

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

CORRIE D. BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001947

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
THE STATE	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
CORRIE D. BROWN,	)	2011-GS-10-1729
	)	
DEFENDANT.	)	

APRIL 16 - APRIL 18, 2012

CHARLESTON, SOUTH CAROLINA

B. E F O R E:

The Honorable Stephanie P. McDonald

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1 (Monday April 16, 2012)

2 THE COURT: Good morning everybody. Y'all please be
3 seated.

4 MS. TOLLEY: Good morning.

5 MR. YOUNG: Judge.

6 THE COURT: All right. Thank you. All right. Is
7 everybody ready to go?

8 MS. TOLLEY: Yes, Judge.

9 MR. YOUNG: We are ready, Judge.

10 THE COURT: How long do we think this is going to take?

11 MR. YOUNG: Probably will go Wednesday.

12 THE COURT: Through Wednesday?

13 MR. YOUNG: Yeah, I think maybe finish we will on
14 Wednesday.

15 THE COURT: Okay. Great. And I don't know if y'all
16 got the word downstairs, but we are pretty low on jurors
17 today so we are picking one at a time instead of splitting
18 off.

19 Judge Jefferson I think is almost finished with her
20 portion of the panel. Then we will do ours. Then if there
21 are enough people left, Judge Houston will pick for his very
22 interesting y'all didn't let me rent the church for my party
23 case. So ---

24 MS. GORDON: I heard about that case.

25 MS. TOLLEY: Judge, if we could approach for a minute?

1 THE COURT: Of course. Come on up.

2 (WHEREUPON, a bench conference was had, not on record.)

3 THE COURT: Okay. Of course. Go take -- have a chat
4 and then we can come back and talk about the voir dire.

5 MS. TOLLEY: Okay. Thank you.

6 MR. YOUNG: Thank you.

7 (WHEREUPON, a break was had.)

8 THE COURT: Okay. Are we all set?

9 MS. TOLLEY: We are all set. We would like to present
10 a motion if we could, Your Honor.

11 THE COURT: Okay. I have got several motion that I am
12 going to need to hear at some point. But we would need to
13 go ahead and strike the jury first. Is there anything I
14 need to hear before we strike the jury?

15 MS. TOLLEY: It -- we would to renew our motion for
16 continuance at this time, Judge.

17 THE COURT: My understand is Judge Dennis has already
18 ruled on that. He is our criminal ad min judge.

19 Unless you have got some other reason to support it
20 different than what you argued to him I am not going to rule
21 any differently. Is there some other basis for your motion?

22 MS. TOLLEY: Well, let me just state this: We believe
23 that in this particular case there's ample reason for a
24 continuance to be granted. There is good cause for
25 continuance to be granted.

1 And those reasons are: One, there is -- there has been
2 outstanding issues with regard to discovery in this case.
3 There's some things that we didn't get until within the last
4 two weeks of the trial of the case. And for that reason we
5 feel like we need additional time to review it.

6 Some of that information is highly technical
7 information and requires the review of an expert. And we
8 have not had an ample opportunity to have the expert review
9 that -- those particular pieces of evidence that were
10 provided to us within the last couple of weeks.

11 In addition, Your Honor ---

12 THE COURT: What specifically was provided to you
13 within the last couple of weeks that requires additional
14 review?

15 MS. TOLLEY: We specifically requested some information
16 from SLED; particularly their file information, information
17 regarding their personnel, information regarding the DNA
18 systems that they use, information regarding the CODIS file.

19 And in this particular case the DNA evidence is
20 critical. It's one of the main pieces of evidence against
21 my client in this case.

22 THE COURT: My understanding was that you had had the
23 DNA information quite a while ago; is that correct?

24 MS. TOLLEY: We've had some of the DNA evidence for
25 quite a while. The only thing we have had really is the

1 report, the DNA officer.

2 And what we were looking for was additional evidence
3 like the CODIS file, something to support why he was in the
4 CODIS database to begin with, how he came to be in the CODIS
5 database, and whatever other information they have with
6 regard to chain of custody as to the CODIS database. And
7 the information that we were provided on that was limited.

8 We also requested the chain of custody with regard to
9 SLED. We didn't get the chain of custody with regard to
10 SLED until March 21st. And we got some of the other
11 evidence after that date.

12 THE COURT: Okay. Yes, sir?

13 MR. YOUNG: Judge, again, as you stated earlier it has
14 already been ruled on by the ad min judge, Judge Dennis.

15 The exact same thing she just spoke about, we talked
16 about then. I mean there has already been a ruling on it.
17 I mean if you need me to continue further ---

18 THE COURT: Well, my ---

19 MR. YOUNG: I'm sorry. Go ahead.

20 THE COURT: That's okay. My understanding - and I
21 talked with Judge Dennis about this - was that there was an
22 assertion that evidence had been given within the last
23 couple of weeks but that nothing could specifically be
24 identified.

25 You know, for example, y'all could hand me a list today

1 if I were the defense attorney and if it were fairly
2 innocuous there would be no prejudice to me going forward.

3 MR. YOUNG: Right.

4 THE COURT: If there were something on there
5 specifically identifiable that would prejudice her client
6 because she didn't have enough time in the last three and a
7 half weeks to take a look at it, I could understand that.
8 But I still haven't heard anything differently identifiable.

9 So if you would address that. I know you have argued
10 this already before.

11 MR. YOUNG: Right.

12 THE COURT: I still have to hear it.

13 MR. YOUNG: No, no problem, Your Honor. Certainly back
14 in December which you may refer to motion for continuance.
15 Okay, she got a four-month continuance at that point.

16 The stuff that she is asking about -- first of all,
17 CODIS file there is no file that exists with CODIS. This is
18 a lab report that is run on DNA when he was in prison. It
19 hit.

20 THE COURT: Okay.

21 MR. YOUNG: Right.

22 THE COURT: So he had been in prison before; ---

23 MR. YOUNG: So he ---

24 THE COURT: --- that is why he is in CODIS?

25 MR. YOUNG: That is correct. And that is how -- that

1 is how it came. There is no file with that.

2 THE COURT: Okay.

3 MR. YOUNG: I have given -- everything that I have, I
4 have given to her.

5 THE COURT: Okay.

6 MR. YOUNG: Additionally, during that four-month
7 continuance I didn't receive what she was asking for chain
8 of custody and those things until March. So for ---

9 THE COURT: Okay.

10 MR. YOUNG: --- December, January, February, end of
11 March, I am not getting anything in issue. And that is why
12 whatever was given over to her a couple of weeks ago was
13 given over to her a couple of weeks ago.

14 And we are in April, beginning of April. I didn't get
15 the discovery request until March. And I hopped right on it
16 and worked through it.

17 I mean there is nothing that I have that she does not
18 have.

19 THE COURT: Okay.

20 MS. TOLLEY: That is not ---

21 THE COURT: So ---

22 MS. TOLLEY: --- entirely true. With regard to
23 discovery and the chain of custody evidence that was
24 something that was requested by the public defender's office
25 when they had the case prior to my being appointed on the

1 case.

2 That was filed probably two years ago. And included in
3 their motion was a requirement that they produce chain of
4 custody. And so that's been outstanding for a long time.
5 We didn't get that until March 21st. I simply renewed the
6 motion for that on March 1st.

7 In addition there's been other information that's come
8 to our attention since then. And that was information
9 regarding Sebastion Qreitz. He is an individual whose DNA
10 was also found on the victim when DNA match was run with
11 SLED.

12 The only -- we have specifically requested in our
13 discovery request any and all information with regard to
14 Sebastion Qreitz, who he is, what is his relationship to the
15 victim, any police reports or anything.

16 We received absolutely nothing. The only thing that we
17 received was the report from SLED with his name on it
18 indicating that there was a match to the DNA on her panties.
19 That was the only information that we received.

20 We received no police report. So we still have not
21 received any police reports that say this is how we came to
22 talk to Sebastian Qreitz, this is how we came to get his DNA
23 evidence, this is his relationship to the victim. We
24 received absolutely none of that.

25 In fact, I think when I met with the solicitor on

1 Friday we received for the first time a copy of Sebastian
2 Qreitz's consent form to have his DNA run. That was the
3 first time that we had ever seen that particular piece of
4 document.

5 If there are police reports relating to this, if there
6 is any information at all that tells us how they got to him
7 and why he wasn't arrested and why he wasn't treated the
8 same way that my client was treated then they need to
9 produce that.

10 THE COURT: If there any?

11 MR. YOUNG: Judge, Sebastian Qreitz is the boyfriend of
12 Brittanae Casper. They were in a consensual relationship
13 back then. They are still in a relationship today. In fact
14 they have been together since this entire period of time.
15 His DNA is on it. They had consensual sex back then. They
16 have it now. I mean that is the reason his DNA is on --
17 there is nothing -- and the reason it wasn't in the police
18 report is he wasn't arrested, he wasn't -- I mean the only
19 thing that they did is ID him on her -- I mean she -- his
20 DNA in on there as well as the defendant's DNA. We know why
21 his is on there. The only thing we don't know is why his is
22 on there.

23 THE COURT: She says it was consensual?

24 MR. YOUNG: Of course she does. Absolutely, Judge.

25 THE COURT: Well ---

1 MS. TOLLEY: Well, Judge, that is -- that is really
2 nice of them to say. I guess the problem that we have in
3 particular with his being in the CODIS DNA database and this
4 other individual not being in the CODIS DNA database then
5 they are treated vastly differently.

6 THE COURT: Why would he be in the database if he is
7 her boyfriend, unless he has been accused of something in
8 the past?

9 MS. TOLLEY: That is exactly my point. He is
10 prejudiced by the fact that he is already in the database
11 and so they assume that he is the person that did it.

12 Perhaps they had a consensual relationship. That is a
13 possibility. We don't know that.

14 THE COURT: Well, if that is a defense I mean that is
15 incumbent upon you to bring that out. But I am not sure how
16 additional information on CODIS or police reports on
17 somebody who was never a suspect is in any way relevant. It
18 is certainly not prejudicial.

19 I am not going to grant a continuance based on we
20 didn't investigate the boyfriend as much as we investigated
21 somebody who allegedly ---

22 MS. TOLLEY: But there is not even a ---

23 THE COURT: --- even is not her boyfriend.

24 MS. TOLLEY: There is not even a police report
25 indicating that they spoke with him. There is nothing in

1 the police reports relating to him.

2 THE COURT: He says he doesn't have one and he has
3 given you everything. And if it turns out later that there
4 is one that they had, then we are going to have a problem.
5 But there is no reason for him to hold back that
6 information. And certainly you can question the police
7 officers about it.

8 MS. TOLLEY: My understanding also is that they want to
9 present testimony regarding Sebastian Qreitz from a friend
10 of the victim and I guess possible from the victim herself.

11 Our position, Your Honor, would be that the best
12 evidence with regard to that would be Sebastian Qreitz
13 himself. And if he is not here ---

14 THE COURT: We will hear about that in the motion.
15 That doesn't have anything to do with the motion for
16 continuance that we are dealing with now. I have read all
17 your motions.

18 MS. TOLLEY: We -- right. We would -- we would submit
19 that now that we have that information that we be allowed
20 ample opportunity to investigate and follow up with regard
21 as to Sebastian Qreitz.

22 THE COURT: Now that you have what information?

23 MS. TOLLEY: The information regarding the fact that he
24 was the boyfriend. The information that there was consent
25 to his having his DNA drawn. That was not information that

1 was previously provided to us. And we still don't know how
2 to contact him. They have not provided us with an address.

3 The most that he said is he is out of the country; he
4 is in France. So for us that poses a problem.

5 THE COURT: Okay. Where is he? What's going on?

6 MR. YOUNG: Judge, he is in Beirut.

7 THE COURT: Okay.

8 MR. YOUNG: He works for a bank there. He's obviously,
9 Judge, not going to be here to testify. I mean and he's --
10 there is no acquisition. This is her boyfriend.

11 So there is no -- I mean -- again, this is the
12 defendant that is on trial. I mean does that make sense,
13 Your Honor? It just -- I ---

14 THE COURT: Why don't I rephrase it for you. If this
15 were in any way potentially exculpatory we would have a
16 different situation. I don't see it as in any way
17 exculpatory to your client that this is a boyfriend that the
18 victim herself says she had a consensual relationship with
19 when -- based on what I am hearing.

20 I haven't heard any of these witnesses obviously. And
21 if there is no information it doesn't put you in a position
22 of needing a continuance.

23 So unless you -- again, my question was what specific,
24 technical, scientific, difficult for a lawyer to translate
25 without having an expert look at it, information was given

1 to you on May -- March 21st I believe that you needed to
2 have an expert look at it where you couldn't have an expert
3 look at it in the last three and a half weeks.

4 And just saying we don't know why he is in CODIS is not
5 going to do it. Because we know why he is in CODIS. He was
6 at SCDC.

7 MS. TOLLEY: All right. We were provided with multiple
8 pieces of documents that would help us assess, you know,
9 what was going on with the case.

10 Let's see. We were also -- I am going to respond to
11 that particular question. We were also provided with call
12 records for my client on April 5th, forensic service
13 laboratory reports, state-matched detailed reports, forensic
14 services laboratory reports on April 5th, Corrie Brown
15 buccal swab, chain of custody report, evidence list, April
16 2nd; buccal, Sebastian Qreitz; chain of custody report April
17 2nd, CD labeled SLED discovery request April 2nd.

18 They did provide some SLED information previously. But
19 that was in the original packet of discovery. Some of this
20 stuff on this new CD is new and different. I know that we
21 had requested SLED information before. But we kept getting
22 the same information over and over again. All of this stuff
23 is new.

24 We did not receive even a copy of the indictment until
25 April 2nd, Your Honor. And it is unsigned and undated. We

1 had requested rap sheets on the witnesses. We received
2 those on April 2nd.

3 THE COURT: When did you request them?

4 MS. TOLLEY: March. I don't know the exact date. I
5 want to say March 1st. But I am not sure, so I don't want
6 to give you a date.

7 THE COURT: Okay. Anything further?

8 MS. TOLLEY: Another SLED case file which included
9 information regarding the potential witnesses. It included
10 information regarding the testing process, the SLED DNA
11 equipment and all of their information.

12 All of that requires review by an expert to see if
13 somehow, you know, the use of different potentially would be
14 beneficial to my client or would yield a different result.
15 All of that information is required.

16 In fact, we have an expert and he indicated that we
17 needed to request this information and that once they got
18 the information he should review it. Because it would
19 perhaps alter or provide us further information that would
20 be needed at trial.

21 THE COURT: Well, have you sent it to him?

22 MS. TOLLEY: I have -- I have not had an opportunity to
23 do that. He has been in trial in another county.

24 THE COURT: Anything further?

25 MR. YOUNG: Just one moment, Judge.

1 THE COURT: Uh-huh.

2 (Pause.)

3 MR. YOUNG: Judge, if I could pass this up.

4 THE COURT: Sure. Show it to Ms. Tolley if you would
5 first.

6 MR. YOUNG: I gave her a copy when we were at the last,
7 Judge.

8 THE COURT: Okay.

9 MR. YOUNG: This is just -- took the liberty of making
10 a spreadsheet.

11 (WHEREUPON, document presented to the court.)

12 THE COURT: Oh, thank you. Okay.

13 MR. YOUNG: You know, when discovery was provided.
14 Again, Judge, just to reiterate. She has everything that I
15 have in my file.

16 MS. TOLLEY: I think he provided me a copy with that
17 before. I am certain he did.

18 MR. YOUNG: Yeah ---

19 MS. TOLLEY: But there are some inaccuracies on
20 that, ---

21 THE COURT: Okay.

22 MS. TOLLEY: --- Judge. They -- this incident occurred
23 on -- in 2008. Mr. Brown wasn't arrested until 2010. The
24 public defender's office was appointed to represent him at
25 that time. It wasn't until nine months later that it was

1 conflicted out of the public defender's office.

2 I was notified by the clerk's office of appointment on
3 September of 2011 -- '09 -- I don't know. Time has passed.
4 At that time I began representing him.

5 We believe that based on all of that we need additional
6 time to prepare, that seven months is an inadequate amount
7 of time to prepare given that he is looking at thirty years
8 in jail for a crime of criminal sexual conduct in the first
9 degree. And that we're asking for a continuance is not an
10 unreasonable thing given all of those circumstances.

11 He has indicated that we asked for a continuance before
12 and got a four-month continuance. But the reason that we
13 asked for a continuance before is because it was put on the
14 docket before we even ever had a chance to really talk about
15 it.

16 Because the first call I got from him was I
17 represent -- I am going to be handling this case and it is
18 probably going to be on the docket soon. And three weeks
19 later it was on the docket. So that is why we got a
20 continuance.

21 MR. YOUNG: Judge, if I could just address ---

22 THE COURT: Yes.

23 MR. YOUNG: --- the last point she said. When I spoke
24 to Ms. Tolley the first time -- again, just to kind of give
25 you a background, it is not easy to get a hold of her. It

1 is -- there is no email ---

2 MS. TOLLEY: It is very easy to get in touch -- the
3 first day you called me I called you right back.

4 THE COURT: Okay. Just let him finish if you would.

5 MR. YOUNG: Thank you, Judge. Again, she does not have
6 an email address. There is no fax number that I can respond
7 to. I ---

8 MS. TOLLEY: All of my information is on file in the
9 clerk's office, with the solicitor's office. I have
10 outstanding cases ---

11 THE COURT: Okay.

12 MS. TOLLEY: --- with the solicitor's office.

13 THE COURT: I need to hear from him first, okay.

14 MR. YOUNG: Thank you, Judge. So getting in contact is
15 not easy. When I spoke to Ms. Tolly the first time I said
16 are we going to make an offer; you know, is this something
17 he wants to plea; if it is, we can bring him over to plea
18 court, I will give you that opportunity in front of a plea
19 judge.

20 She said no, he is not pleading to CSC first. I said,
21 all right at this point then I am going to place it on the
22 next available trial docket. That happened in December.

23 So we proceeded into December. We were ready for trial
24 then. And the judge granted a four month -- or granted her
25 a four-month continuance.

1 At this point -- at that point I told, you know, Ms.
2 Tolley, I said I am going to place this on the next
3 available trial docket so you get four months' notice here;
4 you know, you let me know; if you want to come speak to me,
5 come see me, come sit in our office and let's talk about the
6 case, my door is always open.

7 Again, that conversation, that sit down has still not
8 happened. On this past Friday at noon she showed up in my
9 office and asked to see the evidence. Showed her the
10 evidence. No problem.

11 Still we haven't had a conversation about the case,
12 about, you know, what she wants, what -- you know, any
13 possible mitigating factors. None of that conversation has
14 happened, Judge.

15 We are at this point this victim has been dragged
16 around. I am telling you she is tired and she is upset.
17 And I feel for her, Judge. And that is why I am talking
18 like this.

19 THE COURT: Okay.

20 MR. YOUNG: And her family is here from Georgia. I
21 mean they all came down. You know, we are ready to proceed,
22 Judge. We would ask you to not grant that continuance.

23 THE COURT: Okay. It is your motion. You get the last
24 word. I am happy to hear anything further.

25 MS. TOLLEY: We would just ask that the court consider

1 all of the circumstances. We would ask -- we are sorry that
2 the victim is being dragged around. But that is not because
3 of us. We have been moving as expeditiously as we can.

4 The person of course that I am most concerned about is
5 my client because consequences are significant for him as we
6 move forward. And for that reason, Your Honor, we are
7 renewing our motion for continuance, and we would ask that
8 you grant it based on good cause.

9 THE COURT: Okay. I am going to deny the motion. I
10 know that it has been fully argued in front of Judge Dennis.
11 And I appreciate that. And I haven't heard anything today
12 that would lead me to make a different decision or that I've
13 heard anything -- I haven't heard anything that would
14 prejudice your client by going forward today of -- the
15 solicitor has indicated they have given y'all everything
16 when they had it to give. And I am concerned that there was
17 a previous continuance back in December. So we are going to
18 go ahead and go forward.

19 I have got a number of motions from y'all. How --
20 mostly from Ms. Tolley and then I have got one from the
21 State.

22 How long do you think you will need to handle these?
23 It looks like it might be a couple hours. I am just trying
24 to get a feel for when after we strike the jury to tell them
25 to come back.

1 MR. YOUNG: Judge, the motion we have, the rape shield
2 statute motion, will take five minutes.

3 THE COURT: Right. But have you had a chance to look
4 at Ms. Tolley's ---

5 MR. YOUNG: I have looked at hers, Judge. And I -- and
6 I know she maybe counsel indicated she might withdraw to
7 you. I don't ---

8 THE COURT: Okay. Well, I am just trying to get a
9 ballpark. I am not going to hold anybody to it.

10 MR. YOUNG: Maybe two hours.

11 THE COURT: Two hours probably?

12 MS. TOLLEY: Maximum.

13 THE COURT: Okay. So if we strike our jury, give
14 everybody, you know, an hour and fifteen minutes to eat or
15 so.

16 MS. TOLLEY: I'm sorry?

17 THE COURT: Yes?

18 MS. TOLLEY: I'm sorry, I couldn't hear you.

19 THE COURT: If we strike our jury, give everybody say
20 an hour and fifteen minutes or so to eat then we will come
21 back and have it for two hours.

22 I guess that would put us bringing them back at 3:30 or
23 4:00 which is fine with me unless y'all want to start
24 tomorrow morning at ---

25 MR. YOUNG: Judge, we are ready to go forward today.

1 And the family is here. We are ready to open. And I have
2 got my, you know, first four witnesses lined up if needed if
3 we even get that far.

4 And I almost hesitant to say this motion is going to
5 take two hours. I have looked through them. I think it
6 might take a little bit less.

7 THE COURT: Well, I have got it looks like a Jackson V.
8 Denno. I have got ---

9 MR. YOUNG: And there's no statements, Judge. So
10 that's ---

11 THE COURT: So why do I even have that?

12 MS. TOLLEY: Well, just in case they -- one came up.

13 THE COURT: Okay. I mean it looks like some of these
14 could also be resolved.

15 MS. TOLLEY: We would -- we would prefer if we could
16 start in the morning. I think the motions are going to be
17 significant. I think the main one would be the motion to
18 suppress the DNA evidence. And there's some others.

19 THE COURT: Well, let's ---

20 MS. TOLLEY: And starting at 4:00 doesn't sound like a
21 good time for the jury so.

22 THE COURT: Let's go through this just briefly. The
23 motion to produce the chain of custody, Solicitor, is there
24 anything y'all have not given?

25 MR. YOUNG: Judge, that has all been provided.

1 THE COURT: Okay. Motion to produce the medical
2 records of Brittanae Casper?

3 MR. YOUNG: Judge, the sexual assault kit that was
4 taken that night from Jill Burns, that has been provided.
5 That is ---

6 MS. TOLLEY: We don't have access ---

7 MR. YOUNG: I don't have access to her medical -- I
8 don't have her medical records. We are not putting in ---

9 THE COURT: Yeah.

10 MR. YOUNG: You know, there's some cuts and scrapes.
11 But she can testify what her arm looked like.

12 THE COURT: All right. We may need to hear some
13 information on that. Although I think that would have been
14 more appropriately subpoenaed.

15 Motion to compel production of personnel records of
16 police officers, has there been a subpoena served?

17 MS. TOLLEY: There has not been a subpoena served.

18 THE COURT: Motion to produce the video from the
19 College of Charleston?

20 MR. YOUNG: That video does not exist, Judge. And that
21 is what I just explained, it doesn't even exist. There is
22 no video.

23 THE COURT: All right. Motion ---

24 MR. YOUNG: They didn't pull it that night is why.

25 THE COURT: Okay. Motion to sequester will take a very

1 short amount of time.

2 MR. YOUNG: As long as the victim is allowed, Judge, we
3 have no objection to that.

4 THE COURT: Okay. Well, that is granted then.

5 MS. TOLLEY: I'm sorry, I didn't ---

6 MR. YOUNG: I said as long as the victim is allowed to
7 stay in the courtroom we have no objection to sequester the
8 witness.

9 THE COURT: That will be granted. The motion to -- as
10 to photos of the victim, I'm not sure -- that seems to be
11 evidentiary. But that won't take very long.

12 Motion to suppress testimony of Sergeant Walton
13 regarding video. Motion to suppress statements of the
14 defendant, there are no statements; correct?

15 MR. YOUNG: Right. Judge, we are not putting any
16 statements in from the defendant.

17 THE COURT: Okay. We will deal with the Qreitz issue.

18 MR. YOUNG: Judge, if I may retract that for one
19 second.

20 MS. TOLLEY: Nothing from ---

21 (WHEREUPON, counselors confer.)

22 MR. YOUNG: That's right. Then I'm sorry. Nothing
23 that -- he said the cops or the police that night. But only
24 things that she will testify to what he said when he walked
25 up onto her and grabbed her and put her on ground, those

1 statements are what's -- but we are going to only -- those
2 are the only statements we are going to elicit as we go
3 through ---

4 THE COURT: Okay.

5 MR. YOUNG: So Brittanae Casper.

6 THE COURT: We will take ---

7 MR. YOUNG: So there is no law ---

8 THE COURT: --- a look at those ---

9 MR. YOUNG: No law enforcement.

10 THE COURT: Right. Motion to produce school records,
11 do y'all even have those?

12 MR. YOUNG: Judge, I don't have it.

13 MS. TOLLEY: Well, they are preventing us from getting
14 them. We subpoenaed them. I guess our first line of
15 question -- do you want to hear this now or ---

16 THE COURT: Well, I just want to know how long it is
17 going to that, if there's an issue or not is what I -- I am
18 not ---

19 MS. TOLLEY: There is an issue.

20 THE COURT: Okay. And then the motion to suppress DNA.
21 Okay. I don't think the motions are going to take that
22 long.

23 Do you have any objection, Ms. Tolley, to the proposed
24 voir dire from the State? I have reviewed it, and it seemed
25 pretty basic to me. Have you had a chance to look at it?

1 MS. TOLLEY: I have.

2 THE COURT: Okay. Any objection to those?

3 MS. TOLLEY: No.

4 THE COURT: Okay. Then let's go ahead and get our jury
5 in.

6 MR. YOUNG: Judge, if I may.

7 THE COURT: Yeah.

8 MR. YOUNG: I have a few points. I think Ms. Tolley's
9 voir dire.

10 THE COURT: I don't have that.

11 MS. TOLLEY: I'm sorry.

12 THE COURT: That's okay. I didn't know we had any. I
13 apologize.

14 (WHEREUPON, document presented to the court.)

15 THE COURT: Thank you. And I think we have got a
16 pretty lengthy witness list that y'all handed up. So we are
17 good on that. All right. What are the objections to these?

18 MR. YOUNG: On Number 5 it talks about North Charleston
19 Police Department or Charleston County Sheriff's Office.
20 This case is a Charleston Police Department office -- or
21 sorry, case. So CPD is the ---

22 THE COURT: City of Charleston?

23 MR. YOUNG: That is right, Judge.

24 THE COURT: Okay. I am happy to ask that as to the
25 City of Charleston Police Department. But I am not going to

1 ask it as to North Charleston or the Sheriff coming in and
2 have any involvement.

3 MR. YOUNG: Judge, Number 8.

4 THE COURT: Okay.

5 MR. YOUNG: I am not sure if that really relates to the
6 case. I think the first word says does. It is supposed to
7 be is. Just that seems to make sense.

8 THE COURT: Okay.

9 MS. TOLLEY: I think it does have a relationship to the
10 case, Judge.

11 THE COURT: How so?

12 MS. TOLLEY: There's allegation of alcohol abuse in the
13 case, significant alcohol use. And so that would be
14 relevant for us. And possibly drug use.

15 THE COURT: Well, let's find a way to narrow it from is
16 any member affected. I think everybody has had a family
17 member that has had some kind of issue or something.
18 Unless, you know, my family is just crazier than most.

19 But I would like to narrow that down so that we don't,
20 you know, have 20 people in the panel stand up.

21 MR. YOUNG: Right. I agree, Judge.

22 MS. TOLLEY: I am open to suggestions, Judge. This is
23 how we would like it to be read.

24 MR. YOUNG: I would ask that the whole thing be struck,
25 Judge.

1 THE COURT: I am going to say has any member of the
2 jury panel been significantly affected by drugs, alcohol or
3 a drug-related crime or had a close family member - not
4 going to have friend - who has been.

5 MR. YOUNG: Judge, even to the part drug-related crime.
6 And there is no -- this case doesn't have drugs.

7 THE COURT: Is this a drug-related crime? I don't ---

8 MR. YOUNG: It is a sexual assault.

9 MS. TOLLEY: There may be some -- there may be some
10 evidence with regard to that.

11 THE COURT: I will ask it, but we will just we will
12 see. Okay. What else?

13 MR. YOUNG: On Number 12, Judge, it talks about
14 domestic violence. There is surely no inference of domestic
15 violence in this case. This is a sexual assault. They are
16 not -- they weren't living together or cohabitating or
17 boyfriend or girl, nothing to that so.

18 MS. TOLLEY: That is certainly what the victim -- that
19 is the victim's story.

20 THE COURT: Okay. I am not going to ask about domestic
21 violence. But I will ask about sexual assault or rape. All
22 right.

23 MR. YOUNG: And then, Judge, 13. One more. The last
24 sentence it talks about being charged with murder. Again,
25 this is a criminal sexual conduct case. I don't think ---

1 MS. TOLLEY: Well, that is ---

2 THE COURT: I am just going to take out 13. I think it
3 is covered already.

4 MR. YOUNG: Thank you, Judge.

5 THE COURT: And then I have a catch-all at the end that
6 I ask: Does any member of the panel know of any reason
7 whatsoever while they -- why they would not be allowed to
8 sit as a fair -- be able to sit as a fair and impartial
9 juror in the trial of this case to hopefully encompass any
10 kind of juror misgivings two day after the trial has started
11 since we have had that before. So just to catch all.
12 Generally nobody stands up for that.

13 MR. YOUNG: Okay.

14 THE COURT: Okay. I am going to when I just introduce
15 the case to them, read the indictment to them. And I think
16 that gives the names. Is it Brittanae Casper?

17 MR. YOUNG: Brittanae Casper, yes, Judge.

18 THE COURT: Brittanae Casper. And is it Corrie Dwayne
19 Brown?

20 MS. TOLLEY: Yes.

21 THE COURT: Okay. All right. Then I think we are
22 ready for the jury if y'all are.

23 MR. YOUNG: We are ready, Your Honor.

24 (Pause awaiting jury.)

25 MS. GORDON: With regard to the motion to suppress the

1 DNA we wanted to know -- we don't have the SLED people
2 coming today. So I don't know what -- she didn't give a
3 basis for the motion, so we just need to ---

4 THE COURT: Okay.

5 MS. GORDON: --- be advised if she -- if she is going
6 to need witnesses we haven't arranged for those witnesses to
7 be available.

8 THE COURT: Do you -- have you subpoenaed any SLED
9 witnesses or anything to be here for your motion to suppress
10 or got any issue; do you need to examine the SLED people
11 regarding the DNA?

12 MS. TOLLEY: We may, Judge.

13 THE COURT: Okay. I mean we could do that in the
14 morning. But I don't want to hamper y'all's opening
15 statements if that's something that is going to need to be
16 addressed.

17 MR. YOUNG: Just maybe take it up during the course of
18 trial for -- if she wants to take up that before the course
19 of those scientists testifying, maybe take it up in camera.

20 MS. TOLLEY: I think it is a big enough issue that we
21 probably need to address it fully before we proceed with the
22 trial.

23 THE COURT: Well, when did they find out that you were
24 going to need to address it before? It is not their
25 responsibility to have them here if they don't need them.

1 MS. TOLLEY: Well.

2 MR. YOUNG: Twenty minutes ago, Judge. Ten.

3 MS. TOLLEY: That was -- again, we needed more time.
4 Had we had more time we would have let them know that ahead
5 of time. But that's the best we could do. And I don't
6 think it is unreasonable for us to expect them to have them
7 here since they have to produce chain of custody. And that
8 was requested two years ago.

9 THE COURT: Right, I don't ---

10 MS. TOLLEY: So ---

11 THE COURT: I don't think it is unreasonable for them
12 to have them here. But they don't have to have them here
13 today if they weren't planning to put them up today.

14 MS. TOLLEY: Well, I think one of the things the court
15 talked about is possibly starting in the morning. And that
16 would perhaps give them ample opportunity to get here for us
17 to address it and move forward with the case.

18 MR. YOUNG: Judge, again, we are ready to proceed. She
19 is here with her family. And ---

20 THE COURT: I understand that y'all are ready to
21 proceed. However, I am looking at this list of when she
22 started to get things in a court-appointed case that she is
23 working hard for her client on. And even though it would
24 have been nice to have the motions Friday, that never
25 happens very often in these criminal trials. I generally

1 get them handed to me when I am walking on the bench, even
2 when I am here all week, you know, later on.,

3 I am not going to put her at any dis -- you know, y'all
4 knew DNA was going to be an issue in the case I guess. I
5 understand that it was an issue at the motion for a
6 continuance. So it would seem that -- often there's a
7 motion to suppress. Perhaps the SLED folks need to be here.

8 I am going to let her start in the morning. I have
9 denied the motion for a continuance. I think that, you
10 know, ---

11 MR. YOUNG: And I will have those ---

12 THE COURT: --- fair is fair.

13 MR. YOUNG: And just so I am clear. Do you want all
14 the chain people here? Do you want just the scientist who
15 that -- so I have clarification who to call.

16 MS. TOLLEY: You might plan on having all of them here.
17 But I will let you know if otherwise within the next two
18 hours.

19 MR. YOUNG: So have all ---

20 MS. TOLLEY: Is that okay?

21 THE COURT: I don't -- I mean who do you need? Usually
22 is it two people. I mean I don't think you need everybody
23 in the chain. Y'all get together when -- either at lunch or
24 I guess y'all will have lunch and after we strike the jury
25 that's all we are going to do with them. And then figure

1 out who he needs. I don't want to have to -- him bring
2 extraneous people at nine o'clock if they are not needed
3 until 2:00.

4 MS. TOLLEY: Okay.

5 THE COURT: So I mean I think the least is y'all can
6 take a look at the file and see who is really needed.

7 MS. TOLLEY: We will do that, Judge.

8 THE COURT: That would be great. And why don't we have
9 that at -- do y'all want to start that at 9:00 since we are
10 kind of getting a little bit of a late start?

11 MR. YOUNG: That sounds fine, Judge.

12 THE COURT: And I think my thing for tomorrow morning
13 cancelled. Is that ---

14 THE CLERK: Yes.

15 THE COURT: Are we set? I need to make sure I haven't
16 been double booked. We will do the other motions today.

17 MS. TOLLEY: Yes.

18 THE COURT: And we will do that one motion tomorrow.
19 Unless that puts anybody in a bad spot. I think we can work
20 a lot of these motions out, quite frankly.

21 MR. YOUNG: I agree, Your Honor.

22 MS. TOLLEY: Yes, Judge.

23 THE COURT: Okay. We will do that in the morning, and
24 we will get started with opening statements in the morning.
25 So we are good in the morning. Okay.

1 Then what I'll do is tell the jury after we finish
2 selecting the rest of the panel we will come back at 2:30
3 for Judge Houston. We will tell all the jury to come
4 tomorrow at 10:00. That way we will -- out of an abundance
5 of caution. Hopefully it won't take that long. But I just
6 hate making the jury sit back there. I would rather us wait
7 than them.

8 So and then we are thinking we are going to go into
9 Wednesday anyway. I think that takes care of that.

10 As an administrative matter I have a legislative matter
11 in Columbia tomorrow night that I have to deal with. I have
12 to get out of here probably by 4:30 tomorrow in order to get
13 there in time. I will still probably be late. But they can
14 wait. And so I will let the jury know that as well. And
15 then we can start back whenever y'all want to start back
16 Wednesday morning.

17 MR. YOUNG: Thank you, Judge.

18 MS. GORDON: Your Honor, do you want the witnesses that
19 we have here to come in during -- when we name the witnesses
20 for the jury?

21 THE COURT: I will just read the list out. If there's
22 some issue, that is fine. But I don't usually require
23 people to do that unless there is a need for them to do that
24 in this particular case.

25 MS. TOLLEY: I didn't hear your question. I'm sorry.

1 MS. GORDON: Whether or not she wanted the witnesses to
2 come in. Some judges like the witnesses to come in and show
3 their face.

4 THE COURT: All right. Well, we will just wait on our
5 panel.

6 (WHEREUPON, a break was had.)

7 THE COURT: Folks, what I was telling the court
8 reporter, some of the questions in the voir dire are
9 personal obviously with the type of case we are dealing
10 with. I may have people come up here if they feel that they
11 would prefer to. I will get ya'll to come up as well. And
12 everything will be on the record. We will do it right over
13 here by the court reporter. I just think we will get a more
14 candid response if we do it that way.

15 (WHEREUPON, the jury panel enters the courtroom at
16 approximately 12:25 p.m.)

17 THE COURT: Ladies and gentlemen, thank you for being
18 here with us today. I am Stephanie McDonald. And it is my
19 privilege to be able to work with y'all this week during
20 this term of general sessions court. That is criminal
21 court.

22 I know that y'all heard from Judge Jefferson this
23 morning. We have got terms of criminal court and civil
24 court this week. We will be doing a criminal trial in this
25 courtroom if you are selected on this particular jury.

1 The case that we are striking for today is State of
2 South Carolina versus Corrie Dwayne Brown. And our
3 indictment in this case states that in Charleston County on
4 December 5th, 2008, the defendant, Corrie Dwayne Brown, did
5 commit a sexual battery upon the victim, Brittanae Casper,
6 without her consent and with the use of aggravated force
7 and/or the victim submitted to sexual battery by the actor
8 under circumstances in which the victim was also the victim
9 of forcible confinement, kidnapping or some other similar
10 offense or act in violence of the South Carolina Code of
11 Laws.

12 Now, one very very important thing that you need to
13 remember, this indictment is not evidence in any way.

14 The burden is upon the State to prove each and every
15 element of its case against the defendant and each and every
16 element alleged in the indictment and any facts that might
17 support what's alleged in the indictment.

18 The indictment is merely the instrument, the legal
19 document by which -- that brings the charge to court. I am
20 sure y'all have all heard this before, but I can't emphasize
21 it enough: This defendant is presumed innocent throughout
22 this entire trial up and until the moment that the jury
23 actually decides whether or not they are going to
24 unanimously find him guilty or not guilty.

25 So again, I read you the indictment so that you know

1 what type of case we'll be striking for today and what the
2 solicitor will attempt to prove as it bears -- the State
3 bears the burden of proof throughout the entire process.

4 I need to go through a series of questions with you
5 that are somewhat more specific than the questions that
6 Judge Jefferson asked you earlier. These are questions that
7 the attorneys have requested that the court ask and a few
8 that I ask in any criminal case to determine if you can be
9 fair and impartial when you sit on this jury.

10 I know that we all this things in our life that make it
11 imperfect for us to sit on a certain jury or another. These
12 questions are how we find that out.

13 Some are very innocuous, i.e., do you know any of these
14 parties. Others might be kind of personal. So that if
15 there is a question that you would prefer to answer up here
16 with just the court and the court reporter and the
17 attorneys, we can certainly do that. And if you would like
18 to come forward we will handle it that way. If you prefer
19 to just answer as you stand, which is how we normally handle
20 things, that is fine as well.

21 First we need to make sure that none of y'all are
22 related by blood or marriage or close personal friends of
23 any of the attorneys or of the defendant in the case. I am
24 going to ask the folks from the solicitor's office to
25 introduce themselves to you and then we will ask you some

1 questions about that.

2 MR. YOUNG: Thank you, Judge. My name is Adam Young.
3 I am an assistant solicitor, 9th Judicial Circuit, under
4 Scarlett Wilson. This is Elizabeth Gordon who is also a
5 solicitor in the case.

6 THE COURT: Is any member of the jury panel related by
7 blood or marriage or a close personal friend of Mr. Adam
8 Young, Ms. Elizabeth Gordon or any employee of the
9 Charleston County Solicitor's Office or the 9th Circuit
10 Solicitor's Office? If so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay, I find none. Ms. Tolley, if you
13 could stand and introduce yourself and your client please.

14 MS. TOLLEY: Thank you, Judge. Good morning. I am
15 Juan Tolley. I am an attorney here in Charleston, and I
16 represent Mr. Corrie Dwayne Brown in this case.

17 THE COURT: Okay. Is any member of the jury panel
18 related by blood or marriage or a close personal friend of
19 Ms. Juan Tolley or have you ever been represented by the law
20 office of Juan Tolley? If so, please stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Okay. I find none. Is any member of the
23 jury panel related by blood or marriage or a close personal
24 friend of Mr. Corrie Dwayne Brown? If so, please stand.

25 (WHEREUPON, there was no response.)

1 THE COURT: Okay. I find none. There are a number of
2 witnesses who are potential witnesses in the trial of this
3 case.

4 I'm going read y'all a list of the potential witnesses
5 in the trial of this case and ask you to stand if you are
6 related by blood or marriage or a close personal friend of
7 or know any of these witnesses in such a way that it
8 wouldn't be fair for you to sit as a juror.

9 The first is Brittanae Casper, Grant Hoskins, Officer
10 Mary Phillips of the Charleston Police Department, Sergeant
11 Walton of the College of Charleston Public Safety
12 Department, Jill Burns, Alex Foley, Officer Steven Hood,
13 Crime Scene Tech Officer Richard Wiersma, Investigator
14 Melvin Magwood, Lilly Gallman, Lindsay Thompson,
15 Investigator Shylah Murray of the Charleston Police
16 Department, Linda Wilson of the Charleston Police
17 Department, Stephanie Stanley, Tim Grambow or Grambow of
18 SLED, or Lisa Atline of the Charleston Police Department.

19 If you are related by blood or marriage to any of these
20 individuals or you are a close personal friend of them or
21 anyone of them, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Okay, I find none. Has any member of the
24 jury panel heard anything about this case or do you know
25 anything about this case? If so, please stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Okay. I find none. One additional witness
3 I need to read you in addition to the others, William
4 Christenson. Is there any member of the panel related by
5 blood or marriage to or a close personal friend of William
6 Christenson? If so, please stand.

7 (WHEREUPON, there was no response.)

8 THE COURT: Okay. Thank you. I find none. Has any
9 member of the jury panel or a close family member or close
10 personal friend ever been the victim of a crime? If so,
11 please stand.

12 Yes, sir, if you would give us your name and juror
13 number. I am happy to hear from you or you are welcome to
14 come forward, whichever you prefer.

15 POTENTIAL JUROR: My name is Jimmie Mcfadden. I am
16 Juror Number 173. I was a victim of attempted murder during
17 a shoplifting.

18 THE COURT: Would your experience in any way interfere
19 with your ability to be fair and impartial in the trial of
20 this case which involves an indictment for criminal sexual
21 conduct in the first degree?

22 POTENTIAL JUROR: No, it would not.

23 THE COURT: Okay. Thank you, sir.

24 Yes, ma'am?

25 POTENTIAL JUROR: Heidi A. Gough, Juror Number 99. I

1 am the mother of a young lady who was molested as a child.

2 THE COURT: Would that experience in any way ---

3 POTENTIAL JUROR: (Nodded.)

4 THE COURT: It would interfere?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Okay. You will not be selected as a juror
7 in the trial of this case. But if you could remain just for
8 a little while for further instructions.

9 POTENTIAL JUROR: Okay.

10 THE COURT: Juror Number 99 will be on a different
11 panel.

12 Yes, sir?

13 POTENTIAL JUROR: Yes, my wife's car -- vehicle was
14 broken into.

15 THE COURT: Okay. What is your juror number, please,
16 sir?

17 POTENTIAL JUROR: Two-thirty-eight, Robert Smith.

18 THE COURT: Okay. Two-thirty-eight. Mr. Smith, would
19 that in any way interfere with your ability to be fair and
20 impartial in this case?

21 POTENTIAL JUROR: No, ma'am.

22 THE COURT: Thank you, sir.

23 Yes, sir?

24 POTENTIAL JUROR: Victim twice of burglary.

25 THE CLERK: Jury number, sir?

1 POTENTIAL JUROR: Jury -- Ackerman, Juror Number 2.

2 THE COURT: Okay. Mr. Ackerman, would it -- would
3 anything about those experiences in any way interfere with
4 your ability to be fair and impartial in the trial of this
5 case?

6 POTENTIAL JUROR: No.

7 THE COURT: Thank you, sir. Has any member of the jury
8 panel or a close family member or close personal friend ever
9 been the victim of a crime investigated by the City of
10 Charleston Police Department? If so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Okay. I find none.

13 Has any member of the jury panel or close personal
14 friend of any member or a close family member ever been the
15 victim of a crime prosecuted by the Charleston County
16 Solicitor's Office? If so, please stand.

17 THE COURT: Does any member of the panel hold a
18 religious or philosophical belief that would make it
19 difficult for you to sit in judgment of another person? If
20 so, please stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Okay. I find none.

23 Has any member of the jury panel been significantly
24 affected by drugs, alcohol or a drug related crime; or does
25 any member of the panel have a close family member who has

1 been significantly affected by drugs, alcohol or a
2 drug-related crime? If so, please stand. And we will have
3 time to come forward in the end.

4 Yes, ma'am?

5 POTENTIAL JUROR: Juror 57, Gina Cricchio. My husband
6 had painkiller addiction and he ended up committing suicide
7 over it.

8 THE COURT: I'm sorry. Would that in any way interfere
9 with your ability to sit fairly and impartially in the trial
10 of this case?

11 POTENTIAL JUROR: I don't believe so.

12 THE COURT: Okay.

13 POTENTIAL JUROR: I couldn't say unless I knew the
14 involvement of why drugs and alcohol ---

15 THE COURT: That you would need to know more?

16 POTENTIAL JUROR: Yeah.

17 THE COURT: Okay.

18 MS. TOLLEY: I'm sorry, I didn't get her juror number.

19 THE COURT: Juror number you said 57?

20 POTENTIAL JUROR: Fifty-seven.

21 THE COURT: Ma'am, we are going to keep you with us for
22 now. But we may go into that in more detail. Okay.

23 Yes, ma'am?

24 POTENTIAL JUROR: Rachael Click, Juror Number 49, the
25 exact same situation except it was my mother.

1 THE COURT: Okay. Would that interfere with your
2 ability to be fair and impartial in the trial of this case?

3 POTENTIAL JUROR: I think I would need to know more
4 information.

5 THE COURT: Okay. We are going to ask you to remain
6 with us for now.

7 MS. TOLLEY: I'm sorry, I didn't hear.

8 THE COURT: Forty-nine.

9 Yes, ma'am?

10 POTENTIAL JUROR: Juror Number 62. My brother used
11 drugs before.

12 THE COURT: Okay. Would that interfere with your
13 ability to be fair and impartial in the trial of this case?

14 POTENTIAL JUROR: No, ma'am, not at all.

15 THE COURT: Okay. Thank you.

16 Yes, ma'am?

17 POTENTIAL JUROR: Delphine Moore, Juror Number
18 90 (sic) - 91 (sic). My son was caught with marijuana.

19 THE COURT: Okay. And would that in any way interfere
20 with your ability to be fair and impartial in this case?

21 POTENTIAL JUROR: No.

22 THE COURT: Thank you, ma'am.

23 Anyone else? Yes, sir?

24 POTENTIAL JUROR: Two-twenty-one, Daniel
25 Samuelsonjones. My younger brother has been in jail several

1 times for drug addiction.

2 THE COURT: Okay. Would that in any way interfere with
3 your ability to be fair in this case?

4 POTENTIAL JUROR: I don't think so.

5 THE COURT: I need to know would it ---

6 POTENTIAL JUROR: No.

7 THE COURT: Okay. Thank you, sir. Did I get
8 everybody? Everything all right?

9 POTENTIAL JUROR: I am not feeling very well, Your
10 Honor. I am feeling very sick to stomach at the moment.

11 THE COURT: Okay. Do you need a break right now?

12 POTENTIAL JUROR: Yes, yes.

13 THE COURT: Okay. Let him go ahead and step out. This
14 is Number 221.

15 POTENTIAL JUROR: I'm sorry.

16 THE COURT: That's okay. All right. Is any member of
17 the panel involved with law enforcement, the legal system or
18 the penal system in such a way that it would prevent you
19 from being a fair and impartial juror? If so, please stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: Okay. Finding none. Thank you.

22 Is any member of the jury panel employed by law
23 enforcement or do you have a close family member or close
24 personal friend who is employed by law enforcement? If so,
25 please stand.

1 Okay. Yes, sir?

2 POTENTIAL JUROR: Juror Number 58, David Crutchfield.

3 My brother is a police officer.

4 THE COURT: Okay. And would that in any way interfere
5 with your ability to be fair and impartial in this case?

6 POTENTIAL JUROR: No.

7 THE COURT: Thank you, sir.

8 Yes, ma'am?

9 POTENTIAL JUROR: I have multiple family members that
10 served in various law enforcement roles. I also juvenile
11 volunteer solicitor with the solicitor's office for juvenile
12 arbitration.

13 THE COURT: You are a volunteer solicitor?

14 POTENTIAL JUROR: I volunteer for the juvenile
15 delinquent program.

16 THE COURT: With this solicitor's office?

17 POTENTIAL JUROR: Ninth Circuit.

18 THE COURT: Okay. What is your juror number, please,
19 ma'am?

20 POTENTIAL JUROR: One-fifty.

21 THE COURT: One-fifty. Okay. Ma'am, you will not be
22 selected as a juror in the trial of this case. Thank you.

23 Yes, sir?

24 POTENTIAL JUROR: Robert Smith, Juror 238. I served
25 with several members of law -- several and state law

1 enforcement divisions through the military reserves.

2 THE COURT: You are in the military reserves?

3 POTENTIAL JUROR: Yes, ma'am.

4 THE COURT: Do you serve with the City of Charleston
5 Police Department ---

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: --- in any capacity? No?

8 POTENTIAL JUROR: No, ma'am.

9 THE COURT: Okay. Could you be fair and impartial in
10 the trial of this case?

11 POTENTIAL JUROR: I believe I can, yes.

12 THE COURT: Thank you, sir.

13 Yes, ma'am?

14 POTENTIAL JUROR: Good evening. I have a brother-in-
15 law in North Carolina that is a police officer.

16 THE COURT: Okay. And what is your juror number,
17 please, ma'am?

18 POTENTIAL JUROR: Two-eighty-one.

19 THE COURT: Two-eighty-one?

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: Okay. And could you be fair and impartial
22 in this case?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am?

1 POTENTIAL JUROR: Sally Nelson, Juror 193. I have a
2 brother here with the City of Charleston.

3 THE COURT: He works for City of Charleston Police
4 Department?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Okay. Could you be fair and impartial in
7 the trial of this case?

8 POTENTIAL JUROR: Yes.

9 THE COURT: Okay. Let's get you to remain with us for
10 now, okay.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Juror Number 193.

13 Does any member of the jury panel hold any social,
14 racial, ethnic or other views which would prevent you from
15 being a fair and impartial juror? If so, please stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Okay. I find none. I have a few other
18 questions to read. Again, I mention that some may be of a
19 personal nature. If you want to wait and come forward at
20 the end we will have a catch-all time for you to address
21 those. Or stand now and we will leave that up to you
22 specifically.

23 But first, let me ask you this question: Is any member
24 of the panel a member of an organization such as CAVE - I
25 believe that is Citizens Against Violent Crime, People

1 Against Rape, Mothers Against Drunk Driving, or any other
2 similar group? If so, please stand.

3 Yes, sir, if I could get your juror number and name,
4 please.

5 POTENTIAL JUROR: My name is Lance Lewandowski, Juror
6 Number 158.

7 THE COURT: Okay.

8 POTENTIAL JUROR: And I have donated money to MADD in
9 the past.

10 THE COURT: Okay. Would that ---

11 POTENTIAL JUROR: Other than that, no other ties.

12 THE COURT: You donated money?

13 POTENTIAL JUROR: Just donated -- just donations, yes.

14 THE COURT: Okay. Well, no, that is exactly what we
15 need to know. Would that in any way interfere with your
16 ability to be fair and impartial in the trial of this case?

17 POTENTIAL JUROR: No.

18 THE COURT: Thank you, sir.

19 Does any member of the jury panel have a close family
20 member or a close personal friend who has been the victim of
21 a sexual assault or rape? If so, please stand or we will
22 have a time for folks to come forward to respond to a series
23 of questions shortly.

24 (WHEREUPON, there was no response.)

25 Has any member of the jury panel been a victim of or a

1 witness to a sexual assault? If so, please stand or come
2 forward shortly.

3 (WHEREUPON, there was no response.)

4 Has any member of the panel or a close personal friend
5 been accused of a sexual assault or rape? If so, please
6 stand or come forward shortly.

7 (WHEREUPON, there was no response.)

8 Has any member of the panel or a close personal friend
9 been accused of any violent crime? If so, please stand or
10 come forward shortly.

11 (WHEREUPON, there was no response.)

