

STATE OF SOUTH CAROLINA
[In The Supreme Court]

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APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Carmen T. Mullen, Chief Administrative Judge

S.C. SUPREME COURT

Case No. 2013-CP-07-1650

NATHANIEL JOHNSON, JR. #211574,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPENDIX

NATHANIEL JOHNSON, JR. #211574
PRO-SE APPELLANT

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
FINAL BRIEF OF APPELLANT	365
APPLICATION FOR POST-CONVICTION RELIEF	382
RETURN	389
POST-CONVICTION RELIEF HEARING TRANSCRIPT	394
PLAINTIFF'S EXHIBIT NO 1 SLED LAB REPORT DATED 02/14/07	454
PLAINTIFF'S EXHIBIT NO 2 SLED LAB REPORT DATED 08/11/06	459
PLAINTIFF'S EXHIBIT NO 3 SLED LAB REPORT DATED 06/20/06	465
PLAINTIFF'S EXHIBIT NO 4 EVIDENCE SUBMITTAL FORMS	467
PLAINTIFF'S EXHIBIT NO 5 EXPERT DOCUMENTS	473
MOTION AND ORDER	479
ORDER DENYING POST CONVICTION RELIEF	481
CLERK OF COURT RECORDS	489

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
06-GS-07-1640, 1641,
1642, 1643

STATE OF SOUTH CAROLINA

-vs-

NATHANIEL JOHNSON, JR.

:
:
: TRANSCRIPT OF RECORD
:
:

~~CONFIDENTIAL~~
MARCH 12, 13, AND 14, 2007
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE HOWARD P. KING, JUDGE, AND A JURY.

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

MELISSA M. MILLICAN, ASSISTANT SOLICITOR
GAIL LOVELL, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

STEPHANIE SMART, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

1			
2	OPENING STATEMENTS		
3	MS. MILLICAN	41	
4	MS. SMART	43	
5	WITNESS		DIRECT CROSS REDIRECT RECROSS
6	[REDACTED]		
7	MS. MILLICAN	47	117
8	MS. SMART	79	129
9	FRANK DILSAVER		
10	MS. MILLICAN	130	137
11	MS. SMART	134	
12	BRIAN PATE		
13	MS. MILLICAN	138	141
14	MS. SMART	139	
15	JEFFERY MERRILL		
16	MS. MILLICAN	148	159
17	MS. SMART	151	
18	BRIAN CHAPMAN		
19	MS. MILLICAN	161	205
20	MS. SMART	192	
21	MIKE LYNCH		
22	MS. MILLICAN	206	
23	KIMBERLY CLEGG		
24	MS. MILLICAN	210	
25	MS. SMART	221	

1	WITNESS		DIRECT CROSS REDIRECT RECROSS
2	MATTHEW METRINKO		
3	MS. MILLICAN	229	
4	RAMONA COOPER		
5	MS. MILLICAN	231	
6	MS. SMART		234
7	JEFF PURDY		
8	MS. MILLICAN	236	
9	KIMBERLY HAHN		
10	MS. MILLICAN	238	
11	MS. SMART		257
12	DON BODIKER		
13	MS. MILLICAN	265	
14	ROBIN TAYLOR		
15	MS. MILLICAN	274	
16			
17	CLOSING ARGUMENTS		
18	MS. SMART	295	
19	MS. MILLICAN	308	
20			
21	CHARGE OF THE COURT	320	
22	VERDICTS OF THE JURY	351	
23	SENTENCE OF THE COURT	360	
24	CERTIFICATE OF COURT REPORTER	362	
25			

EXHIBITS

1			ID.	IN EV
2	NO.			
3	S-1	LARGE COLOR PHOTO	28	29
4	S-2	LARGE COLOR PHOTO	28	29
5	S-3	LARGE COLOR PHOTO	28	29
6	S-4	LARGE COLOR PHOTO	28	29
7	S-5	LARGE COLOR PHOTO	28	29
8	S-6	LARGE COLOR PHOTO	28	29
9	S-7	LARGE COLOR PHOTO	28	29
10	S-8	LARGE COLOR PHOTO	28	29
11	S-9	LARGE COLOR PHOTO	28	29
12	S-10	LARGE COLOR PHOTO	28	29
13	S-11	BOX WITH PANTS & SHEET	165	
14	S-12	SWABS	167	250/268
15	S-13	MIRANDA FORM	171	172
16	S-14	SLED EVIDENCE BAG WITH PLASTIC SPOON .	181	183
17	S-15	SHEET CUTTINGS	245	247/268
18	S-16	SKETCH	208	209
19	S-17	SLED BOX	220	268
20	S-18	INTERNET PRINTOUT	273	280
21	D-1	LARGE COLOR PHOTO		109
22	D-2	SHEET (TAKEN FROM STATE'S NO. 11)		202
23	D-3	2 PHOTO LINE-UPS	234	235
24				
25				

1	NO.	ID.	IN EV
2	C-1	DEFENDANT'S REQUESTED VOIR DIRE	18
3	C-2	STIPULATION REGARDING STATE'S NO. 14 .	182
4	C-3	STIPULATION OF TESTIMONY OF MARSHA	
5		LEITZEL AND STATE'S NO. 17	263
6	C-4	NOTE FROM JURY	345
7	C-5	NOTE FROM JURY	346
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (MONDAY, MARCH 12, 2007.)

2 THE COURT: MADAM SOLICITOR, WHAT IS THE NEXT MATTER?

3 MS. MILLICAN: YOUR HONOR, THE NEXT MATTER IS THE
4 STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON, JR. THE
5 INDICTMENT FOR THAT CASE, 06-GS-07-1640, IT'S A TRUE BILLED
6 INDICTMENT FOR KIDNAPING. 06-GS-07-1641, IS AN INDICTMENT
7 FOR CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.
8 INDICTMENT 06-GS-07-1642, THAT IS A TRUE BILLED INDICTMENT
9 FOR BURGLARY IN THE FIRST DEGREE. AND INDICTMENT 06-GS-07-
10 1643, A TRUE BILLED INDICTMENT FOR USE OF A FIREARM DURING
11 THE COMMISSION OF A VIOLENT CRIME.

12 THE COURT: ALL RIGHT. IF YOU'LL HAND UP THE
13 INDICTMENTS PLEASE.

14 (PAUSE.)

15 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
16 JURY PANEL, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE
17 HEARD THE STATE CALL THE CASES OF THE STATE OF SOUTH
18 CAROLINA VERSUS NATHANIEL JOHNSON, JR. AND WHAT I'M GOING
19 TO TELL YOU NOW IS NOT EVIDENCE OF ANYTHING, IT IS SIMPLY
20 THE ALLEGATIONS CONTAINED IN THE INDICTMENT. BUT I'M
21 TELLING YOU THIS SO YOU CAN DETERMINE IF YOU KNOW ANYTHING
22 ABOUT THE CASES OR ANYTHING THAT WOULD PREVENT YOU FROM
23 SERVING AS A JUROR IN THIS CASE. BUT THEY ARE NOT EVIDENCE
24 OF ANYTHING BUT SIMPLY THE CHARGES AGAINST THE DEFENDANT.

25 IN ONE INDICTMENT, THAT IS INDICTMENT NO. 1640, THE

1 STATE CHARGES THAT ON OR ABOUT FEBRUARY THE 7TH, 2006 HERE
2 IN BEAUFORT COUNTY THAT THE DEFENDANT, MR. NATHANIEL
3 JOHNSON, JR., DID UNLAWFULLY SEIZE, CONFINED, INVEIGLE,
4 DECOY, KIDNAP, ABDUCT, OR CARRY AWAY THE VICTIM, ANA
5 RODRIGUEZ, BY ANY MEANS WHATSOEVER, AND THAT IS A CHARGE OF
6 KIDNAPING.

7 ALSO ON INDICTMENT NO. 1641, CHARGES THAT MR. JOHNSON
8 ON THAT SAME DATE, FEBRUARY THE 7TH, 2006, THAT HE DID
9 ENGAGE IN A SEXUAL BATTERY WITH THE VICTIM, MS. ANA
10 RODRIGUEZ, WITHOUT HER CONSENT. AND THAT IS A CHARGE OF
11 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

12 AND THE NEXT INDICTMENT, 1642, THAT ON FEBRUARY THE
13 7TH, 2006 THAT THE DEFENDANT DID WILFULLY AND UNLAWFULLY
14 ENTER THE DWELLING OF ANA RODRIGUEZ WITHOUT CONSENT, WITH
15 INTENT TO COMMIT A CRIME; AND THAT IS A CHARGE OF BURGLARY
16 IN THE FIRST DEGREE.

17 AND ON FEBRUARY THE 7TH -- THE NEXT INDICTMENT, THE
18 LAST INDICTMENT IS INDICTMENT NO. 1643, AND IT CHARGES THAT
19 THE DEFENDANT DID IN BEAUFORT COUNTY ON OR ABOUT FEBRUARY
20 THE 7TH POSSESS OR VISIBLY DISPLAY A FIREARM DURING THE
21 COMMISSION OR ATTEMPTED COMMISSION OF A VIOLENT CRIME,
22 SPECIFICALLY BURGLARY FIRST AND/OR CRIMINAL SEXUAL CONDUCT
23 FIRST.

24 SO THERE'S FOUR CHARGES AGAINST THE DEFENDANT.
25 KIDNAPING, CRIMINAL SEXUAL CONDUCT FIRST, BURGLARY FIRST,

1 AND USE OF A FIREARM DURING THE COMMISSION OF A VIOLENT
2 CRIME.

3 THESE ARE ONLY ALLEGATIONS AT THIS POINT AND ARE THE
4 ALLEGATIONS THAT HAVE BEEN MADE BY THE STATE.

5 THE DEFENDANT, MR. JOHNSON, IS REPRESENTED BY MS.
6 SMART.

7 MS. SMART, WOULD YOU STAND, INTRODUCE YOURSELF, AND
8 HAVE YOUR CLIENT STAND AND FACE THE JURY PLEASE AND
9 INTRODUCE HIM.

10 MS. SMART: GOOD MORNING, MY NAME IS STEPHANIE SMART.
11 I'M AN ASSISTANT PUBLIC DEFENDER HERE IN BEAUFORT COUNTY.
12 TODAY I'M REPRESENTING MR. NATHANIEL JOHNSON. ALSO SEATED
13 AT COUNSEL TABLE WITH ME IS MR. GENE HOOD.

14 THE COURT: THANK YOU. THE STATE IS REPRESENTED BY
15 MELISSA MILLICAN. MS. MILLICAN, WOULD YOU STAND, INTRODUCE
16 YOURSELF AND ANY OF THE OTHER ATTORNEYS WHO WILL BE WORKING
17 WITH YOU ON THIS CASE.

18 MS. MILLICAN: THANK YOU, YOUR HONOR. MY NAME IS
19 MELISSA MILLICAN. I'M AN ASSISTANT SOLICITOR OF BEAUFORT
20 COUNTY. WITH ME IS ---

21 MS. LOVELL: GAIL LOVELL. I'M ANOTHER ASSISTANT
22 SOLICITOR IN BEAUFORT COUNTY. I WILL BE WORKING WITH MS.
23 MILLICAN IN THIS CASE.

24 MS. MILLICAN: THANK YOU. ALSO AT MY TABLE IS
25 INVESTIGATOR BRIAN CHAPMAN WITH BEAUFORT COUNTY SHERIFF'S

8

1 OFFICE.

2 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,
3 BEFORE WE SELECT A JURY, I NEED TO ASK YOU A NUMBER OF
4 QUESTIONS. PLEASE GIVE YOUR ATTENTION TO THESE QUESTIONS.
5 AND IF ANY OF THEM APPLY TO YOU, THEN RESPOND ACCORDINGLY.

6 IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR
7 CONNECTED BY MARRIAGE TO THE DEFENDANT, NATHANIEL JOHNSON?
8 IF SO, PLEASE STAND.

9 ALL RIGHT. YES, MA'AM. GIVE ME YOUR NAME PLEASE.

10 JUROR: SARA GRANT, I'M HIS SISTER.

11 THE COURT: SISTER. OKAY. LET ME FIND A JURY LIST.
12 WHAT WAS YOUR NUMBER?

13 JUROR: 74.

14 THE COURT: 74. OKAY. THANK YOU, MA'AM.

15 THE FOLLOWING INDIVIDUALS MAY APPEAR AS WITNESSES IN
16 THIS CASE. AND I WOULD ASK THAT IF ANY OF THE WITNESSES
17 ARE PRESENT, THAT YOU STAND WHEN YOUR NAME IS CALLED.

18 [REDACTED]

19 FRANK DILSAVER.

20 ROBERT BRIAN PATE.

21 CORPORAL J. MERRILL OF THE BEAUFORT COUNTY SHERIFF'S
22 OFFICE.

23 INVESTIGATOR BRIAN CHAPMAN OF BEAUFORT COUNTY
24 SHERIFF'S OFFICE.

25 DEPUTY METRINKO, BEAUFORT COUNTY SHERIFF'S OFFICE.

1 YOU'RE GOING TO HAVE TO HELP ME ON THIS ONE. DR.
2 AFOLABI ---
3 MS. MILLICAN: DR. OGUNTOYINBO, I BELIEVE.
4 THE COURT: ALL RIGHT. IT'S SPELLED
5 O-G-U-N-T-O-Y-I-N-B-O.
6 MS. MILLICAN: I BELIEVE HE'S POPULARLY KNOWN AS DR.
7 O.
8 THE COURT: DR. O AT BEAUFORT MEMORIAL HOSPITAL.
9 KIMBERLY CLEGG, R.N.
10 DON BODIKER, R.N.
11 WENDY DAISE, D-A-I-S-E.
12 PFC CHRISTOPHER TEASDELL.
13 SERGEANT BRIAN BAIRD.
14 SERGEANT JEFF PURDY.
15 R.K. COOPER.
16 EILEEN RIOS.
17 MIKE LYNCH.
18 KIMBERLY HAHN. 
19 ROBIN TAYLOR.
20 MARSHA LEITZEL, L-E-I-T-Z-E-L.
21 SOME OF THESE ARE SLED OFFICERS, SOME OF THEM ARE
22 BEAUFORT COUNTY OFFICERS.
23 AMY STEPHENS.
24 BETTY B. BUTLER.
25 DENISE EARGLE.

1 JANICE BRYSON.
2 EMILY REINHART.
3 MARILYN FITZPATRICK.
4 SHANA SORRELLS.
5 PATTI RUFF.
6 NIKKI PERRY.
7 THERESA HOOKS.

8 NOW, THOSE ARE THE PEOPLE THAT MAY APPEAR AS WITNESSES
9 IN THIS CASE. IS ANY MEMBER OF THE JURY PANEL RELATED BY
10 BLOOD OR CONNECTED BY MARRIAGE TO ANY OF THE PROPOSED
11 WITNESSES? IF SO, PLEASE STAND.

12 (NO RESPONSE.)

13 THE COURT: IS ANY MEMBER OF THE JURY PANEL CLOSE,
14 PERSONAL FRIENDS OF ANY OF THE PARTIES, THEIR LAWYERS, OR
15 ANY OF THE WITNESSES WHO I HAVE READ OFF TO YOU EXCEPT WHAT
16 HAS ALREADY BEEN DISCLOSED TO ME? IF SO, PLEASE STAND.

17 YES, MA'AM, YOUR NAME?

18 ~~JUROR:~~ JUROR 173, CHERYLE SANDERSON.

19 THE COURT: ALL RIGHT. TELL ME WHAT, IS IT YOU'RE
20 RELATED TO ONE OF THEM?

21 JUROR: NO, SIR. PERSONAL FRIEND TO ONE OF THE
22 WITNESSES.

23 THE COURT: ALL RIGHT. WHAT WITNESS IS THAT?

24 JUROR: JEFF PURDY.

25 THE COURT: OKAY. AND WOULD THE FACT THAT YOU ARE A

1 PERSONAL FRIEND OF THIS WITNESS -- THAT'S SERGEANT JEFF
2 PURDY; IS THAT CORRECT?

3 JUROR: YES.

4 THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH
5 THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL
6 BASED ON THE EVIDENCE IN THIS CASE?

7 JUROR: NO.

8 THE COURT: WOULD YOU BE ABLE TO EVALUATE SERGEANT
9 PURDY'S TESTIMONY WITH THE SAME EYE TOWARD CREDIBILITY AS
10 YOU WOULD BE ABLE TO JUDGE ANY OTHER WITNESS' TESTIMONY?

11 JUROR: YES.

12 THE COURT: AND WOULD YOU DO THAT PLEASE, MA'AM?

13 JUROR: YES.

14 THE COURT: THANK YOU, MA'AM. YES, MA'AM.

15 JUROR: GEVREY JONES, JUROR 105.

16 THE COURT: ALL RIGHT. AND MS. JONES, YOU RELATED TO
17 A WITNESS OR JUST A PERSONAL FRIEND OF A WITNESS?

18 JUROR: NO, SIR. I PREVIOUSLY WORKED WITH SOME OF THE
19 POTENTIAL WITNESSES AT THE BEAUFORT COUNTY SHERIFF'S
20 OFFICE.

21 THE COURT: OKAY. TELL ME AGAIN WHAT -- WHAT'S THE
22 WITH THEM? I'M SORRY, I DIDN'T HEAR YOU.

23 JUROR: I WORKED WITH THEM. I WAS PRIOR LAW
24 ENFORCEMENT.

25 THE COURT: OKAY.

1 JUROR: SO I WORKED WITH SOME OF THE POTENTIAL
2 WITNESSES.

3 THE COURT: OKAY. HOW LONG AGO WAS IT THAT YOU -- YOU
4 WORKED AT THE BEAUFORT COUNTY SHERIFF'S OFFICE?

5 JUROR: YES.

6 THE COURT: AND HOW LONG AGO WAS THAT?

7 JUROR: 1996 TO 2004.

8 THE COURT: 2004. AND SO YOU'RE ACQUAINTED AND KNEW
9 SOME OF THE WITNESSES THAT I HAVE READ OFF; IS THAT
10 CORRECT?

11 JUROR: THAT IS CORRECT.

12 THE COURT: OKAY. THANK YOU, MA'AM.

13 DOES ANY MEMBERS OF THE JURY PANEL KNOW ANYTHING ABOUT
14 THE FACTS OF THIS CASE AS I HAVE BRIEFLY RECITED THEM TO
15 YOU? IF SO, PLEASE STAND.

16 (NO RESPONSE.)

17 THE COURT: HAS ANY MEMBER OF THE JURY PANEL READ
18 ANYTHING IN THE NEWSPAPER OR SEEN ANYTHING ON TELEVISION OR
19 ANY OTHER NEWS MEDIA ABOUT THIS MATTER THAT WOULD PREVENT
20 YOU FROM BEING ABLE TO GIVE BOTH SIDES A FAIR AND IMPARTIAL
21 TRIAL BASED UPON THE EVIDENCE THAT YOU HEAR IN THIS
22 COURTROOM? IF SO, PLEASE STAND.

23 (NO RESPONSE.)

24 THE COURT: OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED
25 TO ME, IS ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR

1 CONNECTED BY MARRIAGE TO A MEMBER OF A LAW ENFORCEMENT
2 AGENCY? AND WHEN I SAY CONNECTED BY MARRIAGE OR RELATED BY
3 BLOOD -- LET ME PUT IT THIS WAY: ANY MEMBER OF THE JURY
4 PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE TO A MEMBER
5 OF A LAW ENFORCEMENT AGENCY -- BY THAT IF THE RELATIONSHIP
6 IS FIRST COUSIN OR CLOSER, NOT DISTANT COUSINS?

7 YES, MA'AM. I ALREADY KNOW YOU. YES, MA'AM, YOUR
8 NAME?

9 JUROR: KAREN HEITMAN, JUROR 87.

10 THE COURT: YES, MA'AM.

11 JUROR: MY SON-IN-LAW IS AN FBI AGENT.

12 THE COURT: OKAY.

13 JUROR: IN VIRGINIA.

14 THE COURT: ALL RIGHT. THAT'S THE KIND OF INFORMATION
15 WE WANT. WOULD THAT PREVENT YOU FROM GIVING TO BOTH THE
16 STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON
17 THE EVIDENCE YOU HEAR IN THIS COURTROOM?

18 JUROR: NO, SIR.

19 THE COURT: OKAY. THANK YOU, MA'AM. YES, MA'AM.

20 JUROR: I'M NO. 233, SARA CALLAWAY (PHONETIC). MY
21 HUSBAND IS FORMERLY A HARDEEVILLE POLICE OFFICER.

22 THE COURT: OKAY. THAT'S THE KIND OF INFORMATION WE
23 WANT. WOULD THAT PREVENT YOU FROM GIVING BOTH THE STATE
24 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE
25 EVIDENCE?

1 JUROR: NO, SIR.

2 THE COURT: OKAY. THANK YOU, MA'AM.

3 IS ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR
4 IMMEDIATE FAMILY -- AND I DEFINE IMMEDIATE FAMILY AS
5 SPOUSE, PARENT, BROTHER, SISTER, OR CHILD -- ANY MEMBER OF
6 THE JURY PANEL OR ANY MEMBER OF YOUR IMMEDIATE FAMILY
7 EMPLOYED BY THE SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE,
8 THE SOLICITOR, OR ANY PROSECUTING ATTORNEY'S OFFICE? IF
9 SO, PLEASE STAND.

10 (NO RESPONSE.)

11 THE COURT: HAS ANY MEMBER OF THE JURY PANEL BEEN
12 EMPLOYED IN THE LAST 10 YEARS WITH ANY CIVILIAN OR MILITARY
13 LAW ENFORCEMENT AGENCY OTHER THAN WHAT HAS ALREADY BEEN
14 DISCLOSED TO ME -- AND I KNOW THAT JUROR NO. 74 HAS ALREADY
15 INDICATED THAT, SO SHE NEED NOT DISCLOSE THAT AGAIN. BUT
16 ANY MEMBER OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE
17 FAMILY BEEN EMPLOYED BY ANY CIVILIAN OR MILITARY LAW
18 ENFORCEMENT AGENCY IN THE LAST 10 YEARS OTHER THAN WHAT HAS
19 ALREADY BEEN DISCLOSED TO ME?

20 (NO RESPONSE.)

21 THE COURT: ALL RIGHT. WITH REGARD TO THE NEXT
22 QUESTION, LADIES AND GENTLEMEN, THIS MAY BE PERSONAL. AND
23 IF IT DOES APPLY, I'M GOING TO ASK YOU TO COME UP AND
24 DISCUSS IT WITH ME AND THE ATTORNEYS. IS THERE ANY MEMBER
25 OF THE JURY PANEL OR MEMBER OF YOUR IMMEDIATE FAMILY AS I

1 HAVE DEFINED THAT TERM -- AND THAT IS, PARENT, SPOUSE,
2 BROTHER, SISTER, OR CHILD -- ANY MEMBER OF THE JURY PANEL
3 OR MEMBER OF YOUR IMMEDIATE FAMILY BEEN THE VICTIM OF A
4 VIOLENT CRIME? IF SO, PLEASE STAND.

5 (NO RESPONSE.)

6 THE COURT: THANK YOU. DURING THE COURSE OF THE TRIAL
7 OF THIS MATTER AND ALSO AT THE END OF THE TRIAL, THE COURT
8 WILL GIVE THE JURORS CERTAIN LEGAL INSTRUCTIONS THAT DEAL
9 WITH THE PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF, AND
10 A NUMBER OF OTHER LEGAL INSTRUCTIONS THAT THE JURY WILL BE
11 REQUIRED TO FOLLOW. IS THERE ANY MEMBER OF THE JURY PANEL
12 WHO FEELS FOR PERSONAL OR PHILOSOPHICAL REASONS THAT THEY
13 WOULD NOT BE ABLE TO FOLLOW THE COURT'S INSTRUCTIONS ON
14 THOSE QUESTIONS -- ON THOSE ISSUES -- ON ANY LEGAL ISSUE
15 THAT THE COURT INSTRUCTS THEM ON? ANYBODY FEELS THAT THEY
16 COULD NOT FOLLOW THE COURT'S INSTRUCTIONS, PLEASE STAND.

17 (NO RESPONSE.)

18 THE COURT: HAS ANY MEMBER OF THE JURY PANEL FORMED OR
19 EXPRESSED AN OPINION AS TO THE GUILT OR INNOCENCE OF THE
20 DEFENDANT IN THIS CASE, NATHANIEL JOHNSON? IF SO, PLEASE
21 STAND.

22 (NO RESPONSE.)

23 THE COURT: DOES ANY MEMBER OF THE JURY PANEL OR IS
24 ANY MEMBER OF THE JURY PANEL AWARE OF ANY INTEREST, ANY
25 BIAS, OR ANY PREJUDICE FOR OR AGAINST THE DEFENDANT OTHER

1 THAN WHAT HAS ALREADY BEEN DISCLOSED TO ME? IF SO, PLEASE
2 STAND.

3 (NO RESPONSE.)

4 THE COURT: OTHER THAN WHAT HAS ALREADY BEEN DISCLOSED
5 TO ME, CAN EACH MEMBER OF THE JURY PANEL GIVE THE STATE AND
6 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE
7 EVIDENCE THAT YOU HEAR IN THIS COURTROOM? IF NOT, PLEASE
8 STAND? AGAIN, OTHER THAN WHAT HAS BEEN DISCLOSED TO ME.

9 (NO RESPONSE.)

10 THE COURT: AND FINALLY, OTHER THAN WHAT HAS BEEN
11 DISCLOSED TO ME, DOES ANY MEMBER OF THE JURY PANEL KNOW OF
12 ANY REASON WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A
13 JUROR IN THIS CASE? IF SO, PLEASE STAND.

14 (NO RESPONSE.)

15 THE COURT: THANK YOU. ARE THERE ADDITIONAL QUESTIONS
16 ON BEHALF OF THE STATE, MS. MILLICAN?

17 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.
18 THANK YOU.

19 THE COURT: ON BEHALF OF THE DEFENDANT, MS. SMART.

20 MS. SMART: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: COME UP PLEASE, COUNSEL.

22 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
23 PRESENCE OF THE JURY PANEL, BUT OUT OF THE HEARING OF THE
24 JURY PANEL.)

25 THE COURT: ALL RIGHT. MADAM CLERK, YOU MAY CALL THE

1 JURY.

2 LADIES AND GENTLEMEN -- FIRST OF ALL, LET ME GIVE THIS
3 TO THE COURT REPORTER. MADAM COURT REPORTER, HERE IS THE
4 DEFENDANT'S VOIR DIRE. IF YOU'LL MAKE THAT COURT'S EXHIBIT
5 NO. 1 AND MAKE IT A PART OF THE RECORD PLEASE.

6 (DEFENDANTS REQUESTED VOIR DIRE, 2 PAGES, MARKED FOR
7 IDENTIFICATION AS COURT'S EXHIBIT NO. 1.)

8 THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN, WE
9 ARE READY TO DRAW THE JURY IN THIS CASE. WHEN YOUR NAME IS
10 CALLED, PLEASE COME THROUGH THE DOORS ON EITHER SIDE UP TO
11 THE FRONT RAIL HERE WITH YOUR BACK TOWARD ME AND FACE THE
12 BACK OF THE COURTROOM. IF YOU ARE ACCEPTABLE TO THE STATE,
13 THE STATE WILL INDICATE BY SAYING, PRESENT THE JUROR. IF
14 YOU'RE ACCEPTABLE TO THE DEFENSE, THEY WILL INDICATE BY
15 SAYING, SEAT THE JUROR, AND YOU WOULD HAVE A SEAT IN THE
16 JURY BOX TO MY LEFT. IF EITHER SIDE EXCUSES YOU, THEN YOU
17 WOULD HAVE A SEAT BACK OUT WITH THE REMAINDER OF THE JURY
18 PANEL.

19 ONE MORE THING, MS. FIELDS.

20 (PAUSE.)

21 THE COURT: ALL RIGHT. MADAM CLERK, YOU MAY DRAW THE
22 JURY.

23 (THE JURY WAS EMPANELED AT 12:22 P.M.)

24 THE COURT: ALL RIGHT. ANYTHING WITH REGARD TO THE
25 SELECTION OF THE JURY IN THIS MATTER ON BEHALF OF THE

1 STATE?

2 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

3 THE COURT: ON BEHALF OF THE DEFENSE?

4 MS. SMART: NOTHING FROM DEFENSE, YOUR HONOR.

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
6 JURY SELECTED IN THE TRIAL OF THIS CASE, WE HAVE SOME
7 MATTERS THAT WE ARE GOING TO HAVE TO ATTEND TO THAT ARE
8 GOING TO TAKE US THE REST OF THE DAY. AND WE NEED TO DO
9 THOSE OUTSIDE OF YOUR PRESENCE, SO I AM GOING TO EXCUSE YOU
10 FOR THE REST OF THE DAY. AND I'M GOING TO ASK THAT YOU GO
11 WITH THE BAILIFFS, AND THEY WILL SHOW YOU WHERE YOUR JURY
12 ROOM IS. AND I'M GOING TO ASK YOU TO REPORT BACK TOMORROW
13 MORNING PLEASE AT 9:30. AND IF YOU'LL COME DIRECTLY TO
14 YOUR JURY ROOM. DO NOT COME TO THE JURY ASSEMBLY ROOM. DO
15 NOT COME TO THE COURTROOM, BUT GO DIRECTLY TO YOUR JURY
16 ROOM BACK HERE -- THE BAILIFFS WILL SHOW YOU WHERE THAT IS
17 -- TOMORROW MORNING AT 9:30. WE SHOULD HAVE ALL
18 PRELIMINARY MATTERS OUT OF THE WAY BY THAT TIME AND BE
19 READY TO GO FORWARD WITH THE TRIAL OF THIS MATTER.

20 OVER THE AFTERNOON RECESS AND THE EVENING RECESS, I
21 WANT TO TELL YOU A COUPLE THINGS, AND SOME OF THESE WILL
22 APPLY -- ALL OF THEM WILL APPLY THROUGHOUT THE TRIAL OF
23 THIS CASE. BUT FIRST OF ALL, I WOULD TELL YOU THAT -- I
24 KNOW YOU DO NOT KNOW ANYTHING ABOUT THE CASE EXCEPT WHAT I
25 TOLD YOU THE ALLEGATIONS OF THE INDICTMENT ARE. BUT IT

1 WOULD BE IMPROPER FOR YOU TO DISCUSS THIS CASE WITH ANYONE
2 OVER THE EVENING RECESS, AND IT WOULD BE IMPROPER FOR
3 ANYONE TO DISCUSS IT WITH YOU.

4 WHEN YOU SEE YOUR FAMILY, YOUR FRIENDS, YOU CAN TELL
5 THEM THAT YOU'RE SERVING ON THE JURY, BUT YOU CAN'T TELL
6 THEM ANYTHING ABOUT THE CASE BECAUSE THE JUDGE TOLD YOU NOT
7 TO. AND THE REASON FOR THAT IS YOU'VE GOT TO DECIDE THE
8 CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM AND NOT ON
9 THE BASIS OF WHAT ANYONE ELSE MIGHT SAY.

10 ALSO IF ANYONE SHOULD APPROACH YOU OR TRY TO TALK WITH
11 YOU ABOUT THE CASE, GET THEIR NAME AND THEIR DESCRIPTION,
12 REPORT IT TO THE BAILIFF, AND THEY WILL REPORT IT TO ME,
13 AND I WILL DEAL WITH THEM.

14 ALSO DO NOT READ ANY NEWSPAPER REPORTS OR LISTEN TO
15 ANY TELEVISION OR BROADCAST MEDIA REPORTS ABOUT THE CASE.
16 AGAIN, YOU'VE GOT TO DECIDE THE CASE BASED UPON WHAT YOU
17 HEAR IN THIS COURTROOM AND NOT WHAT MIGHT BE PUBLISHED IN
18 THE NEWSPAPER OR ON THE BROADCAST MEDIA. SO IF THERE IS
19 ANYTHING IN THE NEWSPAPER, SIMPLY PUT IT ASIDE. DO NOT
20 READ THOSE STORIES. ALSO IF THERE IS ANYTHING IN THE
21 BROADCAST MEDIA, SIMPLY TURN IT OFF OR DO NOT LISTEN TO
22 THEM.

23 LATER ON IN THIS CASE I WILL APPOINT ONE OF THE 12
24 MEMBERS OF THE PRINCIPLE JURY AS THE FOREPERSON OF THE
25 JURY. WHEN I DO THAT, THAT FOREPERSON SHOULD ALWAYS SIT IN

1 THE FIRST SEAT ON THE FRONT ROW DOWN HERE. THE ALTERNATE
2 SHOULD ALWAYS SIT ON THE LAST ROW BACK THERE. THE REST OF
3 THE SEATS IN THE JURY BOX ARE NOT RESERVED, AND IT DOES NOT
4 MATTER WHAT ORDER YOU COME AND GO FROM THE COURTROOM. I
5 WOULD SIMPLY ASK THAT YOU GO ALL WAY DOWN SO IT WOULDN'T BE
6 A SITUATION OF CRAWLING OVER ONE ANOTHER, RESERVING THE
7 FIRST SEAT ON THE FRONT ROW FOR THE FOREPERSON WHEN I NAME
8 THAT FOREPERSON, AND THE SEAT IN THE BACK FOR THE
9 ALTERNATE.

10 AND, FINALLY, I WOULD TELL YOU THAT WHEN YOU ARE
11 REASSEMBLING IN YOUR JURY ROOM TOMORROW AND AT ANY TIME
12 DURING THE TRIAL OF THIS CASE WHEN YOU ARE IN YOUR JURY
13 ROOM, IT WOULD BE IMPROPER FOR YOU TO DISCUSS THIS MATTER
14 AMONG YOURSELVES. ANY DISCUSSION OF THIS MATTER AMONG
15 YOURSELVES PRIOR TO THE COURT TELLING YOU IT IS TIME TO
16 BEGIN YOUR DELIBERATIONS WOULD BE PREMATURE. YOU SHOULD
17 NOT BEGIN ANY DELIBERATIONS UNTIL ALL OF THE TESTIMONY IS
18 IN, UNTIL YOU'VE HEARD THE ARGUMENTS OF COUNSEL, AND THE
19 INSTRUCTIONS ON THE LAW BY THE COURT. AND YOU WILL BE
20 INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS BY EITHER ME OR
21 THE BAILIFFS.

22 SO WHILE YOU'RE THERE IN THE JURY ROOM AND WHEN YOU
23 ARE ASSEMBLING THERE IN THE JURY ROOM, YOU CAN TALK ABOUT
24 ANYTHING YOU WANT TO TALK ABOUT. GET TO KNOW EACH OTHER A
25 LITTLE BETTER. TALK ABOUT WEATHER, SPORTS, CHILDREN, GRAND

1 CHILDREN, ANYTHING AT ALL, BUT DON'T TALK ABOUT THIS CASE
2 UNTIL I TELL YOU IT IS APPROPRIATE TO DO SO.

3 SO WITH THOSE ADMONITIONS THEN, I'M GOING TO EXCUSE
4 YOU FOR THE REST OF THE DAY, ALLOW YOU TO GO ABOUT YOUR
5 BUSINESS. AND PLEASE GO WITH THE BAILIFF NOW, LET HIM SHOW
6 YOU WHERE THE JURY ROOM IS, HE'LL SHOW YOU HOW TO GET BACK
7 IN HERE TOMORROW, BACK INTO THE BACK, AND BE BACK IN YOUR
8 JURY ROOM TOMORROW MORNING AT 9:30, AND I'LL SEE YOU AT
9 THAT TIME. HAVE A PLEASANT DAY AND I'LL SEE YOU TOMORROW.

10 (THE JURY EXITS THE COURTROOM AT 12:26 P.M.)

11 (THE JURY PANEL WAS EXCUSED.)

12 THE COURT: ALL RIGHT. MS. MILLICAN, IS THERE

13 ANYTHING FURTHER WE NEED TO DO ON THIS MATTER THIS MORNING?

14 I NOTICE THAT THE SCHEDULE CALLED FOR SOME PRETRIAL MOTIONS

15 THAT WERE SCHEDULED FOR THIS AFTERNOON. BUT WE'VE GOT A

16 LITTLE BIT OF TIME NOW, IF THERE'S ANYTHING WE CAN DO.

17 MS. MILLICAN: YOUR HONOR, THE STATE DOESN'T HAVE ANY

18 PRETRIAL MOTIONS, JUST IN ANTICIPATION THAT THE DEFENSE

19 MIGHT. AND I'M NOT SURE WHAT THE DEFENSE HAS.

20 THE COURT: ALL RIGHT. MS. SMART.

21 MS. SMART: YOUR HONOR, I ONLY HAVE ONE PRETRIAL

22 MOTION AS OF RIGHT NOW. THERE ARE OTHERS I'M CONSIDERING

23 AFTER VIEWING THE WITNESS LIST. HOWEVER, THE ONE PRETRIAL

24 MOTION HAS TO DO WITH IN-COURT IDENTIFICATION BY THE VICTIM

25 WHO IS HISPANIC, AND OUR INTERPRETERS AREN'T HERE.

1 THE COURT: OKAY. THAT'S PROBABLY SOMETHING WE'RE
2 PROBABLY NOT GOING TO BE ABLE TO TEND TO UNTIL TOMORROW ANY
3 HOW, IS IT, BECAUSE THE INTERPRETERS ARE NOT DUE UNTIL
4 TOMORROW?

5 MS. MILLICAN: ALSO, THE VICTIM DOES SPEAK ENGLISH.

6 THE COURT: OKAY.

7 MS. MILLICAN: IT'S NOT A COMPLETE BAR-ABILITY. AND
8 SHE IS GOING TO ATTEMPT TO TESTIFY IN ENGLISH.

9 THE COURT: ALL RIGHT. WHAT'S YOUR MOTION, MS. SMART?

10 MS. SMART: THE VICTIM WASN'T ABLE TO IDENTIFY THE
11 DEFENDANT IN TWO DIFFERENT PHOTO IDENTIFICATIONS, AND I
12 WOULD SUBMIT TO THE COURT THAT IF SHE WERE ABLE TO IDENTIFY
13 THE DEFENDANT TODAY, IT WOULD BE JUST BECAUSE, OF COURSE,
14 HE'S THE ONLY PERSON SITTING AT COUNSEL TABLE.

15 SHE DID -- THERE IS A SKETCH IN THE POLICE REPORT.
16 HOWEVER, THAT WOULD HAVE BEEN ONE OF MY MOTIONS AS WELL,
17 BECAUSE I DON'T KNOW WHAT SHE DESCRIBED TO THE SKETCH
18 ARTIST TO KNOW WHETHER OR NOT THE SKETCH CAN BE
19 AUTHENTICATED. THEREFORE, WHETHER OR NOT HER DESCRIPTION
20 OF HER BEING ABLE TO IDENTIFY THE DEFENDANT TODAY WOULD BE
21 RELIABLE.

22 MS. MILLICAN: YOUR HONOR, THE SKETCH ARTIST WILL BE
23 HERE AS A WITNESS TO TESTIFY AS TO THE SKETCH. HE'LL BRING
24 THE ORIGINAL WITH HIM, AND HE CAN TESTIFY TO ANY QUESTIONS
25 MS. SMART MAY HAVE WITH REGARD TO THE SKETCH.

1 THE COURT: WHEN IS HE GOING TO BE AVAILABLE, MS.

2 MILLICAN?

3 MS. MILLICAN: I WASN'T INTENDING TO PRESENT THAT
4 UNTIL PROBABLY LATE TOMORROW AFTERNOON.

5 THE COURT: WELL, AT WHAT STAGE ARE WE GOING TO CALL
6 THE VICTIM? IS THAT GOING TO BE EARLY ON?

7 MS. MILLICAN: YES.

8 THE COURT: SO IF THE ISSUE HAS TO DO WITH THE
9 IDENTIFICATION BY THE VICTIM, I THINK WE NEED TO HAVE THE
10 SKETCH ARTIST HERE EARLIER.

11 MS. MILLICAN: YOUR HONOR, I BELIEVE -- THERE WAS A
12 PHOTO LINE-UP THAT WAS PRESENTED TO THE VICTIM, AND SHE
13 COULDN'T FROM ONE PICTURE IDENTIFY HIM FROM THAT. BUT I
14 DON'T THINK THAT PRECLUDES HER ABILITY FROM LOOKING AT HIM
15 IN COURT TODAY AND BEING ABLE TO IDENTIFY HIM BECAUSE
16 PICTURES DON'T ALWAYS LOOK LIKE PEOPLE DO IN PERSON.

17 THE COURT: I DON'T EITHER. I DON'T THINK THAT SHE
18 COULD DO THAT. I'M NOT REAL SURE WHAT MS. SMART'S MOTION
19 IS WHERE THE UNDUE SUGGESTIVENESS COMES IN WITH REGARD TO
20 THE SKETCH. WHAT DOES THAT HAVE TO DO WITH?

21 MS. SMART: WELL, IF THERE WAS AN OUT-OF-COURT
22 IDENTIFICATION, THEN I WOULD BASE IT ON THE FACT THAT IT
23 MIGHT HAVE BEEN SUGGESTIVE. HOWEVER ---

24 THE COURT: BUT THAT'S AN IF, AND THAT'S NOT THE CASE
25 HERE.

1 MS. SMART: BECAUSE THERE IS NO OUT-OF-COURT
2 IDENTIFICATION, SHE WAS PRESENTED WITH TWO DIFFERENT --
3 FROM MY READING OF THE POLICE REPORT, SHE WAS PRESENTED
4 WITH DIFFERENT PHOTO LINE-UPS. AND SHE WASN'T ABLE TO PICK
5 THE DEFENDANT OUT OF EITHER OF THOSE PHOTO LINE-UPS.

6 SO TODAY, OF COURSE, SHE CAN SIT AT THE -- SHE CAN
7 TESTIFY THAT MR. JOHNSON IS THE PERSON BECAUSE HE'S THE
8 ONLY PERSON HERE.

9 THE COURT: I BELIEVE THERE'S SOME CASES DIRECTLY ON
10 THAT, THAT SAY THAT THAT'S NOT THE LAW. I THINK THAT SHE
11 CAN IDENTIFY HIM IN COURT, YOU KNOW, IF SHE RECOGNIZES HIM.

12 NOW, THE MATTERS WITH REGARD TO THE INABILITY TO PICK
13 HIM OUT OF THE POLICE LINE-UP ARE MATTERS FOR CROSS
14 EXAMINATION WHICH YOU WILL CERTAINLY HAVE THE RIGHT TO ASK
15 HER ABOUT.

16 I WOULD NOT SUPPRESS AN IN-COURT IDENTIFICATION. I
17 THINK THAT SHE CAN DO THAT. AND SO I WOULD NOT SUPPRESS
18 THAT.

19 NOW, WHERE DOES THAT FIT IN WITH REGARD TO -- WHAT
20 ELSE DO YOU HAVE WITH REGARD TO THE SKETCH?

21 MS. SMART: I'M NOT SURE. I DIDN'T KNOW WHETHER OR
22 NOT SHE COULD SPEAK ENGLISH OR HOW WELL SHE COULD SPEAK
23 ENGLISH. AND I KNOW THAT THERE'S A SKETCH. OF COURSE, I
24 HAVE TO CROSS EXAMINE MR. LYNCH BECAUSE HE WAS THE ONE WHO
25 DREW THE SKETCH AS TO HOW SHE RELATED A DESCRIPTION OF THE

1 DEFENDANT TO THE DEFENDANT (SIC), BECAUSE THE POLICE REPORT
2 -- THE DESCRIPTION THE REPORT IS VERY VAGUE.

3 THE COURT: WELL, AGAIN, I FEEL LIKE THAT IS A MATTER
4 OF CROSS EXAMINATION, AND I DON'T THINK THAT THAT PRECLUDES
5 THE ADMISSIBILITY OF IT AS SOON AS THE STATE LAYS THE RIGHT
6 FOUNDATION, WHICH I THINK THEY WILL DO. OKAY.

7 MS. SMART: THAT'S THE ONLY ISSUE THAT I HAVE BEFORE
8 THE COURT RIGHT NOW.

9 THE COURT: ALL RIGHT. THEN THAT BEING THE CASE,
10 WE'LL BE IN RECESS ON THIS MATTER UNTIL 9:30 TOMORROW
11 MORNING.

12 (A RECESS WAS TAKEN.)

13 THE COURT: OKAY. LET'S GO BACK ON THE RECORD WITH
14 REGARD TO THE MATTER OF NATHANIEL JOHNSON, JR. IS HE IN
15 LOCK-UP?

16 (THE DEFENDANT ENTERS THE COURTROOM.)

17 THE COURT: HAVE A SEAT WITH YOUR ATTORNEY, MR.
18 JOHNSON.

19 ALL RIGHT. WE'RE BACK ON THE RECORD WITH REGARD TO
20 INDICTMENTS 06-1640, 1641, 1642, AND 1643, THE STATE VERSUS
21 NATHANIEL JOHNSON, JR. LET THE RECORD REFLECT THAT MR.
22 JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS PRESENT
23 WITH MS. MILLICAN.

24 MS. MILLICAN, IS THERE ANYTHING FROM THE STATE THAT
25 YOU WISH TO TAKE UP WITH THE COURT AT THIS TIME?

1 MS. MILLICAN: NO PRETRIAL MOTIONS FROM THE STATE,
2 YOUR HONOR.

3 THE COURT: ALL RIGHT. MS. SMART.

4 MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. I
5 DON'T HAVE ANY OTHER PRETRIAL MOTIONS, AND I'D ALSO LIKE TO
6 WITHDRAW MY PREVIOUS MOTION.

7 THE COURT: ALL RIGHT. BY THAT, YOU MEAN THE ONES
8 THAT I HAVE ALREADY RULED ON?

9 MS. SMART: YES, SIR.

10 THE COURT: OKAY. BY WITHDRAWAL THEN, YOU ARE NO
11 LONGER MAKING THOSE -- THEY ARE NOT AN ISSUE IN THIS CASE
12 AT ALL, AND YOU WOULD WAIVE ANY RIGHT THAT THE DEFENDANT
13 WOULD HAVE TO APPEAL ON THOSE ISSUES?

14 MS. SMART: YES, SIR.

15 THE COURT: ALL RIGHT. THOSE MOTIONS THEN HAVE BEEN
16 WITHDRAWN AND THE COURT'S RULING WILL BE WITHDRAWN AS WELL,
17 AND THEY ARE NO LONGER A PART OF THE RECORD FROM THE
18 STANDPOINT OF BEING GROUNDS FOR APPEAL IN THIS MATTER.

19 NO OTHER MOTIONS, MS. SMART?

20 MS. SMART: NO, SIR.

21 THE COURT: ALL RIGHT. ANY REASON OR DO YOU KNOW OF
22 ANYTHING THAT WOULD PREVENT US FROM GOING FORWARD IN THE
23 MORNING AT 9:30?

24 MS. SMART: NO, SIR.

25 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE?

1 MS. MILLICAN: NOTHING FROM THE STATE, THANK YOU.

2 THE COURT: ALL RIGHT. WE WILL BE IN RECESS IN THIS
3 MATTER UNTIL 9:30 TOMORROW MORNING AT WHICH TIME WE WILL
4 PROCEED ON THE RECORD WITH THE JURY.

5 MS. MILLICAN: THANK YOU, YOUR HONOR.

6 MS. SMART: THANK YOU, YOUR HONOR.

7 (COURT IS IN RECESS.)

8 (TUESDAY, MARCH 13, 2007.)

9 (10 LARGE COLOR PHOTOS MARKED FOR IDENTIFICATION AS
10 STATE'S EXHIBIT NOS. 1 THROUGH 10.)

11 THE COURT: LET ME SEE COUNSEL PLEASE JUST A MINUTE.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

13 THE COURT: ALL RIGHT. LET'S NOW GO ON THE RECORD
14 WITH REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL
15 JOHNSON, JR. LET THE RECORD REFLECT THAT THE DEFENDANT IS
16 PRESENT WITH HIS COUNSEL, THE STATE IS PRESENT WITH MS.
17 MILLICAN. AND WE HAVE BEEN DISCUSSING THE MATTER, FIRST OF
18 ALL, OF EXHIBITS.

19 I UNDERSTAND THAT THE STATE HAS GIVEN THE DEFENSE AN
20 OPPORTUNITY TO LOOK AT CERTAIN EXHIBITS AND THAT THEY ARE
21 AGREED UPON AND HAVE BEEN MARKED BY THE COURT REPORTER.
22 WHAT EXHIBIT NUMBERS ARE THOSE, MS. RUTLEDGE?

23 COURT REPORTER: 1 THROUGH 10.

24 THE COURT: ALL RIGHT. 1 THROUGH 10 ADMITTED WITHOUT
25 OBJECTION; IS THAT RIGHT, MS. SMART?

1 MS. SMART: THAT IS CORRECT, YOUR HONOR.

2 THE COURT: ALL RIGHT. WITHOUT FURTHER AUTHENTICATION
3 THEN, THEY ARE IN THE RECORD AND NEED NOT BE SHOWN BACK AND
4 FORTH WHENEVER YOU GET READY TO USE THEM.

5 (STATE'S EXHIBIT NOS. 1 THROUGH 10 RECEIVED IN
6 EVIDENCE.)

7 THE COURT: SECOND MATTER TO BRING UP FOR THE RECORD
8 IS THAT I RECEIVED THROUGH THE BAILIFF A REQUEST BY ONE
9 JUROR ABOUT TAKING NOTES. AFTER CONFERRING WITH COUNSEL,
10 IT IS MY UNDERSTANDING THAT NEITHER SIDE OBJECTS TO MY
11 ALLOWING THE JURORS TO TAKE NOTES IF THEY WISH TO. IS THAT
12 CORRECT, MS. MILLICAN?

13 MS. MILLICAN: YES, YOUR HONOR.

14 THE COURT: MS. SMART?

15 MS. SMART: THAT IS CORRECT.

16 THE COURT: ALL RIGHT. I WILL SO ADVISE THE JURY.
17 ALL RIGHT. ANYTHING ELSE BEFORE WE GO FORWARD, MS.

18 MILLICAN?

19 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR,
20 THANK YOU.

21 THE COURT: MS. SMART.

22 MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. AT
23 THIS TIME I WOULD JUST LIKE TO RENEW MY RULE 5 DISCOVERY
24 MOTION IN CASE THERE IS ANYTHING THAT THE STATE INTENDS TO
25 INTRODUCE THAT HAS NOT BEEN GIVEN TO DEFENSE. I WOULD LIKE

1 THAT INFORMATION AS SOON AS POSSIBLE.

2 AND, SECOND, I WOULD LIKE TO MAKE A MOTION TO
3 SEQUESTER THE STATE'S WITNESSES.

4 THE COURT: ALL RIGHT. FIRST OF ALL WITH REGARD TO
5 THE RULE 5 REQUEST. MS. MILLICAN, I ASSUME THAT THE STATE
6 HAS COMPLIED WITH RULE 5 ---

7 MS. MILLICAN: YES, YOUR HONOR.

8 THE COURT: --- AND BRADY. AND IF THEY HAVE NOT, THEN
9 ANYTHING THAT HASN'T BEEN GIVEN TO THEM, NEEDS TO BE GIVEN
10 TO THEM NOW.

11 ALL RIGHT. WHAT'S THE STATE'S POSITION ON
12 SEQUESTRATION?

13 MS. MILLICAN: THE STATE HAS NO OBJECTION TO
14 SEQUESTRATION EXCEPT THAT THE STATE WOULD ASK THAT THE
15 VICTIM AND THE INVESTIGATOR REMAIN IN THE COURTROOM.

16 THE COURT: ALL RIGHT. FIRST OF ALL, OF COURSE, MS.
17 SMART, IT'S GOT TO BE RECIPROCAL. I DON'T KNOW WHETHER
18 YOUR CLIENT INTENDS TO PUT UP ANY EVIDENCE IN THIS CASE.
19 BUT IF HE DOES AND THERE ARE WITNESSES THAT THE DEFENSE
20 ANTICIPATES, THOSE WITNESSES WOULD HAVE TO BE SEQUESTERED
21 AS WELL.

22 MOTION FOR SEQUESTRATION WILL BE GRANTED WITH THE
23 EXCEPTION THAT UNDER THE RULE THE VICTIM HAS THE RIGHT TO
24 REMAIN IN THE COURTROOM AS DOES THE PRIMARY INVESTIGATOR.

25 ALL RIGHT. ANYTHING ELSE, MS. SMART?

1 MS. SMART: NOTHING FURTHER, YOUR HONOR.

2 THE COURT: ALL RIGHT. I DO THINK THAT ONE OF THE
3 FIRST THINGS WE NEED TO ALSO -- TELL ME, MS. SMART. TELL
4 ME WHAT THE LANGUAGE SITUATION IS. I SEE YOU HAVE THE
5 INTERPRETER HERE. I'VE MET THIS GENTLEMAN BEFORE BECAUSE
6 HE'S BEEN HERE A COUPLE WEEKS AGO.

7 MS. SMART: THE VICTIM'S STATEMENT IS WRITTEN IN
8 [REDACTED]. HOWEVER, WE WERE INFORMED YESTERDAY THAT SHE DOES
9 SPEAK ENGLISH. I THINK SHE'S GOING TO ATTEMPT TO TESTIFY
10 IN ENGLISH. BUT IF SHE DOES HAVE SOME DIFFICULTY AND HAS
11 TO SPEAK IN [REDACTED], THEN MS. MARTINEZ WILL BE HERE TO
12 INTERPRET FOR US IS SAID ON THE WITNESS STAND FROM THE
13 VICTIM.

14 THE COURT: ALL RIGHT. WHAT ABOUT THE STATE FROM THE
15 STANDPOINT OF INTERPRETER? ARE YOU GOING TO -- DO YOU HAVE
16 AN OFFICIAL INTERPRETER? IS IT NECESSARY TO ---

17 MS. MILLICAN: WE DO HAVE AN INTERPRETER. THE STATE
18 DOES HAVE AN INTERPRETER, YOUR HONOR. [REDACTED] IS GOING TO TRY
19 TO TESTIFY IN ENGLISH FOR THE MOST PART. I BELIEVE SHE'LL
20 BE ABLE TO DO THAT WITHOUT REALLY THE NEED OF A TRANSLATOR.
21 BUT IN CASE SHE NEEDED WORDS OR SHE GOT NERVOUS AND PREFER
22 TO SPEAK [REDACTED], WE HAVE AN INTERPRETER.

23 THE COURT: ALL RIGHT. LET'S GO AHEAD THEN AND HAVE
24 MS. YOUNG SWEAR THE INTERPRETER PLEASE IN CASE YOU NEED IT.
25 IF YOU WOULD COME UP HERE PLEASE, MA'AM.

1 SHE'S GOING TO SWEAR YOU.

2 (THE INTERPRETER WAS FIRST DULY SWORN.)

3 THE COURT: MA'AM, GIVE THE COURT REPORTER YOUR NAME.

4 INTERPRETER: REBECCA MCCANN.

5 THE COURT: ALL RIGHT. MS. MCCANN, THANK YOU.

6 ALL RIGHT. I'M JUST THINKING ABOUT -- IS IT GOING TO
7 BE NECESSARY THAT WE SWEAR THE INTERPRETER? YOUR CLIENT
8 SPEAKS ENGLISH, SO IT'S NOT A QUESTION OF INTERPRETING TO
9 HIM, IT'S JUST INTERPRETING THE VICTIM'S TESTIMONY. SO I
10 DON'T THINK THERE'S ANY NECESSITY THAT HE BE SWORN. HE IS
11 JUST THE INTERPRETER TO ASSIST THE DEFENSE OF THIS
12 MATTER.

13 MS. SMART: CORRECT.

14 THE COURT: OKAY. NONETHELESS, THE COURT WILL
15 RECOGNIZE HIM AS AN OFFICIAL INTERPRETER AND IS HERE FOR
16 THAT PURPOSE. OKAY. THANK YOU.

17 ALL RIGHT. HAVING SAID ALL THAT AND I THINK WE ARE IN
18 PLACE. ANYBODY HAVE ANYTHING ELSE BEFORE THE JURY IS
19 BROUGHT IN AND SWORN ON BEHALF OF THE STATE, MS. MILLICAN?

20 MS. MILLICAN: NOTHING FROM THE STATE.

21 THE COURT: ON BEHALF OF THE DEFENSE?

22 MS. SMART: NOTHING, YOUR HONOR.

23 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

24 (THE JURY RETURNS TO THE COURTROOM AT 9:45 A.M.)

25 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

1 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND
2 GENTLEMEN. THANK YOU FOR YOUR PROMPTNESS IN BEING BACK
3 HERE. WE HAVE ATTENDED TO THE PRELIMINARY MATTERS THAT WE
4 NEEDED TO TAKE CARE OF, INCLUDING SOME THAT WOULD EXPEDITE
5 THE TRIAL OF THIS MATTER, AND WE ARE NOW READY TO GO
6 FORWARD.

7 WITH THAT I'M GOING TO ASK THE CLERK, MS. YOUNG, IF
8 YOU'D PLEASE SWEAR THE JURY.

9 (THE JURY WAS DULY SWORN AT 9:46 A.M.)

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, BEFORE
11 WE BEGIN THE ~~FACTUAL~~ TRIAL OF THIS CASE, I THOUGHT IT MIGHT
12 BE HELPFUL IF I EXPLAIN TO YOU BASICALLY HOW A TRIAL
13 PROCEEDS.

14 SOME OF YOU MAY HAVE SERVED ON A JURY BEFORE. I KNOW
15 ALL OF YOU HAVE SEEN TRIALS ON TELEVISION. BUT I THINK
16 YOU'LL FIND OUT THAT IN REAL LIFE IT'S A GREAT DEAL
17 DIFFERENT THAN IT IS ON TELEVISION.

18 FIRST OF ALL, THE STATE WILL MAKE AN OPENING
19 STATEMENT. AN OPENING STATEMENT IS NOT EVIDENCE. IT IS
20 SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND WHAT THE STATE
21 EXPECTS THE EVIDENCE WILL SHOW.

22 THE ~~DEFENDANT~~ MAY IF HE WISHES TO THROUGH HIS ATTORNEY
23 PRESENT AN OPENING STATEMENT, BUT HE DOESN'T HAVE TO FOR
24 REASONS THAT I WILL EXPLAIN LATER.

25 FOLLOWING THE OPENING STATEMENT, YOU WILL HEAR THE

1 TESTIMONY AND THE EVIDENCE IN THIS CASE. THIS WILL CONSIST
2 OF TESTIMONY FROM THE STATE'S WITNESSES AS WELL AS ANY
3 PHYSICAL EXHIBITS WHICH MAY BE INTRODUCED INTO EVIDENCE.

4 FOLLOWING THE COMPLETION OF THE TESTIMONY, THE
5 ATTORNEYS WILL AGAIN HAVE THE OPPORTUNITY TO MAKE WHAT IS
6 CALLED A CLOSING STATEMENT OR SUMMATION TO YOU. THIS IS AN
7 OPPORTUNITY FOR THE ATTORNEYS TO SUMMARIZE THE CASE FROM
8 THEIR RESPECTIVE POINTS OF VIEW. AGAIN, THESE ARGUMENTS
9 ARE NOT EVIDENCE.

10 FOLLOWING THE CLOSING STATEMENTS BY THE ATTORNEYS, I
11 WILL INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA AS IT
12 PERTAINS TO THE ISSUES THAT HAVE ARISEN IN THIS CASE. AND
13 WHEN I HAVE COMPLETED MY INSTRUCTIONS TO YOU, YOU WILL BE
14 PERMITTED TO BEGIN YOUR DELIBERATIONS IN ORDER TO REACH A
15 VERDICT.

16 NOW, LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN
17 THIS CASE AND I WANT TO TAKE A FEW MINUTES TO TELL YOU
18 SOMETHING ABOUT YOUR DUTY AS JURORS AND TO GIVE YOU SOME
19 PRELIMINARY INSTRUCTIONS. AT THE END OF THIS TRIAL I WILL
20 GIVE YOU MORE DETAILED INSTRUCTIONS AND THOSE INSTRUCTIONS
21 WILL CONTROL YOUR DELIBERATIONS.