12 Has any member of the panel ever sat on a jury in a
13 criminal trial? If so, please stand.

14 Yes, sir, give us your name and your juror number.

15 POTENTIAL JUROR: Jury -- Juror Number 44. Last name
16 is Castellow. I served on a domestic violence case in Decab
17 County, Georgia.

18 THE COURT: Okay. And what was the verdict in that
19 case?

20 POTENTIAL JUROR: A not guilty.

21 THE COURT: Not guilty. Okay. Thank you, sir.

22 Yes, sir?

23 POTENTIAL JUROR: I sat on a trial for driving under
24 the influence and driving under a suspended license here in
25 Charleston.

1 THE COURT: Okay. And what is your juror number,
2 please?

3 POTENTIAL JUROR: Number 10.

4 THE COURT: All right. And what were the verdicts in
5 that case?

6 POTENTIAL JUROR: It was guilty.

7 THE COURT: Guilty. Okay.

8 Yes, sir, in the green?

9 POTENTIAL JUROR: Assault with intent to kill. Juror
10 58, David Crutchfield.

11 THE COURT: Okay.

12 POTENTIAL JUROR: And it was guilty.

13 THE COURT: Guilty. Okay.

14 Yes, sir?

15 POTENTIAL JUROR: Ackerman, Juror Number 2. Third
16 offense, drug dealing. Found guilty.

17 THE COURT: Okay. Thank you, sir.

18 POTENTIAL JUROR: Frank Butler, Juror Number 32. I
19 served on trial -- I am not exactly sure of the charges.
20 But it of course boiled down to spitting on a police
21 officer.

22 THE COURT: Okay.

23 POTENTIAL JUROR: And I think we found him guilty of
24 some lesser included offense.

25 THE COURT: Okay. Thank you, sir.

1 Yes, ma'am?

2 POTENTIAL JUROR: Not this particular question. There
3 was two questions back.

4 THE COURT: Okay.

5 POTENTIAL JUROR: But I had to get my thoughts together
6 before answering.

7 THE COURT: Okay. And you are welcome to answer now or
8 you can forward shortly when I bring everybody, whichever
9 you would prefer.

10 POTENTIAL JUROR: Yes, I would like to come forward.

11 THE COURT: Okay. Let's do that in a minute. Thank
12 you, ma'am.

13 Yes, ma'am?

14 POTENTIAL JUROR: Oclelia Smalls. I am Juror Number
15 235. And it was I think a murder case. It was a mistrial.

16 THE COURT: Okay. Thank you, ma'am.

17 Yes, ma'am?

18 POTENTIAL JUROR: I am Juror Number 281. I served as a
19 grand juror in Texas regarding a ---

20 THE COURT REPORTER: I'm sorry ---

21 THE COURT: Grand juror in Texas. If I could get you
22 to speak up for me, please.

23 POTENTIAL JUROR: Yes, a grand jury in Texas.

24 THE COURT: Okay.

25 POTENTIAL JUROR: It was like different types of

1 crime.

2 THE COURT: You sat on a grand jury for several crimes?

3 POTENTIAL JUROR: Yes, ---

4 THE COURT: Okay.

5 POTENTIAL JUROR: --- I did.

6 THE COURT: Okay. Would anything about that experience

7 interfere with your ability to be fair in this case?

8 POTENTIAL JUROR: No, not at all.

9 THE COURT: Okay. Thank you, ma'am.

10 Yes, ma'am?

11 POTENTIAL JUROR: Yes, I sat on a jury for molestation

12 of a minor.

13 THE COURT: Okay.

14 POTENTIAL JUROR: My jury number is 223.

15 THE COURT: Okay. And what was the verdict in your

16 case?

17 POTENTIAL JUROR: Guilty.

18 THE COURT: Okay. Yes, sir.

19 POTENTIAL JUROR: Juror 219.

20 THE COURT: Okay.

21 POTENTIAL JUROR: I served a lawsuit jury. A lawsuit.

22 THE COURT: A -- for a lawsuit?

23 POTENTIAL JUROR: Uh-huh.

24 THE COURT: Okay. Thank you, sir. I appreciate that.

25 Is there any member of the panel who has previously

1 been a witness in a civil or criminal case? If so, please
2 stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. Would any member of the panel
5 have any problem following the law as the Court gives it to
6 you even if you believe that such law is inappropriate or
7 unfair? If so, please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Now I am going to ask one catch-all
10 question.

11 POTENTIAL JUROR: Could you repeat that?

12 THE COURT: Sure. I am going to give a jury charge at
13 the end of this trial that explains that -- and throughout
14 the whole trial I will be telling the jury that you are the
15 judge of the facts but the court is the judge of the law and
16 that the juries pursuant to the oath that all jurors take
17 they have to apply the law that the court gives it to you
18 even if you think it is unfair or wrong and that there's a
19 place in Columbia for them to fix it if I get it wrong.

20 What this question asks is, is there any member of the
21 panel who would have any problem following the law as the
22 court gives it to you even if you feel that it is
23 inappropriate or unfair. If so, please stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: I'm going ask a catch-all question to

1 include with the other questions for folks that might need
2 to come forward and address something before the court
3 reporter and with the attorneys in the court.

4 Is there any reason whatsoever that would prevent you
5 from being fair and impartial in the trial of this case?

6 And I ask that question because if you're having any
7 kind of misgivings about what you answered before, something
8 you think might apply that doesn't apply, it is better for
9 the court to know, and indeed these attorneys and this
10 defendant are entitled to know. That's why they turn in
11 these voir dire questions for me to ask.

12 So if there is an issue that you have that you think
13 would interfere with your ability to be fair and impartial
14 in a case of this type and you have not already brought that
15 to our attention I am going to get you to come forward with
16 the group that might need to respond to any of the previous
17 questions and we will address that up here. Okay.

18 So if there is anyone that has anything from the
19 previous questions that were asked or from that final
20 catch-all question that you need to bring to my attention
21 and the attention of the attorneys I am going to ask y'all
22 to form a line and come forward kind of like y'all did
23 earlier with Judge Jefferson. Okay.

24 (WHEREUPON, the following sidebar was reported:)

25 THE COURT: All right. Yes, ma'am?

1 THE CLERK: One-sixty.

2 (WHEREUPON, Juror 160 came to sidebar.)

3 THE COURT: One-sixty. Okay. Yes, ma'am?

4 POTENTIAL JUROR: Good morning.

5 THE COURT: Good morning.

6 POTENTIAL JUROR: I'm going back to the question

7 regarding if you or anyone you know has been a victim.

8 THE COURT: Right.

9 POTENTIAL JUROR: I have from the age of seven to
10 fourteen.

11 THE COURT: You have been a victim?

12 POTENTIAL JUROR: Yes, ma'am.

13 THE COURT: Okay. And would that in any way interfere
14 with you ability to be impartial here ---

15 POTENTIAL JUROR: Yes.

16 THE COURT: Okay. I am going to excuse you from the
17 trial of this case. But if you will just remain with us
18 briefly we will give you further instructions.

19 POTENTIAL JUROR: Thank you.

20 THE COURT: Thank you, ma'am. And thank you for
21 bringing that to our attention.

22 (WHEREUPON, Juror 160 returned to seat.)

23 THE CLERK: One-ninety.

24 THE COURT: Yes, ma'am. If you would come on forward.

25 (WHEREUPON, Juror 190 came forward to sidebar.)

1 POTENTIAL JUROR: I had a niece and a nephew that was
2 molested.

3 THE COURT: Okay. Niece and a nephew?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Okay. And would that in any way impact
6 your ability to be fair and impartial in a case of this
7 type? Do you think it might?

8 POTENTIAL JUROR: Yeah.

9 THE COURT: Okay. I'm going to let you go from the
10 trial of this case. One-ninety.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Okay. Thank you, ma'am. If you will just
13 wait we will give you some further instructions, okay.

14 (WHEREUPON, Juror 190 returned to her seat.)

15 THE COURT: Okay. And y'all come forward. I'm not
16 going to let everybody go that has got some issue, but she
17 about to start crying and I don't think she needs to be on
18 this jury.

19 Yes, sir?

20 THE CLERK: Two-thirty-eight.

21 (WHEREUPON, Juror 238 came forward to sidebar.)

22 THE COURT: Okay. Yes, sir? Hello. Good morning.

23 POTENTIAL JUROR: Good morning. My wife was sexually
24 assaulted before I met her, about five years before I met
25 her.

1 THE COURT: Okay.

2 POTENTIAL JUROR: And if anything parallels what
3 happened with her it may or may not affect my judgment.

4 THE COURT: Okay. And you don't know enough about the
5 facts in this case ---

6 POTENTIAL JUROR: Right.

7 THE COURT: --- to know that yet.

8 POTENTIAL JUROR: Right.

9 THE COURT: Do we want to fashion something to explain
10 about this particular case or ---

11 MR. YOUNG: He said his wife?

12 THE COURT: His wife.

13 MS. TOLLEY: We may need to take it up outside the
14 juror's presence to articulate to ---

15 THE COURT: Okay. I am going to ask you to step back
16 for just a minute.

17 POTENTIAL JUROR: Yes, ma'am.

18 THE COURT: And we are going to figure out
19 something ---

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: --- to address that. Because that's what I
22 was a little worried about. Thank you.

23 (WHEREPON, Juror 238 returned to seat.)

24 THE COURT: How do y'all want to address that?
25 Similarly with the two ladies that had drug or alcohol

1 issues they don't know enough yet to know whether they will
2 be affected or not.

3 MS. TOLLEY: I think it sounds like they need to be
4 excused.

5 MS. GORDON: I don't know that Ms. Tolley will agree
6 with -- our issue would say that it was a stranger rape.
7 But I don't know -- and her defense may be that he knew her
8 so ---

9 THE COURT: Yeah, it doesn't sound like that is going
10 to work.

11 MS. GORDON: So I don't know how to narrow it.

12 THE COURT: And I don't know enough ---

13 MR. YOUNG: And this is a college girl ---

14 THE COURT REPORTER: I'm sorry?

15 MR. YOUNG: It is a young college girl, so I mean that
16 is different than possibly a wife or fiancée. I don't know.
17 I am not sure what his facts were in his case.

18 MS. TOLLEY: It sounds like a reason to excuse him.

19 THE COURT: I can't excuse everybody that thinks they
20 might have an issue ---

21 MS. TOLLEY: Four -- he stood up four times already so.

22 THE COURT: For example, how -- what is this drug or
23 alcohol that you think may be involved here?

24 MS. TOLLEY: There was some discussion about it being a
25 sex for drugs.

1 THE COURT: A sex for drugs?

2 MS. TOLLEY: Uh-huh.

3 THE COURT: Okay.

4 MR. YOUNG: What was that discussion?

5 MS. GORDON: That is just her defense.

6 MR. YOUNG: Okay.

7 THE COURT: Okay. All right. What I am going to say
8 is that the alleged victim was a college student and ---

9 MS. TOLLEY: I don't think you should say college
10 student. I mean that ---

11 MR. YOUNG: That is what it was.

12 MS. TOLLEY: I mean ---

13 THE COURT: How old is -- was she?

14 MR. YOUNG: She was 19.

15 MS. TOLLEY: Do you have to say that?

16 THE COURT: Okay. And it was a 19 year old.

17 MR. YOUNG: C of C student, is that ---

18 THE COURT: And it was a nonfamily member. Okay.

19 MS. TOLLEY: Okay.

20 THE COURT: I think that deals with a lot of
21 molestation issues and it doesn't get into whether she knew
22 them or not.

23 MS. GORDON: And not -- and it is not a child.

24 THE COURT: Right.

25 MS. TOLLEY: Right.

1 THE COURT: Okay. Okay. Thank you, sir.

2 (WHEREUPON, Juror 238 came forward to sidebar.)

3 THE COURT: This is about as specific as I am allowed
4 to get, okay. This is -- this case is an alleged victim who
5 was 19 at the time, and it was not a family member. The
6 defendant was not a family member.

7 I don't know if that helps you or not. If you think
8 you would have a problem I would rather you not be on the
9 jury so.

10 POTENTIAL JUROR: I would rather not take the risk.

11 THE COURT: Okay. I am going to let you go. Juror
12 Number 238 if you will have a seat ---

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: --- we will have further instructions.
15 Thank you, sir.

16 (WHEREUPON, Juror 238 returned to seat.)

17 THE COURT: Two-eighty-one.

18 (WHEREUPON, Juror 281 came forward to sidebar.)

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: It was about 10 or 15 years ago I
21 used to work for the Department of Social Service.

22 THE COURT: Okay.

23 POTENTIAL JUROR: As a supervisor for child abuse and
24 neglect.

25 THE COURT: So you saw all kind of things?

1 POTENTIAL JUROR: Yes, and I had to testify.

2 THE COURT: Okay.

3 POTENTIAL JUROR: Do all the laws.

4 THE COURT: Would that experience in any way interfere
5 with your ability to be a fair and impartial juror in this
6 case?

7 POTENTIAL JUROR: Not at all.

8 THE COURT: Okay. Thank you, ma'am.

9 POTENTIAL JUROR: Thank you.

10 (WHEREUPON, Juror 281 returned to seat.)

11 THE COURT: Yes, ma'am?

12 THE CLERK: Sixty-two. Sixty-two

13 THE COURT: Sixty-two. Thank you. I am sorry, y'all.

14 I am having trouble hearing today for some reason.

15 THE COURT: Thank you, ma'am. Yes, ma'am.

16 (WHEREUPON, Juror 62 came forward to sidebar.)

17 POTENTIAL JUROR: Hi, Your Honor.

18 THE COURT: Yes, ma'am.

19 POTENTIAL JUROR: We can hear everything.

20 THE COURT: Okay. Good. I am glad y'all can. Oh, you
21 can hear everything up here?

22 POTENTIAL JUROR: Yeah.

23 THE COURT: Oh, okay.

24 POTENTIAL JUROR: I was molested as a child.

25 THE COURT: Okay. I'm going to let you go from the

1 trial of this case. Okay. Thank you. If you will have a
2 seat and wait for us.

3 (WHEREUPON, Juror 62 returned to seat.)

4 MS. GORDON: What is her number?

5 THE COURT: Sixty-two.

6 THE CLERK: One-fifty-five.

7 (WHEREUPON, Juror 155 came forward to sidebar.)

8 POTENTIAL JUROR: I work at the College of Charleston.

9 THE COURT: Okay.

10 POTENTIAL JUROR: And I am not sure if that is the
11 defendant at the table. But his face looks very familiar to
12 me. I am not sure where I know him but.

13 THE COURT: So you think you might know something about
14 the case but you don't know ---

15 POTENTIAL JUROR: No, ma'am, I don't know anything
16 about the case. I am just saying the guy's face looks
17 familiar to me.

18 THE COURT: Okay.

19 POTENTIAL JUROR: And I don't want later on ---

20 THE COURT: Okay.

21 POTENTIAL JUROR: --- and it comes up.

22 THE COURT: Okay. And you are 155?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Okay. Thinking that he might look familiar
25 to you or anything at all interfere with your ability to be

1 fair and impartial in this case?

2 POTENTIAL JUROR: No.

3 THE COURT: Okay. Thank you, ma'am.

4 POTENTIAL JUROR: All right.

5 (WHEREUPON, Juror 155 returned to seat.)

6 THE COURT: That is 155.

7 THE CLERK: Two-eighty-five ---

8 THE COURT: Thank you.

9 THE CLERK: --- eighty-four. I'm sorry, Judge.

10 THE COURT: That's okay.

11 THE CLERK: Two-eighty-four.

12 THE COURT: Two-eighty-four. Yes, sir.

13 (WHEREUPON, Juror 284 came forward to sidebar.)

14 POTENTIAL JUROR: My apologies for not saying this

15 sooner.

16 THE COURT: That's okay.

17 POTENTIAL JUROR: I have a professional association

18 with one of the jurors. What it is, is I had a college

19 girlfriend and my fiancée were victims of a sexual assault.

20 I don't know if I can be exactly impartial.

21 THE COURT: Okay. Okay. I am going to excuse you from

22 the trial of this case and I am going to ask you to have a

23 seat and we will have further instructions very shortly.

24 (WHEREUPON, Juror 284 returned to seat.)

25 THE CLERK: One-ninety-four.

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, Juror 194 came forward to sidebar.)

3 POTENTIAL JUROR: I was just uncertain earlier if I
4 should stand. First of all, one of my friends, dear
5 friends, is a magistrate judge in Lexington County in South
6 Carolina. And I sort of didn't know if that applied.

7 THE COURT: A different kind of judge, a different kind
8 of court.

9 POTENTIAL JUROR: And I did have an uncle who was
10 murdered. And but that has been 20 years ago probably.

11 THE COURT: Okay. Would that interfere in any way with
12 your ability to be fair and impartial in this case?

13 POTENTIAL JUROR: None.

14 THE COURT: Okay. Thank you, ma'am.

15 POTENTIAL JUROR: What is my number? I'm sorry.

16 THE COURT: One-ninety-four.

17 POTENTIAL JUROR: Thank you.

18 THE COURT: Thank you, ma'am.

19 (WHEREUPON, Juror 194 returned to seat.)

20 THE CLERK: Eighty-nine. Eighty-nine.

21 THE COURT: Eighty-nine. Yes, sir.

22 (WHEREUPON, Juror 89 came forward to sidebar.)

23 POTENTIAL JUROR: I had a friend when I was in high
24 school in California - this has been many years ago - who
25 was convicted of sexual assault and served time.

1 THE COURT: Okay.

2 POTENTIAL JUROR: It was ---

3 THE COURT: Would that interfere with your ability to
4 be fair and impartial ---

5 POTENTIAL JUROR: No.

6 THE COURT: --- in this case?

7 POTENTIAL JUROR: No.

8 THE COURT: Okay. You are Number 89?

9 POTENTIAL JUROR: Eighty-nine.

10 THE COURT: Okay.

11 POTENTIAL JUROR: Two other things.

12 THE COURT: Okay. Yeah, yeah.

13 POTENTIAL JUROR: I'm sorry.

14 THE COURT: No. No.

15 POTENTIAL JUROR: I also have a - my wife's brother's
16 ex-wife is a guard in the prison in Kentucky.

17 THE COURT: Okay. Thank you.

18 POTENTIAL JUROR: No problem with that.

19 THE COURT: Okay. I have a nephew that was shot in the
20 back and had another nephew who got some facial bones broken
21 in assaults.

22 THE COURT: Okay. I'm sorry about that.

23 POTENTIAL JUROR: Yeah.

24 THE COURT: Does any of that interfere with your
25 ability to be fair and impartial in a trial like this?

1 POTENTIAL JUROR: No, everybody is fine.
2 THE COURT: Thank you, sir. I appreciate that.
3 (WHEREUPON, Juror 89 returned to seat.)
4 THE CLERK: Forty-eight.
5 THE COURT: Yes, sir.
6 THE CLERK: Forty-eight.
7 (WHEREUPON, Juror 48 came forward to sidebar.)
8 THE COURT: Hi.
9 POTENTIAL JUROR: How are you?
10 THE COURT: Fine, thank you.
11 POTENTIAL JUROR: I was a witness in Judge Martin's
12 court ---
13 THE COURT: Okay.
14 POTENTIAL JUROR: --- in December on an alimony case
15 for my mother.
16 THE COURT: Okay. In family court?
17 POTENTIAL JUROR: Yeah, family court.
18 THE COURT: Okay. Okay. And would that interfere in
19 any way ---
20 POTENTIAL JUROR: No.
21 THE COURT: --- that you feel that you couldn't be fair
22 in this case?
23 POTENTIAL JUROR: (Nodded).
24 THE COURT: No.
25 POTENTIAL JUROR: No.

1 THE COURT: Okay. Thank you, so much.

2 (WHEREUPON, Juror 48 returned to seat.)

3 THE COURT: Do we need to bring the two young ladies
4 that were questioned?

5 MR. YOUNG: I think that one lady came up, didn't she?

6 THE COURT: I think it is 57 and 49 number is who I
7 had.

8 MS. TOLLEY: Yes.

9 THE COURT: Okay. Do y'all want to bring them up and I
10 can ask them a couple more questions, or how do you want to
11 handle it? I know she just wants to move to strike them.
12 But I don't know ---

13 MR. YOUNG: You might want to ask to answer the
14 questions first, and that will be fine.

15 THE COURT: Okay.

16 MS. GORDON: I think both of them had said that they
17 have a family member addicted to pain pills or something and
18 committed suicide.

19 THE COURT: Right. I don't see it as having any
20 related.

21 MR. YOUNG: Right. Okay.

22 THE COURT: But I'm going to ask them.

23 (WHEREUPON, return to open court.)

24 THE COURT: Could I get Jurors 57 and 49 to come
25 forward, please. Y'all can both come on up. Thank you.

1 Thank you.

2 (WHEREUPON, Jurors 57 and 49 came forward to sidebar.)

3 THE COURT: I'm sorry for what y'all went through. But
4 I think this case involves an alleged victim who was 19 at
5 the time and it does not involve a family member. There may
6 or may not be evidence regarding something related to drugs.
7 I don't know how significant or significant at all it will
8 be. But I just needed to know further if you would feel
9 comfortable and able to be fair and impartial on a trial of
10 this case. And if you don't think you would, that's fine.

11 POTENTIAL JUROR: I don't think I would, honestly.

12 THE COURT: You don't. And are you Number 57?

13 POTENTIAL JUROR: Fifty-seven.

14 THE COURT: Okay. I am going to excuse you from this
15 particular case.

16 (WHEREUPON, Juror 57 returned to seat.)

17 THE COURT: Yes, ma'am?

18 POTENTIAL JUROR: Thank you. I think that's a really
19 hard question.

20 THE COURT: It is because -- even though you don't know
21 a lot of information at this point.

22 POTENTIAL JUROR: I don't know.

23 THE COURT: Okay.

24 POTENTIAL JUROR: I can't say yes or no.

25 THE COURT: Okay.

1 POTENTIAL JUROR: Because I don't -- I don't know.

2 THE COURT: I'm going to get you to have a seat. We
3 are probably going to excuse you from the trial of this
4 case. But I am going to have a little pow wow and talk
5 about it, okay. Thank you.

6 (WHEREUPON, Juror 49 returned to seat.)

7 MR. YOUNG: I don't have a problem with her. I think
8 she's fine to stay.

9 THE COURT: I mean, you know, Ms. Tolley says she has
10 got a problem. If it turns out that there ain't anything
11 like that, I am going to be irritated. But you know.

12 MR. YOUNG: I think she is fine to stay. But it is up
13 to you, Judge, what you think. I don't think it's going to
14 be -- doesn't sound like it was ---

15 THE COURT REPORTER: I'm sorry?

16 MR. YOUNG: Okay. I'm sorry. It just didn't sound
17 like it was ---

18 THE COURT: Okay. You -- you have got her -- you want
19 her struck?

20 MR. YOUNG: Judge ---

21 MS. TOLLEY: I did, yeah. Well ---

22 THE COURT: You want them struck because they are -- I
23 know why you want them struck.

24 (WHEREUPON, end of bench conference.)

25 THE COURT: All right. Juror Number 49 will not be a

1 juror in the trial of this particular case.

2 (WHEREUPON, bench conference was had.)

3 THE COURT: Just out of an abundance of caution,
4 anything further?

5 MS. GORDON: Can you tell me if Number 13 is in here?

6 THE COURT: Thirteen? I didn't have any notes on 13.

7 (WHEREUPON, bench conference was had, not on record.)

8 THE COURT: While I have got y'all up here, anything
9 further, anything else that needs to be asked?

10 MR. YOUNG: Nothing.

11 THE COURT: Any objections to the voir dire?

12 MS. TOLLEY: No, Judge.

13 MS. GORDON: None, Your Honor.

14 MR. YOUNG: None from the State, Judge.

15 THE COURT: Okay. Thank you.

16 (WHEREUPON, counselors returned to their seats.)

17 THE COURT: Okay. Ladies and gentlemen, we are going
18 to pull the strike list and go through the strike process.
19 Five and ten?

20 MR. YOUNG: Your Honor, that's what I understand; yes.

21 THE COURT: Would y'all like two alternates, or how do
22 y'all ---

23 MS. TOLLEY: Two.

24 THE COURT: Two?

25 MR. YOUNG: Two is fine, Your Honor.

1 THE COURT: Okay. So we will do five and ten and then
2 two alternates, so okay. If y'all will bear with us for
3 just a minute and we will get our strike sheet ready.

4 Ladies and gentlemen, if you are not selected as a
5 jurors on the trial of this case you get to go to lunch
6 after this part and come back at 2:30 to the jury assembly
7 room or ---

8 THE CLERK: Yes.

9 THE COURT: Yes. Okay. Back to the jury assembly room
10 at 2:30. If you are selected to be with us on the trial of
11 this case I will have further instructions for our jury
12 shortly. Thank you for your patience. Can I get the
13 attorneys to come forward, briefly.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: If y'all will mark through on your list
16 it's Number 18 on the left-hand side, 18. We will just skip
17 that one because we have plenty on the list to strike from
18 to get the two alternates. Any objection to that?

19 MR. YOUNG: No, Your Honor.

20 MS. TOLLEY: No, Judge.

21 (WHEREUPON, end of bench conference.)

22 THE COURT: Okay. Thank you.

23 THE CLERK: Ladies and gentlemen, like the judge said,
24 we are going to pick the jury. If I call your name, if you
25 will please gather your belongings. Come up to this podium.

1 Turn and face the parties.

2 All I need -- I am going to keep -- ask each party a
3 question. I will then either tell you to please have a seat
4 in the jury box or have a seat back in the audience.

5 Juror Number 70, Mary Dugan.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: What say you for the State?

8 MR. YOUNG: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MS. TOLLEY: Please excuse this juror.

11 THE CLERK: Ms. Dugan, please have a seat back in the
12 audience. You have been excused from the trial in this
13 case.

14 Juror Number 249 Clem Strickland.

15 (WHEREUPON, a black male came forward.)

16 THE CLERK: What say you for the State?

17 MR. YOUNG: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MS. TOLLEY: Please swear this juror.

20 THE CLERK: Mr. Strickland, please have a seat in the
21 jury box. You have been selected as a juror in this case.

22 Juror Number 52, Eric Colleton.

23 (WEREUPON, a black male came forward.)

24 THE CLERK: What say you for the State?

25 MR. YOUNG: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MS. TOLLEY: Please swear this juror.

3 THE CLERK: Mr. Colleton, please have a seat in the
4 jury box. You have been selected as a juror in this case.
5 Juror Number 219, Andrew Rutledge.

6 (WEREUPON, a black male came forward.)

7 THE CLERK: What say you for the State?

8 MR. YOUNG: Please excuse this juror.

9 THE CLERK: Mr. Rutledge, please have a seat back in
10 the audience. You have been excused from the trial of this
11 case.

12 Juror Number 204, Elise Peeples.

13 (WHEREUPON, a white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. YOUNG: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MS. TOLLEY: Please excuse this juror.

18 THE CLERK: Ms. Peoples, please have a seat back in the
19 audience. You have been excused from the trial of this
20 case.

21 Juror Number 275, David Welsh.

22 (WEREUPON, a white male came forward.)

23 THE CLERK: What say you for the State?

24 MR. YOUNG: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MS. TOLLEY: Please swear this juror.

2 THE CLERK: Mr. Welsh, please have an seat in the jury
3 box. You have been selected as a juror in case.
4 Juror Number 155, Yvette Lambright.
5 (WEREUPON, a black female came forward.)
6 THE CLERK: What say you for the State?
7 MR. YOUNG: Please present this juror.
8 THE CLERK: What say you for the defendant?
9 MS. TOLLEY: Please excuse this juror..
10 THE CLERK: Ms. Lambright, please have a seat back in
11 the audience. You have been excused for the trial of this
12 case.
13 Juror Number 48, Mark Clark.
14 (WHEREUPON, a white male came forward.)
15 THE CLERK: What say you for the State?
16 MR. YOUNG: Please present this juror.
17 THE CLERK: What say you for the defendant?
18 MS. TOLLEY: Please swear this juror.
19 THE CLERK: Mr. Clark, please have a seat in the jury
20 box. You have been selected as a juror in this case.
21 Juror Number 45, Debra Chaplin.
22 (WHEREUPON, a white female came forward.)
23 THE CLERK: What say you for the State?
24 MR. YOUNG: Please present this juror.
25 THE CLERK: What say you for the defendant?

1 MS. TOLLEY: Please excuse this juror.

2 THE CLERK: Ms. Chaplin, please have a seat back in the
3 audience. You have been excused from the trial of this
4 case. That's four strikes for the defendant.

5 Juror Number 131, Charles Hull.

6 (WHEREUPON, a white male came forward.)

7 THE CLERK: What say you for the State?

8 MR. YOUNG: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MS. TOLLEY: Please swear this juror.

11 THE CLERK: Mr. Hull, please have an seat in the jury
12 box. You have been selected as a juror in this case.

13 Juror Number 158, Lance Lewandowski.

14 (WHEREUPON, a white male came forward.)

15 THE CLERK: What say you for the State?

16 MR. YOUNG: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MS. TOLLEY: Please excuse this juror.

19 THE CLERK: Mr. Lewandowski, please have a seat back in
20 the audience. You've been excused from the trial in this
21 case.

22 Juror Number 89, Michael Frye.

23 (WHEREUPON, a white male came forward.)

24 THE CLERK: What say you for the State?

25 MR. YOUNG: Please present this juror.

1 THE CLERK: What say you for the defendant?
2 MS. TOLLEY: Please swear this juror.
3 THE CLERK: Mr. Frye, please have an seat in the jury
4 box. You have been selected as a juror in this case.
5 Juror Number 195, Philip Northrop.
6 (WHEREUPON, a white male came forward.)
7 THE CLERK: What say you for the State?
8 MR. YOUNG: Please present this juror.
9 THE CLERK: What say you for the defendant?
10 MS. TOLLEY: Please swear this juror.
11 THE CLERK: Mr. Norththrop, please have a seat in the
12 jury box. You have been selected as a juror in this case.
13 Juror Number 44, Robert Castellow.
14 (WHEREUPON, a white male came forward.)
15 THE CLERK: What say you for the State?
16 MR. YOUNG: Please present this juror.
17 THE CLERK: What say you for the defendant?
18 MS. TOLLEY: Please swear this juror.
19 THE CLERK: Mr. Castellow, please have a seat in the
20 jury box. You have been selected as a juror in this case.
21 Juror Number 194, Dessie Newman.
22 (WHEREUPON, a white female came forward.)
23 THE CLERK: What say you for the State?
24 MR. YOUNG: Please present this juror.
25 THE CLERK: What say you for the defendant?

1 THE CLERK: Please swear this juror.
2 THE CLERK: Ms. Newman, please have a seat in the jury
3 box. You have been selected as a juror in this case.
4 Juror Number 166, Thomas Mauldin.
5 (WHEREUPON, a white male came forward.)
6 THE CLERK: What say you for the State?
7 MR. YOUNG: Please present this juror.
8 THE CLERK: What say you for the defendant?
9 MS. TOLLEY: Please swear this juror.
10 THE CLERK: Mr. Mauldin, please have a seat in the
11 jury box. You have been selected as a juror in this case.
12 Juror Number 281, Barbara Wigfall.
13 (WHEREUPON, a black female came forward.)
14 THE CLERK: What say you for the State?
15 MR. YOUNG: Please present this juror.
16 THE CLERK: What say you for the defendant?
17 MS. TOLLEY: Please swear this juror.
18 THE CLERK: Ms. Wigfall, please have a seat in the jury
19 box. You have been selected as a juror in this case.
20 Juror Number 173, Jimmie Mcfadden.
21 (WHEREUPON, a black male came forward.)
22 THE CLERK: What say you for the State?
23 MR. YOUNG: Please present this juror.
24 THE CLERK: What say you for the defendant?
25 MS. TOLLEY: Please excuse this juror.

1 THE CLERK: Mr. Mcfadden, please have a seat back in
2 the audience. You have been excused for the trial of this
3 case. That is six strikes for the defendant.

4 Juror Number 282, Garry Wiggins.

5 (WHEREUPON, a white male came forward.)

6 THE CLERK: What say you for the State?

7 MR. YOUNG: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MS. TOLLEY: Please excuse this juror.

10 THE CLERK: Mr. Wiggins, please have a seat back in the
11 audience. You have been excused from the trial of this
12 case.

13 Juror Number 235, Oclelia Smalls.

14 (WHEREUPON, a black female came forward.)

15 THE CLERK: What say you for the State?

16 MR. YOUNG: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MS. TOLLEY: Court's indulgence.

19 MR. YOUNG: Court's indulgence. Please present this
20 juror.

21 THE CLERK: What say you for the defendant?

22 MS. TOLLEY: Please swear this juror.

23 THE CLERK: Ms. Smalls, please have a seat in the jury
24 box. You have been selected as a juror in this case. Now
25 picking for the first alternate. The strikes are one and

1 two.

2 Juror Number 102, Garland Green.

3 (WHEREUPON, a black male came forward.)

4 THE CLERK: What say you for the State?

5 MR. YOUNG: Please excuse this juror.

6 THE CLERK: Mr. Green, please have a seat back in the
7 audience. You have been excused from the trial of this
8 case.

9 Juror Number 160, Shenequa Lockwood.

10 (WHEREUPON, a black female came forward.)

11 THE COURT: Yes, I have got it. Thank you. Thank you,
12 ma'am.

13 THE CLERK: Ms. Lockwood, you can have a seat back in
14 the audience.

15 THE COURT: Thank you.

16 Juror Number 20, Randy Boney.

17 (WHEREUPON, a black male came forward.)

18 THE CLERK: Any challenge from the State?

19 MR. YOUNG: No challenge.

20 THE COURT: What say you for the defendant?

21 MS. TOLLEY: Please seat this juror.

22 THE CLERK: Mr. Boney, please have a seat in the jury
23 box. You have been selected as a juror in this case. Now
24 picking for the second alternates. Strikes are one and two.

25 Juror Number 289, Lynn Williams.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say you for the State?

3 MR. YOUNG: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MS. TOLLEY: Please swear this juror.

6 THE CLERK: Ms. Williams, please have a seat in the
7 jury box. You have been selected as a juror in this case.

8 Your Honor, the jury has been selected and are seated.

9 THE COURT: Thank you, sir. Are there any objections
10 to the selection or composition of the jury?

11 MR. YOUNG: None from the State, Judge.

12 MS. TOLLEY: None from the defense, Judge.

13 THE COURT: Okay. Thank you. Ladies and gentlemen,
14 you will be our jury in the trial of this case. Everyone
15 except Ms. Gough y'all are excused for lunch. And I just
16 want to tell her hello. And had she not sat down we
17 probably would have had to cut her lose because she is a
18 close friend of mine that I worked with for about two years.

19 So everyone y'all are excused for a short lunch. I
20 think y'all are starting back to get selected for Judge
21 Houston's panel at 2:30. So enjoy your lunch. Thank you.
22 You can go. I was just going to tell you hello. So good to
23 see you.

24 (WHEREUPON, the jury venire was excused.)

25 THE COURT: All right. Let's go ahead and swear our

1 jury. and then we will get started.

2 THE CLERK: Please have the defendant stand.

3 (WHEREUPON, the jury was given their oath and all were
4 seated.)

5 THE CLERK: Thank you.

6 THE COURT: Thank you, sir. Thank you, ladies and
7 gentlemen. Again, I appreciate y'all being here. I know it
8 is not exactly voluntarily as you are summoned to court.
9 But we truly could not operate our system of justice without
10 you. And know that the State and the defendant both
11 appreciate it.

12 We have a number of motions that we need to take up
13 this afternoon. And I also need to let these lawyers and
14 the defendant have a chance to get something to eat. So I
15 am going to let y'all go for the afternoon.

16 I don't like to leave a jury just waiting. I know you
17 have lives and thing to do. So if we have got two hour of
18 motions I don't want to send y'all to lunch, bring you back
19 and then get started just in time to let y'all go in
20 traffic. I would rather get started with y'all tomorrow
21 morning.

22 We also have one motion we need to hear in the morning
23 in the case. The witnesses just aren't here yet to do that.
24 And we are going to do that motion right at nine o'clock.

25 So I am going to ask y'all to come back tomorrow at

1 10:00. That is a little bit later than I normally start.
2 But sometimes we have to accommodate witnesses and other
3 appointments and it is just hard for us to get you here any
4 earlier.

5 We usually run from about 9:30 to 5:00 or 5:30 barring
6 any other court matters or witness problems. Or sometimes
7 it just makes sense to stop or start at a certain time if it
8 is possible to get a witness's testimony finished.

9 But if anybody has any specific problem - often we have
10 folks that absolutely have to be at daycare across the
11 county by 6:00 or they get charged some astronomical sum a
12 minute - we always do try to accommodate that.

13 A couple of things for tonight: Until you have heard
14 all of the evidence from both sides and heard the closing
15 arguments and the charge from the Court that I referenced
16 earlier, you are not allowed to discuss the matter at all
17 even with each other.

18 So you are not allowed to go home and discuss it with
19 your significant other or your family or each other until
20 you are released to deliberate at the very end and the
21 bailiff brings the evidence to you.

22 You are also not allowed to do any independent research
23 and go home and try to figure out -- I don't know that you
24 really have enough information at this point to try to do
25 any independent research. But even if you did, that is not

1 permitted.

2 Pursuant to oath that you took you are bound to
3 consider only the testimony that comes in here in court and
4 any documentary evidence that the parties put in.

5 So no news reports, internet research or anything at
6 all. Just come with a clean slate tomorrow. I will see
7 y'all at 10:00 in the morning. The bailiffs will tell you
8 where to go. If there are any issues at all they will help
9 you with that and bring anything to my attention that I need
10 to know. But again, thank you for being our jury and we
11 will see you tomorrow morning at 10:00.

12 (WHEREUPON, the jury leaves the courtroom at 1:28 p.m.)

13 THE COURT: Thank you. Okay. Why don't y'all go get
14 something to eat. I know everybody is probably starving and
15 needs a break right now.

16 Why don't y'all come back at three o'clock and we will
17 handle all the motions other than the motion to suppress the
18 DNA.

19 I think that is shouldn't take us too long to get
20 through those and then y'all can get out of here a little
21 earlier to prepare for tomorrow.

22 Thank y'all. I appreciate your kind attention.

23 MR. YOUNG: Thank you, Judge.

24 MS. TOLLEY: Thank you, Judge.

25 THE COURT: See you at 3:00.

1 (WHEREUPON, recess was had for lunch.)

2 THE COURT: Okay. Please be seated everybody. Thank
3 you.

4 Okay. I have got one motion from the State and several
5 from the defendant. And we are going to hold off on the
6 motion to suppress the DNA evidence until tomorrow morning
7 at 9:00. I am happy to start where ever y'all want me to
8 start. So do you want to go ahead and get y'all's out of
9 the way or do you want to -- it doesn't matter.

10 MR. YOUNG: We can go ahead, Judge.

11 THE COURT: Okay.

12 MR. YOUNG: Our motion is just a brief motion dealing
13 with the rape shield statute which basically just mirrors
14 Rule 412 that you can't talk about any reputation or pending
15 evidence, the victim's prior sexual history.

16 THE COURT: Sure.

17 MR. YOUNG: And that is basically what our motion --
18 our motion says.

19 THE COURT: Anything on that, Ms. Tolley?

20 MS. TOLLEY: We understand the rule in that case -- or
21 we understand the rule, Judge. And we are -- we are going
22 to comply with the rule.

23 I guess there are some issues about her prior sexual
24 activity that will come up because there was DNA other than
25 my client's that was found on her. So by its very nature it

1 is going to be part of the trial I am guessing.

2 MR. YOUNG: And Judge, we certainly can understand that
3 part. But the only reason that I think it would come in
4 under 412 would be consent or the source of other semen or
5 in bringing up that there was two set of DNA, one was
6 obviously the defendants and one was that of Sebastian
7 Qreitz who was the boyfriend. So certainly she can bring
8 that up in her opening as well.

9 THE COURT: Okay. Anything further on this?

10 MR. YOUNG: No, that's all I have.

11 THE COURT: Some of that I will have to rule on it as
12 we go. But I have got the statute right in front of me so
13 it will be ready to go on that. All right.

14 MR. YOUNG: Thank you, Judge.

15 THE COURT: Well, that's granted by consent, you know,
16 excepting the issue with the -- of the consensual sex from
17 that evening.

18 MR. YOUNG: Right.

19 THE COURT: Okay. Sure. Start -- whichever one you
20 want to start with.

21 MS. TOLLEY: Okay. I guess we will follow up that
22 since we are talking about Sebastian Qreitz. We have a
23 motion to suppress testimony regarding Sebastian Qreitz as
24 it relates to his being the boyfriend of Brittanae Casper.

25 We believe that if they are going to bring in testimony

1 like that, that he needs to be here and he needs to be
2 available for cross-examination and the failure to have him
3 here would be very detrimental to my client.

4 We believe that under the circumstances -- I mean if
5 there were any indications in any of the police reports, if
6 the police had taken any statements, if the police had made
7 any incident reports or supplemental reports or anything
8 relating to Sebastian Qreitz, that would be something
9 entirely different. But there is nothing. The record is
10 just void of anything regarding Sebastian Qreitz.

11 And if they are going to bring in testimony that he is
12 the boyfriend and he is not here to testify that yes I am
13 the boyfriend, that poses a problem.

14 THE COURT: Do you have any law for me regarding any
15 kind of confrontation clause issue that might relate to a
16 boyfriend or -- I don't want to say could have been. And
17 that's not what we have here. And I don't even want to call
18 him a suspect because by the solicitor's account he never
19 was a suspect.

20 But in this context -- and if they are not putting
21 him up, which they are not because he is in Beirut, what is
22 the constitutional right or the right of your client to
23 exclude -- to exclude even the reference to him?

24 I don't -- I need you to give me some basis other than
25 we think it would be prejudicial.

1 MS. TOLLEY: It would be highly prejudicial. That's
2 the thing. And its prejudicial affect would outweigh the
3 probative value of it. And based on that, we think that it
4 should be excluded.

5 I think the DNA evidence is so critical in this case
6 that to be able to have someone referenced by witnesses, lay
7 witnesses, saying that he is the boyfriend, would definitely
8 be prejudicial in this particular case.

9 The way that the two people whose DNA showed up on her
10 were treated so significantly differently that we believe it
11 poses a problem.

12 THE COURT: What evidence do you have that he was not
13 her boyfriend?

14 MS. TOLLEY: We don't know him. We don't have any
15 evidence at all because we didn't even know who he was until
16 two day -- a week ago.

17 THE COURT: Okay. Yes, sir, or ma'am?

18 MS. GORDON: I would argue this motion, Your Honor. If
19 the defense's position is that Sebastian Greitz should not
20 be mentioned then we have no objection to that as long as we
21 don't talk about the DNA.

22 But once -- the probative value of it is that we have
23 the obligation to explain where the DNA came from if it's
24 coming in.

25 THE COURT: Right.

1 MS. GORDON: And the -- Sebastian Qreitz is not an
2 accuser. This is not a confrontation clause issue.

3 THE COURT: I agree.

4 MS. GORDON: It is the victim can say who Sebastian
5 Qreitz is, what their relationship was. She will also
6 have friends that are coming to testify who will have
7 personal knowledge of that relationship, and the defense can
8 cross-examination them on that issue. But he's not required
9 to be here for someone to say this is my boyfriend when that
10 is not an accuser in this case.

11 THE COURT: How about that, Ms. Tolley? Plus it is,
12 you know, not the State's burden to bring him. You know, it
13 is not incumbent -- they are not trying to prove anything as
14 to that specific individual.

15 What Ms. Gordon is saying is there was another source
16 of DNA, they had to exclude from whence it came; that's what
17 they did.

18 I am not -- I still am not understanding the basis for
19 your motion other than it appears to just be Rule 403 at
20 this point.

21 MS. TOLLEY: Right, well, Judge we would just say that
22 it's highly prejudicial for that particular information to
23 come in.

24 It automatically places -- it automatically
25 discriminates against my client based on the fact that he

1 was in the CODIS DNA database. Because if he weren't in the
2 database then they wouldn't have suspected him and he would
3 not have been -- he would have been treated differently. He
4 would have been treated the same way as Sebastian Qreitz.

5 THE COURT: Well, I mean that is a motion to challenge
6 the validity of the database it seems to me that would be
7 more appropriately directed I guess to the motion to
8 suppress than to this issue of Sebastian Qreitz. I am going
9 to deny this motion.

10 MS. TOLLEY: Okay.

11 THE COURT: They are allowed to show that they excluded
12 the other source. Okay. What's next?

13 MS. TOLLEY: We had a motion to suppress any statements
14 of the defendant. And I believe they said there are no
15 statements.

16 MR. YOUNG: Judge, again, no statements of law
17 enforcement. There is a statement I think that Brittanae
18 should testify about what he said that night when came up on
19 her ---

20 THE COURT: Okay.

21 MR. YOUNG: --- they took down. That that is the only
22 statement that we would -- the State has to come in, Your
23 Honor. It's under admission by party opponent.

24 THE COURT: Right, I think that comes in under 801(d).

25 Anything on that Ms. Tolley?

1 MS. TOLLEY: No, Judge.

2 THE COURT: Okay. Let me just -- I want to make sure
3 we rule on everything. All right. That motion is denied
4 because there are no statements. And any statements he made
5 to the victim are non hearsay.

6 MS. TOLLEY: Okay..

7 THE COURT: So okay.

8 MS. TOLLEY: A motion to suppress testimony of Sergeant
9 Walton regarding a video. This motion is based on the fact
10 that there was apparently a video taken by the College of
11 Charleston. They have a video camera in the area. I guess
12 because it was a problem area and they had put up a camera.
13 And so it happened to video the area on the night of the
14 incident.

15 They are telling us that the video has been destroyed
16 so that it is no longer available. I don't know what
17 testimony Sergeant Walton, who was a security person from
18 the College of Charleston, is going to testify to. I
19 believe what I was told is that he was going to testify
20 about their being a light blocking the video. I'm not sure.

21 But if he doesn't have the video I would be concerned
22 about his testifying about anything that's on the video. My
23 understanding is that my client was not viewable on the
24 video at the time that they -- close to the incident, and
25 they didn't save the video and destroyed it. That is

1 exculpatory evidence that has been destroyed.

2 MR. YOUNG: Thank you, Judge. In regards to the video,
3 just to give Your Honor a background for the video, the
4 night of the incident there's some cameras that are around
5 King, Meeting and Burns Alley.

6 In this video they thought maybe we can see the suspect
7 on it. So the detective and Sergeant Walton, C of C, who is
8 the video I guess expert for security over there, they go
9 look at the video. It doesn't show anything. So the video
10 is not pulled.

11 Now if that's something she wants to cross him on, why
12 didn't you pull -- you know, you should have given the video
13 to the detective or however she wants to phrase that, I
14 think that would be fine. But ---

15 THE COURT: I think she just wants to suppress any
16 statements regarding the video.

17 MS. TOLLEY: Right.

18 THE COURT: And there's no video. So why ---

19 MR. YOUNG: Well, I mean ----

20 THE COURT: --- ever mention the video?

21 MR. YOUNG: --- the video doesn't exist. I mean it
22 just ---

23 MS. TOLLEY: We -- well, we have to mention the video
24 because the video was exculpatory evidence.

25 THE COURT: Well, if you are going to mention the video

1 then Walton gets to explain what happened to it. I mean the
2 motion I am reading right here says defendant above name --
3 and I'm sorry to cut you off, Solicitor. I will let you ---

4 MS. TOLLEY: He can testify about what happened to the
5 video but not what was actually seen on the video.

6 THE COURT: Well, what I am tell -- hearing is they
7 didn't see anything that identified your client so ---

8 MR. YOUNG: And just, yeah, just so I am clear, Judge,
9 so I have expressed myself clearly, it doesn't show the
10 location of where the incident happened. That's why you
11 can't see the defendant or victim.

12 THE COURT: It's not visible?

13 MR. YOUNG: It is just not visible. There is a light
14 that blocks his camera as it spins.

15 THE COURT: Okay.

16 MR. YOUNG: And that is what he would -- what he is
17 going to testify to.

18 THE COURT: So what is the relevance of the video or
19 non video at all?

20 MR. YOUNG: There is no relevance, Judge, because it
21 didn't show anything. And that's why -- that's why exactly
22 why it was not pulled. And that's what we are going to have
23 Walton talk about it. If we need -- to have him talk about
24 this video if she wants to bring it up.

25 THE COURT: And I think that is a Rule 402 problem.

1 But ---

2 MS. TOLLEY: I guess ---

3 THE COURT: --- if Ms. Tolley if she needs to
4 cross-examine him regarding a feeling that there was a video
5 at some point, she is the one bringing that into play. I
6 guess what I am saying is this motion doesn't address
7 anything that I see as an issue.

8 MS. TOLLEY: Okay.

9 THE COURT: But we can cross that bridge again if we
10 come to it.

11 MS. TOLLEY: And I guess -- I guess our point really
12 with all of these motions is that there are so many things
13 that were outstanding. There are so many issues, that it
14 causes us a problem: The lack of Sebastian Qreitz, the lack
15 of the video, the lack of some of the information that we
16 had requested until the last minute. There are just so many
17 outstanding things that that poses a problem for us.

18 THE COURT: Well, let's get to the thing that is a
19 problem. Because the items I have ruled on so far there is
20 no problem.

21 MS. TOLLEY: All right.

22 THE COURT: There's no video because it didn't show
23 the area. Qreitz is not their witness. There is not a
24 confrontation clause problem. And others can be
25 cross-examined as to whether he was the boyfriend.

1 MS. TOLLEY: Okay.

2 THE COURT: And the defendant made no statements.

3 MS. TOLLEY: Okay.

4 THE COURT: So I don't have anything outstanding yet.
5 But we can keep moving through them.

6 MS. TOLLEY: Right. We had done several motions to
7 compel, Judge.

8 THE COURT: Okay.

9 MS. TOLLEY: One was for the personnel records of the
10 police officers. And I believe that Judge Dennis already
11 ruled on that.

12 THE COURT: Did he rule on that?

13 MR. YOUNG: I don't think so, Judge. I think what I
14 did with the personnel records is out of an abundance of
15 caution we pulled those.

16 THE COURT: Okay.

17 MR. YOUNG: Again, it is our position in this office
18 that in every case we are not going to pull a personnel --
19 the internal affair files of each police officer.

20 Judge, and you may have gotten this email, that I sent
21 an email. Have you had a chance to possibly read through
22 that at all?

23 THE COURT: If I have I just don't have the files. I
24 need to look at them in camera.

25 MR. YOUNG: Okay. And I have got them here, Judge.

1 And I thought maybe the best procedure - if I am right on
2 this - was to give them to you.

3 THE COURT: I think that's exactly ---

4 MR. YOUNG: Okay.

5 THE COURT: --- the procedure.

6 MR. YOUNG: Okay. Well, I have them right here, Judge.

7 And that way maybe you can actually rule coming up ---

8 THE COURT: I will look at them tonight ---

9 MR. YOUNG: Right.

10 THE COURT: --- and we will see if there is anything to
11 what she is entitled. I will tell you that my philosophy is
12 I don't like fishing expeditions for personal -- you know,
13 obviously personal, non relevant issues.

14 But as somebody who reviewed police personnel files for
15 kind of a long time and had to explain to my clients why
16 they had to give up internal affairs files and such I think
17 if there's something in here she's entitled to it.

18 But I'm going to look at it tonight and if there's
19 nothing in there that she's entitled to, I will hand it
20 right back to you.

21 But I do think you did just the right thing ---

22 MR. YOUNG: Okay.

23 THE COURT: --- about emailing a while back and saying
24 there was going to be an issue coming up. I think if they
25 ask for it, they are entitled to in camera review and to get

1 what they are entitled to. Other judges might differ. But
2 I will look at it tonight.

3 MR. YOUNG: All right. Thank you, Your Honor.

4 MS. TOLLEY: Thank you, Judge. We also had a motion to
5 produce school records, Judge. We requested the school --
6 Brittanae Casper's school records by way of discovery, Rule
7 5. And we were told that we have subpoena power the same as
8 they do so to subpoena it. So we subpoenaed it and then
9 they blocked it. They prevented us from getting it.

10 THE COURT: How did they block it? They have no
11 standing to block a subpoena ---

12 MS. TOLLEY: They have no ---

13 THE COURT: --- to the College of Charleston.

14 MS. TOLLEY: Well, they -- when I called ---

15 THE COURT: None.

16 MS. TOLLEY: When I called -- when I called the
17 attorney at the College of Charleston they said ---

18 THE COURT: Who is -- who is that?

19 MS. TOLLEY: Tom -- I don't know his last name. I'm
20 sorry. I don't have it with me.

21 THE COURT: Okay.

22 MS. TOLLEY: At any rate, he said that he had notified
23 Brittanae per whatever regular requirement that they have,
24 that he had also spoken with the solicitor; and he said that
25 there would be a motion to suppress it.

1 THE COURT: Had there been a motion to quash?

2 MS. TOLLEY: Are you asking me?

3 THE COURT: Because they are in contempt of the
4 subpoena if they hadn't been. And I want their lawyer here
5 in the morning.

6 MR. YOUNG: Right, and Judge, so I think what Ms.
7 Tolley is trying to say here, and this ---

8 MS. TOLLEY: Judge, I know what I said.

9 MR. YOUNG: Okay. Well, let me try to be clear then
10 with Your Honor. On Thursday she subpoenaed the medical
11 records.

12 THE COURT: Oh, just Thursday?

13 MR. YOUNG: That is correct, Judge. She served ---

14 THE COURT: Okay.

15 MR. YOUNG: She subpoenaed the records ---

16 MS. TOLLEY: They said they could have it here. But
17 they were waiting on his ---

18 THE COURT: They need ---

19 MS. TOLLEY: --- motion to quash.

20 THE COURT: --- to have it here then.

21 MR. YOUNG: Right, and ---

22 THE COURT: They are waiting on y'all?

23 MR. YOUNG: They are not waiting on us, Judge. I am
24 not really sure what she is talking about. I spoke to their
25 attorney. He said we have gotten a subpoena ---

1 THE COURT: I want to speak to their attorney. Who is
2 their attorney?

3 MR. YOUNG: He said -- he said he would be here Monday
4 morning to comply with the subpoena.

5 THE COURT: Where is he?

6 MR. YOUNG: Judge ---

7 THE COURT: Who is it? What is his name?

8 MR. YOUNG: His name is Tom or Tim something.

9 MS. TOLLEY: It is Tom or something.

10 MR. YOUNG: C of C.

11 THE COURT: Tom can call him.

12 MR. YOUNG: Okay. And, you know, Judge, I have that
13 email that he sent me which might have his name on it.

14 I ---

15 THE COURT: How cool -- if you can just give us his
16 phone number that is really -- and name ---

17 MR. YOUNG: Yeah.

18 THE COURT: --- that is really all we need.

19 MR. YOUNG: But he was adamant about he was going to be
20 here. I mean he -- I am just wondering if he showed or not.
21 But I think ---

22 THE COURT: And he sure didn't bring it to anybody's
23 attention. We have been here all day. So I didn't leave at
24 lunch.

25 MR. YOUNG: Okay.

1 THE COURT: It is not y'all's fault. Y'all have no
2 standing to contest the subpoena. None.

3 MR. YOUNG: And I agree. And when I first spoke to him
4 I wasn't sure. I said let me check with my boss. And
5 that's what I did.

6 THE COURT: Who, Ms. Scarlett?

7 MR. YOUNG: It was Bruce.

8 THE COURT: Oh, Bruce.

9 MR. YOUNG: I talked to Bruce about it. And then we
10 talked about it. And he said do not block it; you tell him
11 he needs to be there and if the judge rules, you know,
12 whatever. So I went and told him that. He said we will see
13 you Monday.

14 THE COURT: All right. Well, we are going to get him
15 on the phone, Ms. Tolley.

16 MS. TOLLEY: Okay.

17 THE COURT: We will find out --- I am not saying you
18 are entitled to the records.

19 MS. TOLLEY: Right.

20 THE COURT: But you are entitled to have somebody
21 respond to your subpoena. However, it hasn't been ten days
22 under Rule 45. So we'll get working on that.

23 Okay. The motion to sequester I think y'all agreed to
24 that other than this victim obviously.

25 MR. YOUNG: Just as long as the victim is allowed ---

1 MS. TOLLEY: Right.

2 MR. YOUNG: --- to stay, Judge.

3 THE COURT: Okay. All right. Anything else y'all want
4 to put on the record regarding the College of Charleston
5 records?

6 MR. YOUNG: Judge, I -- our position is that they are
7 not even relevant. We don't think even if they were here
8 that they would come in. That's our position.

9 THE COURT: Have you seen them?

10 MR. YOUNG: I haven't seen them, Judge.

11 THE COURT: See, then you don't know what is in them to
12 know whether they are relevant or not. And I will take a
13 look at that and figure it out.

14 MR. YOUNG: Thank you, Judge.

15 THE COURT: Okay. I have several more.

16 MS. TOLLEY: Okay. This should go quickly, Judge.

17 THE COURT: Motion to produce records, we are waiting
18 on the lawyer.

19 MS. TOLLEY: Right.

20 THE COURT: Okay. And if he's not there, I want
21 somebody. Okay.

22 MS. TOLLEY: Motion to produce the video at the
23 College of Charleston they are telling us that it is
24 destroyed so ---

25 THE COURT: We dealt with that one already.

1 MS. TOLLEY: Okay. Motion with regard to photos of the
2 victim. There's only one that we have an issue with.

3 THE COURT: Okay.

4 MS. TOLLEY: And I think it is one where she is lying
5 on the table, whatever.

6 THE COURT: Do y'all want me to look at it? I will
7 take a look at it and do the photo analysis. I mean I think
8 that's just a straight up 403 and 402 issue.

9 MR. YOUNG: Judge, can we approach on it?

10 (WHEREUPON, a bench conference was had.)

11 THE COURT: Sure, come on. All right. Let's put a
12 sticker on it so we can mark it for

13 MS. TOLLEY: I'm sorry, I am a little shorter than you.

14 THE COURT: That's okay.

15 MR. YOUNG: This is one that I want to enter. It is
16 showing some scratches on the neck.

17 THE COURT: Okay.

18 MR. YOUNG: Around her neck. Then the scratches. I
19 don't know if there's an objection to that.

20 THE COURT: Well, what -- no, but where are the
21 scratches?

22 MR. YOUNG: She has got some red marks.

23 THE COURT: The bruising or ---

24 MR. YOUNG: Right, I think under the neck right there,
25 yes, ma'am.

1 THE COURT: Is that one?

2 MS. TOLLEY: This is the one.

3 MR. YOUNG: That is one.

4 THE COURT: All right.

5 MS. TOLLEY: Is that the one we have got an objection
6 to? Can I see that?

7 THE COURT: Let's put exhibit stickers on them so that
8 I will be able -- I want to make a record for y'all ---

9 MR. YOUNG: Okay.

10 THE COURT: --- in case somebody needs it.

11 (WHEREUPON, States Exhibit 1, photograph of face of
12 victim, was marked for identification.)

13 (WHEREUPON, States Exhibit 2, photograph of body of
14 victim, was marked for identification.)

15 (WHEREUPON, States Exhibit 3, photograph of neck of
16 victim, was marked for identification.)

17 (WHEREUPON, States Exhibit 4, photograph of neck of
18 victim, was marked for identification.)

19 (WHEREUPON, States Exhibit 5, photograph of neck of
20 victim, was marked for identification.)

21 (WHEREUPON, States Exhibit 6, photograph of elbows of
22 victim, was marked for identification.)

23 (WHEREUPON, States Exhibit 7, photograph of elbows of
24 victim, was marked for identification.)

25 (WHEREUPON, States Exhibit 8, photograph of elbow of

1 victim, was marked for identification.)

2 THE COURT: All right.

3 MR. YOUNG: Those are -- yeah, those are the photos,
4 the victim's.

5 THE COURT: How about y'all just take a look at them
6 together real quick and see what you can agree on if
7 anything and what you can't. I am a big fan of pre-marking
8 exhibits.

9 (WHEREUPON, counselors conferred.)

10 MS. GORDON: Your Honor, we have agreed that we will
11 not enter State's Exhibit 2.

12 THE COURT: Okay. State's 2 is out.

13 MS. TOLLEY: And then -- and not -- it is just they are
14 going to limit the number that they are going to produce of
15 the exact same thing.

16 THE COURT: Okay.

17 MS. GORDON: There are a couple that are very similar,
18 but I just need to check with the nurse for her to tell me
19 which one ---

20 THE COURT: Right.

21 MS. GORDON: --- shows it,

22 THE COURT: Okay.

23 MS. TOLLEY: --- what she wants to refer to best.

24 THE COURT: Okay. That would be great. Thank you.

25 All right. Anything else regarding the photos?

1 MS. TOLLEY: Nothing, Judge.

2 THE COURT: All right. Then we are in it by agreement.
3 Okay. The other ones I have got motion to produce medical
4 records, motion to produce chain of custody, and a motion
5 regarding the criminal history of the defendant.

6 MS. TOLLEY: Right, that's in the medical records,
7 Judge. We think that they were -- they are relevant given
8 that this is a sexual assault case and she was physically
9 injured -- or there was potentially physical.

10 THE COURT: Have you subpoenaed the hospital or
11 subpoenaed the ---

12 MS. TOLLEY: We did.

13 THE COURT: --- records.

14 MS. TOLLEY: We subpoenaed the Roper records. So
15 that's no longer an issue.

16 THE COURT: Okay. So that motion is withdrawn.

17 MS. TOLLEY: Okay.

18 THE COURT: Okay.

19 MS. TOLLEY: Motion in limine regarding the admission
20 of criminal history of the defendant, Judge.

21 THE COURT: Okay. And I do not have a copy of his rap
22 so. How about Thomas A. Trimbal (ph) T-R-I-M- ---

23 MS. TOLLEY: That's it.

24 THE COURT: --- B-L ---

25 MS. TOLLEY: That's it.

1 THE COURT: Okay.

2 MR. YOUNG: Judge, if I could approach.

3 THE COURT: Sure.

4 (WHEREUPON, document was presented to the court.)

5 THE COURT: All right, they are going to find a phone
6 number for us. All right. Y'all, let me just look at this.

7 (Pause for review of document.)

8 THE COURT: Okay. Ms. Tolley, did you review a copy of
9 his criminal history?

10 MS. TOLLEY: I have.

11 THE COURT: All right. Tell me what you think should
12 be out and what you think -- well, you probably think it all
13 should be out. Just tell me why.

14 MS. TOLLEY: Let's see. Clearly anything that's over
15 ten years old should be out.

16 THE COURT: The first thing I see is from 1993. So '93
17 to '96. Do y'all agree that ---

18 MR. YOUNG: Forgeries should be out? '93?

19 THE COURT: Well, I mean it is 19 years old.

20 MR. YOUNG: Judge, under 609 we would ask that that
21 would come in under the proof -- I understand it is outside
22 of the ten years old. Under the anything that would have to
23 do with, you know, voracity, crime of dishonesty, certainly
24 forgery would be that. So we would ask that that come in
25 for that part of 609. We certainly can understand it is

1 outside of the ten-year rule though.

2 THE COURT: Okay. I'm not going let the 1993 forgery
3 in. I think there are plenty of timely offenses ---

4 MS. TOLLEY: I understand.

5 THE COURT: --- within, 609(b). So I think that takes
6 us to -- we can start with 3/4/2003. That is failure to
7 stop for a blue light. I don't think that's an issue. All
8 right. Tell me -- tell me which ones you want in I guess,
9 and then she can ---

10 MR. YOUNG: Judge, our position is the '03 failure to
11 stop for blue light, okay, under -- this is again under 609.

12 THE COURT: Right.

13 MR. YOUNG: Okay. Additionally, the '03 possession of
14 cocaine. There's an '04 breaking and entering tanks where
15 fuel is stored. That's -- where he has got three years on
16 that. And we think -- that was '04. So that one is coming
17 in. And especially the burglary second degree conviction
18 from '07. That certainly falls under 609 as well.

19 For the first two under failure to stop and possession
20 of cocaine, the one back in '03, if you look at the 609,
21 Your Honor, it talks about if the crime is to be a felon --
22 or I'm sorry, carry more than one year. It does. At this
23 point it comes to the probative -- weighing the probative
24 value versus prejudicial affect test which, Your Honor,
25 would then weigh that.

1 Judge, we make the argument that failure to stop and
2 possession of cocaine under that test would be more
3 probative than prejudicial.

4 Certainly with the breaking and entering tanks and burg
5 second we think -- if you look at the first part of 609 just
6 like we spoke about, you have carries over a year. At this
7 point the probative value versus prejudicial affect test
8 that Your Honor weighs.

9 Furthermore, if you found that it doesn't fall in that
10 category, Judge, we would say that those crimes are crimes
11 of dishonesty.

12 I have pulled the burglary second incident report.
13 That was in fact stealing in a house where the defendant
14 stole some rims. So that is certainly a crime of
15 dishonesty. We certainly think the burglary second comes in
16 under that test if you don't find it comes under the first
17 part of 609.

18 The breaking and entering tanks as well we think also
19 fall under a crime of dishonesty. We think that should come
20 in.

21 THE COURT: Okay. Ms. Tolley.

22 MS. TOLLEY: We certainly understand that argument
23 about the burglary charge, Your Honor. With regard to the
24 breaking into the tanks we would say that that should be
25 excluded based on the rule, Judge.

1 THE COURT: Okay. I'm looking to see if there is
2 anything about breaking into tanks, if shoplifting has been
3 found to be a crime of dishonesty. Plus you -- so I don't
4 see a tremendous distinction in the breaking into tanks from
5 that as far as dishonesty goes to bring it within the ambit
6 of the 609(a)(2).

7 So I think the burglary and the breaking into tanks
8 come in. It's the -- it's the drug offenses and the failure
9 to stop for a blue light that I'm not sure about. I think
10 that the probative value would be outweighed by the
11 prejudicial effect and we would get into a piling on.

12 I mean you are already going to have been able to
13 impeach him on the 2003 -- well, 2004 breaking into the
14 vehicle and breaking into tanks, 2006 breaking into tanks,
15 2007 burg second. So that's three things already. I will
16 look at the drug issue. And I'm not going let failure to
17 stop for a blue light come in.

18 MR. YOUNG: Okay. Just so I'm clear, Judge. On the
19 2006 break-in I think that is just I believe where the rap
20 where he was sent to jail. So it is custody -- custody
21 status received part right there.

22 THE COURT: I ---

23 MS. TOLLEY: That is not a separate ---

24 THE COURT: So it is not a separate offense?

25 MR. YOUNG: Yeah, I don't think it is a separate

1 offense. Yeah. I'm sorry, yeah.

2 THE COURT: Oh, sorry about that.

3 MR. YOUNG: That's all right. I wasn't being clear.

4 THE COURT: Okay. I apologize. That it is just the
5 one, the 2004 breaking into vehicle. Okay. Got it. Okay.
6 So 2004 breaking into motor vehicle, breaking into tanks.
7 And then the 2007 burg second?

8 MR. YOUNG: That's correct, Judge.

9 THE COURT: Okay. I will look at the drug charges
10 tonight. But I am not inclined to let those in. Well, you
11 know, we have had a theory advance. So we had jurors struck
12 this morning because of the specter that drugs may come up
13 during the trial. And if for some reason that comes up, it
14 makes the drug arrests probative and I will have to do the
15 proper 403 test at that point if that will make a
16 difference. So.

17 MR. YOUNG: Judge, my permission to pass this
18 phone number.

19 THE COURT: Is that a phone number? Thank you, so
20 much.

21 MR. YOUNG: Yeah. I think ---

22 THE COURT: We will get that squared away. Okay. So
23 we are straight on that?

24 MS. TOLLEY: Yes.

25 THE COURT: All right. Let's see. The other -- the

1 motion to produce chain of custody I thought they gave that
2 to you, Ms. Tolley. Did that ---

3 MR. YOUNG: That's been provided.

4 THE COURT: Been provided. Anything else that you are
5 waiting for on that?

6 MS. TOLLEY: I know this is going to sound odd, but I'm
7 going to say it anyway. The chain of custody that we think
8 might be necessary in this case is chain of custody
9 regarding how the CODIS DNA was collected, who collected it,
10 how it was transported, where it was transported to, who
11 received it, and what did they do with it.

12 THE COURT: You mean what caused them to get the hit
13 initially?

14 MS. TOLLEY: Yeah, but not what caused them. Who did
15 it. Who drew the blood. What happened ---

16 THE COURT: Have you sent subpoenas for that
17 information to the various folks that might be implicated?

18 MS. TOLLEY: It is part of the chain of custody.

19 THE COURT: I don't that that the CODIS ---

20 MS. GORDON: Your Honor, may I respond?

21 THE COURT: Yes.

22 MS. GORDON: CODIS is not going to come up -- you know,
23 the State is prepared to exclude any reference to CODIS or
24 that the defendant was ever in the Department of Corrections
25 which put him on CODIS. And the CODIS DNA is, you know,

1 after they got the CODIS hit there was a buccal swab and it
2 is retested. So that's not ---

3 THE COURT: That's not what she is asking about.

4 MS. GORDON: Yes.

5 THE COURT: She wants to know how did what produced
6 the hit get where it was in order to produce the hit.
7 That's ---

8 MS. TOLLEY: Right. That is exactly right.

9 THE COURT: --- my understanding.

10 MS. GORDON: That DNA -- that is coming in. That is
11 the Lindsey Thompson which we talked about ---

12 MS. TOLLEY: Right, you had to start with a hit, the
13 original hit, before you got your arrest and then took an
14 unknown sample. That's the problem.

15 MS. GORDON: And maybe I -- maybe I can articulate this
16 so that it makes sense. But I will try. It -- the rape kit
17 goes to SLED. That is Jill Burns to Hood to Magwood to SLED
18 which goes to Lilly Gallman and Lindsay Thompson. That's
19 the -- that's the chain on that DNA which includes semen
20 from a swab of the victim's rectum. That comes back ---

21 THE COURT: The victim in this case?

22 MS. GORDON: The victim in this case.

23 THE COURT: I know that.

24 MS. GORDON: Okay.

25 THE COURT: She knows that. That is not ---

1 MS. GORDON: Okay. That is not ---

2 THE COURT: --- what she wants to know.

3 MS. GORDON: Okay.

4 THE COURT: As I understand it ---

5 MS. TOLLEY: Right.

6 THE COURT: And if I'm confused, please correct me.

7 You have the kit in this case and y'all have given her the
8 chain of custody folks.

9 MS. GORDON: Yes.

10 THE COURT: She can cross-examine them. She wants the
11 chain of custody for what your rape kit got a hit off of,
12 what caused the hit.

13 MS. GORDON: And, Your Honor ---

14 THE COURT: That's what she wants to know.

15 MS. GORDON: Yes. And I don't think they keep a chain
16 on that, which is why they do a new buccal swab ---

17 THE COURT: Right.

18 MS. GORDON: --- to make sure that it matches. Nor is
19 it -- nor is the CODIS admissible under the case law.

20 THE COURT: I think that is a very novel argument and a
21 very -- I -- you know, your attorney is doing a great job
22 for you.

23 MR. BROWN: Yes, she is.

24 THE COURT: I hope you tell her.

25 MR. BROWN: Yes, she is.

1 THE COURT: I will look at that tonight. But I can
2 promise you I am not going to do anything that's going to
3 vitiate the utility of the entire CODIS system. But I will
4 take a look at it and see how other courts have handled it.
5 They don't have a chain of custody on that to give you.
6 Nobody ever would, I don't think. But that's a very novel
7 argument. And I will give it some thought tonight. I see
8 exactly what she wants. Why did he get a hit and the
9 boyfriend didn't get a hit or

10 I think I get it, but I am happy for you to share
11 whatever ---

12 MR. YOUNG: Judge, I -- the reason he got the hit was
13 he was in prison.

14 THE COURT: Oh, I know.

15 MR. YOUNG: Okay.

16 THE COURT: Thank you.

17 MR. YOUNG: Yes, ma'am.

18 THE COURT: Right. But I think what I'm hearing -- I'm
19 hearing Ms. Tolley say is when he is in prison who then
20 takes a buccal swab there or takes some blood there and then
21 puts it -- who did they give it to next down the chain who
22 had it then entered into CODIS ---

23 MR. YOUNG: You are talking about -- while in
24 prison, ---

25 THE COURT: Uh-huh.

1 MR. YOUNG: Okay.

2 THE COURT: And ---

3 MR. YOUNG: I don't have that information.

4 THE COURT: I am not going to exclude it on that basis.

5 I can tell you that. I will look and see if there's any

6 law..

7 But I think it would be incumbent to subpoena notes for
8 a hearing, a separate hearing, on that if it were indeed to
9 be an issue. But I will look at it. There has got to be
10 law on it.

11 MS. TOLLEY: Okay, I guess if -- what you are saying is
12 that we would need to subpoena people? We don't normally
13 subpoena. That's a problem.

14 THE COURT: I will take a look at it. All right.

15 MS. TOLLEY: Thank you.

16 THE COURT: All right. What else?

17 MS. TOLLEY: I think that's all that we have, Judge.

18 MS. GORDON: Your Honor, I just want to make sure for
19 housekeeping for tomorrow that I understand too, is
20 necessary for Ms. Tolley's DNA motion. Because we discussed
21 it a couple of times, and I am still not clear who she needs
22 or what the basis is. If it is a chain basis or science
23 basis, if it is a legal motion -- or I mean I just don't --
24 I can't have everybody here from SLED to stay all day and
25 then possibly into Wednesday because we are also

1 coordinating SLED witnesses with other counties.

2 THE COURT: Well, and I am not going to turn this into
3 a mini hearing on the DNA issues. I mean you need to let
4 them know what you are trying to elicit, what you are
5 wanting to know and who they need to have here.

6 MS. TOLLEY: Well, I think I have said it several
7 times. And I have specifically requested it in writing.
8 And the CODIS information is what we are concerned about.

9 So if they don't want to bring any witnesses to show
10 the chain of custody on that then I guess I will make the
11 argument without it. I can't subpoena anybody because I
12 don't know who did it.

13 MS. GORDON: So is the DNA motion then based on the
14 CODIS?

15 THE COURT: That's what I am trying to find out. It is
16 the only -- you are moving to suppress the DNA, as I
17 understand it, because they can't give you a proper chain of
18 custody on the CODIS; correct?

19 MS. TOLLEY: That is part of the argument, yes.

20 THE COURT: Okay. So you need somebody to testify
21 tomorrow morning as to how CODIS works, how it gets put
22 in, ---

23 MS. TOLLEY: Specifically ---

24 THE COURT: --- to go backwards.

25 MS. TOLLEY: How it was done in this case.

1 THE COURT: Well, I don't know that that person is
2 going to be here.

3 MS. TOLLEY: Okay.

4 THE COURT: But ---

5 MS. TOLLEY: I guess -- I guess our thought is that
6 that's, not our burden.

7 THE COURT: I think it is your burden to get people
8 here if you are trying to establish something. It's their
9 burden to show the chain of custody if indeed it is
10 something that they have to show.

11 I don't know that I'm going to make them show the chain
12 of custody on the CODIS. So you can do what you need to do
13 to protect your record for appeal.

14 If there's some special SLED witness that you need to
15 have here, you need to pop a subpoena on that person and
16 have somebody find out who that person is, who is the CODIS
17 person.

18 MS. TOLLEY: Okay. Then we would be requesting a
19 continuance so we have ---

20 THE COURT: Denied.

21 MS. TOLLEY: --- an opportunity to do that.

22 THE COURT: And I am not going to let -- turn this into
23 a delay tactic situation in which is somewhat I feel like I
24 am going through right now.

25 MS. TOLLEY: Absolutely not. We think that the

1 argument that we are making is one that is legally
2 legitimate and sound.

3 THE COURT: Oh, I'm very -- that is a very interesting
4 argument. And I will look at it tonight. What I am saying
5 again is you need to know who you need to have here. She
6 can't just think that up.

7 I mean they know who they need to have here to prove
8 their chain. But if there's somebody from SLED or somewhere
9 else that you need to have here specifically to address what
10 I think is a pretty novel issue I think it is incumbent upon
11 you to give the names and have them here and serve them with
12 a subpoena.

13 Have your SLED people here in the morning.

14 MS. GORDON: Just have everybody ---

15 THE COURT: Lindsay -- no, if somebody is the main
16 person that can tell you how the system works, how CODIS
17 works, how SLED gets it from whoever they get it, we can
18 then work our way back if we need to.

19 MS. GORDON: Your Honor, I think that is going to be
20 Heather Stanley. Just because Lindsay Thompson no longer
21 works for SLED, although she did some of the -- Stephanie
22 Stanley, if I misspoke. I would call her and find out if
23 she knows about CODIS or if that's somebody totally
24 different. I don't know who their CODIS person is either.

25 THE COURT: Okay.

1 MS. GORDON: You know, and that is a double edged sword
2 because if we talk about CODIS then they have to know he was
3 in prison and how that all comes out.

4 THE COURT: I mean do you want to open that door up?
5 I mean they are going to know he has the breaking and
6 entering ---

7 MS. TOLLEY: Right.

8 THE COURT: --- and burg second nonviolent charge.

9 MS. GORDON: Only if he testifies.

10 THE COURT: Right. Well, true. Ms. Tolley will have
11 to think about that tonight whether she wants to go down
12 that road or not.

13 I mean it is probably less damaging, well, to say we
14 got a hit on something than, you know, he was in prison and
15 we got a hit on it. But that's a trial tactical decision
16 she will have to make. I will look at the law in the
17 meantime on the chain of custody on the initial sample that
18 got the hit that you then prove the chain of custody for.

19 MS. TOLLEY: Okay.

20 THE COURT: Okay. And that will be interesting. All
21 right. Nine o'clock we will do the motion to the extent we
22 need to on the DNA.

23 And if we are going to go call this lawyer from the
24 College of Charleston now and see if he understands how
25 subpoenas work. I mean I think it was very nice of him to

1 give y'all a courtesy call, but you understanding that ---

2 MR. YOUNG: Right. I think you are right, Judge. I
3 think he understood. He called me about it. So he has
4 definitely been in contact with me.

5 THE COURT: But then he didn't come at all?

6 MR. YOUNG: Right. I haven't seen him. I haven't seen
7 him here today.

8 THE COURT: All right. Well, we will -- do y'all want
9 us to call you after we talk to him or just talk about it in
10 the morning?

11 MS. TOLLEY: We can talk about it in the morning.

12 THE COURT: Okay. That's fine.

13 MS. TOLLEY: We will see y'all at 9:00.

14 MR. YOUNG: Whatever is easiest for you.

15 THE COURT: I mean we might not be able to get him. I
16 don't know what he has got going on.

17 MR. YOUNG: I am not sure so.

18 (WHEREUPON, court was at recess for the day.)

19 (Tuesday, April 17, 2012)

20 THE COURT: Okay. I have the College of Charleston
21 records. I have not had a chance to look at them yet. But
22 I will do that in a couple of minutes. I did look at the
23 personnel file. It is really not a personnel file. It is
24 more investigative reports, i.e., the information that they
25 compiled. I am not sure what was requested. Disciplinary.

1 MS. TOLLEY: Are there disciplinary procedures that we
2 should be aware of?

3 THE COURT: There were really only two things that I
4 found that wouldn't necessarily be admissible that could be
5 relevant that I would have produced. I will tell y'all
6 about those briefly. I don't even recall if this person is
7 listed as a witness, quite frankly.

8 So I am not sure, you know, what the relevance would
9 be. Who -- it seemed that there were many more officers
10 that -- that have generated reports for than were listed. I
11 guess you asked for anybody that handled any kind of
12 evidence at all?

13 MS. TOLLEY: Right.

14 THE COURT: Okay. Well, I have two that I thought
15 were -- you know, again, I don't know that they are -- but
16 they are, you know, tangentially possible relevant.

17 One was Senior Police Officer Steven Hood had a
18 mishandling evidence issue. And then -- well, again, I
19 think this is just a more detailed report for the same
20 incident. But I will hand it up and let y'all take a look
21 at it.

22 MS. TOLLEY: Okay.

23 THE COURT: Okay. Here you go. If any of y'all wants
24 to come up and y'all can both take a look at this. This was
25 really the only -- and again, I don't recall that he is even

1 on the witness list.

2 MS. TOLLEY: He is on the witness list.

3 MR. YOUNG: Yes.

4 THE COURT: He is? Okay.

5 MR. YOUNG: Hood is the officer who takes the rape kit
6 from ---

7 THE COURT: Okay.

8 MR. YOUNG: --- the hospital.

9 THE COURT REPORTER: I'm sorry, Your Honor, I can't
10 hear you.

11 THE COURT: Y'all have got to speak up. Thank you.

12 MR. YOUNG: Officer Hood is the officer that takes the
13 rape kit from the hospital and logs it into evidence.

14 THE COURT: Okay.

15 MS. TOLLEY: We can use it or ...?

16 THE COURT: Well, I mean I think you are entitled to --
17 you know, depending on what they put him up for ---

18 MS. TOLLEY: Right.

19 THE COURT: --- I think you can probably cross-examine
20 him on it unless I've heard ---

21 MR. YOUNG: Judge ---

22 THE COURT: --- otherwise.

23 MR. YOUNG: --- our only objection would be that on the
24 401 we don't think that would be relevant. I think -- if I
25 could see it. This is -- this is 401. This case I guess

1 the incident looks like in was a 209 and it was paperwork
2 that I think they failed to fill out from what I can read on
3 this or at least the paperwork misplaced. Something to do
4 with paperwork.

5 Under 401 any kind of evidence that is relevant has a
6 tendency to prove or disprove material fact in the case.

7 Our argument would be that, you know, in '09 is was
8 before -- actually the incident happened in '08. So the
9 actual incident that we're talking about with Officer Hood
10 happened after the incident with Ms. Catherine, the rape
11 kit. Therefore, we don't think that it would be relevant to
12 what happened in '08 and would ask that it not come in,
13 Judge.

14 THE COURT: Okay. Ms. Tolley.

15 MS. TOLLEY: Judge, we would assert that it is highly
16 relevant in this case. And in fact in talking with the
17 solicitors yesterday I specifically raised concerns about
18 Officer Steven Hood because I saw no reference to him in any
19 of the police work or any of the incident reports that I had
20 received from them regarding the chain of custody from the
21 City of Charleston Police Department.

22 I was subsequently yesterday provided a sheet that had
23 his name listed on it but no -- there is no other reference
24 to him anywhere in any of the other police reports. And so
25 we believe that this is highly relevant.

1 The fact that it happened -- did you say after? The
2 fact that it happened after the 2008 incident would not make
3 it less relevant. In fact it would be more relevant because
4 during a timeframe -- during an extended timeframe there was
5 a possibility that something like that could have happened.

6 And this was in 2010. That would have been just, you
7 know, within not an unreasonable period of time.

8 THE COURT: Okay. I'm going to take a look -- if any
9 of y'all care to provide me with some law on the issue at
10 some point, that would be fine.

11 I'm going to look at it in the context of 404B and 406,
12 and we will just see. We will argue about that later.. But
13 she is entitled to have the document, obviously.

14 MR. YOUNG: Okay. Thank you, Judge.

15 THE COURT: Sure. On the DNA issue -- and thank you
16 for the law that you sent. I did read that in the context
17 of the AFIS case which is somewhat similar to what we have
18 here. And then I did read the Tennessee decision. I think
19 it was Black which dealt with CODIS specifically.

20 But also I found some other law. And this is what I am
21 interested in hearing from y'all on and that I think we need
22 to work through.

23 All CODIS does -- or sometimes people apparently from
24 what I was reading last night even it's not always in CODIS.
25 It is the quote, unquote, DNA database that by congressional

1 authority has been mandatorily established. It generates
2 the hit. It is then incumbent upon the State to provide
3 with a proper chain of custody the DNA confirmation.

4 And so what I need to make sure is once the hit was
5 generated did they -- did law enforcement then get a buccal
6 swab from the defendant and do we have the chain of custody
7 for that.

8 MS. GORDON: Yes, Your Honor, that is exactly how it
9 happened. We got the hit and then a search warrant was
10 obtained for this buccal swab. That buccal swab was then
11 sent to SLED, analyzed again -- that buccal swab was
12 analyzed. That chain of custody we have. And all of those
13 witnesses are prepared to come to court to testify.

14 Your Honor, we did bring Theresa Hines from SLED this
15 morning who works CODIS. And she submitted the letter
16 letting the City of Charleston Police Department know that
17 there had been a CODIS hit, if you have any questions for
18 her regarding that procedure.

19 As Your Honor is aware, the State is generally not
20 allowed to talk about CODIS in the trial. But it appears
21 the defense may strategically want to do that. If that is
22 the decision, the State would ask that the defense put on
23 record that they are waiving that -- that ordinarily
24 prohibition against the State talking about CODIS.

25 THE COURT: Ms. Tolley.

1 MS. TOLLEY: Thank you, Your Honor. May it please the
2 court. I guess our argument, Your Honor, is that with
3 regard to the DNA and the CODIS database if -- if the
4 initial taking of the sample from the person at the jail is
5 tainted then anything derived thereafter is tainted as well.

6 So if there's no record of who drew the blood at the
7 jail, if there's no record of who transported the sample to
8 SLED, then that process is possibly tainted and anything
9 that SLED gets after that is also tainted and therefore
10 should be inadmissible unless they are able to provide the
11 chain with regard to that.

12 THE COURT: I have not found any law in all fed's or in
13 all state's review that supports that proposition.

14 Now, had law enforcement attempted to just rely on the
15 CODIS hit and then missed the step of retesting the
16 defendant then we would have a problem. Do you follow that
17 line of reasoning?

18 And I will read you the case law. But then I am happy
19 for you to make whatever record you need to make. Because I
20 didn't find a South Carolina case on this. There's only the
21 AFIS case. It is either State v Taylor or State v
22 Alexander. I am not sure.

23 MS. GORDON: I think it is State v Anderson.

24 THE COURT: State v Anderson. But I think -- did you
25 receive a copy of that last night ---

1 MS. TOLLEY: Yes.

2 THE COURT: --- from Ms. Gordon?

3 MS. TOLLEY: Yes.

4 THE COURT: Okay. You know, whatever record you'd like
5 to make in the motion to suppress, Ms. Tolley, I am happy
6 for you to do that. But that is what the law I found that
7 Ms. Gordon provided for me supports.

8 MS. TOLLEY: Judge, we would -- we would simply renew
9 our motion to suppress the DNA evidence based on several
10 factors ---

11 THE COURT: Okay.

12 MS. TOLLEY: --- but specifically on the addressing the
13 CODIS and you are not going to require testimony then I
14 guess we can release the experts and proceed with the
15 further arguments. But I will be happy to make all of my
16 arguments right now if you like.

17 THE COURT: However you want to handle it is fine with
18 me. I -- you know, I am happy for you to have them prove up
19 their chain as to the buccal swab and the rape kit now if
20 you want them to do that. Or, you know, we can wait and do
21 that. But as to the actual CODIS hit ---

22 MS. TOLLEY: Okay.

23 THE COURT: --- that is for you to argue and preserve
24 any way you see fit.

25 MS. TOLLEY: Okay. Judge, we would assert that based

1 on the Fourth Amendment and the Fifth Amendment of the
2 United States constitution and the rules and regulations of
3 this state that the DNA evidence is inadmissible in this
4 case.

5 That we would argue that with regard to the taking of
6 the original sample with CODIS that there is no chain of
7 custody with regard to that, that there's no evidence with
8 regard to who took the blood at the jail and if in fact it
9 was taken at the jail, who transported the DNA evidence
10 sample to SLED, and any other records with regard to that.

11 The fact that there was no chain of custody with regard
12 to that means that anything that came after that is possibly
13 tainted as a result of the fact that there's no proof as to
14 the chain of custody.

15 There may be proof as to what happens at SLED, and
16 that's fine; but SLED is using evidence that's possibly
17 tainted. It could be that the DNA samples at the jail got
18 switched.

19 There's my understanding is that sometimes there are
20 multiple samples taken at the same time from the jail and
21 that -- that's always a possibility.

22 There's no indication about who at the jail takes it,
23 whether it's a nurse, whether it's somebody other than a
24 nurse, whether -- or who at the jail is taking the sample.

25 And based on that, we believe that there is -- there's

1 a likelihood -- not -- anything is possible; and that's
2 possible that it's contaminated, that it's been mishandled
3 in some way prior to getting to SLED.

4 And if that is the case then anything that SLED does no
5 matter how right or how well documented would be based on
6 something that's already in error.

7 And for that reason we believe that the chain of
8 custody should be produced with regard to the jail
9 information.

10 THE COURT: I just want to make sure I'm understanding
11 your argument. You are talking about chain of custody as to
12 whatever sample was taken from the defendant that was
13 entered into the CODIS independent of anything to do with
14 this crime, the buccal swab here and the rape kit here?

15 MS. TOLLEY: That's correct.

16 THE COURT: Okay. Here's what you need to look at and
17 go forward from. People v Shaw, 2009, Westlaw, 4757192. It
18 is from California.

19 Evidence of chain of custody is generally not required
20 where the CODIS alert - which is what I understood we have
21 here - is used only for further investigation, not as
22 evidence of guilt. And that's a quote from the case.

23 So if you have something to argue other than the CODIS
24 alert, I am happy to hear from you on that.

25 MS. TOLLEY: Judge we would first assert that the

1 People versus Johnson is a California case happening in 2006
2 and not applicable in this particular state.

3 THE COURT: Well ---

4 MS. TOLLEY: Our statute is ---

5 THE COURT: I am talking about People versus Shaw, ---

6 MS. TOLLEY: Oh, I'm sorry.

7 THE COURT: --- which is a California case from 2009.

8 MS. TOLLEY: I think ---

9 THE COURT: I think there is another People versus -- I
10 think maybe Cooper versus Johnson is another case. This is
11 rather -- because of when the CODIS database was establish
12 and when congress passed the DNA Database Act there's going
13 to be -- well, it is going to happen multiple times that
14 there's not a California -- not a South Carolina case.

15 I know it's not binding on the court. But it's
16 persuasive authority when there's nothing in South Carolina.
17 And when you are talking about things that happened in the
18 2000's often there's not going to be anything in South
19 Carolina. So give me your next argument.

20 MS. TOLLEY: Okay. We would assert that -- well, I am
21 looking at People versus Johnson which is one of the cases
22 that they provided to me.

23 THE COURT: Okay.

24 MS. TOLLEY: And we would say that in that particular
25 case it is distinguishable because in our case we're taking

1 about where the only evidence in the case linking him to
2 this particular incident is DNA evidence two years later.
3 And in that case, I'm not sure that that was the
4 circumstance.

5 And given the fact that the primary evidence in this
6 case is the DNA evidence we should be certain that
7 everything that's done with regard to that evidence is done
8 as precisely and with as much documentation as possible.

9 THE COURT: Okay. I just want to make sure that I'm
10 clear. Is it the CODIS hit that links him to this case or
11 the subsequent buccal swab that they took from your client
12 and compared to the rape kit that links him to this case?

13 MS. TOLLEY: There would never have been a linking of
14 him at all to this case if it weren't for the original DNA
15 sample ---

16 THE COURT: I understand ---

17 MS. TOLLEY: --- taken from the jail.

18 THE COURT: Okay.

19 MS. TOLLEY: And we are saying that everything that
20 came after that is inadmissible unless they are able to
21 prove the chain.

22 THE COURT: Okay. Anything further from the State?

23 MS. GORDON: Nothing further, Your Honor.

24 THE COURT: Your motion to suppress is denied unless
25 there's any further argument that you'd like to make.

1 MS. TOLLEY: Thank you. We would like to -- yes, we
2 would like to make some other arguments, Judge.

3 THE COURT: I'm sorry?

4 MS. TOLLEY: We would like to make some other
5 arguments.

6 THE COURT: Sure. Go ahead.

7 MS. TOLLEY: We would -- we would assert, Judge, first
8 that the requirement to submit to DNA testing as a result of
9 conviction of a felony violates the Fourth Amendment of the
10 United States constitution which guarantees a right to free
11 and unreasonable searches and seizures.

12 In this case the State alleges that Mr. Brown was
13 entered into CODIS as a result of a felon conviction in
14 April of 2006. We would assert that the way that it was
15 implemented is poor, unreliable, not uniformly implemented
16 throughout the State and not funded, and this constitutes an
17 unreasonable search and seizure.

18 One way that the court enforces that is with -- with
19 exclusionary rule. And in this case the CODA (ph) DNA
20 database collection we would assert the way that it was
21 applied in the state should be -- should prevent the
22 admission of the evidence with regard to Mr. Brown.

23 Anything got from that is the fruit of the poisonous
24 fruit.

25 THE COURT REPORTER: I'm sorry, Your Honor, I couldn't

1 hear ---

2 MS. TOLLEY: I think anything derived from that is the
3 fruit of the poisonous tree.

4 THE COURT: And Ms. Tolley, I am just going to ask you
5 to speak up a little bit.

6 MS. TOLLEY: Sure.

7 THE COURT: It is sometimes hard to hear up here.

8 MS. TOLLEY: Right. That correct, Judge. We would
9 also assert, Judge, again just that the method and process
10 for collecting and handling the DNA information with regard
11 to Section 23-3600 makes the information ---

12 THE COURT REPORTER: I am sorry. I am so sorry.

13 THE COURT: You have got to speak up for us.

14 MS. TOLLEY: Makes the information unreliable.

15 THE COURT: Okay.

16 MS. TOLLEY: And some of this we have already said,
17 Judge. We would also assert that it violates the Eighth
18 Amendment of the United States constitution in that it's the
19 kind of punishment where in Mr. Brown's case he was required
20 to submit a blood sample. And the statute has subsequently
21 changed so that now a blood sample is not required but a
22 saliva is required -- saliva sample is required.

23 And based on the fact that the legislature saw fit to
24 make a change that way, we would find that that is
25 significant and that to require a blood sample under those

1 circumstances would be an unreasonable search and seizure
2 and in violation of the Eighth Amendment.

3 THE COURT: Okay.

4 MS. GORDON: Your Honor, would you like a response on
5 that particular argument?

6 THE COURT: I am happy to hear from you.

7 MS. GORDON: Your Honor, I think this issue has been
8 dealt with in courts as well. And they have all come down
9 on the side of balancing the interest but finding that this
10 was not overly intrusive. It is a search but not an overly
11 intrusive search.

12 And weighing that with the concerns of solving crime
13 and protecting innocent people from an undue search and
14 trying to figure out who might be the culprit of a crime the
15 courts have come down on that this is not an unreasonable
16 search or seizure from convicted felons as long as it is
17 performed uniformly and pursuant to the statute.

18 And there is no indication that that is not the case
19 regarding Mr. Brown.

20 THE COURT: Okay. Anything further?

21 MS. TOLLEY: Nothing further. We would just renew our
22 motion, Judge.

23 THE COURT: Okay. The motion to suppress is denied.
24 There is ample Fourth Amendment authority and Eighth
25 Amendment authority that supports the taking of the -- of

1 DNA sample whether it be buccal swab, swab, a blood sample
2 or otherwise in accordance with the DNA Act. And the courts
3 have found that it is not violative of the Fourth Amendment
4 or the Eight Amendment. So I am going to deny the motion to
5 suppress on that basis as well.

6 Anything else we need to take up before we get started
7 this morning? I am going to review these College of
8 Charleston records in just a second.

9 MR. YOUNG: Judge, I have just got a housekeeping
10 matter. I just want to put something on the record ---

11 THE COURT: Sure.

12 MR. YOUNG: --- about the initial offer that you know
13 an offer was never made in this case but that there was
14 never any interest expressed by the defense about what he
15 would plead to.

16 THE COURT: Okay.

17 MR. YOUNG: So for what that's worth I just wanted to
18 put that on the record, Judge.

19 THE COURT: Do y'all want to talk and see if there's
20 something to put on the table I mean, you know, before we
21 get started?

22 MR. YOUNG: I just haven't had any -- and I just don't
23 know if there is any interest in a plea. And I haven't --
24 we haven't had that conversation. And I don't know if Ms.
25 Tolley wants to have that conversation.

1 MS. GORDON: And, Your Honor, in light of the most
2 recent case that came down a few weeks ago we just wanted
3 to make sure the record was clear that Ms. Tolley had
4 discussed with her client if he was interested in an
5 offer ---

6 MR. YOUNG: Right.

7 MS. GORDON: --- based on that latest PCR ---

8 THE COURT: Right..

9 MS. GORDON: --- and make sure the record is clear on
10 that.

11 THE COURT: There are two cases with the U. S. Supreme
12 Court I believe.

13 MS. GORDON: Yes, Your Honor.

14 THE COURT: If y'all need a break to chat about that, I
15 am happy do that. I mean I have got to take a break to look
16 at these College of Charleston records.

17 MS. TOLLEY: Okay. For the record, we did express an
18 interest; but we were told adamantly that there was no plea
19 offer in the case and that in fact if he decided to plea
20 that he -- the solicitor would ask for the maximum 30 years
21 in jail. I believe we were told that on at least two
22 occasions, Judge.

23 MR. YOUNG: That's certainly correct. I think this is
24 the kind of case that warrants something like that, Judge.
25 And there's not many times that I bring that on the table

1 and I ask for that.

2 That being said, no interest was expressed in saying
3 well hey what about this. We haven't had that conversation.
4 I don't know if we need to have that conversation. That's
5 what I wanted to put on the record, Judge.

6 THE COURT: That's fine.

7 MR. YOUNG: Okay.

8 THE COURT: I mean it is his right to enter a guilty
9 plea or to have a jury trial. It's your right to ask the
10 Court to give the max. And then I think I have to make that
11 decision factoring everything into the analysis including
12 any kind of degree of cooperation, whatever kind of
13 recommendation y'all might have and, you know, what y'all
14 present to me in any plea -- well, hearing for lack of a
15 better word.

16 MR. YOUNG: Yes, Your Honor.

17 THE COURT: Because I don't really know anything else
18 at that point other than what y'all have argued to me
19 pretrial.

20 MR. YOUNG: Yes, Your Honor.

21 THE COURT: So I can't say what my sentencing would be
22 until I've heard from everybody. You know, that being said,
23 if y'all want to have a chat I'm happy for you to do it
24 while I look at these records so.

25 MR. YOUNG: That sounds good, Judge. I think we will

1 have some conversation.

2 THE COURT: Okay.

3 MR. YOUNG: Thank you, Judge.

4 THE COURT: We will be at ease. I am going to take a
5 look at these and see -- this is everything. The attorney
6 from the College of Charleston I spoke to him yesterday on
7 the telephone. He was very nice. They pulled everything
8 that they could find on this particular student. And I will
9 take a look at it now.

10 MS. TOLLEY: Okay. Thank you.

11 (WHEREUPON, a brief recess was taken.)

12 MS. GORDON: Your Honor, Theresa Hines,
13 who was not originally under subpoena for us has generously
14 come down from SLED this morning regarding CODIS. May she
15 be released?

16 THE COURT: Unless Ms. Tolley needs her for something
17 or has her under subpoena.

18 MS. GORDON: No, she does not.

19 (WHEREUPON, a brief recess would be taken.)

20 THE COURT: Good morning. Mr. Brown, I just want to
21 chat with you a minute to make sure that you understand what
22 your rights are here as far as considering the offer that
23 the Solicitor's Office has made and in going forward which
24 is your constitutional right obviously to have a jury trial
25 here.

1 I think you've heard some in the pretrial. And I know
2 Ms. Tolley has explained it to you. Because she is an
3 excellent attorney and has fought hard for you so far ---

4 MR. BROWN: Yes. Yes.

5 THE COURT: --- in what I've seen. And I anticipate
6 that she will continue to do so. You know what evidence the
7 State intends it has and what it is going to put up in an
8 effort to meet its burden of proof here and you know the
9 offer that's been made. My understanding is that they've
10 offered you -- is it a recommendation or a negotiated plea?

11 MR. YOUNG: We are reducing the charge to CSC second.

12 THE COURT: Okay.

13 MR. YOUNG: It is a negotiated 20-year sentence.

14 THE COURT: So it would be negotiated, okay.

15 MR. YOUNG: Negotiated 20. That's correct.

16 THE COURT: Now CSC second, is that still violent and
17 most serious; or how is that classified?

18 MR. YOUNG: Sure it is, Judge.

19 THE COURT: Okay. Sir, I just want to make sure that
20 you understand the repercussions if you are convicted of CSC
21 first that you are entitled to go to trial on, the sentence
22 would be up to 30 years.

23 If I accept a negotiated plea, that means I'm bound by
24 the 20 years; I can't give you more or less than that if you
25 freely, voluntarily and intelligently want to take the plea.

1 I just want to make sure that you have discussed with
2 your attorney and understand the implications of going
3 forward and of accepting the plea. Are you ready to proceed
4 with your trial?

5 MR. BROWN: Yes, ma'am, but I want to say one thing. I
6 want to ask -- you said that if I take the second that you
7 can't go less than 20; you would ---

8 THE COURT: By term -- by the terms of a negotiated
9 plea I can either take it or leave it. I can take the 20
10 years that your lawyer has been able to negotiate with them,
11 which they did not want to offer, or I can decline to accept
12 the plea and we can go forward. If you are found guilty,
13 you can be sentenced to up to 30 years.

14 MR. BROWN: But no less than the -- no less than the
15 20 ---

16 THE COURT: I don't think that's an option.

17 MR. YOUNG: That's not being offered, Judge.

18 THE COURT: No, there is no offer of less than 20.

19 MR. BROWN: Judge, Your Honor ---

20 MR. YOUNG: I mean if he wants to plead straight up on
21 the first, which is zero to thirty, if that's what he's
22 asking, I think he has a right to do that.

23 And then -- and they can argue for what they want. And
24 he would plead to the first though. And that is zero to
25 thirty.

1 THE COURT: I understand.

2 MR. BROWN: That meaning that you can give me from zero
3 up to thirty, anything between that?

4 THE COURT: If you are found guilty I could sentence
5 you to 30 years.

6 MR. BROWN: Judge, Your Honor, just bear with me for a
7 minute here. Judge, Your Honor, I was locked up for 18
8 months. All right. From day one when they put a warrant
9 out for my arrest I complied. I came down to Charleston and
10 turned myself in. Okay.

11 THE COURT: What does that have to do with anything?

12 MR. BROWN: Okay. Well, to make a long story short, I
13 was locked up for 18 months like I said. My very first
14 attorney they said that they are not offering me no pleas.

15 THE COURT: Right, they weren't.

16 MR. BROWN: You see what I'm saying. Okay.

17 THE COURT: They feel like they have a pretty strong
18 case. And I would take that very ---

19 MR. BROWN: All right. And ---

20 THE COURT: I wouldn't talk while I'm talking.

21 MR. BROWN: Yes, ma'am.

22 THE COURT: And I would take that very seriously that
23 they feel that they have a strong case. But I know Ms.
24 Tolley has talked to you about that.

25 MR. BROWN: Yes, ma'am. Judge, Your Honor, what I

1 wanted to ask you could you consider at least giving me at
2 least a day to think about this? I mean this all of a
3 sudden bam. I can't give you this ---

4 THE COURT: We are ready to move forward.

5 MR. BROWN: And I know ---

6 THE COURT: If during the trial you decide you want to
7 take the plea, that is your constitutional right. But I
8 have got a jury that's been sitting back there for an hour.
9 And you need to listen to what your attorney advises you.
10 That would be my recommendations.

11 (Pause while defendant confers with counsel.)

12 THE COURT: Can I get the lawyers to approach for a
13 second.

14 (WHEREUPON, a bench conference was had, not in open
15 court.)

16 THE COURT: Let's do this. I have got a short
17 introduction that I need to give the jury to explain to them
18 about what their responsibilities are and that I allow them
19 to take notes and what they are allowed to listen to and the
20 presumption of innocence. Y'all -- I know Ms. Gordon has
21 heard it.

22 It's not long. But then we have openings. I'm okay
23 with breaking for an earlier lunch than I normally would to
24 let y'all have a little more time after opening statements.

25 But once they put the victim up I don't know how long

1 they are going to leave that offer on the table. That's
2 their choice.. So that's one thing y'all need to think
3 about. I would be paying attention. But okay? I think you
4 can talk to him about that real quick.

5 MS. TOLLEY: Thank you, Judge.

6 (Pause while defendant confers with counsel.)

7 MS. TOLLEY: Judge.

8 THE COURT: Yes, ma'am.

9 MS. TOLLEY: Thank you for your patience.

10 THE COURT: Sure.

11 MS. TOLLEY: We would like to move forward with the
12 opening statements and he will continue to consider it and
13 we will provide an answer after lunch if that is convenient.

14 THE COURT: Okay. Let's do that. Y'all ready for the
15 jury?

16 MR. YOUNG: Ready.

17 THE COURT: Okay.

18 MR. YOUNG: The State is, Judge.

19 THE COURT: Yes, sir. Thank you. Oh, real quick --
20 one second before we bring the jury. I do want to share
21 with y'all a juror let the bailiff know earlier that he
22 needed to speak with me about what had been shared during
23 the voir dire and the qualification process.

24 Because of what happened with the mistrial a couple of
25 months ago with a juror who - yep, your trial - who hadn't

1 shared certain background information that would have been
2 significant with the defense I have kind of amped up my voir
3 dire to explain to them that consistent with the oath that
4 they take they are answering those questions.

5 This gentleman checked on his juror questionnaire that
6 he is divorced. But in the voir dire he stood up and said
7 that he was married and gave his name. And he felt like he
8 needed to explain that.

9 What has happened is apparently he is divorced. He got
10 divorced 22 years ago. But he and his wife are back
11 together and she still uses his name and he still calls her
12 his wife. But he says they are still divorced.

13 I didn't explain to him that they probably ain't really
14 divorced anymore. But I just wanted y'all to know that I
15 did have that conversation and just share that with y'all
16 and I thanked him for his candor.