22 IT WILL BE YOUR DUTY TO DECIDE ~~FROM~~ THE EVIDENCE WHAT
23 THE FACTS ARE. YOU AND YOU ALONE ARE THE JUDGES OF THE
24 FACTS. YOU WILL HEAR THE EVIDENCE, DECIDE WHAT THE FACTS
25 ARE, AND THEN APPLY THOSE FACTS TO THE LAW THAT I WILL GIVE

1 TO YOU; THAT IS HOW YOU REACH YOUR VERDICT. IN DOING SO,
2 YOU MUST FOLLOW THE LAW WHETHER YOU AGREE WITH IT OR NOT.

3 THE EVIDENCE WILL CONSIST OF THE TESTIMONY OF
4 WITNESSES, DOCUMENTS, AND OTHER THINGS RECEIVED INTO
5 EVIDENCE AS EXHIBITS, AND ANY FACTS ON WHICH THE LAWYERS
6 AGREE OR WHICH I MAY INSTRUCT YOU TO ACCEPT.

7 NOW, YOU SHOULD NOT TAKE ANYTHING THAT I MAY SAY OR DO
8 DURING THIS TRIAL AS INDICATING WHAT I THINK OF THE
9 EVIDENCE OR WHAT YOUR VERDICT SHOULD BE; THAT IS A MATTER
10 SOLELY FOR YOUR DETERMINATION.

11 THE SAME LAW THAT MAKES YOU THE JUDGE OF THE FACTS
12 MAKES ME THE JUDGE OF THE LAW. YOU MUST TAKE THE LAW AS I
13 GIVE IT TO YOU REGARDLESS OF WHAT YOU THINK THE LAW IS OR
14 WHAT THE LAW OUGHT TO BE. IF I'M WRONG ON THE LAW, THERE'S
15 ANOTHER TIME AND PLACE FOR THAT ERROR TO BE CORRECTED. BUT
16 FOR THIS CASE AND THIS TRIAL, YOU MUST ACCEPT THE LAW AS I
17 CHARGE IT TO YOU.

18 NOW, THIS IS A CRIMINAL CASE BROUGHT BY THE STATE OF
19 SOUTH CAROLINA. THE STATE CHARGES THE DEFENDANT, NATHANIEL
20 JOHNSON, WITH SEVERAL CHARGES. THESE CHARGES ARE CONTAINED
21 IN THE INDICTMENT. THEY ARE -- THE CHARGES AGAINST THE
22 DEFENDANT ARE BURGLARY IN THE FIRST DEGREE, CRIMINAL SEXUAL
23 CONDUCT IN THE FIRST DEGREE, KIDNAPING, AND USE OF A
24 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AND AS I
25 SAY, THE CHARGES ARE CONTAINED IN THE INDICTMENTS WHICH I

1 HOLD IN MY HAND.

2 THE INDICTMENTS ARE NOT EVIDENCE OF ANYTHING. THEY
3 ARE SIMPLY THE DESCRIPTION OF THE CHARGES MADE BY THE STATE
4 AGAINST THE DEFENDANT.

5 THE DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES AND
6 IS PRESUMED INNOCENT UNLESS AND UNTIL PROVEN GUILTY BEYOND
7 A REASONABLE DOUBT.

8 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
9 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

10 A DEFENDANT HAS A RIGHT NOT TO TESTIFY AND NEVER HAS
11 TO PROVE INNOCENCE OR PRESENT ANY EVIDENCE. THE BURDEN OF
12 PROOF IS ALWAYS ON THE STATE OF SOUTH CAROLINA.

13 NOW, THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE.
14 YOU MUST NOT CONSIDER THEM AS EVIDENCE IN DECIDING THE
15 FACTS OF THIS CASE.

16 STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE NOT
17 EVIDENCE. QUESTIONS AND OBJECTIONS OF THE ATTORNEYS ARE
18 NOT EVIDENCE. AND TESTIMONY THAT I INSTRUCT YOU TO
19 DISREGARD IS NOT EVIDENCE.

20 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL.

21 DIRECT EVIDENCE IS TESTIMONY BY A WITNESS ABOUT WHAT
22 THAT WITNESS PERSONALLY SAW OR HEARD OR DID.

23 CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE.

24 THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT TO BOTH, BUT
25 IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY OF

1 THE EVIDENCE.

2 THERE ARE RULES OF EVIDENCE WHICH CONTROL WHAT CAN BE
3 RECEIVED IN TO COURT. WHEN THE LAWYER ASKS A QUESTION OR
4 OFFERS AN EXHIBIT INTO EVIDENCE AND THE LAWYER ON THE OTHER
5 SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES, THAT
6 LAWYER MAY OBJECT.

7 IF I OVERRULE THE OBJECTION, THE QUESTION MAY BE
8 ANSWERED OR THE EXHIBIT MAY BE RECEIVED.

9 IF I SUSTAIN THE OBJECTION, THE QUESTION CANNOT BE
10 ANSWERED AND THE EXHIBIT CANNOT BE RECEIVED.

11 WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION OR DENY
12 A MOTION TO ADMIT AN EXHIBIT INTO EVIDENCE, YOU MUST IGNORE
13 THE QUESTION OR THE EXISTENCE OF THE EXHIBIT, AND YOU MUST
14 NOT GUESS WHAT THE ANSWER WOULD HAVE BEEN OR WHAT THE
15 EXHIBIT WOULD HAVE SHOWN.

16 SOMETIMES IT MAY BE NECESSARY FOR ME TO REQUEST THAT
17 YOU LEAVE THE COURTROOM WHILE I DISCUSS WITH THE ATTORNEYS
18 LEGAL QUESTIONS THAT COME UP DURING THE TRIAL. IF THIS
19 OCCURS, YOU SHOULD NOT SPECULATE ABOUT OUR DISCUSSIONS OR
20 THE REASONS THAT YOU WERE ASKED TO LEAVE THE ROOM. THIS IS
21 SIMPLY A PROCEDURE THAT THE LAW REQUIRES WHEN CERTAIN LEGAL
22 ISSUES ARISE.

23 THERE ALSO MAY BE OCCASIONS WHEN I ASK THE ATTORNEYS
24 TO APPROACH THE BENCH SO THAT I CAN DISCUSS A LEGAL ISSUE
25 WITH THEM IN PRIVATE. I WILL DO THIS AS OFTEN AS POSSIBLE

1 SO THAT YOU WILL NOT BE REQUIRED TO LEAVE THE COURTROOM
2 MORE THAN IS ABSOLUTELY NECESSARY.

3 AGAIN, IF I ASK THE ATTORNEYS TO STEP UP TO THE BENCH
4 OR IF I ASK YOU TO LEAVE THE COURTROOM, PLEASE DON'T THINK
5 THAT ANYBODY IS TRYING TO HIDE ANYTHING FROM YOU OR KEEP
6 ANY EVIDENCE FROM YOU. THIS IS SIMPLY A PROCEDURE USED BY
7 ALL LAWYERS AND BY ALL COURTS TO DETERMINE AND DECIDE LEGAL
8 QUESTIONS.

9 NOW, IN DECIDING THE FACTS OF THIS CASE, YOU MAY HAVE
10 TO DECIDE WHICH WITNESSES TO BELIEVE AND WHICH WITNESSES
11 NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS
12 OR ONLY PART OF IT OR NONE OF IT. THIS IS CALLED
13 CREDIBILITY.

14 IN DECIDING WHAT TO BELIEVE, YOU MAY CONSIDER A NUMBER
15 OF FACTORS INCLUDING THE WITNESS' ABILITY TO SEE OR HEAR OR
16 KNOW THE THINGS THE WITNESS TESTIFIED TO; THE QUALITY OF
17 THE WITNESS' MEMORY; THE WITNESS' MANNER OR DEMEANOR WHILE
18 TESTIFYING; WHETHER THE WITNESS HAS AN INTEREST IN THE
19 OUTCOME OF THE CASE OR ANY MOTIVE, BIAS, OR PREJUDICE;
20 WHETHER THE WITNESS WAS CONTRADICTED BY ANYTHING THE
21 WITNESS SAID OR WROTE BEFORE THE TRIAL OR BY ANY OTHER
22 EVIDENCE; AND HOW REASONABLE WAS THE WITNESS' TESTIMONY
23 WHEN CONSIDERED IN THE LIGHT OF OTHER EVIDENCE WHICH YOU DO
24 BELIEVE.

25 NOW, JUST A FEW WORDS TO YOU ABOUT YOUR CONDUCT AS

1 JURORS. SOME OF THESE I MENTIONED TO YOU YESTERDAY, BUT
2 THEY'RE IMPORTANT ENOUGH THAT THEY BEAR REPEATING.

3 DO NOT TALK TO EACH OTHER ABOUT THIS CASE UNTIL THE
4 END OF THE CASE WHEN YOU GO TO YOUR JURY ROOM TO DECIDE ON
5 YOUR VERDICT. DO NOT TALK WITH ANYONE ELSE ABOUT THE CASE
6 UNTIL THE TRIAL IS ENDED FOLLOWING YOUR VERDICT AND YOU
7 HAVE BEEN DISCHARGED AS JURORS. THIS MEANS, DO NOT DISCUSS
8 THE CASE WITH MEMBERS OF YOUR FAMILY OR YOUR FRIENDS OR
9 WITH ANYONE ELSE.

10 AGAIN, AS I SAID, THE REASON FOR THIS IS YOU'VE GOT TO
11 DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN THIS COURTROOM
12 AND NOT ON THE BASIS OF WHAT ANYONE ELSE MIGHT SAY.

13 YOU MAY TELL YOUR FAMILY OR YOUR FRIENDS THAT YOU ARE
14 A JUROR, BUT DON'T TELL THEM ANYTHING ABOUT THE CASE UNTIL
15 YOU HAVE BEEN DISCHARGED BY ME.

16 DO NOT LET ANYONE TALK TO YOU ABOUT THE CASE. IF
17 ANYONE SHOULD APPROACH YOU OR TRY TO TALK TO YOU ABOUT THE
18 CASE, GET THEIR NAME AND THEIR DESCRIPTION, REPORT IT TO
19 THE BAILIFFS. THEY WILL REPORT IT TO ME AND I WILL DEAL
20 WITH THEM.

21 DO NOT READ ANY NEWS STORIES OR ARTICLES OR LISTEN TO
22 ANY RADIO OR TELEVISION REPORTS ABOUT THE CASE. AGAIN,
23 WITH DUE RESPECT TO ALL OF MY GOOD FRIENDS IN THE MEDIA,
24 THEIR REPORTS OF WHAT GOES ON IN COURT ARE NOT ALWAYS
25 COMPLETELY ACCURATE, AND YOU'VE GOT TO DECIDE THE CASE

1 BASED UPON WHAT YOU HEAR IN THE COURTROOM.

2 YOU'RE NOT TO CONSIDER AS EVIDENCE ANYTHING THAT YOU
3 MAY SEE OR HEAR WHEN COURT IS NOT IN SESSION. DO NOT DO
4 ANY RESEARCH SUCH AS CONSULTING DICTIONARIES OR OTHER
5 REFERENCE MATERIALS OR THE INTERNET. AND DO NOT MAKE ANY
6 INVESTIGATION ABOUT THE CASE ON YOUR OWN.

7 IF YOU NEED TO COMMUNICATE WITH ME, SIMPLY HAVE THE
8 FOREPERSON WHEN I NAME THAT FOREPERSON, WHICH WILL BE SOME
9 TIME LATER ON TODAY, GIVE ME A SIGNED NOTE, AND I WILL TRY
10 TO RESOLVE YOUR PROBLEM.

11 AND FINALLY AND PROBABLY MOST IMPORTANT, DO NOT MAKE
12 UP YOUR MIND ABOUT WHAT YOUR VERDICT SHOULD BE UNTIL YOU
13 HAVE HEARD ALL OF THE TESTIMONY AND THE EVIDENCE IN THIS
14 CASE AND THE INSTRUCTIONS ON THE LAW BY THE COURT. YOU
15 WILL BE INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS BY
16 EITHER ME OR THE BAILIFF.

17 ARE THERE ANY OBJECTIONS TO MY OPENING REMARKS ON
18 BEHALF OF THE STATE, MS. MILLICAN?

19 MS. MILLICAN: NO, YOUR HONOR, THANK YOU.

20 THE COURT: MS. SMART?

21 MS. SMART: NOT FROM THE DEFENSE, YOUR HONOR.

22 THE COURT: ALL RIGHT. THE FIRST ORDER OF BUSINESS
23 THEN, LADIES AND GENTLEMEN, IS THE STATE HAS THE RIGHT TO
24 MAKE AN OPENING STATEMENT, AND I WILL RECOGNIZE MS.
25 MILLICAN FOR THAT PURPOSE.

1 MS. MILLICAN: THANK YOU, YOUR HONOR.

2 OPENING STATEMENT BY MS. MILLICAN ON BEHALF OF THE STATE:

3 ON FEBRUARY THE 7TH, 2006 [REDACTED] WAS AT HOME.
4 IT'S THE MIDDLE OF THE DAY. THERE WAS A KNOCK AT HER FRONT
5 DOOR. SHE ANSWERED THE DOOR. SHE OPENED IT. NATHANIEL
6 JOHNSON WAS STANDING AT HER FRONT DOOR, CLEAN-CUT, WELL-
7 SPOKEN MAN, NEEDED HELP.

8 UNDER THE PURVIEW OF NEEDING TO USE HER TELEPHONE, THE
9 DEFENDANT ENTERED HER HOME. [REDACTED] TURNED HER BACK FOR JUST A
10 MOMENT. AND IN THAT TIME THAT HER BACK WAS TURNED TO THE
11 DEFENDANT, HE GOT UP THE NERVE TO REACH DOWN AND GRIP THE
12 HANDLE OF A DARK, SHINY GUN, HANDGUN, PULL IT OUT AND POINT
13 IT AT HER.

14 SHE TURNS AROUND AND LOOKS OVER HER SHOULDER, SEES THE
15 BARREL OF A GUN IN HER FACE, IN HER OWN KITCHEN, IN HER OWN
16 HOME. IN THE ROOM WHERE SHE FEEDS HER CHILDREN, THERE'S A
17 MAN HOLDING A GUN TO HER FACE.

18 HE TELLS HER -- OR FORCES HER BACK TO THE BACK
19 BEDROOM. AND ON HER MARITAL BED, IN HER HOME IN BROAD
20 DAYLIGHT THE DEFENDANT RAPED [REDACTED]

21 THIS CASE IS ALL ABOUT POWER. ON FEBRUARY THE 7TH,
22 2006 THE DEFENDANT OVERPOWERED [REDACTED] THIS WEEK
23 [REDACTED] IS IN COURT TO FIND HER VOICE AND TO MAYBE
24 GET SOME OF THAT POWER BACK.

25 NOW, LADIES AND GENTLEMEN, THERE IS A LOT OF EVIDENCE

1 IN THIS CASE THE STATE WILL PRESENT IN ORDER TO PROVE OUR
2 CASE. YOU WILL HEAR TESTIMONY FROM POLICE OFFICERS, FROM
3 SLED AGENTS, AND FROM OUR STATE INVESTIGATIVE BUREAU.
4 YOU'LL HEAR TESTIMONY FROM [REDACTED] FROM EYEWITNESSES THAT
5 HELPED [REDACTED] THE DAY OF HER ATTACK. YOU WILL HEAR TESTIMONY
6 FROM DNA EXPERTS, FORENSIC EXPERTS, MEDICAL PERSONNEL. YOU
7 WILL SEE THE DNA THAT WAS COLLECTED THAT DAY AND OTHER
8 EVIDENCE THAT WAS COLLECTED THAT DAY.

9 BUT WHAT YOU BRING TO THIS COURTROOM IS THE MOST
10 IMPORTANT PART OF THIS CASE, BECAUSE YOU BRING YOUR
11 LIFETIME EXPERIENCES AND YOUR COMMON SENSE. AND I ASK YOU
12 TO APPLY THOSE THINGS IN DETERMINING THE WEIGHT AND
13 CREDIBILITY TO BE GIVEN TO THE EVIDENCE THAT I PRESENT TO
14 YOU IN THIS CASE.

15 THE DEFENDANT HAS BEEN CHARGED WITH BURGLARY IN THE
16 FIRST DEGREE, KIDNAPING, CRIMINAL SEXUAL CONDUCT IN THE
17 FIRST DEGREE, AND POSSESSION OF A WEAPON DURING THE
18 COMMISSION OF A VIOLENT CRIME.

19 NOW, THE JUDGE WILL GO INTO GREAT DETAIL AT THE END OF
20 THIS TRIAL, EXPLAINING TO YOU THE EXACT ELEMENTS OF EACH OF
21 THOSE CHARGES. BUT I'LL TELL YOU GENERALLY NOW AS YOU'RE
22 TAKING YOUR EVIDENCE WHAT YOU'RE LOOKING FOR.

23 BURGLARY FIRST DEGREE IS THE ENTERING OR REMOVAL OF
24 ANOTHER WITHOUT CONSENT WITH THE INTENT TO COMMIT A CRIME
25 THEREIN WITH SOME SORT OF AN AGGRAVATING FACTOR

1 ACCOMPANYING IT.

2 CSC FIRST DEGREE -- CRIMINAL SEXUAL CONDUCT FIRST
3 DEGREE IS ENGAGING IN A SEXUAL BATTERY WITH THE VICTIM WITH
4 USE OF AGGRAVATED FORCE.

5 AND THE KIDNAPING WOULD JUST BE THE CARRYING OR TAKING
6 AWAY OF A PERSON BY FORCE FROM ONE PLACE TO ANOTHER.

7 NOW, I APPRECIATE YOUR SERVICE THIS WEEK. I KNOW THAT
8 YOU PROBABLY HAVE OTHER PLACES TO BE. BUT YOU HAVE THE
9 AWESOME RESPONSIBILITY OF BALANCING THE SCALES OF POWER AND
10 JUSTICE THIS WEEK, AND I APPRECIATE IT. I HOPE THAT YOU
11 FIND THE DEFENDANT GUILTY.

12 THANK YOU.

13 THE COURT: MS. SMART, DOES THE DEFENSE CARE TO MAKE
14 AN OPENING STATEMENT?

15 MS. SMART: YES, YOUR HONOR.

16 THE COURT: YOU MAY DO SO.

17 MS. SMART: THANK YOU. MAY IT PLEASE THE COURT.

18 THE COURT: YES, MA'AM.

19 OPENING STATEMENT BY MS. SMART ON BEHALF OF THE DEFENDANT:

20 GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY. I
21 GREET YOU THIS MORNING WITH GREAT EXPECTATION, VERY GREAT
22 EXPECTATION, ~~BECAUSE~~ THIS IS PROBABLY ONE ~~INTERESTING~~
23 ~~FASCINATING~~ TRIALS THAT YOU ARE GOING TO SEE BECAUSE YOU
24 ACTUALLY HAVE FORENSIC EVIDENCE. YOU WILL ACTUALLY SEE
25 C.S.I. AND ALL THE OTHER SHOWS IN WORK IN BEAUFORT COUNTY

1 IN THE STATE OF SOUTH CAROLINA. AND WE APPRECIATE AND
2 RESPECT THAT.

3 WE'RE NOT GOING TO TRY TO MINIMIZE THE DNA. WE'RE NOT
4 GOING TO TRY TO TELL YOU THAT YOU SHOULDN'T PAY ATTENTION
5 TO THE DNA. WE'RE EXCITED TO HAVE THE DNA.

6 BUT WHAT WE ARE GOING TO ASK YOU TO DO IS LISTEN TO
7 THE JUDGE'S CHARGE AND THINK ABOUT WHAT HE TOLD YOU ABOUT
8 CREDIBILITY, BECAUSE THAT'S WHERE MR. JOHNSON IS COMING
9 FROM TODAY. HE WANTS YOU TO PAY ATTENTION TO EACH AND
10 EVERY WITNESS THAT THE STATE PRESENTS TO YOU. PAY
11 ATTENTION TO THEIR TESTIMONY, EACH AND EVERY WORD, BECAUSE
12 SOME TIMES YOUR OPINION CAN BE TURNED ON JUST ONE WORD.
13 YOU CAN SEE A DIFFERENT PICTURE BECAUSE IT'S TOLD DIFFERENT
14 WAYS.

15 I ALSO SAY IN MY OPENING STATEMENTS THAT WE LOOK AT
16 THE GLASS HALF EMPTY OR HALF FULL. I WOULD SUBMIT TO YOU
17 TODAY THAT YOU CAN SEE THE GLASS IN BOTH WAYS. YOU'RE
18 GOING TO SEE IT HALF EMPTY, AND YOU'RE GOING TO SEE THAT
19 VERY SAME GLASS HALF FULL.

20 SO HOW'S THAT GOING TO HAPPEN, MS. SMART? THIS IS
21 GOING TO BE A VERY EMOTIONAL TRIAL. YOU'RE GOING TO HAVE
22 [REDACTED] (PHONETIC) -- [REDACTED], EXCUSE ME, IS
23 GOING TO TELL YOU THAT AN ALLEGED ATTACK HAPPENED AT HER
24 HOME DURING THE MIDDLE OF THE DAY. AND YOU'RE GOING TO
25 FEEL SYMPATHETIC. AND YOU'RE GOING TO FEEL COMPASSION.

1 YOU'RE GOING TO BE EMOTIONAL, PROBABLY.

2 BUT IN THE SAME TIME, YOU'RE GOING TO HAVE TO LISTEN
3 TO THE FACTS. YOU'RE GOING TO HAVE TO LISTEN TO WHAT IS
4 BEING SAID BY EVERY PERSON THAT COMES TO THE WITNESS STAND,
5 AND WE CAN'T JUST HAVE TUNNEL VISION. WE CAN'T JUST THINK
6 THIS LADY HAS BEEN RAPED, OH, MY GOD, I FEEL SO SORRY FOR
7 HER AND SOMEBODY HAS TO PAY.

8 ONLY SOMEBODY WILL HAVE TO PAY IF THE STATE PROVES TO
9 YOU BEYOND A REASONABLE DOUBT THAT EACH AND EVERY ELEMENT
10 HAS BEEN MET. AND I SUBMIT TO YOU TODAY THAT WHEN YOU
11 CONSIDER THE CREDIBILITY OF EACH AND EVERY WITNESS, THAT
12 THE STATE WILL NOT BE ABLE TO PROVE THAT BURDEN. THEY WILL
13 NOT BE ABLE TO MEET EACH AND EVERY ELEMENT. YOU'RE
14 GOING TO LISTEN TO THE TESTIMONY.

15 YOU'RE GOING TO LISTEN ESPECIALLY FOR INCONSISTENCIES,
16 BECAUSE THE JUDGE HAS TOLD YOU THAT YOU ARE ALLOWED TO TAKE
17 IN TO CONSIDERATION THE WITNESS' DEemeanor, WHETHER OR NOT
18 THEY'VE SAID INCONSISTENT STATEMENTS.

19 AND SO WHEN YOU THINK ABOUT A PERSON BEING A VICTIM OF
20 A CRIME, ASK YOURSELF: WHY WOULD THEY MAKE INCONSISTENT
21 STATEMENTS? WHY NOT JUST TELL THE TRUTH? AND HOW MANY
22 TIMES DOES THE TRUTH CHANGE? IS THERE ONE TRUTH? ARE
23 ~~THREE~~ THREE TRUTHS? WHAT EXACTLY IS THE TRUTH?

24 SO YOU HAVE THIS TRAUMATIZED VICTIM WHO MAY OR MAY NOT
25 GIVE INCONSISTENT STATEMENTS, AND THEN YOU HAVE TO START TO

1 HAVE TO ASK QUESTIONS: WHY?

2 SO AS YOU SIT IN THE JURY BOX, IF YOU LISTEN TO
3 TESTIMONY, ASK WHY? WHY? WHY? WHY? WHY? WHY? WHY WAS
4 THIS SAID? WHY WAS THIS DONE? WHY WAS THIS SAID AT THIS
5 PARTICULAR TIME? WHY WAS THIS DONE AT THAT PARTICULAR
6 TIME?

7 AND IF YOU ASK YOURSELVES THOSE QUESTIONS, I BELIEVE
8 THAT YOU WILL FIND THE DEFENDANT NOT GUILTY.

9 THANK YOU VERY MUCH.

10 THE COURT: ALL RIGHT. THANK YOU. MS. MILLICAN, YOU
11 MAY CALL YOUR FIRST WITNESS.

12 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS

13 [REDACTED]

14 [REDACTED], BEING FIRST

15 DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
17 SPELL IT FOR THE COURT.

18 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WHILE
19 SHE IS TAKING A SEAT, LET ME TELL YOU THAT MS. RODRIGUEZ
20 DOES SPEAK ENGLISH AND SHE IS GOING TO ATTEMPT TO TESTIFY
21 IN ENGLISH.

22 THE LADY BEHIND HER IS AN INTERPRETER IN CASE IT
23 BECOMES NECESSARY TO HAVE HER TESTIMONY IN [REDACTED] OR IF
24 SHE SPEAKS IN [REDACTED] TO HAVE IT TRANSLATED TO ENGLISH SO
25 YOU CAN UNDERSTAND IT. SHE HAS ALSO BEEN SWORN IN THIS

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED]

1 CASE TO INTERPRET ACCURATELY, AND THAT'S WHAT HER PURPOSE
2 IN BEING HERE IS -- SO THAT YOU WOULD KNOW THAT.

3 BUT MY UNDERSTANDING IS THAT [REDACTED] DOES SPEAK
4 ENGLISH AND WILL ATTEMPT TO TESTIFY IN ENGLISH.

5 ALL RIGHT. MS. MILLICAN, YOU MAY PROCEED.

6 MS. MILLICAN: THANK YOU, YOUR HONOR.

7 THE COURT: WAIT A MINUTE. [REDACTED], IF YOU
8 WOULD STATE YOUR NAME FOR THE RECORD AND SPELL YOUR NAME
9 PLEASE.

10 WITNESS: [REDACTED]. DO YOU WANT ME TO
11 SPELL IT?

12 THE COURT: YES, PLEASE.

13 WITNESS: [REDACTED] [REDACTED] [REDACTED]

14 THE COURT: ALL RIGHT. MS. MILLICAN.

15 DIRECT EXAMINATION BY MS. MILLICAN:

16 Q THANK YOU, [REDACTED]. [REDACTED], HOW OLD ARE YOU?

17 A 34 YEARS OLD.

18 Q DO YOU HAVE ANY CHILDREN?

19 A I HAVE THREE KIDS.

20 Q WHAT DO YOU DO FOR A LIVING?

21 A I OWN A CLEANING BUSINESS. I AM HOUSEKEEPER.

22 Q ON FEBRUARY THE 7TH, 2006 WERE YOU LIVING ON 94 CUFFY
23 ROAD ON ST. HELENA?

24 A YES, MA'AM.

25 Q WERE YOUR CHILDREN AT HOME THAT AFTERNOON?

[REDACTED] -- DIRECT BY MS. MILLICAN

[REDACTED] 118

1 A NO. THEY WERE IN THE SCHOOL.

2 Q WAS YOUR HUSBAND AT HOME THAT AFTERNOON?

3 A [REDACTED] WORKING.

4 Q WERE ANY OF YOUR NEXT DOOR NEIGHBORS AT HOME THAT
5 AFTERNOON?

6 A EVERYBODY WAS WORKING.

7 Q [REDACTED] LOT OF NEXT DOOR NEIGHBORS WHERE YOU
8 LIVED AT 94 CUFFY ROAD?

9 A IT'S HOUSE NEXT -- NEXT TO MY HOUSE AND A NEW HOUSE
10 JUST IN THE PROCESS OF BUILDING AT THIS TIME. SO, NO, IT'S
11 INSULATED PLACE.

12 Q WHAT HOURS OF THE DAY DURING THE WEEK ARE YOU USUALLY
13 AT HOME BY YOURSELF?

14 A AFTER 12:00. I NORMALLY WORK A COUPLE HOURS, 9:00 TO
15 12:00. I ALWAYS TRY TO BE AT HOME AT 12:00 TO FIX LUNCH TO
16 MY HUSBAND. SO BETWEEN 12:00 AND 3:00 O'CLOCK.

17 Q AND AT 3:00 O'CLOCK, WHAT HAPPENS AT 3:00 O'CLOCK?

18 A I HAVE TO GO AND PICK MY BABIES FROM THE SCHOOL.

19 Q ON FEBRUARY THE 7TH, 2006 DO YOU RECALL IF THERE WERE
20 ANY PEOPLE THAT WERE WORKING AROUND YOUR HOUSE?

21 A I REMEMBER THAT WAS A WHITE TRUCK JUST IN FRONT OF THE
22 HOUSE THAT WAS IN THE PROCESS OF BUILDING; WAS PEOPLE
23 WORKING THERE. AND DIFFERENT TRUCKS AND DIFFERENT PEOPLE
24 WAS ALWAYS IN THIS HOUSE BECAUSE OF THEY WERE BUILDING.

25 Q ON THAT DAY WERE THERE PEOPLE THERE?

██████████ - DIRECT BY MS. MILLICAN

██████████ 9

1 A YES, I SAW ONE TRUCK AND -- AND -- AND PEOPLE WORKING
2 JUST IN FRONT.

3 Q DID SOMEONE KNOCK ON YOUR DOOR THAT AFTERNOON?

4 A YES, SOMEBODY KNOCK ON THE DOOR. AND I SAW THROUGH
5 THE WINDOW, AND I SAW THIS GUY KNOCK ON THE DOOR. AND --
6 AND SINCE VERY OFTEN A LOT OF PEOPLE WAS KNOCKING THE DOOR,
7 ASKING FOR HOSE. SOME TIMES THE PHONE -- WAS NO STRANGE
8 FOR ME TO HAVE -- THEY WERE KNOCKING AND ASKING FOR
9 SOMETHING -- ASKING FOR HELP. SO I OPEN THE DOOR. AND HE
10 ASKED ME FOR THE PHONE.

11 Q NOW, WHO WAS THE PERSON THAT ASKED YOU FOR THE PHONE
12 THAT KNOCKED ON YOUR DOOR?

13 A THIS GUY.

14 Q CAN YOU DESCRIBE WHAT COLOR HIS SHIRT IS?

15 A HE'S WEARING A BLUE SHIRT.

16 MS. MILLICAN: YOUR HONOR, PLEASE LET THE RECORD
17 REFLECT THAT THE WITNESS HAS POINTED OUT THE DEFENDANT.

18 THE COURT: THE RECORD WILL SO REFLECT.

19 Q WHAT DID HE LOOK LIKE THAT DAY? HOW WAS HE DRESSED?

20 A HE WAS WEARING SPORT CLOTHES, DARK COLOR WITH STRIPES
21 HERE -- SPORT -- SPORT CLOTHES.

22 Q DID HE SEEM CALM OR NERVOUS OR ---

23 A NO. AT THIS TIME HE -- HE -- HE WAS VERY NICE. I
24 THOUGHT WAS A VERY OKAY GUY. HE KNOCKED. HE ASKED FOR USE
25 THE PHONE. AND SUDDENLY BECAUSE I -- I JUST TRIED TO BE A

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED]

50

1 NICE LADY WITH ALL THE PEOPLE, I NEVER THOUGHT THAT SOME --
2 SOMETHING BAD.

3 THE COURT: MS. MILLICAN, LET ME INTERRUPT YOU FOR
4 JUST A MINUTE. WE TALKED ABOUT THIS AND THEN I FORGOT TO
5 TELL THE JURY. I DID HAVE A REQUEST, I THINK, THAT SOME OF
6 YOU MIGHT WANT TO TAKE NOTES.

7 THERE IS NO OBJECTION ON THE PART OF THE PARTIES IF
8 ANYBODY WISHES TO TAKE NOTES DURING THE COURSE OF THE
9 TESTIMONY. AND IF ANYBODY WOULD LIKE SOME PADS, WE'LL GET
10 SOME PADS FOR YOU. OKAY. WE WILL ALLOW YOU TO DO THAT.
11 WE'LL WAIT JUST A MINUTE, MS. MILLICAN, AND LET'S DO THAT.

12 (PAUSE.)

13 THE COURT: WHILE THEY'RE GETTING THAT, LET ME JUST
14 GIVE YOU SOME INSTRUCTIONS ON THAT. THE PURPOSE IN
15 ALLOWING YOU TO TAKE NOTES IS SIMPLY TO REFRESH YOUR OWN
16 RECOLLECTION. SO IT IS NOT TO CONTROL ANYBODY ELSE'S
17 THINKING ON THE JURY. IT IS SO THAT YOU WILL BE ABLE TO
18 WHEN YOU GO TO YOUR JURY ROOM, TO REFRESH YOUR RECOLLECTION
19 OF WHAT YOU RECALL THE TESTIMONY WAS ABOUT.

20 BUT NOBODY SHOULD GIVE ANY MORE EMPHASIS TO THE
21 RECOLLECTION OF ONE WITNESS THAN THEY WOULD GIVE TO ANOTHER
22 WITNESS. BUT IT IS SOLELY FOR THE PURPOSE OF THAT -- OF
23 ONE JUROR OVER ANOTHER JUROR, IT IS SOLELY FOR THE PURPOSE
24 OF THAT JUROR REFRESHING THEIR OWN RECOLLECTION.

25 ANY OBJECTION TO THAT, MS. SMART?

~~REDACTED~~ DIRECT BY MS. MILLICAN

~~REDACTED~~ 61

1 MS. SMART: NO, YOUR HONOR.

2 THE COURT: OKAY.

3 (PAUSE.)

4 THE COURT: ALL RIGHT. THANK YOU, COUNSEL AND LADIES
5 AND GENTLEMEN OF THE JURY. WE WILL PROCEED. GO AHEAD, MS.
6 MILLICAN.

7 MS. MILLICAN: THANK YOU, YOUR HONOR.

8 DIRECT EXAMINATION CONTINUED:

9 Q ~~REDACTED~~ DID YOU KNOW THIS MAN ON THAT DAY?

10 A NO.

11 Q DO YOU RECALL IF YOU EVER SAW SOMEBODY THAT MAYBE
12 LOOKED LIKE HIM BEFORE?

13 A THE TRUE TIME BEFORE THIS BAD THING HAPPENED TO ME, I
14 USED TO TAKE MY BABIES ALMOST EVERY SINGLE AFTERNOON TO THE
15 PARK. AND ONE DAY SOMEBODY THAT WAS WEARING SPORT CLOTHES
16 AND -- AND -- AND RIDING A BICYCLE JUST STOPPED BY THE PARK
17 AND START LOOKING FOR SIGNAL IN HIS CELL. AND HE WALK
18 THERE TO MY BABIES AND -- AND MYSELF. AND HE SAID
19 SOMETHING LIKE, CAN YOU BELIEVE I CAN'T HAVE A SIGNAL IN --
20 IN MY PHONE.

21 AND AFTER THAT HE STARTED TALK ABOUT DIFFERENT KIND OF
22 THINGS. I STILL LOOKING. MY BABIES ARE PLAYING ON THE
23 PLAYGROUND. SO I REMEMBER SAID SOMETHING LIKE HE WAS
24 RETIRED. HE -- HE MAKE GOOD MONEY BECAUSE OF THIS. AND
25 AFTER THAT HE START SAYING SOMETHING LIKE YOU ARE PRETTY

[REDACTED] - DIRECT BY MS. MILLICAN: [REDACTED]

52

1 AND THIS KIND OF THING. AND SO WAS IT. I -- I -- I -- I
2 PICK MY BABIES AND -- AND -- GO.

3 BUT THE TRUTH, I CAN'T TELL YOU FOR SURE THAT THIS GUY
4 WAS THE SAME GUY. THIS GUY. I CAN TELL YOU FOR SURE HE
5 WAS WHO KNOCKED MY DOOR. HE WAS WHO HURT ME. THAT'S FOR
6 SURE.

7 BUT TIME WHEN THIS GUY JUST MAKE CONVERSATION, I JUST
8 -- I DIDN'T PAY ATTENTION. I WAS PAYING ATTENTION ON MY
9 KIDS AND WAS IT.

10 WAS -- WHEN -- WHEN THIS GUY WAS IN MY HOME AND WHEN
11 THE POLICE WAS ASKING ME A LOT OF QUESTIONS, I JUST TOLD
12 HIM ABOUT THESE SITUATION AND WAS IT.

13 Q BUT JUST TO UNDERSTAND, YOU'RE NOT SURE IF THE
14 INCIDENT IN THE PARK, THAT WAS THE DEFENDANT OR NOT?

15 A TRUE.

16 Q BUT YOU ARE SURE THAT ---

17 A I AM REAL SURE.

18 Q --- THE INCIDENT IN YOUR HOME WAS THE DEFENDANT?

19 A WAS HIM.

20 Q DID THIS DEFENDANT COME INSIDE YOUR FRONT DOOR TO USE
21 THE TELEPHONE?

22 A YES, HE KNOCK THE DOOR. HE ASKED ME TO USE THE PHONE.
23 HE -- HE WAS KNOCKING THE FRONT DOOR.

24 MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN
25 TO USE AN ILLUSTRATION?

[REDACTED] - DIRECT BY MS. MILLICAN

[REDACTED] 53

1 THE COURT: YES, YOU MAY STEP DOWN. SHE WANTS TO SHOW
2 YOU SOMETHING AND HAVE YOU DEMONSTRATE TO THE JURY.

3 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

4 THE COURT: IS THIS IN EVIDENCE? IS THE ILLUSTRATION
5 IN EVIDENCE?

6 MS. MILLICAN: NO, THE ILLUSTRATION I'M NOT USING FOR
7 EVIDENCE. I'M JUST USING IT FOR PURPOSES OF ILLUSTRATION
8 AS SHE TESTIFIES TO GIVE THE JURY AN IDEA OF WHERE THINGS
9 ACTUALLY TOOK PLACE.

10 THE COURT: ALL RIGHT. THAT WILL BE FINE. LET ME
11 REMIND YOU, [REDACTED], YOU ARE AWAY FROM THE MICROPHONE
12 NOW, SO YOU'RE GOING TO HAVE TO KEEP YOUR VOICE UP SO THAT
13 I CAN HEAR YOU AND EVERYONE IN THE COURTROOM CAN HEAR YOU.
14 OKAY?

15 WITNESS: YES.

16 MS. MILLICAN: YOUR HONOR, COULD WE ASK THE JURY IF
17 EVERYONE ON THE JURY CAN SEE THIS ILLUSTRATION?

18 THE COURT: I BELIEVE THEY CAN SEE IT.

19 MS. MILLICAN: OKAY.

20 Q NOW, [REDACTED], IS THIS A FAIR AND ACCURATE REPRESENTATION
21 OF THE HOUSE YOU LIVED AT IN 94 CUFFY ROAD?

22 A YES, MA'AM.

23 Q ALL RIGHT. FROM THE POINT THAT THE DEFENDANT WALKED
24 IN YOUR FRONT DOOR, COULD YOU SHOW THE JURY WHERE YOUR
25 FRONT DOOR IS?

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED]

54

1 A RIGHT HERE..

2 Q POINT TO IT.

3 A THIS IS THE FRONT DOOR.

4 Q CAN YOU SHOW THE JURY WHAT HAPPENED FROM THAT POINT

5 ON?

6 A I WAS IN THE KITCHEN AND THIS GUY KNOCK THE DOOR. I

7 WALK HERE. AND I JUST SAW THROUGH THE WINDOW. AND I SAW

8 THIS GUY. AND -- AND -- AND ASK CAN I HELP YOU?

9 AND HE SAID, MAY I USE YOUR PHONE?

10 AND -- AND HOW I ALWAYS HAPPY AND TELLING MY KIDS

11 NEVER TALK TO STRANGERS, [REDACTED] I HAVE TO ---

12 MS. SMART: OBJECTION ---

13 THE COURT: JUST A MOMENT. YES, MA'AM.

14 MS. SMART: OBJECTION, YOUR HONOR. SHE'S NARRATING.

15 THE COURT: I'M SORRY?

16 MS. SMART: SHE'S NARRATING. SHE'S NOT ANSWERING

17 QUESTIONS.

18 THE COURT: I THINK SHE IS ANSWERING. OBJECTION IS

19 OVERRULED. SHE WAS ASKED WHAT SHE DID AND SHE HAS THE

20 RIGHT TO TELL IT.

21 GO AHEAD.

22 A BECAUSE A LOT OF PEOPLE WHO WERE WORKING AT THE NEW

23 HOUSE WERE ASKING FOR DIFFERENT KIND OF STUFF, WAS NO

24 STRANGE THAT SOMEBODY KNOCK AT MY DOOR ASKING FOR

25 SOMETHING. SUDDENLY THEY SAY ---

██████████ - DIRECT BY MS. MILLICAN

██████████ 55

1 THE COURT: JUST LIMIT IT TO WHAT YOU DID.

2 A I -- I OPEN. I SHOW HIM WHERE THE PHONE WAS. HE --
3 HE WALKED. HE TOOK ---

4 Q ██████ WHERE'S THE PHONE IN THE PICTURE?

5 A HE TOOK THE PHONE -- THE PHONE WAS HERE. I -- I WAS
6 HERE. HE WAS HERE. HE TOOK THE PHONE. HE DIALED. NOBODY
7 ANSWERED THE PHONE. AND HE ASKED ME IF I KNEW THE PEOPLE
8 THAT LIVES IN THIS OTHER HOUSE.

9 AND I TOLD HIM, YES, I KNOW THESE PEOPLE.

10 AND HE ASKED ME IF THEY WERE THERE?

11 AND I TOLD HIM --- I TOLD HIM, THEY ARE WORKING.

12 AND HE ASKED ME FOR MR. GREEN.

13 AND I TOLD HIM, I -- I DON'T KNOW ANYONE WITH THIS
14 NAME. I -- I REALLY DON'T KNOW MR. GREEN. AND I JUST TOLD
15 HIM I KNOW THEY WERE JUST NEW NEIGHBORS IN FRONT OF MY --
16 MY HOUSE.

17 Q AND IS THIS PARTICULAR ILLUSTRATION AN ACCURATE AND
18 FAIR DEPICTION OF YOUR NEIGHBORHOOD WHERE YOU LIVE?

19 A YES. I LIVE HERE. I HAVE ANOTHER NEIGHBOR WHO WAS
20 HERE WHO WAS WORKING.

21 HE ASKED ME FOR MR. GREEN. I TOLD HIM I DO NOT KNOW
22 ANYBODY WITH THIS NAME. I ALSO TOLD HIM I HAVE NEW
23 NEIGHBORS, AND I TOLD HIM MAYBE THEY ARE GREEN. I WOULDN'T
24 KNOW BECAUSE NEW PEOPLE THERE.

25 Q ██████ IS THAT HOUSE THE ONE THAT WAS UNDER

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 56

1 CONSTRUCTION?

2 A YES. YES. WHEN -- WHEN I OPEN THE DOOR WHEN HE ASKED
3 FOR THE PHONE, I SAW PEOPLE WALKING HERE BY THE WHITE
4 TRUCK. BECAUSE OF THAT, WHEN HE KNOCK MY [REDACTED], I THOUGHT
5 WAS MIGHT BE ONE OF THESE WORKERS ASKING FOR SOMETHING.

6 AND SADLY I JUST A TRUST LADY. I -- I JUST TRUST
7 EVERYBODY. I -- I KNOW THAT I AM NOT NOW.

8 SO HE USE THE PHONE. HE DIALED TWICE. AND -- AND --
9 AND AGAIN WAS ANSWER MACHINE. JUST HERE. WAS AN ANSWER
10 MACHINE, AND -- AND -- AND HE TOLD ME IT'S -- IT'S NOBODY
11 THERE.

12 AND I WAS HERE. AND I ASKED TO TAKE A MESSAGE.

13 AND HE TOLD ME, OKAY.

14 SO I TURNED MY BACK. I TURNED MY BACK IN ORDER TO GET
15 PENCIL AND PAPER. AND WHEN I JUST TURNED MY FACE AGAIN IN
16 FRONT OF HIM -- OF HIM, HE COCK THE GUN AND PUT THE GUN ON
17 MY FACE. I WAS SHOCKED. I WAS SHOCKED BECAUSE I THOUGHT
18 WAS SOMEBODY ASKING FOR PHONE. I AM SORRY. AND THE NEXT
19 MOMENT HE WAS WITH THE GUN -- COCK THE GUN AND HE POINT AT
20 ME. I'M SORRY. I STARTED, PLEASE I AM A VERY POOR LADY.
21 DON'T HURT ME. TAKE WHATEVER YOU WANT. PLEASE DON'T HURT
22 ME.

23 AND HE TOLD ME YOU HAVE TO DO WHAT I ASK YOU TO DO OR
24 I KILL YOU. AND WITH HIS GUN, HE SHOWED AND HE TOOK ME --
25 ASKED ME TO GO TO THE BEDROOM POINTING AT [REDACTED]

██████████ - DIRECT BY MS. MILLICAN

██████████ 57

1 AND I ALWAYS -- I -- I WAS BEGGING HIM, PLEASE DON'T
2 KILL ME. TAKE WHATEVER YOU WANT, BUT DON'T KILL ME. AND
3 -- AND I WAS HERE. AND HE WAS HERE.

4 THE COURT: EXCUSE ME, MS. MILLICAN. ASK HER TO MOVE
5 TO THE SIDE A LITTLE BIT SO THE COURT REPORTER CAN SEE HER.
6 I THINK SHE WOULD BE ABLE TO HEAR BETTER IF SHE CAN SEE
7 HER. GO AHEAD.

8 A AND HE TOOK ME -- HE TOLD ME TO PULL THE PANTS DOWN.
9 AND ALWAYS I WAS ASKING, PLEASE DON'T KILL ME. TAKE
10 WHATEVER YOU WANT. JUST LEAVE PLEASE.

11 AND HE TOLD ME TO PULL THE PANTS DOWN. AND -- AND --
12 AND I DID. SO I WAS ON THE BED. I PULLED THE PANTS DOWN.
13 HE WAS IN FRONT OF ME WITH THE GUN. AND -- AND THEN HE --
14 HE -- HE -- HE WAS ON TOP OF ME. AND -- AND -- AND HE
15 START TRYING TO RAPE ME. I WAS FIGHTING ALL THE TIME. HE
16 IS A VERY BIG GUY, BUT EVEN IF HE IS VERY ~~STRONG~~ WITH THIS
17 HAND I TRIED TO COVER MY PART -- MY VAGINA. AND -- AND --
18 AND WITH THIS HAND I -- I ALWAYS TRY TO FIGHT BACK. I WAS
19 TERRIFIED. I THOUGHT HE WOULD KILL ME.

20 Q ~~Q~~ WHAT DID HE DO WITH THE GUN AT THAT POINT?

21 A WHEN -- BECAUSE I WAS ALWAYS MOVING ABOUT, FIGHTING A
22 LOT, HE PUT THE GUN ON THIS PART OF THE PANTS. AND HE --
23 HE -- HE WAS HERE. AND SO HE WAS HERE. I WAS ON THE BED.
24 AND -- AND -- AND IN ORDER TO -- HE PUT THE GUN HERE AND
25 TAKE HIS PART OUT. AND HE WAS ---

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 58

1 THE COURT: SHE NEEDS TO MOVE AWAY FROM THE DIAGRAM
2 BECAUSE WE NEED TO SEE HER AND THE COURT REPORTER NEEDS TO
3 SEE HER.

4 WITNESS: I'M SORRY.

5 THE COURT: OKAY. GO AHEAD.

6 A HE PUT THE GUN HERE. HE WAS ON TOP OF ME. AND -- AND
7 HE START TO RAPE ME. I ALWAYS WAS BEGGING HIM, PLEASE
8 DON'T KILL ME. I TOLD HIM MY HUSBAND IS ABOUT TO COME. HE
9 -- HE CAME TO EAT LUNCH. I TOLD HIM MY HUSBAND IS -- IS --
10 IS A VERY JEALOUS GUY, AND HE'S GOING TO KILL US. PLEASE,
11 PLEASE STOP. DON'T DO THIS TO ME.

12 HE -- HE -- AT THIS TIME HE WAS VERY NERVOUS. HE WAS
13 VERY NERVOUS. HE WAS IN A BIG HURRY. AND WE -- WE WERE
14 FIGHTING. HE WAS ON ME. AND BECAUSE ALWAYS WE ARE MOVING
15 A LOT, THE GUN SLIDE OFF.

16 Q [REDACTED] WHAT SORT OF WAISTBAND DID HE HAVE ON THE PANTS
17 HE WAS WEARING?

18 A HE -- HE -- HE WAS WEARING THIS KIND OF ELASTIC THING
19 HERE. I -- I -- I -- I JUST CAN TELL YOU THAT HE PUT THE
20 GUN HERE AND -- AND HE WAS ON TOP OF ME AND HE WAS WITH HIS
21 PART IN -- INTO ME. AND BECAUSE I WAS MOVING A LOT, THE
22 GUN WAS SLIDING. I ALWAYS TRY TO FIGHT. I -- I ALWAYS --
23 WHEN -- WHEN THE GUN WAS HERE, I -- I -- I FEELING KIND OF
24 MORE STRONG, MORE -- WHEN -- WHEN THE GUN WAS ON MY FACE, I
25 -- I THOUGHT HE COULD KILL ME ANY TIME. BUT WHEN THE GUN

██████████ -- DIRECT BY MS. MILLICAN ██████████ 9

1 WAS HERE, I -- I -- I WAS ABLE TO FIGHT BETTER, YOU KNOW.
2 I REMEMBER THAT I PUT ONE HAND HERE TRYING TO NOT LET HIM
3 GO THROUGH. AND I TRIED TO PUT HIS PART -- I REMEMBER AT
4 SOME TIME I TRIED TO PULL HIS -- HIS -- HIS FINGERS AND --
5 AND I JUST TRIED TO DEFEND MYSELF. AND WITH THIS HAND I
6 PUT HIS FACE FROM MY FACE. AND IN -- IN ONE MOMENT I -- HE
7 JUST -- MY FINGERS GO IN HIS MOUTH AND HE BITE ME SO HARD
8 THAT I COULDN'T FIGHT ANY MORE. HE BITE ME SO HARD. AND
9 -- AND -- AND I -- I -- I TOLD HIM, PLEASE DON'T HURT ME.
10 I'M PREGNANT. I WAS NOT PREGNANT, BUT I HAVE NO IDEA WHAT
11 ELSE -- WHAT ELSE.
12 Q WHY DID YOU TELL HIM THAT YOU WERE PREGNANT AND THAT
13 YOUR MAN WAS A JEALOUS MAN AND WOULD KILL YOU?
14 A JUST -- IT WAS SOMETHING TO MAKE HIM FEEL SCARED
15 MAYBE. AND TO LEAVE. I -- I -- I WAS -- I WAS VERY
16 SCARED. I JUST TRIED TO SAY SOMETHING TO MAKE HIM GO. AND
17 I TOLD HIM I WAS PREGNANT. I WAS NOT, BUT I THOUGHT MAYBE
18 HE'S GOING TO FEEL SOMETHING AND JUST STOP DOING THAT. AND
19 FOR SOME MOMENT HE TOOK HIS PART OUT AND -- AND PULLED HIS
20 FINGER INTO MY VAGINA. I KNOW -- I DON'T KNOW WHY, MAYBE
21 TO FIND OUT IF I WAS PREGNANT. I DON'T KNOW. I DON'T
22 KNOW. I -- I -- WHEN -- WHEN -- WHEN WE WERE FIGHTING,
23 WHEN I TRIED TO PUT HIS FACE FAR FROM MY FACE AND WHEN HE
24 BITE ME SO HARD, I -- I START TO MOVE IT. BUT I -- I
25 REMEMBER THAT I ALWAYS TRY TO TAKE THE GUN, BECAUSE WHEN HE

██████████ -- DIRECT BY MS. MILLICAN ██████████

60

1 WAS POINTING AT ME, I -- I -- I FELT LIKE I CAN DO ANYTHING
2 BECAUSE HE GOING TO KILL ME. AND WHEN THE GUN WAS HERE, I
3 TRIED TO TAKE THE GUN. I JUST TRIED TO DO SOMETHING AND
4 STOP HURT ME -- BUT I COULDN'T. IN ONE MOMENT HE JUST
5 PULLED ME DOWN AND TOLD ME AGAIN ---

6 Q ██████████ WHERE WERE YOU WHEN THIS HAPPENED?

7 A WE WERE HERE. AND -- AND WHEN I COULDN'T TAKE THE GUN,
8 HE -- HE -- AT THIS TIME HE TRIED TO TAKE THE GUN HIMSELF
9 BECAUSE THE GUN WAS SLIDING AND HE COULDN'T TAKE OFF HIS
10 PANTS. SO WE STILL HERE. AND HE THREW ME AGAINST THIS
11 FURNITURE. AND I JUST WALK ON MY KNEES AGAIN TO TRY TO
12 FIGHT FOR THE GUN. BUT FINALLY HE -- HE -- HE GOT THE GUN
13 AGAIN. AND I JUST WANT MY KIDS -- HE'S GOING TO KILL ME --
14 KILL ME. HE WAS RIGHT HERE.

15 Q WAS THERE A TELEPHONE IN YOUR BEDROOM?

16 A YES, BUT HE WAS HERE AND PULLED THE PHONE -- THE
17 KITCHEN PHONE, HE JUST PULLED IT. AND -- AND -- AND I -- I
18 WAS ON MY KNEES HERE AND HE PULLED THE PHONE IN THE BACK.
19 AND I THOUGHT HE JUST CAME BACK AND SHOOT ME. I STILL ON
20 MY KNEES HERE. AND -- AND HE SAID SOMETHING. THAT I -- I --
21 I -- I CAN'T REMEMBER. AND HE WALKED HERE. AND THEN HE
22 OPENED TWO DRAWERS LOOKING FOR -- I DON'T KNOW, SOMETHING.
23 AND ANOTHER PHONE WAS HERE, AND HE JUST PULLED THE OTHER
24 PHONE RIGHT HERE.

25 Q ██████████

██████████ - DIRECT BY MS. MILLICAN

██████████ 61

1 A YES.

2 Q WOULD YOU LOOK AT WHAT'S BEEN MARKED AS STATE'S

3 EXHIBIT NO. 4. DO YOU RECOGNIZE THAT?

4 A YES, IT'S ---

5 THE COURT: HAVE HER STAND AWAY AGAIN. OKAY. IF
6 YOU'LL COME OVER HERE, MS. MILLICAN, MAYBE SHE'LL STAY AWAY
7 FROM THE DIAGRAM, UNLESS YOU NEED THE DIAGRAM.

8 WITNESS: SORRY.

9 MS. MILLICAN: YOU CAN STAY THERE. I'M GOING TO STAND
10 OVER HERE BESIDE YOU.

11 THE COURT: I NEED WHERE THE REPORTER CAN SEE HER.
12 THERE YOU GO. OKAY. YOU CAN USE THE DIAGRAM, BUT JUST
13 DON'T STAND IN FRONT OF IT, BETWEEN YOU AND THE REPORTER.

14 A IT'S THE DRAWER THAT HE OPENED. I DON'T KNOW WHAT HE
15 WAS LOOKING FOR.

16 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH
17 STATE'S EXHIBIT NO. 4 FOR THE JURY?

18 THE COURT: YES. LADIES AND GENTLEMEN OF THE JURY,
19 LET ME TELL YOU WHAT THAT MEANS. WHEN COUNSEL ASKS
20 PERMISSION TO PUBLISH SOMETHING TO THE JURY, THAT SIMPLY
21 MEANS TO SHOW. THAT'S JUST A LEGALISTIC TERM MEANING SHOW
22 TO THE JURY. AND SHE IS GOING TO PUBLISH THAT OR SHOW YOU
23 THAT BY USING THE EQUIPMENT HERE.

24 BUT I TELL YOU THAT ANYTHING THAT HAS BEEN INTRODUCED
25 INTO EVIDENCE WILL GO WITH YOU TO THE JURY ROOM WHEN YOU

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED]

62

1 RETIRE TO DELIBERATE YOUR VERDICT. SO YOU WILL BE ABLE TO
2 TAKE ANY EXHIBIT TO THE JURY ROOM WHEN YOU GO TO RETIRE TO
3 DELIBERATE YOUR VERDICT. BUT YOU ALSO HAVE THE RIGHT TO
4 VIEW IT NOW. BUT DO NOT BE CONCERNED IF YOU DO NOT HAVE AS
5 LONG TO LOOK AT IT NOW AS YOU MIGHT LIKE TO, BECAUSE YOU
6 WILL BE ABLE TO TAKE THAT EXHIBIT TO THE JURY ROOM WITH YOU
7 WHEN THE PROPER TIME COMES.

8 ALL RIGHT. MS. MILLICAN. MR. STONE. ALL RIGHT.

9 (PAUSE.)

10 THE COURT: FOR YOUR EDIFICATION, LADIES AND GENTLEMEN
11 OF THE JURY, THIS GENTLEMAN IS MR. DUFFY STONE, WHO IS THE
12 SOLICITOR FOR THE FOURTEENTH CIRCUIT.

13 Q [REDACTED] WHAT IS THAT?

14 MR. STONE: ALSO A TECHNICAL PERSON AS WELL, YOUR
15 HONOR. EXCUSE ME.

16 THE COURT: GO AHEAD, MS. MILLICAN.

17 MS. MILLICAN: THANK YOU.

18 A THAT WAS THE DRAWERS THAT HE WAS -- HE WAS KIND OF
19 GOING IN. AND THE PHONE WAS ON THE TOP OF HERE. HE JUST
20 PULLED THE PHONE.

21 Q WHERE WAS THIS PIECE OF FURNITURE LOCATED ON THIS
22 DIAGRAM?

23 A RIGHT HERE.

24 Q WHAT'S THIS IN FRONT OF THAT RIGHT THERE? WHAT IS
25 THAT RIGHT HERE?

██████████ - DIRECT BY MS. MILLICAN

██████████ 63

1 A THERE IS ANOTHER -- BECAUSE OF MY KIDS ALWAYS -- THEY
2 HAVE -- THEY ALWAYS HAVE TO GO TO MOMMY'S ROOM, IT'S A
3 MATTRESS -- A SMALL MATTRESS THAT I JUST PUT DOWN THERE IN
4 ORDER TO PUT THE BABIES IN MY OWN ROOM.

5 Q WHAT HAPPENED NEXT AFTER HE PULLED THE PHONE?

6 A HE -- HE PULLED THE PHONE, AND -- AND I WAS ABOUT
7 HERE. I'M SORRY.

8 THE COURT: THAT'S ALL RIGHT. YOU'RE FINE.

9 A I -- I WAS HERE. AND HE DID SOMETHING LIKE THIS IN
10 THIS DRAWER AND PULLED THE PHONE. AND THANK GOD, FOR SOME
11 REASON HE -- HE WALKED BACK HERE. AT THIS MOMENT I PULLED
12 THE PANTS ON AND I RUN AND I WENT TO -- TO THIS BACK DOOR.
13 AND I -- I WENT TO -- I NEVER STOPPED RUNNING. I NEVER
14 TURN MY BACK. I RUN RIGHT HERE. AND -- AND -- AND I
15 PRAYED. MAYBE, I DON'T KNOW. I JUST TRIED TO GO FAR, FAR,
16 FAR AWAY RUNNING, RUNNING HERE. AND ---

17 Q ██████████, WERE YOUR PANTS ON WHEN YOU WERE RUNNING?

18 A I -- I -- I -- I JUST PULLED THE PANTS AND -- AND --
19 AND I WAS WITH MY PANTS ON WHEN I WAS RUNNING RIGHT HERE. YES,
20 I WAS RUNNING MY -- MY -- MY PANTS.