17 You know, I would rather them share more than less to
18 make sure that every defendant gets a fair trial and the
19 State has a fair shot at voir dire as well. So just wanted
20 to put that on the record.

21 (WHEREUPON, jury enters 11:07 a.m.)

22 BAILIFF: The jury is present, Your Honor.

23 THE COURT: Thank you, sir.

24 Ladies and gentlemen, welcome back. And thank you for
25 your patience. As I indicated yesterday and as you'll see

1 throughout the course of the trial often issues of law come
2 up that need to be handled and it's much better if we can
3 get them done before we bring y'all in here and after we
4 send you home for the day than to have to send you out back
5 and forth and disrupt the trial.

6 So I do appreciate your patience in waiting on us and
7 hopefully this will streamline the work that y'all have to
8 do here in the courtroom.

9 As you know, the case we are about to try is the case
10 of the State versus Corrie Dwayne Brown who is our
11 defendant.

12 Before we begin the trial I want to tell y'all what you
13 probably already know. The trial will be different than
14 what you may expect.

15 Many people don't have the chance to ever attend an
16 actual court session or sit on a jury in a criminal trial.
17 But I think we've all seen television and movies and
18 depictions of court and certainly read about them. And they
19 always seem to present the perspective that trials are full
20 of high drama and intense action.

21 These things may certainly be true in a real courtroom
22 at times. But that's not always the case. And the
23 important thing to remember is that a trial is not for our
24 entertainment. It is a fundamental part of our democracy, a
25 search for the truth in an effort to make sure that justice

1 is done between the parties and before the court.

2 It's certainly important to the defendant, the
3 witnesses, the State, and everyone here that's part of this
4 today. So I encourage y'all to remember that.

5 The defendant is charged with an indictment that I read
6 to y'all that's been filed in the court. He is charged with
7 the crime of criminal sexual conduct in the first degree.

8 The elements of this offense will be given to you later
9 when I charge you on the law at the end of the case. But
10 the thing to remember for now is that as I have previously
11 explained, the indictment is simply the charge by which this
12 case comes into court.

13 It is not in any sense evidence of any of the
14 allegations it contains or of even the offense charged. The
15 defendant has pled not guilty to the indictment and the
16 State therefore bears the burden of proving each of the
17 elements of the indictment beyond a reasonable doubt.

18 It will be your jury, ladies and gentlemen -- your
19 duty, ladies and gentlemen, to determine whether the State
20 has met that burden.

21 Your purpose as jurors is solely to find and determine
22 the facts. You are the judge of the facts. I have no
23 business trying to judge the facts. And if at any time I
24 make any comment regarding the facts it's your duty to
25 disregard it.

1 You determine the facts from the testimony that you
2 hear from the witness box and from the other evidence
3 introduced in court.

4 It's then up to you collectively to determine the
5 inferences which you feel may be properly drawn from the
6 evidence that's permitted -- that is presented.

7 On the other hand, the same law that makes y'all the
8 judge of the facts makes me the judge of the law. And the
9 law as given by the court here on Broad Street is the only
10 law that you may consider.

11 You must accept and follow it even if by some chance
12 you disagree with it. Just as I cannot tell you what the
13 facts in the case are, you cannot disagree with the court
14 about what the law is or should be.

15 Your job is to take the law as the court gives it to
16 you and apply the facts as you find them from the testimony
17 of the witnesses and the evidence that's introduced.

18 After that, you will render your true and just verdict
19 pursuant to the oath that you took yesterday as jurors.

20 Until I advise you to begin your deliberations you may
21 not discuss the case with anyone including each other. This
22 includes face-to-face discussions, telephone, email, blogs,
23 text, any method of communication at all.

24 You may not use an electronic device at any time in the
25 courtroom or in the jury room. But if you have an emergency

1 certainly we want you to make us aware of it and let us know
2 if for example there's an emergency phone call, somebody has
3 got a sick child. Our bailiffs will take care of that for
4 you.

5 We want you to be able to give your full attention to
6 the case at hand and not be distracted by other things that
7 I know everyone has going on in their lives.

8 During the trial do not read, listen to or watch or
9 search for any news reports. I don't know if there will be
10 any at all. I haven't gotten any requests for any press to
11 be in the courtroom.

12 But if there were to be any, it's important that you do
13 everything you can to avoid and ignore it. Again, you want
14 to limit your inquiry only to the facts, the evidence and
15 documents that are presented in the courtroom.

16 Once the case is submitted with you, you discuss it
17 only in the jury room and with your fellow jurors. One
18 important thing - at least this used to be difficult for me
19 as an attorney - if you run into the attorneys in the hall
20 or see them on the street walking to court say tomorrow.
21 morning and they don't acknowledge you or turn and go the
22 other way, they are not being rude. They are not allowed to
23 talk to you. They don't want to give an appearance of even
24 talking to you because they are ordered to not have
25 interaction with the jury.

1 I just wanted y'all to know that doesn't mean that they
2 are being rude or trying to ignore y'all. They just want to
3 make sure that there is no issue. They might say hi and
4 move on. But some lawyers don't even want to do that. So
5 just wanted to make y'all aware of that.

6 Shortly the solicitor will make an opening statement,
7 which is not argument but merely a road map of what the
8 solicitor thinks that the evidence in the case will show.

9 Ms. Tolley may decline to make an initial opening
10 statement or choose to make one on behalf of her client.
11 That is her opportunity. And she may want to address you
12 later.

13 The State bears the sole burden of proof. The defense
14 really doesn't have to do anything. It is up to the State
15 to the meet its burden beyond a reasonable doubt.

16 One other thing, and I may have told y'all this
17 yesterday but I honestly can't remember: During the trial
18 the attorney wills make objections at times. It's their job
19 to do that. Some object a lot. Some don't object a lot.
20 But that's how they bring to my attention what they consider
21 to be a violation of the rules of criminal procedure or our
22 rules of evidence.

23 They are not trying to be obnoxious or disrupt the
24 trial. That's their duty to do that. So I urge you not
25 hold that against them.

1 They wouldn't be doing their job if they didn't object
2 when they felt that it was necessary. Likewise don't
3 attempt to discern anything from the way I may rule on the
4 various objections.

5 I am just considering them each independently as they
6 come. I don't have any feeling one way or another about the
7 case. In fact, I don't know very much about the facts.
8 We've only dealt with the issues of law up to this point.

9 So the way that I rule on an objection should in no way
10 be considered by y'all as attempting to telegraph to you
11 something that I feel about the case or the facts.

12 I don't have any business or right to rule on the facts
13 at all. That is solely your province as the fact finder.

14 You have the right to consider anything that is in the
15 record that will help you evaluate the testimony of the
16 witnesses.

17 This means that it is your duty to pay close attention
18 to what they say when they testify. Observe them, listen to
19 them, pay close attention to them. What they say is
20 evidence, not what the attorneys say is evidence. What they
21 are doing is arguing and advocating on behalf of their
22 client.

23 To that end, I do like for y'all to have notebooks. I
24 think it is helpful to take notes during the trial. And
25 some people actually retain information through writing it.

1 That used to be how I studied for tests was writing things
2 down.

3 Don't let the note taking though distract you from
4 observing the witness in the box. Don't, you know, have
5 your head down.

6 I think a lot of us know just from common sense and
7 day-to-day life often the way somebody says something is
8 just as important as what they actually say. So you need to
9 be able to observe a witness's body language and their
10 demeanor and whether they feel sure in the answers that they
11 are giving.

12 I'll have y'all select a foreperson later on in the
13 trial. I like for the jury to select. But I like for y'all
14 to get to know each other a little bit before you do that.
15 But we will take a break and allow y'all to do that later in
16 the trial.

17 At that point the foreperson will be your way to
18 communicate with the court if anybody has a question or if
19 somebody needs to get some information to me you could write
20 that out and give it to your foreperson.

21 If anything happens before you've selected a foreperson
22 you could just give it to your bailiff and he will make sure
23 and bring that to my attention.

24 I believe that that's about it. Are there any
25 objections from either the State or the defense as to these

1 introductory comments to the jury?

2 MR. YOUNG: None from State, Your Honor.

3 MS. TOLLEY: Nothing, Your Honor.

4 THE COURT: Okay. Well, then at this point, ladies and
5 gentlemen, we are ready to continue with the trial and I
6 will call on Mr. Young for the opening statement.

7 MR. YOUNG: Thank you, Judge. May it please the court.

8 **OPENING BY MR. YOUNG:**

9 Ms. Tolley, ladies and gentlemen of the jury. In the
10 late hours of December 4th, 2008, and into the early hours
11 of December 5th, 2008, is the night that changed Brittanae
12 Casper's life forever.

13 Indeed this college sophomore's life would never be the
14 same. This is the night that her dignity was stripped from
15 her. This is night that she was raped.

16 Now ladies and gentlemen, that man that raped her that
17 night is in the courtroom with us today. He is in here. He
18 is the defendant. He is seated right here.

19 Make no bones about it, he will be convicted of CSC
20 first. And what is CSC first, that's why you are here.
21 Criminal sexual conduct. In South Carolina it is basically
22 rape.

23 The judge, the judge of the law, she will talk to you
24 more about that at the end of trial. But to touch base, CSC
25 first is a sexual battery committed with use of aggravated

1 force. Or as in our case the victim, the victim of a sexual
2 battery, submits to that sexual battery through forcible
3 confinement, holding someone down, or kidnapping.

4 But again, the judge will talk to you more about the
5 law at the end. But that's to give you a basis of what CSC
6 first is.

7 A few of you might be wondering why is this important,
8 why does this matter to me. And the answer is multiple
9 facets of things. The first reason, it's important to
10 Brittanae Casper. She is in here today. She's going to
11 come and talk to you guys about this.

12 This is an event that she has had to live with and will
13 have to live with for the rest of her life that happened in
14 2008. And not a day goes by that she doesn't think about
15 it.

16 It is also important for society. We are here to say
17 sexual predators will not be permitted, not on our streets.

18 Now let's talk about the facts, a little bit of our
19 case that we have in front of you. Again, this happened on
20 the late night of December 4th into December 5th.

21 I want you to picture this: College of Charleston.
22 She was a college sophomore at C of C downtown here. It is
23 exam time in December. The students are getting ready to
24 take exams. They are already into exams.

25 Obviously a few of them want to blow off steam. She

1 wants to go out and have a good time with her friends prior
2 to and during exams.

3 They go to a friend's house, her and her friend Alex
4 Foley. And you are going to hear from Alex. She is going
5 to come in here and she is going to talk to you guys about
6 what Brittanae was doing that night, their relationship, and
7 stuff like that.

8 And all these little details about who we put on the
9 stand you need to listen to and give it your full attention.
10 It is going to help prove our case to you and prove what
11 happened to her that night.

12 But they went to a tacky Christmas party at a friend's
13 house. At this point they had a few drinks, a few laughs.
14 They had a good time. They danced around a little bit,
15 enjoyed each other's company.

16 At some point in the night they move on. They go on to
17 the Silver Dollar. Some of you may or may not be familiar
18 with it. It is a bar on King Street. They go there. They
19 have a few more drinks, a few more laughs, enjoy each
20 other's company.

21 At some point in the night Brittanae decides to go
22 home. She is ready to call it a night. They've had some
23 drinks and she's ready to leave. She bids her farewell and
24 she leaves the bar and leaves Alex Folly still in the bar.
25 Mind you, she leaves the bar alone.

1 Now her address is at [REDACTED]. And we are going
2 to show you a map of the area of Downtown Charleston.

3 Again, if you are familiar with the Silver Dollar it is
4 on Upper King. So it is about six blocks down King Street.
5 You cross right over Calhoun and Burns Lane right there on
6 the left. That's where she lives. So that is the walk that
7 she's making late this night after drinking and being by
8 herself.

9 She walks home. Again, note, alone. She's a small
10 girl. You're going to see her. And for lack of a better
11 word, close to drunk. Certainly not a smart decision. But
12 that's not important. What's important is what happened
13 next.

14 She's a perfect target. The defendant ID's her. He
15 brands her. He sees her take a left onto Burns Lane and go
16 to her house. As she is walking to her house she gets up to
17 the door. She is going through her purse trying to get her
18 keys. This is when the predator, the defendant, sees the
19 prey, Brittanae Casper, and he attacks. And he attacks. He
20 takes her by the shoulder blades and he throws her down,
21 right on the asphalt right beside a car. There are some
22 other cars there. You are going to see the scene through
23 photos. He pulls her pantyhose down. He pulls her panties
24 down. He inserts himself into her and he rapes her. At
25 this point Brittanae Casper is being raped by the defendant

1 seated right there.

2 Now when the defendant is done with what he is doing to
3 her and raping her he gets up and he flees. And as you can
4 imagine, Brittanae tried to struggle. She's going to tell
5 you about that. But to no avail.

6 She's a small girl. She can't take on somebody the
7 likes of him. But she does the prudent thing. She goes to
8 her neighbor's house right after it happens. She runs right
9 next door to [REDACTED]. And this is where Grant Hoskins
10 comes into play. He's going to be also a witness you guys
11 are going to hear from. He is going to talk to you. He is
12 going to tell you how Brittanae is looking that night, how
13 did she act, how did she appear.

14 All these emotions you are going to hear from him.
15 He's going to tell you how he knew something was wrong and
16 immediately takes her to the hospital.

17 They go to the hospital. Brittanae is treated for some
18 minor scrapes and cuts on her arms where she is thrown down
19 on that pavement.

20 But most importantly, a rape kit is done. A rape kit.
21 And that's Jill Burns. That's the lady who does the rape
22 kit. She performs it.

23 Now a rape kit you are going to hear all about it.
24 But it's just swabs and other swabs such as that and they
25 take -- give them fluids off your body in an effort to link

1 you to somebody, to link the person who did this to you.

2 But we will come back to that rape kit.

3 But again, listen to Jill Burns. Listen to her tell
4 you about the science behind it. That's important.

5 And I know we talked about Brittanae. You are going to
6 hear from Brittanae. She's going to talk to you about what
7 happened.

8 And she's going to tell you how she was drunk, how the
9 area that the defendant took her down in and raped her was
10 dimly lit, there was no lights there. You are going to see
11 photos of that. It's the perfect spot for something like
12 this to happen.

13 She's going to tell you how she couldn't place an ID on
14 him, how she didn't know him. But the only thing that she
15 was able to tell the cops was that it was a black male.

16 At this point the cops don't have a suspect. This is
17 2008. They don't have a face. They don't have a name.
18 They don't know who this is.

19 Reinsert this rape kit 2010. Bang. There is a hit on
20 the DNA. And who does it come back to? This man right
21 here, the defendant. That DNA hits. And it's his. And
22 it's on her. Think about that. Science is now backing up
23 Brittanae Casper's story.

24 Now I want you to know that there's two hits of DNA on
25 her. That's totally explainable. She has a consensual

1 college boyfriend. His name is Sebastian. And he is not
2 going to be here to testify. There is no reason to have
3 him. That DNA is on her. They have consensual sex. It's
4 her boyfriend.

5 But what DNA is on her that cannot be explained that he
6 cannot fight science is this man's right here, Corrie Brown.

7 Now ladies and gentlemen, stay with me here for one
8 more minute. You are going to hear from the victim, like I
9 said. You're going hear from her fellow classmates. You
10 are also going to hear from Charleston Police Department
11 officers. You are going to hear from South Carolina Law
12 Enforcement Division officers. You are going to hear from
13 the forensic scientists that tell you the science behind
14 linking the DNA found on Brittanae to this defendant. That
15 will help prove our case.

16 And remember not only do we have a victim with the
17 courage to come up here and talk to you and tell you what
18 happened and tell you her story, but we have science backing
19 it up. That is so important.

20 Now before I sit down I again urge you to listen to
21 that testimony of those people that I just talked about.

22 And you are going to see the evidence of the rape kit
23 and the buccal swabs that were taken that match the
24 defendant to the DNA on Brittanae. That evidence, that
25 testimony is going to match up. And when it does, myself,

1 my fellow solicitor, Ms. Gordon, are going to get up here
2 and we are going to ask you to hold you -- I'm sorry, we
3 are demand, ask and I demand that you hold him and do your
4 jury -- your duty, hold this man accountable for what he did
5 to that girl this night.

6 And we are going to ask you to return a verdict that
7 the truth dictates and justice demands in this case. And
8 that is nothing less than a verdict of guilty. I thank you
9 for your time.

10 THE COURT: Yes, ma'am.

11 MS. TOLLEY: Thank you, Your Honor, may it please the
12 court.

13 (WHEREUPON, counselors confer.)

14 **OPENING BY MS. TOLLY:**

15 What you should know is that things are not always what
16 they seem. The solicitor has told you a lengthy story about
17 what he -- what Ms. Casper says happened that night. But
18 things are not always what they seem. What you should know
19 is that my client, Corrie Brown, says that he did not
20 sexually assault Brittanae Casper.

21 What you should know is that the burden of proof in
22 this case is on the State, not on Brittanae Casper. On the
23 State because the State brought these charges.

24 What you should know is that my client comes before you
25 innocent until proven guilty beyond a reasonable doubt.

1 What you should know is that in this case the only
2 evidence they can have is the DNA evidence. There's no ID
3 of the perpetrator. There's no lineup conducted. There are
4 no fingerprints. There's no weapon, no nothing to link Mr.
5 Brown to an assault of Brittanae Casper on the night of this
6 incident.

7 So what you should know is that things are not always
8 what they seem. And even though there's science in the form
9 of DNA evidence the science doesn't tell you how the
10 evidence got there.

11 And what we are going to ask you to do is to keep an
12 open mind about that. I'm going to ask Ms. Casper about
13 some things that are not going to be pleasant. She's
14 probably going to deny them.

15 We're going to ask you though to keep an open mind and
16 remember that things are not always as they seem. The
17 solicitor has said that that night changed Brittanae
18 Casper's life. It also changed my client's life. Because
19 again, things are not always what they seem to be.

20 And the consequences are great. He said that her life
21 has been changed. His life has been changed. And at the
22 end of this trial we are going to come back and ask you to
23 find Corrie Brown not guilty of this charge. Thank you.

24 THE COURT: Thank you, ma'am. Okay. Ladies and
25 gentlemen, there are a few additional matters that we need

1 to deal with. And so what I'm going to do is send y'all to
2 lunch a little bit earlier than I normally would. Because I
3 don't want to make y'all wait back there.

4 I'm trying to utilize your time as best we can without
5 sending you in and out. So why don't y'all go ahead and
6 take a break for lunch and come back at -- do y'all want to
7 start back at 1:15, 1:30? I am here so it's ...

8 MR. YOUNG: Maybe -- 1:30 sounds better, Judge.

9 THE COURT: 1:30. Okay, 1:30. If y'all will be back
10 in the jury room. We will get our matters dealt with and we
11 will have the witnesses tee up and ready to start at 1:30.
12 Okay. Do not discuss the case yet. And have a nice lunch.

13 (WHEREUPON, the jury leaves the courtroom at 11:30
14 a.m.)

15 THE COURT: Okay. I am going to take a little bit
16 longer today than we normally do. Mr. Brown, that will give
17 you a little more time to discuss whatever you want to,
18 discuss with Ms. Tolley.

19 If you have anything else you want to discuss with your
20 family, get your lawyer to answer any questions that you
21 might have, and we will go from there.

22 Any issues of law we need to take up during the
23 lunchtime?

24 MR. YOUNG: None from the State, Judge.

25 THE COURT: Okay.

1 MS. TOLLEY: None from the defense.

2 THE COURT: Y'all just let me know or we will poke our
3 head out here a little before 1:30 and see if anything has
4 come up legal wise that we need to handle. And we will get
5 ready to start at 1:30. Okay?

6 MR. YOUNG: Thank you, Judge.

7 THE COURT: Have a nice lunch everybody.

8 MS. TOLLEY: Thank you.

9 (WHEREUPON, a bench conference was had, not on the
10 record.)

11 (WHEREUPON, a recess was had for lunch.)

12 (WHEREUPON, State's Exhibit Number 9, photograph of
13 aerial map, was pre-marked for identification.)

14 (WHEREUPON, State's Exhibit Number 10, photograph of
15 front door, was pre-marked for identification.)

16 (WHEREUPON, State's Exhibit Number 11, photograph of
17 windows/ground, was pre-marked for identification.)

18 (WHEREUPON, State's Exhibit Number 12, photograph of
19 ground, was pre-marked for identification.)

20 (WHEREUPON, State's Exhibit Number 13, photograph of
21 Burns and Meeting, was pre-marked for identification.)

22 (WHEREUPON, State's Exhibit Number 14, photograph of
23 ground, was pre-marked for identification.)

24 (WHEREUPON, State's Exhibit Number 15, photograph, was
25 pre-marked for identification.)

1 (WHEREUPON, State's Exhibit Number 16, photograph of
2 street/alley, was pre-marked for identification.)

3 (WHEREUPON, State's Exhibit Number 17, rape kit, was
4 pre-marked for identification.)

5 (WHEREUPON, State's Exhibit Number 18, buccal swab
6 Corrie Brown, was pre-marked for identification.)

7 (WHEREUPON, State's Exhibit Number 19, buccal swab
8 Sebastian Qreitz, was pre-marked for identification.)

9 THE COURT: Okay. I hope everybody had a nice break
10 from lunch. All right. What's the plan, Ms. Tolley?

11 MS. TOLLEY: He wishes to move forward with it and try
12 the case.

13 THE COURT: With the trial. Okay, that sounds fine.
14 Anything we need to take up before we bring the jury? They
15 are all back..

16 MR. YOUNG: Nothing from the State.

17 THE COURT: Okay. Let's bring the jury in.

18 (WHEREUPON, the jury enters 1:32 p.m.)

19 BAILIFF: The jury is present, Your Honor.

20 THE COURT: Thank you, sir. Thank you, ladies and
21 gentlemen. I hope y'all had a nice lunch. We are ready to
22 proceed with the trial. So I will call on the State to call
23 your first witness, please.

24 MS. GORDON: The State calls Brittanae Casper.

25 THE COURT: Okay. Ma'am, if you would come forward.

1 MS. GORDON: Ms. Tolley would like to approach, Your
2 Honor.

3 THE COURT: Approach? Okay.

4 (WHEREUPON, a bench conference was had, not on the
5 record.)

6 (WHEREUPON, the witness was duly sworn)

7 THE BAILIFF: Speak into this microphone. You need to
8 get kind of close to it. And please state your full name
9 and then spell your last name for the record.

10 MS. CASPER: Brittanae Casper, C-A-S-P-E-R.

11 BRITTANAE CASPER, having first been
12 duly sworn, testified as follows:

13 **DIRECT EXAMINATION BY MS. GORDON OF MS. CASPER:**

14 Q. Good afternoon, Brittanae. I know it has been a long
15 week already. Could you tell the jury how old you are.

16 A. I am 23.

17 Q. And Brittanae, where do you live now?

18 A. I still live in Downtown Charleston.

19 Q. And what brought you to Charleston?

20 A. I came here for school. I went to the College of
21 Charleston.

22 Q. And do you remember when you moved here?

23 A. 2007.

24 Q. Where did you grow up?

25 A. In Georgia?

- 1 Q. And is most of your family still in Georgia?
- 2 A. Yes.
- 3 Q. Did they come with you today though?
- 4 A. My parents did.
- 5 Q. Did you graduate from the College of Charleston?
- 6 A. Yes.
- 7 Q. And are you currently -- when did you graduate?
- 8 A. Last May, 2011.
- 9 Q. Do you currently work?
- 10 A. I do.
- 11 Q. Where do you work?
- 12 A. I work at a cosmetics company called RMS Beauty.
- 13 Q. What do you do there?
- 14 A. I am a production manager. So I handle a lot of
- 15 miscellaneous jobs, marketing, PR, sales.
- 16 Q. I want to turn back to December 4th, the evening of
- 17 December 4th and the early morning hours of December 5th,
- 18 2008. Do you remember that night?
- 19 A. Yes.
- 20 Q. Tell me what was going on in early December of 2008;
- 21 what was going on at school and in your life?
- 22 A. Finals were starting at the end of -- in the beginning
- 23 of December.
- 24 Q. And did you meet your friend Alex that evening?
- 25 A. I did. She had called me and we were going out and so

1 she picked me up from my house.

2 Q. And Alex is a girl?

3 A. It is a girl, yes.

4 Q. Did you have a boyfriend at the time?

5 A. I did.

6 Q. Where was he?

7 A. He had just -- he is from France, and he had just flown
8 back.

9 Q. And what is your boyfriend's name?

10 A. Sebastian Greitz.

11 Q. Are you guys still ---

12 MS. TOLLEY: Your Honor, we would just renew our
13 objection.

14 THE COURT: Objection is overruled.

15 BY MS. GORDON:

16 Q. So was Sebastian your boyfriend in December of 2008?

17 A. Yes.

18 Q. Okay. And is he still your current boyfriend?

19 A. Yes.

20 Q. Where is Sebastian now?

21 A. He is in Beirut doing internship at a bank. And I went
22 and visited and actually wanted to go there.

23 Q. I want to go back now to that night of December the
24 4th, 2008. You said that you had met your friend Alex and
25 that you guys were going to go out. You said Sebastian had

1 already left to go home for the holidays?

2 A. Uh-huh.

3 Q. So you and Alex go out. Where did you guys go?

4 A. We went -- we started off at my friend's apartment on
5 Rutledge. They were having a tacky Christmas party. Alex
6 and I were in a different sorority so we weren't dressed up
7 for the party. We were just there hanging out with our
8 other friends.

9 Q. And when you are -- after your friends went on to
10 their -- the official tacky Christmas party where did you
11 and Alex go?

12 A. We went to the Silver Dollar, the bar on King Street.

13 Q. And did anybody else go with you and Alex to the Silver
14 Dollar?

15 A. No, just she and I.

16 Q. And what did you and Alex do at the Silver Dollar?

17 A. We drank.

18 Q. And did you meet anyone there?

19 A. No.

20 Q. Hook up with any guys?

21 A. No.

22 Q. See any close friends?

23 A. I am sure I saw close friends. I can't remember
24 exactly. But it is a lot of people all the same age.

25 Q. Did you meet anybody new?

1 A. No.

2 Q. At some point in the evening I understand you left.

3 Tell me how it ended up that you left and Alex stayed.

4 A We were outside smoking a cigarette. And it was right
5 after my boyfriend left and so she wanted me to go home with
6 her and it was just kind of one of those nights where I just
7 wanted to be home and sleep in my own bed and so I just --
8 we went back inside and when she was inside I kind of just
9 slipped out to walk home to get back to my house.

10 Q. Did anybody go with you to your house?

11 A. No.

12 Q. Did you meet anybody along the way to your house?

13 A. No.

14 Q. Tell me what you were doing -- let me show you this.
15 Tell me if you can recognize this.

16 MS. GORDON: Your Honor, this has been marked as
17 State's Exhibit 9. And I believe admitted without objection
18 from the defense.

19 MS. TOLLEY: That is correct, Judge.

20 THE COURT: Okay. State's 9 is admitted without
21 objection.

22 (WHEREUPON, State's Exhibit No. 9 was admitted into
23 evidence.)

24 BY MS. GORDON:

25 Q. Alex, I am going to -- I put up behind you -- and you

1 tell me if you can see that clearly. This is kind of a map
2 of downtown. And I may have it turned backwards. Let me
3 see if that is better.

4 A. Can you clarify the streets anymore?

5 Q. Yeah, let's see if I can zoom it in for you. Let's
6 see. We have got John and -- let's see, are we getting --
7 oh, there is King. Okay. Now let me focus it. Can you see
8 where you are looking now?

9 A. Uh-huh.

10 Q. Do you see?

11 A. Yes.

12 Q. Can you point approximately on this map can you show
13 where approximately where the Silver Dollar is located.

14 A. It is going to be up a little bit past Ann. It is
15 between Ann, Ann and Morris.

16 Q. Okay. And let me pull it down. Do you see now?

17 A. Right in between Moore Street and Ann Street.

18 Q. Can you just stand up and just point ---

19 A. I'm sorry.

20 Q. --- on the screen?

21 A. It is going to be about right here (indicating).

22 Q. Okay. And in fact I'm going to turn this back around
23 this way. Because I think -- you tell me which way is
24 better for you to see it for reference. Because sometimes I
25 am backwards with map. I hate to say that. But I focus

1 them differently.

2 Can you also point on this map as to where your
3 apartment is -- where your apartment was on [REDACTED].

4 A. Is there -- I'm sorry. Is there any way you can -- I
5 can't really read these words.

6 Q. Yes, let me try to zoom it in. And for reference, I
7 think this is Marion Square ---

8 A. Okay.

9 Q. --- if that helps you.

10 A. If that is Marion Square I would have walked up King
11 and then I would have taken a left onto [REDACTED].

12 Q. And so I'm just going to mark that here.

13 A. So across Calhoun Steet.

14 Q. So this is King Street. And you would have come up
15 this direction ---

16 A. Uh-huh.

17 Q. --- and then [REDACTED] is right here; is that correct?

18 A. Yes.

19 Q. Okay.

20 A. And my house is right in there (indicating).

21 Q. Do you know about how far it is from the Silver Dollar
22 to your -- where your apartment was on [REDACTED]?

23 A. I think it is about almost half a mile. It is point
24 five, point four.

25 Q. Had you walked that area before?

1 A. Plenty of times.

2 Q. Do you know approximately what time it was when you
3 left the Silver Dollar?

4 A. Approximately I would say between 12:30 and 1:00.
5 Because the bar wasn't closing yet. So I left before.

6 Q. On your way home those several blocks between -- on
7 King Street to [REDACTED] did you talk to anyone?

8 A. No.

9 Q. Did you notice anyone behind you?

10 A. No.

11 Q. Did you meet anyone?

12 A. No.

13 Q. Did you stop anywhere?

14 A. No, I walked straight home.

15 Q. When is the first time you realize you were not alone?

16 A. I was standing on my doorstep. It is kind of a stoop.
17 There's two steps.

18 Q. I will show you a picture.

19 MS. GORDON: Your Honor, I am going to show the witness
20 what has been marked and entered as State Exhibit 10 I
21 believe without objection from the defense?

22 MS. TOLLEY: Without objection.

23 THE COURT: Okay. State's 10 is admitted without
24 objection.

25 (WHEREUPON, State's Exhibit No. 10 was admitted into

1 evidence.)

2 Q. Alex, do you recognize -- I'm sorry, Brittanae, do you
3 recognize this?

4 A. Yes, this is my doorway (indicating). And that is my
5 car on the left.

6 Q. And can you show on this picture where you were
7 standing when you realized that you weren't alone.

8 A. I was standing -- let's see -- just right here on this
9 (indicating). And then there is one more step down that
10 leads to the ground. So I was directly in front of the
11 doorknob.

12 Q. Brittanae, what were you doing at that point when you
13 realized somebody was there?

14 A. I was rummaging through my purse for my keys to get in.
15 It is really dark there. There aren't any actual lights
16 over the doorway. So I was trying to find my keys in my
17 purse. And I couldn't find them at the time.

18 Q. Were lights added after this?

19 A. Uh-huh, my friend added them actually, not the
20 landlord.

21 Q. Tell me what happened as you were getting your keys out
22 of your purse?

23 A. I felt that -- like a physical presence where like
24 someone is behind you. I hadn't been touched yet but I felt
25 someone kind of hovering nearby. And when I turned to look

1 there was a black man standing there nearby -- near my
2 doorstep.

3 Q. Was this someone you recognized?

4 A. No.

5 Q. Had you ever seen this person before?

6 A. No.

7 Q. What happened immediately thereafter?

8 A. He approached me and he grabbed my shoulders from
9 behind and he threw me on the ground between the bushes at
10 my house and my car.

11 Q. What happened from there, Brittanae?

12 A. He -- he pulled my skirt up and he pulled my tights
13 down and my underwear. And I just kept asking him to stop.

14 And I told him I was on my period and maybe convince
15 him not to do it. And he -- just kept asking him why. And
16 then he -- he raped me. He put his penis in me. And I just
17 kept asking him over and over again to stop and asking him
18 why the entire time.

19 Q. Did he say anything to you?

20 A. He told me to be quiet and that if I wasn't quiet he
21 would hurt me.

22 Q. How were you -- were you free to leave at this point?

23 A. No, he was holding my shoulders down the whole time.

24 Q. And how -- what were you thinking at this point?

25 A. That he would kill me if I tried to get away. I just

1 kept looking at my car tag because I didn't want to look at
2 his face.

3 Q. Was there anything else that you remember about the
4 person who did this to you?

5 A. The only thing I remember is I felt like he had a
6 necklace on, that was kind of hanging. But I just I didn't
7 want to look up. I didn't want -- I didn't want to see him.

8 Q. How long did this take -- go on?

9 A. It felt like a really long time. I don't know.

10 Q. What made him stop?

11 A. Because he was finished. And he got up and he ran
12 away.

13 Q. What did you do after he ran away?

14 A. Pulled up my tights and I kind of tried to grab my
15 things that were on the ground. And I ran next door to my
16 other -- my friends lived at the house next-door.

17 Q. Was that Grant?

18 A. Grant, Radliff, and Hart.

19 Q. Are they in like an adjacent townhouse?

20 A. Uh-huh, it is perp- -- it is kind of perpendicular to
21 my house.

22 Q. What happened when you went to Grant's house?

23 A. I just banged on the door. Because I -- I saw lights
24 on in there. And there weren't any lights on in my house.
25 And so I just banged on the door until they answered.

1 Q. And who came to the door?

2 A. Grant and Hart.

3 Q. Do you have any idea what time it is at this point?

4 A. No.

5 Q. What happened when Grant opened the door?

6 A. I think they were just really shocked. I told them --
7 I told them that I had just been raped right outside in our
8 driveway. We share the same driveway. And I didn't know
9 what to do. So they -- they just -- they were about to go
10 to sleep. So they decided to take me to the hospital.

11 Q. What hospital did you end up at?

12 A. Roper.

13 Q. And then at some point were you also taken for a sexual
14 assault exam?

15 A. An investigator -- or the cop that was with me drove me
16 to the women's clinic in North Charleston.

17 Q. While you were at the women's clinic in North
18 Charleston do you remember the lady by the name of Jill
19 Burns performed a sexual assault exam on you?

20 A. Uh-huh.

21 Q. What did she do as part of that exam; do you remember?

22 A. She swabbed me. It is kind of a -- like a pelvic exam,
23 and a gynecological exam. She took my underwear. And I had
24 to go home in like different underwear so they could keep it
25 all.

1 Q. Tell the jury how what happened to you that night how
2 it made you feel that night.

3 A. Scared for my life. Of course I wanted to scream, but
4 I -- how would I know that I would live afterwards.

5 Q. And what does -- how has it affected you since that
6 night?

7 A. I have posttraumatic stress disorder. And I have
8 severe anxiety, especially night anxiety. I can't do stuff
9 at night by myself. I have had locks added to like my
10 bedroom doors because I can't sleep at night. And I have to
11 take medication for all of these disorders.

12 Q. Brittanae, at some point did you speak to the police
13 and give them a history of what happened?

14 A. Uh-huh.

15 Q. Were you able to give them a name of someone who had
16 done this to you?

17 A. No.

18 Q. Why not?

19 A. I didn't know who did it.

20 Q. Did you get a good look at the defendant?

21 A. It was so dark I couldn't see any like anything
22 specific.

23 Q. Before you found out that there had been a hit in some
24 possible DNA matching a person by the name of Corrie Brown
25 to your case had you ever heard that name?

- 1 A. No.
- 2 Q. Had you ever met anyone by the name of Corrie Brown?
- 3 A. No.
- 4 Q. Have you ever met the defendant?
- 5 A. No.
- 6 Q. When is the first time you would have seen Corrie
- 7 Brown?
- 8 A. Other than the attack this is the first time I have
- 9 ever seen him.
- 10 MS. GORDON: Court's indulgence.
- 11 (Pause.)
- 12 MS. GORDON: Nothing further at this time.
- 13 THE COURT: Thank you. Cross-examination.
- 14 MS. TOLLEY: Thank you, Your Honor. May it please the
- 15 Court?
- 16 THE COURT: Yes, ma'am.
- 17 **CROSS-EXAMINATION BY MS. TOLLY OF MS. CASPER:**
- 18 Q. You testified that there were no lights; is that
- 19 correct?
- 20 A. That is correct.
- 21 Q. Did you yell?
- 22 A. No.
- 23 Q. Did you struggle?
- 24 A. Yes.
- 25 Q. Was there a knife?

- 1 A. No.
- 2 Q. Was there a gun?
- 3 A. No.
- 4 Q. Was there any other weapon?
- 5 A. His hands.
- 6 Q. Did he hit you?
- 7 A. He held me down.
- 8 Q. Did he hit you with his hands?
- 9 A. No, he did not hit me.
- 10 Q. Did he punch you?
- 11 A. No.
- 12 Q. You mentioned that your car was in the area. Was there
- 13 any damage to your car?
- 14 A. No.
- 15 Q. Was there any damage to your door?
- 16 A. No.
- 17 Q. Do you live alone?
- 18 A. No.
- 19 Q. You have roommates?
- 20 A. I do -- or I did, yes.
- 21 Q. Were there roommates at home?
- 22 A. I didn't know if they were home. All of the lights
- 23 were out.
- 24 Q. But they were there?
- 25 A. I found out after the fact, yes, that they were there.

1 Q. And your two neighbors who took you to the hospital,
2 they were home?

3 A. Uh-huh.

4 Q. And they didn't hear anything?

5 A. No.

6 Q. You testified that you turned away ---

7 A. I did.

8 Q. --- and didn't look at him?

9 A. I mean I looked at him when he initially threw me to
10 the ground and when I first turned around at the doorstep.
11 But in the process of him raping me I did not try to make
12 eye contact with him, no.

13 Q. How old are you?

14 A. I am 23.

15 Q. So you would have been what; 18, 19 when this happened?

16 A. I think it was right before my birthday. I was turning
17 19 -- or I was turning 20 actually.

18 Q. And you said you were drinking?

19 A. I was.

20 Q. Are you aware that the legal age for drinking is not 18
21 or 19?

22 A. I am very well aware, yes.

23 Q. Okay. And how is it that you were able to get alcohol?

24 A. The guard let me in to drink.

25 Q. They just gave it to you?

1 A. I purchased it there.

2 Q. Did you have to present an ID?

3 A. I did. And I had false identification.

4 Q. And whose name was on that identification?

5 A. I don't even -- I don't remember at this point.

6 Q. So you used that to purchase alcohol?

7 A. I did.

8 Q. Were there other times that you were drinking?

9 MS. GORDON: Objection, Your Honor. Relevance.

10 THE COURT: Objection sustained.

11 BY MS. TOLLY:

12 Q. You were at the party earlier that night; am I right?

13 A. Yes.

14 Q. Was there alcohol there?

15 A. Yes.

16 Q. Were you drinking?

17 A. Yes.

18 Q. With there times when you got other people to buy
19 alcohol for you?

20 MR. GORDON: Objection, Your Honor. Relevance.

21 THE COURT: Sustained.

22 BY MS. TOLLY:

23 Q. You stated that this incident occurred at midnight; is
24 that correct; or around that time?

25 A. I said around 12:30 to 1:00 is when I left the bar,

1 yes..

2 Q. And you are getting ready for a party?

3 A. At midnight?

4 Q. I'm sorry, not at midnight. But earlier in the day?

5 A. Earlier in the day -- I wasn't getting ready for a
6 party, no, no. My friend had called me, Alex, to go to a
7 party. And she picked me up and we went.

8 Q. Is it true that you were getting phone calls on your
9 cell phone at night?

10 A. I am sure people were calling me on my cell phone that
11 night.

12 Q. Was there one particular call that you got multiple
13 times that caused you concern?

14 A. There was a strange number that had been calling me a
15 couple of times that evening and they wouldn't reply back to
16 me.

17 Q. Was that something that you told the police officers
18 about?

19 A. I did.

20 Q. What were the nature of those calls; they would text
21 you and what happened?

22 A. I kept -- I didn't have the number and I asked who it
23 was, and they wouldn't reply. And the police had looked
24 into it and there was nothing I don't think of any
25 importance to it.

1 Q. You don't think there is anything of importance to it?

2 A. I was told there was nothing of importance to it, that
3 they had found the phone number somewhere. But they never
4 replied to me when I asked who the person was and I would
5 text them.

6 Q. You thought it was important enough that you told
7 Officer Glover about it and that it was something that they
8 needed to follow up on; am I right?

9 A. Yes, and they did follow up on it and found that there
10 was no importance to it.

11 MS. TOLLEY: I am going to ask her to

12 A. Yes, I ---

13 Q. You don't know if they followed up on it and found
14 there was nothing to it?

15 A. I was made aware that there was nothing important to
16 it.

17 Q. If I told you that they thought it was important enough
18 to run a check on a telephone number would that surprise
19 you?

20 A. No.

21 Q. If I told you that it was important enough that they
22 ran a check on it and were able to determine that that
23 number was not linked to my client, would that surprise you?

24 A. No. I knew that.

25 Q. Okay. And do you ever do drugs?

1 A. No.

2 MS. GORDON: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. TOLLY:

5 Q. In your -- in your statements to the police officers
6 you were able to give some description of the individual; am
7 I right?

8 A. To some degree, yes.

9 Q. Okay. One that -- you gave several actually. And one
10 of those was of a six-foot-one, medium-build, short-buzz-cut
11 man; is that correct?

12 A. I'm not exactly sure what I said. It was
13 three-and-a-half years ago. So I'm not sure what I
14 originally had written. I know that I had said that he was
15 medium built and that he was taller than me and that he was
16 black.

17 Q. Okay. And that he had a short buzz cut?

18 A. If that is what I wrote, then yes. I'm not positive
19 that's what I said.

20 Q. Is it possible that that was a description that you
21 gave because he is someone that you knew?

22 A. No.

23 Q. You remembered him from earlier in the day?

24 A. No.

25 Q. Where you had asked him to get you some drugs.

1 A. No.

2 Q. Where you encountered him earlier in the week and asked
3 him to purchase you some beer?

4 A. No.

5 Q. And that you met up with him again later; a couple of
6 days later you saw him in the same park in Marion Square?

7 A. No.

8 Q. And you asked him to buy you some drugs?

9 A. No, I did not ask him to buy me alcohol nor drugs. No,
10 I have never seen him before.

11 Q. And did you engage in sexual activity with him because
12 you didn't ---

13 A. No, I did not.

14 Q. --- have sufficient funds to pay ---

15 A. No, ---

16 Q. --- for the drugs?

17 A. --- I did not do that.

18 Q. On December 4th about seven o'clock in the afternoon
19 you were out at Marion Square?

20 A. I don't remember if I was out at Marion Square at 7:00
21 p.m. That was three years ago, again.

22 Q. It wouldn't be unusual?

23 A. But probably not. It is December. It is not usually a
24 good time of year to be parolling and stroll -- whatever in
25 Marion Square.

1 Q. So unless you were looking for drugs?

2 A. Which I wasn't.

3 Q. But if you were?

4 A. But I wasn't.

5 Q. You said you went to a party earlier that night on
6 Rutledge Avenue. Were there men at that party?

7 A. Uh-huh, like some of my close guy friends, yes.

8 Q. You went to the Silver Dollar. Were there men at that
9 party?

10 A. I am sure there were. The Silver Dollar doesn't
11 usually have older men at the bar. It is more of a college
12 scene.

13 Q. But there were men there?

14 A. Yeah, men.

15 MS. TOLLEY: Beg the court's indulgence.

16 THE COURT: Certainly.

17 BY MS. TOLLY:

18 Q. You indicated that you were drinking. Is that correct?

19 A. Yes.

20 Q. How much were you drinking?

21 A. I am not sure.

22 Q. You have at least like at the party you had some
23 drinks?

24 A. Had some drinks there, like I said. And then I had
25 some drinks at the bar as well.

1 Q. If I told you that your toxicology level was 2.63 ---

2 MS. GORDON: Objection, Your Honor. The State ---

3 Q. --- would that surprise you?

4 THE COURT: Sustained.

5 BY MS. TOLLY:

6 Q. How drunk were you?

7 A. I mean I was drunk, fairly drunk.

8 Q. Like falling down drunk?

9 A. No, I wasn't falling down. I was able to walk home.

10 Q. If I tell you that your alcohol level was three times
11 the legal limit ---

12 MS. GORDON: Objection, Your Honor.

13 Q. --- would that surprise you?

14 THE COURT: Sustained. Sustained.

15 BY MS. TOLLY:

16 Q. You were drunk?

17 A. Is that a question?

18 Q. That is a question.

19 A. Was I drunk?

20 Q. Yes.

21 A. I was -- I thought I answered yes I had been drinking.

22 MS. TOLLEY: Beg the court's indulgence.

23 BY MS. TOLLY:

24 Q. Would you say that you were sexually active?

25 MS. GORDON: Objection, Your Honor.

1 THE COURT: Sustained.

2 MS. TOLLEY: We would assert that this is highly

3 relevant given the circumstances. She has testified ---

4 MS. GORDON: Your Honor ---

5 THE COURT: Just a second.

6 MS. TOLLEY: --- that she has a boyfriend ---

7 THE COURT: Y'all may approach.

8 (WHEREUPON, a bench conference was had.)

9 MS. TOLLEY: Rape shield statute. I -- she -- I don't

10 know that is it not relevant that she is having sex. I mean

11 part of the testimony. ---

12 MS. GORDON: But she can -- she can ask about the DNA

13 that is Sebastian Qreitz which is her boyfriend, ---

14 THE COURT: You can be very ---

15 MS. GORDON: --- but she can't ask her if she is

16 sexually ---

17 MR. YOUNG: Right.

18 MS. GORDON: --- active.

19 MS. TOLLEY: I can ask her ---

20 THE COURT: You can't.

21 MS. TOLLEY: --- if she is sexually active.

22 THE COURT: No, you can't. But you can be specific in

23 your question about what is relevant to this particular

24 case, but nothing else.

25 MS. TOLLEY: Okay.

1 (WHEREUPON, end of bench conference.)

2 BY MS. TOLLY:

3 Q. When you were examined at MUSC was one of the questions

4 whether or not you had sex ---

5 MS. GORDON: Objection.

6 Q. --- within 72 hours?

7 THE COURT: Overruled.

8 MS. TOLLEY: Judge, we believe this is relevant because

9 the ---

10 THE COURT: I overruled the objection. And I believe I

11 ruled earlier that you could ask specific direct questions.

12 BY MS. TOLLY:

13 Q. Did you have a prescription for birth control pills in

14 your wallet?

15 MS. GORDON: Objection, Your Honor.

16 THE COURT: Sustained.

17 MS. TOLLEY: Nothing further.

18 THE COURT: Redirect.

19 MS. GORDON: Thank you, Your Honor.

20 **REDIRECT EXAMINATION BY MS. GORDON OF MS. CASPER:**

21 Q. Brittanae, I will hopefully clear this up. Had you at

22 some point in the past had consensual sexual relationship

23 with Sebastian Qreitz?

24 A. Yes, he is my boyfriend.

25 Q. That is your boyfriend?

1 A. Yes.

2 Q. And he is still your boyfriend?

3 A. Still my boyfriend.

4 Q. Would you be surprised that his DNA was found on you?

5 A. No, we had consensual sex. So it would make sense.

6 Q. And just let me follow up. Was the defendant, Corrie

7 Brown, to your knowledge at the Silver Dollar that night?

8 A. No.

9 Q. Did you talk to him at the Silver Dollar?

10 A. No.

11 Q. Did you ever talk to the person seated at the

12 defendant's table?

13 A. No.

14 Q. Did you ever buy drugs from him?

15 A. No.

16 Q. When was the first time you laid eyes on him other than

17 the night when he raped you?

18 A. When he walked into this courtroom.

19 Q. Thank you.

20 THE COURT: Thank you. Ma'am, you may step him.

21 MS. CASPER: Thank you.

22 THE COURT: Thank you. Ladies and gentlemen, if y'all

23 would give us a minute. I need to take up a brief legal

24 matter with the attorneys. Have you back in about five

25 minutes. Please do not discuss the case.

1 (WHEREUPON, a break was taken and jury out at 12:03
2 p.m.)

3 THE COURT: Thank you. Pursuant to Rule 52 in the
4 South Carolina Rules of Civil Procedure which apply when
5 there is no applicable rule of criminal procedural rule of
6 evidence once the Court has ruled on something nobody gets
7 to argue about it anymore unless I specifically allow people
8 to. Okay.

9 And once I have ruled on something and I ruled pretrial
10 on the rape shield statute motion in limine and I also made
11 some rulings from the bench, nobody is allowed to ask
12 another question in violation of the ruling that I have
13 recently made.

14 I am just saying that to everybody now and hoping that
15 it won't happen again. Okay.

16 Now I wanted to let y'all know that over lunch or
17 earlier I reviewed the College of Charleston records. There
18 is no information in the records regarding the evening in
19 question or afterwards. And there is nothing relevant.

20 There are billing matters, a few medical matters, a
21 transcript. Nothing that would have to do with this
22 incident. So, you know, I am not going to order that they
23 be produced since the subpoena was sent Thursday.

24 I'm happy for you to look at them if you want to. But
25 there is nothing in there that would help your client.

1 Okay.

2 MS. TOLLEY: Thank you, Your Honor.

3 THE COURT: Sure. All right. Anything else before the

4 jury comes back?

5 MR. YOUNG: Nothing from the State, Judge.

6 THE COURT: All right. Bring them back if they

7 already -- unless anybody needs a quick break.

8 (WHEREUPON, jury returns 12:06 p.m.)

9 BAILIFF: The jury is present, Your Honor.

10 THE COURT: Thank you, sir. All right, ladies and

11 gentlemen. I appreciate your patience. We are ready to

12 move forward. Please call your next witness.

13 MR. TOLLY: Thank you, Judge. The State calls Grant

14 Hoskins.

15 THE COURT: I'm sorry, can you repeat that?

16 MR. TOLLY: Grant Hoskins.

17 THE COURT: Sir, if you would come forward and please

18 be sworn.

19 (WHEREUPON, the witness was duly sworn.)

20 BAILIFF: I need you to speak into this mic. State

21 your full name and then spell your last name for the record.

22 MR. HOSKINS: Grant Wright Hoskins. H-O-S-K-I-N-S.

23 GRANT HOSKINS, having first been duly

24 sworn, testified as follows:

25 **DIRECT EXAMINATION BY MR. YOUNG OF MR. GRANT HOSKINS:**

1 Q. Grant, thank you for being here today. Are you doing
2 okay this afternoon?

3 A. I am. Thank you.

4 Q. Do you live in Charleston, Grant?

5 A. I do.

6 Q. And for how long have you lived there?

7 A. Almost seven years now.

8 Q. Where did you move from?

9 A. Richmond, Virginia.

10 Q. And what did you do coming down to Charleston?

11 A. I moved down here to go to the College of Charleston.

12 Q. Did you -- so you in fact attended the College of
13 Charleston?

14 A. I did.

15 Q. What years were you there for?

16 A. 2005, 2009.

17 Q. What did you major in?

18 A. I double majored in hospitality and tourism management
19 and business administration.

20 Q. Have you got a job now?

21 A. I do. I work here locally for the Charleston Marriott.

22 Q. I want to go ahead and get into -- do you -- did you
23 ever meet Brittanae Casper at the College of Charleston?

24 A. I did. I met her through friends of her friends.

25 Q. Okay. And did you live near Brittanae Casper?

1 A. I did. I lived in the house next door to her.

2 Q. Okay. How well would you say you knew Brittanae?

3 A. She was one of my very good friends.

4 Q. Would y'all hang out together?

5 A. We would.

6 Q. So tell me the years, if you can remember, that you
7 lived beside Brittanae. How many years was that?

8 A. We lived there for three years. We lived next to her
9 for two.

10 Q. And what building was your building; what number; do
11 you remember?

12 A. It was [REDACTED].

13 Q. And what was hers?

14 A. [REDACTED].

15 Q. Okay. So I'm going to show you what has been no
16 previous objections have already been noted.

17 MS. TOLLEY: No.

18 BY MR. YOUNG:

19 Q. I want to show you --

20 MR. YOUNG: If I may approach the witness, Judge.

21 THE COURT: You may. I just wanted to make sure we got
22 everything. Because people were talking at the same time.

23 MR. YOUNG: I am sorry.

24 THE COURT: You may approach.

25 MR. YOUNG: Thank you.

1 THE COURT: But I didn't get any numbers.

2 BY MR. YOUNG:

3 Q. I'm going to ask you if you recognize State's 15 and 16
4 for ID..

5 THE COURT: Thank you.

6 A. Yes.

7 Q. Do you recognize those photos?

8 A. I do.

9 Q. What are those photos of?

10 A. This is the alleyway on [REDACTED] (indicating). And
11 then this (indicating) is it going the opposite direction as
12 well.

13 Q. Is that -- what street is that? Can you see like the
14 right end of there?

15 A. It is King Street here (indicating). And then you have
16 got Meeting on the opposite end.

17 MR. YOUNG: Judge, I ask that State's 15 and 16 be
18 admitted into evidence. Publish to the jury.

19 THE COURT: Anything from the defense?

20 MS. TOLLY: Nothing from the defense.

21 THE COURT: Thank you. Admitted without objection.
22 State's 15 and 16.

23 (State's Exhibit Number 15 was admitted into evidence.)

24 (State's Exhibit Number 16 was admitted into evidence.)

25 MR. YOUNG: I would ask to publish it, Judge.

1 THE COURT: Yes, you may.

2 MR. YOUNG: Thank you.

3 BY MR. YOUNG:

4 Q. Grant, tell the jury what we are looking at right here
5 (indicating).

6 A. This is going up to -- that is going to be King Street
7 right there (indicating). That is a parking lot here
8 (indicating) and here (indicating).

9 Q. So this is King right here (indicating)?

10 A. That it King up there.

11 Q. Is this [REDACTED]?

12 A. This is [REDACTED] (indicating). That is going to
13 be -- that is -- well, it was at the time a sporting goods
14 store straight dead ahead. And then there is a bookstore
15 right there on the left. And then it was at the time an ice
16 cream shop, Coldstone, on the right. Now it is a Five Guys.

17 Q. Okay. I'm going to show you what has been marked as
18 State's 16, marked and admitted. Do you recognize that?

19 A. I do. This is the opposite end. It is going to be
20 Meeting Street dead ahead.

21 Q. So this is Meeting down here (indicating)?

22 A. It is.

23 Q. Okay. We are still looking down [REDACTED]?

24 A. You are. This is going to be [REDACTED] right here
25 (indicating) at the corner of it. I've got the College of

1 Charleston basketball arena right there on your right, the
2 William dock on the backend.

3 Q. Can you describe -- I see the back end of this car
4 right here. Can you describe what that is exactly. Kind of
5 describe the area if you would.

6 A. Sure. This house was right here (indicating). And
7 then there's our house is perpendicular to it. There are
8 six parking spots right here (indicating). Two -- there's,
9 you know, one, two, three. And then there's one behind
10 each, behind that. There is a driveway, and then there is a
11 -- we had a small kind of little gate that went into each
12 courtyard for each house.

13 Q. So is this -- what number -- is this [REDACTED]?

14 A. That is [REDACTED] right there.

15 Q. So this is Brittanae's house; and if you look at me,
16 Grant, I am going to ask you if you are standing at
17 Brittanae's front step what is to the left; is that [REDACTED]
18 [REDACTED] to the left if you are standing on Brittanae's front
19 step?

20 A. If you are standing on her front step right there
21 looking to the right, right here is going to be [REDACTED].

22 Q. Okay. You are going to see that. And then your house
23 is on the other side?

24 A. Correct.

25 Q. Okay. But you all use the same driveway?

1 A. Correct.

2 Q. Now Grant, I'm going to take you back to the night of
3 December 4th, 2008. Do you remember that night into the
4 next day?

5 A. I do.

6 Q. Okay. And what was going on at school at that time?

7 A. We were in the middle of exams.

8 Q. Okay. What were you doing that night of December 4th
9 into the early hours of December 5th, 2008?

10 A. I had a marketing exam the next day. I was studying
11 through there for a while throughout the night. And then I
12 ended up watching some TV later in the evening before going
13 to bed.

14 Q. So cram period, to say the least?

15 A. It was definitely.

16 Q. Okay. How long would you say that you knew Brittanae
17 Casper?

18 A. Before?

19 Q. Just from the day you met her to the day -- I mean have
20 you known her since ---

21 A. I have known her a while.

22 Q. Like over a couple of years?

23 A. Yes.

24 Q. Okay. Now again moving back to December 5th, 2008, in
25 the early hours, at some point was there a knock on your

1 door?

2 A. There was. I had gone to bed and watching a basketball
3 game. And I had gone to sleep, and I woke up to there was a
4 loud pounding. My roommate was yelling at me, you know,
5 kind of he was yelling my name and yelling there is somebody
6 crying downstairs. It was kind of one of those things you
7 wake very disoriented. It was one of those things you are
8 awake ---

9 Q. So ---

10 A. Go ahead.

11 Q. I'm sorry to interrupt you. Go ahead, Grant.

12 A. It was one of those things, you know, you wake up and
13 you're in like kind of a panic mode. It is just you don't
14 know what is going on but you know something is wrong.

15 Q. Could you hear the fear in the voice of your roommate?

16 A. Yeah, you could hear. It was just one of those things.
17 I mean you just knew right away. It was like when you wake
18 up and you are late for work times like 20. It was one of
19 those things.

20 Q. When we are talking about a knock at the door are we
21 talking about something like this (demonstrating)?

22 A. No, I mean it was pounding. He was -- he was kind of
23 screaming. You could hear he was, you know, frightened. He
24 was worried about -- he didn't know what was going on. It
25 wasn't ---

1 Q. You say your roommate was screaming?

2 A. My roommate, yeah. I mean you could tell -- I mean it
3 was the only time -- you know.

4 MS. TOLLEY: Objection. He is testifying about what
5 his roommate said.

6 MR. YOUNG: I'm not -- Judge, I'm not asking.

7 THE COURT: I didn't hear him be that way, but I
8 will ---

9 MR. YOUNG: Judge, I am not asking about what he said.
10 I am asking him to describe what is going on.

11 THE COURT: Okay.

12 BY MR. YOUNG:

13 Q. So keep -- so go ahead, Grant.

14 A. Yeah, so, you know, he was, you know, yelling at me
15 and ---

16 Q. What did you do; did you go downstairs or did you --
17 what did you do next?

18 A. Yeah, our room is the way they -- the stairwell
19 connected and then went down. And I kind of -- we kind of
20 both opened up our doors at the same time and we went down
21 there. And then we went down.

22 Q. Tell us what you saw when you went down there.

23 A. We had a sun room that opened up onto our courtyard and
24 it had like a glass door. But it was -- had blinds kind of
25 like over -- blinds over it, whatnot.

1 . So we went down there and we opened the door. And she
2 was kind of crumpled on a ball, like laying on the ground.
3 She had been pounding at the door, kind of the base frame of
4 the door. She was kind of just laying on our -- we had a
5 doormat right out front.

6 Q. When you say she, who are you talking about?

7 A. Brittanae Casper.

8 Q. So she is hitting on the bottom of the door pounding on
9 the door. Do you open the door at this point?

10 A. Yeah, we opened the door. And she is just kind of
11 laying there.

12 Q. How does she look?

13 A. I mean I've never seen anybody -- any -- any -- I mean
14 that was probably the worst by far I have ever seen anyone
15 in any degree.

16 It was just she was just in hysterics. Just -- I don't
17 know, shaking. She was covered in leaves. She was -- she
18 just looked like she -- she didn't have any life in her.
19 She was just kind of -- I don't know. It's -- it's a very
20 startling sight.

21 Q. Were you scared?

22 A. Yeah. I mean I didn't know what to do. I was just
23 trembling and just standing there. I mean it -- I -- we
24 were both just -- I mean my roommate wasn't moving either.
25 We were just standing there.

1 Q. How did you -- how did you figure out what had
2 happened?

3 A. We kind of just stay -- I mean there was probably just
4 like a pause there. We just stood there. I mean I don't --
5 we just didn't really know what to do. And we got her
6 inside. We were trying to, you know, find out what had
7 happened. I mean I had a million thoughts going through my
8 head. But I didn't know exactly what had happened.

9 And, you know, finally she got it out and she said that
10 she had been raped, somebody, you know, had attacked her in
11 our parking lot. And ---

12 Q. Did you know if this guy was still there?

13 A. No, we didn't know -- I had no idea. I -- when she --
14 I mean it was I just kind of -- we were just trying to hold
15 her and keep her standing.

16 She was barely, you know, able to stand. She was
17 extremely wobbly. Her legs were just shaking. It was just
18 like we were holding a -- I don't know.

19 But she -- no, we didn't really know what to do. I
20 remember kind of looking at him just you know what -- you
21 know.

22 Q. After she said she was raped what did you -- what did
23 you do next? And let me strike that. Grant, did she have
24 anything in her hair?

25 A. Yeah, she had these leaves. I remember very vividly.

1 They were like leaves. I think it was in December. So, you
2 know, fall had happened and whatnot and they had been
3 compressed by like the tires on our -- from our cars driving
4 in the parking lot.

5 They were up at from the base of the -- you know, the
6 very edge of your parking lot where, you know, the wind will
7 blow them up and those kind of get pushed down. They had
8 these little tiny holes in them. It was just like really
9 tethered leaves. They were just, you know, barely --
10 extremely thin. But you know. And they were just all in
11 her hair. And it was -- it was like something else.

12 And then she -- they were just covered in her hair, on
13 her legs, all -- it's all over. I mean they were just -- it
14 was like she, you know, being compressed onto them just
15 like, you know, a tire compressed -- had compressed them as
16 well.

17 Q. Right. So at this point after seeing this, what do you
18 do?

19 A. We -- you know, I continued to try to ask her what
20 happened and try to figure out, you know -- you know, figure
21 out more details from there.

22 Q. Do you at some point make your way to the hospital?

23 A. We -- yeah. Eventually, yeah. We decided to take her
24 to the hospital in my roommate's car.

25 Q. Tell us about -- tell us about that. When you arrive

1 at the hospital what happens then?

2 A. We arrived at the hospital and the lady kind of -- I
3 mean -- there was this -- there is a lady that was really --
4 it was a lady's desk. And we -- there's not much other you
5 can do other than to go up and to say exactly what happened.

6 And it took them a couple of minutes. And then they
7 took her into the back. And we sat in the waiting room for
8 a little while. And then eventually the police officers
9 took us in the back and talked to us for a little while.

10 Q. Knowing Brittanae as you have stated you know her, did
11 this change Brittanae in your opinion? This incident did it
12 change her?

13 A. Yes, I mean I think it definitely did. I think it
14 definitely -- I think it -- as it is -- would anyone I think
15 it took confidence away from her. I think it took who she
16 was. I think you know -- now she definitely has to, you
17 know, answer these questions about this incident. You know,
18 she has to deal with that again on a daily basis. I think
19 it is definitely.

20 Q. Is she as outgoing as she used to be?

21 A. Not in a way. I feel like she's definitely -- it's
22 certainly taken an edge off of her, away. She definitely --
23 he definitely -- definitely see a change in ---

24 Q. Is she more protective of herself?

25 A. Yeah, I think more protective. You know, just -- it is

1 something -- you know, something missing I would say. You
2 know, it is definitely -- I don't know, when you know
3 someone for a good amount of time it is not -- it is like
4 you have got that person but do you have -- you don't have
5 the whole -- you don't have the person that you used to
6 have.

7 Q. Right. Had you ever seen anything like this before?

8 A. No.

9 MR. YOUNG: Court's indulgence.

10 BY MR. YOUNG:

11 Q. Grant, I am going to take you back when you were inside
12 the house with Brittanae. Did you guys wait around and take
13 her to the hospital for a long time or did y'all make a
14 decision fairly quickly to move on and say we need to take
15 her to the hospital?

16 A. No, I mean we knew it was either call 911 or take her.
17 And we just didn't want to wait and for an ambulance.
18 Thought it would be just quicker just -- our car is right
19 there. Just to take her.

20 Q. So that process happened quickly?

21 A. Yeah, it was very quickly.

22 MR. YOUNG: That's all the questions I have, Your
23 Honor.

24 THE COURT: Thank you, sir. Cross-examination.

25 CROSS-EXAMINATION BY MS. TOLLY OF MR. HOSKINS:

1 Q. How are you doing?

2 A. Good, thank you.

3 Q. When you got downstairs and you saw Ms. Casper was she
4 wearing her sweater?

5 A. She was -- yeah, she -- she had -- I mean she still had
6 her clothes on. She had pulled up her ---

7 Q. Did you see her pull up her stockings?

8 A. It was -- she was -- had already done it by the time.

9 Q. Okay. So she already had on her stockings when you saw
10 her?

11 A. Correct.

12 Q. She already had on all her clothes when you saw her?

13 A. Correct.

14 Q. You were upstairs?

15 A. I was -- when I saw her or when ---

16 Q. Yes. I'm sorry. When the knocking came where were
17 you?

18 A. I was up asleep in my bed upstairs.

19 Q. Okay. You didn't look out the window and see anything?

20 A. You can't see the entrance to our door from any of --
21 any of our windows.

22 Q. Okay. So you didn't see anything?

23 A. No.

24 Q. You didn't hear anything?

25 A. Hear anything, as -- I heard the -- it was what I awoke

1 to was the loud knocking and my roommate yelling at me.

2 Q. Right. Other than that you didn't hear any scuffling
3 going on outside your window or outside the building?

4 A. No, I mean it's a -- you know, it's a city environment,
5 you know. We are very ---

6 Q. But you didn't hear anything is the question.

7 A. Correct.

8 Q. Okay. And you didn't call the police?

9 A. Correct.

10 Q. You didn't witness any assault?

11 A. Correct.

12 Q. You weren't there when it happened?

13 A. Correct.

14 Q. Assuming something happened.

15 MS. TOLLEY: That is it, actually.

16 THE COURT: Finished?

17 MS. TOLLEY: Let me check with my client. But I think
18 that's it.

19 (WHEREUPON, defense counselor confers with client.)

20 MS. TOLLEY: Nothing further, Judge..

21 THE COURT: Thank you. Redirect.

22 MR. YOUNG: Thank you, Judge.

23 **REDIRECT EXAMINATION BY MR. YOUNG OF GRANT HOSKINS:**

24 Q. Grant, where does Hart live; is it Hart, is that -- was
25 that your roommate?

1 A. Correct. He lives in Washington D.C.

2 Q. So he's not here right now?

3 A. Correct.

4 Q. Okay.

5 MR. YOUNG: That's all the questions I have, Your
6 Honor.

7 THE COURT: Okay. Any objection to this witness being
8 excused?

9 MR. YOUNG: None, from the State, Judge.

10 MS. TOLLEY: None, Judge.

11 THE COURT: Sir, you may step down. And you are
12 excused. Thank you.

13 THE COURT: Whenever you are ready.

14 MR. YOUNG: Your Honor, the State calls Mary Phillips,
15 Officer Mary Phillips.

16 THE COURT: Okay. Thank you. Officer Phillips, if you
17 could come forward and be sworn, please.

18 (WHEREUPON, the witness was duly sworn.)

19 THE BAILIFF: State your full name for the record and
20 spell your last, please.

21 MS. PHILLIPS: Okay. My name is Mary Catherine
22 Phillips, P-H-I-L-L-I-P-S.

23 OFFICER MARY PHILLIPS, having been
24 first duly sworn, testified as follows:

25 **DIRECT EXAMINATION BY MR. YOUNG OF OFFICER PHILLIPS:**

1 Q. Good afternoon, Officer Phillips.

2 A. Good afternoon.

3 Q. Can you tell the jury where you work.

4 A. I work for the City of Charleston Police Department in
5 the crime scene unit.

6 Q. How long have you worked there?

7 A. I've been with the City approximately five-and-a-half
8 years.

9 Q. What are you current duties with the City?

10 A. I am a crime scene investigator and ---

11 Q. Can you tell us what -- I mean in layman's terms what
12 does a crime scene investigator do?

13 A. We respond to various types of crime scenes for the
14 purpose of documenting the scene by means of notes and
15 photograph. We also process scenes using various types of
16 equipment, fingerprint powder, trajectory kits and shootings
17 and other different types of equipment depending on the
18 scene.

19 And then our job is also to locate any physical
20 evidence, package that evidence so that it can be preserved
21 for future tests.

22 And then we also document everything we do by terms of
23 reports and diagrams for different types of scenes.

24 Q. Okay. Now, were you a crime scene investigator in
25 2008?

1 A. Yes, sir.

2 Q. And on -- I am going to take you specifically to the
3 dates of December 5th and December 6th, 2008. I'm going to
4 take you to 2:50 a.m. on December 5th.

5 A. Okay.

6 Q. 2008. Did you respond to an incident on that day?

7 A. Yes, sir.

8 Q. And where did you first respond to?

9 A. I responded to Roper Hospital.

10 Q. What was this in reference to?

11 A. It was in reference to a sexual assault.

12 Q. Can you -- did you see -- did you have a chance to view
13 the victim there?

14 A. Yes, sir.

15 Q. Can you describe to the jury how she appeared?

16 A. She looked disheveled. She had some cuts on her arms,
17 on her forearms; a little bit of discoloration to the neck.
18 And she had leaves in her hair.

19 Q. Officer Phillips, I'm going to show you what has been
20 pre-marked as State's 1, 6, 7 and 8. Take a look at those
21 four photos for me, please.

22 A. Yes, sir.

23 Q. Do you recognize those photos?

24 A. I do.

25 Q. Can you tell us what those are photos of?

1 A. These are the photos -- graphs of the victim that I
2 photographed at the hospital that night.

3 Q. Okay. Is that a true and accurate representation of
4 how she looked that night?

5 A. Yes, sir.

6 MR. YOUNG: Judge, I ask to admit State's 1, 6, 7 and 8
7 and publish to the jury.

8 THE COURT: Okay.

9 MS. TOLLEY: Without objection, Judge.

10 THE COURT: Okay. State's 1, 6, 7 and 8 are admitted
11 without objection. And you may publish them.

12 (WHEREUPON, State's Exhibit No. 1 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit No. 6 was admitted into
15 evidence.)

16 (WHEREUPON, State's Exhibit No. 7 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 8 was admitted into
19 evidence.)

20 BY MR. YOUNG:

21 Q. Mary, if you could turn around and tell the jury what
22 we are looking at here.

23 A. This would be a photograph I took of the victim's neck.

24 Q. Okay. And we are looking at in this area right here
25 (indicating); is that correct?

1 A. Yes, sir.

2 Q. Okay. And this is the victim in the hospital
3 (indicating)?

4 A. Yes, sir.

5 Q. Okay. I am going to show you what has been marked as
6 State's 6. Can you tell the jury what we are looking at
7 here?

8 A. These would be the victim's forearms.

9 Q. When you say forearms are you talking about elbow area
10 or?

11 A. Yes, sir; just this ---

12 Q. Okay.

13 A. --- area right in here (indicating).

14 Q. Okay. Okay.

15 MR. YOUNG: Court's indulgence, Judge.

16 BY MR. YOUNG:

17 Q. Officer Phillips, I am going to show you again
18 State's 6. Tell me why you took that photo?

19 A. There was some discoloration to the skin, specifically
20 around the lower part around the elbow but also extending up
21 a little bit further up the forearm.

22 Q. Would that be consistent with being on the ground?

23 A. I would say so.

24 Q. Okay. I'm going to show you what's been marked
25 State's 7. Again, similar photo. Can you tell us why you

1 took this photo?

2 A. Just another photograph to try and document the area of
3 the skin that had the discoloration to it.

4 Q. Okay. Thank you. I'm going to show you what has been
5 marked and admitted as State's 8. And tell us what we are
6 looking at here and why you took that photo.

7 A. It is another angle of the arm. And it was also to
8 show just another side of the injuries to her arms.

9 Q. Could that be consistent with laying on your back?

10 A. I would say so.

11 Q. Now Officer Phillips, I want to move on a little
12 further that night. After you left the hospital did you
13 learn where a CSC had taken place that night?

14 A. Yes, actually they informed me of the location of it
15 prior to leaving the hospital that day.

16 Q. And where was that; do you remember?

17 A. It was at [REDACTED] off of Kings Street.

18 Q. Did you respond at that point to that scene?

19 A. Yes, sir.

20 Q. Can you describe to the jury what that scene looked
21 like?

22 A. [REDACTED] is like a two-story brick structure. I
23 believe there was like a wall along the left side of it.
24 And then there was like a very small parking area with
25 numerous cars parked just forward of the structure.

1 Q. Okay. How was the lighting in that area?

2 A. It was very poor.

3 Q. Very poor. Could you notice any lights at all -- I
4 mean was there a light above her house, do you remember?

5 A. Possibly. But it was very dark out there. I don't
6 remember there being a light.

7 Q. Okay. So dimly lit; is that fair to say?

8 A. Yes, sir.

9 Q. When you got to the scene was it secure?

10 A. There was an officer standing by; yes, sir.

11 Q. So it was in the same condition as when the event had
12 taken place?

13 A. I would believe so, yes, to the best of my knowledge.

14 Q. I'm going to show you if I may four more photos. I'm
15 going to show you State's 10, 11, and 12, State's 14, that
16 have been marked for ID.

17 A. Okay.

18 Q. I am going to ask you if you recognize those.

19 A. I do.

20 Q. Can you tell the jury what those are photos of?

21 A. They are photographs of the residence in front of ■

22 ■.

23 MR. YOUNG: Judge, at this time I would ask State's 10,
24 11, 12, and 14 be admitted into evidence and publish them to
25 the jury.

1 MS. TOLLEY: Without objection, Judge.

2 THE COURT: Thank you. State's 10, 11, and 12 are
3 admitted without objection. And you may publish them.

4 MR. YOUNG: And State's 14 as well, Judge?

5 THE COURT: Oh, okay. State's 14. I'm sorry. I
6 didn't hear that.

7 MR. YOUNG: Thank you.

8 (WHEREUPON, State's Exhibit Number 10 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit Number 11 was admitted into
11 evidence.)

12 (WHEREUPON, State's Exhibit Number 12 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit Number 14 was admitted into
15 evidence.)

16 BY MR. YOUNG:

17 Q. Officer Phillips, would you describe what you are
18 looking at right here to the jury, please.

19 A. That would be ---

20 Q. Let me zoom out here a little bit ---

21 A. Okay.

22 Q. --- so you can get a little bit better. Tell us what
23 we are looking at, please.

24 A. That would be the front of [REDACTED].

25 Q. Do you recall where the incident took place, an exact

1 location of that; if you could just stand up you can kind of
2 point.

3 A. Sure. It was between the house and where the cars are
4 parked. Right ---

5 Q. So right to the right of that car?

6 A. Well, I guess if you are facing this ---

7 Q. Right. Yeah ---

8 A. --- it is going to be to the left.

9 Q. Okay. Okay. And that's why you took that picture to
10 show the scene?

11 A. Yeah, to -- the cars were so -- parked so tight that it
12 was hard to get a distance shot anywhere in there. But yes,
13 we always photograph -- try and photograph the front of the
14 residence.

15 Q. Now had you gone inside and turned off this light up
16 here at all?

17 A. No, sir.

18 Q. Okay. So that light when you got there wasn't even on?

19 A. Correct.

20 Q. Okay. So the light that we are seeing, is this the
21 flash from your camera?

22 A. Yes, sir.

23 Q. Okay. I'm going to show you what has been marked,
24 admitted. It is State's 11. Let me get -- zoom out here
25 for a moment. Can you kind of tell of what -- everything we

1 are looking at. This, this and this (indicating).

2 A. Well, this right here (indicating) would obviously be
3 the front of the structure. And this is that car that we
4 saw the rear end of (indicating). And then these
5 (indicating) were some items that we found scattered on the
6 ground amidst all of the leaves.

7 Q. And those are leaves on the ground right there
8 (indicating)?

9 A. Yes, sir.

10 Q. As well as some of her personal items?

11 A. Yes, sir.

12 Q. And is this the incident location right here from what
13 you understood?

14 A. From what I understood, yes, sir.

15 Q. I am going to show you State's 12. Let me zoom in
16 here. Tell us what we are looking at right here.

17 A. Well, I guess the items that you can kind of see right
18 here. They were various items including like a pocketbook.
19 There was a cell phone and some other personal items that we
20 were advised had belonged to the victim.

21 Q. These were just skewed all over that area?

22 A. Yes, sir.

23 Q. Is this a cop standing here?

24 A. Yes, sir.

25 Q. Is this that same vehicle we just saw?

- 1 A. Yes, sir.
- 2 Q. This is just a closer up photo of the items and the
3 leaves right here (indicating)?
- 4 A. Yes, sir.
- 5 Q. And that's the house, [REDACTED]; right?
- 6 A. Yes, sir.
- 7 Q. I am going to show you what has been marked and
8 admitted as State's 14. Describe if you can what we're
9 looking at. Is this an aerial photo in a sense?
- 10 A. Yeah, it is looking down on all of the items mixed
11 within the leaves. Again, a pocketbook. It looks like an
12 eyeglass case and other items that we were advised had come
13 from her pocketbook.
- 14 Q. And so these items were just laying on the ground?
- 15 A. Yes, sir.
- 16 Q. Okay. And to your knowledge nobody had tampered with
17 the scene at all?
- 18 A. No, sir.
- 19 Q. Did that seem odd, stuff just laying on the ground out
20 there like that?
- 21 A. Yes, sir.
- 22 Q. Now Officer Phillips, did you try to fingerprint any of
23 those items out there?
- 24 A. I did.
- 25 Q. Can you tell us about the result of that?

1 A. Well, it was very cold that night. And whenever it's
2 cold we don't secrete as much so we don't have as many ---

3 Q.. Explain secreting. I'm sorry to interrupt you.

4 A. Secrete, sweat. You know, when you are out -- when it
5 is hotter out we have more oils and everything coming out of
6 skin, more sweat. So your chances for getting a fingerprint
7 are much better.

8 But this was December, so it was cold outside. So we
9 are not secreting those oils or sweat glands as much that
10 are needed for fingerprints.

11 And the items that were on the ground there were also
12 kind of wet from just the condensation of being outside in
13 the cold. You know how your car is in the morning when it's
14 kind of got that wet, damp to it. And so these items were
15 wet on top of that. So it was -- made for a much harder
16 surface for getting fingerprints off of it.

17 Q. Now Officer Phillips, is [REDACTED] in the City and
18 County of Charleston?

19 A. Yes, sir.

20 Q. So at this point when you did the fingerprints did
21 anything turn up?

22 A. No, sir.

23 Q. Okay. So you weren't able to develop a suspect off of
24 fingerprints?

25 A. Correct.

1 Q. And then there was no ID that you had known of at this
2 point?

3 A. No ID at this point.

4 Q. So at this point you don't have a suspect?

5 A. Correct.

6 Q. I'm going to show you what has already been marked and
7 admitted.

8 MR. YOUNG: Court's indulgence for just a moment,
9 Judge.

10 THE COURT: Sure.

11 BY MR. YOUNG:

12 Q. Now Officer Phillips, I am going to fast forward some
13 period of time. 2010 were you still employed with the
14 Charleston Police Department?

15 A. I was.

16 Q. As part of your duties as a crime scene tech do you
17 ever drive evidence to SLED?

18 A. I do.

19 Q. Can you tell jury what SLED is?

20 A. Well, SLED stands for the South Carolina Law
21 Enforcement Division. We use them for their forensic
22 services division because they have a lab for DNA, all of
23 sorts of I guess divisions within there that we use that
24 local jurisdictions don't have the money to have themselves
25 so we use the state's lab to process a lot of our evidence.

1 Q. Now in this case did you have an opportunity to drive
2 anything to SLED?

3 A. I did.

4 Q. Officer Phillips, I am going to show you what's been
5 pre-marked as State's 18 and 19 here in one second. This is
6 State's 18 and 19.

7 A. Okay.

8 Q. If you could, tell the jury -- or let me ask you first,
9 do you recognize that?

10 A. I do.

11 Q. What are those two pieces of items?

12 A. They are evidence that we sent up to SLED.

13 Q. Okay. What would -- what would 18 be; can you read on
14 there? It should be on the bottom if you can't read it.

15 A. Oh, yeah, it's -- well, this one is a buccal swab from
16 Corrie D. Brown.

17 Q. And what did you do with that?

18 A. I -- whenever I take anything up to SLED I check it out
19 from our evidence department and then I drive it up to SLED
20 to be submitted for analysis.

21 Q. And did you do that with this piece of evidence in this
22 case?

23 A. Yes, sir.

24 Q. And tell us what the second piece of evidence I gave
25 you is.

1 A. The second piece of evidence would be a buccal swab
2 from Sebastian -- Qreitz I believe is his last name.

3 Q. That is right. And what would you have done with that?

4 A. This also would have been checked out from our evidence
5 department and driven up to SLED and handed over to them for
6 analysis.

7 Q. So you are physically taking these pieces of evidence
8 out of the locker and physically driving them up to SLED?

9 A. Yes, sir.

10 Q. At any point did you open it and play around with it?

11 A. No, sir.

12 Q. At any point did you tamper with it at all?

13 A. No, sir.

14 Q. And you had control over this item the entire time?

15 A. Yes, sir.

16 Q. And you never lost possession of it?

17 A. No, sir.

18 MR. YOUNG: The Court's indulgence, Judge.

19 (Pause.)

20 MR. YOUNG: Judge, may I approach the court reporter?

21 THE COURT: You may.

22 MR. YOUNG: Thank you.

23 (WHEREUPON, State's Exhibit Number 20, photograph of
24 ground, was pre-marked for identification.)

25 BY MR. YOUNG:

1 Q. Officer Phillips, I am going to show you what has been
2 pre-marked as State's 20.

3 A. Okay.

4 Q. Do you recognize that photo?

5 A. I do.

6 Q. Can you describe for the jury what that photo is?

7 A. It's the item that we found strewed around the scene as
8 well.

9 Q. Okay. Is it a fair and accurate representation of how
10 it looked that night?

11 A. Yes, sir.

12 MR. YOUNG: Judge, I would ask you to admit State's 20
13 and publish to the jury.

14 THE COURT: Okay. Anything from the defense?

15 MS. TOLLEY: No objection.

16 THE COURT: Okay. State's 20 is admitted without
17 objection and you may publish it.

18 MR. YOUNG: Thank you, Judge.

19 (WHEREUPON, State's Exhibit Number 20 was admitted into
20 evidence.)

21 BY MR. YOUNG:

22 Q. Officer Phillips, I am going to specifically ask you --
23 and these are those items that you just described, right?

24 A. Yes, sir.

25 Q. What is -- what is this right here (indicating)?

1 A. That would be a tampon.

2 Q. And that was found in that scene in those -- those
3 items?

4 A. Yes, sir.

5 MR. YOUNG: Court's indulgence, Your Honor.

6 THE COURT: Okay.

7 BY MR. YOUNG:

8 Q. Officer Phillips, I'm going to show you -- bear with me
9 for one more second. I am going to show you what has been
10 marked and admitted as State's 1 already that has been
11 published to you prior. And I am going to ask you to look
12 at it one more time.

13 A. Okay.

14 Q. I know it was a little tough to see. Can you tell us
15 why you took these photos?

16 A. Well, in the hospital you could see some discolor --
17 discoloration around her neck. But it was -- it was very
18 hard to photograph because hospitals are very bright. But
19 it was discoloration I would say down around this area of
20 her neck (indicating).

21 Q. Okay. So at this point is it fair to say the person,
22 these injuries -- I know it is tough to see on some of
23 these ---

24 A. Yeah.

25 Q. --- photos. Is it -- did you recognize something in

1 person and you took a photo and then ---

2 A. Yes.

3 Q. Is that right?

4 A. Yes, sir.

5 Q. So there was a reason; you weren't just taking random
6 photos of her?

7 A. Correct.

8 Q. You saw discoloration or marks or whatever you saw?

9 A. Correct.

10 MR. YOUNG: Judge, I have no further questions, Judge.

11 THE COURT: Thank you. Cross-examination.

12 MS. TOLLEY: Thank you, Your Honor. May it please the
13 Court.

14 **CROSS-EXAMINATION BY MS. TOLLY OF OFFICER PHILLIPS:**

15 Q. How are you doing?

16 A. I'm good.

17 Q. Good. So you went to the hospital and met with Ms.
18 Casper?

19 A. I'm sorry, what was that ma'am?

20 Q. You went to the hospital and met with Ms. Casper?

21 A. Yes, ma'am.

22 Q. Okay. And you had an opportunity to observe her?

23 A. Yes, ma'am.

24 Q. Is it true that she was a little bit disoriented?

25 A. I would say so.

1 Q. And were her clothes wet?

2 A. I didn't touch her clothes. I wouldn't -- we wear
3 gloves, so that would be hard for me to tell.

4 Q. Okay. Were her clothes torn?

5 A. Not that I could see.

6 Q. Okay. But you mentioned that the ground was wet?

7 A. Yes, ma'am.

8 Q. Okay. And there were no fingerprints?

9 A. No, ma'am.

10 Q. Was there any damage to the cars in that area?

11 A. None that I could see.

12 Q. Any damage to the door in that area?

13 A. No, ma'am.

14 MS. TOLLEY: I beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 BY MS. TOLLY:

17 Q. You had an opportunity to gather some of the evidence;
18 is that correct?

19 A. Yes, ma'am.

20 Q. Okay. Was one of those items a wallet?

21 A. Yes, ma'am.

22 Q. And inside that wallet was a fake ID?

23 A. It was an identification -- if you let me look at my
24 report for a moment. There was a South Carolina driver's
25 license for a Whitney Nelson in there.

1 Q. Okay. And was there also a prescription in ---

2 MS. GORDON: Objection, Your Honor.

3 THE COURT: Sustained.

4 MS. TOLLEY: Nothing further.

5 THE COURT: Any redirect?

6 MR. YOUNG: None, Your Honor.

7 THE COURT: Okay. Ma'am, you may step down. Is there
8 any objection to this witness being excused? Any objection
9 to her being excused?

10 MR. YOUNG: None, Your Honor.

11 THE COURT: Thank you, ma'am. You may be excused.

12 Ladies and gentlemen, we will take about a five to ten
13 minute break. I have a matter I need to take up with the
14 attorneys. Thank you so much. Please do not discuss the
15 case.

16 (WHEREUPON, the jury leaves the courtroom at 2:48 p.m.)

17 THE COURT: Okay. My caution in general to everyone
18 about Rule 52 was I'm going to sanction you if you do that
19 again. Okay, that was my nice way of saying it.

20 I think your record is well protected on the rape
21 shield statute ruling. I ruled pretrial and then you raised
22 it again with respect to general questions about birth
23 control pills and such. Don't ask those questions again,
24 okay.

25 MS. TOLLEY: We would apologize to the court. With the

1 last question that was not our intent. We were just going
2 to ask about prescription. We were not going to ---

3 THE COURT: For what?

4 MS. TOLLEY: --- reference a pill ---

5 THE COURT: For what prescription?

6 MS. TOLLEY: --- or anything else.

7 THE COURT: A prescription for what?

8 MS. TOLLEY: Nothing. We were just going to say was
9 there a prescription in her wallet. That's it.

10 THE COURT: To show what? For what -- what's the
11 relevance of that under 401 and 402?

12 MS. TOLLEY: There are all kinds of evidence that were
13 discovered out there, and we wanted to reference those.

14 THE COURT: Okay. I've known you a long time. And you
15 are an excellent lawyer and you are doing a great job for
16 your client. But that ain't why you asked about the
17 prescription. And I know that. So I'm again kindly - but
18 this is the last warning - saying don't do it again.

19 Now, more interestingly I was passed a note from the
20 jury which I thought might be that we need a break. But
21 what the note says is, what is a buccal swab.

22 I'm going to tell them when they come back if no one
23 has an objection that I'm not allowed to answer their
24 factual questions, if no one objects to me explaining that,
25 and again charge them that they are limited to the evidence

1 that they hear in the witness box and that's introduced.

2 Anything else y'all want me to add?

3 MS. TOLLEY: Nothing, Your Honor.

4 MR. YOUNG: None, Your Honor.

5 THE COURT: Okay. Why don't y'all take five. Y'all
6 might need a little break too. We will be at ease about
7 five minutes and then we will come back in. Thank you.

8 (WHEREUPON, a brief recess was taken.)

9 THE COURT: Everybody ready to seat the jury?

10 MR. YOUNG: Judge, the State is ready.

11 THE COURT: All right. We will bring them back in and
12 explain to them that I can't answer a question.

13 (WHEREUPON, a short break was had to discuss scheduling
14 and a note from jury was marked as Court Exhibit 1.)

15 (WHEREUPON, the jury entered 2:56 p.m.)

16 BAILIFF: All be seated. Thank you.

17 THE COURT: Thank you. Ladies and gentlemen, thank you
18 for your patience. I wanted to let everyone know that I
19 shared with the attorneys and the defendant earlier I
20 received a note from y'all asking what is a buccal swab.

21 Because I am just the judge of the law and cannot
22 comment on the facts in any way - you are the sole judge of
23 fact - I can't answer that question for you.

24 You are confined to only the evidence that comes into
25 the courtroom either through the witness stand or through

1 documentary evidence that the attorneys put in. That being
2 said, there are more witnesses to come so please do not
3 discuss the case yet or anything you might have heard in the
4 case and we will continue with the trial. Okay.

5 Yes, sir?

6 MR. YOUNG: Thank you, Judge. The State calls Sergeant
7 Walton.

8 THE COURT: Thank you, sir.

9 (WHEREUPON, the witness was duly sworn.)

10 THE BAILIFF: Please state your full name and spell
11 your last for the record, please.

12 MR. WALTON: Larry Walton, W-A-L-T-O-N.

13 SERGEANT LARRY WALTON, having first
14 been duly sworn, testified as follows:

15 **DIRECT EXAMINATION BY MR. YOUNG OF SERGEANT WALTON:**

16 Q. Good afternoon, Sergeant Walton.

17 A. Good afternoon, sir.

18 Q. Thank you for being here. Can you tell the jury where
19 you work?

20 A. College of Charleston, Department of Public Safety.

21 Q. And how long have you worked there?

22 A. Approximately 19 years.

23 Q. What is your job title there?

24 A. I am an investigator and also physical security officer
25 at the college.

1 Q. Are you in charge of the video security there?

2 A. Yes, sir.

3 Q. And where is the C of C campus?

4 A. It is located downtown Charleston.

5 Q. Is [REDACTED] part of the College of Charleston
6 campus?

7 A. No, sir.

8 Q. I'm going to take you back to 2008. Was the basketball
9 arena there in 2008 on [REDACTED]?

10 A. Yes, sir.

11 Q. And -- okay. Did you learn about a sexual assault that
12 had happened on December 5th, the earlier hours of that
13 2008?

14 A. Yes, sir; I did.

15 Q. Did you ever meet with a detective in this case around
16 that time to view some possible security footage?

17 A. Yes, sir.

18 Q. Did any cameras that were on [REDACTED] in '08 show the
19 incident location?

20 A. No, sir.

21 Q. Could you see anything on those cameras in regard to
22 the incident location?

23 A. No, sir.

24 Q. So you couldn't see the sexual assault that happened at
25 that incident location?

- 1 A. No, sir, ---
- 2 Q. Is that correct?
- 3 A. --- I did not. No, sir.
- 4 Q. Could you see any individuals coming from King Street?
- 5 A. No, sir.
- 6 Q. If someone was walking from King Street towards [REDACTED]
- 7 [REDACTED] could you have seen them on that camera?
- 8 A. No, sir.
- 9 Q. Sergeant Walton, I'm going to show you what's been
- 10 marked -- pre-marked rather, State's 13. I am going to ask
- 11 you if you recognize that photo.
- 12 A. Yes, sir, I do.
- 13 Q. And can you tell me is that a true and accurate
- 14 representation of how that camera looked in 2008?
- 15 A. Yes, sir, it is.
- 16 MR. YOUNG: Judge, I would ask to admit State's 13 and
- 17 publish it to the jury?
- 18 THE COURT: Anything from the defendant?
- 19 MS. TOLLEY: Nothing, Judge.
- 20 THE COURT: Okay. State's 13 is admitted without
- 21 objection. You may publish it.
- 22 (WHEREUPON, State's Exhibit Number 13 was admitted
- 23 without objection.)
- 24 BY MR. YOUNG:
- 25 Q. Sergeant Walton, tell the jury -- turn around there and

1 look at the screen, please, and tell the jury - if you need
2 to stand up you can - what we're looking at right here.

3 A. We're looking at 307 Meeting Street.

4 Q. Is this Meeting Street right there (indicating)?

5 A. Yes, sir, it is.

6 Q. What's that right there (indicating)?

7 A. That's [REDACTED].

8 Q. Okay. So that's Meeting and then you take a left onto
9 [REDACTED]?

10 A. That's correct.

11 Q. Tell us what this is right here (indicating). Can you
12 see -- can you stand up where -- do you see that right there
13 (indicating)?

14 A. That is the camera.

15 Q. And you guys viewed that footage?

16 A. Yes, sir.

17 Q. And you couldn't see the incident location?

18 A. No, sir.

19 MR. YOUNG: Court's indulgence, please.

20 BY MR. YOUNG:

21 Q. Tell me a little bit about this ally, this camera.

22 Does the camera twist?

23 A. It is ---

24 Q. Is it a swivel camera?

25 A. It is what they call -- what we call a pan-tilt-and-

1 zoom camera. It is on a rotation. It just -- it is on a
2 predetermined rotation pattern.

3 Q. When it turns from Meeting to [REDACTED] is there anything
4 that's blocking it so you can't see the incident location?

5 A. Yes, sir, there's -- there's actually street lights
6 down that street and also palm trees.

7 Q. Okay. So that light blocks that camera when it turns
8 down [REDACTED] so we can't see anything; is that right?

9 A. That's correct, yes, sir.

10 Q. And since this incident had happened at night would
11 those street lights have been on?

12 A. Yes, sir.

13 Q. So that would have blocked out that camera when it
14 turned down [REDACTED], correct?

15 A. Yes, sir, the brightness of those lights.

16 Q. Okay.

17 MR. YOUNG: That's all questions I have.

18 THE COURT: Thank you. Cross-examination.

19 MS. TOLLEY: Thank you, Your Honor.

20 **CROSS-EXAMINATION BY MS. TOLLEY OF SERGEANT WALTON:**

21 Q. How are you doing, Sergeant Walton?

22 A. I am doing very well. Thank you.

23 Q. Good. Did you have an opportunity to reach out to the
24 City of Charleston Police Department about the fact that
25 there might have been a video showing the incident?

1 A. I'm sorry? I didn't?

2 Q. Did you call the Police Department to tell them after
3 this incident that you maybe had a video?

4 A. Yes, I did.

5 Q. Okay. And that in the video you describe possible
6 black male suspect leaving the area?

7 A. Going into the area.

8 Q. Right. And that that person was wearing a sweat suit
9 type clothing?

10 A. I'm sorry? Again, I didn't ...?

11 Q. And that the individual was wearing sweat suit type
12 clothing?

13 A. I don't -- it's been a while since I have seen that
14 video. I don't recall that.

15 Q. Okay.

16 A. I don't. I'm sorry.

17 Q. If I tell you that it was in the police report
18 specifically that the -- your -- what you relayed to them
19 was that there was a possible black male suspect leaving the
20 area after the incident wearing sweat suit type clothing,
21 would that refresh your recollection?

22 A. Yes, ma'am.

23 Q. Okay. Where is that video?

24 A. I don't have it. I don't -- I don't ---

25 Q. What did you do with it?

1 A. I haven't done anything with it. I -- it might have
2 been -- it might have archived and then it was -- I have no
3 idea where it's at now.

4 Q. Okay.

5 A. I don't have it.

6 Q. Okay. Is there a video from the night of December 4th,
7 morning of December 5th; does that video exist?

8 A. I don't have any video ---

9 Q. Okay.

10 A. --- of that -- of that timeframe.

11 Q. Okay. All right. Thank you.

12 THE COURT: Thank you. Any redirect?

13 MR. YOUNG: Judge, I am going to approach, Judge, if I
14 may ---

15 THE COURT: Yes, you may.

16 **REDIRECT EXAMINATION BY MR. YOUNG OF SERGEANT WALTON:**

17 Q. And hand you a police report. It references your name
18 and is part of this arrow down here. Can you read that
19 second paragraph to yourself.

20 (Pause for witness to review document.)

21 BY MR. YOUNG:

22 Q. You see what part I am talking about, the second
23 paragraph; did you read that?

24 A. Yes, sir.

25 Q. When you called -- or when they called you about the

1 video you said there was possibly a video, right?

2 A. That's correct, yeah.

3 Q. And then according to the report what did you tell --
4 what did you end up figuring out, the video you thought may
5 have existed?

6 A. The video that I think we are referring to here is the
7 video that happened at another time or another day or
8 something and they said it wasn't the -- you know, ---

9 Q. It didn't ---.

10 A. --- it didn't match with the time.

11 Q. So in fact you had messed up and you just said it was
12 the wrong time?

13 A. Right, yeah. I mean I thought that was -- might have
14 been what they were looking for.

15 Q. An it was -- so you said on 12/4?

16 A. Right.

17 Q. Okay. And the incident actually happened on 12/5?

18 A. That's correct.

19 Q. Okay.

20 A. Yeah.

21 Q. Okay. And so that's why that was noted in the report,
22 right?

23 A. Yes, sir.

24 Q. And that is why that video wasn't pulled?

25 A. That's correct.

1 Q. Because it wouldn't have shown anything?

2 A. Right.

3 A. Because it was the wrong day?

4 A. Yes, sir.

5 Q. Okay. And the video that you viewed with the officer
6 didn't show that incident location, did it?

7 A. No, sir, it didn't.

8 MR. YOUNG: No further questions, Judge.

9 **RECROSS-EXAMINATION BY MS. TOLLY OF SERGEANT WALTON:**

10 Q. So there was a video?

11 A. There was a -- right, there was a video. But I
12 didn't -- I didn't keep it or anything because it was the
13 wrong date.

14 Q. Uh-huh. And what about the one for the date; where is
15 that one; did you destroy that one too?

16 A. I don't recall destroying any video. It would -- it
17 would have been a video that's like put on a hard drive on
18 the computer and then it would just delete it. Q. Okay. So
19 it's gone? It doesn't ---

20 A. I'm sorry?

21 Q. The video doesn't exist anymore?

22 A. I don't have no video, no, ma'am.

23 Q. Okay. Because you guys destroyed it; is that correct?

24 A. We saw a video on the 4th. And then we looked at in on
25 the 5th and we didn't -- we didn't see anything.

1 Q. You destroyed the video; am I correct?

2 A. We looked at video ---

3 MR. YOUNG: Judge, I believe that has been asked and
4 answered.

5 A. I don't ---

6 MR. YOUNG: Judge, she asked it three times.

7 THE COURT: Sustained.

8 BY MS. YOUNG:

9 Q. The video no longer exists?

10 A. No, ma'am, I don't have any video.

11 Q. Okay. And when we asked for one you weren't able to
12 provide one?

13 A. No, ma'am.

14 MS. TOLLEY: Okay.

15 THE COURT: Okay. Anything?

16 MR. YOUNG: Nothing, Judge.

17 THE COURT: Okay. May this witness be excused?

18 MR. YOUNG: We have no problem with that, Your Honor.

19 THE COURT: Thank you. Sir, you may be excused. Thank
20 you.

21 SERGEANT WALTON: Thank you, ma'am.

22 THE COURT: Call your next witness, please.

23 MR. YOUNG: Thank you. I'm sorry.

24 THE COURT: That's okay.

25 MR. YOUNG: The State calls Alex Foley.

1 THE COURT: Yes, ma'am, if you would come and be sworn,
2 please.

3 (WHEREUPON, witness was duly sworn.)

4 THE BAILIFF: State your full name and spell your last
5 for the record, please.

6 MS. FOLEY: It is Alexandra Foley, F-O-L-E-Y.

7 ALEXANDRA FOLEY, having first been
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. YOUNG OF MS. FOLEY:

10 Q. Hey, Alex. How are you?

11 A. I'm good. How are you?

12 Q. I'm doing well... I'm just going to get you to speak
13 loudly when you talk to myself and the jury ---

14 A. Okay.

15 Q. --- when you are explaining your answers. Do you live
16 in Charleston, Alex?

17 A. I do.

18 Q. And how long have you lived there?

19 A. Since I came to school in 2006.

20 Q. Okay. And what are you doing these days?

21 A. I am a kindergarten teacher.

22 Q. Okay. And where did you go to college?

23 A. College of Charleston.

24 Q. What years did you attend that college?

25 A. 2006 to 2010.

- 1 Q. While at C of C did you ever meet Brittanae Casper?
- 2 A. I did.
- 3 Q. Do you remember how you met her?
- 4 A. I met her -- she was in the same sorority as me. I met
- 5 her -- she is a year younger. I met her the first week.
- 6 And we have been best friends ever since.
- 7 Q. Okay. What would you guys do together as friends?
- 8 A. Everything.
- 9 Q. Everything. Would you ---
- 10 A. Go to the beach, hang out, ---
- 11 Q. Uh-huh.
- 12 A. --- have sleepovers.
- 13 Q. Okay. So would you say that you got to know her pretty
- 14 well?
- 15 A. Uh-huh.
- 16 Q. In fact would you say you guys are best friends?
- 17 A. Yes.
- 18 Q. Have y'all remained best friends since college?
- 19 A. Uh-huh.
- 20 Q. Now I want to take you back to the night of December
- 21 5th, 2008, okay. Do you remember this night and into the
- 22 next morning?
- 23 A. (Nodded.)
- 24 Q. What was going on at school at that time?
- 25 A. It was around exam time.

1 Q. Okay. So did you have exams?

2 A. It was a while ago. But it was either we didn't have
3 an exam in the next couple days or we were done so.

4 Q. Okay.

5 A. We decide to go out.

6 Q. Okay. So it was December 5th -- or I guess December
7 4th, night of December 5th. Is that -- or December 5th,
8 rather. Was that a Friday?

9 A. I don't remember.

10 Q. Okay. Did at one point you get in touch with Brittanae
11 and y'all talk about going to a party?

12 A. Uh-huh, we met up pretty early and went to a friend's
13 house.

14 Q. What kind of party was it?

15 A. There wasn't a lot of people there. It was just a
16 couple of close friends. Most of them didn't go out with us
17 because they did have exams. It was more just kind of
18 hanging out rather than a party.

19 Q. Okay. Did y'all have some drinks there?

20 A. Yes.

21 Q. Did you make your way at some point later on that night
22 to the Silver Dollar?

23 A. Yes, right after.

24 Q. Now where is Silver Dollar at?

25 A. It is on King Street.

1 Q. Okay. Is that Upper King?

2 A. It is kind of central.

3 Q. Central.

4 A. But, yeah, I guess closer to upper.

5 Q. Okay. And what were you guys doing at the Silver
6 Dollar?

7 A. We just went out together, hanging out. We actually
8 sat on the bar stools the entire night just the two of us.

9 Q. Just the two of you guys?

10 A. Uh-huh.

11 Q. No other friends around at all that y'all had?

12 A. No, everybody else was either like I said had an
13 examine or couldn't go out or was already gone for Christmas
14 or whatnot.

15 Q. So y'all were just having girl night?

16 A. Uh-huh.

17 Q. Did you have some more drinks at Silver Dollar?

18 A. Yes.

19 Q. Okay. How long would you say you stayed there?

20 A. I can't remember. But I'm assuming we probably stayed
21 until it was almost time to close which is 1:30.

22 Q. Okay.

23 A. But I can't remember the exact time.

24 Q. Now was Brittanae there with anybody else besides you?

25 A. No.

1 Q. Any chance she snuck off to meet somebody at all that -
2 - at some point during that night?

3 A. No.

4 Q. Without you knowing?

5 A. No way.

6 Q. Can you describe the demographic of the bar that night.
7 And what I'm asking, who was in there, what type of people
8 was in that bar?

9 A. It was all white college kids ---

10 Q. Uh-huh.

11 A. Young.

12 Q. Young kids?

13 A. Young.

14 Q. And most of them were all in college?

15 A. Yes.

16 Q. Okay.

17 A. It's very rare that anybody that's not in college goes
18 where we were.

19 Q. Okay. Now did you ever know Brittanae to date -- I'm
20 sorry. First of all, strike that. Did Brittanae have a
21 boyfriend?

22 A. Yes.

23 Q. Who was that?

24 A. His name is Sebastian.

25 Q. Had they been together for a little while?

1 A. Uh-huh.

2 MS. TOLLEY: We would just renew our objection, Judge.

3 THE COURT: Thank you. Objection is overruled.

4 BY MR. YOUNG:

5 Q. Did you ever know Brittanae to date a man by the name
6 of Corrie Brown?

7 A. No. Never heard that name.

8 Q. Have you ever seen this man before?

9 A. Never.

10 Q. Did Brittanae date this man?

11 A. Absolutely not.

12 Q. Did Brittanae hang out with this guy?

13 A. Never.

14 Q. Is this Brittanae's boyfriend?

15 A. No.

16 Q. Have you ever seen this man before today?

17 A. Never.

18 Q. Tell us about the end of that night when you and
19 Brittanae go separate ways. Did she -- did you guys leave
20 together or how did -- how did that end?

21 A. We had talked about earlier because a few of my
22 roommates were out of town she was going to spend the night
23 with me. And I went to the bathroom and came back and she
24 was gone. So I tried calling her a couple of time and I
25 didn't hear from her. So I just walked home.

1 Q. Okay. So she just ---

2 A. I assume that had she just went home to -- she's kind
3 of weird about sleeping in other people's bed. She is kind
4 of a homebody so.