21 Q WHY DID YOU SAY YOU DIDN'T LOOK BACK?

22 A I WAS RUNNING HERE. THERE IS ONLY WOODS AND THIS IS
23 THE BACK OF MY NEIGHBOR'S HOUSE. I -- I WAS RUNNING HERE.
24 THERE IS A TREE HERE. AND -- AND I WAS RUNNING HERE. AND
25 I SAW THE WHITE TRUCK THAT BEFORE ALL THIS HAPPENED, THE

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 64

1 WHITE TRUCK WAS ABOUT HERE. BUT AFTER ALL THIS HAPPENED,
2 THE WHITE TRUCK WAS -- WAS -- WAS FAR FROM -- FROM THE
3 HOUSE. AND -- AND -- AND I -- I -- I -- I STOP A LITTLE
4 BIT. MY FIRST THOUGHT WAS, BROKE A WINDOW AND IS GOING TO
5 MAKE THE POLICE COME AND HELP ME. I -- I -- WAS MY FIRST
6 THOUGHT. BUT WHEN I SAW THE WHITE TRUCK, I -- I -- I -- I
7 STOP FOR A MINUTE AND -- AND -- AND I TRY TO SEE THE PEOPLE
8 BECAUSE THEY MIGHT -- ONE OF THEM. BUT WHEN I SAW THE TWO
9 WHITE GUYS WERE HERE, I KEPT RUNNING AND ASKED FOR HELP.
10 THANK GOD THEY -- THEY HELP ME. THEY CALLED THE
11 POLICE. ONE OF THEM WAS WITH ME. AND THEN START TO WALK
12 WITH ME BACK TO MY HOUSE. AND -- AND WHEN WE WENT WALKING
13 BACK TO MY HOUSE, MY HUSBAND WAS DRIVING IN HIS CAR. AND
14 WHO -- WHO WAS WITH ME WALKING A LITTLE AND TALK TO MY
15 HUSBAND ABOUT WHAT HAPPENED. HE TOLD -- HE TOLD HIM
16 SOMEBODY BROKE ---

17 MS. SMART: OBJECTION, YOUR HONOR. [REDACTED]

18 THE COURT: ALL RIGHT. YOU WOULD NOT HAVE ANY WAY OF
19 KNOWING THIS, [REDACTED]. BUT YOU CANNOT TESTIFY AS TO
20 WHAT ANYBODY TOLD YOU; THAT'S A RULE IN THE COURT. SO YOU
21 CAN'T TESTIFY AS TO WHAT ANYBODY SAID TO YOU OR TOLD YOU
22 EXCEPT THIS DEFENDANT. OKAY?

23 WITNESS: YES.

24 THE COURT: ALL RIGHT. THANK YOU. YOU WOULD NOT HAVE
25 ANY WAY OF KNOWING THAT; THAT'S PERFECTLY ALL RIGHT.

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 65

1 Q WHEN DID YOUR HUSBAND SHOW UP?

2 A WHEN -- WHEN I WAS IN THE WAY BACK TO MY HOUSE WITH
3 ONE OF -- OF THESE WHITE GUYS WHO -- I DON'T KNOW WHERE HE
4 -- THE COMPANY FOR THE -- I JUST -- I JUST KNOW THAT THERE
5 WERE TWO WHITE GUYS IN THE WHITE TRUCK THAT I SAW A FEW
6 MINUTES -- FEW TIME BEFORE WORKING IN FRONT OF MY HOUSE.
7 AT THIS TIME THEY WERE WORKING ANOTHER PART. ONE OF THEM
8 CALL THE POLICE, THE OTHER ONE WAS WALKING WITH ME BACK TO
9 MY HOUSE. IN THE WAY WHEN I WAS WALKING BACK, MY HUSBAND
10 WAS ARRIVING IN HIS CAR.

11 Q DID HE NORMALLY COME HOME AT THAT TIME FOR LUNCH?

12 A NO. HE NORMALLY HAVE LUNCH AT 12:00. [REDACTED] THIS DAY HE
13 WAS IN KIND OF A MEETING, TRAINING MEETING IN HIS JOB. AND
14 IN THIS TIME THEY GET LUNCH IN HIS JOB. I HAVE NO IDEA
15 WHY, BUT HE CAME -- CAME -- HE JUST CAME. I HAVE NO IDEA
16 WHY, HE JUST CAME.

17 Q [REDACTED] PLEASE LOOK AT STATE'S EXHIBIT NO. 9. DO YOU
18 RECOGNIZE THAT PICTURE? [REDACTED]

19 A YES. YES.

20 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH NO. 9
21 TO THE JURY?

22 THE COURT: YES, MA'AM.

23 (PAUSE.)

24 Q WOULD YOU PLEASE SHOW THE JURY WHAT THIS IS A PICTURE
25 OF?

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 56

1 A THIS IS MY HOUSE. THIS IS MY NEIGHBOR'S HOUSE. I WAS
2 THIS FAR. I RUN ALL THE WAY BACK HERE AND BACK HERE. AND
3 I WAS HERE. AND I SAW THE WHITE TRUCK A LITTLE FARTHER.
4 AND -- AND -- AND BECAUSE THE NEW HOUSE IS JUST IN FRONT OF
5 HERE, MY FIRST THOUGHT WAS USE A STONE OR BRICK OR
6 SOMETHING, BREAK THE WINDOW AND PRAY FOR THE POLICE. BUT
7 WHEN I WAS HERE, I SAW THE WHITE TRUCK A LITTLE FARTHER.
8 AND I JUST STOPPED AND TRIED TO BE SURE THAT THEY MIGHT BE
9 HERE ONE OF THEM. AND WHEN I REALIZE THAT THEY WERE WHITE
10 GUYS, I JUST -- I JUST ASKED FOR HELP. THANK GOD, THEY
11 HELP ME. THEY HELP ME.

12 Q [REDACTED], DO YOU RECOGNIZE NO. 5 AND NO. 6?

13 A THIS IS MY HOUSE. THIS IS MY HOUSE.

14 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH 5 AND
15 6 TO THE JURY?

16 THE COURT: YES, MA'AM.

17 (PAUSE.) [REDACTED]

18 Q [REDACTED], WILL YOU PLEASE SHOW THE JURY WHERE YOUR FRONT
19 DOOR IS?

20 A RIGHT HERE.

21 Q AND WHERE ABOUT WAS THE OTHER HOUSE YOU WERE -- YOU
22 WENT AROUND AND YOU WERE TRYING TO RUN TO?

23 A WHERE ABOUT -- DID YOU ASK ME TO SHOW WHERE ---

24 Q YES.

25 A AS I TOLD BEFORE, I RUN BACK THERE. THE NEWER HOUSE

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 7

1 IS ABOUT HERE. IN FRONT OF THESE TWO HOUSES.

2 Q IS THIS YOUR FRONT DOOR?

3 A YES. I SAW THIS GUY FROM THE WINDOW. AND I THOUGHT
4 HE WAS NEED HELP.

5 Q DO YOU RECOGNIZE STATE'S EXHIBIT NO. 8?

6 A IT'S THE STREET. THE STREET.

7 THE COURT: KEEP YOUR VOICE UP.

8 A MY HOUSE.

9 THE COURT: KEEP YOUR VOICE UP.

10 A IT'S CUFFY STREET WHERE I USED TO LIVE.

11 Q WHAT IS THAT?

12 A IT'S MY HOUSE.

13 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH
14 STATE'S 8?

15 THE COURT: YES, MA'AM.

16 (PAUSE.)

17 Q OKAY. WHAT IS THAT A VIEW OF?

18 A IT'S -- IT'S A STREET -- CUFFY IS THIS. AND THIS SIDE
19 IS -- THERE IS A SIGN HERE. AND THIS IS CUFFY. HERE'S A
20 STREET, IT'S CUFFY ROAD. I LIVE HERE.

21 Q WHERE WAS THE WORKERS THAT YOU RAN TO? WHERE WERE THE
22 WORKERS THAT YOU RAN TO?

23 A WELL, MAYBE I CAN USE THIS. THEY WERE I BELIEVE KIND
24 OF HERE. I WAS -- I WAS HERE. AND I WAS -- WHEN I SAW THE
25 WORKERS, I SAW THE WHITE TRUCK AND I STOPPED. AND WHEN I

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 68

1 SAW THEY WERE WHITE GUYS, I -- I -- I FELT COMFORTABLE, AND
2 I ASKED FOR HELP. IT'S NOT BECAUSE OF THEM -- THEY ARE
3 WHITE OR BLACK. I ---

4 MS. SMART: OBJECTION, YOUR HONOR. SHE'S NARRATING.
5 IT'S NOT SUPPOSED TO BE WHITE OR BLACK. IT'S NOT RELEVANT.

6 THE COURT: ALL RIGHT. I'M NOT SURE WHAT THE
7 OBJECTION IS. IS YOUR OBJECTION ON THE BASIS OF RELEVANCE
8 OR WHAT?

9 MS. SMART: SHE'S NARRATING AGAIN. SHE DIDN'T EVEN
10 ANSWER THE SPECIFIC QUESTION. I DON'T EVEN KNOW IF A
11 QUESTION WAS ASKED. SHE'S TELLING A STORY.

12 MS. MILLICAN: YOUR HONOR, I ASKED THE VICTIM EXACTLY
13 WHERE THE WORKERS WERE IN RELATION TO HER AND TO SHOW THE
14 JURY BASED ON THE PHOTO AND THE DIAGRAM.

15 THE COURT: OBJECTION IS OVERRULED. SHE'S ENTITLED TO
16 TELL WHAT HAPPENED IN HER OWN WORDS.

17 MS. MILLICAN: THANK YOU, YOUR HONOR.

18 A THE PEOPLE WERE WORKING HERE. THE PEOPLE WAS WORKING
19 HERE. AND I JUST RUN ASKING FOR HELP, AND THEY HELP ME.

20 Q OKAY. [REDACTED] CAN YOU TELL THE JURY WHAT THIS PICTURE IS
21 OF?

22 A IT'S MY HOUSE. THIS IS THE DOOR THAT I USE.

23 Q WHICH DOOR?

24 A THIS DOOR.

25 Q IS THAT A BACK DOOR OR FRONT DOOR?

[REDACTED] - DIRECT BY MS. MILLICAN

[REDACTED] 69

- 1 A BACK DOOR. THE FRONT DOOR IS THIS SIDE.
- 2 Q WHICH DOOR DID YOU RUN OUT OF?
- 3 A THIS DOOR. I RUN, RUN, RUN. I NEVER TURN MY FACE
- 4 BACK.
- 5 Q [REDACTED], LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT NO.
- 6 1, NO. 2 AND NO. 3.
- 7 A THE ---
- 8 REPORTER: I'M SORRY. I'M HAVING TROUBLE HEARING HER.
- 9 THE COURT: ALL RIGHT. KEEP YOUR VOICE UP. AND
- 10 THAT'S WHAT I WANT YOU TO TELL ME, MS. RUTLEDGE. ANY TIME
- 11 YOU HAVE ANY TROUBLE HEARING HER, LET ME KNOW.
- 12 A THE PICTURES ARE MY FINGER SHOWING THE BITE THAT HE
- 13 MADE ON MY FINGERS.
- 14 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH 1
- 15 THROUGH 3 TO THE JURY?
- 16 THE COURT: YOU MAY.
- 17 (PAUSE.)
- 18 THE COURT: [REDACTED], LET ME TELL YOU. WHEN YOU
- 19 GO OVER TOWARD THE SET OVER HERE, KEEP YOUR VOICE UP
- 20 BECAUSE THIS LADY HAS TO TAKE DOWN EVERYTHING THAT IS SAID.
- 21 OKAY?
- 22 Q COULD YOU PLEASE TELL THE JURY WHERE THIS PICTURE WAS
- 23 TAKEN?
- 24 A I WAS IN MY HOUSE IN MY KITCHEN. THIS IS -- THIS IS
- 25 ALL MY KITCHEN.

[REDACTED] - DIRECT BY MS. MILLICAN [REDACTED] 70

1 Q WHERE WAS YOUR TELEPHONE?

2 A IT WAS ABOUT HERE. AND THIS IS THE PAPER AND PENCIL
3 THAT I -- THAT WAS HERE. IT WAS HERE. AND MY -- MY PAPER
4 AND PENCIL WAS HERE. WHEN I JUST -- WHEN I JUST TURNED MY
5 BACK ON HIM, TRYING TO REACH PAPER AND PENCIL TO TAKE HIS
6 MESSAGE, WHEN I TURN MY FACE TO HIM AGAIN, HE COCK THE GUN
7 AND PUT THE GUN IN FRONT OF MY FACE.

8 Q WHAT ARE YOU SHOWING THE PHOTOGRAPHER IN THIS PICTURE?

9 A MY FINGER WHEN WE WERE FIGHTING, HE BITE MY FINGER.
10 AND I WAS SHOWING MY -- MY -- THE BITE ON MY FINGER.

11 Q CAN YOU SHOW ON THIS PICTURE -- THE FOCUS ISN'T GOOD.
12 BUT CAN YOU SHOW ON THIS PICTURE WHERE THE BITE WAS -- THE
13 BITE MARK WAS?

14 A YES, WHEN I -- YES, IT'S HERE. WHEN -- WHEN I TRIED
15 TO PUT HIS FACE FAR AWAY FROM MY FACE, HE -- HE CAUGHT MY
16 FINGER IN HIS MOUTH AND BITE ME VERY HARD IN ORDER TO
17 SUBMIT MYSELF.

18 Q WHAT IS THAT A [REDACTED]?

19 A AGAIN, THE BITE -- WHERE HE BITE.

20 Q OKAY. IF YOU'D TAKE THE STAND BACK.

21 (THE WITNESS RETURNS TO THE WITNESS STAND.)

22 Q ANA, DID THE DEFENDANT HAVE YOUR PERMISSION TO COME
23 INTO YOUR HOUSE AND TO STAY AS LONG AS HE WANTED?

24 A NO.

25 Q DID THE DEFENDANT HAVE PERMISSION TO COME IN YOUR

██████████ - DIRECT BY MS. MILLICAN

71

1 HOUSE AND GO WHEREVER HE WANTED TO INSIDE YOUR HOUSE?

2 A NO.

3 Q DID THE DEFENDANT HAVE YOUR PERMISSION TO GO BACK INTO
4 YOUR BEDROOM?

5 A NO.

6 Q DID YOU WANT TO HAVE SEX WITH THE DEFENDANT?

7 A NO.

8 Q DID HE PUT HIS PENIS INTO YOUR VAGINA?

9 A YES.

10 Q DID HE PUT HIS FINGERS IN YOUR VAGINA?

11 A YES.

12 Q AND DID HE HAVE PERMISSION TO DO THAT?

13 A NO.

14 MS. MILLICAN: NOTHING FURTHER FROM THE STATE OF THIS
15 WITNESS AT THIS TIME, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU.

17 LADIES AND GENTLEMEN AND MS. SMART, I THINK BEFORE
18 GOING TO CROSS EXAMINATION, IT WOULD BE A GOOD IDEA TO TAKE
19 OUR MORNING RECESS AT THIS TIME. AND SO WE ARE GOING TO DO
20 THAT.

21 LET ME JUST MENTION A COUPLE OF THINGS TO YOU. AS I
22 TOLD YOU EARLIER, YOU MAY TAKE NOTES TO HELP YOU REMEMBER
23 WHAT THE WITNESS SAID. IF YOU DO TAKE NOTES, PLEASE KEEP
24 THEM TO YOURSELF. THESE NOTES ARE FOR YOUR OWN PERSONAL
25 USE AND ARE NOT TO BE SHARED WITH OTHER MEMBERS OF THE

1 JURY.

2 WHILE YOU MAY USE THEM TO REFRESH YOUR MEMORY DURING
3 DELIBERATIONS, PLEASE REMEMBER THAT ANY DISPUTE AMONG THE
4 JURORS AS TO WHAT A WITNESS SAID SHOULD BE RESOLVED BY
5 ASKING THE COURT REPORTER TO PLAY BACK THE PARTICULAR
6 PORTION OF THE TESTIMONY FOR THE BENEFIT OF THE JURY.

7 BUT I WILL ALSO TELL YOU THAT THERE IS NO TRIAL
8 TRANSCRIPT AVAILABLE FOR YOUR USE OF THE EVIDENCE THAT HAS
9 BEEN PRESENTED, AND YOU WILL NOT HAVE A WRITTEN TRANSCRIPT
10 OF THE TRIAL TO CONSULT. AND IT IS DIFFICULT AND TIME
11 CONSUMING FOR THE COURT REPORTER TO READ BACK OR PLAY
12 LENGTH TESTIMONY.

13 SO I URGE YOU TO PAY CLOSE ATTENTION TO THE TESTIMONY
14 AS IT IS GIVEN.

15 BUT WITH REGARD TO THE NOTES, I WOULD FURTHER TELL YOU
16 THAT WHEN YOU LEAVE AT NIGHT -- AND THIS CASE WILL RUN OVER
17 THE EVENING RECESS -- YOUR NOTES SHOULD BE LEFT IN THE JURY
18 ROOM, AND I WOULD INSTRUCT YOU THAT THE JUROR'S NOTES
19 SHOULD NOT BE GIVEN ANY GREATER WEIGHT THAN THE
20 RECOLLECTION OR JUDGMENT OF ANY OTHER JURORS. IT IS
21 ESSENTIAL THAT THE RECOLLECTION OF INDIVIDUAL JURORS BE
22 CONSIDERED AS RELIABLE AS THE NOTES RECORDED BY ANY OTHER
23 JUROR.

24 NOW WHAT I'M GOING TO ASK YOU TO DO NOW -- OF COURSE,
25 YOU'RE NOT SUPPOSED TO DO ANY DELIBERATIONS NOW. I'M GOING

1 TO ASK YOU TO TAKE YOUR NOTE PADS. AND IF YOU WILL, TURN
2 THEM OVER AND PUT YOUR JUROR NUMBER ON THE BACK AND SIMPLY
3 LEAVE THEM IN YOUR SEATS WHILE WE TAKE THIS RECESS, AND
4 THEN PICK THEM BACK UP WHEN WE COME BACK IN. AND THEN WE
5 WILL FOLLOW THAT PROCEDURE DURING THE DAY. BUT IF IT'S A
6 ~~RECESS~~, I WILL HAVE THE COURT BAILIFFS COLLECT THE
7 NOTES AND GIVE THEM BACK TO YOU.

8 AND I WILL ASSURE YOU THAT NO ONE WILL SEE YOUR NOTES,
9 INCLUDING THE BAILIFFS, DEFENSE COUNSEL, NOR ME. THESE ARE
10 STRICTLY CONFIDENTIAL, STRICTLY FOR YOUR USE IN RECALLING
11 THE TESTIMONY OF THIS CASE AS WE GO THROUGHOUT THE TRIAL.

12 BUT FOR THIS RECESS IF YOU'LL JUST PUT YOUR NUMBER --
13 YOU DON'T EVEN NEED TO PUT YOUR NAME. BUT IF YOU'LL JUST
14 PUT YOUR NUMBER ON THE BACK OF THE PAD, LEAVE THEM IN YOUR
15 SEATS, AND THEN PICK THEM BACK UP WHEN YOU COME BACK IN.

16 WITH THAT THEN, I AM GOING TO TAKE A MORNING RECESS AT
17 THIS TIME FOR ABOUT 10 MINUTES. JUST RELAX. YOU CAN TALK
18 ABOUT ANYTHING YOU WANT TO TALK ABOUT, BUT DON'T TALK ABOUT
19 THIS CASE. OF COURSE, ANY DISCUSSION OF THIS MATTER IS
20 PREMATURE ON YOUR PART.

21 THANK YOU. YOU MAY GO WITH THE BAILIFF TO THE JURY
22 ROOM.

23 (THE JURY RETIRES TO THE JURY ROOM AT 10:55 A.M.)

24 THE COURT: ANY OBJECTION TO MY INSTRUCTIONS WITH
25 REGARD TO THE NOTE TAKING ON BEHALF OF THE STATE, MS.

1 MILLICAN?

2 MS. MILLICAN: NO, YOUR HONOR.

3 THE COURT: ON BEHALF OF DEFENSE, MS. SMART?

4 MS. SMART: NONE, YOUR HONOR.

5 THE COURT: ALL RIGHT. WE WILL TAKE A RECESS AT THIS
6 TIME AND I WOULD TELL THE STATE AND [REDACTED] THAT
7 DURING THE RECESS YOU SHOULD NOT DISCUSS THIS CASE WITH
8 YOUR LAWYERS AT ALL OR SHOULD NOT DISCUSS YOUR TESTIMONY AT
9 ALL. JUST RELAX FOR A FEW MINUTES, BUT DON'T TALK ABOUT
10 THIS CASE FOR THE NEXT 15 MINUTES.

11 MS. SMART HAS THE RIGHT TO CROSS EXAMINE YOU, SO YOU
12 SHOULD NOT DISCUSS YOUR TESTIMONY WITH ANYONE OVER THE NEXT
13 15 MINUTES. ALL RIGHT. THANK YOU, YOU MAY STEP DOWN.

14 (THE WITNESS LEAVES THE WITNESS STAND.)

15 THE COURT: ALL RIGHT. IT IS 5 MINUTES UNTIL 11:00.
16 LET'S BE READY TO RESUME PLEASE AT 10 MINUTES AFTER 11:00.
17 THANK YOU.

18 (A RECESS WAS TAKEN.)

19 THE COURT: LET'S GET MR. JOHNSON BACK IN THE
20 COURTROOM PLEASE, AND LET ME SEE COUNSEL AT SIDE BAR.

21 (A SIDE BAR CONFERENCE WAS HELD OFF THE RECORD.)

22 (THE DEFENDANT ENTERS THE COURTROOM.)

23 THE COURT: LET THE RECORD REFLECT WE'RE BACK ON THE
24 RECORD WITH REGARD TO STATE VERSUS JOHNSON. I DISCUSSED A
25 MATTER WITH COUNSEL AT THE SIDE BAR, AND WE WANT TO TAKE UP

1 THE MATTER THAT JUROR NO. 112 BROUGHT TO OUR ATTENTION AND
2 I WANT TO DO IT ON THE RECORD, BUT I'M NOT GOING TO DO IT
3 IN OPEN COURT. IT'S GOING TO BE LIKE AN IN CHAMBERS
4 HEARING, BUT WE WILL DO IT WITH MS. RUTLEDGE TAKING THIS
5 DOWN.

6 IF YOU WILL BRING JUROR NO. 112 IN PLEASE.

7 (THE JUROR ENTERS THE COURTROOM.)

8 THE COURT: THE BAILIFF BROUGHT TO MY ATTENTION THAT
9 YOU INDICATED THAT YOU RECOGNIZED THE VICTIM WHEN SHE
10 TESTIFIED?

11 JUROR: YES.

12 THE COURT: JUST TELL ME.

13 JUROR: I'M SORRY TO TAKE UP YOUR HONOR'S TIME.

14 THE COURT: THAT'S EXACTLY WHAT WE WANT YOU TO DO.

15 JUROR: I WORK AT THE MENTAL HEALTH CENTER IN
16 RIDGELAND, JASPER COUNTY ---

17 REPORTER: I'M SORRY.

18 JUROR: I SEE A LOT OF PEOPLE. AND SHE LOOKS FAMILIAR
19 TO ME, BUT I CAN'T PLACE HER. I WANTED TO LET YOU KNOW
20 THAT SHE MAY HAVE BEEN A CLIENT OF OURS OR MAYBE NOT.

21 THE COURT: THAT'S GOOD. THAT'S EXACTLY THE KIND OF
22 THING WE WANT TO KNOW. I APPRECIATE YOU BRINGING THAT TO
23 OUR ATTENTION. FROM WHAT I GATHER YOU'VE TOLD ME, YOU
24 DON'T KNOW HER PERSONALLY OR HAVE ANY ---

25 JUROR: NO.

1 THE COURT: --- PERSONAL CONTACT WITH HER, BUT SHE
2 COULD HAVE BEEN A CLIENT THERE.

3 JUROR: MAY BE A CLIENT.

4 THE COURT: WOULD THIS IN ANY WAY PREVENT YOU FROM
5 BEING OBJECTIVE IN THIS CASE?

6 JUROR: NO.

7 THE COURT: WOULD YOU BE ABLE TO PUT THAT ASIDE AND
8 DECIDE THIS CASE FAIRLY AND OBJECTIVELY?

9 JUROR: YES.

10 THE COURT: OKAY. AND YOU DON'T SEE THAT AS ANY KIND
11 OF A CONFLICT?

12 JUROR: I DON'T, NOT AT THIS POINT.

13 THE COURT: THANK YOU, SIR, THAT'S WHAT WE WANT YOU TO
14 DO BY BRINGING THAT TO OUR ATTENTION. IF YOU COULD JUST GO
15 OUT AND HAVE A SEAT IN THE JURY ROOM.

16 JUROR: OKAY.

17 THE COURT: THANK YOU.

18 (THE JUROR EXITS THE COURTROOM.)

19 THE COURT: ANY MOTIONS BY THE STATE REGARDING THIS
20 JUROR?

21 MS. MILLICAN: THE STATE IS VERY CONCERNED THAT HE
22 THINKS THAT SHE WAS A MENTAL HEALTH PATIENT, BEING A JUROR
23 THAT HE THINKS SHE MAY HAVE MENTAL ISSUES.

24 THE COURT: ANY MOTIONS?

25 MS. MILLICAN: THE STATE WOULD MOVE, I GUESS, TO HAVE

1 THIS JUROR EXCUSED.

2 THE COURT: WHAT'S THE DEFENSE POSITION?

3 MS. SMART: YOUR HONOR, HE SAID THAT HE DOESN'T -- HE
4 MAY RECOGNIZE HER, HE MAY NOT HAVE RECOGNIZED HER. AND HE
5 SAID THAT HE CAN BE FAIR AND IMPARTIAL, SO I HAVE NO
6 PROBLEMS WITH THIS JUROR, AND I WOULD OBJECT TO HIM BEING
7 REMOVED.

8 THE COURT: I'M GOING TO DENY ~~THE MOTION~~ I THINK
9 THAT HE DOESN'T EVEN KNOW IF SHE'S EVER BEEN A CLIENT
10 THERE. HE JUST KNOWS THAT PEOPLE IN THIS SITUATION MAY BE
11 CLIENTS, BUT HE DOESN'T EVEN KNOW SHE'S EVER BEEN THERE.
12 HE JUST SAID THAT SHE COULD HAVE BEEN BECAUSE OF HER
13 LOCATION. AND I DON'T THINK THAT THERE IS ANY CONFLICT
14 WHATSOEVER. AND SO I'M GOING TO DENY THE MOTION AND
15 CONTINUE HIM ON THE JURY.

16 MS. MILLICAN: THANK YOU, JUDGE.

17 (PAUSE.)

18 THE COURT: ALL RIGHT. THE MATTER OF THE JUROR'S
19 COMMUNICATION WITH THE BAILIFF HAS BEEN TAKEN UP ON THE
20 RECORD AND HAS BEEN HANDLED BY THE COURT WITH COUNSEL
21 PARTICIPATING IN THE HEARING, AND THE JUROR FOR THE REASONS
22 PUT ON THE RECORD -- THE JUROR WILL BE CONTINUED ON THE
23 CASE AS A JUROR -- AS ONE OF THE PRINCIPLE JURORS.

24 ALL MOTIONS ARE NOTED AND THAT'S WHY I WANTED TO DO IT
25 ON THE RECORD.

1 ALL RIGHT. ANYTHING BEFORE WE BRING THE JURY IN ON
2 BEHALF OF THE STATE, MS. MILLICAN? ANYTHING BEFORE WE
3 BRING THE JURY IN?

4 MS. MILLICAN: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: ALL RIGHT. DEFENSE?

6 MS. SMART: NOTHING, YOUR HONOR.

7 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

8 HAVE ~~THE JURY~~ COME BACK AROUND PLEASE.

9 (THE WITNESS RETURNS TO THE WITNESS STAND.)

10 THE COURT: WHEN THE JURY COMES BACK, THE STATE HAS
11 ASKED ALL THE QUESTIONS THAT THEY'RE GOING TO ASK OF YOU AT
12 THIS TIME. AND NOW MS. SMART WILL HAVE THE RIGHT TO ASK
13 ANY QUESTIONS THAT SHE WISHES TO ASK. OKAY.

14 MS. SMART: YOUR HONOR, BEFORE THE JURY COMES IN. IF
15 ONE OF THE BAILIFFS BRING THE DIAGRAM.

16 THE COURT: YOU WANT IT BACK IN FRONT OF THE JURY,
17 WE'LL PUT IT BACK UP WHEN THEY GET BACK IN.

18 (THE JURY RETURNS TO THE COURTROOM AT 11:18 A.M.)

19 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. LADIES
21 AND GENTLEMEN, WE ARE NOW READY TO RESUME. WE DID HAVE ONE
22 MATTER THAT WE NEEDED TO ATTEND TO AND THAT HAS BEEN TAKEN
23 CARE, AND WE'RE READY TO RESUME.

24 THE STATE HAS FINISHED AND COMPLETED THEIR DIRECT
25 EXAMINATION OF THIS WITNESS, AND NOW THE DEFENSE WILL HAVE

[REDACTED] - CROSS BY MS. SMART [REDACTED]

1 THE RIGHT TO CROSS EXAMINE. MS. SMART.

2 MS. SMART: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MS. SMART:

4 Q [REDACTED], DO YOU REMEMBER SPEAKING WITH OFFICERS
5 FROM THE BEAUFORT COUNTY SHERIFF'S OFFICE, IN PARTICULAR
6 OFFICER MERRILL AND INVESTIGATOR CHAPMAN?

7 A YES.

8 Q AND DO YOU ALSO REMEMBER SPEAKING WITH THE TWO
9 GENTLEMEN THAT WERE OUTSIDE THE ROAD, MR. FRANK DILSAVER
10 AND MR. ROBERT PATE?

11 A YES.

12 Q AND YOU ALSO REMEMBER GIVING A STATEMENT TO NURSE
13 CLEGG [REDACTED] THE HOSPITAL WHEN YOU WERE AT THE HOSPITAL?

14 A YES.

15 Q AND IN THE REPORT THAT I HAVE, I HAVE THREE DIFFERENT
16 STATEMENTS THAT YOU GAVE TO LAW ENFORCEMENT. DO YOU
17 REMEMBER GIVING THREE DIFFERENT STATEMENTS TO LAW
18 ENFORCEMENT? WRITTEN STATEMENTS?

19 A NO.

20 Q [REDACTED] STATEMENTS DID YOU PROVIDE TO LAW
21 ENFORCEMENT?

22 A ONE.

23 Q YOU PROVIDED ONE WRITTEN STATEMENT. AND DID YOU SEE
24 COPIES OF TRANSLATED STATEMENTS?

25 A I MADE IN SPANISH.

[REDACTED] - CROSS BY MS. SMART [REDACTED] 80

1 Q YOU DID ONE STATEMENT IN SPANISH?

2 A YES.

3 Q AND YOU SUBMITTED A STATEMENT TO OFFICER MERRILL, AND
4 THAT WAS A SPANISH STATEMENT? [REDACTED]

5 A I MADE IN SPANISH AND THEY HAVE SOMEBODY TO TRANSLATE.

6 Q AND WHEN INVESTIGATOR CHAPMAN CAME TO SEE YOU, HE
7 ASKED YOU FOR ANOTHER STATEMENT, DIDN'T HE?

8 A I REMEMBER HAVING STATEMENT IN MY HOME AND HAVE
9 ANOTHER IN HOSPITAL.

10 Q OKAY. SO YOUR RECOLLECTION YOU HAVE ONE WRITTEN
11 STATEMENT THAT YOU WROTE IN SPANISH?

12 A YES.

13 Q AND ISN'T IT TRUE THAT YOUR SISTER, [REDACTED], TRANSLATED A
14 STATEMENT TO LAW ENFORCEMENT FOR YOU?

15 A I HAVE TWO SISTERS WHO GAVE ME SUPPORT -- THIS THING.
16 I -- I REMEMBER I WAS ONE OF THEM WHO WERE WITH ME THIS
17 DAY.

18 Q OKAY. SO YOU DON'T RECALL THEN ON FEBRUARY THE 7TH,
19 2006 ONE STATEMENT BEING GIVEN TO CORPORAL MERRILL AND THEN
20 ANOTHER STATEMENT TRANSLATED BY [REDACTED] AND THEN
21 ANOTHER STATEMENT?

22 A I REMEMBER THAT WHEN I WAS THERE AND OVER TO -- TO A
23 TRANSLATION IN THIS PARTICULAR MOMENT.

24 Q OKAY. I WANT TO ASK YOU ABOUT THE DIFFERENT
25 STATEMENTS THAT I HAVE IN THE PACKET GIVEN TO ME BY LAW

[REDACTED] - CROSS BY MS. SMART [REDACTED]

1 ENFORCEMENT. AND I'M GOING TO ASK YOU A SERIES OF
2 QUESTIONS, SO IF YOU'LL JUST BE PATIENT WITH ME.

3 DO YOU REMEMBER GIVING A STATEMENT TO INVESTIGATOR
4 MERRILL WITH REGARD TO WHAT HAPPENED? HE WAS THE FIRST
5 INVESTIGATOR ON THE SCENE. DO YOU REMEMBER WHAT YOU TOLD
6 HIM?

7 A HIM, HE ASKED ME ---

8 Q JUST DO YOU REMEMBER WHAT YOU TOLD HIM?

9 A YES.

10 Q NOW, THE FIRST THING I WANT TO TALK TO YOU ABOUT IS
11 WHAT YOU TOLD OFFICER MERRILL. ISN'T IT TRUE THAT YOU TOLD
12 OFFICER MERRILL THAT WHEN SOMEONE KNOCKED ON THE DOOR, YOU
13 LOOKED THROUGH THE WINDOW, YOU SAW A MAN. BUT BEFORE YOU
14 SAW THAT MAN, YOU SAW TWO PEOPLE WORKING ON THE SIDE OF THE
15 ROAD?

16 A YES.

17 Q AND ISN'T IT ALSO TRUE THAT WHEN YOU SPOKE TO
18 INVESTIGATOR CHAPMAN, YOU TOLD INVESTIGATOR CHAPMAN THAT
19 WHEN SOMEONE KNOCKED ON YOUR DOOR, YOU DIDN'T SEE TWO
20 PEOPLE WORKING?

21 A THIS WAS -- IS FALSE. I -- I TOLD HIM THE SAME.

22 Q YOU TOLD INVESTIGATOR CHAPMAN THE SAME THING?

23 A (NODS HEAD.)

24 Q SO YOUR TESTIMONY TODAY IS THAT WHEN YOU GAVE YOUR
25 STATEMENT TO INVESTIGATOR CHAPMAN, INVESTIGATOR CHAPMAN IS

~~REDACTED~~ CROSS BY MS. SMART ~~REDACTED~~ 32

1 THE SECOND POLICE OFFICER THAT CAME AND TALKED TO YOU, THAT
2 YOU TOLD HIM THAT YOU SAW THE TWO WHITE MEN BEFORE YOU
3 OPENED THE DOOR TO ALLOW THIS PERSON IN?

4 A YES.

5 Q OKAY. WHEN YOU WERE AT THE HOSPITAL, YOU TOLD A NURSE
6 WHAT HAPPENED AND YOU GAVE A DESCRIPTION TO THE NURSE ABOUT
7 YOUR ASSAILANT. DO YOU REMEMBER WHAT YOU TOLD THE NURSE?

8 A YES.

9 Q DO YOU REMEMBER TELLING THE NURSE THAT THERE WAS A
10 LIGHT SKINNED AFRICAN AMERICAN MAN THAT CAME TO YOUR DOOR?

11 A THERE WAS WHAT?

12 Q A LIGHT SKINNED AFRICAN AMERICAN MAN CAME TO YOUR
13 DOOR?

14 A NO.

15 Q YOU DIDN'T -- YOU DON'T RECALL TELLING THE NURSE THAT?

16 A NO.

17 Q NOW, OFFICER MERRILL ASKED YOU TO DESCRIBE THE SUSPECT
18 TO HIM. AND DO YOU REMEMBER TELLING OFFICER MERRILL THAT
19 THERE WAS A MEDIUM COMPLEXION BLACK MAN COMING TO YOUR
20 DOOR?

21 A I REMEMBER I DESCRIBE THE MAN, AND I REMEMBER -- COULD
22 YOU ASK ME AGAIN.

23 Q DO YOU REMEMBER TELLING OFFICER MERRILL IN YOUR
24 DESCRIPTION OF THE SUSPECT, YOU SAID THAT HE WAS A MEDIUM
25 COMPLEXION BLACK MAN?

██████████ - CROSS BY MS. SMART

██████████ 3

1 A NO.

2 Q HOW DID YOU DESCRIBE THE SUSPECT TO OFFICER MERRILL?

3 A KIND OF TALL, STRONG.

4 Q WHAT OTHER PHYSICAL DESCRIPTION DID YOU GIVE?

5 A I TOLD HIM WHAT HE WAS WEARING. I TOLD HIM THAT WAS A
6 BLACK MAN, BUT NO REALLY BLACK. I TOLD HIM THE MAN WAS
7 VERY STRONG, BUT WAS NO FAT MAN.

8 Q DO YOU REMEMBER BEING GIVEN A PHOTO LINE-UP BY
9 INVESTIGATOR CHAPMAN?

10 A I DID.

11 Q AND IN THAT PHOTO LINE-UP WERE YOU TOLD THAT THE
12 ASSAILANT MIGHT HAVE BEEN IN THERE?

13 A GO AGAIN?

14 Q WHEN THEY SHOWED YOU THE PICTURES ---

15 A YES.

16 Q --- DID THEY TELL YOU THAT YOUR ATTACKER WAS IN THAT
17 PICTURE?

18 A COULD YOU PLEASE ASK TO TRANSLATE -- SOMEONE TO
19 TRANSLATE FOR ME.

20 THE COURT: ALL RIGHT. HERE'S YOUR TRANSLATOR RIGHT
21 HERE. SHE CAN TRANSLATE IT.

22 INTERPRETER: THE TRANSLATOR ASKS FOR A REPETITION OF
23 THE QUESTION.

24 THE COURT: ASK THE QUESTION AGAIN PLEASE, MS. SMART.

25 Q DID INVESTIGATOR CHAPMAN TELL YOU THAT THE PERSON WHO

[REDACTED] - CROSS BY MS. SMART [REDACTED] 84

1 ATTACKED YOU -- PICTURE WAS IN THE SET OF PICTURES THAT YOU
2 LOOKED AT?

3 A YES, HE -- HE SHOWED ME A BOOK OF PICTURES.

4 (THE TRANSLATOR SPEAKS WITH WITNESS.)

5 INTERPRETER: NO.

6 A NO.

7 Q NOW, THIS MORNING YOU POINTED OVER THERE TO MR.
8 JOHNSON SEVERAL TIMES.

9 A YES.

10 Q DOES HE LOOK THE SAME WAY TODAY THAT HE DID IN
11 FEBRUARY OF LAST YEAR?

12 A HE JUST LOOKS -- HE -- HE'S BIGGER NOW. HE'S FAT.

13 Q HE'S FATTER NOW. BUT HE LOOKS -- HIS FACE LOOKS THE
14 EXACT SAME WAY TODAY THAT IT DID THEN?

15 A HE WAS NO WEARING MUSTACHE AND HE WAS NO WEARING THE
16 BEARD. HIS FACE WAS VERY BRIGHT, VERY CLEAN.

17 Q AND WHEN YOU SAW HIM TODAY, YOU IMMEDIATELY KNEW WHO
18 HE WAS?

19 A YES.

20 Q YOU DIDN'T HESITATE AT ALL, YOU KNEW ---

21 A I KNOW.

22 Q --- THAT HE WAS THE PERSON?

23 A I KNOW. I KNOW.

24 Q AND WHEN YOU WERE SHOWN A PHOTO LINE-UP BY
25 INVESTIGATOR CHAPMAN THE DAY THAT THIS INCIDENT OCCURRED,

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 85

1 YOU WEREN'T ABLE TO PICK MR. JOHNSON OUT OF THAT PHOTO

2 LINE-UP, WERE YOU?

3 A TRUE.

4 Q IS IT THAT YOU DIDN'T RECOGNIZE HIM?

5 A IT WAS LOOKS FAT. AND WHEN HE ASSAULT ME WAS NOT AS
6 FAT AS IN THE PICTURE, THE EXAMPLE.

7 Q SO THE PICTURE THAT YOU SAW OF MR. JOHNSON, THE
8 PICTURES THAT YOU WERE SHOWN BY INVESTIGATOR CHAPMAN THE
9 DAY OF THE INCIDENT, IS YOUR TESTIMONY TODAY THAT NONE OF
10 THOSE PICTURES RESEMBLED MR. JOHNSON?

11 A LOOKS DIFFERENT -- IF I COULD COMPARE REAL PERSON WITH
12 PICTURE.

13 Q YOU WERE JUST NOT ABLE TO PICK HIM OUT OF THAT PHOTO
14 LINE-UP ON THAT DAY?

15 A NO.

16 MS. MILLICAN: OBJECTION, YOUR HONOR.

17 THE COURT: WHAT'S YOUR OBJECTION?

18 MS. MILLICAN: TO RELEVANCE. THIS WITNESS HAS NO
19 KNOWLEDGE WHETHER OR NOT THE DEFENDANT'S PHOTO WAS IN THE
20 LINE-UP TO BEGIN WITH. SO WHETHER OR NOT SHE COULD
21 IDENTIFY THE DEFENDANT NOT KNOWING IF HE WAS IN IT HAS NO
22 RELEVANCE.

23 THE COURT: THE OBJECTION IS OVERRULED. THIS IS CROSS
24 EXAMINATION AS TO WHAT SHE CAN FIND FROM THE PHOTO LINE-UP.
25 OBJECTION IS OVERRULED.

— CROSS BY MS. SMART

86

1 Q LET'S MOVE ONTO YOUR -- WHEN YOU TESTIFIED ON DIRECT
2 EXAMINATION YOU TOLD A STORY ABOUT WHAT HAPPENED, SO I'M
3 GOING TO ASK YOU SPECIFIC QUESTIONS NOW ABOUT WHAT
4 HAPPENED. THE FIRST QUESTION I WANT TO ASK YOU -- IT MAY
5 SEEM AS THOUGH I'M BEING PETTY, BUT I JUST NEED TO ASK YOU
6 LITTLE QUESTIONS.

7 NOW, WHEN YOU SPOKE TO INVESTIGATOR MERRILL, YOU
8 INDICATED THAT YOU DIDN'T HESITATE TO OPEN THE DOOR BECAUSE
9 YOU SAW THESE OTHER PEOPLE WORKING?

10 A TRUE.

11 Q YOU FELT LIKE IT WAS OKAY?

12 A TRUE.

13 Q DO YOU RECALL WHAT YOU TOLD THE NURSE AT THE HOSPITAL
14 ABOUT OPENING THE DOOR FOR THE SUSPECT?

15 A I DON'T REMEMBER. I DON'T REMEMBER.

16 Q DO YOU RECALL TELLING THE NURSE THAT YOU ASKED THE
17 SUSPECT FROM THE WINDOW WHAT HE WANTED, AND HE TOLD YOU
18 THAT HE WANTED TO USE THE PHONE, AND ONLY AFTER HE TOLD YOU
19 THAT HE WANTED TO USE THE PHONE THAT YOU OPENED THE DOOR
20 FOR HIM. DO YOU RECALL TELLING THAT TO THE NURSE?

21 A I DON'T REMEMBER THAT.

22 Q YOU DON'T REMEMBER THAT. DO YOU RECALL TELLING THE
23 NURSE THAT THIS PERSON THAT CAME TO YOUR HOUSE SIMPLY ASKED
24 YOU FOR A PEN AND PAPER?

25 A GO AGAIN.

[REDACTED] - CROSS BY MS. SMART [REDACTED] 7

1 Q THE PERSON THAT KNOCKED ON THE DOOR ASKED YOU FOR A
2 PEN AND PAPER. DO YOU RECALL TELLING THE NURSE AT THE
3 HOSPITAL THAT AT ALL?

4 A I DON'T REMEMBER. I DON'T REMEMBER THAT.

5 Q LET'S TALK ABOUT THE PHONE. SO THIS MAN KNOCKS ON
6 YOUR DOOR. EITHER YOU LET HIM IN -- AND NOW THERE'S THE
7 ISSUE OF THE TELEPHONE. HE WANTS TO USE THE TELEPHONE. DO
8 YOU RECALL TELLING OFFICER MERRILL THAT YOU GAVE THE
9 SUSPECT THE TELEPHONE, THAT HE ASKED YOU TO USE THE
10 TELEPHONE?

11 A NO.

12 Q WHAT DO YOU RECALL TELLING OFFICER MERRILL? OFFICER
13 MERRILL WAS THE FIRST OFFICER THAT INTERVIEWED YOU.

14 A I -- I TOLD HIM THAT HE ASKED FOR THE PHONE. I SHOW
15 HIM WHERE THE PHONE WAS. HE TOOK THE PHONE AND DIAL.

16 Q OKAY. NOW, DO YOU REMEMBER WHAT YOU TOLD INVESTIGATOR
17 CHAPMAN WITH REGARD TO THE TELEPHONE?

18 A I DON'T KNOW. CAN I SAY SOMETHING?

19 Q SURE.

20 A I JUST CAN TELL YOU FOR SURE WHAT HAPPENED.

21 Q BUT YOU CAN'T RECALL WHAT YOU TOLD WHAT OFFICER ON THE
22 DATE OF THE INCIDENT?

23 A I CAN'T TELL YOU FOR SURE THAT WHAT EXACTLY MY WORDS
24 WERE.

25 Q OKAY. I'LL MOVE ONTO ANOTHER QUESTION. IN YOUR

[REDACTED] -- CROSS BY MS. SMART [REDACTED]

8

1 WRITTEN STATEMENT, DO YOU RECALL -- HOW MANY TIMES DID MR.

2 JOHNSON ATTEMPT TO USE YOUR TELEPHONE?

3 A HE DIALED TWICE.

4 Q AND LET'S TALK ABOUT MR. GREEN. YOU SAID THAT -- IN

5 YOUR DIRECT TESTIMONY YOU SAID THAT HE ASKED YOU, DID YOU

6 KNOW MR. GREEN; IS THAT CORRECT?

7 A YES.

8 Q AND YOU SAID THAT YOU DIDN'T KNOW MR. GREEN; IS THAT

9 CORRECT?

10 A CORRECT.

11 Q NOW, IN YOUR DIRECT TESTIMONY YOU SAID THAT THE HOUSE

12 ACROSS THE STREET WAS BEING BUILT; ISN'T THAT CORRECT?

13 A WAS BRAND NEW, BUT THE NEW NEIGHBOR WAS LIVING THERE.

14 Q THE NEW NEIGHBOR WAS LIVING THERE?

15 A YES.

16 Q BUT YOU DIDN'T KNOW THAT NEW NEIGHBOR'S NAME?

17 A NO.

18 Q OKAY. YOU DIDN'T KNOW THAT NEW NEIGHBOR'S NAME. BUT

19 DO YOU RECALL TELLING OFFICER CHAPMAN THAT YOU TOLD YOUR

20 ATTACKER THAT YOU WOULD TAKE A MESSAGE FOR MR. GREEN?

21 A I OFFER TO TAKE THE MESSAGE WAS WHEN THE TIME I TOOK

22 PAPER AND -- AND -- AND PEN.

23 Q SO IT'S YOUR TESTIMONY THAT ALTHOUGH YOU DIDN'T KNOW

24 WHO LIVED IN THE HOUSE NEXT DOOR AND YOU DIDN'T KNOW MR.

25 GREEN AND THE PERSON THAT ASKED TO USE YOUR TELEPHONE

[REDACTED] - CROSS BY MS. SMART [REDACTED] 9

1 WANTED TO LEAVE A MESSAGE FOR MR. GREEN, YOU VOLUNTEERED TO
2 TAKE THAT MESSAGE FOR MR. GREEN?

3 A SEE, HE DIAL TWICE AND NOBODY ANSWERED TO HIM, I
4 OFFERED TO TAKE THE MESSAGE.

5 Q AND YOU INDICATED THAT WHEN HE DIALED, THERE WAS NO
6 ANSWER. DO YOU RECALL TELLING OFFICER MERRILL THAT THERE
7 WAS NO ANSWER?

8 A BECAUSE THERE WAS A MACHINE.

9 Q SO YOU TOLD OFFICER MERRILL THAT THERE WAS AN
10 ANSWERING MACHINE?

11 A LIKE I TOLD YOU BEFORE, I CAN'T TELL YOU FOR SURE THE
12 EXACTLY THE WORDS THAT I USED TO SAY.

13 Q OKAY. SO THIS ASSAILANT COMES TO YOUR HOUSE, USES THE
14 TELEPHONE, THERE'S AN ANSWERING MACHINES BUT HE CHOOSES NOT
15 TO LEAVE A MESSAGE ON THE ANSWER MACHINE, AND YOU OFFER TO
16 TAKE A WRITTEN MESSAGE FOR MR. GREEN?

17 A YES, MA'AM.

18 Q NOW, LET'S TALK ABOUT YOU TURNING AROUND TO GET THIS
19 PEN AND PAPER.

20 A YES, MA'AM.

21 Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL
22 HOSPITAL, NURSE CLEGG I BELIEVE HER NAME IS, THAT THE
23 SUSPECT ASKED YOU FOR A PIECE OF PAPER AND A PEN?

24 A NO.

25 Q YOU DON'T RECALL TELLING HER THAT?

[REDACTED] CROSS BY MS. SMART. [REDACTED] 0

1 A NO.

2 Q WHAT ABOUT OFFICER MERRILL, DO YOU RECALL TELLING
3 OFFICER MERRILL THAT YOU VOLUNTEERED TO WRITE DOWN A NOTE
4 FOR HIM IN CASE THE NEIGHBOR ACROSS THE STREET WHOSE NAME
5 YOU WERE NOT SURE OF TURNED OUT TO BE MR. GREEN -- YOU
6 VOLUNTEERED TO TAKE THIS MESSAGE?

7 A WELL, YES, MA'AM.

8 Q AND DO YOU RECALL TELLING IN YOUR WRITTEN STATEMENT
9 YOU JUST WROTE, I TURNED TO GET A PEN AND PAPER?

10 A YES, MA'AM.

11 Q NOW, YOU TALKED TO LAW ENFORCEMENT ABOUT THIS ALLEGED
12 GUN. DO YOU REMEMBER HOW YOU DESCRIBED THE GUN TO LAW
13 ENFORCEMENT?

14 A YES.

15 Q WHAT DID YOU SAY THE GUN LOOKED LIKE?

16 A I TOLD HIM THAT IT WAS KIND OF -- THIS -- THIS FLAT --
17 FLAT GUN THAT MY ONE THING WAS SHOWING IT LOOKS LIKE GRAY.
18 NOW I DON'T KNOW IT WAS BECAUSE OF THE TIME OR I DON'T
19 KNOW. BUT IT WAS FLAT AND -- AND -- AND THIS KIND OF YOU
20 COCK ON TOP.

21 Q I'M SORRY, I DIDN'T UNDERSTAND YOU. DID YOU SAY GRAY?

22 A DARK. I SAID DARK.

23 Q YOU SAID DARK. DO YOU REMEMBER WHETHER OR NOT YOU
24 SAID IT WAS A REVOLVER?

25 A I JUST -- I JUST -- I BELIEVE I JUST SAID GUN, FLAT

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 91

1 AND DARK.

2 Q YOU SAID YOU TOLD LAW ENFORCEMENT THAT THE GUN WAS
3 FLAT?

4 A WHEN I TRIED TO DESCRIBE, I BELIEVE SO.

5 Q WHEN OFFICER MERRILL ASKED YOU ABOUT THIS INCIDENT, DO
6 YOU REMEMBER TELLING HIM THAT HE PRODUCED THE PISTOL FROM
7 BEHIND HIS BACK?

8 A I TOLD HIM THAT WHEN I TURN MY BACK TO PICK PENCIL AND
9 PEN -- WHEN I JUST TURN MY FACE TO HIM AGAIN, HE COCK THE
10 GUN AND POINTED IN MY FACE.

11 Q SO TODAY YOU'RE TELLING THIS COURT THAT YOU DIDN'T
12 TELL OFFICER MERRILL THAT YOU SAW THE ASSAILANT TAKE THE
13 GUN FROM HIS BACK AND POINT IT AT YOU?

14 A I -- I JUST REMEMBER TURN MY BACK TO PICK PENCIL AND
15 PEN. AND WHEN I FACE HIM AGAIN, HE JUST COCK AND POINT AT
16 ME.

17 Q OKAY.

18 MS. SMART: CAN I GET THE DIAGRAM PLEASE.

19 THE COURT: BRING THE DIAGRAM BACK IN FRONT OF THE
20 JURY PLEASE.

21 (PAUSE.)

22 THE COURT: WOULD YOU LIKE THE WITNESS TO STEP DOWN,
23 MS. SMART?

24 MS. SMART: YES, SIR.

25 THE COURT: ALL RIGHT. STEP DOWN, [REDACTED].

██████████ - CROSS BY MS. SMART

██████████ 92

1 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

2 Q I'M GOING TO GIVE YOU THESE LITTLE ---

3 THE COURT: KEEP YOUR VOICE UP.

4 Q WHAT I'D LIKE YOU TO DO IS STICK THESE ON EVERY
5 LOCATION I ASK YOU ABOUT.

6 A YES, MA'AM.

7 Q IF YOU WILL, PLACE THE FIRST STICKY TAG WHERE YOU WERE
8 WHEN THE SUSPECT KNOCKED ON YOUR DOOR?

9 A (COMPLIED.) IN THE -- IN THE KITCHEN.

10 Q AND WHERE DID YOU FIRST SEE THE SUSPECT? WHERE WAS HE
11 LOCATED WHEN YOU SAW HIM?

12 A (COMPLIED.)

13 Q AND COULD YOU JUST TELL THE JURY WHERE YOU PLACED
14 THIS?

15 A SOMEBODY KNOCK THE DOOR. I WAS IN THE KITCHEN. I
16 WALK HERE. I SAW THROUGH THE WINDOW. AND I WAS HERE, JUST
17 IN FRONT OF THE DOOR.

18 Q AND WHEN HE CAME IN THE HOUSE, WHERE DID HE GO?

19 A I SHOW HIM WHERE THE PHONE WAS AND HE WALKED RIGHT
20 HERE.

21 Q AND THAT WAS BY THE TABLE?

22 A YES.

23 Q AND YOUR TESTIMONY WAS THAT HE TOOK YOU TO THE
24 BEDROOM. WHERE IS THE BEDROOM THAT HE TOOK YOU TO?

25 ██████████ I OFFERED TO TAKE MESSAGE AND TURNED MY BACK ON

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 3

1 HIM TO PICK PENCIL AND PEN, AND WHEN I TURN AGAIN, HE WAS
2 THERE POINTING AT ME. SO HE ASKED ME TO GO TO THE BEDROOM.
3 THIS WAY.

4 Q AND WHERE DID YOU GO IN THE BEDROOM?

5 A HE JUST --WHEN HE JUST ASKED ME TO MOVE, I -- I WENT
6 FOR HIM AND HIS GUN.

7 Q WHERE DID YOU GO IN THE BEDROOM?

8 A I WENT HERE.

9 Q IS THERE A DOOR RIGHT HERE?

10 A YES, BUT IT'S OPEN.

11 Q OPEN. AND THIS IS YOUR BED. WHERE EXACTLY WERE YOU
12 LAYING ON YOUR BED?

13 A RIGHT HERE.

14 Q SO YOU WERE ON THIS PART OF THE BED?

15 A YES.

16 Q AND YOU SAID THAT YOU STRUGGLED WITH THIS ASSAILANT.
17 HOW FORCEFUL WAS THAT STRUGGLE?

18 A WITH THE GUN IN THE FACE.

19 Q YOU DIDN'T MOVE, YOU JUST STAYED IN THAT ONE SPOT?

20 A I ALWAYS WAS BEGGING HIM TO ---

21 Q BUT DID YOU MOVE OR DID YOU STAY IN ONE SPOT ---

22 A I WAS ---

23 Q --- ON THE BED?

24 A I WAS STANDING UP HERE, AND HE ASKED ME TO TAKE MY
25 PANTS DOWN WHEN I WAS HERE.

[REDACTED] CROSS BY MS. SMART [REDACTED] 94

1 Q AND YOU SAID THAT HE ASKED YOU TO LAY ON THE BED.

2 WHERE ON THE BED DID YOU LAY?

3 A RIGHT HERE.

4 THE COURT: CAN YOU HEAR HER, MS. RUTLEDGE?

5 REPORTER: YES, SIR.

6 THE COURT: OKAY.

7 Q AND DURING THE COURSE OF THIS ENTIRE INCIDENT, YOU
8 REMAINED IN THIS ONE SPOT?

9 A YES, AND HE WAS HERE WHERE I WAS -- WHEN I WAS HERE,
10 HE WAS HERE.

11 Q SO WERE YOUR LEGS HANGING OFF THE BED OR WAS YOUR
12 ENTIRE BODY ON THE BED?

13 A MY LEGS WERE ON THE -- ON THE FLOOR, AND I JUST SIT.

14 Q SO WHEN YOU LAID BACK, YOUR LEGS WERE ACTUALLY HANGING
15 OFF THE SIDE OF YOUR BED; IS THAT CORRECT?

16 A YES, I JUST WAS -- MY FEET WERE ON THE FLOOR AND MY
17 BACK ON THE -- ON THE BED.

18 Q AT ANY TIME DID HE LAY ON YOUR BED?

19 A HE WAS ON THE TOP OF ME RIGHT HERE. MY LEGS WERE
20 HERE. HIS LEGS WERE AGAINST MY LEGS HERE.

21 Q SO YOU'RE SAYING THAT HE WAS ON THE BED UP HERE OR HE
22 WAS DOWN HERE?

23 A I -- I WAS HERE AND HE WAS STANDING UP IN FRONT OF ME.
24 HIS LEGS AGAINST MY LEGS. AND -- AND I LAID DOWN ON THE
25 * BACK AND HE WAS ON ME HERE.

██████████ - CROSS BY MS. SMART ██████████

1 Q SO IT'S YOUR TESTIMONY THAT EVERYTHING THAT OCCURRED,
2 OCCURRED IN THIS SECTION OF THE BED?

3 A YES, MA'AM.

4 Q IS THAT CORRECT?

5 A (NODS HEAD.)

6 Q YOU CAN TAKE THE WITNESS STAND.

7 (THE WITNESS RETURNS TO THE WITNESS STAND.)

8 THE COURT: MOVE THE DIAGRAM SO IT WON'T BE BETWEEN
9 THE WITNESS AND THE JURY.

10 Q NOW I'M GOING TO TALK ABOUT WHAT HAPPENED ONCE YOU
11 WERE IN THE BEDROOM. DO YOU RECALL TELLING OFFICER MERRILL
12 THAT ONCE YOU WERE IN THE BEDROOM YOU ONLY PULLED YOUR
13 PANTS DOWN TO YOUR THIGH; IS THAT CORRECT?

14 A YES, AT FIRST. YES.

15 Q AT FIRST?

16 A YES.

17 Q AND YOU INDICATED TO OFFICER MERRILL THAT HE CONTINUED
18 TO TRY TO INSERT HIS PENIS INTO YOUR VAGINA?

19 A TRUE.

20 Q AND THIS BACK AND FORTH BETWEEN THE TWO OF YOU LASTED
21 FOR ABOUT HOW LONG?

22 A IT WAS VERY FAST. I ALWAYS TOLD HIM ABOUT MY HUSBAND
23 IS ABOUT TO COME.

24 Q YOU ALWAYS -- YOU ALWAYS TOLD THE SUSPECT ---

25 A I WAS TELLING HIM.

[REDACTED] - CROSS BY MS. SMART [REDACTED] 96

1 Q NOW, DID YOU TELL OFFICER MERRILL THAT YOU TOLD THE
2 SUSPECT THAT YOUR HUSBAND WAS ABOUT TO COME HOME?

3 A WHEN -- LIKE I TOLD BEFORE ---

4 Q YOU DON'T REMEMBER?

5 A --- I CAN'T TELL FOR SURE ---

6 Q BUT YOU ---

7 A --- WHAT ---

8 THE COURT: WAIT A MINUTE. LET HER ANSWER. LET HER
9 ANSWER. GO AHEAD.

10 A I CAN'T TELL YOU FOR SURE WHICH MY WORDS WERE WHEN THE
11 OFFICERS WERE DOING THEIR REPORT.

12 Q WHEN YOU TOLD THE SUSPECT THAT YOUR HUSBAND COMING, DO
13 YOU RECALL TELLING OFFICER MERRILL THAT THE SUSPECT LEFT
14 THE ROOM WHEN YOU TOLD HIM THAT YOUR HUSBAND WAS COMING?

15 A NO.

16 Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL
17 HOSPITAL THAT WHEN YOU TOLD THE SUSPECT YOUR SPOUSE WAS
18 COMING THAT HE RAN?

19 A THAT -- THAT HE WHAT?

20 Q THAT THE SUSPECT RAN OUT OF THE HOUSE?

21 A NO, HE NEVER. NO.

22 Q HE NEVER RAN. BUT YOU NEVER TOLD THE NURSE AT
23 BEAUFORT MEMORIAL HOSPITAL THAT?

24 A I DON'T -- I DON'T -- I DON'T THINK I -- I COULD TELL
25 THAT. HE NEVER RUN.

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 97

- 1 Q NOW, YOU'VE INDICATED THAT HE -- THE SUSPECT INSERTED
2 HIS FINGERS INTO YOUR VAGINA?
3 A TRUE.
4 Q DO YOU RECALL SAYING THAT HE INSERTED HIS WHOLE HAND
5 IN YOUR VAGINA?
6 A NO. FINGERS. I TOLD THEM HE USED THE FINGERS -- PUT
7 HIS FINGERS.
8 Q DO YOU RECALL TELLING IN YOUR WRITTEN STATEMENT SAYING
9 THAT HE USED GREAT FORCE INSERTING HIS HAND IN MY VAGINA AS
10 IF HE WERE SEARCHING FOR SOMETHING?
11 A TRUE.
12 Q YOUR DESCRIPTION OF THE SUSPECT WAS THAT HE WAS
13 STOCKY, CORRECT?
14 A HE WAS WHAT?
15 Q STOCKY. BIG?
16 A TRUE.
17 Q AND DID HE HAVE LARGE HANDS?
18 A IT DEPENDS.
19 Q BIG HANDS? DO YOU BRUISE EASILY?
20 A I WHAT?
21 Q DO YOU BRUISE EASILY?
22 A I CAN'T TELL YOU FOR SURE THAT. THIS DAY, THIS
23 PARTICULAR TIME?
24 Q NO. IN GENERAL, DO YOU BRUISE EASILY? IF YOU BUMP
25 YOUR LEG ON A TABLE WITH FORCE, WILL YOU GET A BRUISE?

[REDACTED] CROSS BY MS. SMART. [REDACTED]

1 A I DON'T THINK SO.

2 Q YOU DON'T THINK SO. SO THERE'S ANY TRAUMA TO YOUR
3 BODY, THERE WON'T BE BRUISING?

4 MS. MILLICAN: OBJECTION, YOUR HONOR. GENERALIZATION.
5 AND I'M NOT EXACTLY SURE WHAT THE RELEVANCE IS.

6 THE COURT: ALL RIGHT. I'M GOING TO ALLOW IT, BUT
7 IT'S NOT GOING ANY FURTHER. I'LL ALLOW THIS QUESTION. YOU
8 MAY ANSWER THE QUESTION IF YOU CAN. IF YOU DON'T KNOW, YOU
9 CAN ALSO ANSWER YOU DON'T KNOW.

10 A NO.

11 Q DID YOU HAVE ANY BRUISES ON YOUR BODY THIS PARTICULAR
12 DAY?

13 A NO.

14 Q BUT IT IS YOUR TESTIMONY THAT THIS LARGE SUSPECT WITH
15 LARGE HANDS HELD YOU DOWN ON THE BED, FORCED YOU TO HAVE
16 SEX WITH HIM, BUT YOU WERE NOT BRUISED AT ALL?

17 A MA'AM, HE WAS ---

18 Q WERE YOU BRUISED AT ALL?

19 A NO, MA'AM.

20 Q THE ONLY INJURY THAT YOU COMPLAINED OF AT THE HOSPITAL
21 WAS A BITTEN -- A BITE MARK ON YOUR FINGER?

22 A AND MY FEET WHERE HE -- IN MY FEET ALSO.

23 Q AND YOUR TOES; IS THAT CORRECT?

24 A YES.

25 Q BUT YOU DIDN'T HAVE ANY COMPLAINT ABOUT SORENESS OR

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 99

- 1 PAIN OR ANYTHING ---
- 2 A NO, MA'AM.
- 3 Q --- IN YOUR THIGH AREA?
- 4 A NO, MA'AM.
- 5 Q OR YOUR VAGINA AREA?
- 6 A NO, MA'AM.
- 7 Q AND THE DOCTOR DIDN'T TELL YOU THAT YOU HAD ANY TRAUMA
- 8 TO YOUR VAGINA, DID THEY?
- 9 A NO, MA'AM.
- 10 Q AND IN FACT, THEY TOLD YOU THAT THERE WAS NO TRAUMA?
- 11 A TRUE.
- 12 Q NOW, DO YOU RECALL TELLING THE NURSE AT BEAUFORT
- 13 MEMORIAL HOSPITAL THAT YOU WERE FORCED TO REMOVE YOUR PANTS
- 14 AND YOUR UNDERWEAR?
- 15 A YES, MA'AM.
- 16 Q BUT YOU DON'T RECALL TELLING THE POLICE OFFICERS THAT
- 17 YOU ONLY PULLED YOUR PANTS DOWN TO YOUR THIGHS, THAT YOU
- 18 DID NOT REMOVE YOUR PANTS ALL THE WAY?
- 19 A CAN I SAY SOMETHING? I DID THAT AT FIRST, BUT I
- 20 COULDN'T DEFEND MYSELF. I COULDN'T MOVE. WHEN THIS WAS
- 21 HAPPENING, I DID MYSELF MOVE ALL MY PANTS DOWN IN ORDER TO
- 22 FIGHT.
- 23 Q SO NOW YOUR TESTIMONY TODAY IS THAT YOU ACTUALLY
- 24 PULLED YOUR PANTS ALL THE WAY DOWN?
- 25 A LIKE I TOLD YOU BEFORE, AT FIRST WHEN HE ASKED ME TO

[REDACTED] - CROSS BY MS. SMART [REDACTED] 00

1 PULL MY PANTS DOWN, WAS NOT COMPLETELY DOWN. BUT AT THE
2 SAME TIME THAT WAS -- THAT HE WAS RAPING ME, I -- I -- I
3 COULDN'T MOVE MYSELF IN ORDER TO DEFEND MYSELF, SO I PULLED
4 ALL THE PANTS DOWN AND TRIED TO FIGHT.

5 Q YOU PULLED THEM ALL THE WAY OFF?

6 A YES, BECAUSE -- YES.

7 Q NOW, LET'S TALK ABOUT THE SUSPECT'S PANTS. YOU SAID
8 THAT THEY HAD AN ELASTIC WAISTBAND?

9 A I SAID THAT HE WAS WEARING SPORT CLOTHES.

10 Q AND HE PLACED THE GUN IN THE BACK OF HIS PANTS?

11 A YES, MA'AM.

12 Q NOW, YOU INDICATED THAT HE NEVER REMOVED HIS PANTS;
13 ISN'T THAT CORRECT?

14 A TRUE.

15 Q TELL THIS JURY HOW HE WAS ABLE TO PICK HIS PENIS OUT
16 -- IN WHAT MANNER DID HE TAKE HIS PENIS OUT?

17 A HE PUT THE GUN BACK HERE AND TAKE HIS PART OUT.

18 Q SO HE JUST REACHED IN AND PULLED IT OUT?

19 A TRUE.

20 Q AND DO YOU RECALL WHETHER OR NOT THE SUSPECT
21 EJACULATED?

22 A I TOLD THEM NO.

23 Q YOU TOLD THEM NO. WHO DID YOU TELL THEM NO?

24 A TO THE POLICE AND TO THE NURSE.

25 Q IS IT YOUR TESTIMONY TODAY THAT HE EJACULATED OR HE

[REDACTED] - CROSS BY MS. SMART [REDACTED] 1

- 1 DID NOT?
- 2 A HE DID NOT.
- 3 Q HE DID NOT EJACULATE?
- 4 A (SHAKES HEAD.)
- 5 Q NOW, YOU INDICATED DURING YOUR TESTIMONY THAT AT SOME
- 6 POINT IN THE STRUGGLE THE SUSPECT LEFT THE BEDROOM?
- 7 A TRUE.
- 8 Q IS THAT CORRECT? AND WHEN HE LEFT THE BEDROOM, YOU
- 9 TOLD OFFICER MERRILL THAT HE -- I'M SORRY, IN YOUR WRITTEN
- 10 STATEMENT YOU SAID HE WALKED TOWARD THE KITCHEN AND HE
- 11 SNATCHED THE PHONE CORD OFF THE WALL?
- 12 A TRUE.
- 13 Q DO YOU RECALL THAT?
- 14 A YES.
- 15 Q YOU TOLD OFFICER MERRILL THAT WHEN HE LEFT THE
- 16 BEDROOM, HE WENT TO THE LIVING ROOM. DO YOU RECALL THAT?
- 17 A I DON'T REMEMBER THAT.
- 18 Q BUT YOU DIDN'T TELL OFFICER MERRILL ANYTHING ABOUT HIM
- 19 SNATCHING THE PHONE CORD OUT OF THE WALL IN THE KITCHEN,
- 20 DID YOU?
- 21 A I TOLD HIM THAT HE WENT TO THE KITCHEN AND PULLED THE
- 22 PHONE DOWN.
- 23 Q YOU TOLD OFFICER MERRILL THAT?
- 24 A YES.
- 25 Q THEN YOU SAID THAT WHEN HE RETURNED TO THE BEDROOM, HE

[REDACTED] - CROSS BY MS. SMART

[REDACTED] 02

1 WAS ONLY GONE FOR A SHORT PERIOD OF TIME; IS THAT CORRECT?

2 A HE GOT BACK AND I THOUGHT HE GO BACK TO SHOOT ME.

3 Q BUT HE WAS ONLY JUST GONE FOR A SHORT PERIOD OF TIME?

4 A ENOUGH TO SMASH THE -- THE DRAWERS AND ---

5 Q SMASH THE WHAT?

6 A TWO DRAWERS. HE OPENED TWO DRAWERS.

7 Q OH, HE OPENED TWO DRAWERS. YOU TOLD OFFICER MERRILL

8 THAT WHEN HE CAME BACK TO THE BEDROOM, HE YANKED THE CORD

9 OUT OF THE -- HE YANKED THE PHONE CORD FROM THE BEDROOM

10 WALL AS WELL?

11 A YES.

12 Q SO YOU INDICATED THEN THAT THERE WERE TWO PHONES THAT

13 WERE YANKED FROM THE WALL; IS THAT CORRECT?

14 A TRUE.

15 Q AND THAT THERE WERE TWO DRESSER DRAWERS THAT WERE

16 OPENED; IS THAT CORRECT?

17 A TRUE.

18 Q DID YOU CLOSE ANY OF THE DRAWERS?

19 A NO.

20 Q SO UPON THE ARRIVAL OF LAW ENFORCEMENT, THEY WOULD

21 HAVE NOTICED THAT TWO DRESSER DRAWERS WERE OPENED; IS THAT

22 CORRECT?

23 A TRUE.

24 Q NOW, YOU INDICATED WITH REGARD TO THE DRESSER DRAWERS

25 THAT HE RUMBLED THROUGH THE DRAWERS OR HE PUSHED HIS HANDS

[REDACTED] - CROSS BY MS. SMART [REDACTED] 3

1 THROUGH THE DRAWERS AS IF HE WAS LOOKING FOR SOMETHING; IS
2 THAT CORRECT?

3 A TRUE.

4 Q AND THE STATE GAVE YOU STATE'S EXHIBIT NO. 4, AND YOU
5 INDICATED TO THE JURY THAT THIS WAS THE PICTURE OF THE
6 DRAWER THAT WAS OPENED; IS THAT CORRECT?

7 A TRUE.

8 Q AND THIS IS THE DRAWER THAT WAS RUMPLED THROUGH AS IF
9 HE WERE LOOKING FOR SOMETHING?

10 A THE FIRST TWO.

11 Q OKAY. AND THIS IS THE SAME DRESSER THAT TWO DRAWERS
12 WERE OPENED?

13 A TRUE.

14 Q AND YOU DID NOT CLOSE ANY OF THE DRAWERS?

15 A I DID NOT TOUCH ANYTHING.

16 Q SO IT IS YOUR TESTIMONY TODAY THAT TWO DRAWERS WERE
17 OPENED DURING THE COURSE OF THIS STRUGGLE?

18 A YES, MA'AM.

19 Q IN THIS PICTURE. AND THIS WOULD BE STATE'S EXHIBIT 4
20 WHICH HAS ALREADY BEEN PUBLISHED TO THE JURY.

21 NOW, DO YOU RECALL TELLING OFFICER MERRILL THAT --
22 BEFORE I ASK YOU THAT, LET'S TALK ABOUT YOUR HOUSE. YOU
23 LIVE IN A SINGLE WIDE MOBILE HOME?

24 A YES.

25 Q AND YOU INDICATED THAT THE SUSPECT LEFT THE ROOM A

[REDACTED] - CROSS BY MS. SMART [REDACTED] 4

1 SECOND TIME, AND DURING THE TIME IN WHICH HE WAS GONE, YOU

2 RAN OUT OF THE BACK DOOR; IS THAT CORRECT?

3 A TRUE.

4 Q AND YOU INDICATED THAT YOU DIDN'T KNOW WHERE THE

5 SUSPECT WAS WHEN YOU RAN OUT OF THE DOOR?

6 A I NEVER TURN MY FACE BACK. I JUST ---

7 Q YOU NEVER TURNED YOUR FACE BACK.

8 A --- ESCAPE.

9 Q NOW, WHEN YOU LEFT THE HOUSE, WHOSE PANTS DID YOU HAVE
10 ON?

11 A I HAD MY HUSBAND'S.

12 Q YOUR HUSBAND'S.

13 A HE WEARS VERY COMFORTABLE PANTS.

14 Q OKAY. SO JUST FOR CLARITY, THE PANTS THAT YOU
15 INITIALLY HAD ON, YOUR TESTIMONY TODAY IS THAT YOU TOOK
16 THOSE PANTS OFF?

17 A YES.

18 Q WHERE DID YOU PUT THEM WHEN YOU TOOK THEM OFF?

19 A I LEFT THE PANTS IN THE -- THE -- IN THE SAME PLACE
20 WHEN -- WHEN HE ASSAULT ME.

21 Q SO THE PANTS ARE STILL IN THE BEDROOM?

22 A YES.

23 Q YOUR PANTS ---

24 A YES.

25 Q --- THAT YOU HAD ON WHEN THIS ALLEGED ATTACK OCCURRED

██████████ - CROSS BY MS. SMART

██████████ 5

- 1 WERE LEFT IN THE BEDROOM?
- 2 A YES.
- 3 Q AND THEN YOU PUT YOUR HUSBAND'S PANTS ON?
- 4 A MY HUSBAND PANTS WERE ON THE FLOOR.
- 5 Q AND YOU PUT HIS PANTS ON AND YOU RAN OUT?
- 6 A THEY WERE ON THE FLOOR WHEN I WAS ON MY KNEES. WHEN
- 7 HE COME BACK TO THE KITCHEN, I JUST PUT THE PANTS AND RUN
- 8 AWAY.
- 9 Q DID YOU SEE HIM WHEN HE LEFT?
- 10 A NO. THE SECOND TIME WHEN HE GO BACK TO THE KITCHEN, I
- 11 JUST ESCAPE. I NEVER TURN MY FACE. I THOUGHT HE WAS GOING
- 12 TO SHOOT ME. I JUST RUN, RUN, RUN.
- 13 Q YOU DON'T KNOW WHEN HE LEFT YOUR HOUSE OR IF HE EVEN
- 14 LEFT YOUR HOUSE, YOU DON'T KNOW THAT, DO YOU?
- 15 A NO. WHEN HE GO BACK, I ESCAPE.
- 16 Q SO YOU WERE IN YOUR BEDROOM. THE SUSPECT WAS SOME
- 17 PLACE IN THE KITCHEN AREA, THE LIVING ROOM AREA, AND YOU
- 18 WERE ABLE -- DO YOU KNOW WHETHER OR NOT HE WAS IN THE
- 19 KITCHEN OR THE LIVING ROOM WHEN YOU RAN OUT OF THE HOUSE?
- 20 A I KNOW WHEN HE TURN HIS BACK ON ME ---
- 21 Q YOU LEFT?
- 22 A --- I JUST ESCAPE.
- 23 Q OKAY. NOW, LET'S TALK ABOUT HIM GETTING AWAY. DO YOU
- 24 RECALL TELLING INVESTIGATOR CHAPMAN THAT YOU SAW THE
- 25 SUSPECT LEAVE YOUR HOUSE ON A BICYCLE HEADING TOWARDS SCOTT

— CROSS BY MS. SMART

06

1 HILL ROAD?

2 A NO.

3 Q DO YOU RECALL TELLING THE NURSE AT BEAUFORT MEMORIAL
4 HOSPITAL THAT THE MAN FLED ON A BIKE?

5 A CAN I SAY SOMETHING? I KNEW THAT HE LEFT.

6 Q YOU KNEW THAT HE LEFT?

7 A (NODS HEAD.)

8 Q TODAY YOUR TESTIMONY IS THAT YOU KNOW THAT HE LEFT
9 YOUR HOUSE. BUT AT THE DATE OF THE INCIDENT, YOU RECALL
10 TELLING THE NURSE THAT HE LEFT ON THE BIKE, TELLING OFFICER
11 CHAPMAN THAT HE LEFT ON THE BIKE, BUT IN YOUR WRITTEN
12 STATEMENT YOU SAID YOU DON'T KNOW HOW HE LEFT. YOU DON'T
13 KNOW WHEN HE LEFT?

14 A TRUE.

15 Q DID YOU SEE HIM APPROACH YOUR HOUSE ON A BIKE?

16 A NO.

17 Q BUT YOU JUST KNOW THAT HE LEFT ON A BIKE?

18 A YES.

19 Q BUT YOU DIDN'T SEE HIM WHEN HE LEFT?

20 A NO.

21 Q DO YOU RECALL WHEN YOU WERE TALKING TO THE TWO MEN
22 OUTSIDE, YOU TOLD THEM THAT THIS PERSON LEFT ON A BIKE?

23 A THE TWO GUYS WHO HELP ME, THE ONES WHO TOLD ME THAT
24 THEY SAW HIM WHEN HE WAS LEAVING MY HOUSE ON A BIKE.

25 Q SO YOUR TESTIMONY IS THAT YOU DID OR DID NOT SEE HIM

[REDACTED] - CROSS BY MS. SMART [REDACTED]

1 LEAVE YOUR HOUSE?

2 A NO.

3 Q YOU DID NOT SEE HIM?

4 A I DID NOT.

5 Q SO THE INFORMATION YOU PROVIDED TO LAW ENFORCEMENT
6 THEN WAS THAT YOU DID SEE HIM LEAVE, THAT YOU SAW HIM LEAVE
7 ON A BICYCLE, AND YOU SAW HIM GO TOWARD SCOTT HILL ROAD; IS
8 THAT WHAT YOU SAID?

9 A THE -- I -- I -- I CAN'T TELL YOU FOR SURE WHAT
10 EXACTLY I TOLD THE POLICE.

11 Q BUT YOU DIDN'T TELL THEM THAT?

12 A I CAN TELL YOU NOW, I DIDN'T SEE HIM WHEN HE LEFT MY
13 HOUSE. I KNEW THAT BECAUSE THE PEOPLE WHO HELP ME TOLD ME
14 SO.

15 Q OKAY. LET'S TALK ABOUT SCOTTS HILL ROAD PARK, THAT'S
16 WHERE YOU INDICATED IN YOUR TESTIMONY ON DIRECT EXAM THAT
17 YOU SAW THIS STRANGER WHO APPROACHED YOU AND SAID THAT YOU
18 WERE PRETTY AND HAD THIS CONVERSATION WHILE YOU WERE AT THE
19 PARK WITH YOUR CHILDREN; IS THAT CORRECT?

20 A TRUE.

21 Q SO THE FIRST TIME YOU ENCOUNTERED THIS PERSON WAS AT
22 SCOTT HILL PARK; IS THAT CORRECT?

23 A TRUE.

24 Q AND IS THIS MONTHS AGO? MONTHS PRIOR TO THIS
25 INCIDENT?

[REDACTED] - CROSS BY MS. SMART [REDACTED] 18

1 A I HAVE NO IDEA WHEN.

2 Q AND I'M NOT EXACTLY SURE WHAT YOU SAID ON DIRECT, BUT
3 THE PERSON THAT YOU SAW PREVIOUSLY AT SCOTT HILL PARK, WAS
4 THAT THE PERSON THAT WAS AT YOUR HOUSE ON THE DATE OF THIS
5 INCIDENT?

6 A I TOLD BEFORE, I CAN TELL YOU AGAIN, I PAY NO
7 ATTENTION. I WAS PAYING ATTENTION ON MY KIDS.

8 Q BUT THEY LOOKED SIMILAR?

9 A BECAUSE OF THE KIND OF CLOTHES THAT WAS WEARING,
10 BECAUSE WAS RIDING A BICYCLE, BECAUSE IT WAS A BLACK MAN.

11 Q YOU DON'T RECALL TELLING OFFICER CHAPMAN THAT THE MAN
12 THAT YOU SAW AT SCOTT HILL PARK WAS VERY SIMILAR TO THE MAN
13 THAT WAS AT YOUR HOUSE THAT DAY?

14 A I TOLD HIM WHAT I TELL YOU NOW.

15 Q LET'S TALK ABOUT YOUR BED. IS THIS A PICTURE OF YOUR
16 BED?

17 A YES, MA'AM.

18 Q IS THAT THE WAY YOUR BED LOOKED THE DAY THE INCIDENT
19 OCCURRED?

20 A YES, MA'AM.

21 Q AND WAS THAT PICTURE TAKEN BY THE SHERIFF'S
22 DEPARTMENT?

23 A YES, MA'AM.

24 Q AND WAS THAT PICTURE TAKEN ON THE DATE OF THE
25 INCIDENT?

██████████ - CROSS BY MS. SMART ██████████ 9

1 A YES, MA'AM.

2 Q WAS IT TAKEN AFTER THE INCIDENT OCCURRED?

3 A YES.

4 Q AND IT'S A TRUE AND ACCURATE DEPICTION OF YOUR BEDROOM
5 AT THE TIME OF THE INCIDENT?

6 A YES.

7 MS. SMART: YOUR HONOR, I WOULD LIKE TO PUBLISH THIS
8 TO THE JURY, A PICTURE THE ---

9 THE COURT: WHAT EXHIBIT IS IT?

10 MS. SMART: IT WILL BE DEFENSE EXHIBIT 1.

11 THE COURT: ALL RIGHT. YES, YOU MAY DO SO. IN OTHER
12 WORDS, YOU'RE JUST NOW OFFERING IT? I THOUGHT YOU MEANT IT
13 WAS ALREADY IN EVIDENCE. OKAY. ANY OBJECTION?

14 MS. MILLICAN: NO OBJECTION, YOUR HONOR.

15 THE COURT: ALL RIGHT. WILL BE ADMITTED INTO EVIDENCE
16 AS DEFENSE EXHIBIT NO. 1.

17 (LARGE COLOR PHOTO MARKED IN EVIDENCE AS DEFENDANT'S
18 EXHIBIT NO. 1.)

19 Q IF YOU DON'T MIND, CAN YOU STEP DOWN.

20 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

21 Q OKAY. COULD YOU SHOW THE JURY ON THIS PICTURE WHERE
22 YOU WERE?

23 A RIGHT HERE.

24 Q AND WHERE WAS THE DEFENDANT?

25 A AGAINST ME RIGHT HERE.

[REDACTED] - CROSS BY MS. SMART. [REDACTED] 0

1 THE COURT: KEEP YOUR VOICE UP PLEASE.

2 A I WAS HERE AND HE WAS AGAINST ME.

3 Q SO ONLY THIS AREA?

4 A YES, MA'AM.

5 Q AND THIS IS WHERE THE STRUGGLE OCCURRED?

6 A YES, MA'AM.

7 Q AND IS THIS HOW YOUR BED LOOKED WHEN LAW ENFORCEMENT
8 CAME?

9 THE COURT: ALL RIGHT. SHE CAN'T SEE YOU -- YES,
10 OKAY. YOU ALL MOVE BACK FROM THE JURY A LITTLE BIT. MS.
11 SMART, MOVE BACK THIS WAY SO EVERYBODY CAN SEE. THERE YOU
12 GO. ALL RIGHT.

13 Q POINT FOR THE JURY WHERE YOU WERE ON YOUR BED?

14 A I WAS ON -- RIGHT HERE. AND THE GUY WAS RIGHT HERE.

15 Q AND YOUR STRUGGLE OCCURRED RIGHT HERE?

16 A YES, MA'AM.

17 Q WERE THESE ITEMS ON THE BED DURING THE STRUGGLE?

18 A I SUPPOSE SO.

19 Q YOU DIDN'T PUT ANYTHING ON THE BED AFTER IT HAPPENED?

20 A NO.

21 Q YOU DIDN'T TAKE ANYTHING OFF THE BED AFTER IT
22 HAPPENED?

23 A NO.

24 Q YOU STRUGGLED RIGHT HERE?

25 A YES.

██████████ - CROSS BY MS. SMART

██████████ 1

- 1 Q WITH THE SUSPECT?
- 2 A YES.
- 3 Q AND YOU FOUGHT HIM RIGHT HERE?
- 4 A YES.
- 5 Q AND HE THREW YOU FROM THE FLOOR FROM RIGHT HERE?
- 6 A I WAS HERE AND ANOTHER FURNITURE RIGHT HERE. WHEN --
- 7 IN -- IN THE MOMENT HE PULLED ME AND THREW ME AGAINST THE
- 8 FURNITURE.
- 9 Q BUT ALL THAT OCCURRED RIGHT HERE?
- 10 A YES, MA'AM.
- 11 Q AND YOU DIDN'T TIDY UP THE BED, YOU DIDN'T RE-MAKE THE
- 12 BED?
- 13 A NO.
- 14 Q YOU DIDN'T DO ANYTHING TO THE BED AFTER THIS OCCURRED?
- 15 A YOU HAVE TO KEEP IN MIND, YOU KNOW, THAT HE WAS
- 16 POINTING A GUN ON MY FACE.
- 17 Q BUT YOU FOUGHT HIM? YOUR TESTIMONY TO THE COURT WAS
- 18 THAT YOU FOUGHT HIM DURING THIS INCIDENT?
- 19 A YES.
- 20 Q YOU CAN RETAKE YOUR SEAT.
- 21 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 22 Q IS YOUR HUSBAND PRESENT IN THE COURT TODAY?
- 23 A YES.
- 24 Q WHAT TYPE OF RELATIONSHIP DO YOU HAVE WITH YOUR
- 25 HUSBAND? IS HE JEALOUS?

~~REDACTED~~ CROSS BY MS. SMART ~~REDACTED~~ 2

1 MS. MILLICAN: OBJECTION, YOUR HONOR. RELEVANCE.

2 THE COURT: ALL RIGHT. COME FORWARD PLEASE.

3 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
4 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

5 THE COURT: OBJECTION IS SUSTAINED AS ASKED. NEXT
6 QUESTION.

7 Q YOUR TESTIMONY WAS THAT YOUR HUSBAND WAS A JEALOUS
8 MAN; IS THAT CORRECT?

9 A TRUE.

10 Q AND ON THIS PARTICULAR DAY YOU INDICATED THAT YOUR
11 HUSBAND WAS ABOUT TO COME HOME?

12 A TRUE.

13 Q AND YOU KNEW THIS BECAUSE YOU WOULD BE HOME FROM 12:00
14 TO 3:00 PREPARING FOR YOUR HUSBAND TO COME HOME?

15 A TRUE.

16 Q DO YOU RECALL WHAT TIME THIS INCIDENT OCCURRED?

17 A IT WAS AROUND MAYBE 3:00 O'CLOCK. I CAN'T TELL YOU
18 FOR SURE THE HOUR.

19 Q IT WAS BETWEEN 1:00 AND 3:00?

20 A YES, MA'AM.

21 Q DOES ABOUT 2:40 SOUND CORRECT?

22 A YES, MA'AM.

23 Q AND YOUR HUSBAND WAS ABOUT TO COME HOME AT 3:00
24 O'CLOCK?

25 A I JUST WAS TRYING TO DEFEND MYSELF.

[REDACTED] - CROSS BY MS. SMART [REDACTED]

- 1 Q BUT YOUR HUSBAND WAS ABOUT TO COME HOME AT 3:00
2 O'CLOCK?
- 3 A NO.
- 4 Q WHAT TIME -- WHAT TIME DID YOUR HUSBAND COME HOME?
- 5 A 5:00 O'CLOCK.
- 6 Q 5:00 O'CLOCK?
- 7 A YES, MA'AM.
- 8 Q 5:00 O'CLOCK?
- 9 A YES.
- 10 Q WHAT TIME DID THE ASSAILANT LEAVE YOUR HOUSE, ABOUT?
- 11 A EVERY SINGLE DAY?
- 12 Q NO. ON THE DATE THAT THIS INCIDENT OCCURRED, WHAT
13 TIME DID THE SUSPECT LEAVE YOUR HOUSE?
- 14 A I DON'T KNOW. IT WAS -- EVERYTHING HAPPENED VERY
15 FAST.
- 16 Q IT WAS ALMOST 5:00 O'CLOCK?
- 17 A OH, NO.
- 18 Q NOW, WASN'T ALMOST 5:00 O'CLOCK. BUT YOUR TESTIMONY
19 IS THAT YOUR HUSBAND CAME HOME AT 5:00 O'CLOCK?
- 20 A NO. MY HUSBAND CAME ABOUT 2:45.
- 21 Q ABOUT 2:45?
- 22 A AND HE NORMALLY ---
- 23 Q BUT HE CAME HOME THAT DAY AT 2:45?
- 24 A YES, MA'AM.
- 25 Q OKAY. AND THE SUSPECT HAD JUST LEFT ---

[REDACTED] - CROSS BY MS. SMART [REDACTED] 4

- 1 A YES.
- 2 Q --- WHEN YOUR HUSBAND CAME HOME?
- 3 A YES.
- 4 Q WAS THERE A LOT OF TIME SPENT IN THAT BEDROOM DURING
- 5 THE COURSE OF THIS INCIDENT?
- 6 A NO. MAYBE 5 MORE MINUTES.
- 7 Q DID HE VIOLENTLY THROW YOU TO THE FLOOR OR DID YOU
- 8 JUST FALL TO THE FLOOR?
- 9 A NO. HE THREW ME.
- 10 Q HE THREW YOU TO THE FLOOR?
- 11 A HE THREW ME AND THREW ME AGAINST THE FURNITURE.
- 12 Q OKAY. WERE YOU ABLE TO IDENTIFY YOUR ATTACKER PRIOR
- 13 TO TODAY?
- 14 A YES.
- 15 Q SO PRIOR TO TODAY YOU KNEW WHO HE WAS?
- 16 A NO.
- 17 Q SO DURING THE COURSE OF THIS ENTIRE INCIDENT OVER THE
- 18 PAST YEAR, YOU WERE NEVER ABLE TO IDENTIFY HIM?
- 19 A NO.
- 20 Q YOU NEVER TOLD LAW ENFORCEMENT WHO HE WAS?
- 21 A NO.
- 22 Q YOU WERE ABLE TO -- YOU TOLD OFFICER CHAPMAN -- DO YOU
- 23 RECALL TELLING OFFICER CHAPMAN THAT HIS PICTURE -- HIS FACE
- 24 WAS IN YOUR MIND?
- 25 A YES.

[REDACTED] - CROSS BY MS. SMART [REDACTED] 5

1 Q AND YOU WERE ABLE TO GIVE A DESCRIPTION OF HIM TO
2 OFFICER CHAPMAN?

3 A YES.

4 Q AND THAT HE SUGGESTED THAT YOU DESCRIBE HIM TO A
5 SKETCH ARTIST?

6 A YES.

7 Q AND YOU DID THAT, DIDN'T YOU?

8 A YES.

9 Q AND THIS WAS TWO DAYS AFTER THE INCIDENT OCCURRED?

10 A YES.

11 Q SO JUST FOR CLARITY, THE DAY AFTER THE INCIDENT
12 OCCURRED, YOU WERE SHOWN A PHOTO LINE-UP THAT YOU DID NOT
13 PICK THE SUSPECT OUT OF. THE NEXT DAY YOU GAVE A
14 DESCRIPTION TO A SKETCH ARTIST WHO DREW A PICTURE OF THE
15 SUSPECT; IS THAT CORRECT?

16 A TRUE.

17 Q AND THAT PICTURE ACCURATELY DESCRIBED THE WAY THE
18 SUSPECT LOOKED?

19 A YES.

20 Q AND DID THAT PICTURE RESEMBLE MR. JOHNSON?

21 A YES.

22 Q VERY MUCH SO?

23 A THE -- THE ONLY DIFFERENCE IS NOW HE LOOKS FAT AND
24 WITH MUSTACHE AND THE BEARD.

25 Q WAS ANY MONEY STOLEN?

[REDACTED] - CROSS BY MS. SMART [REDACTED] 6

1 A THE MONEY THAT MY HUSBAND GAVE ME.

2 Q OKAY. WHERE WAS IT STOLEN FROM?

3 A THE -- THE -- THE -- REMEMBER WHEN I PICK PENCIL --

4 PENCIL AND PAPER, IT'S KIND OF NOTEBOOK. AND THE MONEY,

5 CASH, WAS JUST THERE.

6 Q IT WAS GONE. BUT DID YOU SEE ANYBODY TAKE IT?

7 A NO, MA'AM.

8 Q SO YOU DON'T KNOW WHETHER OR NOT THE SUSPECT TOOK

9 MONEY FROM YOUR NOTEBOOK?

10 A NO, MA'AM.

11 Q BUT YOU TOLD LAW ENFORCEMENT THAT HE DID?

12 A YES, MA'AM.

13 Q NOW, LET'S TALK ABOUT THE SUSPECT'S DEMEANOR WHILE HE

14 WAS AT YOUR HOUSE. DO YOU REMEMBER TELLING INVESTIGATOR

15 CHAPMAN THAT HE REMAINED CALM THE ENTIRE TIME?

16 A HE WAS CALM WHEN HE KNOCK THE DOOR, WHEN HE DIAL THE

17 PHONE, WHEN I TURN MY BACK TO PICK PENCIL AND PAPER AND HE

18 POINT MY FACE WITH THE GUN. HE CHANGE VERY -- HE CHANGE

19 COMPLETELY.

20 Q OH, HE CHANGED?

21 A YES, HE WAS NERVOUS, IN A BIG HURRY. HE WAS SHAKING.

22 HE CHANGE LIKE THIS.

23 Q BUT YOU DON'T RECALL TELLING OFFICER CHAPMAN THAT HE

24 REMAINED CALM AND HE DID NOT SEEM TO PANIC?

25 A NO.

██████████ - REDIRECT BY MS. MILLICAN

██████████ 7

1 Q I'M SORRY TO KEEP GOING BACK AND FORTH, BUT AT SCOTT
2 HILL PARK YOU TOLD OFFICER CHAPMAN THAT THIS BLACK MALE
3 LOOKED SIMILAR TO YOUR ATTACKER -- APPROACHED YOU WHILE YOU
4 WERE WITH YOUR KIDS AND STARTED BRAGGING ABOUT HOW HE COULD
5 TAKE CARE OF YOU. DO YOU REMEMBER TELLING HIM THAT?

6 A NO.

7 Q AND THAT HE HAD LOTS OF MONEY AND HE RETIRED EARLY?

8 A YES.

9 Q AND THAT HE KNEW YOUR SISTER AND THAT YOUR SISTER WAS
10 PRETTY?

11 A TRUE.

12 Q AND YOU SAID THAT THAT MAN LOOKED VERY SIMILAR TO THE
13 MAN THAT WAS AT YOUR HOUSE THAT DAY? THAT'S TRUE?

14 A LIKE I TOLD YOU BEFORE, I -- I JUST TOLD HIM THAT
15 BLACK AND THE SAME COMPLEXION. BUT I -- I -- I PAID NO
16 ATTENTION IN HIS FACE AT THAT PARTICULAR TIME. I WAS
17 KEEPING ALL OF MY ATTENTION ON -- ON MY KIDS. AND WHEN HE
18 START TELLING ME ABOUT YOU ARE PRETTY, AND I JUST ---

19 MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS, YOUR
20 HONOR.

21 THE COURT: ALL RIGHT. REDIRECT, MS. MILLICAN?

22 MS. MILLICAN: THANK YOU, YOUR HONOR.

23 REDIRECT EXAMINATION BY MS. MILLICAN:

24 Q HOW MANY STATEMENTS DO YOU RECALL ACTUALLY WRITING
25 DOWN YOURSELF?

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 18.

1 A ONE. TWICE. ONE IN -- IN MY HOUSE WHEN THE POLICE
2 CAME AND ANOTHER IN THE HOSPITAL.

3 Q HOW MANY TIMES SINCE THIS HAPPENED HAVE YOU TOLD THE
4 STORY TO POLICE?

5 A MANY TIMES.

6 Q DESCRIBE WHAT EVERYONE IN THE PHOTO THAT THE POLICE
7 SHOWED YOU THAT DAY -- WHAT THEY LOOKED LIKE, IN THE LINE-
8 UP THE DEFENSE ATTORNEY WAS REFERRING TO? CAN YOU DESCRIBE
9 WHAT THEY LOOKED LIKE?

10 A YOU ASKING ME TO DESCRIBE THE MAN WHO HURT ME OR -- I
11 MISUNDERSTOOD.

12 Q OKAY. THE DEFENSE ATTORNEY WAS ASKING YOU QUESTIONS
13 ABOUT PHOTO LINE-UPS ---

14 A YES.

15 Q --- AND THAT YOU COULDN'T PICK OUT THE MAN WHO
16 ATTACKED YOU FROM ALL THOSE PICTURES THEY SHOWED YOU?

17 A UH-HUH.

18 Q WHAT DID EVERY ONE OF THOSE PICTURES LOOK LIKE
19 GENERALLY AS YOU RECALL?

20 A I DON'T KNOW. THE SAME, I THINK. I -- I -- EVERYONE
21 -- EVERYONE WAS WEARING THE SAME CLOTHES, SAME -- I DON'T
22 KNOW ---

23 Q WERE THERE ---

24 A --- HOW TO -- HOW TO IDENTIFY.

25 Q DID THEY ALL HAVE THE SAME FACIAL HAIR?

██████████ - REDIRECT BY MS. MILLICAN ██████████

- 1 A ALL OF THEM HAD -- LIKE I TOLD BEFORE -- THE SAME
2 CLOTHES AND -- AND -- AND BAD FACE KIND OF.
- 3 Q WERE THEY ALL THE SAME RACE?
- 4 A YES.
- 5 Q WERE THEY ALL THE SAME GENDER?
- 6 A YES.
- 7 Q DID THEY ALL HAVE THE SAME HAIR STYLE?
- 8 A YES.
- 9 Q DO YOU KNOW ABOUT HOW MANY PHOTOS YOU LOOKED AT?
- 10 A I -- I JUST REMEMBER TWO BOOKS, BIG BOOKS.
- 11 Q BUT COULD YOU REMEMBER WHAT THE MAN THAT ATTACKED YOU
12 LOOKED LIKE?
- 13 A YES, IT'S -- IT'S -- IT'S SOMETHING THAT I NEVER -- I
14 NEVER COME TO FORGOT. THE DIFFERENCE IS WHEN YOU CAN SEE
15 THE PERSON IN FRONT OF YOU, IF YOU COMPARE WITH THE
16 PICTURES, THERE'S NO -- THERE'S NO WAY TO IDENTIFY A
17 PICTURE BECAUSE LOOKS VERY DIFFERENT THAN THE PERSON LOOKS
18 VERY FAT, LOOKS DIFFERENT. I KNOW WHO IS.
- 19 Q WHAT DAY DID THEY SHOW YOU ALL THESE PICTURES, DO YOU
20 REMEMBER?
- 21 A NO.
- 22 Q WAS IT THE SAME DAY OF THE INCIDENT OR WAS IT SEVERAL
23 DAYS LATER?
- 24 A NO. LATER.
- 25 Q DO YOU REMEMBER WHEN YOU FIRST -- WHEN INVESTIGATOR

RE-REDIRECT BY MS. MILLICAN

0

1 CHAPMAN FIRST CAME OUT TO SEE YOU AT YOUR HOUSE?

2 A YES.

3 Q DID HE HAVE ANYTHING WITH HIM WHEN HE CAME TO SEE YOU
4 THAT DAY? DO YOU RECALL?

5 A NO.

6 Q OKAY. THE BOOKS AND PHOTOS THAT WE TALKED ABOUT THAT
7 YOU SAID YOU LOOKED AT, DID ALL THE PHOTOS OF ALL THE
8 PEOPLE THAT LOOKED SIMILAR THAT YOU SPOKE OF -- WHAT DAY
9 DID YOU LOOK AT THOSE?

10 A I DON'T REMEMBER.

11 Q OKAY. DO YOU KNOW IF THE DEFENDANT REALLY DIALED THE
12 TELEPHONE OR IS IT POSSIBLE THAT HE ACTED LIKE HE DIALED IT
13 AND MAYBE YOU HEARD THE OPERATOR?

14 A HE -- I JUST -- HE DIAL. HE DIAL.

15 Q DO YOU KNOW IF HE WAS ACTUALLY CALLING A NUMBER THAT
16 HAD A VOICE MAIL?

17 A I HAVE NO IDEA. I JUST SAW THAT HE DIAL TWICE.

18 Q DID YOU ACTUALLY HEAR THE OTHER END OF THE PHONE? DID
19 YOU HAVE IT TO YOUR EAR?

20 A NO. HE -- HE WAS WITH THE PHONE HERE AND I JUST KIND
21 OF HEAR KIND OF SOMETHING, BUT I CAN'T TELL YOU FOR SURE.

22 I DON'T HEAR BOTH SIDES. I CAN'T TELL FOR SURE. I JUST
23 COULD HEAR SOMETHING, AND HE JUST TOLD ME IT'S NOBODY IN --
24 IN THE HOME. SO WHEN HE DIAL THE SECOND TIME, I JUST TOLD
25 HIM, WELL, IF YOU WANT ME TO TAKE A MESSAGE WHEN MR. GREEN

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 1

1 -- I THOUGHT MR. GREEN WAS THE NEW NEIGHBOR IN FRONT OF MY
2 HOUSE.

3 Q [REDACTED], DID YOU GROW UP AROUND GUNS AT ALL?

4 MS. SMART: OBJECTION, YOUR HONOR, IT EXCEEDS CROSS.

5 MS. MILLICAN: YOUR HONOR, THE DEFENSE ASKED ON CROSS
6 EXAMINATION TO GO INTO GREAT DETAIL ON THE DESCRIPTION OF
7 THE GUN SHE SAW.

8 THE COURT: OBJECTION OVERRULED. IT WAS ASKED ON
9 CROSS EXAMINATION. SHE WAS ASKED ON CROSS EXAMINATION THE
10 GUN AND THE TYPE GUN AND SO FORTH, AND I THINK IT IS IN
11 RESPONSE. AND THIS IS WITHIN THE SCOPE OF REDIRECT.
12 OBJECTION OVERRULED.

13 MS. MILLICAN: THANK YOU, YOUR HONOR.

14 Q [REDACTED], I'LL JUST ASK YOU THE QUESTION AGAIN. DID YOU
15 GROW UP AROUND GUNS? ARE YOU FAMILIAR WITH GUNS?

16 A WELL, YES. MY -- MY BROTHERS LOVE TO HUNT, SO I CAN
17 -- I CAN RECOGNIZE GUNS. I CAN KNOW THE DIFFERENCE BETWEEN
18 A REAL GUN AND -- AND A B.B. GUN OR -- AND THIS IS WHY I
19 WAS VERY STRESSED, VERY SHOCKED BECAUSE HE -- HE COCK GUN
20 AND POINT IN MY FACE AND I THOUGHT HE'S GOING TO KILL ME.
21 THEN HE TOLD ME, THE BED LOOKS FINE. WHY YOU FIGHT? I --
22 I -- I FIGHT -- I THOUGHT HE WOULD KILL ME.

23 MS. SMART: OBJECTION, YOUR HONOR, THAT DOESN'T HAVE
24 ANYTHING TO DO WITH THE GUN.

25 THE COURT: I'LL SUSTAIN THE OBJECTION. MOVE ONTO

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 22

1 SOMETHING ELSE.

2 MS. MILLICAN: THANK YOU, YOUR HONOR.

3 Q ON THE BED, [REDACTED] THE DEFENSE ATTORNEY ASKED YOU ON
4 CROSS EXAMINATION IF YOU MOVED OR IF YOU STAYED IN ONE
5 SPOT. IS IT POSSIBLE THAT YOU COULD HAVE MOVED AND STAYED
6 IN ONE SPOT? MOVED AROUND?

7 MS. SMART: OBJECTION, YOUR HONOR, CALLS FOR
8 SPECULATION.

9 THE COURT: ON THAT GROUNDS IT IS OVERRULED.

10 MS. MILLICAN: I'LL REPHRASE, YOUR HONOR.

11 THE COURT: OKAY.

12 Q DID YOU MOVE WHILE YOU WERE IN ONE SPOT? DID YOU MOVE
13 AROUND IN ONE SPOT?

14 A I WAS IN JUST ONE SPOT.

15 Q DID YOU WIGGLE OR DID YOU MOVE OR DID YOU LAY YOUR
16 HANDS DOWN AT YOUR SIDE PERFECTLY STILL? WHAT DID YOU DO
17 IN THAT POSITION?

18 A I -- I -- I WAS -- WHEN -- WHEN ONE HAND WOULD TRY TO
19 COVER MY VAGINA IN ORDER TO DON'T LET HIM -- HIS PENIS GET
20 INTO. WITH THE OTHER HAND I WAS TRYING TO PUT HIS FACE FAR
21 AWAY. BUT I ALWAYS WAS VERY SCARED THAT HE -- HE HAD A
22 GUN, AND I WAS VERY SCARED THAT HE IS GOING TO KILL ME. HE
23 -- HE -- HE SAID SO.

24 Q THE DEFENSE ATTORNEY KEPT GOING OVER THE TIME FRAME
25 AGAIN ON THE AFTERNOON. BETWEEN TELLING THE DEFENDANT THAT

RE-EXAMINATION - REDIRECT BY MS. MILLICAN

1 YOUR HUSBAND WAS COMING HOME AND THE GUN SLIPPING DOWN AND
2 HIM GOING OUT THE DOOR, WHAT EXACTLY WAS THE TIME FRAME ONE
3 MORE TIME JUST GOING THROUGH THAT, ANA, TO CLARIFY?
4 A WAS VERY -- EVERYTHING PASS VERY, VERY FAST. WHEN --
5 WHEN HE -- WHEN HE -- WHEN HE WAS AGAINST ME AND -- AND --
6 AND I ALWAYS WAS MOVING AROUND, AND IN ORDER TO RAPE ME, HE
7 PUT THE GUN HERE AND -- AND TOOK THE -- THE -- HIS BODY
8 PART AND HE WAS ON TOP OF ME AND HE PUT HIS PENIS INTO MY
9 VAGINA AND -- AND I JUST TAKE HIS PART OUT OF ME AND -- AND
10 I PUT HIS FACE FAR FROM ME, AND HE CAUGHT MY -- MY -- MY
11 FINGER AND HE BITE ME SO HARD, SO I -- I -- I -- I WAS
12 STILL IN -- IN -- IN THIS MOMENT. THE GUN SLIDE AND --
13 AND I TRIED TO -- TO TAKE THE GUN BECAUSE I -- I -- I -- I
14 JUST TRIED TO FIGHT FOR THE GUN. I THOUGHT HE -- HE IS
15 GOING TO KILL ME AND -- AND -- AND I HAVE TO FIGHT FOR THE
16 GUN. SO WE -- WE TRIED TO FIGHT FOR GET THE GUN, AND THE
17 GUN SLIDE AND HE COULDN'T REACH THE GUN, SO HE PULLED ME
18 AND THREW ME AWAY, AND HE TRIED TO TAKE THE GUN OUT AND --
19 AND -- AND ---

20 MS. SMART: OBJECTION, YOUR HONOR.

21 THE COURT: WHAT'S YOUR OBJECTION?

22 MS. SMART: SHE IS NARRATING. SHE IS TELLING A STORY.

23 THE COURT: YES, MA'AM, SHE CERTAINLY HAS THAT RIGHT.
24 OBJECTION OVERRULED. GO AHEAD.

25 A AND I -- I WALK ON MY KNEES, AGAIN, TRYING TO STILL

REDIRECT BY MS. MILLICAN

24

1 FIGHT FOR THE GUN. BUT EVERYTHING PASS VERY, VERY FAST.
2 AND FINALLY HE -- HE TOOK THE GUN AGAIN AND I WAS ON MY
3 KNEES THERE. AND I THOUGHT HE'S GOING TO SHOOT. HE
4 DIDN'T. HE WALKED TO THE KITCHEN. HE PULLED THE PHONE.
5 HE COME BACK.

6 THE COURT: OKAY. LET'S DON'T REPEAT THE TESTIMONY.
7 JUST ASK HER SPECIFIC QUESTIONS.

8 MS. MILLICAN: OKAY, YOUR HONOR.

9 Q AT WHAT POINT DID THE DEFENDANT GIVE YOU AN
10 OPPORTUNITY TO ESCAPE?

11 A THE SECOND TIME THAT HE WALK TO THE KITCHEN.

12 Q DID HE WALK TO THE KITCHEN BECAUSE HE THOUGHT YOUR
13 HUSBAND WAS COMING HOME? DID HE WALK TO THE KITCHEN
14 BECAUSE YOU INDICATED YOUR HUSBAND WAS COMING HOME?

15 A I ALWAYS -- YES, I THINK SO. I ALWAYS WAS TELLING HIM
16 MY HUSBAND IS -- IS -- IS VERY VIOLENT, HE'S GOING TO KILL
17 US. PLEASE JUST GO. PLEASE. MY HUSBAND IS VERY SWAYED
18 (PHONETIC). BUT I -- I WAS TRYING TO SAY SOMETHING THAT
19 JUST FORCING HIM -- FORCING HIM TO GO. AND -- AND -- AND
20 -- AND THE SECOND TIME THAT HE GO BACK TO THE KITCHEN, HE
21 TURNED HIS BACK AND I JUST ESCAPE.

22 Q WHY DID YOU THINK THE DEFENDANT HAD A BICYCLE?

23 A I HAVE NO IDEA.

24 Q DID YOU SEE HIM RIDING A BICYCLE TO YOUR HOUSE?

25 A NO, MA'AM.

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 5

1 Q DID YOU SEE HIM RIDE A BICYCLE FROM YOUR HOUSE?

2 A NO.

3 Q IS IT POSSIBLE MAYBE YOU HEARD SOMEBODY ELSE SAID THEY
4 SAW SOMEBODY THAT LOOKED LIKE THE DEFENDANT RIDING A
5 BICYCLE?

6 A THE ONLY REASON BECAUSE I KNOW THAT HE WAS ON BICYCLE
7 WAS BECAUSE THE PEOPLE THAT HELP ME SAW HIM.

8 Q WAS THE BICYCLE AT YOUR HOUSE WHEN YOU AND THE MEN
9 WALKED BACK FROM DOWN THE ROAD TO THE HOUSE WAITING ON
10 POLICE?

11 A NO.

12 Q THERE'S NO BICYCLE AT YOUR HOUSE THEN [REDACTED]

13 A NO.

14 Q DO YOU ASSUME FROM THAT HE MUST HAVE LEFT WITH A
15 BICYCLE?

16 A AGAIN, I -- I -- I JUST ESCAPE AND I NEVER TURN MY
17 FACE BACK. I NEVER KNEW IF HE WAS THERE OR IF HE JUST
18 LEFT. I KNEW THAT HE LEFT BECAUSE OF THE PEOPLE WHO HELP
19 ME TOLD ME.

20 Q [REDACTED], EXPLAIN WHAT WAS GOING THROUGH YOUR MIND WHEN YOU
21 LEFT AND YOU WOULDN'T LOOK BACK?

22 A I -- I THOUGHT HE -- HE -- HE WILL SHOT ME IN MY BACK.
23 BUT WAS THE ONLY THING THAT I TRIED. I JUST TRIED TO
24 ESCAPE. I -- I -- I -- I JUST WAS THE ONLY -- ONLY CHANCE
25 THAT I -- I -- I -- I HAD. HE -- HE -- HE TURNED HIS BACK

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 26

1 AND WALKED AGAIN TO THE KITCHEN, AND I -- I -- I JUST TRIED
2 TO ESCAPE.

3 Q [REDACTED], DO YOU KNOW WHAT TRAUMA MEANS FROM YOUR MEDICAL
4 RECORD? WHAT DOES TRAUMA MEAN?

5 A IT'S SOMETHING HURT SOMETHING, BROKE SOMETHING.

6 Q DO YOU KNOW WHAT -- WHAT DOES EJACULATE MEAN? WHAT DO
7 YOU THINK EJACULATE MEANS?

8 A WHEN THE SEMEN GOES OUT TO THE PENIS.

9 Q WHEN DOES THAT USUALLY HAPPEN?

10 A WHEN -- WHEN THE MALE IS VERY EXCITED AND FINISHED
11 HIS ---

12 Q [REDACTED] DO YOU BELIEVE THAT THE DEFENDANT DID NOT
13 EJACULATE BECAUSE HE DIDN'T FINISH?

14 A I THINK THAT HE DID NOT BECAUSE OF THE HURRY, BECAUSE
15 OF HE WAS VERY NERVOUS BECAUSE I ALWAYS WAS TELLING HIM MY
16 HUSBAND IS VERY VIOLENT, HE'S GOING TO COME IN AND KILL US.
17 PLEASE JUST GO -- GO PLEASE. SO I BELIEVE IT WAS BECAUSE
18 HE -- HE -- HE WAS KIND OF INTIMIDATED BY MY WORDS -- BY --
19 BY -- BY -- BECAUSE I ALWAYS WAS TELLING HIM HOW BAD MY
20 HUSBAND IS. I DON'T KNOW. HE WAS VERY NERVOUS.

21 EVERYTHING HAPPENED SO FAST. HE WAS WITH THE POWER BECAUSE
22 OF THE GUN, BUT I BELIEVE -- WELL, JUST BECAUSE OF THE GUN.

23 Q IF YOU DID HAVE BRUISING DOWN AROUND YOUR VAGINA, HOW
24 WOULD YOU SEE IT?

25 A I WAS NOT ABLE TO.

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 7

1 Q SO DO YOU REALLY KNOW WHETHER OR NOT THERE WAS
2 BRUISING OR TRAUMA TO YOUR VAGINA ACCORDING TO THE MEDICAL
3 PERSONNEL?

4 A NO.

5 Q DID YOU KNOW YOUR HUSBAND WAS COMING HOME WHEN HE
6 SHOWED UP?

7 A I DIDN'T. I DIDN'T KNOW. HE WAS IN -- EVERY YEAR HE
8 HAS MEETINGS, TWO WEEKS. AND WAS ONE OF THESE WEEKS THAT
9 MEETING TIMES. AND AFTER THAT HE NORMALLY IS AT HOME AT
10 12:00, BUT NOT IN THESE MEETING WEEKS. I -- I HAD AN IDEA
11 THAT HE -- HE WAS ABOUT TO COME. AND I JUST TOLD THAT GUY
12 JUST TO TRY TO FORCE HIM -- FORCING HIM TO JUST GO AWAY AND
13 -- AND -- BUT I NEVER KNEW THAT MY HUSBAND WAS COMING.
14 THANK GOD HE WAS.

15 Q WHAT DID YOUR HUSBAND DO ONCE HE GOT HOME?

16 A WHEN HE CAME, HE -- ONE OF THE GOOD GUYS WHO HELP ME
17 TOLD HIM THAT SOMEBODY BROKE INTO MY HOUSE. HE ASKED ME IF
18 I WAS OKAY.

19 MS. SMART: YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MS. SMART: IT EXCEEDS SCOPE, AND SHE'S SAYING WHAT
22 ONE OF THE GOOD GUYS SAID TO HER HUSBAND.

23 THE COURT: I THOUGHT SHE WAS TESTIFYING AS TO WHAT
24 HER HUSBAND SAID. YOU CONTEND THAT IT'S NOT HEARSAY?

25 MS. MILLICAN: WELL, AS FAR AS WHAT HER HUSBAND SAID,

[REDACTED] - REDIRECT BY MS. MILLICAN [REDACTED] 28

1 I WOULD SUBMIT THAT IT PROBABLY WOULD BE. I'LL JUST RE-ASK
2 THE QUESTION.

3 THE COURT: REPHRASE THE QUESTION.

4 Q OKAY. WITHOUT STATING EXACTLY WHAT ANYONE SAID, WHAT
5 DID YOUR HUSBAND DO WHEN HE GOT HOME?

6 A HE JUST WALKED AND ASKED ME IF I WAS OKAY. AND I TOLD
7 HIM, YES, I'M FINE. THE POLICE IS COMING.

8 Q THEN WHAT DID HE DO?

9 A HE GO BACK. HE -- ON THE SAME WAY HE JUST CAME, HE
10 GET INTO HIS CAR AND -- AND -- AND -- AND GO TRY TO CATCH
11 THE GUY WHO BROKE INTO MY HOUSE.

12 Q HOW DID YOU TRY TO IDENTIFY THE DEFENDANT BEFORE TODAY
13 TO POLICE?

14 A HOW?

15 Q HOW?

16 A THE ONLY -- THE ONLY THING WAS THEY SHOWED ME
17 PICTURES, TWO BOOKS OF PICTURES. AND SADLY, I -- I -- I
18 COULDN'T IDENTIFY SEEING THE PICTURES.

19 Q DID YOU DESCRIBE HIM TO ANYONE?

20 A I DESCRIBE TO THE FIRST OFFICER WHO CAME TO MY HOUSE
21 -- I DESCRIBE TO INSPECTOR CHAPMAN AND TO A ARTIST WHO MADE
22 ME THE PICTURE.

23 Q DID THE PICTURE THE ARTIST MADE BASED ON YOUR
24 DESCRIPTION -- DID THAT LOOK TO YOU LIKE THE DEFENDANT?

25 A YES, IT'S HIM.

~~REDACTED~~ - RECROSS BY MS. SMART

129

1 Q OKAY.

2 A YES.

3 MS. MILLICAN: NO FURTHER QUESTIONS, YOUR HONOR.

4 THANK YOU.

5 THE COURT: RECROSS?

6 RECROSS EXAMINATION BY MS. SMART:

7 Q ~~Q~~ IF THE SUSPECT HAD EJACULATED ON THE DATE OF THIS
8 INCIDENT, WOULD YOU HAVE KNOWN IT?

9 A I BELIEVE, YES.

10 Q AND IT IS YOUR TESTIMONY THAT WHEN THIS INCIDENT
11 OCCURRED HE DID NOT EJACULATE?

12 A TRUE.

13 Q AND YOU TALKED ON DIRECT, CROSS, REDIRECT ABOUT YOUR
14 HUSBAND -- ABOUT TELLING THE SUSPECT THAT YOUR HUSBAND WAS
15 A VIOLENT MAN, THAT HE WAS COMING HOME, THAT HE WOULD, YOU
16 KNOW -- HE WAS JUST A VIOLENT MAN, AND THAT THE SUSPECT
17 SHOULD RUN BECAUSE HE WOULD KILL BOTH OF YOU. IS THAT NOT
18 TRUE?