5 Q. She just wanted to go back to her house?

6 A. Yeah.

7 Q. Okay.

8 A. So I wasn't really that surprised.

9 Q. Right. But this is without confronting the ---

10 A. Yeah, she ---

11 Q. --- I'm leaving ---

12 A. --- is not -- she doesn't like confrontation a lot
13 either. So I'm sure she just

14 Q. She just left. What did you do after that; did you end
15 up going home?

16 A. Uh-huh.

17 Q. Did you eventually find out what happened to Brittanae
18 that night?

19 A. Uh-huh.

20 Q. Tell us about how you found out about that?

21 (Pause.)

22 Q. And there's some tissues right there, some water if you
23 need one.

24 A. I'm sorry.

25 Q. Take a minute. It's okay.

1 A. It was like nine o'clock the next morning. And I woke
2 up and I called her just to yell at her and tell her she
3 left me, what was she doing. And her roommate at the time
4 answered the phone and told me that I needed to come over
5 there.

6 MS. TOLLEY: Objection.

7 BY MR. YOUNG:

8 Q. Without saying what she said, did you end up going to
9 Brittanae's house that morning at all?

10 A. (Nodded.)

11 Q. Did you find out she had been raped that night?

12 A. (Nodded.)

13 Q. How did she appear the next time you saw her?

14 A. I remember pulling leaves out of her hair.

15 Q. And this is the next morning?

16 A. (Nodded.)

17 THE COURT: Ma'am, I'm sorry, I'm going to have to get
18 you to answer yes or no because my court reporter is trying
19 to take down everything you say. Okay?

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 THE WITNESS: I'm sorry.

23 THE COURT: That's -- no, that's okay. She just can't
24 take down a nod so.

25 THE WITNESS: Okay.

1 BY MR. YOUNG:

2 Q. So the next morning when you went and saw Brittanae she
3 still had leaves in her hair?

4 A. Uh-huh.

5 Q. And you being her friend helped her take those out?

6 A. Yes.

7 Q. Did this -- has this incident changed Brittanae at all?

8 A. Yes.

9 Q. Can you describe how?

10 A. She would go days without talking to anyone. Her mom
11 used to have to call me to go check on her and make sure she
12 hadn't done anything crazy to harm herself. Or -- I think
13 she was just violated in such a way that she was so low that
14 she was a different person for a while.

15 Q. Is this different than the best friend that you met the
16 first time you met her at the College of Charleston; did she
17 act differently then versus how she did after she got raped?

18 A. Yes. But now she's just a little bit stronger.

19 Q. Did you change after this act had happened; have you
20 changed anything?

21 MS. TOLLEY: Objection. Irrelevant.

22 MR. YOUNG: I will withdraw that question, Judge.

23 THE COURT: Thank you.

24 MR. YOUNG: Court's indulgence.

25 THE COURT: Certainly.

1 MR. YOUNG: May I approach the court reporter?

2 THE COURT: You may.

3 (WHEREUPON, State's Exhibit No. 21, DVD, pre-marked.)

4 THE COURT: State's 21..

5 MR. YOUNG: This is pre-marked State's 21, Judge..

6 THE COURT: Okay.

7 THE COURT: Ladies and gentlemen, if you'll just bear
8 with us for one minute. We need some equipment.

9 MR. YOUNG: I should have done that earlier. I'm
10 sorry, Judge.

11 THE COURT: That's okay.

12 MS. TOLLEY: Okay. Can we approach for just a second?

13 THE COURT: You may. Why don't y'all come on up.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: Yes.

16 MS. TOLLEY: With regard to the video we would -- I
17 didn't want to object in open court. But it would appear to
18 just be simply bolstering whatever it is she has already
19 testified to it and that what this witness has testified ---

20 THE COURT: I don't even know what it is.

21 MR. YOUNG: It's a video of the party that night
22 showing just a few people. It's corroborating her testimony
23 of what happened that night. That is certainly relevant and
24 should be admitted.

25 MS. TOLLEY: And I think there has been sufficient

1 testimony that she has been out partying and all that kind
2 of stuff.

3 THE COURT: I don't think it's cumulative. I mean I
4 think it's relevant to show where she was. But what we will
5 do is go ahead and play it. And then I will let you -- I am
6 going to overrule the objection. But you can put it on the
7 record more ---

8 MS. TOLLEY: Okay.

9 THE COURT: --- specifically if you want to. I think
10 you are preserved. But just if you want to.

11 MS. TOLLEY: All right.

12 MR. YOUNG: It's like 20 seconds.

13 THE COURT: Yeah, I am going to let you show it. Okay.

14 (WHEREUPON, end of bench conference.)

15 BY MR. YOUNG:

16 Q. Alex, let me ask you just a few basic questions.

17 Not -- do you remember taking -- was there a video taken
18 that night at the Tacky Christmas Party?

19 A. Uh-huh.

20 Q. Or was that ---

21 A. Yes. I'm sorry.

22 THE COURT: Thank you. That's okay.

23 BY MR. YOUNG:

24 Q. Was that -- was that a yes?

25 A. Yes.

1 Q. Was that -- what was that video of?

2 A. We were just doing really bad dancing to some Christmas
3 music.

4 Q. And you -- you say you. You and who?

5 A. Me and Brittanae.

6 Q. Okay.. And that was that night of December 5th?

7 A. Yes.

8 MR. YOUNG: Judge, at this point I would ask that CD
9 that she just identified as the video of that night that was
10 pre-marked as State's 21 be moved into evidence.

11 THE COURT: Okay. It is admitted over objection.

12 MR. YOUNG: Thank you, Judge. I ask to publish it to
13 the jury when we get the video. Thank you.

14 (WHEREUPON, State's Exhibit Number 21 was admitted.)

15 (WHEREUPON, break was had to set up equipment.)

16 THE COURT: Ms. Tolley, where ever you need to be to be
17 able to see it. I know you have already seen it but.

18 MS. TOLLEY: Thank you.

19 THE COURT: Sure.

20 MR. YOUNG: Judge, I would ask the witness to step down
21 so she can ---

22 THE COURT: Sure.

23 MR. YOUNG: --- show us what we are looking at here.

24 THE COURT: Ma'am, can you step down. And he might ask
25 you some questions about the video.

1 MR. YOUNG: Judge, I don't know if it's going to play.
2 It is a disc error.

3 (WHEREUPON, pause trying to play video.)

4 BY MR. YOUNG:

5 Q. Alex, I am just going to get you to watch this and at
6 the end I am going to ask you a few more questions.

7 A. Okay.

8 (WHEREUPON, State's Exhibit 21 was played.)

9 BY MR. YOUNG:

10 Q. That's all right, Alex, you can have -- take your seat.
11 Thank you. And I apologize that it was a little tough to
12 see, Alex.

13 But just tell us -- so tell us again, if you don't
14 mind, what we were looking at. Was that that tacky
15 Christmas party?

16 A. Yes.

17 Q. What were y'all doing?

18 A. Dancing. It was ---

19 Q. Dancing.

20 A. That -- that video was actually taken with my phone and
21 I -- whatever or whoever had it. I can't remember who it
22 was, was supposed to be taking a picture but they
23 accidentally recorded us.

24 Q. Recorded a video of you guys?

25 A. Yes.

1 MR. YOUNG: Court's indulgence, Judge.

2 BY MR. YOUNG:

3 Q. Just a few more questions. Was Corrie Brown at that
4 Tacky Christmas Party?

5 A. No.

6 Q. Had you ever seen him before this night?

7 A. No.

8 Q. Or before rather today?

9 A. No.

10 Q. And that's not her boyfriend?

11 A. No.

12 Q. Her boyfriend is Sebastian?

13 A. Yes. Who is also a good friend of mine.

14 Q. And you don't know this man?

15 A. No.

16 Q. And you're her best friend?

17 A. Yes.

18 Q. Would it be fair to say you would know her boyfriend?

19 A. Yes.

20 MR. YOUNG: No further questions, Judge.

21 THE COURT: Thank you. Cross-examination

22 MS. TOLLEY: Thank you, Your Honor.

23 **CROSS-EXAMINATION BY MS. TOLLY OF MS. FOLEY:**

24 Q. Good afternoon.

25 A. Hi.

1 Q. You and Brittanae are best friends?

2 A. Yes.

3 Q. Okay. Would it be safe to say that there were times
4 where you were not spending time together?

5 A. No.

6 Q. When she went to class did you go to class with her?

7 A. No. But I was with her almost every day.

8 Q. Okay. Twenty-four hours a day?

9 A. No.

10 Q. Seven days a week?

11 A. No.

12 Q. So there were times when you were not with her; is that
13 correct?

14 A. Yes.

15 Q. And on the day of this alleged incident on December
16 4th, I guess the day leading into the night, were you with
17 her all day?

18 A. I can't remember.

19 Q. Do you live with her?

20 A. No.

21 Q. Did you get up with her?

22 A. No.

23 Q. Did you eat breakfast with her?

24 A. No.

25 Q. Did you eat lunch with her?

- 1 A. No.
- 2 Q. Did you --
- 3 A. I -- maybe. I don't remember.
- 4 Q. Okay. So you weren't with her all day?
- 5 A. No.
- 6 Q. Okay. After she left the party did you see her again
- 7 that night?
- 8 A. After we left the party we went to the bar.
- 9 Q. After you left the bar did you see her that night?
- 10 A. No.
- 11 Q. Were there men at the party?
- 12 A. Like four or five of our very best guy friends.
- 13 Q. Were there men at the bar?
- 14 A. I'm assuming so.
- 15 Q. Okay.
- 16 A. I mean -- correction. There were college students at
- 17 the bar.
- 18 Q. Men college students?
- 19 A. If you consider them men, sure.
- 20 Q. Boys?
- 21 A. There were college students I would say between the
- 22 ages of 18 and 24 tops.
- 23 Q. Men, boys, I just don't have another category.
- 24 A. Okay, men.
- 25 Q. Okay. You didn't leave with her from the bar; is that

1 correct?

2 A. Correct.

3 Q. And you didn't see her again anymore until the next
4 day; is that correct?

5 A. Yes.

6 Q. Okay. So you didn't witness the incident?

7 A. No.

8 Q. You didn't hear the incident?

9 A. No.

10 Q. You didn't see her get sexually assaulted?

11 A. No.

12 MS. TOLLEY: Nothing else, Judge.

13 MR. YOUNG: Nothing.

14 THE COURT: Thank you. Nothing further?

15 MR. YOUNG: Nothing from the State.

16 THE COURT: Okay. May this witness be excused?

17 MR. YOUNG: Yes, Your Honor.

18 MS. TOLLEY: Yes, ma'am.

19 THE COURT: Ma'am, you may step down. And you are
20 excused. Thank you.

21 THE COURT: Okay. Next witness.

22 MR. YOUNG: Thank you.

23 THE COURT: Whenever you're ready.

24 MR. YOUNG: Thank you, Judge. The State calls Officer
25 Hood.

1 THE COURT: Sir, if you would come forward to be sworn,
2 please. Thank you.

3 (WHEREUPON, the witness was duly sworn.)

4 THE BAILIFF: State your full name and spell your last
5 for the record, please.

6 SERGEANT HOOD: My name is Sergeant Steven,
7 S-T-E-V-E-N, Hood, H-O-O-D.

8 SERGEANT STEVEN HOOD, having first been
9 duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY MR. YOUNG OF OFFICER HOOD:**

11 Q. Thank you, Officer Hood. Good afternoon. Officer
12 Hood, can you tell the jury where you work?

13 A. I work for Charleston Police Department.

14 Q. And how long have you worked there?

15 A. Thirty-five-and-a-half years now.

16 Q. What are your duties within the Department?

17 A. As of now it's ward service -- ward service, bond
18 hearings and prisoner transport.

19 Q. Okay. And were you employed with Charleston Police
20 Department in December 10th, 2008?

21 A. Yes, I was.

22 Q. And what were your duties then; same duties?

23 A. No, at that time I was a crime scene investigator.

24 Q. Okay. And what does crime scene investigator mean;
25 what does that mean?

1 A. Crime scene investigator is an individual that goes out
2 after the commission of a crime or a crime has been
3 committed and what they are doing is trying to reconstruct a
4 crime to the best of their ability through physical
5 evidence, through testimony, through just anything. The
6 smallest bit of evidence may give you the biggest story.

7 So it's actually finding facts trying to put them
8 together, and then it gives the detective something to work
9 with.

10 Q. Great. Officer Hood, do you have your chain of custody
11 in front of you?

12 A. I do.

13 Q. From December 10th, 2008?

14 A. Yes, sir.

15 Q. Can you tell me on December 10th, 2008, did you ever
16 handle a piece of evidence?

17 A. Yes, I picked up a -- it is a sexual protocol kit.
18 That's the name of the kit.

19 Q. Is that also known as the rape kit?

20 A. It is the rape kit, yes, sir.

21 Q. Where did you pick that up from?

22 A. I picked that up from the Women's Clinic up in North
23 Charleston from a Faye -- a Faye Lebuff (ph).

24 Q. And what did you do with it?

25 A. I immediately took it back probably a 25, 30 minute

1 ride from there to my office West Ashley. Stuck it in a
2 secured refrigerated locker until it was determined it was
3 going for analysis.

4 Q. Okay. And at any point did you open it?

5 A. No, I put it in intact.

6 Q. Okay. And you didn't tamper with it at all?

7 A. Negative.

8 Q. And you took it to the evidence locker and secured it?

9 A. Yes, sir, I did.

10 Q. Officer Hood, I'm going to show you what's been
11 pre-marked State's Exhibit 17. Is this a piece of evidence
12 that you took from the Women's Clinic and transported to CPD
13 and logged it into evidence?

14 A. These are components of the kit. The kit is actually
15 what I have here is the back of the box which is a chain of
16 custody and the front of the box. It is a box that this
17 stuff is in.

18 Q. So the box just isn't there, but the stuff is there?

19 A. The stuff is in the box. The box is sealed when I
20 collect it.

21 Q. Gotcha. But we don't have the box here, right?

22 A. No, no.

23 Q. Okay. We just have the materials ---

24 A. We just have the materials that were collected and
25 analyzed by SLED.

- 1 Q. Okay. And these are what you took to ---
- 2 A. Correct.
- 3 Q. --- the evidence locker, secured them in?
- 4 A. No, I did not take these. These -- this stuff that --
- 5 these items were in the box when I collected the box.
- 6 Q. Right.
- 7 A. Because I never took it to SLED.
- 8 Q. Right. And that's -- maybe -- let me rephrase my
- 9 question.
- 10 A. Yes, sir. I'm sorry.
- 11 Q. You picked these items up from the Women's Clinic and
- 12 you took them and you logged them into evidence at CPD?
- 13 A. As one box, yes, sir.
- 14 Q. As one box?
- 15 A. Correct.
- 16 Q. Okay. And you didn't open them, play around with them
- 17 or anything did you?
- 18 A. Negative.
- 19 Q. Okay. When you got the box was everything sealed in
- 20 the box?
- 21 A. Again, the box was sealed.
- 22 Q. Okay, the box was sealed ---
- 23 A. I could not see inside, no, sir.
- 24 Q. Okay. So the answer, was the box sealed ---
- 25 A. The box it was sealed ---

1 Q. It was sealed.

2 A. --- and marked; yes, sir.

3 Q. Okay. And you didn't open that up or anything?

4 A. No, sir.

5 Q. You just transported it?

6 A. All's I did is transport it and store it.

7 Q. Okay.

8 MR. YOUNG: That's all the questions I have for Officer
9 Hood, Judge.

10 THE COURT: Thank you, sir. Cross-examination.

11 MS. TOLLEY: Thank you, Judge.

12 **CROSS-EXAMINATION BY MS. TOLLEY OF OFFICER HOOD:**

13 Q. How are you doing, Officer Hood?

14 A. All right, counsel.

15 Q. Good. When you do -- or when you pick up a package
16 from MUSC like you did in this particular case do you ever
17 write a written report with regard to it?

18 A. No, what we do is we use -- at that time we were using
19 our Form 300's. It's a tracking form. And they stay --
20 they stay with the case file.

21 Q. Uh-huh. Were you -- that was in 2008 you were -- you
22 are still working at Charleston Police Department?

23 A. I am.

24 Q. Okay. Was there ever an incident with the Charleston
25 Police Department that resulted in your being suspended or

- 1 transferred out of the Crime Scene Unit?
- 2 A. Yes, there was.
- 3 Q. Okay. And that involved the mishandling of evidence?
- 4 A. Mishandling is a not a term I want to use. But it
- 5 dealt with evidence, yes.
- 6 Q. Okay. If your disciplinary history says that it's
- 7 mishandling evidence would that be accurate?
- 8 A. Okay, I -- may I ask you a question?
- 9 Q. No.
- 10 A. Okay. No, I did not mishandle evidence.
- 11 Q. Okay. I'm going to hand you a form from the Charleston
- 12 Police Department ---
- 13 A. Uh-huh.
- 14 Q. --- and ask you to take a look at it.
- 15 A. Certainly.
- 16 Q. Can you identify it?
- 17 A. Yes, employee feedback from the Charleston Police --
- 18 the Internal Affairs or Professional Standards Office.
- 19 Q. Okay. Does it indicate that you were disciplined for
- 20 mishandling evidence?
- 21 A. Mishandling evidence?
- 22 Q. I'm just reading it ---
- 23 A. Right ---
- 24 Q. --- exactly from the paper. Is that correct?
- 25 A. Yeah, I -- mishandling evidence, correct.

1 Q. Okay. Thank you.

2 MS. TOLLEY: Nothing further, Your Honor.

3 THE COURT: Thank you. Redirect.

4 MR. YOUNG: Thank you, Judge.

5 **REDIRECT EXAMINATION BY MR. YOUNG OF OFFICER HOOD:**

6 Q. Officer, how long have you worked Charleston Police
7 Department?

8 A. Since 1976.

9 Q. How many years is that?

10 A. Thirty-five-and-a-half years.

11 Q. Thirty-five-and-a-half years and you have had one
12 incident about mishandling of evidence and that was in 2009;
13 is that right?

14 A. Correct.

15 Q. Okay. And that happened -- this event happened, the
16 case in front of today, happened in 2008?

17 A. In 2008, correct.

18 Q. Okay. In this case in front of us you didn't mishandle
19 anything, did you?

20 A. Negative.

21 Q. You drove it directly from the clinic and logged it in?

22 A. I -- that I did.

23 Q. Explain just so I'm clear ---

24 A. Sure.

25 Q. --- about the '09 incident. Just clear that up for the

1 jury.

2 A. Regarding the mishandling?

3 Q. That's correct.

4 A. Okay.

5 Q. Explain what that is and just briefly you know

6 without ---

7 A. Sure. What had happened is I had to go to Virginia
8 Beach to pick up some evidence on -- on a case. I picked up
9 evidence and brought it back, stuck it in my locker, a
10 secured locker which we always do. And I left it until it
11 was determined that it was going to be sent to SLED.
12 Because at that time I did the transfers to SLED, all the
13 evidence.

14 The reason being I left the evidence in that particular
15 locker is because we were having -- I was minimizing the
16 chain of custody. If I collected it and the only one that
17 handled it until it got to SLED then there was -- it was a
18 no brainer on the ---

19 Q. So you stuck it in your locker instead of securing it
20 in a secured box?

21 A. It was -- it was secured in -- it was secured in a
22 secured, locked locker ---

23 Q. Okay.

24 A. --- that nobody had access to other than myself.

25 Q. But it wasn't secured in the -- just so I'm clear, it

1 wasn't secured in the actual station; is that ---

2 A. No, it was -- no.

3 Q. Okay. And that's -- that was the problem, right?

4 A. No, the problem is because I left it in my locker.

5 Q. The problem is you left it in your locker?

6 A. Correct. Right.

7 Q. Okay. But in this case in 2008 you didn't put anything
8 in your locker?

9 A. No, sir, I put it directly into the locker that it was
10 supposed to.

11 Q. Okay. Thank you, Officer Hood.

12 THE COURT: Thank you. Anything further for this
13 witness?

14 MR. YOUNG: None from the State.

15 THE COURT: Okay. Sir, you may step down and be
16 excused. Thank you.

17 SERGEANT HOOD: Thank you, ma'am.

18 THE COURT: Yes, sir. Okay. Ready for your next
19 witness?

20 MR. YOUNG: Judge, we are checking to see if the next
21 witness is outside. One of them is. I'm just trying to
22 make sure --

23 THE COURT: Okay.

24 MR. YOUNG: --- of the order.

25 THE COURT: No problem.

1 MR. YOUNG: Just give me one second if you would.
2 Officer Magwood?
3 OFFICER MAGWOOD: Yes, sir.
4 MR. YOUNG: Okay. The State calls Officer Magwood.
5 THE COURT: Sir, if you would come forward and be
6 sworn, please. Thank you.
7 (WHEREUPON, the witness was duly sworn.)
8 THE BAILIFF: If you will please state your full and
9 then spell your last name for the record.
10 MR. MAGWOOD: Melvin Magwood. Last name is
11 M-A-G-W-O-O-D.
12 OFFICER MAGWOOD, having first been duly
13 sworn, testified as follows:
14 **DIRECT EXAMINATION BY MR. YOUNG OF OFFICER MAGWOOD:**
15 Q. Good afternoon, Officer Magwood.
16 A. Good afternoon.
17 Q. Can you tell the jury where you work?
18 A. I work at the Charleston City Police Department.
19 Q. And how long have you worked there?
20 A. Eighteen years.
21 Q. And what are your duties within the Department?
22 A. I'm a detective in the Special Victims Unit where I
23 investigate crimes against persons.
24 Q. Were you in the course of these duties on December
25 10th, 2008?

1 A. Yes, I was.

2 Q. Detective Magwood, have you had a chance to look at the
3 chain of custody for this case?

4 A. Yes, I have.

5 Q. Okay. Did you have an opportunity to handle any
6 evidence in this case, the sexual assault that happened on
7 December 5th at [REDACTED]?

8 A. Yes, I did.

9 Q. Can you tell the jury what you did with the evidence,
10 what evidence you had, and what did you do with it? And let
11 me strike that.

12 May I approach you. I am going to show you what's been
13 pre-marked State's 17. Do you recognize that?

14 A. Yes, I do.

15 Q. Okay. Is that the rape kit that you transported from
16 CPD to SLED?

17 A. That's correct.

18 Q. Okay. Was this your involvement with this case
19 transporting that package, the rape kit, from the Police
20 Department to the South Carolina Law Enforcement Division?

21 A. That was my only involvement in case, yes.

22 Q. Describe -- and this might be basic. Describe please
23 when I say transport from the Charleston Police Department
24 to South Carolina Law Enforcement Division are you -- how
25 are you getting there?

1 A. By city vehicle. I first responded to the Crime
2 Scene Office where I met with crime scene tech Richard
3 Wishimer (ph). And I received the victim evidence
4 collection kit from him. And I immediately transported it
5 to the State Law Enforcement Division in Columbia, South
6 Carolina.

7 Q. Okay. And any stops along the way?

8 A. No.

9 Q. Okay. Did you take any of the evidence out and tamper
10 with it at all?

11 A. No, I didn't.

12 Q. Was it secure when you got it?

13 A. Yes, it was.

14 Q. And was it secure when you handed it to South Carolina
15 Law Enforcement Division?

16 A. That's correct, it was secure.

17 Q. And Officer Wiersma he is crime scene tech that you
18 got -- that you got the kit from that was -- that checked in
19 the evidence, correct?

20 A. That's correct.

21 Q. Okay.

22 MR. YOUNG: No further questions for Officer Magwood,
23 Judge.

24 THE COURT: Thank you. Yes, ma'am?

25 MS. TOLLY: No question for this witness, Judge.

1 THE COURT: Okay. Officer, you may step down. Thank
2 you.

3 OFFICER MAGWOOD: Thank you.

4 THE COURT: You may be excused. Everybody okay?
5 Anybody need a break? Okay.

6 MR. YOUNG: Judge, the State calls Officer Linda
7 Wilson.

8 THE COURT: Okay. Yes, ma'am, if you would come
9 forward and be sworn, please.

10 (WHEREUPON, the witness was duly sworn.)

11 THE BAILIFF: Ms. Wilson, if you will please speak
12 into the microphone and state your full name and spell your
13 last name for the record.

14 MS. WILSON: Linda Wilson, W-I-L-S-O-N.

15 LINDA WILSON, having first been
16 duly sworn, testified as follows:

17 **DIRECT EXAMINATION BY MR. YOUNG OF LINDA WILSON:**

18 Q. Good afternoon officer Wilson.

19 A. Hey.

20 Q. Can you tell the jury where you work?

21 A. I work at City of Charleston Police Department,
22 Evidence Division.

23 Q. How long have you worked there?

24 A. Since November 2008.

25 Q. Okay. What are your duties there?

1 A. I take in evidence that officers or investigators put
2 into evidence for storage.

3 Q. So you are the actual person in evidence that would
4 take in a piece of evidence?

5 A. Yes.

6 Q. Describe how the process of taking in a piece of
7 evidence how does that work.

8 A. The officer would bring the evidence to us. He would
9 create a voucher and I would take it in, make sure the
10 voucher matches to evidence, and accept it into our Evidence
11 Division and put it in the back in our evidence control
12 room.

13 Q. Is it a lock box you are getting it out of?

14 A. In the mornings, yes, sir.

15 Q. Tell us about that lock box.

16 A. It is a mailbox with a lock. And we have a key, the
17 evidence control room.

18 Q. When you say we, is it you and the evidence ---

19 A. It is myself and my supervisor, Brian Denton.

20 Q. Okay. Officer Wilson, I am going to show you a couple
21 pieces of evidence that have been pre-marked; State's 19,
22 State's 18. I am going to ask you if you recognize those
23 pieces of evidence.

24 A. Yes, sir.

25 Q. And if you can read on the bottom, can you tell us what

1 those pieces of item -- evidence are?

2 A. What they are?

3 Q. That's correct. On the bottom line of the packaging.

4 A: Okay. It says on the bottom line, item three,
5 described as one sealed buccal swab contained in CPD; Item
6 two, one buccal swab from Corrie D. Brown.

7 Q Okay. And can you tell us what the second one is?

8 A. It is Item 4 described as one sealed buccal swab
9 contained in CPD; Item 4, one buccal swab from
10 Stefan (ph) -- I'm sorry.

11 Q. Is it Sebastian?

12 A Sebastian. I'm sorry.

13 Q. Qreitz?

14 A. Qreitz.

15 Q. Can you tell us what you did with these items?

16 A. When they came into the evidence I put them in our
17 evidence control room for storage.

18 Q. Okay. So when they would have been logged into
19 evidence do you know what officer logged them in?

20 A. Yes, sir. It would have been Mary Phillips who I
21 received it from.

22 Q. Okay. And just so we are clear, is this evidence
23 sticker is that who drove it back from SLED in front of you;
24 did Officer Murray check that into evidence?

25 A. Now this here is who has recovered it. It says recover

1 from. And it should have been Officer Murray, yes.

2 Q Okay.

3 A Not unless I could see the ---

4 Q. And what does this on the back of the package say right
5 there? This ---

6 A. This is Officer Murray.

7 Q Okay. That's ---

8 A I'm sorry.

9 Q. Okay.

10 A. Okay. This is -- yes, it came back from SLED.

11 Q And that is when ---

12 A Mary Phillips.

13 Q Right.

14 A And Officer Murray is the one to ---

15 Q Okay.

16 A --- turn it in.

17 Q. And can you tell us who dropped this one off?

18 A Officer Murray.

19 Q. Officer Murray. So she would have put them in the lock
20 box; you would have taken them out and you would have stored
21 them in evidence, right?

22 A Yes, sir.

23 Q Did you tamper with them at all?

24 A No, sir.

25 Q Were they sealed when you got them out?

1 A Yes, sir.

2 Q. And you didn't take them out and play with them at all?

3 A No, sir.

4 Q Okay. Would somebody later on have taken them out of
5 evidence and then driven them to SLED?

6 A. Yes, sir.

7 Q For them to be tested?

8 A Yes, sir.

9 MR. YOUNG: No further questions, Judge, for Officer
10 Wilson.

11 THE COURT: Thank you. Cross-examination.

12 MS. TOLLEY: Just one question.

13 THE COURT: Yes.

14 **CROSS-EXAMINATION BY MS. TOLLEY OF OFFICER WILSON:**

15 Q. How you doing?

16 A I'm fine.

17 Q. Ms. Wilson, if someone were to put evidence somewhere
18 other than in the designated locker or in the evidence
19 control room would that be a violation of the policy?

20 A. Yes, yes, it would.

21 Q Okay. Thank you.

22 THE COURT: Thank you. Any redirect?

23 MR. YOUNG: None, Your Honor.

24 THE COURT: Okay. Ma'am, you may step. And you are
25 excused.

1 MR. YOUNG: Judge, if we could have two minutes. Our
2 next witness is walking from the parking garage.

3 THE COURT: That's fine.

4 MR. YOUNG: Thank you.

5 THE COURT: Ladies and gentlemen, why don't y'all take
6 about a five minute break. If anybody needs a quick break I
7 am going to ask you to go to your jury room and you can
8 stretch or do whatever you need to do and then shortly we
9 start again. Please do not discuss the case yet.

10 (WHEREUPON, the jury leaves the courtroom at 3:55 p.m.)

11 THE COURT: Ms. Tolley, did you want to put anything
12 else on the record? I think you are protected as to State's
13 21, the video tape. Your objection was that it's cumulative
14 and ---

15 MS. TOLLEY: Yes, Your Honor.

16 THE COURT: --- served to bolster the witness. I
17 overruled the objection and found that it was not cumulative
18 and that it wasn't relevant. Anything else that you wanted
19 to put on the record?

20 MS. TOLLEY: Nothing.

21 THE COURT: Okay. Thank you.

22 (WHEREUPON, a brief break was had.)

23 MR. YOUNG: Judge, we are ready to proceed whenever you
24 are.

25 THE COURT: Okay. Let's bring the jury, please, sir.

1 Thank you.

2 (WHEREUPON, the jury returned 4:00 p.m.)

3 THE BAILIFF: Your Honor, all the jurors are seated.

4 THE COURT: Thank you, ma'am. Okay. Ladies and
5 gentlemen, thank you for your patience. I think we are
6 ready to proceed. You can go ahead and call your next
7 witness.

8 MR. YOUNG: Thank you. The State calls crime scene
9 tech, Richard Wiersma.

10 THE COURT: Okay. Sir, if you will come forward and be
11 sworn, please. Thank you.

12 (WHEREUPON, the witness was duly sworn.)

13 THE BAILIFF: Be seated. State your full name and
14 spell your last name for the record.

15 THE WITNESS: Richard Wiersma, W-I-E-R-S-M-A.

16 RICHARD WIERSMA, having first been duly
17 sworn, testified as follows:

18 **DIRECT EXAMINATION BY MR. YOUNG OF OFFICER WIERSMA:**

19 Q. Good afternoon, Officer Wiersma.

20 A. Thank you.

21 Q. Thank you for being here. Can you tell the jury where
22 you work?

23 A. I work for the City of Charleston Police Department in
24 the Crime Scene Unit.

25 Q. How long have you worked there?

1 A I have been with the Department about seven years. I
2 have been in the Crime Scene Unit for the last five years.

3 Q Okay. And what are your duties within the Crime Scene
4 Unit?

5 A Respond to any crime scenes within the city, process
6 the scene for any evidence; collect evidence, fingerprints,
7 anything related to the crime that might be needed for
8 further investigation.

9 Q Do you handle evidence in some cases?

10 A Yes, we do.

11 Q Now were you in the course of the duties we just talked
12 about on December 10th, 2008?

13 A Yes.

14 Q And do you have your chain of custody in front you;
15 have you had a chance to review that?

16 A I have seen it. I do not have it in front of me.

17 Q Okay. I am going to refresh your memory here. The
18 chain of custody from the CSC case.

19 A Yes, sir.

20 Q I am also going to show you what has been pre-marked as
21 State's 17. Do you recognize what that is?

22 A Yes, it's the contents of the CSC kit.

23 Q Okay. And what was your involvement with this case and
24 this kit?

25 A We have a storage facility at our office where we could

1 store evidence. Specifically in this case we have a secure
2 refrigerator where we can keep blood or CSC kits, anything
3 that needs to be refrigerated.

4 I was requesting to take this CSC kit out of our secure
5 refrigerator and give it to Investigator Magwood.

6 Q. Okay. Was it sealed when you took it out of there?

7 A. Yes.

8 Q. Okay. And you didn't open it at all?

9 A. No.

10 Q. Didn't tamper with it?

11 A. No.

12 Q. And who would have put it in there; can you see on that
13 chain who put that kit in the sealed box?

14 A. Yeah, that is Sergeant Hood.

15 Q. Okay. And then you take it and then who do you give it
16 to?

17 A. I gave it to Investigator Magwood.

18 Q. And do you know what his role in that was all?

19 A. I know he was -- I believe he was the lead investigator
20 in the case at the time.

21 Q. Do you know if he drove this to SLED?

22 A. As far as I know, yes.

23 Q. Okay. And when you had the kit in your possession you
24 didn't open it?

25 A. No.

1 Q. Okay.

2 MR. YOUNG: That's all the questions I have for Crime
3 Scene Tech Wiersma.

4 THE COURT: Thank you. Cross-examination.

5 MS. TOLLEY: Nothing for this officer, Judge.

6 THE COURT: Thank you. Sir, you may step down and be
7 excused.

8 OFFICER WIERSMA: Thank you.

9 THE COURT: Thank you.

10 MR. YOUNG: Judge, the State calls Investigator Shyla
11 Murray, the Charleston Police Department.

12 THE COURT: Okay. Ma'am, if you would come forward to
13 be sworn.

14 (WHEREUPON, the witness was duly sworn.)

15 THE BAILIFF: Be seated. If you will please state your
16 full name and spell your last name.

17 THE WITNESS: Shyla Murray, M-U-R-R-A-Y.

18 OFFICER SHYLA MURRAY, having first been
19 duly sworn, testified as follows:

20 **DIRECT EXAMINATION BY MR. YOUNG OF OFFICER MURRAY:**

21 Q. Good afternoon, Officer Murray.

22 A. How are you?

23 Q. Good. How are you doing?

24 A. Good, thank you.

25 Q. Can you tell the jury where you work?

1 A. I work at the City of Charleston Police Department.

2 Q. And how long have you worked there?

3 A I was hired on July of 2000.

4 Q. Okay. Twelve years?

5 A Twelve years.

6 Q. And what are your duties and responsibilities there?

7 A. I currently am in uniform patrol, Team 4.

8 Q. Okay. What kind of training do you have in

9 specifically -- strike that. Were you ever in the Special
10 Victim's Unit?

11 A. Yes, sir.

12 Q Okay. Can you tell us what that is and what that
13 entails?

14 A. I was in the Special Victims Unit since 2005 to just
15 recently a month ago. I would investigate sexual assaults,
16 criminal domestic violence, anything to do with children.

17 Q. Okay. And so back in 2008 you were on the Special
18 Victims Unit?

19 A. Yes, sir.

20 Q. And specifically December 5th and December 6th, 2008,
21 did you go on about on an incident on the night -- or rather
22 the early hours of the 5th?

23 A Yes, sir. I was working day -- day-shift central that
24 weekend.

25 Q. Okay. And what was the incident that you learned

1 about?

2 A I learned there was a criminal sexual assault at 20
3 Burns Lane the morning that I came into work.

4 Q. So at this point what's your involvement when you learn
5 about this?

6 A At that point I was just attempting to gain information
7 of what happened and see if everything was covered from the
8 night before.

9 Q. Did you have an opportunity to take a statement from
10 the victim on the day after the incident?

11 A. Yes, sir.

12 Q. How did the victim appear when you were taking the
13 statement?

14 A. She appeared fine. She was upset. But she was able to
15 give me a statement in reference to what happened.

16 Q. Okay. In reference to that sexual assault?

17 A. Yes, sir.

18 Q. Was she with anyone when you took a statement?

19 A Her mother was there.

20 Q. So her -- did her parents live here; do you know?

21 A No, her parents came from I believe Georgia.

22 Q So they had driven down through the night ---

23 A. Yes, sir.

24 Q. --- to be there?

25 A Uh huh.

1 Q. Okay. Where was the statement taken?

2 A It was taken at the Charleston City Police Department.

3 Q. How did the victim -- was the victim forthcoming with
4 you?

5 A. Yes, sir.

6 Q. After the statement that you took did you show her any
7 sketches of a person to possible get an ID?

8 A. No, sir. She was unable to ID anyone. And at that
9 time she told us that she was unable to even provide a
10 sketch due to the fact that she was so scared that she had
11 turned her head so she was unable to provide anymore
12 information on a suspect.

13 Q. Okay. So you didn't show her a six pack of possible
14 suspects?

15 A. No, sir.

16 Q. And this was due to the fact that she couldn't ID
17 someone?

18 A. Correct. The reason why we didn't show her a six pack
19 or had her do a sketch is because she said she would be
20 unable to even ID anyone.

21 Q. Okay. So at this point on 12/6/2008 is there a suspect
22 developed?

23 A. No, sir.

24 Q. Okay. Do you know if the victim would have been
25 swabbed or tested for possible DNA around her vaginal area

1 to help identify the perpetrator of the crime?

2 A. Well, from what I learned she went to Northwood's and
3 she did receive a rape kit. So that's what they do on a
4 rape kit.

5 Q. Okay. They did swabs and ---

6 A. Yes, sir.

7 Q In order to detect fluids?

8 A. Correct.

9 Q. Okay. Where would this have been done; do you know?

10 A It would have been done at Northwood's. We call it
11 Northwood's. It was in North Charleston. It's now done at
12 MUSC. But it's sort of by -- I will give you sort of a
13 description. It is sort of by Northwood's Mall. It is a
14 secure location where a SANE nurse would meet an
15 investigator or an officer and you would meet them in a
16 medical plaza.

17 Q And a SANE nurse, can you tell us what that is?

18 A. It's a sexual assault nurse that -- who is I guess is
19 trained to ---

20 Q. Trained in sexual assaults?

21 A. Yes, sir.

22 Q. Okay. Do you know who that was in this case?

23 A I believe it was Faye.

24 Q. Would you believe me if I told you it was Jill Burns?

25 A That is Jill.

1 Q Is she one of the SANE nurses?

2 A Yes.

3 Q. Now I want to fast forward with you to the summer of
4 2010.

5 A Okay.

6 Q. Did your office receive a letter about a DNA profile
7 that was a possible match in this case?

8 A. Yes.

9 Q. Who was that letter in reference to?

10 A. Corrie D. Brown.

11 MR. YOUNG: We are objecting, Your Honor.

12 THE COURT: The basis?

13 MR. YOUNG: We are just renewing our objection.

14 THE COURT: Objection is overruled subject to my prior
15 ruling.

16 MR. YOUNG: Thank you, Judge.

17 BY MR. YOUNG:

18 Q. Just to repeat that, who was this letter in reference
19 to?

20 A. Corrie D. Brown.

21 Q. And who was that; did you know at this time?

22 A. No.

23 Q. Okay. Did you then proceed to recontact the victim at
24 all?

25 A I did.

1 Q. Tell us about that.

2 A. I contacted the victim. We met at the Charleston City
3 Police Department at that time. I met with her. And I
4 wanted to retalk to her about how she wanted to proceed or
5 wanted to go forward with the investigation.

6 She told me again that she wanted to go forward with
7 the investigation. And that she also told me that at that
8 time she would not be able to identify him or anyone else.
9 So at that time there was no -- a line up or a six pack done
10 at that time either.

11 Q. But you did have the DNA?

12 A. Yes, sir.

13 Q. Okay. And with this DNA based on the victim's
14 statement and the scene that night and the DNA evidence did
15 you draw up an arrest warrant for Corrie Brown?

16 A. Yes, sir. Uh-huh.

17 Q. Did you in fact then execute that arrest warrant on
18 Corrie Brown or did you pass that along to somebody else to
19 execute that?

20 A. It went to our Warrants Division.

21 Q. And they would have executed the arrest?

22 A. Yes, sir.

23 Q. Once the defendant was arrested did you obtain a buccal
24 swab from the defendant?

25 A. Yes, sir.

1 Q. Tell the jury what a buccal swab is.

2 A. Okay. A buccal swab is -- it looks like a QTip. And
3 on the end of it is a sponge. And it is about this long
4 (indicating)..

5 And what I did is it comes in a package. So it is
6 about this long (indicating) and it is in a secured package
7 and you rip it apart here (indicating). And it opens up.
8 And it's a QTip with a sponge.

9 And then we have an envelope and then a white box. So
10 what I did when I did a buccal swab on Mr. Brown is I took
11 the buccal swab and I put it into his mouth and just circled
12 around. And then I put it into a white box. And then I put
13 it into an envelope. And that's the kit that we have for a
14 buccal swab.

15 Q. Would you then secure that into evidence?

16 A. Yes, sir.

17 Q. And then they would transport that to test it against
18 the match?

19 A Yes, sir.

20 Q. Okay. I'm going to show you, Investigator Murray,
21 what's been marked as State's 18 and 19. Can you tell us
22 what State's 18 is on the bottom sentence there?

23 A. This is a buccal swab that I put into evidence for for
24 Corrie D. Brown.

25 Q. Okay. And that is the buccal swab that you personally

1 swabbed, closed, sealed, and you would have dropped that
2 into the evidence locker?

3 A. Yes, sir.

4 Q. Okay. And is that kit something that -- that buccal
5 swab kit something that is provided by your office to do?

6 A. Yes.

7 Q. Okay. And was at any time was that swab out of your
8 possession at all?

9 A. No, sir.

10 Q. Okay. Was it when you sealed it did you ever unseal
11 it?

12 A. No.

13 Q. Play around with it at all?

14 A. No, sir.

15 Q. Okay. At any time was it out of your possession?

16 A. No, sir.

17 Q. So there was nothing that happened between the time you
18 swabbed, sealed and dropped off; right?

19 A. Correct, nothing happened.

20 Q. And where would you drop this off at?

21 A. At our Police Department we have an evidence room.

22 It's a mailbox. What we would do is tape it, secure it,
23 initial it to make sure if it's -- if someone damages it,
24 they would know. So that's what I did. I taped it. I
25 initialed it. And I put it into the mailbox.

1 Q. Okay. Now did you have the opportunity -- and I think
2 that was State's was 18 Defendant Brown's?

3 A. That's Brown's.

4 Q Okay. And that is 18. Now look at State's 19. Can
5 you tell me what that is?

6 A It is one buccal swab from a Sebastian.

7 Q What is the last name on that?

8 A Quarts (ph). Quarts.

9 Q. I believe it is pronounced Q-R-E-I-T-Z.

10 A. Yes, sir.

11 Q. Qreitz?

12 A. Qreitz.

13 Q. Qreitz. And that's a buccal swab from him?

14 A Yes, sir.

15 Q Did you take that?

16 A Yes, sir.

17 Q. And tell us how you did that.

18 A. Well, I met him at the College of Charleston Police
19 Department which is on St. Phillips Street. He provided
20 consent. And I did the same thing. I un- -- took the
21 package open, pulled out the QTip looking with a sponge on
22 the end, made circles within his mouth. And then I put it
23 into the white box. And then I put it into a sealed, manila
24 envelope.

25 Q. Okay. And you personally took this sample?

1 A. Yes, sir.

2 Q. Did you seal it after you took it?

3 A. Yes, sir.

4 Q. Was it out of your possession at any time?

5 A. No.

6 Q. Anything happen between the time you took it and
7 dropped it off?

8 A No, sir.

9 Q. Did you secure it into evidence?

10 A. Yes, sir.

11 Q. Where was -- and tell me again where you dropped it off
12 at; do you know; does it have it on the package?

13 A. Well, I would have dropped it off at the -- at the ---

14 Q. Is there a locker?

15 A. It's like a mailbox.

16 Q Okay.

17 A A secured mailbox in a secured evidence room at the
18 Charleston City Police Department.

19 Q. Okay. Why would you have taken a buccal swab from
20 Sebastian Qreitz?

21 A. I was notified that there was a second hit of DNA. And
22 that's why I took a second buccal swab -- or a buccal swab.

23 Q. And who was Sebastian Qreitz to your knowledge?

24 A I was -- I was informed that it was Ms. Brittanae's
25 boyfriend.

1 MR. YOUNG: We are renewing our objection, Your Honor.

2 THE COURT: Objection is overruled.

3 BY MR. YOUNG:

4 Q He consented to swabbing so they could test that DNA?

5 A. Yes, sir.

6 Q. Okay. To see if it was him?

7 A. Yes, sir.

8 Q Okay.

9 MR. YOUNG: Court's indulgence, Judge.

10 BY MR. YOUNG:

11 Q. Investigator Murray, can you tell me again -- and I may
12 have asked you. If I did, I'm sorry. What's the purpose of
13 getting a buccal swab and swabbing the inside of somebody's
14 mouth?

15 A. To -- to get DNA evidence or get DNA from a person.

16 Q So to get DNA. And that DNA would then be sent to SLED
17 to be tested at the laboratory ---

18 A Correct.

19 Q --- to see if it matched?

20 A Correct, from the lab.

21 Q Okay. From the stuff from the rape kit, from anything
22 like that?

23 A. From anything, uh-huh.

24 MR. YOUNG: I have no further questions, Judge, for
25 Investigator Murray.

1 THE COURT: Okay. Cross-examination.

2 MR. YOUNG: Thank you, Your Honor.

3 MS. TOLLEY: Thank you, Your Honor.

4 **CROSS-EXAMINATION BY MS. TOLLEY OF OFFICER MURRAY:**

5 Q. How you doing?

6 A. Good. How are you?

7 Q. Good.

8 A. Good.

9 Q. So in this case there is no identification by the
10 victim; is that correct?

11 A. No, ma'am, she informed me that she was too afraid to
12 look at the person who was assaulting her.

13 Q. Okay. There was no sketch?

14 A. No.

15 Q. No fingerprints?

16 A. No, ma'am.

17 Q. No line up?

18 A. No, ma'am.

19 Q. No photo ID?

20 A. No, ma'am.

21 Q. Okay. You didn't actually go to the crime scene that
22 night; is that correct?

23 A. No, ma'am.

24 Q. And you weren't at Roper Hospital?

25 A. No, ma'am.

1 Q. And you weren't at Northwood's MUSC?

2 A. No, ma'am.

3 Q. Okay. So all the information you got, you got from the
4 victim?

5 A. Correct.

6 Q. Okay.

7 MS. TOLLEY: Court's indulgence?

8 THE COURT: Sure.

9 (Pause.)

10 MS. TOLLEY: We don't have any questions at this time.
11 But we would like her to remain available if possible,
12 Judge.

13 THE COURT: For your case?

14 MS. TOLLEY: Possibly.

15 THE COURT: Okay. Any redirect?

16 MR. YOUNG: No redirect, Judge.

17 THE COURT: Okay. Ma'am, you may step down.

18 THE WITNESS: Thank you.

19 THE COURT: We will have further instruction for you.
20 Okay. Thank you.

21 MR. YOUNG: Judge, can we approach ---

22 THE COURT: You may.

23 MR. YOUNG: --- for scheduling purposes.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: Is that it for today?

1 MR. YOUNG: Yes.

2 THE COURT: Y'all have gotten through a good many.

3 MR. YOUNG: Yes.

4 THE COURT: So I'm not going to beat you up for that.

5 MR. YOUNG: We have got ---

6 MS. GORDON: The -- we --- the -- she is on maternity
7 leave.

8 THE COURT: Okay.

9 MS. GORDON: But she will be back tomorrow morning.

10 And then the SLED people and then we are done.

11 MR. YOUNG: Actually four. Four witnesses. Two big
12 ones tomorrow and then two.

13 THE COURT: Okay. Great. Do y'all want to start at
14 9:30?

15 MR. YOUNG: That's perfect.

16 THE COURT: I will tell y'all this in a minute too. I
17 have already started putting the jury charges together.
18 Anything particular y'all want, y'all can email me. Okay.
19 Thank you.

20 (WHEREUPON, end of bench conference.)

21 THE COURT: Okay. Ladies and gentlemen, we have
22 reached a good stopping point. We've got some witnesses and
23 one of whom will not be available until tomorrow morning.
24 And we are going to start with that witness at 9:30.

25 So I'm going to let y'all go for the day and ask y'all

1 to please be ready to go at 9:30. And don't discuss the
2 case or do any independent research. And I appreciate your
3 time and attention. Have a good evening.

4 (WHEREUPON, the jury leaves the courtroom at 4:20 p.m.)

5 THE COURT: Thank you. Okay. I'll see y'all at 9:30.
6 If y'all have any issue of law we need to take up, I will be
7 here. We can start a little before that. I started putting
8 the charges together. So whatever y'all want to send me
9 will be fine.

10 MR. YOUNG: Thank you, Judge.

11 THE COURT: Thank you.

12 MS. TOLLEY: Your Honor, ask you send us a list of what
13 you are going to include so that I can ---

14 THE COURT: I can just email y'all what I have already
15 drafted up. I don't know if I am going to need to give the
16 expert witness charge. I don't know yet if the defendant is
17 going to testify.

18 MS. TOLLEY: Right.

19 THE COURT: So I have got all those standard charges
20 here. Ms. Tolley, what is your email address? I don't have
21 it.

22 MS. TOLLEY: Just writing it down for you.

23 THE COURT: Oh, perfect.

24 MS. TOLLEY: I will give it to them.

25 THE COURT: That will be great. I will email what I've

1 got ---

2 MS. TOLLEY: Okay.

3 THE COURT: --- so far. And some of it may not be
4 applicable.

5 MS. GORDON: Right. I do expect we will have experts.
6 We have some SLED people ---

7 THE COURT: Okay.

8 MS. GORDON: --- who are going to come.

9 THE COURT: Thank you. I'll send that to you right now
10 so y'all will have it.

11 MS. TOLLEY: Thank you.

12 THE COURT: Sure. Anything else we need to deal with
13 before tomorrow morning?

14 MR. YOUNG: Not that I can think of, Judge.

15 THE COURT: Okay.

16 (WHEREUPON, recessed for the day.)

17 (Wednesday, April 18, 2012)

18 THE COURT: Okay. Where are we, everybody?

19 MS. TOLLEY: I think we are close to reaching an
20 agreement, but we are still trying to finalize that, Judge.

21 THE COURT: What is left to finalize?

22 MS. TOLLEY: We are working on the sheet, Judge.

23 THE COURT: Okay.

24 (Pause.)

25 THE COURT: He either needs to sign the sheet or we are

1 going to bring the jury in and get started. He has got an
2 absolute constitutional right to a jury trial. But he does
3 not have a right to make that jury sit back there and wait
4 while we decide. Okay.

5 MS. TOLLEY: Thank you, Judge.

6 (Pause.)

7 MR. YOUNG: Sentence sheet, Judge.

8 (WHEREUPON, document presented to the court.)

9 THE COURT: Oh, great. Thank you. Weren't y'all going
10 to check negotiated ---

11 MR. YOUNG: Yeah, I'm sorry, Judge.

12 THE COURT: --- and have him initial that? But that is
13 my understanding it is negotiated, correct?

14 MR. YOUNG: It is negotiated. That is right.

15 THE COURT: I'm going to let Ms. Tolley initial that
16 change. I didn't want -- there is a revision that needed to
17 be made and I wanted to make sure that nothing was made
18 without y'all's -- and that it is my understanding that this
19 is a negotiated plea and not straight up, correct?

20 MR. YOUNG: That is correct.

21 MS. TOLLEY: That is correct. And I guess what we were
22 asking about is that he get credit for time served.

23 THE COURT: Is that part of y'all's negotiation?

24 MR. YOUNG: Judge, we haven't talked about that.

25 MS. GORDON: I think that is calculated --

1 MR. YOUNG: I think Your Honor ---

2 MS. GORDON: I think that is always calculated --
3 calculated by the Department of Corrections and that is a
4 given. They have to be given credit for ---

5 THE COURT: It is if I check the box. If I don't, I
6 don't think it is a given. But yes, if that is part of what
7 you discussed with the solicitor's office then I will do
8 that.

9 MS. TOLLEY: Okay.

10 THE COURT: But if you don't check the box, they don't.

11 MS. TOLLEY: Right.

12 THE COURT: They don't. Okay.

13 Ms. Tolley, it is my understanding that the defendant
14 wishes to accept a negotiated plea to the charge of criminal
15 sexual conduct in the second degree. That is a lesser
16 included offense of CSC first which is what he was indicted
17 for. So I don't believe he needs to go through any waiver
18 issue of having that presented to the grand jury. Are you
19 in agreement with his decision to accept that negotiated
20 plea?

21 MS. TOLLEY: Yes, I am.

22 THE COURT: Okay. Have you explained to Mr. Brown the
23 significant constitutional rights that he waives in doing
24 so?

25 MS. TOLLEY: Yes, I have.

1 THE COURT: Okay. Sir, if you could stand up for me
2 and raise your right hand.

3 (WHEREUPON, Corrie Brown was duly sworn.)

4 THE COURT: Thank you. And I might get you to speak up
5 a little bit. My court reporter has to take down everything
6 you say. Sir, I know that you are Corrie Dwayne Brown,
7 correct?