19 A I TOLD HIM THAT MY HUSBAND WAS GOING TO COME. I TOLD
20 HIM THAT HE WAS A VIOLENT MAN.

21 Q AND THAT HE WOULD KILL BOTH OF YOU ---

22 A TRUE.

23 Q --- IF HE CAME HOME AND HE CAUGHT HIM THERE; IS THAT
24 NOT CORRECT?

25 A YES.

FRANK DILSAVER -- DIRECT BY MS. MILLICAN

30

1 Q DURING THE COURSE OF THIS WHOLE INCIDENT YOU NEVER
2 SCREAMED, YOU NEVER HOLLERED, AND HE NEVER EJACULATED THAT
3 DAY?

4 A TRUE.

5 MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.

6 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU MAY
7 STEP DOWN.

8 (THE WITNESS LEAVES THE WITNESS STAND.)

9 THE COURT: ALL RIGHT. COUNSEL, APPROACH JUST A
10 MINUTE PLEASE.

11 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
12 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

13 THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL
14 YOUR NEXT WITNESS.

15 MS. MILLICAN: THE STATE CALLS FRANK DILSAVER.

16 FRANK DILSAVER, BEING FIRST
17 DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
19 SPELL IT FOR THE COURT.

20 WITNESS: MY NAME IS FRANK DILSAVER. IT'S
21 D-I-L-S-A-V-E-R.

22 DIRECT EXAMINATION BY MS. MILLICAN:

23 Q MR. DILSAVER, HOW OLD ARE YOU?

24 A 48.

25 Q WHAT'S YOUR OCCUPATION?

FRANK DILSAVER - DIRECT BY MS. MILLICAN

131

1 A LAND SURVEYOR.

2 Q WHO DO YOU WORK FOR?

3 A DAVID GASQUE.

4 Q ON FEBRUARY THE 7TH, 2006 WERE YOU WORKING NEAR 94
5 CUFFY ROAD ON ST. HELENA?

6 A YES, MA'AM, I WAS.

7 Q ~~WHO~~ WHO WAS WORKING WITH YOU THAT AFTERNOON?

8 A BRIAN PATE.

9 Q DID YOU SEE ANYONE FITTING THE DEFENDANT'S DESCRIPTION
10 OUT AND ABOUT AROUND CUFFY ROAD THAT AFTERNOON?

11 A I SEEN A GENTLEMAN, BUT I COULDN'T IDENTIFY HIM IN ANY
12 WAY. BUT I SEEN SOMEONE GO BY THERE. THERE WASN'T MANY
13 PEOPLE ON THE ROAD AT ALL. THERE WAS ONLY ONE PERSON WE
14 SEEN GO BY, AND HE WAS RIDING A BICYCLE.

15 Q TO THE BEST OF YOUR ABILITY WHAT DO YOU RECALL AT ALL
16 IF ANYTHING, FROM ANY GENERALIZATION, OF THIS PARTICULAR
17 PERSON?

18 A HE WAS A BLACK GENTLEMAN. I COULDN'T -- LIKE I SAY, I
19 COULDN'T PICK HIM OUT. THAT DAY I COULDN'T HAVE PICKED HIM
20 OUT THAT AFTERNOON.

21 Q DID YOU SPEAK TO HIM AT ALL?

22 A I SAID SOMETHING TO HIM BECAUSE THERE WAS A DOG IN A
23 YARD THAT WAS BARKING, AND I TOLD HIM THAT THE DOG DIDN'T
24 SEEM TO BE TOO BAD. HE GOT OFF THE SIDE OF THE BICYCLE
25 LIKE HE WAS AFRAID OF THE DOG. AND I SAID, THE DOG ISN'T

1 THAT BAD. AND I JUST CARRIED ON WITH WHAT I WAS DOING.

2 Q WHERE DID YOU SEE HIM GOING? AND IF I MAY ---

3 MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN
4 FOR ---

5 THE COURT: YES, MA'AM.

6 MS. MILLICAN: --- THE ILLUSTRATION?

7 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

8 Q COULD YOU SHOW THE JURORS ABOUT WHERE YOU AND MR. PATE
9 WERE WORKING AND WHERE YOU SAW SOMEONE RIDE BY ON A
10 BICYCLE?

11 A WELL, WHEN I SEEN THE GENTLEMAN ON THE BICYCLE, I WAS
12 RIGHT ABOUT HERE.

13 THE COURT: STEP BACK FROM THE BOARD AND USE THE
14 POINTER. THE JURY IS HAVING A LITTLE TROUBLE SEEING.

15 A I WAS PROBABLY STANDING ABOUT RIGHT HERE ON THE SIDE
16 OF THE ROAD. AND HE COME RIDING UP ON THE BICYCLE. AND I
17 BELIEVE THE DOG WAS RIGHT IN HERE BARKING. AND HE GOT OFF
18 THE BICYCLE. AND I SAID WHAT I SAID TO HIM ABOUT THE DOG,
19 AND I JUST WALKED ON DOWN THE ROAD TO WHERE BRIAN WAS AT.

20 Q DO YOU HAVE ANY IDEA WHERE HE WENT AFTER THAT
21 ENCOUNTER?

22 A I DIDN'T SEE HIM. I PAID NO ATTENTION TO HIM AFTER
23 THAT.

24 Q OKAY. WHAT ELSE HAPPENED LATER THAT DAY?

25 A WELL, WITHIN ABOUT 15 OR 20 MINUTES THE LADY COME

FRANK DILSAVER - DIRECT BY MS. MILLICAN

133

1 RUNNING DOWN THE ROAD REALLY UPSET.

2 Q CAN YOU TELL ME WHO THE LADY WAS? DO YOU SEE HER
3 PRESENT IN THE COURTROOM?

4 A I BELIEVE THAT'S HER.

5 Q OKAY. WHAT DID YOU SEE?

6 A WELL, SHE WAS EXTREMELY UPSET. SHE WAS HOLDING HER
7 PANTS, AND SHE CAME UP AND SAID SOMEBODY HAD ROBBED HER AND
8 RAPED HER.

9 Q WAS SHE RUNNING?

10 A YES.

11 Q WAS SHE CRYING?

12 A YES, VERY UPSET.

13 Q WHAT DID YOU DO?

14 A WE CALLED THE LAW. AND WE LOOKED AROUND BECAUSE WE
15 KNEW THAT THE GUY ON THE BICYCLE WAS THE ONLY PERSON THAT
16 HAD BEEN THERE.

17 Q HOW ISOLATED IS THIS AREA?

18 A WELL, THE ONLY CARS THAT WE SEEN AT THE TIME WAS
19 SOMEONE THAT WAS IN HER YARD HAD LEFT. AND RIGHT AFTER
20 THEY LEFT, THAT'S WHEN THE GUY ON THE BICYCLE SHOWED UP.
21 BUT OTHER -- THAT WAS THE ONLY PERSON THAT WAS AROUND. SO
22 WE FIGURED THAT'S ---

23 Q DID YOU SEE HIM LEAVE HER HOUSE?

24 A NO, I DID NOT.

25 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT

FRANK DILSAVER - CROSS BY MS. SMART

134

1 NO. 7. DO YOU RECOGNIZE THAT PHOTO?

2 A YES, I DO.

3 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH
4 STATE'S 7 TO THE JURY?

5 THE COURT: YES.

6 Q IS IT THAT PHOTO?

7 A YES.

8 Q COULD YOU PLEASE EXPLAIN TO THE JURY WHERE YOU SAW
9 THIS FEMALE RUNNING AND WHERE YOU WERE?
10 A I WAS DOWN HERE SOMEWHERE. SHE WAS COMING UP THIS WAY
11 TOWARD US.

12 Q OKAY. SO ABOUT HOW FAR WAS IT THAT SHE MUST HAVE RUN
13 FROM THE POINT YOU SAW HER UNTIL SHE REACHED YOU?

14 A 300 FEET.

15 Q OKAY. YOU CAN TAKE THE STAND BACK. THANK YOU, MR.
16 DILSAVER.

17 (THE WITNESS RETURNS TO THE WITNESS STAND.)

18 MS. MILLICAN: I HAVE NO FURTHER QUESTIONS OF THIS
19 WITNESS AT THIS TIME. PLEASE ANSWER ANY QUESTIONS FOR THE
20 DEFENSE.

21 THE COURT: CROSS EXAMINATION, MS. SMART.

22 CROSS EXAMINATION BY MS. SMART:

23 Q MR. DILSAVER, DO YOU RECALL GIVING A WRITTEN STATEMENT
24 TO LAW ENFORCEMENT?

25 A YES.

FRANK DILSAVER — CROSS BY MS. SMART

135

1 Q AND DO YOU RECALL IN THAT WRITTEN STATEMENT STATING
2 THAT A SMALL HISPANIC FEMALE APPROACHED MYSELF AND BRIAN
3 PATE STATING THAT A BLACK MAN LEFT HER HOUSE ON A BICYCLE?

4 A YES.

5 Q SHE SAID HE ASSAULTED HER AND TRIED TO RAPE HER?

6 A YES, I BELIEVE THAT'S WHAT SHE SAID. [REDACTED]

7 Q DO YOU RECALL TELLING THE LADY THAT THE MAN LEFT HER
8 HOUSE ON THE BICYCLE OR DID SHE TELL YOU THAT THE MAN LEFT
9 HER HOUSE ON A BICYCLE?

10 A SHE MUST HAVE TOLD ME BECAUSE I DIDN'T SEE HIM LEAVE.

11 Q AND YOU WERE PRESENT WHEN THE HUSBAND CAME HOME?

12 A YEAH, I BELIEVE I WAS THERE WHEN HE PULLED UP. I WAS
13 OFF AT A DISTANCE.

14 Q DID YOU GET A CHANCE TO SPEAK TO HIM?

15 A NO. WELL, YES, I DID SAY SOMETHING TO HIM. I SAID,
16 IF THE GUY ON THE BICYCLE DID IT, YOU MUST HAVE JUST PASSED
17 HIM IF HE WENT DOWN THAT ROAD. THAT'S HOW QUICK IT WAS
18 AFTER HE PULLED UP. IF HE WENT DOWN THAT ROAD ON A
19 BICYCLE, HE HAD TO GO RIGHT BY HIM. BUT, OBVIOUSLY, HE
20 DIDN'T.

21 Q SO THE SUSPECT LEFT AND THE HUSBAND SHOWED UP?

22 A YEAH.

23 Q DID THE HUSBAND SEEM ANGRY TO YOU?

24 A HE DIDN'T SHOW TOO MUCH EMOTION, BUT HE DID LEAVE AND
25 RIDE DOWN THE ROAD TO SEE IF HE SEEN SOMEONE ON A BICYCLE I

1 BELIEVE.

2 Q WERE YOU THE ONE THAT TOLD THE HUSBAND THAT SOMETHING
3 OCCURRED?

4 A I MIGHT HAVE.

5 Q JUST FOR CLARITY, YOUR RECOLLECTION IS THAT A SMALL
6 [REDACTED] FEMALE APPROACHED YOU AND SAID THAT THE SUSPECT
7 LEFT HER HOUSE ON A BICYCLE?

8 A I DON'T KNOW IF SHE SAID THAT OR NOT, BUT SHE SAID
9 THAT SOMEBODY HAD BEEN IN HER HOUSE AND WAS -- HAD TRIED
10 TO ---

11 Q COULD YOU READ -- IS THIS YOUR STATEMENT THAT YOU GAVE
12 TO LAW ENFORCEMENT MINUS THE HIGHLIGHTS?

13 A A BLACK MAN HAD LEFT HER HOUSE ON A BICYCLE, SHE SAID.
14 WELL, MAYBE SHE DID SAY THAT.

15 Q AND IS THAT THE STATEMENT THAT YOU GAVE TO LAW
16 ENFORCEMENT?

17 A YES.

18 Q AND IT'S A VOLUNTARY STATEMENT AND IT'S IN YOUR
19 HANDWRITING?

20 A YES.

21 Q COULD YOU READ ALOUD THAT PARTICULAR PART OF THE
22 STATEMENT?

23 A A BLACK MAN LEFT HER HOUSE ON A BICYCLE, SHE SAID.
24 AND HE HAD ASSAULTED HER AND TRIED TO RAPE HER.

25 Q AND YOUR WRITTEN STATEMENT IS THAT HE TRIED TO RAPE

FRANK DILSAVER - CROSS BY MS. SMART

137

1 HER?

2 A YEAH, I BELIEVE THAT'S WHAT SHE SAID.

3 MS. SMART: THANK YOU, I DON'T HAVE ANY OTHER
4 QUESTIONS. OH, I'M SORRY.

5 Q YOU DIDN'T HEAR ANY SCREAMING OR HOLLERING PRIOR TO
6 HER RUNNING OUT OF THE HOUSE?

7 A NEVER HEARD ANYTHING.

8 Q OKAY. AND YOU WERE CLOSE ENOUGH TO THE HOUSE THAT ---

9 A WELL, I WAS ABOUT 300 FEET DOWN THE ROAD.

10 MS. SMART: THANK YOU.

11 THE COURT: REDIRECT?

12 MS. MILLICAN: JUST ONE QUESTION, YOUR HONOR.

13 REDIRECT EXAMINATION BY MS. MILLICAN:

14 Q IF [REDACTED] HAD BEEN SCREAMING IN HER HOME OR YELLING FOR
15 HELP, HOW LIKELY IS IT THAT YOU WOULD HAVE HEARD HER FROM
16 WHERE YOU WERE?

17 A I DON'T KNOW. 300 FEET AWAY INSIDE A TRAILER, I MIGHT
18 PROBABLY WOULDN'T HAVE HEARD HER.

19 MS. MILLICAN: NO FURTHER QUESTIONS FOR THIS WITNESS,
20 YOUR HONOR.

21 THE COURT: RECROSS?

22 MS. SMART: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP
24 DOWN.

25 ~~MS.~~ MS. MILLICAN: YOUR HONOR, MAY WE APPROACH?

BRIAN PATE -- DIRECT BY MS. MILLICAN

138

1 THE COURT: YES.

2 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
3 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

4 THE COURT: MS. MILLICAN, YOU MAY CALL YOUR NEXT
5 WITNESS.

6 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS
7 BRIAN PATE.

8 BRIAN PATE, BEING FIRST DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
11 SPELL IT FOR THE COURT.

12 WITNESS: ROBERT BRIAN PATE.

13 DIRECT EXAMINATION BY MS. MILLICAN:

14 Q MR. PATE, HOW OLD ARE YOU?

15 A 30 YEARS OLD.

16 Q WHAT DO YOU DO FOR A LIVING?

17 A I'M A LAND SURVEYOR.

18 Q FOR WHAT COMPANY?

19 A GASQUE AND ASSOCIATES.

20 Q WERE YOU WORKING ON FEBRUARY THE 7TH, 2006 AROUND
21 CUFFY ROAD?

22 A YES, I WAS.

23 Q DO YOU RECALL WHO YOU WERE WORKING WITH THAT DAY?

24 A YES, I WAS WORKING WITH FRANK DILSAVER.

25 Q CAN YOU RECALL THAT DAY MEETING AN [REDACTED] WOMAN?

BRIAN PATE — CROSS BY MS. SMART

139

- 1 A YES.
- 2 Q COULD YOU PLEASE DESCRIBE FOR THE JURY THE
- 3 CIRCUMSTANCES SURROUNDING THAT?
- 4 A YEAH, WE WERE WORKING DOWN THE ROAD FROM HER HOUSE AND
- 5 WAS PUTTING EQUIPMENT AWAY AT OUR TRUCK, AND SHE CAME
- 6 RUNNING DOWN THE ROAD TOWARD US. AND SHE WAS HOLDING HER
- 7 PANTS UP AND SHE WAS BARE FOOT AND WAS CRYING AND SAID SHE
- 8 WANTED HELP.
- 9 Q DID SHE SAY WHY?
- 10 A YEAH, SHE SAID THAT SHE HAD BEEN ROBBED AND A MAN
- 11 TRIED TO RAPE HER.
- 12 Q I'M SORRY. GO AHEAD.
- 13 A AND WE JUST ASKED HER IF SHE WANTED US TO CALL THE
- 14 POLICE, AND SHE SAID, YEAH.
- 15 Q SO WHO CALLED THE POLICE?
- 16 A WE HAD A TWO-WAY RADIO. WE DIDN'T HAVE CELL PHONES,
- 17 AND SO I CALLED THE OFFICE AND ASKED OUR OFFICE MANAGER TO
- 18 CALL 9-1-1.
- 19 Q DID YOUR OFFICE MANAGER DO THAT?
- 20 A YES.
- 21 MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS FOR
- 22 THIS WITNESS AT THIS TIME.
- 23 THE COURT: CROSS EXAMINATION, MS. SMART.
- 24 CROSS EXAMINATION BY MS. SMART:
- 25 Q YOU WERE IN THAT AREA FOR QUITE SOME TIME WORKING

1 PRIOR TO SEEING HER APPROACH YOU OR PRIOR TO HER

2 APPROACHING YOU?

3 A THAT'S CORRECT.

4 Q AND YOU WORK IN A WHITE TRUCK?

5 A YES.

6 Q AND YOUR TRUCK WAS LOCATED IN FRONT OF HER HOUSE?

7 A YEAH, EARLIER IN THE DAY IT WAS AND THEN WHEN SHE

8 APPROACHED US, WE WERE DOWN THE ROAD ABOUT 600 FEET.

9 Q NOW, DID YOU SEE ANYONE?

10 A NO, I DID NOT.

11 Q SO YOU DIDN'T SEE ANYONE?

12 A NO, I DID NOT.

13 Q AND DID SHE TELL YOU ANYTHING ABOUT THE PERSON WHO

14 RAPED HER?

15 A SHE JUST SAID IT WAS A BLACK MAN.

16 Q AND DID SHE SAY THAT SHE SAW HIM LEAVE HER HOUSE?

17 A I THINK -- I THINK SHE SAID HE WAS ON A BICYCLE AND

18 LEFT ON A BICYCLE.

19 Q DO YOU RECALL TELLING HER THAT YOU SAW HIM ON A

20 BICYCLE?

21 A I DID NOT. MY CO-WORKER DID.

22 Q BUT YOUR RECOLLECTION OF WHAT SHE TOLD YOU THAT DAY

23 WAS THAT A BLACK MAN LEFT HER HOUSE ON A BICYCLE?

24 A YES.

25 Q AND HE ROBBED HER AND HE TRIED TO RAPE HER?

BRIAN PATE -- REDIRECT BY MS. MILLICAN

141

- 1 A THAT'S CORRECT.
- 2 Q BUT SHE DIDN'T INDICATE THAT HE HAD IN FACT RAPED HER?
- 3 A NO, SHE DID NOT.
- 4 Q DID YOU HEAR ANY SCREAMING OR ANYTHING OUT OF THE
- 5 ORDINARY WHILE YOU WERE WORKING?
- 6 A NO.
- 7 Q DID YOU SEE HER HUSBAND WHEN HE ARRIVED AT HOME?
- 8 A YES, I DID.
- 9 Q DID YOU SPEAK WITH HIM?
- 10 A I DID NOT.
- 11 Q DID YOU HAVE A CHANCE TO OBSERVE HIS Demeanor?
- 12 A THE HUSBAND'S Demeanor?
- 13 Q YES.
- 14 A YEAH, HE LOOKED -- LOOKED LIKE HE WAS UPSET.
- 15 Q SO YOU DIDN'T SEE ANYBODY LEAVE THE HOUSE?
- 16 A NO, I DID NOT.
- 17 MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.
- 18 THE COURT: REDIRECT?
- 19 MS. MILLICAN: JUST VERY BRIEFLY.
- 20 REDIRECT EXAMINATION BY MS. MILLICAN:
- 21 Q WHEN YOU SAW THE HUSBAND, YOU TESTIFIED THAT HE LOOKED
- 22 UPSET. DID HE CHECK ON ~~ANYONE~~?
- 23 A YEAH.
- 24 Q DO YOU RECALL?
- 25 A YEAH, WE HAD -- HE WAS PULLING INTO THE YARD AND WE

BRIAN PATE -- REDIRECT BY MS. MILLICAN

142

1 WENT BACK UP TOWARD THE YARD. AND I THINK THAT'S WHEN MR.
2 DILSAVER TOLD HIM WHAT HAPPENED AND ASKED HIM IF HE'D SEEN
3 ANYBODY ON THE ROAD. AND THEN HE -- YEAH, HE HAD CHECKED
4 ON HER.

5 Q HOW MUCH CLOTHES -- WAS FRANK CLOSER TO THE HOUSE THAN
6 YOU WERE OR FURTHER AWAY FROM THE HOUSE THAN YOU WERE?

7 A HE WAS CLOSER. HE WAS GIVING ME A BACK SITE WHEN
8 YOU'RE SURVEYING -- I WAS RUNNING THE INSTRUMENT. AND HE
9 WAS HOLDING THE ROD. AND THE BACK SITE POSITION WAS CLOSER
10 TOWARD THE HOUSE.

11 Q SO ABOUT HOW MANY FEET AWAY DID YOU SAY YOU WERE FROM
12 THE HOUSE?

13 A I WAS ABOUT 600 FEET.

14 Q ABOUT HOW MANY FEET MAYBE WAS HE FROM THE HOUSE?

15 A HE WAS RIGHT ACROSS THE ROAD. PROBABLY 75, 80 FEET,
16 MAYBE 100.

17 Q AT THE POINT IN TIME WHEN SHE CAME RUNNING DOWN THE
18 ROAD?

19 A I CAN'T REMEMBER. I THINK HE WAS AT THE TRUCK WITH
20 ME.

21 MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS.

22 THE COURT: RECROSS

23 MS. SMART: NONE, YOUR HONOR.

24 THE COURT: ALL RIGHT. THANK YOU, SIR, YOU MAY STEP
25 DOWN.

1 (THE WITNESS LEAVES THE WITNESS STAND.)

2 MS. MILLICAN: THE STATE WOULD ASK THAT THE WITNESSES
3 THAT HAVE BEEN CALLED SO FAR COULD BE EXCUSED.

4 THE COURT: ANY OBJECTION TO THE TWO WITNESSES WHO
5 HAVE BEEN CALLED BY THE STATE BEING EXCUSED?

6 MS. SMART: NONE, YOUR HONOR.

7 THE COURT: ALL RIGHT. THEY ARE EXCUSED. THANK YOU
8 FOR COMING.

9 ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, WE HAVE
10 REACHED THE LUNCH HOUR, AND I THINK THAT IT IS APPROPRIATE
11 THAT WE RECESS FOR LUNCH AT THIS TIME.

12 THERE ARE A COUPLE THINGS THAT I'M GOING TO DO, AND I
13 WANT TO TELL YOU. FIRST OF ALL, SINCE WE ARE GOING TO BE
14 AWAY FROM THE COURTROOM AND I DO NOT WANT YOU TO LEAVE YOUR
15 NOTE PADS IN THE COURTROOM BECAUSE I'M NOT SURE THAT THEY
16 WILL BE ABSOLUTELY SECURE. IN FACT, WHAT I'M GOING TO ASK
17 YOU THAT YOU DO IS TURN THEM OVER TO THE BAILIFFS. THE
18 BAILIFFS WILL TAKE CHARGE OF THEM. JUST TURN THEM OVER ON
19 THE FACE. THE BAILIFFS WILL TAKE CHARGE OF THEM. AND I
20 CAN ASSURE YOU THAT NO ONE WILL SEE THEM INCLUDING THE
21 BAILIFFS AND INCLUDING ME. AND THEN WE WILL GIVE YOU YOUR
22 NOTES BACK WHEN WE RESUME TESTIMONY.

23 MR. BAILIFF, I'LL ASK YOU TO TAKE CHARGE OF THE NOTE
24 PADS AND SECURE THEM DURING THE LUNCH RECESS. THEY ARE
25 CONFIDENTIAL AND NO ONE SHOULD SEE THEM WITH EXCEPTION OF

1 THE PERSON WHO MADE THE NOTES. AND ONLY THEN WHEN THEY GET
2 THEM BACK WHEN WE COME INTO THE COURTROOM.

3 THE NEXT THING IS I HAD TOLD YOU THAT I WAS GOING TO
4 APPOINT OR NAME A FOREPERSON OF THIS JURY. I HAVE DECIDED
5 THAT I AM GOING TO ALLOW YOU TO SELECT YOUR OWN FOREPERSON.
6 SO WHEN YOU COME BACK FROM LUNCH, IF THE 12 OF YOU WILL
7 SELECT 1 OF THE 12 TO BE THE FOREPERSON OF THE JURY AND
8 ADVISE ME OF WHO THAT PERSON THAT HAS BEEN ELECTED WHEN YOU
9 RETURN TO THE COURTROOM, AND I WILL PROCEED FROM THERE.

10 SO WITH THOSE TWO ADMONITIONS, THEN THE OTHER THINGS
11 I'M GOING TO REMIND YOU OF THE ADMONITIONS THAT I GAVE YOU
12 BEFOREHAND. DO NOT DISCUSS THE CASE WITH ANYONE WHILE
13 YOU'RE AWAY FROM THE COURTHOUSE. DO NOT ALLOW ANYONE TO
14 DISCUSS IT WITH YOU. AND DO NOT DISCUSS IT AMONG
15 YOURSELVES WHEN YOU'RE REASSEMBLING IN THE JURY ROOM. IT
16 WOULD CERTAINLY BE PREMATURE FOR YOU TO BE IN ANY
17 DISCUSSION OF THIS CASE AT THIS TIME.

18 SO WHEN YOU'RE REASSEMBLING IN THE JURY ROOM IF YOU
19 WOULD SIMPLY TALK ABOUT ANYTHING THAT YOU WANT TO TALK
20 ABOUT, WEATHER, SPORTS, CHILDREN, GRANDCHILDREN, BUT DON'T
21 TALK ABOUT THIS CASE. AND THEN WE WILL RESUME PROMPTLY AT
22 -- AND IT IS NOW 1:00 O'CLOCK. WILL AN HOUR AND 15 MINUTES
23 -- I'D LIKE TO START BACK AT 2:15. WILL THAT GIVE EVERYONE
24 SUFFICIENT TIME TO GET LUNCH? IF SO, IF YOU'LL BE BACK IN
25 YOUR JURY ROOM PLEASE AT 2:15, WE'LL BE READY TO BEGIN AT

1 THAT TIME.

2 AND IF YOU'LL GIVE THE NOTE PADS TO THE BAILIFF AS YOU
3 LEAVE. THANK YOU VERY MUCH. I'LL SEE YOU AT 2:15. COME
4 BACK TO YOUR JURY ROOM AT 2:15.

5 (THE JURY EXITS THE COURTROOM AT 1:00 P.M.)

6 THE COURT: ANY EXCEPTIONS TO THE METHOD OF HANDLING
7 THE MATTER WITH THE JURY AS FAR AS THE NOTE TAKING IS
8 CONCERNED ON BEHALF OF THE STATE, MS. MILLICAN?

9 MS. MILLICAN: NO EXCEPTION, YOUR HONOR.

10 THE COURT: MS. SMART?

11 MS. SMART: NONE, YOUR HONOR.

12 THE COURT: ALL RIGHT. COUNSEL, LET'S TALK A MINUTE
13 ABOUT THE INTERPRETERS. [REDACTED] DID VERY WELL FROM
14 THE STANDPOINT OF BEING ABLE TO SPEAK ENGLISH. THERE WERE
15 ONLY A FEW THINGS THAT SHE HAD NEEDED A LITTLE BIT OF HELP
16 ON. HOWEVER, I DO THINK THAT IT IS IMPORTANT THAT WE
17 MAINTAIN THE INTERPRETER HERE DURING THE OTHER TESTIMONY IN
18 CASE SHE NEEDS TO TRANSLATE ANY OF THE OTHER TESTIMONY TO
19 THE VICTIM IN THIS CASE.

20 FROM A DEFENSE STANDPOINT, DO YOU THINK IT'S NECESSARY
21 FOR YOU TO MAINTAIN THE INTERPRETER ANY MORE, MS. SMART?

22 MS. SMART: YOUR HONOR, I WOULD LIKE MR. MARTINEZ TO
23 STAY WITH ME SO THAT HE CAN TELL ME WHAT IS BEING
24 TRANSLATED AND I CAN BE SURE THAT WHAT THE TRANSLATOR IS
25 SAYING TO [REDACTED] IS ACTUALLY CORRECT.

1 THE COURT: WELL, SHE'S BEEN SWORN TO DO THAT, AND I
2 REALLY AM NOT SURE THAT IT'S NECESSARY TO MAINTAIN STATE'S
3 EXPENSE FOR THIS INTERPRETER UNLESS DEFENSE COUNSELOR IS
4 WILLING TO PAY FOR THIS INTERPRETER.

5 MS. SMART: OUR INTERPRETER?

6 THE COURT: YES, ARE YOU PAYING HIM?

7 MS. SMART: WE PAY OUR INTERPRETER.

8 THE COURT: OKAY. WELL, YOU CAN KEEP HIM THEN JUST AS
9 LONG AS YOU'RE NOT DOING IT AT THE EXPENSE OF THE STATE.
10 THAT WILL BE FINE. OKAY.

11 WE'LL BE IN RECESS THEN UNTIL 2:15. SEE YOU AT THAT
12 TIME.

13 (COURT [REDACTED] FOR LUNCH.)

14 THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD
15 TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR.
16 LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS
17 COUNSEL. THE STATE IS ALSO PRESENT REPRESENTED BY COUNSEL.

18 ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?

19 MS. MILLICAN: NOTHING FROM THE STATE.

20 THE COURT: MS. SMART?

21 MS. SMART: NOTHING, YOUR HONOR.

22 THE COURT: ALL RIGHT. I'VE BEEN ADVISED THAT THE
23 JURY HAS ELECTED A FOREMAN AND I'M GOING TO RECOGNIZE HIM
24 WHEN HE COMES IN. BUT THEY HAVE ELECTED JUROR NO. 103, MR.
25 JOHNSON, AS THE FOREPERSON [REDACTED]

1 ALL RIGHT. BRING THE JURY IN PLEASE.

2 (THE JURY RETURNS TO THE COURTROOM AT 2:20 P.M.)

3 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

4 THE COURT: THANK YOU VERY MUCH. AND THANK YOU,
5 LADIES AND GENTLEMEN, FOR YOUR PROMPTNESS IN BEING BACK
6 HERE. AND I HAVE BEEN ADVISED THAT THE JURY HAS SELECTED
7 MR. JOHNSON AS THE FOREPERSON OF THE JURY. AND I SEE HE IS
8 SEATED IN THE FOREPERSON'S SEAT.

9 MR. JOHNSON, THAT WILL BE YOUR SEAT THROUGHOUT THE
10 REMAINDER OF THIS TRIAL.

11 OF COURSE, THE ALTERNATE WILL ALWAYS SIT BACK ON THE
12 BACK ROW.

13 THE REST OF YOU CAN SIT IN ANY OF THE SEATS IN THE
14 JURY BOX AS YOU HAVE BEEN DOING.

15 I SEE ALSO THAT THE BAILIFFS HAVE DISTRIBUTED TO YOU
16 YOUR NOTE PADS, AND WE ARE NOW READY TO RESUME.

17 ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT
18 WITNESS.

19 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS
20 DEPUTY MERRILL.

21 JEFFERY MERRILL, BEING FIRST
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
24 SPELL IT FOR THE COURT. ~~THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND~~

25 WITNESS: MY NAME IS JEFFERY MERRILL. J-E-F-F-E-R-Y.

1 MERRILL, M-E-R-R-I-L-L.

2 DIRECT EXAMINATION BY MS. MILLICAN:

3 Q DEPUTY MERRILL, WHERE ARE YOU EMPLOYED?

4 A BEAUFORT COUNTY SHERIFF'S OFFICE.

5 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

6 A 10 ½ YEARS.

7 Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S
8 OFFICE?

9 A CURRENTLY I SERVE WITH THE WARRANTS DIVISION. I SERVE
10 WARRANTS.

11 Q WHAT WERE YOUR DUTIES ON FEBRUARY OF 2006?

12 A I WAS A ROAD PATROL OFFICER RESPONDING TO CALLS.

13 Q WERE YOU ON DUTY OF FEBRUARY THE 7TH, 2006?

14 A YES, I WAS.

15 Q WERE YOU DISPATCHED TO CUFFY ROAD ON ST. HELENA ISLAND
16 ON THAT DAY?

17 A YES, I WAS.

18 Q IS THAT BEAUFORT COUNTY?

19 A BEAUFORT COUNTY AND ST. HELENA.

20 Q WHO WAS ON THE SCENE WHEN YOU ARRIVED AT THAT ADDRESS?

21 A THERE WERE NO OTHER OFFICERS ON THE SCENE WHEN I
22 RESPONDED TO THE ADDRESS, AND I CAME TO CUFFY ROAD FROM
23 SEASIDE. AND WHEN I ARRIVED AT THE SCENE, THE VICTIM WAS
24 THERE, [REDACTED]

25 Q DID YOU SECURE THE CRIME SCENE?

JEFFERY MERRILL -- DIRECT BY MS. MILLICAN

149

1 A YES, I DID.

2 Q WHAT DID YOU SEE WHEN YOU ARRIVED?

3 A JUST PRIOR TO MY ARRIVAL, I DID SEE THE SURVEYORS. IT
4 WOULD HAVE BEEN ON THE EAST SIDE OF THE HOUSE IN A FIELD.
5 AND I STOPPED AND THEY GAVE ME DIRECTIONS TO THE HOUSE.
6 WHEN I WENT TO THE HOUSE, I REMEMBER THE TRAILER BEING
7 THERE. I BELIEVE THERE WAS A VEHICLE IN THE YARD. AND
8 GOING UP TO THE YARD, I REMEMBER A DOG BEING ON THE OUTSIDE
9 OF THE TRAILER. THE FRONT DOOR WAS STILL AJAR -- WAS AJAR,
10 I BELIEVE.

11 Q WAS THERE ANYONE INSIDE THE RESIDENCE?

12 A [REDACTED].

13 Q DID YOU SPEAK TO [REDACTED]?

14 A YES, I DID.

15 Q DID SHE SPEAK ENGLISH TO YOU?

16 A I BELIEVE, YES. I HAVE TO QUALIFY WITH BELIEVE,
17 BECAUSE AS I WAS THERE, I SPENT A LOT OF TIME ALSO TALKING
18 TO ANOTHER LADY WHO WAS AT THE RESIDENCE. AND OVER THE
19 TIME I REMEMBER SPEAKING TO HER AND AT THE FIRST MOMENT OF
20 ARRIVAL, I BELIEVE MS. RODRIGUEZ GREETED ME.

21 Q DO YOU RECALL WHO THE OTHER LADY WAS WHO WAS THERE?

22 A I BELIEVE IT WAS HER SISTER, FRIEND, SISTER.

23 Q DID YOU TAKE A WRITTEN STATEMENT FROM [REDACTED]?

24 A YES. I DIDN'T -- I INITIATED IT. SHE WAS THERE. AND
25 THEY WERE WRITING IT. TO SAY TAKE IT, I BELIEVE THAT THE

JEFFERY MERRILL - DIRECT BY MS. MILLICAN

150

1 DETECTIVE TOOK IT TOWARD THE END OF THE MEETING, BUT IT WAS
2 STARTED THROUGH HER -- THROUGH ME.

3 Q WHEN YOU STATED THEY WERE WRITING IT, WHO ARE YOU
4 REFERRING TO, THEY?

5 A SHE AND HER SISTER. I BELIEVE HER SISTER WAS HELPING
6 HER WITH SOME OF THE ENGLISH OF IT.

7 Q WAS HER SISTER CONTRIBUTING TO THE CONTENT OF IT OR
8 DID IT SEEM THAT SHE WAS JUST TRANSLATING IT?

9 A TRANSLATING.

10 Q WHO ELSE ARRIVED ON THE SCENE AFTER YOU ARRIVED?

11 A OFFICER RUNYON ARRIVED AFTER I DID.

12 Q AND WHAT DID YOU OBSERVE HIM [REDACTED] THERE?

13 A PRIMARILY, [REDACTED] OFFICER THAT CHECKED THE OUTSIDE
14 AREA. I RESPONDED TO THE SCENE, LOCATED IT, MADE SURE IT
15 WAS SECURE, SPOKE TO THE VICTIM. HE WAS ON THE OUTSIDE.
16 HE LOOKED FOR THE SUSPECT AND SPOKE TO THE SURVEYORS WHO
17 WERE OUTSIDE THE RESIDENCE.

18 Q ALL RIGHT. WHO ELSE ARRIVED AFTER DEPUTY RUNYON?

19 A I WANT TO BELIEVE THAT RUNYON HAD SOMEBODY RIDING WITH
20 HIM. AND OTHER THAN THAT, JUST THE DETECTIVE.

21 Q AND WHICH DETECTIVE ARE YOU REFERRING TO?

22 A DETECTIVE CHAPMAN.

[REDACTED] HE TAKE OVER THE INVESTIGATION AT THE POINT HE
24 ARRIVED?

25 A YES, HE DID.

JEFFREY MERRILL - CROSS BY MS. SMART

151

1 MS. MILLICAN: OKAY. I HAVE NO FURTHER QUESTIONS AT
2 THIS TIME, YOUR HONOR.

3 THE COURT: CROSS EXAMINATION, MS. SMART?

4 MS. SMART: MAY IT PLEASE THE COURT.

5 THE COURT: YES, MA'AM.

6 CROSS EXAMINATION BY MS. SMART:

7 Q CORPORAL MERRILL, DID YOU WRITE A SUPPLEMENTAL REPORT?

8 A I WROTE THE ORIGINAL REPORT.

9 Q YOU WROTE THE ORIGINAL REPORT. AND DID YOU INTERVIEW
10 [REDACTED]?

11 A YES.

12 Q AND SHE GAVE YOU AN ORAL STATEMENT?

13 A YES.

14 Q WERE YOU ABLE TO UNDERSTAND HER?

15 A ONCE AGAIN, WHEN I GOT THERE, IF I WAS WITH [REDACTED]

16 [REDACTED] LONG -- I MEAN, THERE, IT WASN'T LONG. SO HER

17 SISTER WAS THERE ALSO AND I HAD TO WAIT FOR A WHILE FOR

18 OFFICER CHAPMAN TO COME OUT, SO I DID SPEAK FOR A WHILE

19 WITH HER AND HER SISTER. AND SO TO SAY I SPOKE DIRECTLY

20 WITH [REDACTED] AT THIS TIME A YEAR LATER, IT'S SOMEWHAT

21 HARD TO SAY HOW MUCH I GOT FROM HER AND HOW MUCH I GOT FROM

22 HER SISTER.

23 Q DO YOU HAVE YOUR POLICE REPORT WITH YOU?

24 A YES, I DO.

25 Q I'M GOING TO ASK YOU A NUMBER OF QUESTIONS THAT YOU

JEFFREY MERRILL - CROSS BY MS. SMART

152

1 MAY NEED TO REFER TO YOUR POLICE REPORT, SPECIFICALLY,
2 ABOUT WHAT SHE TOLD YOU OCCURRED. NOW, ISN'T IT TRUE THAT
3 SHE INDICATED TO YOU THAT SHE SAW THE SUSPECT THROUGH THE
4 WINDOW AND HE TOLD HER THAT HE WANTED TO USE HER PHONE?

5 A YES.

6 Q AND SHE STATED THAT SHE OBSERVED PEOPLE WORKING ON THE
7 STREET AND SHE THOUGHT IT WOULD BE SAFE TO LET HIM IN?

8 A YES.

9 Q SHE ALLOWED HIM TO ENTER THE RESIDENCE, AND SHE GAVE
10 HIM THE TELEPHONE? [REDACTED]

11 A I'LL HAVE TO REFER BACK TO THIS ON THE -- WHETHER SHE
12 GAVE IT TO HIM OR SHOWED HIM WHERE IT WAS AT IS THE ONLY
13 THING I JUST HAVE TO QUESTION. BUT THERE'S NOT MUCH
14 DIFFERENCE, HE USED THE PHONE.

15 [REDACTED] CAN YOU TELL ME WHAT YOUR REPORT SAYS?

16 MS. MILLICAN: YOUR HONOR, THE STATE [REDACTED] OBJECT TO
17 THE FACT THE OFFICER IS TESTIFYING TO WHAT SHE ASKED. FOR
18 HIM TO QUOTE THE REPORT WITHOUT THE REPORT BEING IN
19 EVIDENCE IS ---

20 THE COURT: WELL, SHE HAS NO [REDACTED] INTO
21 EVIDENCE. I'M NOT SURE IF SHE CAN. BUT BE THAT AS IT MAY,
22 HE HAS THE RIGHT TO LOOK AT THE REPORT TO REFRESH HIS
23 RECOLLECTION AND AFTER HE'S LOOKED AT IT, HE CAN TESTIFY IF
24 THAT REFRESHES HIS RECOLLECTION.

25 MS. MILLICAN: BUT, YOUR HONOR, THE STATE'S OBJECTION

1 WOULD ONLY BE THAT HE HAS TO READ FROM IT.

2 THE COURT: DON'T READ FROM THE REPORT. READ THE
3 REPORT. SEE IF THAT REFRESHES YOUR RECOLLECTION, AND THEN
4 ANSWER MS. SMART'S QUESTION.

5 MS. MILLICAN: THANK YOU, YOUR HONOR.

6 A YES. THE ANSWER WOULD BE, YES.

7 Q OKAY. AND DID SHE TALK TO YOU ABOUT A PERSON NAMED
8 GREEN?

9 A YES.

10 ~~Q DID SHE~~ INDICATE ANYTHING TO YOU ABOUT GREEN? FROM
11 YOUR RECOLLECTION, SHE INDICATED THAT THERE WAS A DIALOGUE
12 BETWEEN SHE AND THE SUSPECT, AND THE SUSPECT WANTED TO KNOW
13 WHETHER OR NOT SHE KNEW GREEN, AND SHE SAID SHE DID NOT.
14 IS THAT CORRECT?

15 A YES.

16 ~~Q~~ THEN SHE SAID THAT THIS DIALOGUE CONTINUED AND THEN HE
17 MADE ANOTHER PHONE CALL; IS THAT CORRECT?

18 A THAT SOUNDS CORRECT.

19 Q AND SHE INDICATED TO YOU THAT SHE OFFERED TO WRITE A
20 NOTE FOR THIS SUSPECT IN CASE THE NEIGHBOR ACROSS THE
21 STREET WHOSE NAME SHE WAS NOT SURE OF TURNED OUT TO BE
22 GREEN ---

23 A YES.

24 Q --- IS THAT CORRECT? AND NOW LET'S TALK ABOUT THE
25 GUN. WAS SHE ABLE TO DESCRIBE THE GUN TO YOU?

1 A SHE SAID IT WASN'T A REVOLVER, THAT IT WAS A BLACK OR
2 DARK GRAY IN COLOR PISTOL.

3 Q AND DID SHE TELL YOU WHERE -- ISN'T IT TRUE SHE TOLD
4 YOU THAT THE SUSPECT PRODUCED THE PISTOL FROM BEHIND HIS
5 BACK?

6 A THAT'S WHAT I RECALL AND THAT'S WHAT I WROTE ON THIS
7 REPORT.

8 Q NOW WITH REGARD TO THE SEQUENCE OF EVENTS THAT
9 OCCURRED ONCE SHE AND THE SUSPECT WERE IN THE BEDROOM,
10 ISN'T IT TRUE THAT SHE TOLD YOU THAT SHE TOOK HER PANTS OFF
11 BUT ONLY TO HER THIGHS?

12 A YES.

13 Q AND SHE SAID THAT SHE DIDN'T TAKE HER PANTS ALL OF THE
14 WAY OFF?

15 A YES.

16 Q AND SHE SAID THAT THE SUBJECT FORCED HIS FINGER INSIDE
17 HER VAGINA?

18 A YES.

19 Q AND THEY STRUGGLED?

20 A YES.

21 Q AND HE THREW HER ON THE FLOOR?

22 A DURING THE STRUGGLE, I'M SURE THAT THERE WAS, YOU
23 KNOW, QUITE A LOT OF MOVEMENT.

24 Q AND SHE TOLD HIM THAT SHE WAS EXPECTING HER HUSBAND
25 ANY MINUTE?

JEFFREY MERRILL -- CROSS BY MS. SMART

155

1 A YES.

2 Q NOW, IN DETAILING YOUR OBSERVATIONS OF THE CRIME
3 SCENE, IF YOU HAD NOTICED THAT THE ROOM APPEARED AS IF A
4 STRUGGLE HAD OCCURRED WITHIN, WOULD YOU HAVE INCLUDED THAT
5 WITHIN YOUR REPORT -- OF YOUR OBSERVATION?

6 A IT'S ONE OF THOSE THINGS THAT I WOULD LIKE TO SAY YES
7 TO, BUT IT DEPENDS ON WHAT I'M TYPING, WHAT I'M
8 REMEMBERING, WHAT I'M WRITING. SO I'D LIKE TO SAY THAT,
9 YES, I ALWAYS HIT ALL THE POINTS. BUT I'M JUST AN OFFICER
10 TRYING TO DO THE JOB AND WHEN I'M TYPING I MIGHT NOT
11 INDICATE SOMETHING OF THAT NATURE. I CAN DO THE BEST I CAN
12 FROM MEMORY FOR YOU THOUGH.

13 Q NOW, AS THE BEST YOU CAN RECALL, DID IT APPEAR THAT
14 THE STRUGGLE OCCURRED IN THE BEDROOM?

15 A THE SHEETS WERE DISTURBED AND I BELIEVE THE PHONE HAD
16 BEEN TAMPERED WITH AS I RECALL.

17 Q DID SHE TELL YOU -- ISN'T IT TRUE THAT SHE ONLY
18 INDICATED TO YOU THAT ONE PHONE WAS YANKED FROM THE WALL?

19 A IN PARTICULAR I REMEMBERED THE KITCHEN PHONE AREA,
20 BECAUSE I DEALT MORE TIME WITH IT PROBABLY -- IN THE
21 KITCHEN AREA.

22 Q WITH REGARD TO THE DRESSER IN THE BEDROOM, ISN'T IT
23 TRUE THAT SHE TOLD YOU THAT HE FUMBLING THROUGH THE DRESSER,
24 THAT HE HAD OPENED TWO DRESSER DRAWERS AND THAT HE RUMBLED
25 THROUGH THE DRESSER ---

JEFFREY MERRILL - CROSS BY MS. SMART:

156

1 A . YES.

2 Q --- AS IF HE WAS LOOKING FOR SOMETHING?

3 A YES.

4 Q DID SHE INDICATE TO YOU HOW THE SUSPECT LEFT HER
5 HOUSE?

6 A SEEMS TO ME THAT SHE INDICATED THROUGH THE BACK DOOR
7 -- NOT READING THIS, BUT SEEMS TO BE.

8 Q DID SHE INDICATE TO YOU WHETHER OR NOT SHE SAW THE
9 SUSPECT LEAVE HER HOUSE?

10 A NO.

11 Q NOW, DID YOU DUST FOR ANY FINGERPRINTS WHILE YOU WERE
12 THERE?

13 A YES, I DID.

14 Q AND DO YOU RECALL WHAT YOU DUSTED FOR PRINTS?

15 A THE DRESSER, SOME PHONES -- I BELIEVE BOTH PHONES.

16 Q AND WERE YOU ABLE TO DETERMINE IF THOSE FINGERPRINTS
17 HAD ANY VALUE -- AN EVIDENTIARY VALUE?

18 A IT WAS DETERMINED THAT THERE WAS NO EVIDENTIARY VALUE
19 TO THE FINGERPRINTS I WAS ABLE TO LOCATE.

20 Q AND DID YOU OBSERVE ANY TIRE TRACKS OR SHOE
21 IMPRESSIONS AROUND THE EXTERIOR OF THE MOBILE HOME?

22 A I DID NOT OBSERVE ANY -- THERE WERE SHOE IMPRESSIONS
23 OUT BY THE FRONT, BUT THEY WERE FOUND -- IDENTIFIED AS THE
24 SURVEYORS' SHOE IMPRESSIONS.

25 Q AND YOU WERE THE ONE THAT SEIZED THE PANTS THAT MS.

JEFFREY MERRILL -- CROSS BY MS. SMART

157

1 RODRIGUEZ WAS WEARING; IS THAT CORRECT?

2 A YES.

3 Q AND THOSE PANTS WERE LOCATED?

4 A IN THE BEDROOM.

5 Q IN THE BEDROOM. AND YOU COLLECTED THOSE PANTS AND
6 SUBMITTED THEM TO EVIDENCE?

7 A YES, MA'AM.

8 Q WHEN YOU ARRIVED, WHAT TYPE OF PANTS DID MS. RODRIGUEZ
9 HAVE ON?

10 A I REMEMBER THEY WERE BAGGIER THAN NORMAL, MORE LIKE
11 THEY WERE JUST TOO BIG FOR HER. I DON'T RECALL THEM BEING
12 JEANS. I THINK THEY WERE DARK, AS I RECALL.

13 Q AND DID SHE INDICATE TO YOU AT ALL THAT SHE HAD
14 CHANGED CLOTHES?

15 A INTO THOSE -- INTO THOSE PANTS.

16 Q BUT IN HER STATEMENT SHE INDICATED THAT SHE DIDN'T
17 TAKE HER PANTS OFF DURING THE ALLEGED INCIDENT, THAT SHE
18 ONLY DROPPED THEM TO HER THIGHS?

19 A SHE ORIGINALLY DID THAT, BUT SHE HAD -- DURING HER
20 STATEMENT THAT WAS WHEN SHE WAS BEING FORCED INTO A SEX
21 ACT, THAT SHE SAID SHE'D ONLY TAKEN THEM DOWN THERE.

22 Q NOW, YOU HAD HER WRITE A WRITTEN STATEMENT; IS THAT
23 CORRECT?

24 A YES, SHE WAS WRITING ---

25 Q A VOLUNTARY STATEMENT?

1 A YES.

2 Q BUT YOU NEVER RECEIVED IT FROM HER?

3 A AS I RECALL, IT'S NOT -- I DON'T SEE THAT IT WAS
4 ATTACHED TO MY REPORT. I SEE THAT I OBTAINED THE -- HAD
5 THE STATEMENTS FROM THE WITNESSES, SURVEYORS, ON MINE. BUT
6 I BELIEVE THAT HERS WAS TURNED OVER TO THE DETECTIVE
7 BECAUSE HE'D ARRIVED AT THE SCENE AND SHE TOOK A WHILE, AND
8 IT TOOK A WHILE TO GET THE STATEMENT WRITTEN.

9 Q AND DID YOU -- YOU DIDN'T INTERVIEW THE SURVEYORS
10 ABOUT WHAT HAPPENED, DID YOU?

11 A OFFICER RUNYON WAS THE OFFICER WHO WAS OUTSIDE THE
12 TRAILER, HE OBTAINED THEIR STATEMENTS FROM THEM.

13 Q YOU DIDN'T NOTE ANY DAMAGE TO THE RESIDENCE?

14 A NO, I DIDN'T NOTE ANY DAMAGE TO THE DOORS OR FORCED
15 ENTRY-TYPE INCIDENT LIKE THAT OTHER THAN THE PHONES.

16 Q WHAT TYPE OF CLOTHING DID MS. RODRIGUEZ HAVE ON WHEN
17 YOU ARRIVED?

18 A I REMEMBER THE PANTS IN PARTICULAR, BECAUSE I DON'T
19 RECALL THEM FITTING HER QUITE RIGHT. AND THE SHIRT, I
20 CAN'T HONESTLY BRING BACK. I WANT TO SAY IT WAS DARK IN
21 COLOR TOO.

22 Q YOU DIDN'T NOTE ANY BRUISING OR SWELLING OR INJURIES
23 TO HER BODY OTHER THAN HER FINGER, DID YOU?

24 A PRIMARILY, IN MY MIND NOW I REMEMBER THE FINGER.

25 Q AND DID SHE COMPLAIN TO YOU OF ANY TYPE OF INJURIES OR

JEFFREY MERRILL -- REDIRECT BY MS. MILLICAN

159

1 BEING IN PAIN OR ANYTHING LIKE THAT?

2 A I DON'T REMEMBER HER COMPLAINING OF BEING -- AS HAVING
3 A SUBSTANTIAL INJURY THAT SHE WAS COMPLAINING OF.

4 MS. SMART: THANK YOU, I DON'T HAVE ANY OTHER
5 QUESTIONS.

6 THE COURT: REDIRECT?

7 REDIRECT EXAMINATION BY MS. MILLICAN:

8 Q DEPUTY MERRILL, ALTHOUGH [REDACTED] CAN SPEAK ENGLISH AND HER
9 SISTER WAS PRESENT TO TRANSLATE, IS IT FAIR TO SAY THAT
10 THERE IS STILL SOMETHING OF A LANGUAGE BARRIER IN GETTING
11 THE EXACT DETAILS OF WHAT SHE SAID WHEN YOU TOOK HER
12 STATEMENT?

13 A YES.

14 Q IS IT ALSO FAIR TO SAY THAT THIS INCIDENT HAPPENED
15 OVER A YEAR AGO AND YOUR RECOLLECTION OF THE DETAILS MAY
16 NOT BE AS SHARP?

17 A YES.

18 Q WHEN YOU ARRIVED ON THE SCENE, DID THE VICTIM STILL
19 APPEAR TO YOU TO BE IN SOME KIND OF SHOCK -- OR WHAT KIND
20 OF STATE WAS SHE IN?

21 A SHE OBVIOUSLY HAD BEEN THROUGH A TRAUMATIC INCIDENT TO
22 ME. HAVING SPEAKING WITH HER, SHE WAS ABLE TO HANDLE THE
23 STRESS OF THE MOMENT, BUT SHE CLEARLY HAD BEEN THROUGH
24 SOMETHING BUT SHE WAS ABLE TO CONTROL HER EMOTIONS. SHE
25 DIDN'T -- TO ME -- IT WAS IMPORTANT TO ME THAT SHE WAS THE

JEFFREY MERRILL — REDIRECT BY MS. MILLICAN 160

1 WAY SHE WAS BECAUSE SHE HAVING BEEN UPSET BUT SHE COULD
2 STILL DEAL AND MAINTAIN CONTROL OF HERSELF BUT ALSO GIVE ME
3 THE INFORMATION SHE NEEDED AND NOT JUST BE TOTALLY
4 OVERWHELMED BY THE INCIDENT.

5 MS. MILLICAN: I HAVE NO FURTHER QUESTIONS, YOUR
6 HONOR. THANK YOU.

7 THE COURT: RECROSS?

8 MS. SMART: ~~NO~~ YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU MAY
10 STEP DOWN.

11 MS. MILLICAN: YOUR HONOR, MAY THIS WITNESS BE
12 EXCUSED?

13 THE COURT: ANY OBJECTION?

14 MS. SMART: NO OBJECTION.

15 THE COURT: THE WITNESS IS EXCUSED. THANK YOU, SIR.

16 (THE WITNESS LEAVES THE WITNESS STAND.)

17 THE COURT: ALL RIGHT. MS. MILLICAN, CALL YOUR NEXT
18 WITNESS.

19 THE COURT: THE STATE CALLS INVESTIGATOR BRIAN
20 CHAPMAN.

21 BRIAN CHAPMAN, BEING FIRST
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
24 SPELL IT FOR THE COURT.

25 WITNESS: LANCE CORPORAL BRIAN CHAPMAN, B-R-I-A-N

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

161

1 C-H-A-P-M-A-N.

2 DIRECT EXAMINATION BY MS. MILLICAN:

3 Q INVESTIGATOR CHAPMAN, WHERE ARE YOU EMPLOYED?

4 A BEAUFORT COUNTY SHERIFF'S OFFICE.

5 Q HOW LONG HAVE YOU BEEN AT THE BEAUFORT COUNTY

6 SHERIFF'S OFFICE?

7 A I'VE BEEN EMPLOYED SINCE NOVEMBER OF 2002.

8 Q HOW MANY YEARS HAVE YOU BEEN IN LAW ENFORCEMENT IN

9 TOTAL THOUGH?

10 A 4 YEARS. A LITTLE OVER 4 YEARS.

11 Q WHAT WERE YOUR GENERAL DUTIES IN FEBRUARY OF 2006?

12 A GENERAL ASSIGNMENT, CRIMINAL INVESTIGATOR.

13 Q WERE YOU ON DUTY ON FEBRUARY THE 7TH, 2006?

14 A I WAS.

15 Q DID YOU GET INVOLVED IN A RAPE CASE ON THAT DAY?

16 A I DID.

17 Q HOW DID YOUR INVOLVEMENT WITH THE CASE BEGIN?

18 A INVESTIGATION DIVISION RECEIVED A CALL FOR ASSISTANCE

19 FROM THE ROAD PATROL. THEY ADVISED THEY HAD AN ASSAULT AT

20 ON ST. HELENA, BEAUFORT COUNTY, SOUTH

21 CAROLINA. ALSO RECEIVED INFORMATION FROM THE OFFICERS THAT

22 THEY HAD MADE CONTACT WITH AN INDIVIDUAL THAT MATCHED THE

23 DESCRIPTION THAT WAS GIVEN BY THE VICTIM BY THE NAME OF

24 NATHANIEL JOHNSON. AND I ALONG WITH SERGEANT CHRIS WILSON

25 CREATED A PHOTO LINE-UP.

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN 162

1 Q DO YOU RECALL HOW MANY PHOTOS WERE INVOLVED IN THIS

2 PHOTO LINE-UP OR PHOTO ARRAY?

3 A I BELIEVE IT WAS A TOTAL OF 12 INDIVIDUAL PICTURES.

4 Q WHAT DID -- WHAT DID THE PHOTOS IN THOSE PICTURES --

5 WHAT DID THEY LOOK LIKE?

6 A THEY WERE ALL AFRICAN AMERICAN MALES WITH CLOSE SHAVED

7 HAIRCUTS OR NO HAIR AT ALL, CLEAN CUT FACIAL FEATURES, AND

8 THEY WERE ALL WEARING ORANGE JUMP SUITS.

9 Q DID THEY ALL LOOK ABOUT ALIKE?

10 A THEY ALL LOOKED SIMILAR, YES.

11 Q IS THAT THE INTENTION IN A PHOTO ARRAY LIKE THAT?

12 A YES, IT IS.

13 Q WHY?

14 A SO THAT THERE ARE VARIOUS PEOPLE THAT LOOK SIMILAR, TO

15 SEE IF A VICTIM CAN IDENTIFY A PERSON THAT MAY BE THEIR

16 ATTACKER OR INVOLVED IN A CRIMINAL INCIDENT.

17 Q IN YOUR EXPERIENCE IS IT UNCOMMON FOR A VICTIM TO HAVE

18 DIFFICULTY PICKING SOMEONE OUT OF A PHOTO LINE-UP?

19 A IT'S VERY COMMON.

20 Q IT'S VERY COMMON FOR THEM TO HAVE DIFFICULTY?

21 A YES.

22 Q WHEN DID YOU PRESENT THESE PHOTOS OF ALL THESE VARIOUS

23 PEOPLE THAT LOOKED SIMILAR TO THE VICTIM?

24 A SHORTLY AFTER I ARRIVED ON THE SCENE.

25 Q DID SHE STILL APPEAR TO YOU TO BE IN SOME SORT OF

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

163

1 SHOCK OR HAVING BEEN INVOLVED IN ANY KIND OF TRAUMA AT THAT
2 POINT?

3 A ABSOLUTELY. SHE WAS VISIBLY SHAKEN. BUT WHEN I BEGAN
4 SPEAKING TO HER, SHE WAS -- PRESENTED HERSELF VERY WELL AND
5 WAS ABLE TO PROVIDE INFORMATION.

6 Q SO WHAT DID YOU DO ONCE YOU ARRIVED AT THE CRIME
7 SCENE?

8 A FIRST I GOT AN UPDATE ON THE SITUATION FROM CORPORAL
9 MERRILL AND OFFICER RUNYON TO GET AN IDEA OF WHAT THEY'VE
10 ALREADY DONE ON THE SCENE, AND THEN I BEGAN SPEAKING WITH
11 MS. RODRIGUEZ AND SHOWED HER THE LINE-UPS.

12 Q DID YOU TAKE ANY PHOTOGRAPHS OF THE SCENE?

13 A I DID WITH A DIGITAL CAMERA.

14 Q DID YOU TAKE THE PHOTOGRAPH OF THE VICTIM AND HER BITE
15 MARKS?

16 A YES, I DID.

17 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
18 NO. 1. IS THAT THE MANNER IN WHICH THE VICTIM WAS DRESSED
19 AND THE STATE THAT HER KITCHEN WAS IN WHEN YOU SHOWED UP ON
20 THE SCENE?

21 A YES, IT WAS.

22 Q DID YOU TAKE HER COMPLETE STATEMENT OR DID DEPUTY
23 MERRILL TAKE THE COMPLETE STATEMENT?

24 A WHEN I ARRIVED, SHE WAS ALREADY IN THE BEGINNING
25 STAGES OF A WRITTEN STATEMENT THAT WAS INITIATED BY

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN 164

1 CORPORAL MERRILL.

2 Q AFTER TAKING HER COMPLETE STATEMENT, SHOWING HER THE
3 PHOTO LINE-UPS, AND TAKING PHOTOGRAPHS, WHAT DID YOU DO
4 NEXT?

5 A I ASKED HER IF SHE HAD WASHED HER HANDS. SHE
6 INDICATED SHE HAD A BITE MARK ON HER FINGER. I THEN
7 COLLECTED COTTON SWABS OF THAT WOUND FOR POTENTIAL DNA
8 EVIDENCE.

9 Q COULD YOU DESCRIBE FOR THE JURY EXACTLY HOW YOU GO
10 ABOUT DOING THAT?

11 A TAKE A STERILE COTTON SWAB AND THEN SOME SALINE
12 SOLUTION, PUT 1 OR 2 DROPS ON THE SWAB, AND THEN SWAB THE
13 AREA IN A MOTION AROUND THE BITE WOUND THAT SHE HAD.

14 Q AND WHAT'S THE POINT OF THE SALINE?

15 A THE SALINE IS TO KEEP IT CLEAN, SO IT'S GOT SOMETHING
16 -- IF THERE'S ANYTHING ON HER BITE WOUND, IT HAS SOMETHING
17 TO ATTACH TO.

18 Q WHAT DO YOU DO AFTER YOU'VE TAKEN THE SWAB OF THE
19 WOUND AREA?

20 A I PUT IT ON A DRYING RACK THAT I HAD AND THEN I
21 SECURED IT.

22 Q IS THE DRYING RACK A PART OF THE KIT THAT COMES WITH
23 THE SWABS OR WHAT IS IT EXACTLY?

24 A IT'S A -- IT'S A PIECE OF WOOD THAT'S MARKED, I
25 BELIEVE 1 THROUGH 12, THAT WAS GIVEN TO ME -- THAT WAS

BRIAN CHAPMAN — DIRECT BY MS. MILLICAN .

165

1 ISSUED FROM THE SHERIFF'S OFFICE.

2 Q WHILE THIS IS SITTING IN THE DRYING RACK, HOW LONG DID
3 IT SIT THERE AND WHAT DID YOU DO WITH IT?

4 A IT WAS SITTING THERE UNTIL I COMPLETED MY
5 INVESTIGATION, ON-SCENE INVESTIGATION. AND THEN I TOOK IT
6 ALONG WITH OTHER EVIDENCE I'D COLLECTED WITH ME. AND THE
7 VICTIM WAS ESCORTED TO BEAUFORT MEMORIAL HOSPITAL FOR A
8 CRIMINAL SEXUAL CONDUCT KIT. AND THEN AFTER THAT I SECURED
9 IT IN MY OFFICE.

10 Q DID YOU COLLECT ANYTHING ELSE FROM HER HOUSE?

11 A I DID. I COLLECTED A BEDDING SHEET THAT WAS ON THE
12 BED.

13 (BOX WITH PANTS AND SHEET MARKED FOR IDENTIFICATION AS
14 STATE'S EXHIBIT NO. 11.)

15 Q WOULD YOU PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S
16 EXHIBIT NO. 11 FOR PURPOSES OF IDENTIFICATION?

17 A THIS IS A BOX MARKED FROM SLED, STATE LAW ENFORCEMENT
18 DIVISION. INSIDE THERE'S A BIO HAZARD BAG. THEN THERE IS
19 A BROWN PAPER EVIDENCE BAG FROM THE SHERIFF'S OFFICE, WHICH
20 I FILLED OUT AND IT'S MARKED ONE BED SHEET COLLECTED FROM
21 THE VICTIM'S BED.

22 Q NOW, THIS IS THE BED SHEET THAT YOU COLLECTED FROM THE
23 VICTIM'S RESIDENCE ON THIS DAY?

24 A YES, MA'AM. INSIDE THAT, THERE'S A WHITE PAPER BAG.
25 AND THEN THERE IS -- WHAT APPEARS A FITTED BEDDING SHEET.

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

166

1 Q THE SWABS THAT YOU TOOK WITH THE BITE MARK, WERE THEY
2 SEPARATE FROM THE RAPE KIT?

3 A YES, THEY WERE. I BELIEVE SWABS WERE ALSO CONDUCTED
4 IN THE ASSAULT KIT, BUT I CONDUCTED SOME SEPARATELY PRIOR
5 TO TAKING HER TO THE HOSPITAL.

6 Q OKAY. WHAT DID YOU DO WITH ALL THESE ITEMS THAT YOU
7 COLLECTED, THE BEDDING SHEET, THE SWABS FROM HER HAND?

8 A WHEN I COMPLETED THE AT-SCENE INVESTIGATION AND
9 COMPLETED THE STUFF AT THE HOSPITAL, THE EVIDENCE DIVISION
10 AT THE SHERIFF'S OFFICE WAS ALREADY CLOSED FOR THE DAY, SO
11 I HAD TO SECURE THEM IN MY OFFICE INSIDE THE SHERIFF'S
12 OFFICE.

13 Q AND WHEN DID YOU PERSONALLY -- DID YOU PERSONALLY TAKE
14 THOSE ITEMS TO EVIDENCE AT SOME POINT?

15 A I DID.

16 Q WHEN DID YOU DO THAT?

17 A IF YOU'LL INDULGE ME FOR A SECOND, I CAN LOOK BACK AT
18 MY EVIDENCE SHEET AND I CAN TELL YOU EXACTLY WHEN.

19 (PAUSE.) THE BEDDING SHEET AND THE SWABS THAT I COLLECTED
20 ALONG WITH THE CD OF THE DIGITAL PICTURES, WERE SUBMITTED
21 ON FEBRUARY 8TH AT 08:30.

22 Q IS THERE ANYTHING ELSE LOCATED IN THAT BOX RIGHT THERE
23 IN FRONT OF YOU?

24 A THERE'S ANOTHER EVIDENCE BAG UNDERNEATH THIS ONE HERE.
25 THIS IS A BROWN PAPER EVIDENCE BAG FROM CORPORAL MERRILL

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

167

1 LABELED ONE PAIR OF PANTS FROM THE LOCATION INSIDE THE
2 VICTIM'S BEDROOM.

3 Q IS THERE AN ITEM NO. 3 IN THAT BOX THAT WAS SENT TO
4 SLED?

5 A CAN YOU ADVISE ME WHICH ITEM IT WAS? (PAUSE.)

6 (SWABS MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
7 NO. 12.)

8 Q ACTUALLY HAVE IT RIGHT HERE.

9 A OKAY.

10 Q WOULD YOU PLEASE TAKE A LOOK AT WHAT'S BEEN MARKED FOR
11 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NO. 12? DO YOU
12 RECOGNIZE IT?

13 A YES, I DO. THIS IS AN EVIDENCE BAG CONTAINING 2 Q-TIP
14 SWABS TAKEN FROM THE VICTIM'S BITE WOUND, WHICH I
15 COLLECTED.

16 Q HOW DO YOU RECOGNIZE IT? DO YOU HAVE ANY SORT OF ---

17 A IT'S MARKED WITH THE SHERIFF'S OFFICE CASE NUMBER. IF
18 I CAN OPEN THIS UP, THE STUFF'S INSIDE THAT I'D BE ABLE TO
19 IDENTIFY.

20 Q DID YOU INITIAL ---

21 A NOT ON THIS PART. THIS OUTER PART IS FROM STATE LAW
22 ENFORCEMENT DIVISION. (PAUSE.) THIS IS A CLEAR PLASTIC
23 EVIDENCE BAG CONTAINING TWO MANILA ENVELOPES LABELED SWAB
24 1 AND SWAB NO. 2. THESE ARE THE COTTON SWABS THAT I
25 COLLECTED, AND IT IS MY HANDWRITING.

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

168

1 Q THANK YOU, INVESTIGATOR CHAPMAN. DID YOU COLLECT
2 ~~0112~~ VOLUNTARY WRITTEN STATEMENT OR DID DEPUTY MERRILL
3 COLLECT THAT?

4 A HE INITIATED THE STATEMENT ON THE SCENE PRIOR TO MY
5 ARRIVAL, AND THEN I COLLECTED IT PRIOR TO LEAVING FOR
6 BEAUFORT MEMORIAL.

7 Q DID YOU ADVISE ANA TO DO ANYTHING FURTHER AT THAT
8 POINT?

9 A WHEN WE GOT TO BEAUFORT MEMORIAL I ASKED HER TO GO
10 AHEAD AND COMPLETE ANOTHER STATEMENT.

11 Q AT THE HOSPITAL?

12 A AT THE HOSPITAL, YES.

13 Q DID YOU ESCORT HER TO THE HOSPITAL?

14 A I DID. SHE FOLLOWED BEHIND ME IN ANOTHER VEHICLE.
15 SEEING HOW SHE HAD JUST STATED SHE HAD BEEN ASSAULTED BY A
16 BLACK MALE AND BEING SEXUALLY ASSAULTED, I DIDN'T FEEL IT
17 WOULD BE COMFORTABLE FOR HER TO RIDE WITH ME TO THE
18 HOSPITAL. SO SHE RODE WITH HER SISTER AND THEY FOLLOWED
19 BEHIND ME.

20 Q WAS SHE COOPERATIVE WITH YOUR INVESTIGATION?

21 A YES, SHE WAS.

22 Q WAS THE TRANSLATOR PRESENT WHEN YOU TOOK THE SECOND
23 STATEMENT AT THE HOSPITAL?

24 A HER SISTER WAS THERE, YES.

25 Q WHY DID YOU TAKE ANOTHER STATEMENT FROM HER?

BRIAN CHAPMAN — DIRECT BY MS. MILLICAN

169

1 A COMMONLY DO THAT TO MAKE SURE EVERYTHING IS
2 CONSISTENT.

3 Q WELL, IN YOUR OPINION WAS SHE CONSISTENT WITH HER
4 PREVIOUS STATEMENT?

5 A YES, SHE WAS.

6 Q DURING THE INTERVIEW WAS ANA ABLE TO DESCRIBE HER
7 ATTACKER IN DETAIL?

8 A SHE WAS.

9 Q DID YOU ARRANGE FOR HER TO MEET WITH A SKETCH ARTIST?

10 A I DID, I ARRANGED FOR HER TO MEET WITH A STATE LAW
11 ENFORCEMENT DIVISION FORENSIC SKETCH ARTIST.

12 Q WAS A COMPOSITE SKETCH OF HER ATTACKER COMPLETED?

13 A IT WAS.

14 Q WHAT DATE WAS THAT DONE?

15 A I BELIEVE THAT WAS DONE ON THE 9TH.

16 Q AND WHO ACTUALLY COMPLETED THAT?

17 A THAT WOULD BE SLED AGENT MIKE LYNCH.

18 Q WHAT WAS DONE WITH THE SKETCH AFTER IT WAS COMPLETED?

19 A THE SKETCH WAS TAKEN AND THEN DISTRIBUTED TO THE LOCAL
20 MEDIA OUTLETS, TV AND NEWSPAPER.

21 Q DID YOU CONDUCT ANY NEIGHBORHOOD CANVASES?

22 A I DID. I WALKED THE AREA OF CUFFY ROAD, AND ALSO OF
23 SCOTT HILL AREA.

24 Q AS A RESULT OF THE PUBLICATION OF THAT SKETCH TO THE
25 COMMUNITY AND A CANVAS OF THE AREA, DID YOU RECEIVE

BRIAN CHAPMAN - DIRECT BY MS. MILLECAN

170

1 INFORMATION FROM COMMUNITY MEMBERS THAT HELPED YOU DEVELOP
2 A POSSIBLE SUSPECT IN THIS CASE?

3 A I DID.

4 Q WHO WAS THE POSSIBLE SUSPECT THAT WAS DEVELOPED?

5 A REPEATED TIMES THE NAME OF NATHANIEL JOHNSON, JR.

6 Q DID YOU DETERMINE WHERE NATHANIEL JOHNSON, JR. WAS
7 LIVING?

8 A I DID.

9 Q WHAT WAS HIS ADDRESS?

10 A 160-B STORYTELLER ROAD, ST. HELENA, BEAUFORT COUNTY
11 SOUTH CAROLINA.

12 Q APPROXIMATELY HOW FAR IS THAT ADDRESS FROM THE
13 VICTIM'S ADDRESS 94 CUFFY ROAD?

14 A IT'S APPROXIMATELY 2 1/2 TO 3 MILES.

15 Q WAS A SEARCH WARRANT EXECUTED AT THAT ADDRESS?

16 A IT WAS.

17 Q WAS THE DEFENDANT PRESENT?

18 A HE WAS. INITIALLY HE WAS -- THE REASON WE SERVED THE
19 SEARCH WARRANT, HE WAS ARRESTED FOR UNRELATED CHARGES, AND
20 THEN THE SEARCH WARRANT WAS SERVED AFTER HIS ARREST.

21 Q DID YOU ADVISE THE DEFENDANT OF HIS MIRANDA RIGHTS?

22 A I DID.

23 MS. SMART: OBJECTION, YOUR HONOR. SIDE BAR.

24 THE COURT: ALL RIGHT.

25 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

171

1 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

2 THE COURT: MS. RUTLEDGE, IF YOU'LL MAKE A NOTE ON
3 YOUR TAPE WHERE YOU ARE RIGHT NOW FOR MY BENEFIT PLEASE.

4 ALL RIGHT. YOU MAY PROCEED.

5 MS. MILLICAN: THANK YOU, YOUR HONOR.

6 Q DID YOU ADVISE THE DEFENDANT OF HIS MIRANDA RIGHTS?

7 A YES, I DID.

8 (MIRANDA FORM MARKED FOR IDENTIFICATION AS STATE'S
9 EXHIBIT NO. 13.)

10 Q WOULD YOU PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S
11 EXHIBIT NO. 13. DO YOU RECOGNIZE IT?

12 A YES, I DO.

13 Q WHAT IS IT?

14 A IT'S A BEAUFORT COUNTY SHERIFF'S OFFICE MIRANDA FORM.

15 Q HOW DO YOU RECOGNIZE IT?

16 A MY SIGNATURE IS THE FIRST SIGNATURE ON HERE AS
17 WITNESS.

18 MS. MILLICAN: YOUR HONOR, THE STATE MOVES TO ADMIT
19 STATE'S EXHIBIT NO. 13 INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MS. SMART: NONE, YOUR HONOR.

22 THE COURT: ALL RIGHT. STATE'S EXHIBIT NO. 13 WILL BE
23 ADMITTED INTO EVIDENCE WITHOUT OBJECTION. IS IT MARKED FOR
24 IDENTIFICATION AT THIS POINT, MS. MILLICAN?

25 MS. MILLICAN: YES, YOUR HONOR, STATE'S NO. 13.

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN 172

1 THE COURT: GIVE IT BACK TO THE COURT REPORTER, LET
2 HER TAKE THE I.D. MARKING OFF OF IT.

3 (PAUSE.)

4 (STATE'S EXHIBIT NO. 13 RECEIVED IN EVIDENCE.)

5 MS. MILLICAN: THANK YOU.

6 Q WOULD YOU PLEASE DEMONSTRATE THE MANNER IN WHICH YOU
7 ADVISED THE DEFENDANT OF HIS MIRANDA RIGHTS USING THIS
8 FORM?

9 A THIS IS THE STANDARD WAY I DO IT. (READING.) THIS IS
10 A STATEMENT OF YOUR MIRANDA RIGHTS. BEFORE I ASK YOU ANY
11 QUESTIONS, YOU MUST UNDERSTAND WHAT YOUR RIGHTS ARE. YOU
12 HAVE THE RIGHT TO REMAIN SILENT. DO YOU UNDERSTAND THAT?

13 ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A
14 COURT OF LAW. DO YOU UNDERSTAND THAT?

15 YOU HAVE THE RIGHT TO TALK TO AN ATTORNEY FOR ADVICE
16 BEFORE WE ASK YOU ANY QUESTIONS. DO YOU UNDERSTAND THAT?

17 IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE
18 APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. DO
19 YOU UNDERSTAND THAT?

20 IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT AN
21 ATTORNEY, YOU STILL HAVE THE RIGHT TO STOP ANSWERING ANY
22 TIME. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING ANY TIME
23 UNTIL YOU TALK TO AN ATTORNEY. DO YOU UNDERSTAND THAT?

24 THIS NEXT PART IS CALLED A WAIVER OF RIGHTS, AND I'M
25 GOING TO READ THIS TO YOU.

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

173

1 THE FIRST ONE SAYS, I HAVE READ THE STATEMENT OF MY
2 RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE. DO YOU
3 UNDERSTAND THAT? DO YOU UNDERSTAND THAT?

4 THE SECOND PART SAYS, I CANNOT READ THE STATEMENT AND
5 THE STATEMENT HAS BEEN READ TO ME SUFFICIENTLY SO I
6 UNDERSTAND WHAT MY RIGHTS ARE. DO YOU UNDERSTAND THAT?

7 I'M WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS.
8 I DO NOT WANT AN ATTORNEY AT THIS TIME. I UNDERSTAND AND
9 KNOW WHAT I'M DOING. NO PROMISES OR THREATS HAVE BEEN MADE
10 TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED
11 AGAINST ME. DO YOU UNDERSTAND THAT?

12 NORMALLY AFTER I'VE COMPLETED THAT, I'LL ASK IF THEY
13 UNDERSTAND THAT AND AGREE WITH IT, PLEASE INITIAL IN THE
14 PARENTHESES THAT ARE LISTED ON THE SIDE HERE. AND I ASK
15 THEM IF THEY AGREE WITH ALL THAT, PLEASE SIGN, PUT THE
16 AMOUNT OF EDUCATION THEY'VE COMPLETED IN THE MARKED BOX AND
17 THEN SIGN IT AND DATE IT.

18 Q DID THE DEFENDANT SIGN THIS PARTICULAR WAIVER FORM?

19 A NO, HE DID NOT. HE WAS HANDCUFFED.

20 Q DID HE INDICATE WHETHER OR NOT HE UNDERSTOOD AS YOU
21 WENT THROUGH THE VARIOUS RIGHTS?

22 A HE DID. HE GAVE VERBAL ACKNOWLEDGMENT FOR EACH ONE.

23 Q DESCRIBE THE DEFENDANT'S PHYSICAL APPEARANCE AT THE
24 TIME YOU GAVE HIM HIS MIRANDA RIGHTS?

25 A AT THE TIME HIS APPEARANCE APPEARED TO BE CLEAN CUT,

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN. 174

1 WELL KEPT. HIS HAIR WAS VERY CLOSE, APPEARED TO BE VERY
2 CLOSE SHAVEN.

3 Q HAVE YOU EVER DEALT WITH PEOPLE IN YOUR WORK WHO ARE
4 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS?

5 A YES, MA'AM.

6 Q DID THE DEFENDANT APPEAR TO YOU TO BE UNDER THE
7 INFLUENCE OF EITHER ALCOHOL OR DRUGS AT THE TIME YOU
8 ADVISED HIM OF HIS RIGHTS?

9 A NO, HE DID NOT.

10 Q DID THE DEFENDANT APPEAR TO UNDERSTAND YOUR QUESTIONS?

11 A YES, MA'AM.

12 Q WAS HIS SPEECH COHERENT?

13 A YES, MA'AM.

14 Q DID HE RESPOND WHEN ASKED IF HE WANTED AN ATTORNEY?

15 A HE SAID NO.

16 Q DID THE DEFENDANT INVOKE HIS RIGHT TO REMAIN SILENT?

17 A NO.

18 Q DID THE DEFENDANT AGREE TO ANSWER YOUR QUESTIONS
19 WITHOUT AN ATTORNEY BEING PRESENT?

20 A YES, HE DID.

21 Q DID YOU PROMISE THE DEFENDANT ANYTHING IN EXCHANGE FOR
22 HIS STATEMENT?

23 A NO, I DID NOT.

24 Q DID YOU COERCE THE DEFENDANT IN MAKING A STATEMENT
25 WITH THREATS OR ACTIONS?

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

175

1 A NO, I DID NOT.

2 Q TO THE BEST OF YOUR KNOWLEDGE, WAS THE DEFENDANT'S
3 STATEMENT FREELY AND VOLUNTARILY GIVEN TO YOU?

4 A YES, MA'AM.

5 Q DID THE DEFENDANT MAKE A STATEMENT IN RESPONSE TO YOUR
6 QUESTIONS REGARDING [REDACTED] CASE?

7 A YES, HE DID.

8 Q DID THE DEFENDANT EVER REFUSE TO ANSWER FURTHER
9 QUESTIONS OR REFUSE TO DO SO WITHOUT AN ATTORNEY BEING
10 PRESENT? [REDACTED]

11 A HE ANSWERED THE MAJORITY OF THE QUESTIONS TOWARD THE
12 END OF THE INTERVIEW.

13 Q AT THE POINT THAT HE EITHER REFUSED TO ANSWER
14 QUESTIONS OR WANTED HIS ATTORNEY TO BE PRESENT, DID YOUR
15 QUESTIONS STOP?

16 A AFTER HE REQUESTED AN ATTORNEY TO BE PRESENT, THEN WE
17 STOPPED THE INTERVIEW.

18 Q WHERE DID THE DEFENDANT [REDACTED] HE WAS -- WHERE DID
19 HE STATE HE WAS ON FEBRUARY THE 7TH, 2006?

20 A HE STATED HE WAS WORKING AT SUCCESSION GOLF COURSE ON
21 LADY'S ISLAND.

22 Q WERE YOU LATER ABLE TO VERIFY [REDACTED]S EMPLOYMENT AT
23 SUCCESSION ON THAT DAY?

24 A YES, I WAS ABLE TO VERIFY THAT INFORMATION.

25 Q WHAT DID YOU LEARN FROM YOUR INVESTIGATION WITH REGARD

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

176

1 TO THAT?

2 A THAT HE WAS EMPLOYED FOR A PERIOD IN THE YEAR 2005,
3 WAS NOT EMPLOYED AT SUCCESSION GOLF COURSE AT THE TIME.

4 Q DID HIS EMPLOYMENT AT SUCCESSION END IN 2005?

5 A I BELIEVE SO. I HAVE A RECORD HERE, I CAN REFER BACK
6 TO.

7 Q IF THAT WOULD HELP YOU REFRESH YOUR RECOLLECTION.

8 (PAUSE.)

9 A TO VERIFY NATHANIEL JOHNSON SOCIAL SECURITY NO. [REDACTED]
10 [REDACTED] WAS EMPLOYED FROM MARCH 29TH, 2005 TO APRIL 23RD,
11 2005.

12 Q WHEN DID THIS INCIDENT HAPPEN AGAIN?

13 A THIS HAPPENED IN FEBRUARY OF 2006.

14 Q DID THE DEFENDANT MENTION HIS PREFERRED MEANS OF
15 TRANSPORTATION?

16 A HE SAID HE PREFER TO EITHER WALK OR RIDE A BICYCLE.

17 Q DID THE DEFENDANT INDICATE WHETHER HE KNEW ABOUT THE
18 ATTACK ON [REDACTED]

19 A YES, HE INDICATED HE'D HEARD ABOUT IT ON THE NEWS AND
20 IN THE NEWSPAPER.

21 Q DID YOU SHOW THE DEFENDANT THE SKETCH THAT MIKE LYNCH
22 HAD MADE WITH [REDACTED] DESCRIPTION?

23 A YES, MA'AM.

24 Q WHAT WAS THE DEFENDANT'S REACTION TO THE SKETCH?

25 A HE STATED IT LOOKED LIKE HIM, BUT HE DIDN'T KNOW

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

177

- 1 ANYTHING ABOUT IT AND IT WAS NOT HIM IN THE PICTURE.
- 2 Q DID YOU REQUEST ANY OF THE EVIDENCE YOU HAD COLLECTED
- 3 AT THIS POINT BE SENT TO SLED FOR ANALYSIS?
- 4 A YES, MA'AM.
- 5 Q WHAT PIECES OF EVIDENCE DID YOU REQUEST BE SENT TO
- 6 SLED?
- 7 A I REQUESTED THE SEXUAL ASSAULT KIT, THE FITTED BED
- 8 SHEET, AND THE SWABS I HAD COLLECTED AT THE SCENE.
- 9 Q WAS THERE ANY CLOTHING THAT WENT?
- 10 A I BELIEVE THERE WAS A PAIR OF PANTS THAT WAS SENT AS
- 11 WELL THAT WAS COLLECTED BY CORPORAL MERRILL.
- 12 Q WERE YOU ABLE TO OBTAIN AN INITIAL DNA SAMPLE FROM THE
- 13 DEFENDANT FOR COMPARISON TO THE RAPE KIT THAT [REDACTED] SUBMITTED
- 14 TO AT THE HOSPITAL?
- 15 A NOT AT FIRST.
- 16 Q WERE YOU EVER ABLE TO?
- 17 A YES, I WAS.
- 18 Q HOW?
- 19 A HE WAS IN THE BEAUFORT COUNTY DETENTION CENTER ---
- 20 MS. SMART: OBJECTION, YOUR HONOR.
- 21 THE COURT: ALL RIGHT. THE JURY WILL DISREGARD WHERE
- 22 HE WAS, JUST TELL HOW YOU CAME TO GET THE SAMPLE. THE
- 23 FIRST PART OF THAT STATEMENT WILL BE STRICKEN.
- 24 MS. MILLICAN: YOUR HONOR, MAY WE APPROACH JUST
- 25 BRIEFLY?

1 THE COURT: YES.

2 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
3 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THERE IS
5 AN EVIDENTIARY MATTER THAT I NOW NEED TO TAKE UP WITH THE
6 ATTORNEYS, AND I NEED TO DO THAT ON THE RECORD AND OUTSIDE
7 OF YOUR PRESENCE. SO I'M GOING TO ASK IF YOU WOULD, GO TO
8 YOUR JURY ROOM FOR A FEW MINUTES PLEASE WHILE WE TAKE CARE
9 OF THAT. JUST LEAVE YOUR NOTE PADS IN YOUR CHAIR. DO NOT
10 DISCUSS THE CASE AMONG YOURSELVES WHILE YOU'RE IN THE JURY
11 ROOM. WE'LL SEND FOR YOU VERY SHORTLY.

12 (THE JURY RETIRES TO THE JURY ROOM AT 3:05 P.M.)

13 THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY PROFFER
14 THE TESTIMONY KEEPING IN MIND THE PROHIBITIONS UNDER RULE
15 608 SPECIFIC INSTANCES OF CONDUCT. BUT I'LL HEAR FROM YOU.
16 YOU MAY GO AHEAD AND ASK THE QUESTIONS AS TO THE SECURING
17 OF THE EVIDENCE THAT YOU THINK IS NECESSARY TO LAY THE
18 PROPER FOUNDATION.

19 MS. MILLICAN: THANK YOU, YOUR HONOR.

20 Q INVESTIGATOR CHAPMAN, HOW DID YOU GET A DNA SAMPLE
21 FROM THE DEFENDANT?

22 A I GOT THE SAMPLE BY GOING INTO THE WING CONTROL OF
23 BRAVO 3, WHICH IS AN ADMINISTRATIVE SEGREGATION UNIT AT
24 BEAUFORT COUNTY DETENTION CENTER. I WATCHED MR. JOHNSON IN
25 HIS CELL IN A CLOSED DOOR. I WATCHED HIM THROUGH A PAIR OF

BRIAN CHAPMAN — DIRECT BY MS. MILLICAN

179

1 BINOCULARS IN WING CONTROL. I WATCHED HIM EAT HIS MEAL
2 WITH A PLASTIC UTENSIL. HE THEN DISCARDED THAT UTENSIL OUT
3 OF THE FOOD TRAY SLOT AND OUT INTO THE OPEN COMMON AREA.
4 HIS DOOR WAS STILL CLOSED. THAT UTENSIL AND A NAPKIN WAS
5 COLLECTED BY A MEMBER OF THE BEAUFORT COUNTY DETENTION
6 CENTER PERSONNEL.

7 Q AND THEN WHAT DID THAT PERSON DO WITH THE SPOON AND
8 THE NAPKIN?

9 A IT WAS BROUGHT TO ME AND IT WAS PLACED IN AN EVIDENCE
10 BAG.

11 Q WHAT DID YOU DO WITH THOSE ITEMS AT THAT POINT IN
12 TIME?

13 A I COLLECTED THOSE AND I BROUGHT IT BACK TO THE
14 BEAUFORT COUNTY SHERIFF'S OFFICE AND SUBMITTED IT AS
15 EVIDENCE. AND IT WAS LATER SENT TO STATE LAW ENFORCEMENT
16 DIVISION FOR COMPARISON TO THE EVIDENCE THAT I'D ALREADY
17 SUBMITTED.

18 MS. MILLICAN: YOUR HONOR, THAT IS THE EXTENT.

19 THE COURT: WHY WAS HE IN BEAUFORT COUNTY DETENTION
20 CENTER?

21 WITNESS: HE WAS ARRESTED FOR UNRELATED CHARGES TO
22 THIS INCIDENT, YOUR HONOR.

23 THE COURT: MS. SMART, ANY QUESTIONS ON THIS ISSUE?

24 MS. SMART: NO, YOUR HONOR, I DON'T HAVE ANY QUESTIONS
25 ON THIS ISSUE.

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN

180

1 THE COURT: ALL RIGHT. WHAT'S YOUR POSITION WITH
2 REGARD TO THE PROFFER AS MADE BY MS. MILLICAN -- NOT THE
3 QUESTIONS I ASKED, BECAUSE I ASKED HIM AND THAT'S WHEN HE
4 SAID THE UNRELATED CHARGES, WHICH I DON'T THINK IS
5 ADMISSIBLE. BUT GO AHEAD WITH WHATEVER ARGUMENTS YOU MIGHT
6 HAVE.

7 MS. SMART: YOUR HONOR, CLEARLY, PRIOR BAD ACTS ARE
8 INADMISSIBLE. AND WHEN ---

9 THE COURT: WILL YOU STIPULATE THAT THE OFFICER
10 OBTAINED A SAMPLE OF HIS DNA?

11 MS. SMART: YES. THEY HAVE TWO SAMPLES.

12 THE COURT: I MEAN, THIS SAMPLE, THE ONE THAT HE'S
13 TALKING ABOUT. WILL YOU STIPULATE ---

14 MS. SMART: I'LL STIPULATE ---

15 THE COURT: --- THAT THE OFFICER RECEIVED A -- WHAT
16 WAS IT, A SPOON?

17 MS. MILLICAN: A PLASTIC SPOON.

18 THE COURT: A SAMPLE OF HIS DNA ON A PLASTIC SPOON?

19 MS. SMART: I WILL STIPULATE THAT ---

20 THE COURT: WRITE OUT THE STIPULATION. THAT'S WHAT
21 THE RULE REQUIRES. YOU ALL GET TOGETHER RIGHT NOW. WRITE
22 IT OUT.

23 (PAUSE.)

24 MR. HOOD: JUDGE, MR. JOHNSON WOULD LIKE TO USE THE
25 RESTROOM WHILE WE'RE DOING THIS. DO YOU HAVE A PROBLEM

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN

181

1 WITH THAT?

2 THE COURT: NO, SIR, THAT WILL BE FINE.

3 (THE DEFENDANT EXITS THE COURTROOM.)

4 (PAUSE.)

5 THE COURT: IS THE PROPOSED STIPULATION AGREEABLE, MS.
6 SMART?

7 MS. SMART: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT. BOTH OF YOU WILL SIGN THAT AND
9 HAND IT UP PLEASE.

10 MS. MILLICAN: YOUR HONOR, THE STATE HAS SIGNED IT.

11 (PAUSE.)

12 MS. SMART: YOUR HONOR, THERE IS ANOTHER ISSUE WITH
13 REGARD TO THE SECOND DNA SAMPLE.

14 THE COURT: ALL RIGHT. LET'S TAKE ONE THING AT A
15 TIME. LET ME SEE THAT ONE FIRST.

16 (PAUSE.)

17 (SLED EVIDENCE BAG WITH PLASTIC SPOON MARKED FOR
18 IDENTIFICATION AS STATE'S EXHIBIT NO. 14.)

19 THE COURT: ALL RIGHT. WITH REGARD TO THIS PARTICULAR
20 PART OF THE TESTIMONY, MY RECOLLECTION IS THAT THIS
21 DEFENDANT HAS NOT TESTIFIED IN THE PRESENCE OF THE JURY OR
22 MAYBE HE DID. I'M NOT SURE.

23 (THE DEFENDANT RETURNS TO THE COURTROOM.)

24 THE COURT: BUT I WILL TELL THEM IT DOESN'T MATTER.
25 BUT THE STIPULATION WHICH I WILL PUBLISH TO THE JURY IS

BRIAN CHAPMAN — DIRECT BY MS. MILLICAN

182

1 COURT'S EXHIBIT NO. 2?

2 REPORTER: YES, SIR.

3 THE COURT: OKAY. IS THE STATE RECEIVED A DNA SALIVA

4 EVIDENCE BELONGING TO DEFENDANT NATHANIEL JOHNSON, JR.

5 BOTH PARTIES AGREEING THAT STATE'S EXHIBIT NO. 14 IS A

6 DISCARDED SPOON CONTAINING THE DEFENDANT'S DNA.

7 I WILL PUBLISH THAT AND ADVISE THE JURY THAT THEY ARE

8 TO DISREGARD ANY TESTIMONY REGARDING THE CIRCUMSTANCES

9 UNDER WHICH THIS EVIDENCE WAS OBTAINED.

10 ANY OBJECTION TO THAT?

11 MS. MILLICAN: NONE BY THE STATE, YOUR HONOR.

12 THE COURT: ALL RIGHT. ANY OBJECTION TO THAT?

13 MS. SMART: NONE BY THE DEFENSE, YOUR HONOR. HOWEVER,

14 I WOULD HAVE TO RENEW MY OBJECTION FOR THE RECORD -- I'M

15 SORRY. RENEW MY MOTION. I DON'T THINK I MADE MY MOTION.

16 THE COURT: ALL RIGHT. LET'S TAKE ONE THING AT A

17 TIME, MS. SMART. I'M COMING TO THAT, BUT I WANT TO KEEP

18 THE RECORD CLEAR AS TO WHAT WE'RE TALKING ABOUT. RIGHT NOW

19 WE'RE TALKING ONLY ABOUT THE DNA ON THE SPOON, AND THAT'S

20 TAKEN CARE OF.

21 I'M GOING TO GIVE THIS TO THE COURT REPORTER AND HAVE

22 HER MARK IT AS COURT'S EXHIBIT NO. 2 AND GIVE IT BACK TO ME

23 SO THAT I CAN PUBLISH IT TO THE JURY.

24 (STIPULATION REGARDING STATE'S EXHIBIT NO. 14 MARKED

25 FOR IDENTIFICATION AS COURT'S EXHIBIT NO. 2.)

BRIAN CHAPMAN — DIRECT BY MS. MILLICAN

183

1 (STATE'S EXHIBIT NO. 14 RECEIVED IN EVIDENCE.)

2 THE COURT: NOW, PRIOR TO THAT THE WITNESS DID TESTIFY
3 AS I RECALL THAT HE WAS ARRESTED FOR AN UNRELATED CHARGE.
4 AND THEN AFTER THAT ANSWER WAS GIVEN, THE NEXT QUESTION WAS
5 ASKED ABOUT HIS MIRANDA RIGHTS AT WHICH POINT THE DEFENDANT
6 OBJECTED -- NOT TO THE MIRANDA RIGHTS QUESTION, WHICH I
7 THOUGHT IS WHAT THE OBJECTION WAS GOING TO BE -- BUT TO THE
8 PREVIOUS QUESTION AND ANSWER WHICH HAD ALREADY BEEN GIVEN.
9 AND THAT WAS THE OBJECTION THAT WAS INTERPOSED AT THAT
10 TIME, AND THAT'S THE TIMING OF IT AS I RECALL. AT WHICH
11 TIME MS. SMART REQUESTED A SIDE BAR AND WE HAD A SIDE BAR,
12 AND SHE INDICATED THAT SHE OBJECTED TO THE TESTIMONY ABOUT
13 BEING ARRESTED FOR UNRELATED CHARGES AND HAD A MOTION IN
14 CONNECTION WITH THAT.

15 I TOLD HER THAT I WOULD MARK IT AS MOTION BEING TIMELY
16 MADE AT THAT POINT. AND I'LL BE GLAD TO HEAR FROM YOU WITH
17 REGARD TO YOUR MOTION, MS. SMART.

18 MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR.
19 CLEARLY, THE RULES OF EVIDENCE INDICATE THAT PRIOR BAD ACTS
20 ARE INADMISSIBLE UNLESS, OF COURSE, THE DEFENDANT WERE TO
21 TAKE THE STAND AND THE STATE WOULD HAVE THE OPPORTUNITY TO
22 CROSS EXAMINE HIM WITH REGARD TO ANY PRIOR CONVICTION.

23 THERE ARE SEVERAL CASES ON POINT THAT SAYS THAT ARREST
24 ARE INADMISSIBLE.

25 THE COURT: THAT SAYS WHAT?

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

184

1 MS. SMART: ARRESTS -- ARRESTS -- CROSS EXAMINATION
2 BASED ON ARRESTS.

3 THE COURT: AREN'T THEY SPECIFIC THOUGH?

4 MS. SMART: THEY ARE, YOUR HONOR, BUT THIS JURY HAS
5 HEARD THAT MR. JOHNSON HAS BEEN -- HAS HAD A PRIOR CRIMINAL
6 HISTORY. THEY'VE HEARD IT TWICE NOW.

7 THE COURT: NO, I DON'T THINK SO. I BELIEVE THEY'VE
8 HEARD IT ONCE.

9 MS. SMART: THEY HEARD IT AFTER MY OBJECTION, AND THEN
10 THEY HEARD IT AGAIN MOST RECENTLY WITH REGARD TO THE SPOON
11 INCIDENT WHEN THEY SAID THAT HE WAS AT THE BEAUFORT COUNTY
12 DETENTION CENTER.

13 THE COURT: WELL, I DON'T THINK THAT NECESSARILY
14 IMPLIES AN ARREST THOUGH.

15 MS. SMART: IT WAS AN UNRELATED CHARGE, SO NOW THE
16 JURY KNOWS THAT HE WAS ARRESTED ON SOME OTHER UNRELATED
17 CHARGE, WHICH I BELIEVE IS UNDULY PREJUDICIAL TO MY CLIENT.

18 THE COURT: HOW SO?

19 MS. SMART: THE JURY KNOW THAT HE HAS A PRIOR CRIMINAL
20 ARREST. THEY DON'T KNOW WHAT FOR, BUT THEY KNOW THAT HE
21 WAS ARRESTED AND THAT AT THE TIME HE WAS BEING QUESTIONED
22 FOR THIS INCIDENT, HE WAS AT THE BEAUFORT COUNTY DETENTION
23 CENTER, AND THAT IS CLEARLY PRIOR BAD ACT.

24 MS. MILLICAN: YOUR HONOR ---

25 THE COURT: I DON'T QUITE AGREE WITH YOU. I THINK

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN

185

1 CLEARLY IT IS A LITTLE STRONG STATEMENT, BUT GO AHEAD.

2 YES, MA'AM.

3 MS. MILLICAN: THE STATE WOULD JUST RESPOND THAT THIS
4 PARTICULAR PIECE OF EVIDENCE IS CERTAINLY THAN MORE
5 PROBATIVE THAN PREJUDICIAL TO THE DEFENDANT IN THIS CASE,
6 AND THAT ---

7 THE COURT: WELL, THAT'S NOT THE ARGUMENT -- SHE'S NOT
8 ARGUING THE DNA. SHE'S ARGUING -- THAT'S ALREADY BEEN
9 STIPULATED TO. SHE'S ARGUING THE FACT THAT THIS WITNESS
10 TESTIFIED THAT HE WAS -- EVEN BEFORE WE GOT TO THE DNA
11 QUESTION, THAT HE WAS ARRESTED FOR A PRIOR UNRELATED --
12 ARRESTED FOR AN UNRELATED CHARGE AND THAT'S HER OBJECTION.
13 SHE SAYS THAT IS VOLATIVE OF 608.

14 WHAT'S YOUR ---

15 MS. MILLICAN: THE STATE JUST HAD NO OTHER MEANS OF
16 ESTABLISHING A CHAIN IN THIS PARTICULAR SITUATION FOR THIS
17 PARTICULAR PIECE OF EVIDENCE WITHOUT GOING IN TO HOW IT WAS
18 RETRIEVED -- WHERE IT WAS RETRIEVED.

19 AND I BELIEVE THE GENERALIZATION THAT, YOU KNOW, ARE
20 LEFT ARE JUST VERY MINOR IN THAT IT WAS JUST UNRELATED
21 CHARGES, THAT HE WAS SIMPLY ARRESTED, NOT THAT HE'D BEEN
22 CONVICTED OF ANYTHING OR THAT HE WAS SERVING TIME IN THE
23 DEPARTMENT OF CORRECTIONS OR ANYTHING OF THAT NATURE. IT
24 WASN'T AS THOUGH THIS WAS DNA TAKEN FROM THE DEPARTMENT OF
25 CORRECTIONS THAT THEY TAKE WHEN THEY HAVE INMATES GO

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN

186

1 THROUGH INTAKE. IT COULD HAVE BEEN A FAMILY COURT BENCH

2 WARRANT. IT COULD HAVE BEEN ---

3 THE COURT: ALL RIGHT. MS. SMART, WAS YOUR OBJECTION
4 AND YOUR MOTION BASED ON 608?

5 MS. SMART: YES, SIR, YOUR HONOR. AND NOT ONLY THAT,
6 YOUR HONOR -- AND I JUST ---

7 MS. MILLICAN: AND, YOUR HONOR, THIS WAS NOT ---

8 THE COURT: WAIT A MINUTE. WAIT A MINUTE. GO AHEAD,
9 MS. SMART.

10 MS. SMART: AND I JUST WANT TO PUT THIS ON THE RECORD
11 AND I NEED TO OBJECT TO IT DURING -- DURING THE TIME THAT
12 THIS WAS SAID. BUT IN LIGHT OF -- IF WE LOOK AT THIS IN A
13 CUMULATIVE SENSE, INVESTIGATOR CHAPMAN INDICATED THAT ALL
14 THE PHOTOS HAD ORANGE JUMP SUITS ON THEM.

15 THE COURT: HAD WHAT?

16 MS. SMART: ALL THE PICTURES -- ALL THE PICTURES THAT
17 WERE SHOWN TO THE VICTIM, ALL THE SUSPECTS HAD ORANGE JUMP
18 SUITS. AND INDEPENDENTLY, THAT IS NOT AN ISSUE. BUT IF WE
19 LOOK AT THE TOTALITY OF CIRCUMSTANCES, THE ---

20 THE COURT: WELL, I CAN'T GO BACK AND CLOSE THAT DOOR,
21 MS. SMART. YOU DIDN'T MAKE THAT OBJECTION AT THE TIME.
22 YOU KNOW, I CAN'T GO BACK AND ---

23 MS. SMART: WELL, I THINK INDEPENDENTLY IT WAS
24 IRRELEVANT, BECAUSE THE JURY MAY NOT KNOW WHAT AN ORANGE
25 JUMP SUIT IS.

BRIAN CHAPMAN -- DIRECT BY MS. MILLICAN

187

1 THE COURT: YOU KNOW, YOU MUST HAVE THOUGHT IT WAS
2 IRRELEVANT, AND I CAN'T GO BACK AND CLOSE THAT DOOR AFTER
3 IT'S LONG BEEN TESTIFIED TO AND THERE WERE NO QUESTIONS
4 ASKED ABOUT IT, THERE WAS NO OBJECTION MADE AT THE TIME. I
5 MEAN, I OBVIOUSLY CAN'T DO ANYTHING ABOUT THE FACT THAT THE
6 LINE-UP MAY HAVE HAD PICTURES IN IT WITH JUMP SUITS BECAUSE
7 NO OBJECTION WAS MADE TO THAT.

8 MS. MILLICAN: YOUR HONOR, ALSO UNDER RULE 608-B, IT
9 DOES STATE THAT THE SPECIFIC INSTANCES OF CONDUCT OF A
10 WITNESS -- REFERRING -- IT'S REFERRING TO THE PURPOSE OF
11 ATTACKING OR SUPPORTING A WITNESS' CREDIBILITY AND WHETHER
12 OR NOT THE DEFENDANT WAS IN JAIL FOR WHATEVER GENERAL
13 ARREST HE MAY HAVE BEEN IN JAIL FOR DOES NOT GO TO HIS -- I
14 DON'T BELIEVE IT'S AN ATTACK ON HIS CREDIBILITY, IT'S
15 SIMPLY PART OF A CHAIN IS ALL WE'RE TRYING TO ESTABLISH
16 WITH THAT EVIDENCE.

17 (PAUSE.)

18 THE COURT: ALL RIGHT. WITH REGARDS TO THE MOTION FOR
19 A MISTRIAL, THE COURT HAS REVIEWED VERY CAREFULLY THE NOTES
20 THAT I HAD AND THE CONTEXT IN WHICH THE TESTIMONY WAS
21 GIVEN. SPECIFICALLY, THE TESTIMONY WAS ONLY SAID THAT HE
22 HAD BEEN ARRESTED FOR UNRELATED CHARGES. IT IS NOT
23 EVIDENCE OF A SPECIFIC BAD ACT, AND THERE IS NO EVIDENCE OF
24 ANY SPECIFIC BAD ACT.

25 IN MY VIEW, FURTHER, 608 IS NOT APPLICABLE IN THIS

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

188

1 SITUATION BECAUSE IT DOES NOT GO TO THE CREDIBILITY OF THE
2 WITNESS, BUT TO SHOW THE CIRCUMSTANCES UNDER WHICH THE
3 EVIDENCE WAS OBTAINED.

4 FURTHERMORE, THE PURPOSE OF THE PROFFER WAS TO SHOW
5 THE CHAIN OF EVIDENCE. MY RECOLLECTION IS THAT BEFORE THE
6 CASE STARTED, DEFENSE COUNSEL WAS SPECIFICALLY ASKED AT
7 SIDE BAR IF THE CIRCUMSTANCES OF THE CHAIN OF THE EVIDENCE
8 COULD BE STIPULATED TO, AND SHE INDICATED THAT IT COULD
9 NOT, AND THE STATE WAS SIMPLY TRYING TO SHOW THE CHAIN OF
10 EVIDENCE OF THIS PARTICULAR PIECE OF EVIDENCE SHOWN IN
11 STATE'S EXHIBIT NO. 14.

12 THIS COULD HAVE BEEN AVOIDED VERY EASILY BY
13 STIPULATING IN ADVANCE THE STIPULATION THAT THE PARTIES
14 HAVE NOW ENTERED IN TO.

15 THUS, I DON'T THINK FIRST OF ALL THAT THE OBJECTION IS
16 PRESERVED BY NOT BEING TIMELY. IT WAS AFTER THE QUESTION
17 WAS ASKED AND ANSWERED AND ANOTHER QUESTION WAS ASKED
18 BEFORE THE OBJECTION WAS MADE.

19 SECONDLY, IT COULD HAVE BEEN AVOIDED BY THE
20 STIPULATION THAT THE PARTIES HAVE ENTERED IN TO, AND THE
21 PARTIES WERE GIVEN AN OPPORTUNITY TO ENTER. THE DEFENSE
22 WAS GIVEN AN OPPORTUNITY TO ENTER THAT STIPULATION.

23 AND, FINALLY, IN MY VIEW THE PROBATIVE VALUE OUTWEIGHS
24 ANY PREJUDICIAL EFFECT, ESPECIALLY IF -- ALTHOUGH I DON'T
25 THINK IT'S NECESSARY, BUT I'LL BE GLAD TO CONSIDER A

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

189

1 CURATIVE INSTRUCTION, MS. SMART. BUT IT'S MY VIEW THAT
2 UNDER THE CIRCUMSTANCES OF THE PROFFER OF THIS TESTIMONY
3 AND ALL OF THE CIRCUMSTANCES SURROUNDING WHICH IT CAME IN,
4 THE MOTION WILL BE DENIED. THE JURY WILL BE INSTRUCTED TO
5 DISREGARD ANY TESTIMONY IN THE RECORD WHATSOEVER OF ANY --
6 WITHOUT SAYING ANY MORE, JUST SAYING ANY PRIOR ARREST -- I
7 WON'T EVEN SAY PRIOR -- OF ANY ARREST OF THIS DEFENDANT.

8 IF YOU WOULD LIKE THAT -- ANY MORE THAN THAT BY WAY OF
9 CURATIVE INSTRUCTION, I'LL BE GLAD TO HEAR FROM YOU.

10 MS. SMART: YOUR HONOR, THAT'S SUFFICIENT.

11 THE COURT: OKAY.

12 MS. MILLICAN: YOUR HONOR, JUST BEFORE WE BRING THE
13 JURY IN -- SO I CAN BE CLEAR WITH MY WITNESS AND WE DON'T
14 SAY SOMETHING WRONG IN FRONT OF THE JURY WHEN WE BRING THEM
15 IN. I WOULD JUST ASK THE WITNESS HOW ---

16 THE COURT: THE FIRST THING IS I'M GOING TO PUBLISH
17 THIS STIPULATION.

18 MS. MILLICAN: OKAY.

19 THE COURT: OKAY? THAT THE PARTIES RECEIVED A
20 DISCARDED SPOON CONTAINING THE DEFENDANT'S DNA.

21 YOU MAY ASK THE WITNESS, DID YOU OBTAIN THAT DISCARDED
22 SPOON AND DID YOU TURN IT IN TO EVIDENCE AND GO FROM THERE.

23 MS. MILLICAN: OKAY. THANK YOU.

24 THE COURT: THAT'S ALL YOU NEED TO DO IS ASK IF HE
25 OBTAINED THAT DISCARDED SPOON.

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

190

1 MS. MILLICAN: THANK YOU, YOUR HONOR.

2 THE COURT: OKAY. ANYTHING ELSE BEFORE WE BRING THE
3 JURY IN? THIS MIGHT BE A GOOD TIME SINCE WE'VE GOT THEM
4 OUT SO WE WON'T HAVE TO SEND THEM OUT AGAIN, FOR US TO TAKE
5 OUR AFTERNOON RECESS FOR ABOUT 10 MINUTES. AND THEN LET'S
6 PLAN TO BE READY TO START BACK, SAY, AT 20 UNTIL 4:00, THEN
7 WE WON'T HAVE TO STOP AGAIN THIS AFTERNOON. ALL RIGHT.
8 THANK YOU.

9 (A RECESS WAS TAKEN.)

10 THE COURT: PLEASE GET THE DEFENDANT BACK.

11 (THE WITNESS RETURNS TO THE WITNESS STAND.)

12 (THE DEFENDANT RETURNS TO THE COURTROOM.)

13 THE COURT: BACK ON THE RECORD WITH REGARD TO THE
14 MATTER OF THE STATE VERSUS JOHNSON. MR. JOHNSON IS PRESENT
15 WITH HIS COUNSEL. THE STATE IS ALSO PRESENT. I AM
16 PREPARED TO BRING THE JURY BACK IN AND PUBLISH THE
17 STIPULATION AND ADVISE THEM THAT THEY ARE TO DISREGARD ANY
18 TESTIMONY IN THE RECORD WHATSOEVER WITH REGARD TO THE
19 DEFENDANT HAVING BEEN ARRESTED FOR ANY CHARGES AT ALL.

20 ANY OBJECTION TO THAT, MS. SMART?

21 MS. SMART: NONE, YOUR HONOR.

22 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

23 (THE JURY RETURNS TO THE COURTROOM AT 3:40 P.M.)

24 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

25 THE COURT: ALL RIGHT. THANK YOU. AND THANK YOU FOR

BRIAN CHAPMAN - DIRECT BY MS. MILLICAN

191

1 YOUR PATIENCE, LADIES AND GENTLEMEN. THAT TOOK A LITTLE
2 LONGER THAN I HAD EXPECTED, BUT WE HAVE RESOLVED THE
3 MATTER, AND IN ADDITION WE THOUGHT THAT IT WAS A GOOD TIME
4 FOR THE COURT PERSONNEL TO TAKE THEIR AFTERNOON BREAK SO
5 THAT WHEN WE BROUGHT YOU BACK IN, WE WOULD NOT HAVE TO
6 HOPEFULLY SEND YOU OUT AGAIN WHILE WE CONTINUE WITH THE
7 TESTIMONY.

8 I WILL TELL YOU THAT THE PARTIES HAVE ENTERED THE
9 FOLLOWING STIPULATION. AND YOU ARE TO ACCEPT THIS
10 STIPULATION AS A FACT IN THIS CASE.

11 THE STATE RECEIVED A DNA SALIVA EVIDENCE BELONGING TO
12 THE DEFENDANT, NATHANIEL JOHNSON, JR., AND BOTH PARTIES
13 AGREE THAT STATE'S EXHIBIT NO. 14 IS A DISCARDED SPOON
14 CONTAINING THE DEFENDANT'S DNA.

15 YOU ARE TO DISREGARD FROM YOUR MIND AND DISABUSE FROM
16 YOUR MIND ANY TESTIMONY REGARDING THE CIRCUMSTANCES UNDER
17 WHICH THAT MAY HAVE BEEN OBTAINED OR WHETHER -- AND YOU
18 SHOULD ALSO DISREGARD ANY TESTIMONY IN THE RECORD
19 WHATSOEVER WITH REGARD TO WHETHER THE DEFENDANT HAD BEEN OR
20 WAS UNDER ARREST FOR ANY CHARGES IN CONNECTION WITH
21 ANYTHING AND DISREGARD ALL OF THAT TESTIMONY AND ACCEPT THE
22 STIPULATION AS A FACT TO COVER THE CHAIN OF CUSTODY
23 REGARDING THE DEFENDANT'S DNA SALIVA ON THIS DISCARDED
24 SPOON.

25 ALL RIGHT. MS. MILLICAN, YOU MAY PROCEED.

BRIAN CHAPMAN — CROSS BY MS. SMART

192

1 MS. MILLICAN: THANK YOU, YOUR HONOR.

2 DIRECT EXAMINATION CONTINUED BY MS. MILLICAN:

3 Q PLEASE LOOK AT WHAT'S BEEN MARKED AND ADMITTED AS
4 STATE'S EXHIBIT NO. 14. DO YOU RECOGNIZE IT?

5 A YES, THIS IS A SLED EVIDENCE BAG SAID TO CONTAIN -- 1
6 BROWN PAPER EVIDENCE BAG CONTAINING A USED PLASTIC SPOON
7 FROM NATHANIEL JOHNSON, JR.

8 Q DID YOU TURN THAT SPOON IN TO EVIDENCE?

9 A YES, I DID.

10 Q AND WAS IT SENT TO SLED FOR ANALYSIS?

11 A YES, MA'AM, IT WAS.

12 MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS AT
13 THIS TIME, YOUR HONOR.

14 THE COURT: ALL RIGHT. MS. SMART.

15 CROSS EXAMINATION BY MS. SMART:

16 Q INVESTIGATOR CHAPMAN, THERE WAS A WRITTEN STATEMENT IN
17 YOUR REPORT, WERE THERE NOT?

18 A YES, MA'AM, THERE WAS.

19 Q SEVERAL WRITTEN STATEMENTS?

20 A YES, MA'AM.

21 Q TO BE CORRECT, THERE'S ONE WRITTEN STATEMENT THAT WAS
22 WRITTEN COMPLETELY [REDACTED]?

23 A YES, MA'AM.

24 Q AND THERE'S A SUBSEQUENT WRITTEN STATEMENT THAT
25 CONSISTS OF 5 PAGES THAT I BELIEVE THE TESTIMONY WAS

BRIAN CHAPMAN - CROSS BY MS. SMART

193

1 TRANSLATED BY THE VICTIM'S SISTER?

2 A YES.

3 Q AND THEN THERE ARE TWO OTHER STATEMENTS THAT I BELIEVE
4 ARE ALSO IN THE RECORD; IS THAT CORRECT?

5 [REDACTED]'S ONE FROM THE TWO WITNESSES.

6 Q STATEMENTS OF [REDACTED]?

7 A I BELIEVE THERE WAS ONLY ONE OTHER ONE THAT I
8 COLLECTED.

9 Q WOULD ONE OF THEM BE 2 PAGES?

10 A BEAR WITH ME JUST A SECOND. THE ONE I HAVE I BELIEVE
11 [REDACTED] IS 1 PAGE.

12 Q FOR CLARITY, THE STATEMENT THAT I'M REFERRING TO HAS
13 CASE NO. 2006-02-07359 AND IT SAYS DETAILED REPORT AND THEN
14 THERE'S ANOTHER PAGE DATED 2-7-06 AS WELL. IT SAYS PAGE
15 NO. 1. THE FIRST STATEMENT ON THE BOTTOM -- IT'S CUT OFF,
16 BUT IT SAYS TRANSLATED BY [REDACTED] AND PART 2 OF
17 THAT DOES NOT HAVE ANYTHING REGARDING ANY TRANSLATION. DO
18 YOU HAVE COPIES OF BOTH OF THOSE?

19 A I BELIEVE I ONLY HAVE -- LOOKS LIKE I ONLY HAVE THE
20 LAST PART OF THAT, BUT I BELIEVE THAT IS THE ONE THAT WAS
21 TRANSLATED BY HER SISTER.

22 Q DO YOU HAVE THE STATEMENT THAT'S 5 PAGES?

23 A WAS THAT WRITTEN IN [REDACTED] OR [REDACTED]?

24 Q IT'S WRITTEN IN ENGLISH AND IT SAYS THE STATEMENT OF
25 [REDACTED] AND IT HAS HER ADDRESS AND DATE OF BIRTH?

1 A YES, I DO.

2 Q AND THEN YOU HAVE THE OTHER STATEMENT THAT'S ACTUALLY
3 WRITTEN ON I BELIEVE YOUR VOLUNTARY STATEMENT FORM?

4 A YES.

5 Q NOW, YOU HAD A CHANCE TO INTERVIEW [REDACTED] UPON
6 YOUR ARRIVAL AT THE [REDACTED] IS THAT CORRECT?

7 A YES, MA'AM.

8 Q AND ON THE DATE OF THE INCIDENT YOU ARRIVED WITH PHOTO
9 LINE-UPS, DID YOU NOT?

10 A YES, I DID.

11 Q AND THOSE PHOTO LINE-UPS WERE GIVEN TO [REDACTED]
12 IS THAT CORRECT?

13 A CORRECT.

14 Q AND THERE ARE TWO SEPARATE ENVELOPES. EACH ENVELOPE
15 CONTAINS SIX PICTURES AND BOTH ENVELOPES WERE GIVEN TO HER
16 AND ASKED [REDACTED] TO IDENTIFY HER ASSAILANT. SHE
17 WAS ASKED IF SHE WAS ABLE TO IDENTIFY HER ASSAILANT; IS
18 THAT NOT CORRECT?