8 MR. BROWN: Yes, ma'am.

9 THE COURT: And how old are you, sir.

10 MR. BROWN: Forty-two.

11 THE COURT: Forty-two. And how far did you go in
12 school?

13 MR. BROWN: I finished high school.

14 THE COURT: High school.

15 MR. BROWN: Two years of college.

16 THE COURT: And you have been incarcerated since the
17 time of your arrest; is that correct?

18 MR. BROWN: Yes, Your Honor.

19 THE COURT: You have been in jail?

20 MR. BROWN: Yes, ma'am. Yes, ma'am.

21 THE COURT: Detention Center?

22 MR. BROWN: Yes, ma'am.

23 THE COURT: And they will calculate that, because I
24 don't have the exact days served. But what was your line of
25 work prior to your arrest?

1 MR. BROWN: Brick mason by trade. Just went back to
2 school and got my CDL driver's license. I completed that
3 and got my license.

4 THE COURT: Okay. And I need to ask you a few
5 questions to make sure that any guilty plea that you enter
6 today is entered knowingly, intelligently, and voluntarily
7 of your own free will, okay, sir. Have you ever been
8 treated for drug or alcohol abuse?

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Okay. Tell me about that, please.

11 MR. BROWN: I went to this program. I think it was in
12 North Carolina. And I completed the program which that is
13 what led me to where I was living at which was like a
14 halfway house which was Star Gospel Mission here in
15 Charleston. You know, pointed me there. And I completed
16 that.

17 THE COURT: Okay.

18 MR. BROWN: It looks like the Salvation Army or
19 something like that, treatment center.

20 THE COURT: Okay. I know where that is. Are you
21 having any problems with drug or alcohol abuse -- since then
22 have you had any problems?

23 MR. BROWN: Judge, Your Honor, since -- since December
24 the 5th, like I told Ms. Tolley, I went back home. I
25 completely changed my life. You know, I haven't done drugs.

1 You know, I was engaged to get married. Like I said, I went
2 back to school, completed it, a CDR course, and I completely
3 changed my life, you know.

4 THE COURT: So no, you haven't had any problems?

5 MR. BROWN: I haven't had no problems.

6 THE COURT: Okay. What I am trying to make sure is
7 that you feel well enough today to go forward with your
8 plea.

9 MR. BROWN: Yes, ma'am.

10 THE COURT: Okay.

11 MR. BROWN: Yes, ma'am.

12 THE COURT: Are you taking any kind of medication or
13 under the influence of any substance that would interfere
14 with your ability to understand what we are doing here
15 today?

16 MR. BROWN: No, ma'am.

17 THE COURT: Okay. What about any kind of mental
18 illness, have you ever been treated for any kind of mental
19 illness?

20 MR. BROWN: No, ma'am.

21 THE COURT: It is my understanding that you wish to
22 plead guilty to the charge of criminal sexual conduct in the
23 second degree; is that correct?

24 MR. BROWN: Yes, ma'am.

25 THE COURT: Okay. And I understand -- I am looking at

1 the indictment. It is Indictment 2011-1729 which states
2 that in Charleston County, South Carolina, on December 5th,
3 2008, Mr. Corrie Dwayne Brown committed a sexual battery
4 upon the victim without her consent and with the use of
5 aggravated force and/or the victim submitted to sexual
6 battery by the defendant under circumstances in which the
7 victim was the victim of forcible confinement or some other
8 similar offense or act. Those are the elements of criminal
9 sexual conduct in the first degree.

10 It is my understanding that your negotiated plea is a
11 17-year sentence for criminal sexual conduct, second degree.
12 Is that your understanding, sir?

13 MR. BROWN: Yes, sir.

14 THE COURT: Okay. And I know Ms. Tolley has explained
15 all of this to you. She is an excellent attorney. She has
16 done an excellent job for you during the trial. But
17 criminal sexual conduct in the second degree is classified
18 as a most serious offense. Do you understand that?

19 MR. BROWN: Yes, ma'am.

20 THE COURT: And you understand that pursuant to South
21 Carolina law if after your release or anything happens
22 during your time at SCDC that also was classified as a most
23 serious offense if you ever get a most serious offense again
24 you could be sentenced to life in prison. Do you understand
25 that?

1 MR. BROWN: Yes, ma'am. Yes, ma'am.

2 THE COURT: Okay. And sir, this is also classi- ---

3 MR. BROWN: Yes, ma'am?

4 THE COURT: Okay. This is also classified as a violent
5 crime pursuant to our statutes. And I believe this is under
6 the old scheme, not the omnibus. But this is a no parole
7 offense, as this offense carries up to 20 years in prison
8 and is a C-felony. Do you understand that?

9 MR. BROWN: Somewhat.

10 THE COURT: Okay. Tell me what you understand.

11 MR. BROWN: The C is -- I don't quite -- what did you
12 say the C something?

13 THE COURT: My understanding is it is a day for day.
14 He is not ---

15 MS. TOLLEY: I don't know. That is not -- that is not
16 what ---

17 THE COURT: Eighty-five percent.

18 MR. YOUNG: Eighty-five percent, right.

19 MS. TOLLEY: That is not what we ---

20 THE COURT: Eighty-five percent. And then upon your
21 release you would -- it would be a community supervision
22 program that is not parole as normally understood. If you
23 don't understand that, I need you to talk to Ms. Tolley
24 about that.

25 MS. TOLLEY: If he wants to talk about that, we

1 probably need to talk about that.

2 THE COURT: Well, I need him to say on the record that
3 he understands all of the circumstances of what he is
4 pleading to. That is one of the things I need to ask him
5 about. So it's an 85 percent offense. I need to make sure
6 he knows that.

7 MS. TOLLEY: Okay. That's -- we talked about it being
8 85 percent. When you said it was no parole then we haven't
9 talked.

10 THE COURT: Well, it is classified ---

11 MS. TOLLEY: Right.

12 THE COURT: --- effective January 1, 1996, the
13 legislature defined certain crimes as quote, unquote, no
14 parole offenses. Community supervision is what triggers
15 after that time period.

16 Sir, this also would require that you register as a sex
17 offender. Do you understand that, this plea?

18 MR. BROWN: Is that the rest of my life?

19 THE COURT: Yes.

20 MR. BROWN: Yes, sir.

21 THE COURT: Understand -- do you understand all of
22 that? Do you have any questions for your attorney that you
23 need to talk to her about?

24 (WHEREUPON, Mr. Brown conferred with counsel.)

25 MR. BROWN: Okay, Judge.

1 THE COURT: Do you understand that?

2 MR. BROWN: Yes, ma'am.

3 THE COURT: Okay. Let the record reflect that the
4 defendant was able to discuss the implications of what I
5 have just explained with his attorney.

6 Sir, are there any other questions that you need to ask
7 Ms. Tolley right now?

8 MR. BROWN: No, ma'am.

9 THE COURT: Okay. And sir, you understand that what I
10 have been presented with is a negotiated plea; that means
11 that I can either accept or reject the plea and the sentence
12 amount of 17 years; I don't have any power to change that as
13 I was with a recommendation; do you understand that?

14 MR. BROWN: Yes, ma'am.

15 THE COURT: Okay. Understanding all of that how do you
16 wish to plead to this offense?

17 MR. BROWN: I plead guilty.

18 THE COURT: Okay. Solicitor, I am happy for you to
19 share some of the facts. I know I know some of them. But
20 let's protect our record.

21 MR. YOUNG: Thanks, Judge. Again for the testimony
22 from the victim this happened on December 5th or the late
23 hours of December 4th into the early hours of December 5th.

24 The victim was out with some friends. They were at a
25 bar, the Silver Dollar. She decided to leave and go home.

1 As she was walking down King Street and taking a left
2 onto [REDACTED] where she lived, when she got to her door
3 this defendant came out from behind her, grabbed her, put
4 her on the ground and raped her. And that is why we are
5 here, Judge.

6 A rape kit was done. The only testimony you didn't
7 hear, Your Honor, was DNA that linked this defendant to that
8 rape kit that night, his DNA was found on.

9 Judge, I can tell you that the victim in this case the
10 reason we negotiated at this time, you know, is looking for
11 some closure. She doesn't want to say anything at this,
12 point, but she has been here through the whole trial and she
13 has been involved in the whole process.

14 So we have negotiated 17 years on this, Your Honor.
15 And I can read his priors if you would like me to do that.

16 THE COURT: I have got them already ---

17 MR. YOUNG: Okay.

18 THE COURT: --- because I had his rap. But I'm happy
19 for you to put that on the record if you want to.

20 MR. YOUNG: Judge, well, I will just go through them
21 briefly.

22 THE COURT: Okay.

23 MR. YOUNG: '93 forgery, '96 failure to stop, '97
24 breaking into tanks, '98 possession of crack, '03 failure to
25 stop, '03 possession of crack, '04 breaking into autos, and

1 '07 burg second.

2 Judge, that is all we have from the State at this time

3 THE COURT: Okay. And the victim is in agreement with
4 this?

5 MR. YOUNG: She is in agreement. We've talked to her.

6 THE COURT: Okay.

7 MR. YOUNG: She understands. And we -- again we are
8 looking to bring some closure to her life in this case.

9 THE COURT: Okay. Thank you. Mr. Brown, do you agree
10 to those facts as the solicitor has presented to me?

11 MR. BROWN: Yes, ma'am.

12 THE COURT: Is that what happened?

13 MR. BROWN: If I please the jury, Judge, Your Honor?

14 THE COURT: I need to know if that is what happened. I
15 mean I need to make sure that you are pleading guilty to and
16 that you are in fact guilty.

17 MR. BROWN: Can I ask my attorney a question?

18 THE COURT: Sure.

19 MS. TOLLEY: Can I run something by them real quick?

20 THE COURT: Sure.

21 (WHEREUPON, there was a break for counselors to
22 confer.)

23 MR. BROWN: Judge, Your Honor, what I am having a
24 problem with right here, you know, I plead guilty but I also
25 swear under oath -- I need to say, Judge, and I am being

1 honest.that ---

2 THE COURT: Okay, let me just stop you right here.

3 MR. BROWN: Okay.

4 THE COURT: You understand that you have the absolute
5 right to remain silent and the absolute constitutional right
6 to a jury trial; do you understand that?

7 MR. BROWN: Yes, ma'am. Yes, ma'am.

8 THE COURT: When you enter a guilty plea you waive
9 those rights. You completely waive them. I need to make
10 sure that you understand the implications of waiving those
11 constitutional rights. And we are going to go through them
12 in more detail in a minute. And I will go through them now
13 for you if you want me to.

14 But I need to make sure that I as the court am
15 comfortable that you are in fact guilty. I can't let
16 somebody plead to something if they are telling me they are
17 not guilty or that the facts are not as the solicitor has
18 printed them -- has presented them.

19 If you want to tell me the facts, I am happy for you to
20 tell me what you did. But I need to make sure that you did
21 in fact commit the offense of criminal sexual conduct in the
22 second degree which is what you are pleading to.

23 Because we haven't finished the trial, I haven't heard
24 all of the testimony. And I need to know that you are in
25 fact guilty and that that is what you are pleading to. Do

1 you understand that?

2 MR. BROWN: Yes, ma'am.

3 THE COURT: Okay. Let me just tell you some more about
4 that. And some of this you know because we have already
5 started the trial, and also know because I know Ms. Tolley
6 and I know that she has explained it to you.

7 But if you wanted to complete your trial, the
8 solicitor would be required to continue the presentation of
9 their evidence. Ms. Tolley would be able to continue
10 cross-examining their witnesses. And then she would be able
11 to choose whether or not to put up a defense on your behalf.

12 I think you heard me tell that to the jury when we
13 first got started, ---

14 MR. BROWN: Yes, ma'am.

15 THE COURT: --- the burden is not on the defense at
16 all. The State must bear the burden of proof throughout the
17 entire trial because the defendant is presumed innocent
18 throughout the entire trial.

19 Just like you have the right to remain silent, you have
20 got the right to be presumed innocent and indeed are
21 presumed innocent throughout the entire pleading --
22 proceeding.

23 Twelve jurors would have to agree unanimously to find
24 you guilty. And even if they did find you guilty, you would
25 have the right to appeal. You waive those rights when you

1 enter a guilty plea.

2 Because of that, I have to make sure to the court's
3 satisfaction that you know what you are pleading guilty to
4 and that you are in fact guilty. Do you understand that?

5 MR. BROWN: Yes, ma'am.

6 THE COURT: Okay. Do you understand all of those
7 rights that you waive, and that right also includes the
8 right not to testify. And nobody can hold it against you if
9 you don't testify.

10 In fact at the end of the trial -- and I think I have
11 already told them this before, but I will tell the jury they
12 are not even allowed to consider that you don't testify if
13 you choose not to. That would be a decision you reached
14 consulting with Ms. Tolley about how best y'all wanted to
15 proceed with your case. You waive all of those rights when
16 you plead guilty. Do you understand that?

17 MR. BROWN: Yes, ma'am.

18 THE COURT: Okay. Now understanding that, do you agree
19 with the presentation of the facts as by the solicitor and
20 are you in fact guilty of the crime of criminal sexual
21 conduct in the second degree?

22 MR. BROWN: I am guilty, Judge, Your Honor.

23 THE COURT: You are guilty?

24 MR. BROWN: Yes, ma'am.

25 THE COURT: What about his factual presentation did you

1 not agree with?

2 MR. BROWN: Is that going to change my plea if I answer
3 that question?

4 THE COURT: What is going to change your plea is if you
5 tell me you didn't do this. I need you to tell me that you
6 are in fact guilty of this crime.

7 MR. BROWN: I am guilty, Judge, Your Honor.

8 THE COURT: Okay. What did he say that you disagree
9 with?

10 MR. BROWN: What I did.

11 THE COURT: Tell me your -- tell me the facts as you
12 recall them.

13 MR. BROWN: Judge, Your Honor, I did not like he said
14 down 20 Lane come up behind her, threw her to the ground,
15 sexually -- well, actually rape ---

16 THE COURT: You did not? You are saying you did not do
17 that?

18 MR. BROWN: Judge, Your Honor, I did.

19 THE COURT: You did that?

20 MR. BROWN: I did that.

21 THE COURT: You came up behind her on [REDACTED];
22 correct or not correct?

23 MR. BROWN: I am a little older, Judge, Your Honor.

24 THE COURT: Yes, you are. That is what I'm trying to
25 find out what you did and when you did it and if you are

1 guilty.

2 (Pause.)

3 MR. BROWN: Judge, Your Honor, I'm going to state it --
4 I just -- I am under oath. Judge, Your Honor.

5 MS. TOLLEY: Can we have a minute?

6 THE COURT: Sure. I am not going to take the plea if
7 he doesn't tell me he did it. If I am not satisfied that he
8 is knowingly, intelligently and voluntarily entering this
9 plea I am not going to take the plea. But, you know, it
10 doesn't change his sentence -- I am not sure what is going
11 on actually. So we need ---

12 MS. TOLLEY: Well, I guess ---

13 THE COURT: --- to make sure that I am comfortable.

14 MS. TOLLEY: And this is probably my fault. But one of
15 the things that we should have talked to them about is a
16 North Carolina versus Alford plea as opposed to ---

17 THE COURT: I am not taking an Alford plea.

18 MS. TOLLEY: There we go then.

19 THE COURT: In this kind of case I am not going to take
20 an Alford plea. Do you want to talk to him or not?

21 (WHEREUPON, Mr. Brown conferred with counsel.)

22 MR. BROWN: Okay, Judge.

23 THE COURT: Okay.

24 MR. BROWN: Yes, ma'am, I understand.

25 THE COURT: Do you want them to repeat the facts or do

1 you want to tell me the facts? . .

2 MR. BROWN: I don't -- I don't want him to repeat the
3 facts.

4 THE COURT: Okay. Is there anything the solicitor said
5 that you disagreed with?

6 MR. BROWN: No, ma'am.

7 THE COURT: Okay. Are you in fact guilty of the
8 offense of criminal sexual conduct in the second degree, yes
9 or no?

10 MR. BROWN: Yes, Your Honor.

11 THE COURT: And do you wish for the court to accept
12 this negotiated plea today?

13 MR. BROWN: Yes, ma'am.

14 THE COURT: Okay. And I know we have been through this
15 before, but out of an abundance of caution I am going to go
16 through it again.

17 Do you understand that you have the absolute right to
18 remain silent and the right to continue with this jury
19 trial; do you ---

20 MR. BROWN: Yes.

21 THE COURT: --- understand that?

22 MR. BROWN: Yes, ma'am.

23 THE COURT: And do you understand the other components
24 I explained to you; do you?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: Okay. Do you want to waive those rights
2 and have the court accept this plea negotiation today?

3 MR. BROWN: Yes, Your Honor.

4 THE COURT: Okay. Has anybody promised you anything
5 other than the recommended sentence of 17 years and other
6 than allowing you to plea to criminal sexual conduct second
7 degree instead of criminal sexual conduct first degree for
8 which you were indicted, has anybody promised you anything
9 or done anything to try to make you plead?

10 MR. BROWN: No, ma'am.

11 THE COURT: Okay. Has anybody done anything to force
12 you or threaten you to take -- to make this plea today?

13 MR. BROWN: No, ma'am.

14 THE COURT: Okay. Are you entering this plea of your
15 own free will?

16 MR. BROWN: Yes, ma'am.

17 THE COURT: Are you entering this plea knowingly,
18 intelligently, and voluntarily this morning?

19 MR. BROWN: Yes, ma'am.

20 THE COURT: Okay. Do you have any other questions for
21 Ms. Tolley?

22 MR. BROWN: No, ma'am.

23 THE COURT: Okay. Are you happy with her work for you?

24 MR. BROWN: Yes, very much, very much.

25 THE COURT: Okay. And I am glad to hear that. I am

1 glad to hear that. Sir, you will have ten days from today's
2 date to appeal the decision of the court if you wish to do
3 so.

4 I will accept the negotiated plea and the negotiated
5 sentence of 17 years. I do find that the victim has agreed
6 to this negotiated plea incidence and I do find that the
7 defendant is pleading knowingly, intelligently, and
8 voluntarily this morning of his own free will.

9 He is clearly intelligent and not under the influence
10 of any kind of substance today. I have watched him through
11 the trial and since Monday. He has had numerous
12 opportunities to confer with his counsel and has helped her
13 in negotiating this sentence with the solicitor's office,
14 and I will accept the plea.

15 I find that nothing has been promised him other than
16 the negotiated sentence of 17 years, and I will accept it.
17 Anything further anybody needs to add?

18 MR. YOUNG: Nothing from the State, Judge.

19 THE COURT: Okay. I do find him -- I do accept the
20 plea then to the lesser charge of criminal sexual conduct in
21 the second degree, which is a most serious offense and a
22 violent crime under our code of laws; and his sentence is 17
23 years, that he will be incarcerated at the Department of
24 Corrections, and that he does get credit for time served.

25 And I am pleased that he is happy with his attorney.

State v Brown, Case 2011-GS-10-1729

317

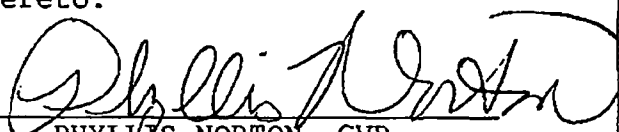
- 1 She has done an excellent job.
- 2 MS. TOLLEY: Thank you, Judge.
- 3 MR. YOUNG: Thank you, Judge.
- 4 (WHEREUPON, the trial concluded April 18, 2012.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, based on the audio provided me by Sharon Vizor-Hanks, Official Court Reporter, relative to appeal, in the Family Court for Charleston County, South Carolina, April 16 through April 18, 2012.

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


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: March 7, 2013

Certified Transcript Provided For: Solicitors

Certification Reference # 030743 OT216

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)2013-CP-10-448
IN THE COURT OF COMMON PLEASCorrie D. Brown 246396)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

FILED
2013 JAN 24 PM 4:38
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Institution AA60
P.O. Box 205 Ridgville, SC 29472
2. Name and location of Court which imposed sentence Charleston County General Session Court, Charleston, SC.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011GS1001729

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) April 18, 2012 17 years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. N/A
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. N/A
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. N/A
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) I was advised by a Horney Juan Tolley that I would receive 30 years if I didn't accept the 17 years plea and I didn't know there were any other options for me.

- (b) Juan Tolley deprived me of filing any kind of appeal.
 (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) Victims blood alcohol concentration (BAC)
 (c) Victim gave conflicting stories to medical personnel, investigators + law enforcement
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to adequately develop, investigate and present the facts +
- (a) deprived the jury of critical information relevant to an accurate assessment to my innocence.
 (b) Victims (BAC) was 0.263 at the time of incident.
 (c) Victim gave detailed descriptions of the suspect but stated after the attack she never looked at him.
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? _____
 (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? NO
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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

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?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

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) Ineffective assistance of counsel.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
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. Juan Tolley
P.O. Box 25 Charleston, S.C. 29402
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Attorney Juan Tolley told me to plea guilty at the trial.
- ii. Juan Tolley wasn't competent in finishing my trial.
- iii. _____

19. State clearly the relief you seek in filing this application:

From filing this application I seek my freedom with time served and
my name to be totally removed from all sex offender registries.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Corrie D. Brown, 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.

Corrie Brown

SWORN to and subscribed before me this 15th
 day of January, 2013.

Ludrean Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Corrie D. Brown, 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.

Corrie Brown
Applicant

SWORN or affirmed to and subscribed before me this
15th day of January, 2013.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

Submitted By:

Corrie Brown #246396
Lieber Institution AA60
P.O. Box 205
Ridgeville, SC 29472

1-15-2013

I Corrie D. Brown's allegations of the trial counsel's ineffectiveness are:**1(a): Johnson v. State, 480 S.E.2d 733 (S.C. 1997).**

Trial counsel found ineffective for failing to timely notify defendant of right to appeal so direct appeal issues were reviewed on the merits in PCR appeal.

2(a): Thomas v. State, 417 S.E.2d 531 (S.C. 1992).

In rape case where the victim was the sole witness and she identified the defendant as her attacker, trial counsel was ineffective for failing to call emergency medical personnel who would have testified that the victim stated immediately after the attack that she did not know her assailant.

3(a): Alexander v. State, 402 S.E.2d 484 (S.C. 1991).

Trial counsel found ineffective for advising client that he would face potential life sentence if he proceeded to trial when he would have actually faced a seven to twenty-five year sentence for one charge and a twenty-five year sentence for the second charge. Based on trial counsel's erroneous advice, defendant pled guilty.

4(a): Sosebee v. Leeke, 362 S.E.2d 22 (S.C. 1987).

Trial counsel in criminal sexual conduct case found ineffective for failing to object to judge's improper comments in the presence of the jury which clearly reflected that the judge believed the victim's testimony.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Defendant(s)

2013-CP-10-448

(Please Print)

Submitted By: Corrie D. Brown 246396

Address: Lieber Institution AA60

P.O. Box 205

Ridgeville, S.C. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete.

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Label (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accidents (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP- _____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
☐ Inmate Petitions	☐ Judgments/Settlements	☐ Administrative Law/Relief	☐ Appeals
☐ PCR (500)	☐ Death Settlements (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture-Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
	☐ Other (799)		☐ Zoning Board (970)
☐ Special/Complex/Other			☐ Administrative Law Judge (980)
☐ Environmental (600)	☐ Pharmaceuticals (630)		☐ Public Service Commission (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)		☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of-State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Sexual Predator (610)		

Submitting Party Signature:

Corrie Brown

Date:

1/15/13

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, CP, S.S. & F.C.

By

DEPUTY CLERK

STATE OF SOUTH CAROLINA

County of Charleston

State of South Carolina,

2011 JUL 15 PM 12: 53

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUITFILED CASE NO(s): 2011-65-10-1729
WARRANT # K344102

APPOINTMENT OF COUNSEL

-vs-

JULIE J. ARMSTRONG
CLERK OF COURT☐

ORDER

☐

AMENDED ORDER

CORRIE D. BROWN

Defendant.

Charges:

CSC 1st

It appears that the above-named defendant is indigent and is entitled to court-appointed counsel. It further appears that:

- ☐ the public defender now represents a co-defendant and that a conflict would arise if that office represents the above-named defendant.
- ☐ the public defender has indicated a possible conflict of interest or other good cause warranting the appointment of counsel based on:
- ☐ the public defender or court-appointed counsel has indicated that the defendant has now retained private counsel and is no longer entitled to appointed counsel.
- ☐ court-appointed counsel has claimed an exemption or has demonstrated good cause pursuant to Rule 608 warranting the appointment of new counsel based on:
- ☐ court-appointed counsel has obtained substitute counsel named below pursuant to Rule 608(h)(2); only the member who originally received the appointment and who sought substitute counsel shall receive credit for the appointment.

Therefore, it is ordered that JUAN Tolley
Esquire, is hereby appointed as counsel (lead counsel if capital case) for the above-named defendant. Counsel previously appointed is / are hereby relieved as counsel for the defendant.

- ☐ [If Death Penalty Case] It is further ordered that
Esquire, is hereby appointed as second counsel in this capital case.

The clerk of court is directed to forward a copy of this order to counsel.

IMPORTANT NOTICE: PURSUANT TO NEW PROCEDURES, APPOINTED COUNSEL, TO RECEIVE COMPENSATION, MUST REGISTER ONLINE WITH INDIGENT DEFENSE WITHIN 15 DAYS AT: www.sccid.sc.gov. Submit Vouchers directly to OID and not the Clerk of Court.

IT IS SO ORDERED this ____ day of

7/15

2011

ATTEST: A TRUE COPY

Circuit Judge or Clerk of Court

JULIE J. ARMSTRONG (SEAL)

CLERK, C.P. & S.E.C.

By

DEPUTY CLERK

Revised 12/11/05

9. Is any member of the Jury Panel involved with law enforcement, the legal system, or the penal system in such a way that it would prevent you from being a fair and impartial Juror?
10. Is any member of the Jury Panel employed by law enforcement, or have a family member or close friend who is employed by law enforcement?
11. Does any member of the Jury Panel hold any social, racial, ethnic views which would prevent you from being a fair and impartial juror?
12. Does any member of the Jury Panel have any close family member or friend who was the victim of a sexual assault, rape, domestic violence ?
13. Does any member of the Jury Panel have an opinion about, or have had an experience with sexual assault, rape, domestic violence which would make it difficult for you to serve where someone is charged with murder?
14. Is any member of the Jury Panel a member of any organization such as CAVE, People Against Rape, Mothers Against Drunk Driving, or any other similar group?

I SO MOVE:

Juan Tolley
JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina
 Dated: April 16, 2012

FILED
 2012 APR 16 AM 9:28
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By *[Signature]*
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
 2012 APR 16 AM 8:30) CASE NUMBER: K-344102
 JULIE J. ARMSTRONG) CHARGES: Criminal Sexual Conduct 1st
 CLERK OF COURT)

State of South Carolina, BY _____)

Plaintiff,)

Motion In Limine-Admission of
Criminal History of Defendant

vs.)

Corrie Dewayne Brown)

Defendant.)

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for a determination prior to trial of the admissibility of prior convictions of the Defendant for impeachment or any other purposes. The within Motion is made on the grounds that the Defendant is desirous of taking the stand to testify and needs to know the nature of convictions which can be introduced in order to intelligently make a decision as to whether to testify; and further, that it would be unduly prejudicial to allow the State to cross-examine the Defendant in open Court concerning convictions which are subsequently held not to be admissible.

I SO MOVE:

Juan Tolley
 JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina

Dated: April 16, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By *[Signature]*
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 APR 16 AM 8:28) CASE NUMBER: K-344102
JULIE J. ARMSTRONG) CHARGES: Criminal Sexual Conduct 1st
CLERK OF COURT)
State of South Carolina,)
BY _____)
))
Plaintiff,) Motion to Produce
) Chain of Custody
vs.))
))
Corrie Dewayne Brown)
))
Defendant.)
_____)

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order requiring the State to produce for examination prior to the trial the chain of custody on all items of physical evidence which the State intends to introduce at trial which require proof of a chain of custody in order to be admitted into evidence.

The Motion is made on the grounds that this information is necessary for the Defendant to prepare for trial, that he production of such material prior to trial should help establish a chain of custody with respect to any item of evidence would constitute exculpatory matter under the case of Brady vs. Maryland, 373 U.S. 83, 1963.

Further, the Defendant is informed and believes that production of the information herein requested will help to expedite the trial of this case by eliminating the necessity of litigating and cross examination, as to the chain of custody on those items of evidence wherein the chain of custody is clearly defective.

1ST MOVE:

Juan Watson Tolley
JUAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina

Dated: *April 16*

2012
ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C. J. G. S. & F.C.
By *[Signature]*
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 APR 16 AM 9:20

CASE NUMBER: K-344102

JULIE J. ARMSTRONG)
CLERK OF COURT)
CHARGES: Criminal Sexual Conduct 1st

State of South Carolina, BY _____)

Plaintiff,)

Motion to Produce
Medical Records

vs.)

Corrie Dewayne Brown)

Defendant.)
_____)**TO THE DEFENDANT ABOVE NAMED:**

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order requiring the State to produce for examination prior to the trial the medical records of Brittanee L. Casper.

The Motion is made on the grounds that this information is necessary for the Defendant to prepare for trial, that the production of such material prior to trial would constitute exculpatory matter under the case of Brady vs. Maryland, 373 U.S. 83, 1963.

Further, the Defendant is informed and believes that this evidence is highly relevant given the nature of the charge.

I SO MOVE:

Juan Watson Tolley
JUAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina

Dated: April 16 2012 ATTEST TRUE COPYJULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & J.C.By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

State of South Carolina,

Plaintiff,

vs.

Corrie Dewayne Brown

Defendant.

FILED

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

CASE NUMBER: K-344102

CHARGES: Criminal Sexual Conduct 1st

JULIE J. ARMSTRONG

CLERK OF COURT

By _____

Motion to Compel Production of
Personnel Records of Police Officers**TO THE DEFENDANT ABOVE NAMED:**

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order requiring the State to produce for the police personnel records of the officers involved in the above captioned case.

The Motion is made on the grounds that this information is necessary for the Defendant to prepare for trial, that the production of such material prior to trial should help establish and eliminate the need for cross exam with regard to those issues if that would not constitute exculpatory matter under the case of Brady vs. Maryland, 373 U.S. 83, 1963.

Further, the Defendant is informed and believes that production of the information herein requested will help to expedite the trial of this case by eliminating the necessity of litigating and cross examination regarding those matters.

I SO MOVE:

Juan Watson Tolley
JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina

Dated: *April 16* 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., C.S. & C.O.

By *[Signature]*
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 APR 16) CASE NUMBER: K-344102

JULIE J. ARMSTRONG
CLERK OF COURT

State of South Carolina,

BY _____

Plaintiff,

Motion to Produce

Video College of Charleston

vs.

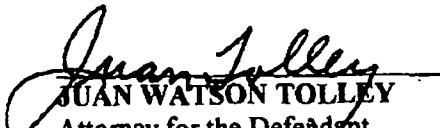
Corrie Dewayne Brown

Defendant.

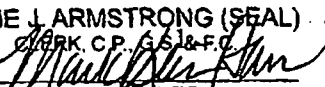
TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order requiring the State to produce for examination prior to the trial the video from the College of Charleston on the night of the alleged incident and would constitute exculpatory matter under the case of Brady vs. Maryland, 373 U.S. 83, 1963.

I SO MOVE:


JUAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina
Dated: April 16, 2012

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By 
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 APR 16 AM 8:28)
CASE NUMBER: K-344102

CHARGES: Criminal Sexual Conduct 1st

JULIE J. ARMSTRONG
CLERK OF COURT

State of South Carolina,

BY _____

Plaintiff,

Motion to Sequester the Witnesses

vs.

Corrie Dewayne Brown

Defendant.

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order sequestering the State's witnesses. This motion is made on the grounds that the separation (or sequestration) of witnesses will afford a means of discovering discrepancies (if any) in the different accounts which the witnesses will give of the same transaction.

I SO MOVE:

Juan Tolley
JUAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina
Dated: April 16, 2012

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK S.P.C. & F.C.
By [Signature]
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2012 APR 16 AM 9:28) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NUMBER: K-344102
 JULIE J. ARMSTRONG) CHARGES: Criminal Sexual Conduct 1st
 CLERK OF COURT)

State of South Carolina,)
 BY _____)

Plaintiff,)

Motion to Photos of Victim)

vs.)

Corrie Dewayne Brown)

Defendant.)
 _____)

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, hereby moves that the Court instruct the Solicitor for the Ninth Judicial Circuit, his staff, and all of the State's witnesses in this cause, not to allude to, refer to, or in any photos or videos of the victim. This Motion is based on the fact that its probative value is outweighed by its prejudicial effect, that the South Carolina Rules of Evidence, the laws of the State of South Carolina and the Contitution, Laws and Regulations of the United States of America.

I SO MOVE:

Juan Tolley
JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina
 Dated: April 16, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK OF G.S.A.C.
 By *[Signature]*
 DEPUTY CLERK

STATE OF SOUTH CAROLINA) **FILED**
) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON 2012 APR 16) CASE NUMBER: K-344102
) CHARGES: Criminal Sexual Conduct 1st

State of South Carolina,

JULIE J. ARMSTRONG
 CLERK OF COURT

BY)

Plaintiff,

Motion to Suppress Testimony of
 Sgt. Walton regarding Video

vs.

Corrie Dewayne Brown

Defendant.

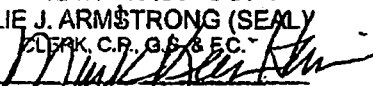
TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order suppressing any statements regarding the video taken by the college of Charleston on the night of the alleged incident regarding the video as the video would be the best evidence. Further this Motion is based on the laws, rules and regulations of the State of South Carolina and the United States of America

I SO MOVE:


JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina
 Dated: April 16, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & E.C.
 By 
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 APR 16 AM 9:45) CASE NUMBER: K-344102

CHARGES: Criminal Sexual Conduct 1st

JULIE J. ARMSTRONG
CLERK OF COURT

State of South Carolina,

BY _____

Plaintiff,

Motion to Suppress Statements
of Defendant

vs.

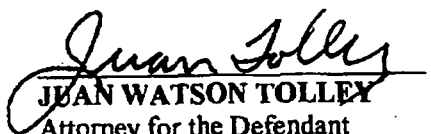
Corrie Dewayne Brown

Defendant.

TO THE DEFENDANT ABOVE NAMED:

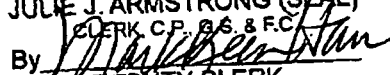
PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, hereby moves that the Court instruct the Solicitor for the Ninth Judicial Circuit, his staff, and all of the State's witnesses in this cause, not to allude to, refer to, or in any way bring before the jury, whether as a panel or jury selected to try this cause, any statements, oral admissions, written statements, or tape recordings of any alleged statements made by the Defendant, to law enforcement officers, until such time as a Jackson v. Denno hearing is held to determine the admissibility of such alleged statements.

I SO MOVE:


JEAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina

Dated: April 16, 2012

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
 2012 APR 16 AM 9:28 CASE NUMBER: K-344102
 CHARGES: Criminal Sexual Conduct 1st

State of South Carolina, JULIE J. ARMSTRONG
 CLERK OF COURT

BY _____

Plaintiff,

Motion to Suppress Testimony
 Regarding Sebastian Qrietz

vs.

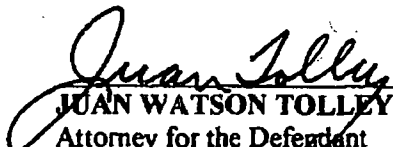
Corrie Dewayne Brown

Defendant.

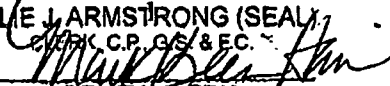
TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, hereby moves that the Court instruct the Solicitor for the Ninth Judicial Circuit, his staff, and all of the State's witnesses in this cause, not to allude to, refer to, or in any way bring before the jury, whether as a panel or jury selected to try this cause, any evidence or testimony regarding Sebastian Qrietz as it relates to his being the boyfriend of Brittanee Casper. This Motion is based on the right of the defendant to confront witnesses as guaranteed by the Constitution of the United States of America and the State of South Carolina.

I SO MOVE:


JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina
 Dated: April 16, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & E.C.
 By 
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
APR 10 AM 9:25) CASE NUMBER: K-344102
) CHARGES: Criminal Sexual Conduct 1st

JULIE J. ARMSTRONG
State of South Carolina,) CLERK OF COURT

BY _____)

Plaintiff,)

Motion to Produce
School Records

vs.)

Corrie Dewayne Brown)

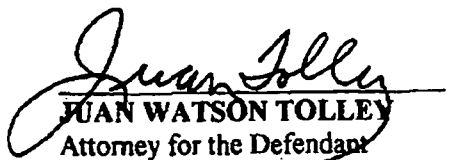
Defendant.)

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant above named by and through the undersigned attorney, will move before the Presiding Judge of the court of General Sessions for the Ninth Judicial Circuit at the Charleston County Courthouse, Charleston, South Carolina, as soon as the matter may be heard for an Order requiring the State to produce for examination prior to the trial the school records of Brittanee L. Casper.

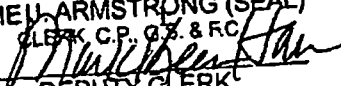
The Motion is made on the grounds that this information is highly relevant given the significant involvement that the College of Charleston has played in the prosecution of this case and is necessary for the Defendant to prepare for trial, that the production of such material prior to trial could reveal exculpatory matter under the case of Brady vs. Maryland, 373 U.S. 83, 1963.

I SO MOVE:


JUAN WATSON TOLLEY
Attorney for the Defendant
601 King Haven Lane
Charleston, South Carolina 29455
Telephone: (843) 720-8557

Charleston, South Carolina

Dated: April 16 2012

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P., G.S. & F.C.
By 
DEPUTY CLERK

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS
 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
 CASE NUMBER: K-344102
 CHARGES: Criminal Sexual Conduct 1st

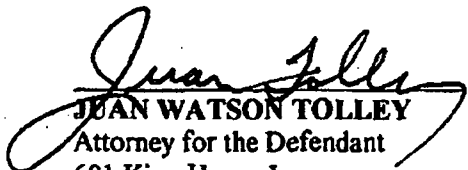
State of South Carolina JULIE J. ARMSTRONG
 CLERK OF COURT

BY _____
 Plaintiff,) Motion to Supress DNA Evidence
)
 vs.)
)
 Corrie Dewayne Brown)
)
 Defendant.)
 _____)

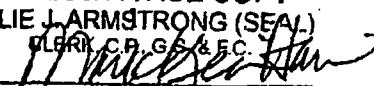
TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT as soon as counsel may be heard, the Defendant, by and through undersigned counsel, will move before the Chief Administrative Judge of the Charleston County Court of General Sessions at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina for an Order suppressing the admission of any and all DNA evidence as it relates to the Defendant. This motion is based on the laws and regulations of the State of South Carolina and the Constitution, laws, and regulations of the United States of America

I SO MOVE:


 JUAN WATSON TOLLEY
 Attorney for the Defendant
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina
 Dated: April 16, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.D., G.S. & J.C.
 By 
 DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

2012 APR -5 PM 4:25) JUDICIAL CIRCUIT

COUNTY OF CHARLESTON) CASE NUMBER: K-344102

JULIE J. ARMSTRONG) CHARGES: Criminal Sexual Conduct 1st
CLERK OF COURTState of South Carolina, BY *[Signature]*

Plaintiff,

Notice of Motion and Motion for
Continuance

vs.

Corrie Dewayne Brown

Defendant.

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT as soon as counsel may be heard, the Defendant, by and through undersigned counsel, will move before the Chief Administrative Judge of the Charleston County Court of General Sessions at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina for an Order granting a Continuance from the April 16, 2012 trial date, as additional time for discovery and further investigation based on that discovery is needed.

I SO MOVE:

Juan Watson Tolley
JUAN WATSON TOLLEY
 Attorney for the Defendant

601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

Charleston, South Carolina

Dated: April 5, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., GS & F.C.
 By *[Signature]*
 DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Court of General Sessions
9th Judicial Circuit

-VS-

CORRIE BROWN # 1160759

WARRANT: # K-344102

Defendant

FEB 20, 2012

FILED
2012 FEB 27 AM 9:18
CLERK OF COURT
JULIE J. ARMSTRONG

DEAR Mrs. Armstrong,

I would like to request a copy of my Transcripts from Court on July 15, 2011. As you know I am in the Charleston County Detention Center and the jail doesn't provide us with Copies of Financial Status. I would like to file under Indigent status, and I hope you can help me with the above matter. I'm hoping to hear from your office soon, and I thank you for your time.

Sincerely; Corrie Brown 1160759

N. Chas. Co. Deten. CNTR.

3841 Leeds Ave.

N. Chas. S.C. 29405

(Defendant)

ATTEST: A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

By *Julie J. Armstrong*
CLERK C.P., G.S. & F.C.
DEPUTY CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
2012 FEB 16 PM 2) CASE NUMBER: K-344102

State of South Carolina,) CHARGES: Criminal Sexual Conduct 1st
BY) COURT

Plaintiff,

Amended Ex Parte Motion for
Attorney Fees and Expenses

vs.

Corrie Dewayne Brown

Defendant.

THE DEFENDANT ABOVE NAMED, through the undersigned attorney,
JUAN TOLLEY, respectfully petitions this Court for an Order under the South Carolina
Code of Laws, Section 17-3-50 (1976, as amended) for an Order as detailed below, and
would show unto this Honorable Court:

That the Defendant is presently incarcerated in the Charleston County Jail,
awaiting trial on the above-stated charges;

That the Defendant has been incarcerated since the November 19, 2010 date of
arrest, and has been unable to meet bail;

That the undersigned attorney, Juan Tolley, was appointed to represent the
Defendant July 15, 2010 and notified by Clerk of Court of that appointment on
September 14, 2010, as a result of a conflict of interest within the Charleston County
Public Defender's Office; that the Defendant had two prior attorneys from the Public
Defender's Office before the appointment of Juan Tolley

That in furtherance of that representation the undersigned attorney has expended
time on the case consistent with the Rules and Regulations of the South Carolina
Commission on Indigent Defense, and South Carolina Code of Laws, and Orders by the

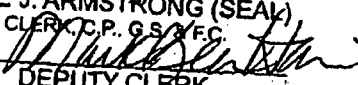
ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., S.S. & P.C.
By *[Signature]*
DEPUTY CLERK

South Carolina Supreme Court. That the time expended was reasonable and necessary given the serious nature of the charge.

Further, that the Defendant is informed and believes that the seriousness of the charge and the possible penalty dictate that more time and expenses be expended. In particular that it will be reasonable and necessary for the attorney to seek out the services of a DNA expert, Toxicology expert, Private Investigator, and Court Reporter to assist in preparation of the case. This belief is based on the fact that this is a Criminal Sexual Conduct 1st Degree case with a possible penalty of thirty (30) years in prison, involving the alleged rape of a white female College of Charleston student by an unknown black male in downtown Charleston. This belief is based further on the fact that it appears that a trial will be necessary as no plea offer has been made in the case; and none is anticipated; rather the Solicitor has indicated that he will ask for the maximum sentence should the Defendant plead guilty or be found guilty at trial.

More specifically, that expenses may be reasonable and necessary for a DNA Expert in the person of Stephen Lambert in this case as the DNA evidence may prove critical in the case. Attached is a copy of Dr. Lambert's anticipated work and fee schedule. Based on same, the Attorney requests a Court Order be issued allowing Defendant to exceed the \$500.00 cap for expenses with an amount of up to \$3,000.00 being allowable without further leave of the Court.

Further, that expenses may be reasonable and necessary for a Toxicology Expert in the person of William Brewer in this case as there is considerable evidence in the case regarding the consumption of alcohol by the Victim which evidence needs to be explored and evaluated in the context of the rest of the case. That a rate of \$200.00 per hour, with

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & S.C.
By 
DEPUTY CLERK

a maximum amount allowable of \$400.00 without further leave of this Court would be reasonable and necessary.

Further, that expenses may be reasonable and necessary for an investigator who meets the Guidelines of the Commission on Indigent Defense, to further investigate on behalf of the Defendant including the contacting of potential witnesses at a rate of \$50.00 per hour, with a total amount not to exceed \$750.00 being reasonable and necessary without further leave of the Court.

Further, that expenses for a court reporter may be reasonable and necessary for the transcription of the Preliminary Hearing. The cost for same is not yet known, but should not exceed \$500.00. Further, that Defendant should be compensated for that when it is incurred without further leave of Court.

Further, this motion is being made Ex-parte so as not to reveal any part of the defense in this case.

Further, that this motion is provided for and consistent with the Rules and Regulations of the South Carolina Commission on Indigent Defense, and South Carolina Code of Laws, and Orders of the South Carolina Supreme Court.

Respectfully submitted,

Juan Watson Tolley
JUAN WATSON TOLLEY
 Attorney for the Plaintiff
 601 King Haven Lane
 Charleston, South Carolina 29455
 Telephone: (843) 720-8557

BY

COURT REPORTER

2012 FEB 16 PM 2:47

FILED

Charleston, South Carolina
 Dated: February 9, 2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P. & G.S.
 BY *[Signature]*
 DEPUTY CLERK

STEPHEN LAMBERT
Lambert Forensic DNA Consulting

201 Carriage Hill Court

Lexington, SC 29072

TELEPHONE (803) 609-2584

February 7, 2012

Juan Tolley
Attorney at Law
601 King Haven Lane
Charleston, SC 29455

Re: State of South Carolina vs. Corrie Dewayne Brown
My Client: Corrie Dewayne Brown
Court: Charleston County General Sessions Court
Police Agency: City of Charleston Police Department
Charges: Criminal Sexual Conduct
Warrant Num.: K-344102

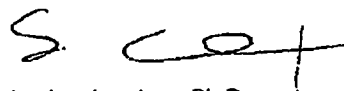
Dear Ms. Tolley:

In furtherance of our telephone conference this date, Tuesday, February 7, 2012, regarding my serving as a consultant to you in the area of DNA evidence, please know that my hourly rate is \$150.00 per hour, including travel time. I anticipate that approximately five (5) to seven (7) hours will be necessary to provide the following consulting activities:

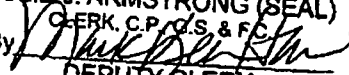
- Preparation of a discovery items list for DNA evidence and all related items
- Review and interpretation of DNA evidence - including the SLED DNA Case File, SLED evidence processing case file, Chain of Custody Information, alleged crime scene details, calculations of population genetics analysis, laboratory bench notes, unexpected laboratory results log, comments made to and by the police, etc.
- Communication with you, i.e. telephone conversations, layman's DNA technology lecture, etc.
- Preparation of DNA visual aids
- Preparation of cross-examination questions

An Additional \$1,500.00 would be charged if I were to come to Charleston to testify and/or assist you during the trial.

Sincerely,



Stephen Lambert, Ph.D.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By 
DEPUTY CLERK

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2011 JUL -6 PM 3:29) FOR THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) Case No(s):

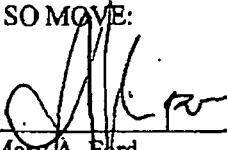
JULIE J. ARMSTRONG) Warrant No(s): K344102.
 STATE OF SOUTH CAROLINA) Charge(s): CSC 1st

BY)
 -versus-) **MOTION TO BE RELIEVED AS COUNSEL**

Corrie Dewayne Brown,
 Defendant.

This motion is made by Mary A. Ford of the Charleston County Public Defender's Office, on behalf of the Defendant who moves before this Honorable Court that Mary A. Ford be relieved as counsel in the above-entitled matter. The grounds for the motion shall be submitted to the court at the time of the hearing.

I SO MOVE:


 Mary A. Ford
 Assistant Public Defender

Charleston, South Carolina

Dated: _____, 2011.

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., D.S. & F.C.
 By 
 DEPUTY CLERK

STATE of South Carolina
County of Charleston

Court of General Sessions
9th Judicial Circuit

- V -

CORRIE Brown 1160759

WARRANT #: K-344102

Defendant

May 31, 2011

Dear Mrs Armstrong

I would like to recg copy
of my indictment for warrant
know. I'm in Chas County Deten Center the Jail
doesn't provide us with copies of financial status
I would like to file under indigent status I
hope that you could help me with the above matter
I hope to hear from your office
soon I would like to thank you in advance

CORRIE Brown 1160759
Chas Co Deten Cntr
3841 Leed Ave
Chas S.C. 29405

Defendant

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., GS. & F.C.
BY *[Signature]*
DEPUTY CLERK

To Julie S. Armstrong
 Clerk of Court
 100 Broad Street
 Charleston, SC. 29401

MAY 31, 2011

Reason: Indictment

DEAR Mrs Armstrong

Enclosed please provide me with
 A clock stamped copy of the same

FILED
 2011 JUN -2 AM 10:58
 JULIE S. ARMSTRONG
 CLERK OF COURT

Thank you.

Corrie Brown 1160759
 Chas Co Deten CNTR
 3841 LEEDS AVE
 Chas, S.C. 29405

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., GS & F.C.
 By 
 DEPUTY CLERK

CORRIE BROWN
Name of Defendant

KJ44102

Criminal Charging Document No.

COUNTY OF CHARLESTON

Charges: CSC 1ST	Trial Court: General Sessions

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must be provided a completed copy of this form.

☐ BAILABLE PROCEEDING/☐ FIRST APPEARANCE (NON-BAILABLE OFFENSE)

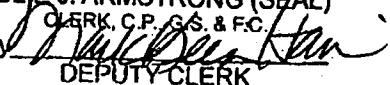
1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage) ☐ None (Non-Bailable Offense)
2. For cases in which bond was set, defendant was informed
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend
 - ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. Failure to appear in connection with a felony, or while awaiting sentence after conviction, additional charge has penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for a misdemeanor for which the maximum possible sentence is at least one year, additional charge has penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required on any charge not specified above will result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days.
 - ☒ a. Orally ☒ In writing (NOTE: Defendant must be informed of right both orally and in writing)
- ☒ 4. Defendant was informed of the right to trial by jury
5. In all general sessions cases, in all criminal domestic violence cases, and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges
 - ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
 - ☐ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court appointed counsel if indigent (must meet federal poverty guidelines) and instructions on how to obtain court appointed counsel. In order to apply for court appointed counsel, defendant is required to appear before _____ located at _____ for indigency screening. Defendant is responsible for a statutory fee of _____ for indigency screening
6. ☐ In all criminal domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member reside constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.
7. ☐ If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged

Appearance or
Hearing Date: Friday, February 04, 2011 at 2:00 p.m.


Judge's Signature: Baldwin

Second
Appearance Date: Friday, April 15, 2011 at 9:00 a.m.

SCCA/507 (Rev. 8/2008)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.C.
By  DEPUTY CLERK

CONSENT TO VIDEO CONFERENCING

Name of Defendant Brown Carrie D Warrant/Ticket Numbers

Type of Proceeding:

- ☐ Initial Appearance
(non-capital case)
☒ Bond Hearing
☐ Preliminary Hearing
☐ Contested Motion
☐ Guilty Plea and Sentencing
(Magistrate's/Municipal Court Offense)

County of Charleston

- Trial Court: ☒ General Sessions
☐ Magistrate Court
☐ Municipal Court

By my signature below, I, the defendant, consent to the use of video conference equipment in this criminal proceeding. The court will maintain the videotape of these proceedings for a period of thirty (30) days from today's date, after which the videotape may be destroyed. I have been fully informed of my rights to be personally present before the court for this proceeding and with that knowledge, I voluntarily waive that right.

Attorney for Defendant

X Carrie Brown
Signature of Defendant

The defendant waived his rights to personally appear at this criminal proceeding both orally and by writing.

Appearance or hearing date

DD
Signature of Judge:

SCCA/650

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

CHARLESTON COUNTY INDIGENCY SCREENING FORM
SPECIAL CONDITION OF SURETY OR
PERSONAL RECOGNIZANCE BONDS

Brown Corrie D

This is to acknowledge that I understand that a condition of my bond is that I must report to or contact the Indigency Screener at the Office of the Public Defender at **101 Meeting Street, 5th Floor, Charleston**, within seven (7) days from the date hereof to be advised of my right to a lawyer, a preliminary hearing and other rights, and to have a lawyer appointed for me if I so desire and if I am eligible. I understand that should I fail to report to the Indegency Screener, it will be a violation of special condition of bond. I understand that the office hours for the Indigency Screener are Tuesday, Wednesday and Thursday between the hours of 2:00 p.m. and 4:00 p.m.

I acknowledge receipt of a copy thereof:

Date:

BONDSMAN'S NAME

BONDSMAN'S ADDRESS

BONDSMAN'S TELEPHONE NUMBER

X

Corrie Brown
SIGNATURE OF DEFENDANT

DEFENDANT'S ADDRESS

DEFENDANT'S TELEPHONE NUMBER

SC LAW REQUIRES AN APPLICATION FEE OF \$40 TO APPLY FOR A PUBLIC DEFENDER. YOU MAY SEEK A WAIVER OF THAT FEE. MUST ALSO PRESENT RECENT PAY RECEIPTS WHEN YOU APPLY.