19 A CORRECT.

20 Q AND DID YOU TELL HER THAT HER ASSAILANT MIGHT HAVE
21 BEEN -- HER ASSAILANT'S PICTURE MIGHT HAVE BEEN INCLUDED IN
22 EITHER OF THOSE PHOTOS?

23 A I JUST MERELY ASKED HER IF SHE COULD IDENTIFY ANYONE
24 IN THESE PICTURES THAT LOOKED FAMILIAR TO HER THAT MAY BE
25 HER ATTACKER. [REDACTED]

BRIAN CHAPMAN -- CROSS BY MS. SMART

195

1 Q AND THIS OCCURRED APPROXIMATELY HOW LONG AFTER THIS

2 ALLEGED ATTACK OCCURRED?

3 A I WOULD SAY APPROXIMATELY AN HOUR TO AN HOUR AND A
4 HALF.

5 Q AN HOUR TO AN HOUR AND A HALF. AND WAS MR. JOHNSON'S
6 PICTURE INCLUDED IN ANY ONE OF THE PHOTO LINE-UPS?

7 A YES, HE WAS.

8 Q AND WAS SHE ABLE TO IDENTIFY HIM?

9 A NO, SHE WAS NOT.

10 Q SO SHE DID NOT INDICATE TO YOU THAT HER -- THAT THE
11 PERSON WHO ALLEGEDLY ATTACKED HER -- THAT HIS PHOTOGRAPH
12 WAS INCLUDED IN ANY OF THE PHOTOGRAPHS THAT YOU HAD GIVEN
13 TO HER?

14 A SHE SAID SHE COULDN'T IDENTIFY ANYONE.

15 Q NOW, THERE'S BEEN SOME TALK ABOUT THE BITE WOUND.
16 WAS THAT THE ONLY PHYSICAL INJURY THAT YOU OBSERVED ON
17 [REDACTED]

18 A THAT'S THE ONLY ONE THAT I CAN RECALL, THE BITE WOUND.

19 Q AND THAT'S THE ONLY ONE THAT YOU TOOK A PICTURE OF?

20 A YES, MA'AM.

21 Q AND HAD YOU OBSERVED ANY BRUISING ABOUT HER PERSON,
22 YOU WOULD HAVE TAKEN A PICTURE OF THAT AS WELL?

23 A CORRECT.

24 Q AND YOU WERE THE PERSON THAT TOOK THE PICTURE OF THE
25 BEDROOM?

BRIAN CHAPMAN - CROSS BY MS. SMART

196

1 A YES, MA'AM.

2 Q NOW, LET'S TALK ABOUT YOUR REPORT. IN YOUR SYNOPSIS
3 YOU HAVE STATEMENT OF [REDACTED] NOW, WOULD THAT BE
4 BECAUSE IT'S IN YOUR REPORT -- WOULD THAT BE AN ORAL
5 STATEMENT THAT SHE GAVE TO YOU?

6 A YES.

7 Q OR -- SO YOU DIDN'T -- IN COMING UP WITH WHAT'S
8 INCLUDED IN THAT PORTION OF YOUR SUPPLEMENTAL REPORT, YOU
9 WOULDN'T HAVE READ THE DIFFERENT STATEMENTS AND THEN
10 CONCLUDED ---

11 A NO.

12 Q --- AND PUT IT IN YOUR REPORT?

13 A NO.

14 Q SO EVERYTHING THAT'S WRITTEN IN YOUR REPORT THAT SAYS
15 STATEMENT OF [REDACTED] IS WHAT SHE TOLD YOU THE DAY
16 THAT YOU INTERVIEWED HER?

17 A YES, THAT'S MY RECOLLECTION. [REDACTED]

18 Q AND SHE INDICATED TO YOU THAT WHEN SHE OPENED THE DOOR
19 FOR THE SUSPECT, SHE DIDN'T SEE ANYONE ELSE OUTSIDE; IS
20 THAT NOT CORRECT?

21 A SHE SAID SHE DID NOT SEE ANYONE ELSE OUTSIDE, SHE
22 COULD NOT SEE THE WORKERS THAT EVENTUALLY HELPED HER.

23 Q SO UPON THE SUSPECT'S ARRIVAL, SHE DIDN'T SEE THE
24 WORKERS; THAT'S WHAT SHE TOLD YOU?

25 A AT THAT TIME, YES.

BRIAN CHAPMAN - CROSS BY MS. SMART

197

1 Q AND SHE SAID THAT -- SHE ALSO TOLD YOU THAT AFTER THE
2 SUSPECT LEFT HER HOUSE, THAT'S THE FIRST TIME SHE SAW THE
3 TWO MEN IN THE WHITE TRUCK?

4 A LET ME REVIEW MY REPORT. SHE SAID SHE SAW THE MEN
5 DOWN EARLIER, BUT SHE DIDN'T SEE THEM AT THE TIME THE
6 PERSON CAME TO HER HOUSE.

7 Q NOW, ALSO IN YOUR SYNOPSIS YOU INDICATED THAT THE
8 SUSPECT LEFT ON A BICYCLE HEADING TOWARDS SCOTT HILL ROAD.
9 HOW DID YOU OBTAIN THAT INFORMATION?

10 A ONE OF THE WITNESSES SAID THAT THEY OBSERVED HIM
11 LEAVING IN THAT DIRECTION, A MALE MATCHING THAT
12 DESCRIPTION.

13 Q SO [REDACTED] DIDN'T TELL YOU THAT SHE OBSERVED THE
14 SUSPECT LEAVING HER HOUSE ON A BICYCLE?

15 A I DON'T RECALL HER TELLING ME THAT DIRECTLY.

16 Q DID YOU READ THE WRITTEN STATEMENTS THAT WERE PROVIDED
17 TO YOU?

18 A I WAS ONLY ABLE TO READ THE ONE THAT WAS IN ENGLISH.

19 Q NOW, THE TRANSLATED STATEMENT, WERE YOU ABLE TO VERIFY
20 THAT THE STATEMENT THAT WAS TRANSLATED -- THE STATEMENTS,
21 BECAUSE THERE ARE TWO STATEMENTS THAT WERE TRANSLATED BY
22 [REDACTED] SISTER. WERE YOU ABLE TO VERIFY THAT THOSE
23 TRANSLATIONS WERE ACCURATE FROM WHAT SHE WROTE IN SPANISH?

24 A I COULDN'T SAY FOR SURE THAT WHAT SHE WAS WRITING WAS
25 WHAT [REDACTED] WAS TELLING US BECAUSE I DON'T SPEAK

BRIAN CHAPMAN - CROSS BY MS. SMART

198

- 1 [REDACTED] AND I WOULDN'T KNOW THAT.
- 2 Q AND DID YOU NOTE ANY INCONSISTENCIES IN THE WRITTEN
- 3 STATEMENTS VERSUS WHAT SHE TOLD YOU?
- 4 A I DON'T RECALL ANY INCONSISTENCIES.
- 5 Q JUST TO REFRESH YOUR MEMORY, IF YOU DON'T MIND IF YOU
- 6 WOULD LOOK AT THE STATEMENT WITH THE HEADING, STATEMENT OF
- 7 ANA B. RODRIGUEZ WITH HER ADDRESS.
- 8 A THE ONE IN ENGLISH?
- 9 Q THAT'S THE ONE IN ENGLISH. THE ONLY ONE I WILL BE
- 10 ASKING YOU TO LOOK AT WOULD BE THE ONE IN ENGLISH.
- 11 A OKAY.
- 12 Q OKAY. NOW -- AND YOU'VE READ THIS STATEMENT, BUT I'LL
- 13 GIVE YOU THE OPPORTUNITY TO RE[REDACTED] MEMORY TO WHAT WAS
- 14 INCLUDED IN THE STATEMENT. BUT YOUR TESTIMONY A MOMENT AGO
- 15 WAS THAT SHE SAID THAT SHE DIDN'T SEE THE MEN PRIOR TO
- 16 OPENING THE DOOR AND ALLOWING THE SUSPECT IN. BUT ISN'T IT
- 17 TRUE THAT ON THIS WRITTEN STATEMENT SHE INDICATED THAT
- 18 BEFORE SHE SAW -- SHE SAW THE MAN ON THE BICYCLE, BUT
- 19 MOMENTS BEFORE SHE SAW THE MAN ON THE BICYCLE SHE SAW THE
- 20 PEOPLE WORKING OUTSIDE, AND THEN SHE OPENED THE DOOR?
- 21 A I'LL HAVE TO READ IT. (PAUSE.) CAN YOU TELL ME WHICH
- 22 PAGE? [REDACTED]
- 23 Q FIRST PAGE.
- 24 A FIRST PAGE?
- 25 Q YES. [REDACTED]

BRIAN CHAPMAN -- CROSS BY MS. SMART

199

1 A SHE SAYS MOMENTS BEFORE, AND I COULDN'T TELL YOU WHAT
2 HER INTERPRETATION OF MOMENTS IS. BUT SHE SAYS MOMENTS
3 BEFORE SHE SAW PEOPLE WORKING OUTSIDE.

4 Q AND THIS IS IMPORTANT BECAUSE WE DO HAVE ---
5 THE COURT: NO, MA'AM. NO, MA'AM. JUST ASK THE
6 QUESTION.

7 Q ISN'T IT IMPORTANT THAT THE TRANSLATIONS THAT WE
8 PRESENT IN COURT ARE ACCURATE?

9 A YES.

10 Q AND AS WE HAVE IT TODAY, IT APPEARS AS IF THERE ARE
11 INCONSISTENCIES BASED ON JUST THAT ONE STATEMENT THAT YOU
12 WROTE ---

13 MS. MILLICAN: OBJECTION, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 MS. MILLICAN: COUNSEL IS ---

16 THE COURT: OBJECTION IS SUSTAINED.

17 Q IT IS TRUE THAT THERE IS AN INCONSISTENT -- THAT IN
18 THE WRITTEN STATEMENT SHE INDICATED THAT SHE SAW PEOPLE
19 WORKING OUTSIDE.

20 THE COURT: ALL RIGHT. COUNSEL, COME AROUND PLEASE.

21 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
22 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

23 THE COURT: OBJECTION IS SUSTAINED.

24 Q INVESTIGATOR CHAPMAN, DID YOU -- THE SHEETS THAT WERE
25 RECOVERED FROM THE BEDROOM, DID YOU HAVE AN OPPORTUNITY TO

BRIAN CHAPMAN - CROSS BY MS. SMART

200

1 EXAMINE THOSE?

2 A JUST MY INITIAL OBSERVATION OF IT BEING ON THE
3 BEDDING.

4 Q YOU WERE THE ONE THAT RECOVERED THEM?

5 A YES, MA'AM.

6 MS. SMART: ARE THOSE SHEETS STILL HERE?

7 (PAUSE.)

8 Q COULD YOU TAKE THE SHEET OUT OF THE BAG PLEASE?

9 A YES, MA'AM. (COMPLIED.)

10 MS. MILLICAN: OBJECTION, YOUR HONOR. IS THE DEFENSE
11 MOVING TO PUT THIS PARTICULAR PIECE OF EVIDENCE INTO
12 EVIDENCE OR IS SHE JUST PUBLISHING EVIDENCE?

13 THE COURT: IS IT IN EVIDENCE?

14 MS. MILLICAN: NO.

15 THE COURT: IT'S JUST FOR EXHIBIT ONLY AT THIS TIME.

16 MS. SMART: HE HAS TO ESTABLISH THAT THAT IS THE SHEET
17 THAT HE RECOVERED, AND I ---

18 MS. MILLICAN: IT'S NOT ---

19 MS. SMART: --- HAVEN'T GOT TO THAT YET.

20 THE COURT: WAIT JUST A MINUTE. ONE AT A TIME PLEASE.
21 IT'S NOT IN EVIDENCE YET, MS. SMART. IT'S JUST BEEN MARKED
22 FOR IDENTIFICATION AND THE STATE HAS NOT OFFERED IT INTO
23 EVIDENCE AT THIS POINT, SO IT CANNOT BE DISPLAYED.

24 Q FROM THE CONDITION OF THAT SHEET, CAN YOU TELL WHETHER
25 OR NOT THAT WAS THE SHEET THAT YOU RECOVERED THAT DAY --

BRIAN CHAPMAN — CROSS BY MS. SMART

201

1 THE WAY IT IS RIGHT NOW, CAN YOU TELL WHETHER OR NOT THAT
2 IS THE SHEET THAT YOU RECOVERED?

3 A IT LOOKS SIMILAR TO THE ONE I COLLECTED.

4 MS. MILLICAN: OBJECTION, YOUR HONOR. SAME OBJECTION.

5 THE COURT: THAT'S SIMPLY AN IDENTIFICATION QUESTION
6 AND HE HAS TESTIFIED THAT IT IS THE SAME SHEET, AND I'M
7 GOING TO ALLOW THAT QUESTION BUT I'M NOT GOING TO ALLOW IT
8 TO GO ANY FURTHER ---

9 MS. MILLICAN: THANK YOU, YOUR HONOR.

10 THE COURT: UNLESS AND UNTIL IT IS OFFERED INTO
11 EVIDENCE.

12 Q YOU HAVEN'T ALTERED THAT SHEET IN ANY WAY, HAVE YOU?

13 A NO, MA'AM. I COLLECT EVIDENCE, I PUT IT DIRECTLY IN
14 THE BAG.

15 MS. SMART: I WOULD LIKE TO INTRODUCE THIS SHEET INTO
16 EVIDENCE AT THIS TIME, YOUR HONOR, AND IT BE PUBLISHED TO
17 THE JURY.

18 THE COURT: ANY OBJECTION?

19 MS. MILLICAN: THE STATE HAS NO OBJECTION TO THAT.
20 THE STATE HAS NO OBJECTION TO THAT.

21 THE COURT: ALL RIGHT. IT WILL BE MARKED AS DEFENSE
22 EXHIBIT NO. 2. IS THERE ANYTHING ELSE -- THAT BOX WAS
23 IDENTIFIED BUT IT CONTAINED MORE THAN ONE THING, DID IT
24 NOT?

25 MS. MILLICAN: THE BOX CONTAINED THREE ITEMS FROM

BRIAN CHAPMAN - CROSS BY MS. SMART

202

1 SLED.

2 THE COURT: ALL RIGHT. SO WE'LL MAKE THIS A SEPARATE
3 EXHIBIT AS -- THE SHEET IS ADMITTED INTO EVIDENCE AS
4 DEFENSE EXHIBIT NO. 2 WITHOUT OBJECTION. I'M NOT SURE, MS.
5 RUTLEDGE, HOW YOU WANT TO MARK THAT SEPARATELY, BUT THAT
6 NEEDS TO BE SHOWN AS DEFENSE EXHIBIT NO. 2 ADMITTED WITHOUT
7 OBJECTION, THE SHEET ONLY.

8 (SHEET MARKED IN EVIDENCE AS DEFENDANT'S EXHIBIT NO.
9 2.)

10 THE COURT: ALL RIGHT. MS. SMART, YOU MAY PROCEED.

11 Q CAN YOU HOLD THAT SHEET UP?

12 A (COMPLIED.)

13 Q AND DID YOU ALTER THIS SHEET IN ANY WAY?

14 A NO, MA'AM.

15 Q I NOTICE THAT THERE'S SEPARATE -- THERE ARE HOLES IN
16 THE SHEET. DID YOU DO THAT?

17 A NO, MA'AM.

18 Q YOU DID NOT. SO THIS SHEET WAS SENT TO SLED ---

19 A INTACT.

20 Q IT WAS INTACT WHEN YOU SENT IT TO SLED. OKAY. I
21 DON'T HAVE ANY QUESTIONS WITH REGARD TO THAT SHEET. BUT
22 THAT IS THE SHEET THAT WAS TAKEN OFF THE BED?

23 A YES, MA'AM.

24 Q NOW, WHEN YOU COLLECTED THAT SHEET, YOU COLLECTED IT
25 FOR EVIDENTIARY PURPOSES, DID YOU NOT?

BRIAN CHAPMAN -- CROSS BY MS. SMART

203

1 A YES, MA'AM.

2 Q AND WE TALKED ABOUT DNA. SO YOU HAD A SAMPLE OF MR.

3 JOHNSON'S DNA AND YOU NEEDED THAT DNA FOR COMPARATIVE

4 PURPOSES -- COMPARATIVE REASONS; IS THAT NOT CORRECT?

5 A CORRECT.

6 Q YOU BELIEVE THAT THERE WAS EVIDENCE ON THAT SHEET THAT

7 COULD HAVE POSSIBLY BEEN OF EVIDENTIARY VALUE AND THAT'S

8 WHY YOU COLLECTED BOTH THIS SHEET AND THE DNA FROM MR.

9 JOHNSON?

10 A CORRECT.

11 Q AND THAT INFORMATION WAS SENT TO SLED?

12 A YES.

13 Q AND AS A RESULT OF THAT INFORMATION DID YOU HAVE

14 INFORMATION TO BELIEVE THAT MR. JOHNSON'S DNA WAS ON THAT

15 SHEET?

16 A ACCORDING TO THE STATE LAW ENFORCEMENT DIVISION

17 RECORDS IT SHOWS THAT.

18 Q AND BASED ON THAT, YOU CONCLUDED THAT THAT INFORMATION

19 WOULD CORROBORATE WHAT MS. RODRIGUEZ SAID?

20 A IT WOULD CORROBORATE EVERYTHING THAT I'VE

21 INVESTIGATED.

22 Q NOW, THE SKETCH THAT -- THE SKETCH ARTIST WAS BROUGHT

23 IN ACTUALLY TWO DAYS AFTER THE INCIDENT OCCURRED; IS THAT

24 CORRECT?

25 A CORRECT.

BRIAN CHAPMAN -- CROSS BY MS. SMART

204

1 Q AND SHE WAS ABLE TO GIVE A VERY GOOD DESCRIPTION OF
2 HER ASSAILANT AT THAT TIME, WAS SHE NOT?

3 A YES.

4 Q SO MUCH SO THAT A PICTURE WAS DRAWN FROM HER
5 DESCRIPTION AND THAT PICTURE WAS SUBMITTED TO THE MEDIA
6 OUTLET?

7 A RIGHT.

8 Q AND THIS WAS THE DAY AFTER -- TWO DAYS AFTER THE
9 ALLEGED INCIDENT OCCURRED?

10 A CORRECT, TWO DAYS.

11 Q BUT THE DAY PRIOR AND THE DAY OF SHE WOULD NOT
12 IDENTIFY HIM IN A PHOTO LINE-UP; IS THAT CORRECT?

13 A SHE WAS ONLY SHOWN THE LINE-UP ON THE INITIAL DAY.

14 Q OKAY. SO SHE WAS SHOWN A PHOTO LINE-UP. SHE DIDN'T
15 IDENTIFY HIM, BUT SHE DESCRIBED HIM TO A SKETCH ARTIST WHO
16 MADE A COMPOSITE SKETCH AND SUBMITTED THAT SKETCH TO THE
17 MEDIA OUTLET?

18 A CORRECT.

19 Q AND AS A RESULT OF THAT SKETCH, YOU RECEIVED A PHONE
20 CALL THAT SAID, THIS IS NATHANIEL JOHNSON?

21 A YES.

22 Q NOW, WHEN SHE TALKED TO YOU ABOUT MR. --- THE ASSAILANT
23 LEAVING HER HOUSE, SHE DID OR DID NOT INDICATE TO YOU THAT
24 SHE SAW HOW HE LEFT?

25 A I BELIEVE SHE TOLD ME SHE DID NOT SEE HIM LEAVE.

BRIAN CHAPMAN — REDIRECT BY MS. MILLICAN

205

1 Q SHE DID NOT SEE HIM LEAVE.

2 MS. SMART: I DON'T HAVE ANY OTHER QUESTIONS.

3 THE COURT: REDIRECT, MS. MILLICAN?

4 MS. MILLICAN: YES, SIR.

5 REDIRECT EXAMINATION BY MS. MILLICAN:

6 Q INVESTIGATOR CHAPMAN, WOULD YOU STATE THAT ALL THE
7 STATEMENTS THAT YOU TOOK FROM [REDACTED] AND THE STATEMENTS YOU'VE
8 HEARD TODAY THEY ARE MATERIALLY CONSISTENT?

9 A YES.

10 MS. MILLICAN: NO FURTHER QUESTIONS, YOUR HONOR.

11 THE COURT: ANYTHING FURTHER?

12 MS. SMART: NOTHING, YOUR HONOR.

13 THE COURT: THANK YOU. YOU MAY STEP DOWN.

14 (THE WITNESS LEAVES THE WITNESS STAND.)

15 THE COURT: CALL YOUR NEXT WITNESS.

16 MS. MILLICAN: STATE CALLS MIKE LYNCH FROM SLED.

17 MICHAEL LYNCH, BEING FIRST

18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
20 SPELL IT FOR THE COURT.

21 THE COURT: BEFORE YOU GET STARTED, LET ME SEE COUNSEL
22 AT SIDE BAR PLEASE.

23 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
24 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

25 THE COURT: ALL RIGHT. YOU MAY PROCEED.

MIKE LYNCH - DIRECT BY MS. MILLICAN

206

1 MS. MILLICAN: THANK YOU, YOUR HONOR.

2 DIRECT EXAMINATION BY MS. MILLICAN:

3 Q PLEASE STATE YOUR NAME AND SPELL IT FOR THE RECORD?

4 A MICHAEL LYNCH. M-I-C-H-A-E-L L-Y-N-C-H.

5 Q WHERE ARE YOU EMPLOYED?

6 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

7 Q HOW LONG HAVE YOU BEEN WITH SOUTH CAROLINA LAW
8 ENFORCEMENT DIVISION?

9 A A YEAR AND A HALF.

10 Q WHERE IS YOUR OFFICE LOCATED?

11 A IT'S LOCATED IN COLUMBIA.

12 Q HOW MANY YEARS TOTAL HAVE YOU WORKED IN LAW
13 ENFORCEMENT?

14 A 7 YEARS.

15 Q WHAT ARE YOUR GENERAL DUTIES WITH SLED?

16 A I'M EMPLOYED THERE AS A FORENSIC ARTIST SPECIAL AGENT.

17 Q WHAT'S YOUR EDUCATIONAL BACKGROUND?

18 A I HAVE A BACHELOR OF SCIENCE FROM THE CITADEL IN
19 BUSINESS ADMINISTRATION. I ALSO HAVE TRAINING FROM THE FBI
20 ACADEMY IN QUANTICO, VIRGINIA FOR FORENSIC FACIAL IMAGING
21 OR FORENSIC ARTIST MORE COMMONLY KNOWN.

22 Q APPROXIMATELY HOW MANY SKETCH COMPOSITES HAVE YOU
23 COMPLETED IN YOUR CAREER?

24 A ANYWHERE BETWEEN 100, 125.

25 Q GENERALLY SPEAKING, HOW DO YOU CREATE A COMPOSITE

MIKE LYNCH - DIRECT BY MS. MILLICAN

207

1 SKETCH OF SOMEONE YOU'VE NEVER SEEN?

2 A I GENERALLY WILL SIT DOWN WITH THE WITNESS AND ME
3 ASKING THEM QUESTIONS ABOUT THE EVENTS THAT TOOK PLACE AND
4 THE UNKNOWN SUBJECT. AND WE'LL ALSO HAVE REFERENCE
5 MATERIAL AVAILABLE FOR THEIR USE. AND IT'S A STEP-BY-STEP
6 PROCESS. IT MAY BE ANYWHERE 1 TO 3 HOURS GENERALLY. AND
7 GENERALLY WE ASK OPEN-ENDED QUESTIONS. AND THROUGH A
8 PROCESS WE'LL SHOW THEM -- KEEP SHOWING THEM THE DRAWING AS
9 IT PROGRESSES. AND I'LL HAVE THEM MAKE CHANGES AS THEY SEE
10 FIT UNTIL THEY'RE SATISFIED WITH THE DRAWING.

11 Q DID YOU HAVE OCCASION TO PARTICIPATE IN THE
12 INVESTIGATION IN THE STATE'S CASE AGAINST NATHANIEL
13 JOHNSON, JR.?

14 A I DID.

15 Q WHEN DID YOU GET INVOLVED IN THE CASE?

16 A I WAS CONTACTED IN FEBRUARY OF 2006, I BELIEVE
17 FEBRUARY 9TH -- FEBRUARY 8TH, AND I RESPONDED ON FEBRUARY
18 9TH, 2006.

19 Q WHERE DID YOU GO TO ASSIST IN THE INVESTIGATION?

20 A BEAUFORT COUNTY SHERIFF'S OFFICE.

21 Q DID YOU MEET [REDACTED] IN PERSON?

22 A I DID.

23 Q DID YOU CREATE A COMPOSITE SKETCH BASED ON ANA'S
24 DESCRIPTIONS?

25 A YES, I DID.

MIKE LYNCH - DIRECT BY MS. MILLICAN

208

1 Q WHAT WAS THE PROCESS FOR CREATING THAT PARTICULAR

2 SKETCH?

3 A SAT DOWN WITH [REDACTED] AND I ASKED HER ABOUT HER

4 OPPORTUNITY TO SEE THE INDIVIDUAL AND ABOUT THE EVENTS THAT

5 TOOK PLACE TO GET A BETTER IDEA OF WHAT WE'RE DEALING WITH.

6 AND WE SAT DOWN. I INTRODUCED REFERENCE MATERIAL TO HER SO

7 THAT SHE'D HAVE A BETTER IDEA OF HOW TO DESCRIBE DIFFERENT

8 FEATURES TO ME. AND THROUGHOUT THE PROCESS, AGAIN, I WOULD

9 SHOW HER THE COMPOSITE AS I WENT ALONG. AND IF SHE SAW FIT

10 TO MAKE A CHANGE, I WOULD MAKE THAT CHANGE. AND WE WERE

11 NOT COMPLETED UNTIL SHE WAS SATISFIED WITH THE COMPOSITE

12 DRAWING.

13 Q DO YOU HAVE IN YOUR POSSESSION TODAY THE ORIGINAL

14 SKETCH YOU CREATED?

15 A I DO.

16 MS. MILLICAN: QUICKLY, LET'S MARK THE SKETCH AS

17 STATE'S EXHIBIT -- I BELIEVE IT'S 15 OR IS IT 16. 16.

18 (SKETCH MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT

19 NO. 16.)

20 Q HAVE YOU HAD CUSTODY AND CONTROL OF THIS ORIGINAL

21 SKETCH SINCE YOU CREATED IT?

22 A I HAVE.

23 Q WOULD YOU PLEASE REMOVE IT FROM THE ENVELOPE?

24 A (COMPLIED.)

25 Q IS IT REASONABLY IN THE SAME CONDITION IT WAS WHEN YOU

MIKE LYNCH - DIRECT BY MS. MILLICAN

209

1 RENDERED THE DRAWING?

2 A IT IS.

3 MS. MILLICAN: THE STATE WOULD MOVE AT THIS TIME TO
4 ADMIT STATE'S EXHIBIT NO. 16 INTO EVIDENCE.

5 THE COURT: ANY OBJECTION, MS. SMART?

6 MS. SMART: NONE.

7 THE COURT: ALL RIGHT. IT WILL BE ADMITTED INTO
8 EVIDENCE AS STATE'S EXHIBIT NO. 16 WITHOUT OBJECTION. THE
9 ENVELOPE -- WAS AN I.D. NUMBER PUT ON IT, OR WAS IT AN
10 EXHIBIT NUMBER?

11 MS. MILLICAN: IT WAS AN EXHIBIT NUMBER.

12 THE COURT: OKAY. IT'S ADMITTED INTO EVIDENCE AS
13 STATE'S NO. 16 WITHOUT OBJECTION.

14 (STATE'S NO. 16 RECEIVED IN EVIDENCE.)

15 MS. MILLICAN: YOUR HONOR, MAY THE STATE PUBLISH THE
16 DRAWING TO THE JURY?

17 THE COURT: YES, MA'AM.

18 (PAUSE.)

19 THE COURT: LADIES AND GENTLEMEN, YOU WILL RECALL THAT
20 I TOLD YOU THAT ANYTHING THAT IS INTRODUCED INTO EVIDENCE
21 YOU WILL BE ABLE TO TAKE WITH YOU BACK TO THE JURY ROOM
22 WHEN YOU RETIRE TO DELIBERATE YOUR VERDICT.

23 Q DID [REDACTED] INDICATE TO YOU WHETHER THIS LOOKED LIKE THE
24 ATTACKER WHEN YOU COMPLETED IT?

25 A SHE DID.

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

210

1 MS. MILLICAN: YOUR HONOR, THE STATE HAS NO FURTHER
2 QUESTIONS OF THIS WITNESS AT THIS TIME.

3 THE COURT: CROSS EXAMINATION, MS. SMART?

4 MS. SMART: I DON'T HAVE ANY QUESTIONS FOR THIS
5 WITNESS.

6 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP
7 DOWN. GIVE THE EXHIBIT TO THE COURT REPORTER.

8 MS. MILLICAN: YOUR HONOR, MAY THIS WITNESS BE
9 EXCUSED?

10 THE COURT: ANY OBJECTION?

11 MS. SMART: NONE.

12 THE COURT: THE WITNESS IS EXCUSED. THANK YOU FOR
13 COMING.

14 (THE WITNESS LEAVES THE WITNESS STAND.)

15 THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL
16 YOUR NEXT WITNESS.

17 MS. MILLICAN: THE STATE CALLS KIMBERLY CLEGG.

18 KIMBERLY CLEGG, BEING FIRST
19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
21 SPELL IT FOR THE COURT.

22 WITNESS: MY NAME IS KIMBERLY CLEGG. K-I-M-B-E-R-L-Y
23 C-L-E-G-G.

24 DIRECT EXAMINATION BY MS. MILLICAN:

25 Q MS. CLEGG, WHERE ARE YOU EMPLOYED?

KIMBERLY CLEGG — DIRECT BY MS. MILLICAN

211

1 A AT BEAUFORT MEMORIAL EMERGENCY ROOM.

2 Q AND EXACTLY WHAT ARE YOUR DUTIES AT BEAUFORT MEMORIAL?

3 A I AM THE NIGHT CHARGE NURSE IN THE EMERGENCY ROOM, AND

4 I ALSO PARTAKE IN SEXUAL ASSAULT KITS THAT COME THROUGH THE
5 EMERGENCY ROOM.

6 Q HOW LONG HAVE YOU BEEN EMPLOYED AT BEAUFORT MEMORIAL
7 HOSPITAL?

8 A APPROXIMATELY 3 1/2 YEARS.

9 Q HOW LONG HAVE YOU BEEN A REGISTERED NURSE?

10 A SINCE DECEMBER OF 2000.

11 Q WHERE DID YOU ATTEND NURSING SCHOOL?

12 A AT JEFFERSON DAVIS COLLEGE ON THE MISSISSIPPI GULF
13 COAST.

14 Q IS THERE A PROTOCOL REQUIRING NURSES TO UNDERGO ANY
15 SPECIAL TRAINING TO BE QUALIFIED TO COLLECT EVIDENCE FOR
16 RAPE KITS OR SEXUAL ASSAULT KITS?

17 A NO, THERE'S NOT. I HAVE TAKEN A SANE COURSE, WHICH IS
18 A SEXUAL ASSAULT NURSE EXAMINER'S COURSE THAT I TOOK IN
19 OCTOBER OF THIS LAST YEAR. BUT OTHER THAN THAT, YOU DO NOT
20 HAVE TO BE CERTIFIED TO DO A SEXUAL ASSAULT EXAMINATION ON
21 A PATIENT.

22 Q HOW MANY NURSES AT BEAUFORT MEMORIAL HOSPITAL HAVE
23 TAKEN THE TRAINING COURSE, THE SANE COURSE, THAT YOU'RE
24 REFERRING TO?

25 A AS OF RIGHT NOW THERE ARE NO CERTIFIED SANE NURSES AT

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

212

1 BEAUFORT MEMORIAL EMERGENCY ROOM. WHEN I WENT TO THE
2 COURSE IN OCTOBER, THERE WAS APPROXIMATELY THREE EMERGENCY
3 ROOM NURSES THAT WENT WITH ME, AND THERE'S TWO OTHER NURSES
4 WITHIN THE HOSPITAL THAT ALSO WENT TO THE COURSE.

5 Q SO HOW FAR HAVE YOU COMPLETED THE TRAINING AT THIS
6 POINT?

7 A AS OF RIGHT NOW I'VE GONE THROUGH THE BOOK WORK AND
8 I'VE PASSED THE WRITTEN EXAMINATION TO PROCEED WITH
9 CLINICAL TRIALS.

10 Q AND HAVE YOU BEEN INVOLVED IN CLINICAL TRIALS AT THIS
11 POINT?

12 A YES, I HAVE. I HAVE TO COMPLETE 40 PELVIC EXAMS. I
13 HAVE TO DO 6 RAPES, TURN THEM IN TO AN INSTRUCTOR IN
14 COLUMBIA. I ALSO HAVE TO RIDE ALONG WITH A POLICE OFFICER,
15 A DETECTIVE, AND I ALSO NEED TO SIT IN ON AN EXPERT
16 TESTIMONY.

17 Q APPROXIMATELY HOW MANY RAPE KITS DO YOU COMPLETE IN A
18 YEAR?

19 A APPROXIMATELY 10.

20 Q APPROXIMATELY HOW MANY RAPE KITS HAVE YOU PERFORMED IN
21 YOUR CAREER?

22 A APPROXIMATELY 20 -- LESS THAN A HUNDRED.

23 Q IS YOUR WORK DEVELOPED ENTIRELY TO EMERGENCY CARE,
24 INCLUDING RAPE KITS, THAT SORT OF THING?

25 A ALSO I TAKE CARE OF TRAUMA, ANYTHING THAT WALKS

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

213

1 THRO[REDACTED] HEART ATTACKS, STROKE VICTIMS, NBC'S,
2 MINOR EAR ACHES, SORE THROATS, BUT ALSO WITH SEXUAL
3 ASSAULTS, YES.

4 Q WERE YOU WORKING ON FEBRUARY THE 7TH, 2006?

5 A THAT IS CORRECT.

6 Q DID YOU HAVE A PATIENT ON THAT DATE PRESENT AS A RAPE
7 VICTIM?

8 A YES, I DID.

9 Q DO YOU RECALL HER NAME?

10 A YES. MAY I LOOK AT MY NOTES PLEASE?

11 Q IF THAT WOULD REFRESH YOUR RECOLLECTION.

12 A YES. HER NAME IS [REDACTED].

13 Q WHO IS THE DOCTOR THAT TOOK HER HISTORY AND PHYSICAL?

14 A DR. AFOLABI OGUNTOYINBO.

15 Q WHAT ELSE DID YOU OBSERVE -- WHAT DID YOU OBSERVE THE
16 DOCTOR DO WITH REGARD TO TREATING ANA?

17 A BASICALLY THE PHYSICIAN COMES IN AND DOES A HISTORY
18 AND PHYSICAL. I ACTUALLY DO THE RAPE EXAM FOR THE SLED
19 KIT. AFTER[REDACTED] COMPLETE THAT, THE DOCTOR WILL COME IN AND DO
20 A SPECULUM EXAM WITH AN RN CHAPERON.

21 Q WHO COLLECTED ALL THE EVIDENCE FROM THIS PATIENT FOR
22 THE RAPE KIT IN THIS CASE?

23 A I DID.

24 Q WOULD YOU PLEASE EXPLAIN TO THE JURY HOW YOU FOLLOWED
25 HOSPITAL AND SANE PROTOCOL AND PROCEDURES AS YOU DESCRIBE

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

214

1 HOW YOU COLLECTED EVIDENCE FROM [REDACTED] IN THIS CASE?

2 A YES, MA'AM. FIRST OF ALL, WE HAVE TO GET WRITTEN
3 CONSENT FROM THE VICTIM OR THE PATIENT BEFORE WE CAN EVEN
4 PROCEED. WE ALSO HAVE TO HAVE A CASE NUMBER FROM THE
5 AGENCY THAT IS REQUESTING THE SLED KIT FROM US. THEN AFTER
6 WE HAVE THE WRITTEN DOCUMENTATION FROM THE PATIENT AND WE
7 HAVE SIGNED IT, WE WILL PROCEED WITH A RAPE KIT.

8 THE RAPE KIT -- THE SLED KIT IS BROUGHT INTO THE ROOM.
9 IT NEVER LEAVES MY SIGHT UNTIL IT IS TURNED OVER TO THE
10 AGENCY THAT HAS ASKED FOR THE SANE KIT. THEN WE PROCEED
11 WITH -- IT'S BROKEN DOWN IN DIFFERENT CATEGORIES OF WHAT
12 AREAS OF [REDACTED] WOULD NEED.

13 WE ALSO INTERVIEW THE PATIENT AT THAT TIME. AND
14 THROUGHOUT THE -- WITHIN THE COURSE OF THE COLLECTING OF
15 EVIDENCE WE CAN ALSO ASK THE PATIENT, BECAUSE SOME TIMES IT
16 CAN REFRESH THEIR MEMORY WHEN THEY ARE GOING THROUGH THE
17 SANE KIT.

18 Q COULD YOU PLEASE GO THROUGH THE PROCEDURE AND EACH
19 PIECE OF EVIDENCE THAT YOU TOOK FROM [REDACTED] IN THIS CASE FOR
20 THE JURY?

21 A SURE. MAY I REFRESH WITH MY NOTES?

22 Q YES.

23 A OKAY. THERE WAS NO CLOTHES THAT WERE OBTAINED. AND
24 FROM MY NOTES THAT THE OFFICERS HAD TAKEN THE BED SHEETS
25 AND HER CLOTHES. SO SHE HAD CHANGED CLOTHES PRIOR TO

KIMBERLY CLEGG -- DIRECT BY MS. MILLICAN

215

1 COMING TO THE EMERGENCY ROOM.

2 THERE WAS A BITE MARK THAT WAS NOTED ON HER RIGHT
3 MIDDLE FINGER, AND THAT WAS COLLECTED. WE USE WHAT WE CALL
4 A DOUBLE SWAB TECHNIQUE WHERE YOU TAKE -- I HAVE ON GLOVES.
5 AND I TAKE A SWAB WHICH IS WET WITH STERILE WATER, AND THAT
6 IS RAN ACROSS THE FINGER. THIS IS A STERILE SWAB, AND IT'S
7 ~~RAN~~ ACROSS THE FINGER. AND THEN YOU TAKE ANOTHER DRY SWAB,
8 AND THAT IS ALSO RAN ACROSS THE FINGER. THOSE TWO ARE
9 PLACED INTO A DRYER. AND THEN AFTER IT IS DRIED, IT GOES
10 INTO THE EVIDENCE COLLECTION ENVELOPE THAT IS PROVIDED.
11 THAT IS HOW YOU COLLECT FOR THE FINGERNAIL -- FOR A BITE
12 MARK. *

13 Q NOW, YOU MENTIONED THE FINGERNAIL. IS THAT SEPARATE
14 THAN THE SWAB FROM THE BITE MARK?

15 A YES, IT IS.

16 Q HOW IS THAT DONE?

17 A FINGERNAIL SWABS ARE ALSO -- THERE IS AN ENVELOPE.
18 THERE ~~IS A SEPARATE~~ PAPER. IT'S DESIGNATED LEFT AND
19 RIGHT HAND. THE PATIENT OR THE VICTIM'S HAND IS PLACED ON
20 THE PIECE OF PAPER FROM THE ENVELOPE. THERE IS A PLASTIC
21 TOOTHPICK-LOOKING DEVICE THAT IS INSERTED INTO THE
22 ENVELOPE. AND THAT GOES -- EACH INDIVIDUAL FINGER IS
23 SCRAPPED. AND THEN I GO TO THE NEXT HAND THAT IS LABELED.
24 IF I STARTED WITH THE LEFT HAND, I WOULD GO TO THE RIGHT
25 HAND. AND THAT IS ALSO DONE IN THE SAME PROCEDURE.

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

216

1 Q WHAT'S THE PURPOSE OF SCRAPING UNDER THE FINGERNAILS
2 OF A RAPE PATIENT?

3 A THE PURPOSE OF IT IS TO -- IN CASE THE VICTIM HAD
4 SCRAPED OR SCRATCHED THE ASSAILANT. AND YOU CAN ALSO GET
5 DNA FROM THAT AND YOU CAN GET THE PATIENT AND THE
6 ASSAILANT'S DNA FROM THAT EVIDENCE.

7 Q WHAT OTHER EVIDENCE DID YOU COLLECT FROM [REDACTED] DURING
8 HER RAPE KIT?

9 A OKAY. I ALSO HAD SOME MISCELLANEOUS MATERIALS. LET'S
10 SEE, MISCELLANEOUS BODY FLUIDS. THAT IS COLLECTED BY -- WE
11 TURN OFF THE LIGHTS IN THE ROOM THAT THE VICTIM IS IN AND
12 WE GO OVER THE BODY HEAD TO TOE WITH WHAT IS CALLED A WOODS
13 LAMP. A WOODS LAMP IS A BLACK LIGHT, AND THAT ILLUMINATES
14 -- IT STARTS FROM THE HEAD AND WE GO ALL THE WAY DOWN THE
15 BODY TO SEE IF WE SEE ANYTHING THAT ILLUMINATES THAT IS
16 SUSPICIOUS TO US.

17 BASICALLY, SEMEN WILL BE ILLUMINATED.

18 AT THE TIME WHEN I DID [REDACTED] SLED KIT, I DID
19 FIND A POSITIVE WOODS LAMP AROUND THE EXTERNAL AND INTERNAL
20 MEATUS.

21 Q COULD YOU EXPLAIN EXACTLY WHERE THAT IS?

22 A RIGHT. THAT IS IN THE OPENING OF THE VAGINA. THAT IS
23 THE OUTER AND INNER LIPS OF THE VAGINA.

24 Q WAS THERE ANY OTHER SPECIMEN FOUND ANYWHERE ELSE ON
25 HER BODY WITH THE WOODS LAMP?

KIMBERLY CLEGG -- DIRECT BY MS. MILLICAN

217

1 A NO, THERE WAS NOT.

2 Q NOW, HOW WOULD YOU GO ABOUT COLLECTING A SPECIMEN LIKE
3 THAT? YOU STATED THAT YOU FOUND ---

4 A RIGHT.

5 Q WOULD IT BE SEMEN OUTSIDE OF HER VAGINA?

6 A IT CAN BE SEMEN. WE DON'T KNOW EXACTLY IF IT IS
7 SEMEN, BUT WE KNOW THAT IT IS A FOREIGN BODY THAT IS NOT
8 PART OF THE PATIENT THAT WAS ILLUMINATED. SO WHAT WE DO IS
9 WE ALSO DO THE DOUBLE SWAB TECHNIQUE WHERE WE TAKE -- I
10 WOULD PUT UP -- EVERY TIME THAT I COLLECT EVIDENCE ON A
11 PATIENT, I CHANGE MY GLOVES EVERY SINGLE TIME WITH EACH
12 COLLECTION.

13 Q SO IF YOU DID THE FINGERNAILS AND HAD ONE KIND OF
14 GLOVE ON, YOU WOULD ---

15 A I WOULD TAKE ---

16 Q --- CHANGE GLOVES?

17 A THAT'S CORRECT. I CHANGE GLOVES EVERY SINGLE TIME.
18 AND BEFORE I EVEN START A SLED KIT, I ALWAYS CLEAN MY HANDS
19 WITH ANTIBACTERIAL SOAP AND MAKE SURE THAT MY ROOM IS CLEAN
20 AND THE BED HAS BEEN CLEANED BEFORE WE EVEN PROCEED WITH A
21 SLED KIT.

22 Q WHAT OTHER EVIDENCE DID YOU TAKE TO SLED?

23 A I ALSO GOT ORAL SWABS AND A SMEAR, WHICH IS WHERE I
24 TAKE STERILE SWABS AND IT IS INSERTED INTO THE MOUTH. AND
25 WE GO AROUND THE BUCCAL SITE. THE BUCCAL SITE IS RIGHT

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

218

1 HERE IN THE CHEEK AREA. AND THAT IS ALSO PUT ON A SLIDE,
2 AND THOSE ARE ALSO PUT INTO A DRYER. AND THEN AFTER THEY
3 HAVE BEEN DRIED, THEY ARE THEN SEALED INTO THE EVIDENCE
4 CASE, THE ENVELOPE.

5 I ALSO DID PUBIC HAIR COMBINGS. PUBIC HAIR COMBINGS
6 -- AGAIN, I WOULD HAVE CHANGED MY GLOVES. AND INSIDE THE
7 PUBIC HAIR COMBING KIT THERE IS A PIECE OF PAPER THAT THE
8 PATIENT'S VAGINA AND BUTTOCKS IS PLACED ON. THERE IS A
9 STERILE BLACK COMB THAT IS INSIDE THERE. AND WHAT WE DO IS
10 WE ACTUALLY COMB THE PATIENT'S PUBIC HAIRS TO SEE IF HER
11 PUBIC HAIRS FALL OFF OR IF WE CAN ALSO FIND SOME ADDITIONAL
12 PUBIC HAIRS THAT MAY NOT BE RELATED TO THE PATIENT.

13 Q WHAT OTHER SMEARS DO YOU TAKE?

14 A WE ALSO DID VAGINAL SWAB SMEARS ON THIS PATIENT, WHICH
15 IS WHEN I OPEN THE LABIAL MAJORA AND MINORA; THAT IS THE
16 OPENING OF THE VAGINA. AND, AGAIN, I CHANGE GLOVES, AND
17 TWO STERILE SWABS ARE INSERTED INTO THE VAGINA AND LEFT FOR
18 APPROXIMATELY 10 SECONDS. AND THEN AFTER THAT, THOSE ARE
19 ALSO PLACED IN THE DRYER.

20 Q WAS ANY BLOOD TAKEN FROM THE PATIENT?

21 A YES, THERE WAS BLOOD TAKEN FROM THE PATIENT. I
22 ACTUALLY DREW THE BLOOD FROM THE PATIENT. AGAIN, I CHANGED
23 MY GLOVES AT THIS TIME. A TOURNIQUET IS PLACED AND I HAVE
24 FOUND A VEIN THAT I CAN DRAW BLOOD FROM. THEN THE SKIN IS
25 ALSO CLEANED WITH BETADINE. WE NEVER USE ALCOHOL, BECAUSE

KIMBERLY CLEGG - DIRECT BY MS. MILLICAN

219

1 ALCOHOL CAN DESTROY EVIDENCE. AND THEN I DREW THE BLOOD
2 AND THEN PLACED IT INTO THE APPROPRIATE TUBES THAT WERE
3 DESIGNATED IN THE SLED KIT.

4 Q YOU HAD MENTIONED THAT YOU COMB THE PUBIC HAIR.

5 A RIGHT.

6 Q COLLECT ANY FOREIGN HAIR.

7 A RIGHT.

8 Q DO YOU TAKE ANY OTHER HAIR FROM THE VICTIM?

9 A YES, WE DO. WE ALSO HAVE TO PLUCK SEVERAL HAIRS OUT
10 OF THE PATIENT'S VAGINA, PUBIC AREA. WE HAVE TO GET MAYBE
11 10 TO 15 WHERE WE ACTUALLY LITERALLY HAVE TO PLUCK IT FROM
12 THE VAGINA AND AROUND THE AREA.

13 AND THEN ALSO WE ALSO HAVE TO PLUCK HAIR FROM THE
14 VICTIM'S HAIR. I START -- YOU HAVE TO DO IT IN THE FRONT
15 OF THE HEAD, THE TOP, THE LEFT, THE RIGHT, AND THE BACK OF
16 THE HEAD. AND THAT IS ALSO PUT INTO AN ENVELOPE.

17 Q AFTER YOU COLLECTED ALL THIS EVIDENCE THAT YOU JUST
18 DESCRIBED, WHERE DO YOU PLACE THE SPECIMENS? WHAT DO YOU
19 DO NEXT WITH IT?

20 A AFTER THE SPECIMENS HAVE BEEN DRIED, I THEN CHANGE
21 GLOVES AGAIN AND INSERT THEM INTO THE APPROPRIATE ENVELOPE
22 THAT IS DESIGNATED IN THE SLED KIT. AND THEN THAT IS
23 SEALED WITH RED EVIDENCE TAPE, AND THEN THAT IS IN MY
24 PRESENCE UNTIL IT IS TURNED OVER TO THE AGENCY THAT HAS
25 REQUESTED THAT TO BE PERFORMED.

KIMBERLY CLEGG -- DIRECT BY MS. MILLICAN

220

1 (SLED BOX MARKED FOR IDENTIFICATION AS STATE'S EXHIBIT
2 NO. 17.)

3 Q PLEASE LOOK AT WHAT'S BEEN MARKED FOR IDENTIFICATION
4 PURPOSES AT THIS POINT AS STATE'S EXHIBIT NO. 17. DO YOU
5 RECOGNIZE THAT ITEM?

6 A YES, I DO.

7 Q WHAT IS IT?

8 A THAT IS A SLED KIT.

9 Q HOW DO YOU RECOGNIZE IT?

10 A BECAUSE IT IS THE SEXUAL ASSAULT EXAMINING COLLECTION
11 KIT. THAT IS THE STATE PROTOCOL, THIS IS.

12 Q HOW DO YOU KNOW THAT PARTICULAR KIT IS INVOLVED IN
13 THIS CASE?

14 A BECAUSE IT HAS MY PATIENT'S NAME ON IT, AND IT ALSO
15 HAS MY NAME ON IT, AND THE AGENCY WHERE I WORK, WHICH IS
16 BEAUFORT MEMORIAL EMERGENCY ROOM.

17 Q DID YOU INITIAL OR SIGN ANYWHERE ON THAT BOX?

18 A YES, I DO. EVERY TIME THAT A COLLECTION -- IF YOU CAN
19 SEE ON THE RED, EVERYTHING ON THE RED HAS TO BE INITIALED
20 AND ALSO MY NAME HAS TO BE PRINTED AND SIGNED ON THE BACK.
21 AND ALSO WHOEVER I TURN IT OVER TO HAS TO PRINT AND SIGN
22 THEIR NAME.

23 Q WHY DO YOUR INITIALS HAVE TO BE SIGNED ON THE RED
24 TAPE?

25 A BECAUSE THAT MEANS THAT I HAD -- THIS HAS NOT LEFT MY

KIMBERLY CLEGG — CROSS BY MS. SMART

221

1 SIGHT AND I AM THE ONE WHO SEALED THIS KIT.

2 Q YOU COLLECTED ALL THIS EVIDENCE FROM ANA, YOU PUT IT
3 IN THAT BOX, AND YOU SEALED THE KIT?

4 A THAT IS CORRECT.

5 Q THEN WHAT DID YOU DO WITH IT?

6 A I HELD IT IN MY POSSESSION UNTIL IT WAS TURNED OVER AT
7 [REDACTED]:12 TO MATT METRINKO, M-E-T-R-I-N-K-O.

8 MS. MILLICAN: THANK YOU. I HAVE NO [REDACTED] QUESTIONS
9 FOR THIS WITNESS AT THIS TIME.

10 THE COURT: CROSS EXAMINATION, MS. SMART.

11 CROSS EXAMINATION BY MS. SMART:

12 Q MS. CLEGG, DURING YOUR EXAMINATION OF [REDACTED]
13 DID YOU HAVE THE OPPORTUNITY TO SPEAK TO HER ABOUT WHAT
14 HAPPENED?

15 A YES, MA'AM, I DID.

16 Q AND DID SHE TELL YOU WHAT OCCURRED?

17 A YES, MA'AM, SHE DID.

18 Q AND I SUPPOSE IN YOUR ORDINARY COURSE OF BUSINESS YOU
19 HAVE TO MAKE NOTES ---

20 A THAT IS CORRECT.

21 Q --- AS TO WHAT YOU WERE TOLD BY THE PATIENT?

22 A THAT IS CORRECT.

23 Q AND DID YOU MAKE NOTES IN THIS PARTICULAR CASE?

24 A YES, MA'AM, I DID.

25 Q AND THE NOTES THAT YOU MADE, WOULD THEY BE NOTES THAT

KIMBERLY CLEGG — CROSS BY MS. SMART

222

1 YOU DREW A CONCLUSION OR WERE YOU SPECIFICALLY TOLD THINGS
2 BY THE PATIENT?

3 A NO, MA'AM. ACTUALLY, SOME TIMES WE ASK THE PATIENT IF
4 THEY REMEMBER ANYTHING THAT HAPPENED DURING THE ASSAULT,
5 AND THAT'S WHAT WE GO BY.

6 Q AND IN THIS PARTICULAR CASE, ISN'T IT TRUE THAT YOU
7 ASKED -- OR ISN'T IT TRUE THAT YOU WERE TOLD BY [REDACTED]
8 [REDACTED] THAT A LIGHT SKINNED AFRICAN AMERICAN MAN CAME TO
9 HER DOOR AND ASKED TO USE THE PHONE?

10 A YES, MA'AM, IT IS.

11 Q AND THAT THIS MAN ASKED FOR A PEN AND PAPER AT THE
[REDACTED] PULLED OUT A LONG, FLAT, DARK COLORED GUN?

13 A YES, MA'AM, IN MY NOTES THAT'S WHAT IT SAYS.

14 Q AND THAT SHE ALSO TOLD YOU THAT SHE BELIEVED THE MAN
15 FLED ON A BIKE?

16 A THAT IS CORRECT.

17 Q AND SHE ALSO TOLD YOU THAT SHE WAS FORCED TO REMOVE
18 HER PANTS AND HER UNDERWEAR?

19 A THAT IS CORRECT.

20 Q AND THAT SHE WAS PUSHED ON THE BED BY HER ASSAILANT?

21 A THAT IS CORRECT.

22 Q AND THAT HE FORCEFULLY JAMMED HIS FINGERS INTO HER
23 VAGINA?

24 A THAT IS CORRECT.

25 Q AND SHE ALSO TOLD YOU THAT SHE TOLD HER ATTACKER THAT

KIMBERLY CLEGG -- CROSS BY MS. SMART

223

1 HER SPOUSE WAS COMING HOME AND HE FLED?

2 A THAT IS CORRECT.

3 Q AND YOU ALSO NOTED IN YOUR REPORT THAT THERE WAS NO
4 ACTIVE BLEEDING?

5 A THAT IS CORRECT.

6 Q DID YOU ALSO PERFORM THE SEXUAL ASSAULT EXAMINATION
7 PROTOCOL, THE WRITTEN REPORT?

8 A YES, MA'AM, I DID.

9 Q AND IF YOU HAD NOTED ANY PHYSICAL INJURIES TO THE
10 PATIENT, WOULD THOSE NOTES -- WOULD THOSE INJURIES BE
11 INCLUDED IN YOUR REPORT?

12 A YES, MA'AM, THEY WOULD BE. SOMETIMES THAT YOU WILL
13 NOT SEE SWELLING OR FIND TEARS OR ANYTHING. YOU CAN SEE IT
14 UP TO 24 HOURS AFTER THE VICTIM COMES IN -- BECAUSE YOU
15 HAVE TO REALIZE, WE'RE SEEING THEM AT AN ACUTE STAGE.

16 Q NOW, IN YOUR REPORT ON PAGE 2, AND JUST TO REFRESH
17 YOUR MEMORY WITH REGARD TO YOUR PELVIC EXAM, YOU DID NOTE
18 ON YOUR REPORT THAT THERE WAS NO OBVIOUS TRAUMA?

19 A THAT IS CORRECT.

20 Q AND THAT WAS TO THE VULVA?

21 A THAT IS CORRECT. THERE WAS NO OBVIOUS TRAUMA TO THE
22 VULVA, THE INTROITS, THE HYMEN, THE VAGINA, OR THE ANUS.

23 Q AND COULD YOU EXPLAIN TO THIS JURY IN LAYMAN'S TERMS
24 WHAT THE ---

25 A BODY PARTS?

KIMBERLY CLEGG - CROSS BY MS. SMART

224

1 Q THOSE BODY PARTS?

2 A YES. THE VULVA IS ACTUALLY THE OUTER AREA OF THE
3 VAGINA. THE INTROITS IS ACTUALLY THE INTER PART OF YOUR
4 VAGINA NEAR YOUR CERVIX. THE HYMEN IS A THIN LAYER OF
5 MATERIAL. SOMETIMES IF YOU'VE HAD CHILDREN, YOU MAY NOT
6 HAVE A HYMEN THAT IS PRESENT. THE VAGINA ACTUALLY ITSELF
7 IS THE WHOLE ENCASING OF THE VAGINA IN THE PELVIC AREA.
8 AND THEN, OF COURSE, THE ANUS IS THE RECTUM.

9 Q AND ON PAGE 4 OF YOUR ANATOMICAL DRAWING ---

10 A THAT IS CORRECT.

11 Q --- YOU DID NOTE, ISN'T IT CORRECT, THAT WHAT IS
12 DESCRIBED AS SIGNS OF PHYSICAL OF TRAUMA, THE ONLY THING
13 YOU WROTE THERE WAS BRUISING AND MINIMAL EDEMA NOTED AT THE
14 RIGHT MIDDLE FINGER?

15 A THAT IS CORRECT.

16 Q AND NO VAGINA TRAUMA?

17 A THAT IS CORRECT.

18 MS. SMART: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: REDIRECT?

20 MS. MILLICAN: NOTHING FURTHER FOR THIS WITNESS, YOUR
21 HONOR.

22 THE COURT: THANK YOU.

23 MS. MILLICAN: MAY SHE BE EXCUSED?

24 THE COURT: YOU MAY STEP DOWN.

25 (THE WITNESS LEAVES THE WITNESS STAND.)

1 THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL

2 YOUR NEXT WITNESS.

3 MS. MILLICAN: YOUR HONOR, MAY WE APPROACH?

4 THE COURT: YES.

5 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
6 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
8 JURY, IT IS GOING TO BE NECESSARY THAT WE GO AHEAD ADJOURN
9 FOR THE AFTERNOON. THE STATE WAS JUST EXPLAINING TO ME THE
10 SLIGHT WITNESS PROBLEM THAT SHE HAD PLANNED TO PUT UP
11 TODAY, BUT THE WITNESS COULD NOT GET HERE TODAY BUT WILL BE
12 HERE IN THE MORNING; THAT IS WHAT SHE HAD PLANNED TO DO,
13 AND WE WOULD HAVE QUIT ABOUT 5:00 ANYHOW.

14 SO I THINK IT IS APPROPRIATE THAT WE RECESS NOW FOR
15 THE AFTERNOON. IF IT DOES NOT CAUSE ANYONE ANY PROBLEMS, I
16 WOULD LIKE TO MAKE UP THIS HALF AN HOUR IN THE MORNING AT
17 9:00 O'CLOCK. WOULD IT SUIT EVERYBODY TO BE HERE AT 9:00
18 IN THE MORNING? IF THAT WOULD CAUSE ANYBODY A REAL
19 HARDSHIP, LET ME KNOW. OTHERWISE, WE ARE GOING TO ADJOURN
20 FOR THE AFTERNOON.

21 I'M GOING TO ASK AGAIN THE BAILIFFS TO COLLECT YOUR
22 NOTE PADS. AND, AGAIN, THEY'LL BE KEPT IN THE SECURITY OF
23 THE BAILIFFS OVER THE EVENING RECESS. AND I'M GOING TO
24 EXCUSE YOU TO GO ABOUT YOUR BUSINESS FOR THE REST OF THE
25 DAY.

1 AND, AGAIN, I WOULD TELL YOU THAT OVER THE EVENING
2 RECESS DO NOT DISCUSS THE CASE WITH ANYONE, DO NOT ALLOW
3 ANYONE TO DISCUSS IT WITH YOU. AND WHEN YOU ARE
4 REASSEMBLING IN THE JURY ROOM TOMORROW MORNING, DO NOT
5 DISCUSS IT AMONG YOURSELVES. IT IS STILL PREMATURE FOR YOU
6 TO BEGIN ANY DISCUSSION ABOUT THIS CASE.