Public Defender Telephone: (843) 958-1850

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON)

THE STATE,

2012 MAR -

APR 11 48

Plaintiff,

JULIE J. ARMSTRONG
CLERK OF COURT# K344102
Criminal Sexual Conduct
- 1st Degree

BY

MOTION FOR PRODUCTION AND
DISCLOSURE OF EVIDENCE

CORRIE BROWN

Defendant

SOLICITOR, NINTH JUDICIAL CIRCUIT:

PLEASE TAKE NOTICE that the above-named Defendant, by:

Pro-Se

hereby requests and moves that the State produce and make available to the Defendant any and all documents, evidence and other information which is subject to disclosure pursuant to Rule 5 SCRCrimP. Defendant further requests that the Prosecutor make available any and all evidence favorable to the Defendant which is subject to disclosure pursuant to the case of Brady vs. Maryland, 373 U.S. 83 (1963), and subsequent cases interpreted to include any and all information or evidence which is discoverable pursuant to Brady vs. Maryland, and which is in the hands of the agents for the Prosecution, including all police agencies. By way of illustration, and in no way limiting the above general request for discovery, the Defendant specifically requests information and evidence of the following nature:

1. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the Government, the existence of which is known, or by the exercise of due diligence may become known, for the Government;
2. The substance of any oral statement made by the Defendant or anyone else, which the Government intends to offer as evidence at the trial of this case;

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JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.S.
By [Signature]
DEPUTY CLERK

3. The prior criminal record of the Defendant;
4. All books, papers, reports, documents, photographs, video tapes or tangible objects which are in the possession, custody or control of the Government, and which are material and relevant to this case, including any handwritten notes taken by any investigating agent;
5. The results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the Prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the Prosecution;
6. All statements of witnesses producible under Rule 5 SCR CrimP.
7. All evidence favorable to the Defendant or which would be helpful in the preparation of a defense or in mitigation of punishment. This includes, but is not limited to, the following:
 - a. All information relevant to the credibility of all Government witnesses.
 - b. All information concerning the conduct, character and reputation of any such witnesses which is relative to his or her truthfulness or untruthfulness.
 - c. The criminal record of any such witnesses.
 - d. All names and present addresses of all persons who have any knowledge of the existence of any evidence which might be relevant to this case, including all persons who (1) will be witnesses for the Prosecution upon the trial of this case, or (2) will not be called as witnesses by the Government.

This request shall be deemed to be a continuing request that the Prosecution supplement the disclosure of the material set forth herein as such additional evidence becomes available.

Respectfully submitted,

CORRIE BROWN
#1160759
3841 Leeds Ave
North Charleston, SC

ATTEST: A TRUE COPY
JULIE J ARMSTRONG (SEAL)
CLERK C.R. G.S. SEC.
By [Signature]
DEPUTY CLERK

29405

2012 MAR -7 AM 11:48

JULIE J ARMSTRONG
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Corrie D. Brown, #246396,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-10-0448

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 24, 2013, 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 Charleston County Clerk of Court. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for criminal sexual conduct- first degree (2011-GS-10-1729). The Applicant was represented by Juan Tolley, Esquire.

On April 16, 2012, the Applicant proceeded to trial. On April 18, 2012, before the conclusion of trial, the Applicant pled guilty to the lesser included offense criminal sexual conduct- 2nd degree. Applicant was sentenced by the Honorable Stephanie P. McDonald to confinement for a period of seventeen (17) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to adequately develop, investigate, and present the facts and deprived the jury of critical information relevant to an accurate assessment of his innocence.
 - b. Counsel failed to timely notify the defendant of his right to appeal.
2. Victim's blood alcohol concentration.
3. Victim gave conflicting stories to medical personnel, investigators, and law enforcement.

III.

The Applicant alleges in his first allegation that he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent construes the remaining allegations to be a challenge to the sufficiency of the evidence against the Applicant. The Applicant alleges that the evidence presented by the State was insufficient. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. ' 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and

during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975).

Therefore, the Court should summarily dismiss this ground for relief.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the ineffective assistance of counsel allegation.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: AL R. Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Nov. 1, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CORRIE D. BROWN, #246396

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

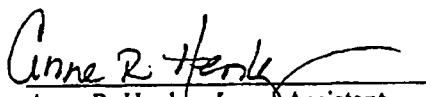
2013-CP-10-0448

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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 Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mikell C. Harper
502 King Street
Charleston, SC 29403

DATED this 1st day of November, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Corrie D. Brown,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 13-CP-10-0448
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 14, 2014, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

William L. Runyon, Esq.
Appearing for Applicant

Ashleigh Wilson, Assistant Attorney General
Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

State of South Carolina v Corrie D. Brown

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

1 THE COURT: Good morning, sir.

2 APPLICANT: Good morning, sir.

3 MR. RUNYON: Good morning.

4 THE COURT: You are Corrie Brown?

5 APPLICANT: Yes, sir.

6 THE COURT: Mr. Brown, this is
7 your application for post-conviction relief
8 and I have had a chance to review the file.
9 It appears that you're desirous of going
10 forward. And looking at it, apparently you
11 were charged with criminal sexual conduct in
12 the first degree. And then during the trial,
13 you elected to enter a plea to criminal
14 sexual conduct second degree. You understand
15 that?

16 APPLICANT: Yes, sir.

17 THE COURT: And you understand
18 that all I can -- the best I can do for you
19 is to give you another crack at being --
20 going forward on criminal sexual conduct in
21 the first degree?

22 APPLICANT: Yes, sir.

23 THE COURT: And, of course, as I'm
24 sure you've talked with your lawyer and you
25 understand, the difference really is that you

State of South Carolina v Corrie D. Brown

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

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1 face a potential thirty-year sentence versus
2 a twenty-year sentence?

3 APPLICANT: Yes, sir.

4 THE COURT: Okay. It is your
5 desire to go forward, sir?

6 APPLICANT: Yes, sir.

7 THE COURT: Okay. Mr. Runyon, you
8 prepared to go forward today?

9 MR. RUNYON: Yes, Your Honor. Your
10 Honor, we'd call at this time, Juan Tolley.

11 THE COURT: Okay.

12 (WITNESS TAKES STAND)

13 JUAN W. TOLLEY, having been duly sworn to
14 tell the truth, and nothing but the truth,
15 testified as follows:

16 CLERK: If you'll just state your
17 full name and spell your last name for the
18 record?

19 WITNESS: Juan Tolley, T-O-L-L-E-Y.

20 DIRECT EXAMINATION

21 BY MR. RUNYON:

22 Q. Ms. Tolley, what is your occupation?

23 A. I'm an attorney.

24 Q. And when were you admitted to the
25 bar?

State of South Carolina v Corrie D. Brown

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

1 A. In 1991.

2 Q. And have you handled criminal cases
3 over the course in your time before the Bar?

4 A. I have.

5 Q. And were you ever a public defender,
6 for example?

7 A. I was.

8 Q. Okay. Now, did you have an occasion
9 to represent Mr. Corrie Brown?

10 A. I did, yes.

11 Q. And you were in private practice at
12 the time, were you not?

13 A. Yes.

14 Q. But you were appointed because of
15 conflict in the public defender's office?

16 A. That is correct.

17 Q. All right. Now, drawing your
18 attention to the actual trial of the matter,
19 did you, were you prepared to try this
20 matter?

21 A. Yes.

22 Q. Did you have -- in your estimation
23 did you have the discovery from the
24 solicitor's office, things of that sort?

25 A. We did, yes.

State of South Carolina v Corrie D. Brown
Case No. 13-GS-10-0448
Guilty Plea Hearing of April 14, 2014
Before The Honorable R. Markley Dennis

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1 Q. I beg your pardon?

2 A. Yes, we did. We had some issues
3 about that but, yes, we did.

4 Q. Now, at the time you went to trial,
5 did you, for example -- and the transcript is
6 part of the record, did you, for example,
7 move for a continuance?

8 A. I did, yes.

9 Q. And why did you move for a
10 continuance?

11 A. Part of it had to do with some of
12 the discovery that we received, we thought, a
13 little late. And we thought you could always
14 use more time in preparing for a trial like
15 that.

16 Q. Well, a case that ain't been tried
17 is a case that ain't been lost; right?

18 A. Exactly.

19 Q. All right. Now, as a practical
20 matter, were there colloquies, which are of
21 record, between the prosecution and the
22 defense with the Court?

23 A. Yes.

24 Q. And during the course of those
25 proceedings, did the Court advise generally

State of South Carolina v Corrie D. Brown
Case No. 13-GS-10-0448
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Before The Honorable R. Markley Dennis

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1 as to what the Court's policy might be if
2 there was, in fact, a conviction?

3 A. Yes, she did.

4 Q. And what was that policy assuming
5 there was a conviction. Not assuming that he
6 would be convicted.

7 A. I believe the policy was to possibly
8 give the maximum penalty, you know, possible.
9 I know that the prosecutor specifically said
10 that if he were convicted that he was going
11 to ask for the maximum penalty.

12 Q. I'm not worried about what the
13 prosecutor was going to ask for.

14 A. Well.

15 Q. But did the Court in essence advise
16 that that would be the policy if convicted,
17 to impose the maximum penalty?

18 A. That's correct.

19 Q. Which would be thirty years.

20 A. That's correct.

21 Q. Okay. Now, did you draw a jury in
22 this case?

23 A. We did.

24 Q. And did you in fact start the trial,
25 have motions and things of that sort?

State of South Carolina v Corrie D. Brown

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Case No. 13-GS-10-0448

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1 A. Yes, we did.

2 Q. All right. Were there -- during the
3 course of this proceeding -- and I'll just
4 jump right ahead -- there were in essence
5 plea negotiations going on during this time,
6 were they not?

7 A. Yes.

8 Q. Did the solicitor in fact offer
9 twenty years?

10 A. Yes.

11 Q. And did you discuss that with your
12 client?

13 A. I did.

14 Q. And was that accepted?

15 A. No, it was not.

16 Q. Was there subsequent that another
17 offer of, say, eighteen years?

18 A. Yes.

19 Q. And was that accepted by your
20 client?

21 A. No, it was.

22 Q. Subsequent to that, during the
23 course of the ongoing portion, the jury
24 drawing and motions and what-have-you, was
25 there an offer for seventeen years?

State of South Carolina v Corrie D. Brown
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1 A. Yes.

2 Q. Did you have a discussion with your
3 client, Mr. Brown, about the seventeen-year
4 offer?

5 A. Yes, I did.

6 Q. And in the course of that discussion
7 -- of course the Supreme Court of the United
8 States says that a defense lawyer has got to
9 tell their client about plea offers; correct?

10 A. That's correct.

11 Q. Did you, in the course of
12 discussion, advise as to the wisdom of taking
13 this particular plea?

14 A. I did, yes.

15 Q. Did Mr. Brown -- was Mr. Brown aware
16 of the policy of the Court previously
17 announced?

18 A. Right. He was in court when she
19 said it.

20 Q. Okay. And did Mr. Brown ultimately
21 take the plea bargain?

22 A. Yes, he did.

23 Q. And, of course, that's of record in
24 the transcript?

25 A. Yes, sir.

State of South Carolina v Corrie D. Brown

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Before The Honorable R. Markley Dennis

1 Q. All right.

2 MR. RUNYON: I have no further
3 questions of this witness, Your Honor.

4 THE COURT: All right. Cross-
5 examine.

6 CROSS-EXAMINATION

7 BY ATTORNEY GENERAL WILSON:

8 Q. Good morning, Ms. Tolley.

9 ATTORNEY GENERAL WILSON: And just
10 for the record, it's Ashleigh Wilson with the
11 State of South Carolina.

12 CROSS-EXAMINATION

13 BY MS. WILSON:

14 Q. Do you recall exactly when you were
15 appointed to represent Mr. Brown?

16 A. It was some time in 2011.

17 Q. Do you recall like how many months
18 before trial?

19 A. Probably nine months before trial.

20 Q. Do you recall how many times you met
21 -- how many times you got to meet with him
22 before trial started?

23 A. Many times within that short period
24 of time.

25 Q. And did you file any Rule 5 motions

State of South Carolina v Corrie D. Brown
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Guilty Plea Hearing of April 14, 2014
Before The Honorable R. Markley Dennis

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1 for Mr. Brown?

2 A. I did, yes.

3 Q. Did you review all of the discovery
4 that you had, that you received with him?

5 A. Yes, I did.

6 Q. And prior to Mr. Brown starting this
7 trial, did you talk to him about the elements
8 of the charges he was facing and what the
9 State had to prove?

10 A. Yes.

11 Q. Did you talk to him about his
12 version of the facts?

13 A. Yes, I did.

14 Q. Did you discuss possible defenses
15 with him?

16 A. Yes, I did.

17 Q. And could you briefly characterize
18 the State's evidence against Mr. Brown and
19 what defenses you were planning to present at
20 trial when it started?

21 A. He was accused of raping a College
22 of Charleston student, downtown Charleston.
23 She was one of the witnesses. She had two
24 friends who were also going to be witnesses
25 and who actually did testify. There was DNA

State of South Carolina v Corrie D. Brown

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1 evidence linking him to the victim. And
2 those were the kinds of things that they were
3 going to present at trial.

4 His defense, from my understanding was
5 that he was involved with the young lady, it
6 was a consensual relationship. Not a
7 lifelong relationship, a one-time event in
8 exchange for a drug deal and that that was
9 how he came to be with her.

10 Q. Did Mr. Brown give you any
11 particular witnesses or leads to investigate?

12 A. We talked about a person who worked
13 at the shelter downtown because he was
14 staying at the shelter at that time,
15 according to him. And that the person could
16 possibly verify that he was in the shelter at
17 the time the incident allegedly occurred.

18 We had a private investigator attempt to
19 contact the witness. And he, in fact, did
20 contact one person who worked at the shelter
21 who could verify that he was staying there at
22 the time, but not that he was there at the
23 time of the incident.

24 Q. And did you have any other investi-
25 gation in this case?

State of South Carolina v Corrie D. Brown

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Case No. 13-GS-10-0448

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Before The Honorable R. Markley Dennis

1 A. There were no other witnesses, *per*
2 *se*, to track down. He gave us a description,
3 a general description of somebody else who
4 might know something but that was all very
5 nebulous.

6 Q. And did you feel like you had ample
7 time to prepare for trial?

8 A. I did.

9 Q. Do you recall what your conversation
10 was prior to -- with Mr. Brown prior to him
11 pleading guilty?

12 A. I'm sorry. Say that again?

13 Q. Do you recall what your conversation
14 was with Mr. Brown prior to him pleading
15 guilty?

16 A. Yes. Well, we had had many on-going
17 conversations before trial, during the trial,
18 throughout the process where I -- he was very
19 aware of what was going on and what the
20 possible penalties were. And I continued to
21 advise him of that throughout the process. I
22 also gave him the opportunity during the
23 course of the trial, and in between these
24 plea offers to discuss those things with his
25 family members.

State of South Carolina v Corrie D. Brown

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Before The Honorable R. Markley Dennis

1 Q. And did you talk to him about the
2 Constitutional rights he'd be waiving if he
3 pled guilty?

4 A. I did.

5 Q. And did you give him any advice one
6 way or another about whether he should take
7 the State's plea offer?

8 A. I repeatedly advised him that it was
9 up to him, that he was aware of what his
10 rights were, what the penalties were. But
11 that as far as plea offers were concerned
12 that I thought it was a good one but it was
13 ultimately his decision.

14 Q. And Mr. Brown was aware that it was
15 possible the thirty-year maximum sentence
16 that the Judge would sentence him up to
17 thirty; is that correct?

18 A. That's correct.

19 Q. During the guilty plea, did he
20 appear to have any type of reservations like
21 he didn't understand what was going on?

22 A. No.

23 ATTORNEY GENERAL WILSON: Thank
24 you.

25 THE COURT: Redirect?

State of South Carolina v Corrie D. Brown
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Guilty Plea Hearing of April 14, 2014
Before The Honorable R. Markley Dennis

15

1 MR. RUNYON: Briefly.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. RUNYON:

5 Q. Ms. Tolley, as a practical matter
6 you fully discharged your duties and advised
7 him as to the wisdom of taking the plea?

8 A. Yes.

9 Q. And you also advised him of the
10 possible outcome, which might even include
11 acquittal, if he went forward with the trial?

12 A. That's correct.

13 Q. And that the decision to plead
14 guilty was, in fact, his?

15 A. Yes, it was.

16 MR. RUNYON: I have no further
17 questions, Judge.

18 THE COURT: Recross?

19 ATTORNEY GENERAL WILSON: Nothing
20 from the State.

21 THE COURT: Ms. Tolley, you may
22 come down. Thank you.

23 WITNESS: Thank you.

24 (WITNESS STEPS DOWN)

25 MR. RUNYON: We'd call at this time

State of South Carolina v Corrie D. Brown

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1 the applicant, Mr. Corrie Brown.

2 THE COURT: All right. Mr. Brown.

3 (WITNESS TAKES STAND)

4 CORRIE BROWN, having been duly sworn to
5 tell the truth and nothing but the truth,
6 testified as follows:

7 CLERK: Please state your full name
8 and spell your last name.

9 APPLICANT: Corrie Brown -- B-R-O-
10 W-N.

11 DIRECT EXAMINATION

12 BY MR. RUNYON:

13 Q. Mr. Brown, how old are you, sir?

14 A. I'm forty-four years old.

15 Q. And prior to being incarcerated,
16 what was your occupation?

17 A. I was a brick mason.

18 Q. Now, did you have any college?

19 A. Actually, I went to college two
20 years.

21 Q. And you graduated from high school,
22 of course?

23 A. (Affirmative nod).

24 Q. Okay. So at the time of the trial
25 in April of 2012, you were roughly forty-two

State of South Carolina v Corrie D. Brown
Case No. 13-GS-10-0448
Guilty Plea Hearing of April 14, 2014
Before The Honorable R. Markley Dennis

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1 years of age?

2 A. Yes, sir.

3 Q. You were educated and you actually
4 were engaged in the occupation of being a
5 brick mason?

6 A. Yes, sir.

7 Q. Now, did you, in fact, enter a
8 guilty plea in this case?

9 A. Yes, sir.

10 Q. And was Ms. Tolley your lawyer?

11 A. Yes, sir.

12 Q. And the transcript speaks for itself
13 as it relates to motions and things of that
14 sort. During the course of the proceeding,
15 did you become aware of the Bench's policy if
16 you were, in fact, convicted of criminal
17 sexual conduct in the first degree?

18 A. Yes, sir.

19 Q. And what was that policy?

20 A. Well, the judge, from day one she
21 told me, she said, upon convicted of these
22 charges, that she was going to give me thirty
23 years. She wasn't going no lesser or
24 anything.

25 Q. Now, during the course of the

State of South Carolina v Corrie D. Brown

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Guilty Plea Hearing of April 14, 2014

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1 proceeding, were there ultimately plea
2 bargain offers made to you?

3 A. Yes, sir.

4 Q. All right. Did you accept those?

5 A. No, sir.

6 Q. Did you understand that your lawyer
7 was required to tell you about those?

8 A. Yes, sir.

9 Q. Matter of fact, you weren't too
10 happy when she made that number to you, were
11 you?

12 A. No, sir, not at all.

13 Q. Okay. You thought she wasn't on
14 your side, so to speak?

15 A. Exactly.

16 Q. Okay. But she told you that these
17 offers were being made?

18 A. Yes, sir.

19 Q. When they offered you twenty years,
20 did you accept it?

21 A. No, sir.

22 Q. And the trial went on?

23 A. Yes, sir.

24 Q. So a little later on they offered
25 you eighteen years?

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1 A. Yes, sir.

2 Q. Did you accept it?

3 A. No, sir.

4 Q. Okay. A little bit later on, was
5 there a break and she advised you of a
6 seventeen-year plea?

7 A. Yes.

8 Q. Did you, after consultation with her
9 take that -- accept that -- when I say "take
10 it," accept that plea bargain offer from the
11 State?

12 A. Well, sir, I didn't wanted to, but I
13 did.

14 Q. All right. And why didn't you want
15 to?

16 A. Because I knew I didn't committed
17 the crime.

18 Q. Okay. Why didn't you want to take
19 it? You didn't want to take the plea
20 bargain?

21 A. I didn't want to.

22 Q. Okay. Why did you take the plea
23 bargain?

24 A. Because I was scared. I was
25 stressed out. And there was always in the

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1 back of mind that I'm going to get this
2 thirty years.

3 And if I can explain myself a little bit
4 about what when went down, what went on
5 during the time of the trial, is that when
6 she told me that she was going to give me
7 thirty years, she was firm. The judge said
8 there no doubt about it. 'If you be found
9 guilty, I'm going to give you thirty years.'

10 And on day one when we were at the trial,
11 you know, there was also a second suspect in
12 this case. And the Judge for some reason --
13 the prosecutor asked the Judge, told the
14 Judge, said that 'you know, this is the
15 boyfriend of the victim.'

16 MS. WILSON: Objection, Your Honor.
17 Relevance.

18 THE COURT: I'll allow it.

19 WITNESS: Can I continue?

20 THE COURT: Yes.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. RUNYON:

23 Q. Okay. Go ahead and continue.

24 A. And the prosecutor ask that the
25 second suspect should be removed from this

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1 case. I don't felt that that was right. Ms.
2 Tolley then questioned and asked that he
3 should be here because he should at least be
4 questioned. But the Judge denied it.

5 Q. Okay. Well, let me ask you this
6 question. Ms. Tolley talked to you on all
7 the issues you wanted her to fight for her;
8 right?

9 A. Yes, sir, she did.

10 Q. Okay. There's no question about
11 that.

12 A. She did a wonderful job. She did.

13 Q. All right. So at the particular
14 point in time after all this going back and
15 forth and these rulings on these motions, you
16 accepted a plea bargain of seventeen years?

17 A. Yes, sir, I did. Involuntarily.

18 Q. I beg your pardon?

19 A. Involuntarily.

20 Q. And why was that involuntarily?

21 A. Because Judge, Your Honor, like I
22 said, I was scared, I was afraid of the
23 thirty years. I mean, the Judge, Your Honor

24 ---

25 Q. No, I'm not a judge. I'll never get

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1 to that point.

2 A. Well, I'm speaking to the judge.

3 Q. All right.

4 WITNESS: Judge, Your Honor, I
5 was scared. I was nervous and I was stressed
6 out. Actually went to court before we was
7 actually even supposed to go to court. When
8 Ms. Tolley talked to me, like maybe a week
9 before she said that we were going to court.
10 But before that, she told me that we were
11 going to court before you, Judge Dennis, and
12 that you was going to be the trial Judge.

13 Well, she came back to me that week and
14 she said, 'Mr. Brown, I'm sorry, but they're
15 calling you to come to court Monday morning.'
16 Well, here it is, we had to be in court
17 Monday morning.

18 When I got to court, there was Judge
19 McDonald up there. And Judge, Your Honor,
20 it's, you know, from that point right there,
21 I felt like that this trial was going to be
22 staged.

23 And for everything Ms. Tolley fought for,
24 Judge, Your Honor, she denied her; everything
25 that she fought for. But for the prosecutor,

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1 she gave them everything that she asked, they
2 asked for. And, Judge, Your Honor, I mean,
3 it was from that point, throughout the whole
4 trial, nothing was going in our behalf.

5 Now, I'm not here to bash you Ms. Tolley,
6 because she's a wonderful lawyer. She done a
7 wonderful job. She did a great job. But
8 Judge, Your Honor, she was ineffective in her
9 counseling because the judge wouldn't allow
10 her to prove my innocence. I mean, in no
11 point in no standing at all. And I feel like
12 my grandmother said, our hands were tied.
13 And she just couldn't do her job. Now, Ms.
14 Tolley was a wonderful lawyer and I felt like
15 she done a wonderful job, but she just
16 couldn't do what she -- what her job requires
17 her to do.

18 And, Judge, Your Honor, as it went on,
19 you know, I got scared. I got nervous.
20 Nothing was going in our behalf.

21 And, number one, by them excusing the
22 second suspect in the case, I mean, I didn't
23 feel like I was getting a fair trial. So I
24 gave an involuntary guilty plea.

25 ATTORNEY GENERAL WILSON: Your

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1 Honor, I'm going to object on the basis of
2 relevance.

3 THE COURT: I appreciate it. I'm
4 going to overrule you. Thank you.

5 WITNESS: And, Judge, Your
6 Honor, I'm being honest. I was scared. I
7 did not want to plead guilty. I explained to
8 Ms. Tolley several times, that "I don't want
9 to plead guilty."

10 But that one time, I'll be honest,
11 she did told me on the seventeen years, she
12 said, that Mr. Brown, if you don't accept
13 this plea, the Judge is going to give you
14 thirty years.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. RUNYON:

17 Q. If you're convicted?

18 A. If I was convicted.

19 MR. RUNYON: No further questions,
20 Judge.

21 THE COURT: Cross-examine.

22 ATTORNEY GENERAL WILSON: May it
23 please the Court.

24 CROSS-EXAMINATION

25 BY ATTORNEY GENERAL WILSON:

1 Q. Good morning, Mr. Brown.

2 A. Good morning.

3 Q. Do you recall how many times you met
4 with Ms. Tolley before you went to trial?

5 A. Not exactly but she came and visited
6 me on a regular basis. She did that.

7 Q. And did you go over with her all the
8 State's evidence that they gave her before
9 you went to trial? All of that stuff, y'all
10 reviewed that?

11 A. I think we did. I'm not sure.

12 Q. Did you talk to her about -- did
13 y'all talk about possible defenses and what
14 y'all were going to present at trial?

15 A. Well, no, we did not. And that's
16 why from day one that she got up and she
17 asked for continuance and the Judge denied
18 it. Because we wasn't ready. I mean, I
19 wasn't ready to take the stand. And I mean,
20 we really didn't even went over the Defense
21 yet.

22 Q. Thank you. Before you went to
23 trial, she talked to you about your
24 Constitutional rights, like your right to
25 remain silent, your right to a jury trial and

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1 your right to confront the witnesses against
2 you. She talked to you about those?

3 A. Yes. Yes, ma'am.

4 Q. Did she talk to you about any plea
5 offers while you prepared for trial and what
6 it meant to plead guilty and all that kind of
7 stuff?

8 A. No, she didn't because they didn't
9 offer me no plea until -- I mean, I was in
10 jail a year and a half. They didn't offer me
11 a plea until I came to trial.

12 Q. And you were aware going into trial
13 that criminal sexual conduct in the first
14 degree carried up to a thirty-year sentence;
15 right?

16 A. Excuse me. Ask again?

17 Q. Were you aware that CSC first, which
18 is what you were charged with originally,
19 carried up to a thirty-year sentence?

20 A. Yes, ma'am.

21 Q. Okay. And so -- well, one thing --

22 ATTORNEY GENERAL WILSON: May I
23 approach the witness, Your Honor?

24 THE COURT: Yes.

25 CROSS-EXAMINATION CONTINUED

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1 BY ATTORNEY GENERAL WILSON:

2 Q. Mr. Brown, I think you're able to
3 read and write; correct?

4 A. Somewhat.

5 Q. If you ---

6 ATTORNEY GENERAL WILSON: Let the
7 record reflect I'm on Page 144 of his trial,
8 the start of his trial transcript.

9 THE COURT: Okay.

10 ATTORNEY GENERAL WILSON: And
11 we're going to start at Line 8.

12 CROSS-EXAMINATION CONTINUED

13 BY ATTORNEY GENERAL WILSON:

14 Q. Can you start reading from Line 8 to
15 Line 13, right here (indicating), for the
16 Court?

17 A. You said from the ---

18 THE COURT: He doesn't need to
19 read it out loud.

20 ATTORNEY GENERAL WILSON: We
21 don't? Okay.

22 THE COURT: I have it.

23 CROSS-EXAMINATION

24 BY ATTORNEY GENERAL WILSON:

25 Q. Well, can you just review line --

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1 just review section -- like Lines 8 through
2 13 on Page 144?

3 A. You want me just to read it out?

4 Q. No, you don't have to read it out.
5 Just read it for yourself.

6 A. (Complies.)

7 THE COURT: I'm reading it right
8 now as well.

9 CROSS-EXAMINATION CONTINUED

10 BY ATTORNEY GENERAL WILSON:

11 Q. Just let me know when you're
12 finished.

13 A. Okay.

14 Q. Okay. And you agree that that, in
15 that, in that portion of the transcript Judge
16 McDonald is telling you that you could be
17 sentenced up to thirty years; is that
18 correct?

19 A. No, no, no. That's not correct.

20 Q. Okay. So can you read Lines 12 and
21 13, starting right here?

22 A. (Complies).

23 THE COURT: It says what it says.
24 He doesn't have to agree with you.

25 ATTORNEY GENERAL WILSON: Okay.

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1 THE COURT: Thank you.

2 CROSS-EXAMINATION CONTINUED

3 BY ATTORNEY GENERAL WILSON:

4 A. Okay.

5 Q. Thank you. Mr. Brown, did you not
6 plead guilty because you didn't want to risk
7 getting a thirty-year sentence?

8 A. Yes, sir [sic].

9 Q. And you didn't think that your trial
10 was going well and you might be convicted?

11 A. Yes, ma'am.

12 Q. And you were aware that you were
13 facing a thirty-year sentence before the
14 Court's comments; is that correct?

15 A. Yes, ma'am.

16 Q. Thank you.

17 THE COURT: Redirect?

18 MR. RUNYON: No redirect, Judge.

19 THE COURT: Thank you, Mr. Brown.
20 You may step down, sir.

21 (WITNESS STEPS DOWN)

22 THE COURT: Any additional
23 witnesses, Mr. Runyon?

24 MR. RUNYON: No additional
25 witnesses, Judge.

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1 THE COURT: Does the State wish to
2 call any additional witness?

3 ATTORNEY GENERAL WILSON: Nothing
4 from the State, Your Honor.

5 THE COURT: Okay. I'll be happy
6 to hear from you, Mr. Runyon.

7 MR. RUNYON: Judge, Mr. Brown's
8 position is -- I think it's covered in the
9 application -- is that 'I took my lawyer's
10 advice.' And I'm not suggesting the lawyer's
11 advice is the court's advice. I'm not
12 suggesting. And this is the problem with
13 these cases. You have to say that the lawyer
14 fell below the certain standard. And I don't
15 think she did.

16 THE COURT: He said she did a
17 great job for him.

18 MR. RUNYON: That's right. But let
19 me get right to the point, Judge. Years ago
20 there was a very fine Circuit Judge in this
21 state. I appeared before him many, many
22 times. And when you'd advise him that your
23 client was not going to take the stand, he
24 would give what I term, what I came to call,
25 the Harris charge.

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1 THE COURT: Tony Harris, yes, sir.
2 I had the same experience.

3 MR. RUNYON: And I knew that for
4 years when my client did not -- went forward
5 and sat down and said, 'I'm not going to
6 testify' that he had been thoroughly vetted
7 on the question of his choice of not taking
8 the stand.

9 THE COURT: Right.

10 MR. RUNYON: And I would have very
11 confident in that until the Supreme Court one
12 day disabused me of that notion when they
13 found that the Harris charge to the
14 defendant, in effect, had a chilling effect
15 on the defendant's right to stay silent.
16 Now, and I know the Court's familiar with
17 that narrow issue of law.

18 THE COURT: I am.

19 MR. RUNYON: Taking that theory and
20 applying it to what Mr. Brown said basically
21 is the testimony here, that the Court -- the
22 Bench in this case either advertently or
23 inadvertently gave to the Defendant the
24 theory or the position that, you know, 'I'm
25 going to give you a great trial. And if

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1 you're acquitted that's fine, but if you're
2 convicted my policy basically is thirty
3 years. And that's what you're playing with,
4 sir.'

5 THE COURT: Let me ask you a
6 question because I've read the one part.

7 Is there another part where she says,
8 'I'm going to give you twenty years, thirty
9 years'?

10 MR. RUNYON: No, sir, there's ---

11 THE COURT: I haven't found it. I
12 was just wondering.

13 MR. RUNYON: It's not expressed in
14 the transcript, but it was discussed in the
15 testimony.

16 THE COURT: And I don't question
17 the fact that lawyers, I know I did and I'm
18 sure you do. I mean, we aren't mind readers,
19 but we also know the tendency of judges when
20 a person has been guilty -- because of a lot
21 of things. Number one, one of the things
22 I've learned over the twenty years is that
23 when I take a guilty plea, I haven't heard it
24 all. And once you hear it all, it sometimes
25 has a different complexion and overall

1 picture that changes how you originally felt.
2 So I'm cognizant of that. I just wanted to
3 be -- I didn't see it. I saw up to thirty
4 years. And no question he may have heard
5 thirty years, and that's fine. It's probably
6 good he did, because that's the exposure.

7 MR. RUNYON: Well, -- and, Judge,
8 I'd be the first one to also acknowledge the
9 record that sometimes the advantage of a
10 guilty plea is that you have a fairly narrow
11 presentation and the judge doesn't get to
12 hear it all.

13 THE COURT: That's correct.

14 MR. RUNYON: Which makes it -- and
15 I don't mean to -- and I'm not suggesting
16 anything improper, but it makes easier to
17 accept a lesser sentence, by the judge.

18 THE COURT: Well, let me just tell
19 you -- confession time. I tried the
20 gentleman and lady that were charged with a
21 child dying and stuffing the body in concrete
22 barrel. I actually in a discussion, pre-
23 trial discussion asked the State and was
24 quite harsh about it, needing to take the
25 twenty-five year sentence -- a twenty-year

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1 sentence I think it is. And said, you really
2 ought to take that. And she said, 'I can't
3 recommend that and I can't accept that,
4 allowing them to plead to a lesser charge.'
5 After hearing the trial, and I made this
6 comment on the record -- I'm sure that it
7 will be appealed. We'll see. But after
8 hearing it, I was in error. I don't know of
9 a case that warranted a life sentence any
10 more than that. And in twenty years I'd
11 never seen one. So, again, that changed my
12 whole mindset about that case.

13 But you're absolutely right. And that's
14 just human nature. That's just the nature of
15 the beast.

16 MR. RUNYON: And so our position in
17 this case on behalf of this applicant, I
18 think it's pretty well documented that the
19 testimony, his testimony is that -- it's kind
20 of like in the Harris charge. It had a
21 chilling effect on his going forward with the
22 trial. And, you know, paying his money and
23 taking his choice. And, therefore, the Court
24 should consider his application and grant a
25 new trial.

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1 THE COURT: Thank you, Mr. Runyon.
2 I appreciate it. And I appreciate---

3 MR. RUNYON: I think that, you
4 know, we could make it a lot more flowery and
5 what-have-you, but basically ---

6 THE COURT: But that's where we
7 are and I understand that. And I appreciate
8 your -- I really appreciate again the
9 presence of Mr. Brown. These are tough cases
10 and I handled them when I was a lawyer. I
11 had the pleasure of practicing law for
12 twenty-one years before I took this job. And
13 I had the pleasure of representing persons
14 just like you when I was a lawyer. And so --
15 and I understand it, but as you know -- and
16 you're the lawyer -- there are very narrow
17 issues here. And sometimes lawyers, I think,
18 do their client a disservice by just going
19 off on all these tangents that really don't
20 have anything, rather than focusing on the
21 true issue at hand. And Mr. Runyon, I
22 commend you for that and for your
23 professionalism, sir.

24 MR. RUNYON: Well, as a practical
25 matter, Judge, like I said, I still disagree

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1 with the Supreme Court in their decision on
2 the Harris trial.

3 THE COURT: I've said the same
4 thing in my career. To be candid with you,
5 that's one of the things that I probably, if
6 I had to practice law again, I'd change. Not
7 because of the Supreme Court said what it
8 said about Tony Harris' charge, but because
9 of my observations. I can think of only
10 three cases in twenty years where I believe
11 that it was advantageous for the defendant to
12 testify. Frankly, it's the best thing not to
13 testify in most cases. And I've just seen it
14 time and time again. So it's really a, I
15 think -- I don't think Tony was correct,
16 notwithstanding the chilling effect, I think
17 the substance of what he said was incorrect,
18 too. That people want to hear you say, "I
19 didn't do it." But I've seen it where it
20 didn't work that way. But anyhow, thank you
21 very much.

22 MR. RUNYON: Thank you very much,
23 Your Honor.

24 THE COURT: You bet. Yes, Ms.
25 Wilson?

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1 ATTORNEY GENERAL WILSON: May it
2 please the Court. Just briefly, Your Honor,
3 with regard to these allegations the State's
4 position that the court's statements to Mr.
5 Brown had a proper -- because there was a
6 thirty-year possible sentence for the CSC
7 first charge that he was facing.

8 Also, Your Honor, the record reflects his
9 guilty plea was entered freely and
10 voluntarily and he was advised of all his
11 Constitutional rights by the court. You
12 know, he's aware of what he was waiving.

13 The record also reflects that he admitted
14 his guilt. He told the court that he hadn't
15 been threatened or coerced or promised
16 anything to plead guilty.

17 And there are, even without the court's
18 statements about the possibility of the
19 Defendant being sentenced to a thirty-year
20 sentence, he also was made aware of that from
21 his talks with Ms. Tolley.

22 So we'd just ask that you dismiss his
23 application for post-conviction relief.

24 THE COURT: Okay. All right.
25 Anything else?

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1 MR. RUNYON: Nothing further, Your
2 Honor.

3 THE COURT: All right. And I
4 understand Mr. Brown's position. As I said,
5 I really am blessed and very fortunate to
6 have had the privilege of practicing law for
7 twenty-one years. And it taught me a lot of
8 things, I think, that have helped. Maybe
9 some that didn't help so much. But most
10 importantly is understand the dynamics of
11 what goes on at those times in those
12 decisions. And it's tough time when you make
13 decisions of whether to go forward or not.

14 And I have challenged the Court, but they
15 reversed me one time saying that I basically
16 sentenced somebody more harshly because they
17 had a jury trial than they did a guilty plea.
18 But finally in the Sumter case that has
19 followed this case, the entire Court
20 addressed the issue of whether I penalized
21 her. Judge Stilwell who was then on the
22 Court of Appeals, made, what I think, the
23 greatest statement and we know it. And I
24 assume it's still done in the Federal System.
25 You're given points for pleading guilty that

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1 are advantageous to your sentence. Yet we
2 sit there and say we can't use those terms
3 when we caution people about trials. But as
4 Judge Stilwell wrote, all of us that practice
5 law know the best sentence you can hope for
6 is a guilty plea, generally, in a case. Not
7 always but generally that's the case.

8 You talk about Judge Harris, I also had
9 to practice -- and you did too, practicing
10 law before a jurist that was the first
11 Circuit Judge that I appeared before in this
12 Circuit, Judge Singletary. Judge Singletary
13 even said, 'I have three sentence forms. One
14 if you plead guilty, one if you plead guilty
15 after picking a jury, because you're entitled
16 to see who's going to -- what the judges is
17 going to look like that's going to decide the
18 facts. And the third sentence is if you're
19 convicted. And the third sentence, he always
20 said, is what the statute provides.' That
21 meant the maximum if you understood that as a
22 lawyer. Whether I liked it or not, that was
23 the reality of that particular judge.

24 That's the beauty of practicing law. And
25 that's one of the things that we're supposed

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1 to share with you. Not to coerce you, not
2 to do anything but just to tell you the real
3 facts of life. You know, just -- there was a
4 movie not too long ago, *A Perfect World*.
5 We don't live in a perfect world. And I'll
6 give you an example. People like you who've
7 finished and completed their sentence, when
8 they come out, we know what happens in
9 society. They punish you. They continue to
10 punish you. They won't hire you. That's not
11 right. That's wrong. I mean, it ought not
12 to happen a thing in the world -- you've
13 served your time. But we don't live in a
14 perfect world. We have to deal with what it
15 is and the way it is. And that's a sad
16 thing, but that's just the way life is.

17 In this situation, I've read the
18 transcript and specifically focused on the
19 transcript in the middle of the trial where
20 your lawyer continued to work for you. As
21 you noted, she did a marvelous job of getting
22 it down from twenty down to seventeen. I
23 mean, that's a pretty significant drop, to be
24 candid with you, once the trial starts. Most
25 of the time ---

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1 DEFENDANT: I ---

2 THE COURT: It's my turn to speak.
3 You'll have an opportunity in another hear-
4 ing. But clearly, that's what a negotiated
5 sentence means.

6 I read the colloquy with Judge
7 McDonald, which is similar to the colloquy
8 that I have. And she has the same, obviously
9 the same feeling, especially in mid-trial.
10 You're going to have to do a lot to convince
11 me this is what you want to do because
12 everything's in place. This trial is going
13 forward. You, as every person accused of
14 committing criminal offenses are entitled to
15 have the judge of the facts make that
16 decision. Then the Court is left with its
17 decision of what to do based on their
18 decision.

19 But quite frankly, so when someone
20 stops, I want to be sure that that's what
21 they want to do because that's probably one
22 of the most important things that I do, have
23 done for twenty years, really, is take guilty
24 pleas, because it's a -- it doesn't take
25 long. Just like yours, it didn't take that

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1 long as compared to trial. Quite frankly,
2 she went into much more detail than a lot of
3 us do in asking you questions about your
4 decision. But clearly I have to be convinced
5 that you want to waive those incredibly
6 important Constitutional rights. That is the
7 right to confront your witnesses, which you
8 did in part. The right to remain silent and
9 the right to have a jury make a determina-
10 tion.

11 Whatever motivated you, there are
12 lots of motivations and a lot of things
13 people consider. That's up -- I leave that
14 to them, to the individual.

15 But the judge discussed with you all
16 the ramifications very clearly.

17 The problem that you have today is
18 you're under oath in responding to the judge.
19 You're under oath today. I also understand
20 human beings. I've raised three children. I
21 was a child, I remember that. It's hard to
22 testify or to tell things that might be
23 detrimental to us, especially when something
24 is on the line. And we kind of -- sometimes
25 it's intentional, sometimes it's just we just

1 forget those things. But clearly the
2 credibility -- your credibility has to be
3 assessed. And I can't for the life of me
4 believe that you now are saying after having
5 had an opportunity to go forward, and quite
6 frankly I know you said that everything was
7 going against you, sometimes it goes against
8 you because that's what we do as Judges. We
9 have to rule on the law. She did. And, in
10 fact, I don't know that in reading the
11 rulings that I've read, I don't know that --
12 it doesn't make any difference, but I don't
13 know that I would have ruled any differently.
14 So my point is you would have had the same
15 feeling if I'd been trying the case, that
16 things were going against you.

17 They went against you because we
18 can't -- I used to tell clients, 'I'm a
19 lawyer. I'm not a magician. I can't make
20 the facts disappear. I can't change how
21 those things are.' And that's reality.

22 And your lawyer dealt with it the
23 best she could, as you state. And she did a
24 heck of a job for you. But you made a
25 choice.

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Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

1 And that's the other -- the sort of
2 crowning blow here for me in credibility is
3 you got a benefit, a significant benefit.
4 You almost cut it in half your exposure, to
5 plead guilty. And it's a negotiated
6 sentence, which means you're asking the Judge
7 to impose that sentence. And now you say
8 'no, that's not what I wanted to do.'

9 For all of those reasons -- first of
10 all, you stated -- I don't think her approach
11 or anything she did or didn't do fell below
12 the standard of a lawyer. You even acknow-
13 ledged that. That she did exactly what she
14 would do.

15 Would you do it again? Would it be
16 any different in the outcome? The end result
17 may be different in the sense that you may be
18 facing thirty years instead of the seventeen
19 that you got. But it surely wasn't anything
20 that Ms. Ms. Tolley did or didn't do, so I'm
21 going to deny your application.

22 If you'll prepare the Order that it
23 failed on both prongs. It's a negotiated
24 sentence and he -- clearly, Judge McDonald
25 went through it indepth and he consciously

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

1 made a decision. I find that to be the most
2 credible testimony, not his testimony today.
3 So thank you very much.

4 MR. RUNYON: Thank you, Your Honor.

5 THE COURT: And, Mr. Brown, you'll
6 have an opportunity to appeal this sentence.
7 I think you have. I think it's thirty days
8 from the date that you receive the Order. So
9 good luck to you, sir.

10 ATTORNEY GENERAL WILSON: Thank
11 you, Your Honor.

12 MR. RUNYON: And it -- it will be
13 prepared for him by my office, Your Honor?

14 THE COURT: Okay. That's fine.
15 And if you'll give me the Order, please,
16 within thirty days.

17 ATTORNEY GENERAL WILSON: Yes,
18 Your Honor. Thank you.

19 THE COURT: Thank you. Good luck
20 to you, sir.

21 (HEARING CONCLUDED)

22

23

24

25

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Case No. 13-GS-10-0448

Guilty Plea Hearing of April 14, 2014

Before The Honorable R. Markley Dennis

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on April 14, 2014, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
October 8, 2014

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AT
AG
SOL
BS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Corrie D. Brown, #246396,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-0448

ORDER OF DISMISSAL

2011 SEP -5 PM 3:23
JULIE R. STRONG
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

The Honorable R. Markley Dennis
William L. Runyon, Jr., Esquire
Ashleigh R. Wilson, Esquire
Juan Tolley, Esquire
April 14, 2014
Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 24, 2013. The Respondent made its Return on November 1, 2013. An evidentiary hearing into the matter was convened on April 14, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Juan Tolley, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2011 term of the Charleston County Grand Jury for criminal sexual conduct- first degree (2011-GS-10-1729). Juan Tolley, Esquire, represented the Applicant. The Applicant pled guilty to the lesser included offense of criminal sexual conduct- second degree. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for seventeen (17) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to adequately develop, investigate, and present facts depriving the jury of critical information relevant to an accurate assessment of my innocence.
 - b. Failure to timely notify defendant of his right to appeal.
 - c. Failure to call emergency medical personnel who would have testified the victim stated immediately after the attack that she did not know her assailant.
 - d. Advising the defendant that he would face life if he went to trial, when he would face 7-25 years or 25 years.
 - e. Failure to object to judge's improper comments in the presence of jury which reflect that the judge believed the victim's testimony.
2. Victim's blood alcohol concentration.
3. Victim gave conflicting stories to medical personnel, investigators, and law enforcement.

At the hearing, the Applicant proceeded solely on the issue of whether or not his guilty plea was entered freely and voluntarily after the Court advised the Applicant that he could be sentenced to thirty (30) years if he were convicted at trial. This Court finds the Applicant presented no testimony or evidence in support of any other claims at the evidentiary hearing, therefore, any remaining allegations are deemed abandoned by the Applicant.

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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 his or her 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).

Summary of the Testimony

Juan Tolley, Esquire, was present and testified she has been practicing law since 1991. She testified she was a former public defender and had experience handling criminal matters. She testified she was appointed to represent the Applicant approximately nine (9) months prior to the Applicant's trial. Counsel testified she met with the Applicant many times prior to trial.

Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified she received discovery from the State and reviewed the materials with the Applicant. She testified she discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. She testified they also discussed the Applicant's version of facts and possible defenses. Counsel testified the Applicant was accused of raping a College of Charleston student. She testified the evidence against the Applicant included the student's testimony and DNA linking the Applicant to the victim. Counsel testified she tracked down a potential witness given to her by the Applicant, but when her investigator contacted the witness, the witness was unable to verify the Applicant was present at the shelter during the time of the incident.

Counsel testified she was prepared to try the Applicant's case. Counsel testified the

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Applicant's defense would be that he was involved with the victim and that consensual sex took place between the victim and the Applicant in exchange for drugs. Counsel testified at the start of the Applicant's trial she requested a continuance because she felt she had received some discovery late. Counsel testified ultimately she had enough time to prepare for trial. She testified the Court had a colloquy with the Applicant about the possibility of the Applicant being sentenced to the maximum sentence if convicted at trial. She testified they selected a jury and proceeded to trial.

Counsel testified plea negotiations took place throughout the trial. She testified the solicitor originally offered plea to twenty (20) years which she discussed with the Applicant and he rejected. Counsel testified the State offered the Applicant a plea to eighteen (18) years which she discussed with the Applicant and he also rejected. She testified the State made a third offer of seventeen (17) years. She testified she discussed the plea offer with the Applicant and advised him about the wisdom of taking the plea offer. Counsel testified ultimately the Applicant decided to accept the plea offer. Counsel testified she had many conversations with the Applicant about a guilty plea and the possible penalties he was facing. She testified she discussed with the Applicant his constitutional rights. She testified the Applicant was aware of his rights and the penalties he was facing. She testified she told the Applicant that the plea offer was a good one, but it was up to him to decide whether or not to plead guilty.

The Applicant was present and testified he met with his attorney regularly before the start of his trial. He testified he reviewed discovery with his attorney. He testified they discussed his constitutional rights, but they did not discuss possible defenses. The Applicant testified counsel never mentioned a plea offer until trial started. The Applicant testified the judge told him that it was her policy to give the maximum sentence. He testified he declined two prior plea offers and

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did not want to plead guilty. He testified he pled guilty because he was stressed out and scared about getting a thirty (30) year sentence. He testified counsel did a wonderful job, but he felt his trial was staged and the State got everything it wanted. The Applicant testified he was aware he was facing a thirty (30) year sentence prior to his trial and the court's comments. He testified his trial was not going so well and he plead guilty because he did not want to risk receiving a thirty (30) year sentence if convicted at trial.

Involuntary Guilty Plea.

The Applicant claims that his guilty plea was not entered freely and voluntarily and that he was scared into pleading guilty by the Court advising him that he was facing a thirty (30) year sentence if convicted at trial. This Court finds this allegation is without merit. This Court finds counsel's testimony at the evidentiary hearing to be credible, while the Applicant provided testimony that was not credible.

This Court finds the Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431

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U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

This Court finds counsel provided reasonable representation and adequate advice to the Applicant about pleading guilty. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the Applicant's pending charges, the elements of the charges the Applicant was facing and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. This Court finds counsel properly advised the Applicant of the potential sentence he was facing and of the consequences of pleading guilty.

This Court finds the Applicant has failed to carry his burden of proving his guilty plea was entered freely and voluntarily. The record reflects the Applicant was advised by the Court before the start of his trial that if he was convicted of criminal sexual conduct- first degree he would be facing a sentence of up to thirty (30) years. (T. 143:19-22, 144:12-13, 145:4-5). This Court also finds the Court's comments to the Applicant regarding the potential sentence he was facing if convicted at trial were not improper in any way, but a reflection of the reality of the sentence the Applicant was facing if convicted of criminal sexual conduct- first degree. This

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Court finds the record is void of any showing that the Applicant was forced or threatened to plead guilty. The record reflects the Applicant was never told by the court that he would be sentenced to the maximum sentence if he was convicted at trial. This Court finds the Applicant pled guilty because he was receiving a significant benefit by accepted the State's plea offer to a negotiated sentence for the lesser included offense.

This Court also finds further the Applicant was fully advised of the consequences of pleading guilty. The record reflects the applicant was advised of the following by the Court during his guilty plea proceeding: the substance of the plea offer he was accepting (T. 303:10-13), the most serious and violent classification of the offense (T.303:20-304:304:9), the fact that he would have to register for the sex offender registry upon release (T. 305:16-20), and the Applicant's right to remain silent and right to a jury trial (T. 309:4-311:17). The Applicant advised the Court that he was not under the influence of any substances that would interfere with his ability to understand his guilty plea proceeding. (T. 302:12-16). The Applicant also admitted he was indeed guilty of the offense he was pleading guilty to. (T. 314:4-10). The Applicant told the Court he was not promised anything, forced, or threatened to plead guilty and that he was doing so of his own free will. (T. 315:4-19).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically 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 while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

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All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of August, 2014

Therese Corner, South Carolina

R. Markley Dennis
The Honorable R. Markley Dennis
Presiding Judge
9th Judicial Circuit

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MCS20101106052

WITNESSES

SHYLAH MURRAY

Charleston City Police Department

AGENCY CASE NUMBER

0823596

ARREST WARRANT NUMBER

K344102

DATE OF ARREST

November 19, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 27 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1001729

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2011

THE STATE

vs.

CORRIE DEWAYNE BROWN

DOB:

B/M

Indictment for

Criminal Sexual Conduct - 1st Degree

FILED

3/29/2011 8:43:12 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

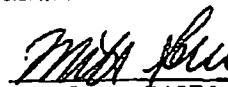
INDICTMENT

At a Court of General Sessions, convened on March 7, 2011 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct - 1st Degree

That in Charleston County, South Carolina, on December 5, 2008, the Defendant, CORRIE DEWAYNE BROWN, did commit a sexual battery upon the victim, Brittanee Casper, without her consent, and with the use of aggravated force and/or the victim submitted to sexual battery by the actor under circumstances where the victim was also the victim of forcible confinement, kidnapping, or any other similar offense or act; all in violation of Section 16-3-652, 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.



MICHAEL SAHN
ASSISTANT SOLICITOR