7 BUT IF YOU WOULD BE BACK TOMORROW MORNING AT 9:00
8 O'CLOCK, WE'LL TRY TO START PROMPTLY AT THAT TIME SO THAT
9 WE CAN MOVE ALONG.

10 HAVE A PLEASANT EVENING AND I'LL SEE YOU TOMORROW.
11 THANK YOU.

12 (THE JURY EXITS THE COURTROOM AT 4:33 P.M.)

13 THE COURT: ALL RIGHT. I WANT TO GO BACK -- LET THE
14 RECORD REFLECT THE JURY IS NOW OUT OF THE ROOM. I JUST
15 WANT TO GO BACK AND PLACE ON THE RECORD THE REASON FOR ONE
16 OF MY RULINGS.

17 THERE WAS AN OBJECTION BY THE STATE REGARDING
18 INCONSISTENCIES OR ALLEGED INCONSISTENCIES IN THE VICTIM'S
19 STATEMENT. THE WITNESS THAT WAS ON THE STAND AT THE TIME I
20 BELIEVE WAS THE POLICE OFFICER, MR. CHAPMAN.

21 AND THE REASON FOR SUSTAINING OF THE OBJECTION WAS
22 THAT THE WITNESS WAS ASKED IF THERE WERE INCONSISTENCIES.
23 IN MY VIEW, THAT IS A MATTER FOR THE JURY TO DETERMINE FROM
24 THE CROSS EXAMINATION OF THE PERSON GIVING THE STATEMENT.

25 MS. SMART CERTAINLY HAD THE RIGHT AND DID ASK THE

1 VICTIM IN THIS CASE, WHO WAS THE PERSON GIVING THE
2 STATEMENT, ABOUT THINGS THAT SHE MAY HAVE SAID IN ONE
3 STATEMENT AS OPPOSED TO ANOTHER STATEMENT. AND IT IS FOR
4 THE JURY TO DETERMINE WHETHER OR NOT THOSE ARE INCONSISTENT
5 OR NOT, NOT WHETHER THE WITNESS, MR. CHAPMAN, THINKS THAT
6 THEY'RE INCONSISTENT. AND THAT WAS THE REASON FOR
7 SUSTAINING THAT OBJECTION.

8 ALL RIGHT. IS THERE ANYTHING ELSE, MS. MILLICAN, THAT
9 YOU THINK THAT WE NEED TO DO OR THAT WOULD INTERFERE WITH
10 US GOING FORWARD TOMORROW MORNING PROMPTLY?

11 MS. MILLICAN: I BELIEVE WE CAN START PROMPTLY AT
12 9:00, YOUR HONOR.

13 THE COURT: ALL RIGHT. DO YOU KNOW OF ANYTHING, MS.
14 SMART, THAT NEEDS TO BE TAKEN UP?

15 MS. SMART: NOTHING, YOUR HONOR.

16 THE COURT: ALL RIGHT. WE WILL BE IN RECESS THEN
17 UNTIL 9:00 O'CLOCK TOMORROW MORNING. LET'S DO TRY TO START
18 PROMPTLY WITH THE JURY AT THAT TIME. THANK YOU. GOOD
19 NIGHT.

20 (COURT IS IN RECESS.)

21 (WEDNESDAY, MARCH 14, 2007.)

22 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH
23 REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON,
24 JR. LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT
25 WITH HIS COUNSEL. THE STATE IS PRESENT AND REPRESENTED BY

1 COUNSEL, MS. MILLICAN AND MS. LOVELL.

2 ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?

3 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

4 THE COURT: ANYTHING FROM THE DEFENSE?

5 MS. SMART: NOTHING FROM THE DEFENSE, YOUR HONOR.

6 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

7 (THE JURY RETURNS TO THE COURTROOM AT 9:05 A.M.)

8 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND
9 GENTLEMEN. THANK YOU FOR YOUR PROMPTNESS IN BEING BACK
10 HERE. AND WE ARE NOW READY TO PROCEED.

11 BEFORE I HAVE THE STATE CALL THEIR FIRST WITNESS, I
12 NEED TO INQUIRE OF THE JURY IF ANYONE HAS TRIED TO TALK
13 WITH YOU OR MAKE ANY CONTACT WITH YOU ABOUT THIS CASE OVER
14 THE EVENING RECESS, I WOULD NEED TO KNOW ABOUT IT NOW.

15 (NO RESPONSE.)

16 THE COURT: WITH NO RESPONSE, I ASSUME THAT THAT IS A
17 NEGATIVE RESPONSE. I WOULD ALSO NEED TO ASK YOU IF ANYBODY
18 HAS READ ANYTHING OR SEEN ANYTHING IN THE NEWS MEDIA
19 REGARDING THIS CASE OVER THE EVENING RECESS? I WOULD ALSO
20 NEED TO KNOW ABOUT THAT NOW.

21 (NO RESPONSE.)

22 THE COURT: AGAIN, NO RESPONSE. I WILL ASSUME THAT
23 THAT IS A NEGATIVE RESPONSE, AND WE ARE READY TO GO
24 FORWARD.

25 ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR FIRST

MATTHEW METRINKO - DIRECT BY MS. MILLICAN

229

1 WITNESS.

2 MS. MILLICAN: THANK YOU, YOUR HONOR, THE STATE CALLS
3 DEPUTY METRINKO.

4 MATTHEW METRINKO, BEING FIRST
5 DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
7 SPELL IT FOR THE COURT.

8 WITNESS: MY NAME IS PATROLMAN FIRST CLASS MATTHEW
9 METRINKO. METRINKO, M-E-T-R-I-N-K-O.

10 DIRECT EXAMINATION BY MS. MILLICAN:

11 Q DEPUTY METRINKO, WHERE ARE YOU EMPLOYED?

12 A BEAUFORT COUNTY SHERIFF'S OFFICE, MA'AM.

13 Q HOW LONG HAVE YOU BEEN EMPLOYED AT THE SHERIFF'S
14 OFFICE?

15 A ALMOST 3 YEARS NOW.

16 Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S
17 OFFICE?

18 A I'M A PATROL OFFICER, TRAFFIC ENFORCEMENT, RESPONSE TO
19 CALLS. I'M ALSO ON THE SWAT TEAM.

20 Q WERE YOU ON DUTY ON FEBRUARY THE 7TH, 2006?

21 A YES, MA'AM.

22 Q DID YOU GET INVOLVED IN THE INVESTIGATION OF A RAPE
23 CASE ON THAT DAY?

24 A YES, MA'AM.

25 Q HOW DID YOUR INVOLVEMENT BEGIN?

MATTHEW METRINKO -- DIRECT BY MS. MILLICAN

230

1 A I RETRIEVED THE CSC KIT FROM THE HOSPITAL, TURNED IT
2 IN TO THE EVIDENCE DIVISION.

3 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
4 NO. 17. DO YOU RECOGNIZE IT?

5 A I DO, MA'AM.

6 Q HOW DO YOU RECOGNIZE IT?

7 A MY NAME AND INITIALS APPEAR ON IT.

8 Q WHAT IS IT?

9 A IT'S A CSC KIT.

10 Q WHAT DID YOU DO WITH THIS RAPE KIT AFTER YOU TOOK
11 CUSTODY AND CONTROL OF IT?

12 A I SIMPLY TURNED IT IN TO THE EVIDENCE DIVISION.

13 Q DID YOU EVER BREAK THE SEAL OF THE RAPE KIT WHILE IT
14 WAS UNDER YOUR CUSTODY OR CONTROL?

15 A NO, MA'AM, I DID NOT.

16 MS. MILLICAN: THANK YOU. I HAVE NO MORE QUESTIONS OF
17 THIS WITNESS, YOUR HONOR.

18 THE COURT: CROSS EXAMINATION, MS. SMART?

19 MS. SMART: I HAVE NO QUESTIONS OF THIS WITNESS.

20 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP
21 DOWN. IF YOU'LL GIVE THE EXHIBIT BACK TO THE COURT
22 REPORTER.

23 (THE WITNESS LEAVES THE WITNESS STAND.)

24 MS. MILLICAN: THE STATE CALLS RAMONA COOPER.

25 RAMONA COOPER, BEING FIRST

RAMONA COOPER - DIRECT BY MS. MILLICAN

231

1 DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
3 SPELL IT FOR THE COURT.

4 WITNESS: MY NAME IS CORPORAL RAMONA SUE COOPER. I
5 WORK FOR THE BEAUFORT COUNTY SHERIFF'S OFFICE AS AN
6 EVIDENCE TECHNICIAN.

7 DIRECT EXAMINATION BY MS. MILLICAN:

8 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE BEAUFORT COUNTY
9 SHERIFF'S OFFICE?

10 A I'VE BEEN EMPLOYED BY THEM SINCE 1999 BUT BECAME A
11 CERTIFIED OFFICER IN 2000.

12 Q WHAT ARE YOUR GENERAL DUTIES WITH THE SHERIFF'S
13 OFFICE?

14 A CURRENTLY MY DUTIES ARE AS AN EVIDENCE TECHNICIAN
15 WHERE MY RESPONSIBILITIES INVOLVE TAKING IN, MAINTAINING,
16 AND CATALOGING THE EVIDENCE THAT IS BROUGHT IN BY OUR
17 OFFICERS.

18 Q PLEASE LOOK AT STATE'S EXHIBIT NO. 17. DO YOU
19 RECOGNIZE IT?

20 A YES, MA'AM, I DO.

21 Q HOW DO YOU RECOGNIZE IT?

22 A IT IS A CRIMINAL SEXUAL ASSAULT EVIDENCE COLLECTION
23 KIT, AND I RECOGNIZE IT BECAUSE ONE OF MY FELLOW CO-
24 WORKERS, MS. EILEEN RIOS, WHO IS ANOTHER EVIDENCE
25 TECHNICIAN, HER SIGNATURE IS ON THE BOX.

RAMONA COOPER - DIRECT BY MS. MILLICAN

232

- 1 Q PLEASE ALSO LOOK AT STATE'S EXHIBIT NO. 12. DO YOU
2 RECOGNIZE THIS ITEM?
- 3 A YES, MA'AM, I DO.
- 4 Q HOW DO YOU RECOGNIZE IT?
- 5 A IT HAS MY SIGNATURE ON IT FROM WHERE I SUBMITTED IT TO
6 SLED FOR ANALYZING FOR WHATEVER REQUEST WAS MADE BY THE
7 INVESTIGATOR.
- 8 Q NOW, DID THE BEAUFORT COUNTY SHERIFF'S OFFICE EVIDENCE
9 ALSO TAKE IN A BLOOD STANDARD FROM THE DEFENDANT, NATHANIEL
10 JOHNSON?
- 11 A I DO BELIEVE A BIOLOGICAL SPECIMEN WAS TAKEN IN BY MS.
12 RIOS FROM THAT INDIVIDUAL ON JANUARY THE 19TH.
- 13 Q COULD YOU PLEASE EXPLAIN WHO MS. RIOS IS?
- 14 A MS. RIOS IS ANOTHER EVIDENCE TECHNICIAN IN OUR
15 DEPARTMENT WHO IS A CIVILIAN EMPLOYEE.
- 16 Q NOW, IS SHE ALSO LIKE YOU, MAINTAIN CUSTODY AND
17 CONTROL OF ALL THE ITEMS IN EVIDENCE?
- 18 A YES, MA'AM, SHE DOES. WE HAVE THE SAME
19 RESPONSIBILITIES.
- 20 Q NOW, WHO DELIVERED THE BLOOD STANDARD FROM THE
21 DEFENDANT TO EVIDENCE ON JANUARY 19?
- 22 A I'M THE ONLY ONE CURRENTLY IN THE EVIDENCE DIVISION
23 THAT TAKES THINGS TO AND FROM SLED.
- 24 Q WHO BROUGHT IT TO EVIDENCE THOUGH?
- 25 A TO EVIDENCE, THE BLOOD STANDARD, IT WAS BROUGHT TO US

RAMONA COOPER -- DIRECT BY MS. MILLICAN

233

1 BY STAFF SERGEANT PURDY.

2 Q AND DID YOU SAY YOU TOOK ALL OF THESE PIECES OF
3 EVIDENCE, STATE'S EXHIBIT 17 AND 12 AND THE DEFENDANT'S
4 BLOOD STANDARD TO SLED?

5 A YES, MA'AM, I DID.

6 Q WHAT'S THE PROCEDURE FOR SUBMITTING EVIDENCE TO SLED?

7 A A REQUEST IS MADE BY THE INVESTIGATING OFFICER AND
8 THEY ARE GIVEN TO ME, AND THEN I WILL COLLECT THOSE ITEMS
9 FROM WHERE WE HAVE THEM STORED AND TRANSPORT THEM TO SLED
10 MYSELF AND SUBMIT THEM.

11 Q AFTER ALL THESE ITEMS ARE ANALYZED AT SLED, WHO
12 RETRIEVES THEM FROM SLED -- FROM COLUMBIA?

13 A WHEN I GO TO SLED ON MY NEXT VISIT, THEY HAVE IT
14 HOUSED IN THEIR EVIDENCE CONTROL, AND THEY GIVE ME THE
15 ITEMS THAT ARE AVAILABLE FOR ME TO BRING BACK.

16 Q WHAT DID YOU DO WITH THE ITEMS AFTER YOU BROUGHT THEM
17 BACK?

18 A I STORED THEM WITH THE REST OF THE EVIDENCE IN OUR
19 HOLDING FACILITY.

20 Q HAVE ALL OF THESE ITEMS REMAINED IN YOUR CUSTODY AND
21 CONTROL SINCE THE POINT IN TIME WHEN YOU BROUGHT THEM BACK
22 TO BEAUFORT COUNTY SHERIFF'S OFFICE FROM SLED?

23 A YES.

24 MS. MILLICAN: THANK YOU. I HAVE NO FURTHER QUESTIONS
25 FROM THIS WITNESS AT THIS TIME, YOUR HONOR.

RAMONA COOPER -- CROSS BY MS. SMART

234

1 THE COURT: CROSS EXAMINATION, MS. SMART?

2 MS. SMART: YES, YOUR HONOR.

3 CROSS EXAMINATION BY MS. SMART:

4 Q MA'AM, DO YOU RECOGNIZE THIS ITEM?

5 A YES, MA'AM, I DO. IT HAS MY SIGNATURE ON IT WHERE I
6 RECEIVED IT FROM INVESTIGATOR CHAPMAN.

7 Q AND HOW ARE YOU FAMILIAR WITH THAT? IS THAT SOMETHING
8 THAT YOU HANDLE IN THE COURSE OF YOUR DUTIES AS AN EVIDENCE
9 COLLECTION CUSTODIAN?

10 A YES. WHEN ANY OFFICER, INVESTIGATOR, OR ROAD OFFICER
11 SUBMITS ANYTHING IN TO EVIDENCE, I TAKE IT IN, I CATALOGUE
12 IT, AND I SIGN THE DOCUMENT.

13 MS. SMART: I'D LIKE TO HAVE THIS MARKED AS DEFENSE
14 EXHIBIT FOR IDENTIFICATION.

15 THE COURT: NO. 3, ISN'T IT?

16 REPORTER: YES.

17 THE COURT: ALL RIGHT. DEFENSE NO. 3 FOR
18 IDENTIFICATION.

19 (TWO PHOTO LINE-UPS MARKED FOR IDENTIFICATION AS
20 DEFENDANT'S EXHIBIT NO. 3.)

21 Q I'M SORRY, I DON'T REMEMBER WHETHER I ASKED YOU THIS
22 QUESTION. BUT DID YOU TELL ME WHAT THAT WAS IN THE BAG?

23 A INSIDE IT, IT SAYS THERE ARE TWO PHOTO LINE-UPS
24 CONTAINING A -- CONTAINING NATHANIEL JOHNSON, JR.

25 Q AND IT WAS GIVEN TO YOU BY INVESTIGATOR CHAPMAN?

RAMONA COOPER - CROSS BY MS. SMART

235

1 A YES, MA'AM.

2 MS. SMART: I'D LIKE FOR THIS TO BE ADMITTED INTO
3 EVIDENCE AND BE PUBLISHED TO THE JURY, YOUR HONOR.

4 THE COURT: ANY OBJECTION, MS. MILLICAN?

5 MS. MILLICAN: ALTHOUGH NO PROPER CHAIN HAS BEEN
6 ESTABLISHED, THE STATE WON'T HAVE ANY OBJECTION TO THAT
7 BEING ADMITTED INTO EVIDENCE.

8 THE COURT: ALL RIGHT. ADMITTED INTO EVIDENCE AS
9 DEFENDANT'S NO. 3. GIVE IT BACK TO THE COURT REPORTER AND
10 LET HER TAKE THE I.D. MARKING OFF OF IT PLEASE.

11 (DEFENDANT'S EXHIBIT NO. 3 RECEIVED IN EVIDENCE.)

12 THE COURT: AGAIN, LADIES AND GENTLEMEN, THE LAWYERS
13 DO HAVE THE RIGHT TO PUBLISH THE EXHIBITS TO YOU AT THIS
14 TIME. AND, AGAIN, DO NOT BE CONCERNED IF YOU DO NOT HAVE
15 AS LONG TO LOOK AT THEM AS YOU MIGHT LIKE TO, BECAUSE YOU
16 WILL BE ABLE TO TAKE THESE EXHIBITS TO THE JURY ROOM WITH
17 YOU WHEN YOU RETIRE TO DELIBERATE YOUR VERDICT.

18 MS. SMART: YOUR HONOR, I DON'T HAVE ANY OTHER
19 QUESTIONS FOR THIS WITNESS.

20 THE COURT: REDIRECT?

21 MS. MILLICAN: THE STATE HAS NO FURTHER QUESTIONS.
22 YOUR HONOR, MAY MS. COOPER AND DEPUTY METRINKO BE EXCUSED?

23 THE COURT: ANY OBJECTION, MS. SMART?

24 MS. SMART: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. YES. THANK YOU FOR COMING.

JEFF PURDY - DIRECT BY MS. MILLICAN

236

1 YOU ARE EXCUSED, BOTH OF YOU.

2 MS. MILLICAN: THANK YOU, YOUR HONOR.

3 (THE WITNESS LEAVES THE WITNESS STAND.)

4 MS. MILLICAN: THE STATE CALLS KIMBERLY HAHN.

5 (PAUSE.)

6 MS. MILLICAN: WE'LL GO AHEAD AND CALL A WITNESS OUT
7 OF ORDER, JEFF PURDY.

8 THE COURT: ALL RIGHT. YOU CAN WAIT JUST A MINUTE
9 UNTIL THE JURY HAS FINISHED PASSING THAT AROUND. GO AHEAD
10 AND CALL HIM, LET HIM BE COMING UP.

11 MS. MILLICAN: JEFF PURDY.

12 JEFF PURDY, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
15 SPELL IT FOR THE COURT.

16 WITNESS: JEFF PURDY. J-E-F-F P-U-R-D-Y.

17 THE COURT: JUST WAIT JUST A MINUTE, MS. MILLICAN,
18 UNTIL THE JURY HAS REVIEWED THE EXHIBIT, THEN THE BAILIFF
19 GIVE THEM BACK TO THE COURT REPORTER.

20 (PAUSE.)

21 THE COURT: ALL RIGHT. YOU MAY PROCEED.

22 MS. MILLICAN: THANK YOU, YOUR HONOR.

23 DIRECT EXAMINATION BY MS. MILLICAN:

24 Q SERGEANT PURDY, WHERE ARE YOU EMPLOYED?

25 A THE BEAUFORT COUNTY SHERIFF'S OFFICE.

JEFF PURDY — DIRECT BY MS. MILLICAN

237

1 Q HOW LONG HAVE YOU BEEN EMPLOYED AT THE SHERIFF'S
2 OFFICE?

3 A A LITTLE OVER 13 YEARS.

4 Q WHAT ARE YOUR GENERAL DUTIES AT THE SHERIFF'S OFFICE?

5 A CURRENTLY I'M RESPONSIBLE FOR ALL INVESTIGATIONS --
6 ALL THE CASES THAT ARE INVESTIGATED NORTH OF BROAD RIVER,
7 WHICH IS BURTON, SEA BROOK, ST. HELENA, LADY'S ISLAND,
8 EVERYTHING OFF OF THE BROAD RIVER THAT'S BEAUFORT COUNTY.

9 Q SERGEANT PURDY, WERE YOU AT BEAUFORT MEMORIAL HOSPITAL
10 WHEN THE DEFENDANT, NATHANIEL JOHNSON, JR., SUBMITTED TO
11 THE TAKING OF A BLOOD SAMPLE?

12 A YES, THAT WAS JANUARY 19TH OF THIS YEAR.

13 Q AFTER THE DEFENDANT'S BLOOD WAS TAKEN, THE NURSE
14 SEALED THE BLOOD STANDARD. DID YOU TAKE CUSTODY AND
15 CONTROL OF IT?

16 A YES, I WATCHED HIM DRAW THE BLOOD, I WATCHED HIM
17 PACKAGING IN THE BIO BOX, AND HE TURNED IT OVER TO ME.

18 Q WHAT DID YOU DO WITH IT AT THAT POINT?

19 A I IMMEDIATELY CARRIED IT TO THE SHERIFF'S OFFICE AND
20 TURNED IT IN TO EVIDENCE.

21 Q WAS THE DEFENDANT'S BLOOD STANDARD SENT TO SLED FOR
22 DNA COMPARISON TO ITEMS ALREADY ANALYZED IN THIS CASE?

23 A IT WAS. HOWEVER, I WASN'T THE PERSON THAT DID THE
24 SENDING.

25 MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS,

KIMBERLY HAHN — DIRECT BY MS. MILLICAN

238

1 YOUR HONOR.

2 THE COURT: CROSS EXAMINATION, MS. SMART.

3 MS. SMART: NO QUESTIONS FOR THIS WITNESS.

4 THE COURT: ALL RIGHT. SERGEANT PURDY, THANK YOU.

5 YOU MAY STEP DOWN.

6 (THE WITNESS LEAVES THE WITNESS STAND.)

7 MS. MILLICAN: THE STATE CALLS KIMBERLY HAHN.

8 KIMBERLY HAHN, BEING FIRST

9 DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
11 SPELL IT FOR THE COURT.

12 WITNESS: MY NAME IS KIMBERLY HAHN; THAT'S H-A-H-N.

13 DIRECT EXAMINATION BY MS. MILLICAN:

14 Q MS. HAHN, WHAT'S YOUR OCCUPATION?

15 A I'M A SCIENTIST.

16 Q MORE SPECIFICALLY, WHAT SORT OF SCIENCE DO YOU STUDY?

17 A I'M A SCIENTIST IN QUALITY CONTROL DEVELOPMENT. I DO
18 TROUBLE SHOOTING ON GENETIC KITS FOR THE COMPANY I WORK
19 FOR.

20 Q WHO DID YOU WORK FOR IN FEBRUARY OF 2006?

21 A I WORKED FOR THE SOUTH CAROLINA LAW ENFORCEMENT
22 DIVISION.

23 Q HOW LONG WERE YOU EMPLOYED WITH THE SOUTH CAROLINA LAW
24 ENFORCEMENT DIVISION OR SLED?

25 A I WAS EMPLOYED FOR 2 1/2 YEARS.

KIMBERLY HAHN — DIRECT BY MS. MILLICAN

239

- 1 Q WHAT WERE YOUR DUTIES WITH SLED?
- 2 A I WAS A FORENSIC DNA ANALYST.
- 3 Q COULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND?
- 4 A I HAVE A BACHELOR OF SCIENCE IN BIOLOGY FROM OLD
- 5 DOMINION UNIVERSITY IN NORFOLK, VIRGINIA. AND I ALSO HAVE
- 6 A MASTERS OF SCIENCE DEGREE IN MICRO BIOLOGY FROM OLD
- 7 DOMINION UNIVERSITY IN NORFOLK, VIRGINIA.
- 8 Q DID YOUR FORMAL EDUCATION INCLUDE THE STUDY OF DNA?
- 9 A YES, IT DID.
- 10 Q DID YOUR EDUCATION INCLUDE HANDS-ON WORK WITH DNA
- 11 TESTING TECHNIQUE?
- 12 A YES, IT DID.
- 13 Q HAVE YOU PERFORMED RESEARCH IN THE AREA OF DNA OR DNA
- 14 TESTING?
- 15 A YES, I HAVE.
- 16 Q DO YOU BELONG TO ANY PROFESSIONAL SOCIETIES OR
- 17 ORGANIZATIONS IN THE SCIENCE OF DNA?
- 18 A NO, I DO NOT.
- 19 Q HAVE YOU WRITTEN ANY PAPERS OR ARTICLES WITH REGARD TO
- 20 DNA?
- 21 A YES, I'VE HAD TWO PAPERS PUBLISHED, ONE IN THE JOURNAL
- 22 OF PEDIATRICS AND ONE IN THE AMERICAN JOURNAL OF HUMAN
- 23 GENETICS.
- 24 Q HAVE YOU TESTIFIED BEFORE TODAY AS AN EXPERT IN DNA
- 25 TESTING?

KIMBERLY HAHN - DIRECT BY MS. MILLICAN

240

1 A YES, I HAVE.

2 Q APPROXIMATELY HOW MANY TIMES?

3 A I'VE BEEN QUALIFIED 3 TIMES.

4 MS. MILLICAN: YOUR HONOR, THE STATE MOVES THAT
5 KIMBERLY HAHN BE DECLARED AS AN EXPERT IN THE FIELD OF
6 FORENSIC DNA ANALYSIS.

7 THE COURT: CROSS EXAMINATION WITH REGARD TO VOIR DIRE
8 -- WITH REGARD TO QUALIFICATIONS, MS. SMART?

9 MS. SMART: NOTHING FOR THIS WITNESS, YOUR HONOR.

10 THE COURT: ALL RIGHT. THE COURT WOULD FIND THAT THE
11 UNDERLYING SCIENCE IS RELIABLE UNDER THE JONES FACTORS THAT
12 THE WITNESS IS QUALIFIED BY TRAINING, EXPERIENCE,
13 EDUCATION, OR OTHERWISE, AND THAT THE TESTIMONY WILL ASSIST
14 THE TRIER OF FACT IN DETERMINING A FACT IN ISSUE. AND THE
15 WITNESS WILL BE QUALIFIED AS AN EXPERT IN THE FIELD OF
16 FORENSIC DNA ANALYSIS.

17 LADIES AND GENTLEMEN OF THE JURY, LET ME TELL YOU WHAT
18 THAT MEANS. ORDINARILY, A WITNESS WHO IS NOT AN EXPERT AND
19 IS TESTIFYING TO MATTERS IN COURT IS LIMITED TO TESTIFYING
20 TO THOSE THINGS THAT ARE WITHIN THE WITNESS' PERCEPTION,
21 SUCH AS THINGS THEY CAN SEE, HEAR, TOUCH, SMELL -- THOSE
22 ARE THE THINGS THAT ORDINARILY A WITNESS IS LIMITED TO.

23 HOWEVER, IF SCIENTIFIC, TECHNICAL, OR OTHER
24 SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF FACT -- AND
25 THAT'S YOU IN THIS CASE -- TO UNDERSTAND THE EVIDENCE OR TO

KIMBERLY HAHN — DIRECT BY MS. MILLICAN

241

1 DETERMINE A FACT AT ISSUE, A WITNESS QUALIFIED AS AN EXPERT
2 BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY
3 TESTIFY IN THE FORM OF AN OPINION.

4 SO BASICALLY THE DIFFERENCE BETWEEN A WITNESS WHO IS
5 QUALIFIED AS AN EXPERT AND A NON-EXPERT WITNESS IS THAT AN
6 EXPERT WITNESS IS ALLOWED TO GIVE AN OPINION, WHEREAS A
7 NON-EXPERT WITNESS IS NOT.

8 AND I HAVE QUALIFIED THIS WITNESS AS AN EXPERT IN THE
9 FIELD OF FORENSIC DNA ANALYSIS.

10 ALL RIGHT. YOU MAY PROCEED.

11 MS. MILLICAN: THANK YOU, YOUR HONOR.'

12 Q MS. HAHN, WHAT IS DNA?

13 A DNA STANDS FOR DEOXYRIBONUCLEIC ACID. IT'S A COMPLEX
14 MOLECULE FOUND IN ALMOST EVERY CELL IN YOUR BODY. ALL
15 HUMANS HAVE 46 CHROMOSOMES, AND THIS IS WHERE YOUR DNA IS
16 FOUND. 23 OF THESE YOU GET FROM YOUR MOTHER AND THE OTHER
17 23 YOU GET FROM YOUR FATHER. SO 99.95 PERCENT OF THAT DNA
18 IS THE SAME FROM PERSON TO PERSON. AND THIS IS WHAT CODES
19 FOR THINGS SUCH AS TWO EYES, ONE NOSE, ONE MOUTH, TEN
20 FINGERS, AND TEN TOES.

21 THE OTHER .05 PERCENT OF YOUR DNA IS DIFFERENT FROM
22 PERSON TO PERSON, AND THIS IS WHAT WE LOOK AT TO DEVELOP A
23 DNA PROFILE.

24 Q DID YOU RECEIVE EVIDENCE IN THE CASE OF STATE VERSUS
25 NATHANIEL JOHNSON, JR.?

- 1 A YES, I DID.
- 2 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
- 3 17 IN FRONT OF YOU. THIS BOX. DO YOU RECOGNIZE IT?
- 4 A WHEN WE GET THE EVIDENCE IN THE EVIDENCE -- UPSTAIRS
- 5 IN THE DNA LABORATORY, IT DOESN'T COME IN THE ACTUAL BOX.
- 6 WE GET -- IT COMES IN A POUCH LIKE THIS. IS THERE A POUCH
- 7 INSIDE? SHOULD I ---
- 8 Q YOU CAN OPEN IT.
- 9 A OKAY. (PAUSE.) YES, THIS IS -- THIS HAS MY INITIALS
- 10 AND THE DATE ON IT. THIS IS WHAT I WOULD HAVE RECEIVED
- 11 UPSTAIRS IN THE LABORATORY.
- 12 Q WHEN DID YOU RECEIVE THIS RAPE KIT?
- 13 A I DON'T HAVE THE CHAIN OF CUSTODY WITH ME. I THINK IT
- 14 WAS ON 2/28/07. I DIDN'T BRING MY CHAIN OF CUSTODY WITH
- 15 ME.
- 16 Q WOULD YOU LIKE TO REFER TO THE CHAIN OF CUSTODY TO
- 17 REFRESH YOUR RECOLLECTION?
- 18 A YES, PLEASE. (PAUSE.) YES, ON 2/28/07 IS WHEN I
- 19 RECEIVED THE RAPE KIT.
- 20 Q FROM THE TIME THAT RAMONA COOPER WITH BEAUFORT COUNTY
- 21 SHERIFF'S OFFICE TURNED THAT EVIDENCE IN TO SLED IN
- 22 COLUMBIA, WHO ALL HANDLED IT BEFORE IT GOT TO YOU?
- 23 A DENISE EARGLE DOWN IN THE LOG-IN CHECKED THE EVIDENCE
- 24 IN. AND THAT WAS ON 2/17/06. AND THEN SHE WOULD HAVE PUT
- 25 IT IN THE DNA EVIDENCE INTAKE STORAGE, IT'S A SECURE

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

243

1 REFRIGERATOR DOWNSTAIRS.

2 AND THEN MARSHA LEITZEL, WHICH IS A DNA TECHNICIAN --
3 THEY GO DOWNSTAIRS AND COLLECT THE EVIDENCE AND BRING IT
4 UPSTAIRS TO US.

5 AND FROM THERE IT WAS IN MARSHA'S CUSTODY, THE
6 TECHNICIAN. AND THEN SHE PUT IT IN ONE OF OUR DNA
7 REFRIGERATORS, WHICH IS A SECURE REFRIGERATOR. FROM THERE
8 SHE MOVED IT FROM THAT REFRIGERATOR TO ANOTHER DNA
9 REFRIGERATOR LOCATED WITHIN THE FOURTH FLOOR, WHERE THE DNA
10 LABORATORY IS.

11 AND FROM THERE I WOULD HAVE TAKEN IT ~~TO MY~~
12 CUSTODY.

13 Q WHO IF ANY OF THOSE PEOPLE YOU MENTIONED WOULD HAVE
14 BROKEN THE EVIDENCE SEAL BEFORE YOU RECEIVED IT?

15 A THE ONLY PERSON THAT WOULD HAVE BROKEN THE EVIDENCE
16 SEAL WOULD HAVE BEEN MARSHA LEITZEL, WHICH IS THE DNA
17 TECHNICIAN. NORMALLY, THEY OPEN THE PACKAGE UP AND POUR
18 THE LIQUID BLOOD ONTO PAPER. IT'S CALLED BOTMAN (PHONETIC)
19 PAPER. AND THIS IS HOW WE PRESERVE THE SAMPLE AS A DRIED
20 SAMPLE OF THE BLOOD.

21 Q IN WHAT CONDITION DID YOU RECEIVE THE EVIDENCE OF THE
22 RAPE KIT? HOW WAS IT PACKAGED?

23 A IT WAS IN A SECURE SLED EVIDENCE BAG.

24 Q DID YOU TEST SLED SAMPLES -- IT WOULD BE STATE'S
25 EXHIBIT NO. 17, INSIDE THAT YOU HAD MULTIPLE SAMPLES AND

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

244

1 SLED ASSIGNED DIFFERENT NUMBERS TO THOSE SAMPLES; IS THAT
2 CORRECT?

3 A WHEN I GET THE RAPE KIT, IT'S ASSIGNED -- LIKE HERE IT
4 WAS ASSIGNED ITEM 1. AND MARSHA OPENED IT UP AND TOOK THE
5 BLOOD SAMPLES OUT AND ASSIGNED THEM ITEM 1.1 AND 1.2. AND
6 THEN SHE WOULD SEAL THIS BACK UP. AND EVERYTHING ELSE I
7 WOULD GIVE THE ITEM NUMBER TO EACH INDIVIDUAL ITEM WITHIN
8 THIS PACKAGE.

9 Q COULD YOU PLEASE TELL THE JURY WHAT ITEM 1.2 IS?

10 A ITEM 1.2 IS THE BLOOD STANDARD FROM THE VICTIM, [REDACTED]

11 [REDACTED].

12 Q AND 1.7?

13 A 1.7 IS MISCELLANEOUS BODY FLUIDS.

14 Q AND WHAT GENERALLY WOULD THAT BE?

15 A IT'S USUALLY ANYTHING FOUND ON THE BODY, THEY COLLECT
16 IT AND LABEL IT AS MISCELLANEOUS BODY FLUIDS AND SEAL IT UP
17 AND SEND IT TO US SO WE CAN DETERMINE WHAT IT IS.

18 Q IS THAT OFTEN BODY FLUIDS THAT MIGHT BE FOUND USING A
19 WOODS LAMP?

20 A YES, IT COULD BE.

21 Q WHAT ABOUT ITEM 1.8?

22 A ITEM 1.8 WAS FINGERNAIL SCRAPINGS.

23 Q AND ITEM 1.9?

24 A ITEM 1.9 WAS BITE MARK SWABS.

25 Q DID YOU TEST ALL OF THESE SAMPLES THAT WE JUST WENT

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

245

1 THROUGH?

2 A YES, I DID.

3 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS DEFENSE EXHIBIT

4 NO. 2. DO YOU RECOGNIZE THE PACKAGING OF THIS?

5 A I WOULD NOT HAVE RECEIVED THIS. THIS WOULD HAVE GONE
6 DOWN TO EVIDENCE PROCESSING DOWNSTAIRS. THEY GET ALL THE
7 BULK PIECES OF ITEMS, YOU KNOW, CLOTHING AND EVERYTHING,
8 AND THEN THEY MAKE CUTTINGS. AND THE CUTTINGS ARE ACTUALLY
9 GIVEN TO US. SO I WOULD HAVE NEVER SEEN THIS.

10 Q WOULD THE CUTTINGS HAVE BEEN SOMETHING THAT BEAUFORT
11 COUNTY SHERIFF'S OFFICE WOULD HAVE BROUGHT BACK OR DO THEY
12 TEND TO JUST PICK UP -- DO YOU ALL SEND BACK THE CUTTINGS
13 THAT ARE TAKEN FROM A BULK SAMPLE OR DO YOU JUST SEND BACK
14 THE BULK SAMPLE?

15 A WE SEND BACK THE CUTTINGS ALSO.

16 MS. MILLICAN: OKAY. BEG THE COURT'S INDULGENCE.

17 (PAUSE.)

18 (SHEET CUTTINGS MARKED FOR IDENTIFICATION AS STATE'S
19 EXHIBIT NO. 15.)

20 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
21 15. DO YOU RECOGNIZE IT?

22 A YES, I DO.

23 Q HOW DO YOU RECOGNIZE IT?

24 A MY NAME AND MY INITIALS ARE MARKED ACROSS IT.

25 Q WHAT EXACTLY IS THAT? WHAT'S INSIDE THAT PACKAGE?

KIMBERLY HAHN - DIRECT BY MS. MILLICAN

246

1 A I CAN SEE ONE IS ITEM 4.1.1, WHICH WAS CUTTINGS FROM A
2 PAIR OF PANTS. THERE IS ALSO ---

3 Q MS. HAHN, IF YOU NEED TO OPEN THAT TO SEE WHAT THE
4 OTHERS SAY, GO AHEAD.

5 A DO YOU HAVE A PAIR OF SCISSORS?

6 THE COURT: ARE THERE SOME SCISSORS DOWN THERE?

7 A THANK YOU. (PAUSE.) THIS IS ITEM 4.1.1, WHICH IS
8 CUTTINGS FROM A PAIR OF PANTS.

9 I'VE GOT ITEM 2.1 WHICH IS CUTTINGS FROM A FITTED
10 SHEET. THESE ARE DNA EXTRACTS. THEY'RE ACTUALLY THE DNA
11 THAT I EXTRACTED OUT OF THESE SAMPLES. WE DRIED THEM DOWN
12 AND JUST PUT THE TUBES BACK IN. EVERYTHING WE DO -- ALL
13 THE EVIDENCE IS SENT STRAIGHT BACK TO THE AGENCY.

14 THIS IS ITEM 2.4, WHICH IS ALSO CUTTINGS FROM A FITTED
15 SHEET.

16 2.3 IS CUTTINGS FROM A FITTED SHEET.

17 2.5 AND 2.2 ARE ALSO CUTTINGS FROM A FITTED SHEET.

18 AND THEN ITEM 2.6 IS TRACE EVIDENCE. ANYTHING THAT
19 MIGHT HAVE BRUSHED OFF THE FITTED SHEET LIKE HAIR OR ANY
20 KIND OF SKIN CELLS OR ANYTHING, THEY BRUSH IT DOWN AND THEY
21 SAVE IT IN AN ENVELOPE.

22 MS. MILLICAN: YOUR HONOR, FOR PURPOSES OF THE RECORD,
23 THE STATE WOULD SEEK TO JUST HAVE NO. 15, THE STATE'S
24 NUMBER, ASSIGNED TO ITEMS 2.1, 2.3, AND 2.4, WHICH ARE THE
25 THREE CUTTINGS OF THE SHEET AS A GROUP.

KIMBERLY HAHN — DIRECT BY MS. MILLICAN

247

1 THE COURT: YOU DON'T WANT TO HAVE THE WHOLE THING?

2 MS. MILLICAN: JUST THOSE THREE ITEMS. THEY'RE ALL
3 JUST PACKAGED IN ONE SLED ENVELOPE.

4 THE COURT: ALL RIGHT. TAKE THE TWO BACK THAT YOU
5 DON'T NEED AND TAKE THE THREE THAT YOU WANT AND PUT IT IN
6 THE ENVELOPE, AND THEN I'LL SEE IF MS. SMART HAS ANY
7 OBJECTION TO IT.

8 (COMPLIED.)

9 THE COURT: ALL RIGHT. SHOW TO MS. SMART THE ONES
10 THAT YOU PROPOSE TO INTRODUCE AS STATE'S NO. 15.

11 (PAUSE.)

12 THE COURT: PUT THOSE BACK IN THE ENVELOPE. AND THE
13 REST OF THEM, IF YOU'LL TAKE THOSE BACK.

14 ANY OBJECTION TO THE THREE SMALL MANILA ENVELOPES; IS
15 THAT RIGHT, MS. MILLICAN?

16 MS. MILLICAN: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. ANY OBJECTION TO THE
18 INTRODUCTION OF THOSE AS STATE'S EXHIBITS NO. 15?

19 MS. SMART: NO OBJECTION, YOUR HONOR.

20 THE COURT: ALL RIGHT. WILL BE SO ADMITTED. THEY
21 ALREADY HAVE THE NUMBERS OR IS IT I.D. NUMBER? IT'S GOT A
22 NUMBER. ALL RIGHT. STATE'S NO. 15.

23 (STATE'S EXHIBIT NO. 15 RECEIVED IN EVIDENCE.)

24 THE COURT: YOU MAY PROCEED.

25 MS. MILLICAN: THANK YOU, YOUR HONOR.

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

248

1 Q NOW, PLEASE LOOK AT WHAT'S NOW BEEN MARKED AS STATE'S
2 EXHIBIT NO. 15 FOR PURPOSES OF IDENTIFICATION ---

3 THE COURT: NO. IT'S IN. IT'S NOT FOR
4 IDENTIFICATION. OH, YOU'RE TALKING ABOUT FOR HER
5 IDENTIFYING. IT'S IN EVIDENCE. IT'S NOT STATE'S FOR
6 IDENTIFICATION. IT IS STATE'S 15 IN EVIDENCE.

7 Q PLEASE LOOK AT THESE ITEMS AND EXPLAIN EXACTLY WHAT
8 THEY ARE?

9 A ITEMS 2.1, 2.3, AND 2.4 ARE CUTTINGS FROM THE FITTED
10 SHEET. THEY WOULD HAVE -- DOWN IN EVIDENCE PROCESSING,
11 THEY WOULD GO OVER THE WHOLE ENTIRE SHEET. AND ANYTHING
12 THEY THINK I SHOULD LOOK AT, THEY MAKE A CUTTING FROM AND
13 SEND IT TO ME.

14 Q HOW DO THEY DETERMINE WHAT TO CUT, WHERE TO CUT ON A
15 SHEET?

16 A THEY'LL EITHER LOOK AT IT VISUALLY OR SOME TIMES THEY
17 USE A LAMP THAT ANYTHING -- ANY KIND OF LIKE, SALIVA, SEMEN,
18 OR ANYTHING LIKE THAT, IT GLOWS, SO THEY MAKE A CUTTING.

19 Q NOW, MS. HAHN, THE JURY SAW THE SHEET, SAW THE CUTS IN
20 THE SHEET. WOULD THOSE HAVE BEEN MADE BY THE EVIDENCE
21 TECHNICIAN THAT MADE THOSE PIECES FOR YOU TO STUDY?

22 A YES, THAT WOULD HAVE BEEN BY -- I THINK JAN WAS THE
23 ONE DOWN IN EVIDENCE -- YEAH, EVIDENCE PROCESSING THAT DID
24 THE CUTTINGS.

25 Q NOW, PLEASE ALSO LOOK AT WHAT'S BEEN MARKED AS STATE'S

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

249

1 EXHIBIT 12. DO YOU RECOGNIZE IT?

2 A YES, I DO.

3 Q HOW DO YOU RECOGNIZE IT?

4 A IT'S GOT MY NAME AND MY INITIALS ACROSS IT.

5 Q WHAT IS IT?

6 A IT IS -- ITEM 3 IS SWABS.

7 Q WHEN DID YOU RECEIVE THE BITE SWABS?

8 A I RECEIVED THE BITE SWABS ON 2/28/06.

9 Q FROM THE TIME THAT RAMONA COOPER OF THE BEAUFORT
10 COUNTY SHERIFF'S OFFICE TURNED THAT PIECE OF EVIDENCE IN TO
11 SLED IN COLUMBIA, WHAT ARE THE IDENTITIES OF EVERYONE WHO
12 HANDLED IT BEFORE YOU RECEIVED IT?

13 A IT WAS BROUGHT IN ON 2/17/06 WHERE DENISE EARGLE, A
14 FORENSIC TECHNICIAN DOWNSTAIRS IN LOG-IN, TOOK CUSTODY OF
15 IT.

16 FROM THERE DENISE WOULD HAVE PUT IT IN THE DNA
17 EVIDENCE INTAKE STORAGE, WHICH IS A SECURE REFRIGERATOR
18 DOWNSTAIRS OR A SECURE AREA.

19 ON 2/21/06 MARSHA LEITZEL, OUR DNA TECHNICIAN WENT
20 DOWNSTAIRS AND RETRIEVED THIS EVIDENCE AND HAD IT IN HER
21 CUSTODY.

22 FROM THERE MARSHA PUT IT INTO A DNA REFRIGERATOR,
23 WHICH IS A SECURE REFRIGERATOR.

24 AND THEN ON 2/27/06 MARSHA MOVED IT FROM THAT SECURE
25 DNA REFRIGERATOR UPSTAIRS TO THE FOURTH FLOOR DNA SECURE

KIMBERLY HAHN — DIRECT BY MS. MILLICAN

250

1 REFRIGERATOR.

2 AND FROM THERE I RETRIEVED IT OUT OF THERE AND TOOK IT
3 INTO MY CUSTODY.

4 Q WHO IF ANY OF THOSE PEOPLE YOU JUST DESCRIBED WOULD
5 HAVE BROKEN THE SEAL BEFORE YOU RECEIVED IT?

6 A NO ONE WOULD HAVE BROKEN THIS SEAL. THE ONLY THING
7 THAT DNA TECHNICIANS OPEN IT FOR IS TO DO BLOOD SAMPLES,
8 AND THIS WAS NOT A BLOOD SAMPLE.

9 MS. MILLICAN: YOUR HONOR, THE STATE WOULD MOVE AT
10 THIS TIME THEN TO ADMIT STATE'S EXHIBIT NO. 12 INTO
11 EVIDENCE.

12 THE COURT: ANY OBJECTION, MS. SMART?

13 MS. SMART: NO OBJECTION, YOUR HONOR.

14 THE COURT: ALL RIGHT. BE ADMITTED INTO EVIDENCE AS
15 STATE'S NO. 12 WITHOUT OBJECTION.

16 (STATE'S EXHIBIT NO. 12 RECEIVED IN EVIDENCE.)

17 Q PLEASE LOOK AT WHAT'S BEEN MARKED AS STATE'S EXHIBIT
18 NO. 14. DO YOU RECOGNIZE IT?

19 A YES, I DO.

20 Q HOW DO YOU RECOGNIZE IT?

21 A IT'S GOT MY DATE AND INITIALS ACROSS IT.

22 Q WHAT IS IT?

23 A ITEM 14 IS -- OH, YOUR ITEM 14. THAT IS ITEM 5 AND
24 ITEM 6, WHICH IS -- NUMBER -- ITEM 5 IS A PLASTIC SPOON

25 SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON, JR. AND ITEM

KIMBERLY HAHN - DIRECT BY MS. MILLICAN

251

1 6 IS A NAPKIN SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON,
2 JR.

3 Q NOW, DID YOU TEST ALL OF THESE ITEMS, STATE'S EXHIBIT
4 NO. 17, STATE'S EXHIBIT NO. 15, STATE'S EXHIBIT NO. 12,
5 STATE'S EXHIBIT NO. 14 FOR DNA?

6 A YES, I DID.

7 Q PLEASE EXPLAIN TO THE JURY HOW YOU TESTED THESE ITEMS?

8 A EACH ITEM IS BROUGHT TO ME IN A SECURE SLED EVIDENCE
9 BAG. AND FROM THERE I FIRST DO SEROLOGICAL TESTING, WHICH
10 IS JUST TESTING TO DETERMINE WHAT TYPE OF BIOLOGICAL FLUID
11 I'M LOOKING AT SUCH AS BLOOD, SEMEN, SALIVA, OR URINE.

12 ONCE I DETERMINE THIS, I DO A DNA EXTRACTION TO GET
13 THE DNA OUT OF WHATEVER MATERIAL IT'S ON, SUCH AS CLOTH OR
14 SWABS OR ANYTHING.

15 ONCE I HAVE THIS DNA, I QUANTITATE IT, WHICH IS JUST
16 TELLING ME HOW MUCH DNA I HAVE PRESENT. AND THEN FROM
17 THERE I DO ANOTHER TEST, WHICH IS CALLED PALMARIS
18 (PHONETIC) CHAIN REACTION. IT SIMPLY IS TAKING THE DNA
19 THAT'S ALREADY PRESENT AND MAKING MULTIPLE COPIES OF IT.
20 AND IT ONLY MAKES MULTIPLE COPIES OF WHAT'S ALREADY THERE.
21 IT CAN'T MAKE DNA. IT'S LIKE A XEROX MACHINE.

22 AND ONCE I'VE DONE THIS, I PUT IT ON AN INSTRUMENT
23 CALLED A CAPILLARY ELECTROPHORESIS MACHINE, WHICH JUST
24 TELLS ME THE SIZE OF THE DNA FRAGMENTS. AND THIS -- I TAKE
25 THIS INFORMATION AND THIS IS HOW I DETERMINE THE DNA

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

252

1 PROFILE.

2 Q SO WERE RESULTS OBTAINED FROM YOUR ANALYSIS OF THOSE
3 ITEMS?

4 A FOR ITEM 6.0, WHICH IS THE NAPKIN SAID TO HAVE BEEN
5 USED BY NATHANIEL JOHNSON, JR., THE AMOUNT OF DNA PRESENT
6 WAS TOO LOW TO DETERMINE A DNA PROFILE.

7 BUT I DID GET A PROFILE FROM ---

8 Q WHICH STATE'S EXHIBIT WOULD THAT BE?

9 A THAT'S STATE'S EXHIBIT 14.

10 I DID GET A DNA PROFILE FROM THE CUTTINGS FROM THE
11 SHEETS AND THE SWABS, AND THEN THE PLASTIC SPOON.

12 Q NOW, DID YOU ALSO TEST -- FOR WHAT PURPOSE DID YOU
13 TEST STATE'S EXHIBIT NO. 17, SLED NO. 1.2 -- THAT SHOULD BE
14 THE VICTIM'S BLOOD STANDARD. FOR WHAT PURPOSE WOULD YOU
15 TEST THE VICTIM'S BLOOD STANDARD?

16 A YOU NEED TO KNOW THE VICTIM'S BLOOD STANDARD IN ORDER
17 TO COMPARE TO THE EVIDENCE. YOU ALWAYS LOOK AT THE
18 VICTIM'S BLOOD STANDARD AS WELL AS THE SUSPECT'S BLOOD
19 STANDARD OR ANY -- YOU KNOW, A KNOWN STANDARD. IT COULD
20 EVEN BE A SALIVA STANDARD OUT OF THE MOUTH, JUST SOMETHING
21 OF A KNOWN DNA SAMPLE FROM THAT PERSON.

22 YOU COMPARE THESE TO THE EVIDENCE TO SEE IF THERE'S A
23 MATCH BETWEEN THEM.

24 Q DID YOU HAPPEN TO HAVE A MATCH ON ANY OF THOSE ITEMS
25 TO ~~THE~~ BLOOD STANDARD?

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

253

1 A YES, THERE WAS -- WELL, IF YOU LOOK THROUGH THE DNA
2 PROFILES, YOU CAN SEE THAT HER DNA IS PRESENT IN THE
3 PROFILES.

4 Q IN ALL OF THESE ITEMS?

5 A THE FEMALE PORTION OF THE MISCELLANEOUS BODY FLUIDS
6 WAS [REDACTED]. THE FINGERNAIL SCRAPINGS HAD A -- IT'S
7 HARD TO -- THERE -- THERE ARE A LOT OF NUMBERS, SO IT'S
8 HARD TO EXPLAIN.

9 THE FINGERNAILS SCRAPINGS ALSO SHOWED A PROFILE WITH
10 DNA FRAGMENTS THAT WERE [REDACTED].

11 THE CUTTINGS FROM THE SHEET -- THERE WERE A SMALL
12 AMOUNT OF DNA FRAGMENTS THAT WERE FROM -- MATCHED THE DNA
13 PROFILE [REDACTED].

14 WHEN WE LOOK AT THE CUTTINGS -- LIKE THE CUTTINGS FROM
15 THE SHEET AND STUFF, WE DO SOMETHING CALLED A DIFFERENTIAL
16 EXTRACTION WHICH SEPARATES THE MALE AND THE FEMALE DNA SO
17 WE CAN -- WE BROKE IT UP INTO TWO SAMPLES SO WE CAN LOOK AT
18 THE FEMALE PART AND THE MALE PART. AND ACTUALLY, THE
19 FEMALE AND THE MALE PART, IT LOOKS LIKE THERE'S MORE MALE
20 PART THAN FEMALE PART. SO A SMALL AMOUNT OF DNA FRAGMENTS
21 ARE THERE THAT LOOKS AS IF THEY'RE CONSISTENT WITH [REDACTED]
22 [REDACTED] PROFILE. BUT MOST OF THE DNA SHOWING UP THERE IS
23 CONSISTENT WITH THE UNIDENTIFIED MALE PRESENT IN MOST OF
24 THESE SAMPLES.

25 Q SO YOU WERE ABLE TO DEVELOP AN UNKNOWN PROFILE,

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

254

1 SOMEBODY'S DNA THAT YOU KNOW IS MALE, BUT BEYOND THAT, FROM
2 THOSE ITEMS ALONE YOU DIDN'T HAVE ANY KIND OF IDENTIFIER;
3 IS THAT CORRECT?

4 A YES. I DID NOT KNOW WHO THE UNIDENTIFIED MALE PROFILE
5 WAS.

6 Q WHEN YOU RECEIVED STATE'S EXHIBIT NO. 5, STATE'S EXHIBIT NO. 14, THE SPOON IN PARTICULAR, DID
7 YOU HAVE A KNOWN SUSPECT'S DNA TO COMPARE TO THIS UNKNOWN
8 MALE DNA ON THE OTHER ITEMS?

10 A NO, I DID NOT.

11 Q OKAY. ALL RIGHT. THE SPOON ITSELF, NO. 5 -- IT WILL
12 BE STATE'S 14, SLED NO. 5.

13 A YES.

14 Q THIS PARTICULAR ITEM YOU DESCRIBED AS RECOGNIZING A
15 SPOON THAT THE DEFENDANT HAD USED. HOW MUCH DNA WOULD YOU
16 HAVE FOUND ON SOMETHING LIKE A SPOON WITH ONLY SALIVA ON
17 IT? IS THAT A STRONG SAMPLE? WHAT KIND OF SAMPLE IS THAT?

18 A I GOT -- I HAVE A DNA PROFILE FROM IT. I MEAN, IT
19 JUST ALL DEPENDS ON HOW MUCH SALIVA IS THERE. WE DON'T
20 REALLY HAVE A WAY TO MEASURE.

21 Q THE DNA PROFILE THAT -- ALL RIGHT. IS DNA THAT YOU
22 MIGHT GET FROM SALIVA AS COMPLETE AS DNA THAT YOU WOULD GET
23 FROM, SAY, BLOOD FROM SOMEBODY? WOULD YOU HAVE AS GOOD A
24 COMPARISON BASE WITH SALIVA AS YOU WOULD WITH BLOOD?

25 A THAT WOULD DEPEND -- IT WOULD DEPEND ON HOW MUCH OF

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

255

1 THE SAMPLE IS THERE. I MEAN, I COULD HAVE A BLOOD SAMPLE
2 THAT WAS DEGRADED, AND IT WOULD BE JUST AS -- IT COULD BE
3 WEAKER THAN WHAT I GET FROM A SALIVA STAIN. YOU CAN'T
4 COMPARE.

5 Q LOOKING AT ITEM 1.7 OF SLED'S NUMBERS FOR EVIDENCE,
6 WHICH WOULD BE STATE'S NO. 17, IN COMPARING THAT TO SLED'S
7 NO. 5, STATE'S NO. 14, THE SPOON, WAS THERE ANY KIND OF A
8 PROFILE DEVELOPED THAT WAS CONSISTENT AT ALL TO 1.7?

9 A YES, THE DNA PROFILE DEVELOPED FROM THE UNIDENTIFIED
10 MALE ON THE BED SHOWING ITEM 5.0, WHICH WAS FROM THE
11 PLASTIC SPOON SAID TO HAVE BEEN USED BY NATHANIEL JOHNSON
12 WAS CONSISTENT WITH THE PROFILE DEVELOPED FROM THE
13 SEMEN PORTION FROM ITEM 1.7, WHICH WAS THE MISCELLANEOUS
14 BODY FLUIDS. MEANING, THESE TWO PROFILES WERE CONSISTENT
15 WITH EACH OTHER. IF I WERE COMPARED, YOU COULD SEE
16 THAT -- I COULD SEE THE SAME DNA FRAGMENTS IN EACH OF THEM.

17 Q SO THE DNA THAT YOU SAW FROM THE SPOON APPEARED TO BE
18 CONSISTENT WITH THE DNA THAT YOU SAW IN SEMEN THAT CAME OFF
19 [REDACTED] BODY?

20 A YES.

21 Q DID ANY OF THE OTHER ITEMS APPEAR TO BE CONSISTENT
22 WITH DNA FOUND ON THE SPOON, KNOWN TO BE NATHANIEL JOHNSON?

23 A YES. ITEM 1.7 OR THE DNA PROFILE DEVELOPED FROM THE
24 SEMEN ON ITEM 1.7 WHICH WAS THE MISCELLANEOUS BODY FLUIDS,
25 ITEM 2.1 WHICH IS CUTTING FROM A SHEET, ITEM 2.3 WHICH IS

KIMBERLY HAHN -- DIRECT BY MS. MILLICAN

256

1 ALSO A CUTTING FROM A SHEET, AND ITEM 2.4 WHICH IS ANOTHER
2 CUTTING FROM THE SHEET HAD THE UNIDENTIFIED MALE
3 INDIVIDUAL. AND ITEM 5.0 WAS CONSISTENT WITH THE DNA
4 PROFILE FROM THESE ITEMS.

5 Q WHAT ABOUT SLED'S NUMBERS 3.1 AND 3.2, WHICH WOULD BE
6 STATE'S NO. 12?

7 A THAT WOULD BE THE SWABS -- THEY WERE MARKED SWABS FROM
8 A BITE WOUND. WHEN I GOT THEM IN, IT WAS JUST LABELED
9 SWABS, AND I BROKE THEM UP INTO TWO DIFFERENT SWABS WHICH
10 ARE MY ITEMS 3.1 AND 3.2. AND THIS WAS A MIXTURE. AND
11 FROM THIS MIXTURE ALL OF THE DNA FRAGMENTS THAT SHOWED UP
12 WERE CONSISTENT -- OR [REDACTED] AND THE UNIDENTIFIED
13 MALE COULD NOT BE EXCLUDED AS BEING CONTRIBUTORS. MEANING,
14 THE DNA ALLELES THAT I SAW IN THESE SAMPLES LOOKED AS IF
15 THEY CAME FROM [REDACTED] AND THE IDENTIFIED MALE.

16 Q WHAT WOULD BE THE PROBABILITY OF RANDOMLY SELECTING AN
17 UNRELATED INDIVIDUAL WHO COULD HAVE CONTRIBUTED TO THIS
18 MIXTURE?

19 A IT WOULD HAVE BEEN 1 IN 330,000. MEANING [REDACTED] 1
20 PERSON OUT OF 330,000 WOULD HAVE HAD DNA FRAGMENTS THAT
21 WOULD HAVE BEEN FOUND IN EACH OF THESE 13 DIFFERENT
22 LOCATIONS.

23 MS. MILLICAN: THANK YOU. I HAVE NO FURTHER QUESTIONS
24 OF THIS WITNESS AT THIS TIME.

25 THE COURT: CROSS EXAMINATION, MS. SMART?

KIMBERLY HAHN — CROSS BY MS. SMART

257

1 CROSS EXAMINATION BY MS. SMART:

2 Q AND FOR CLARITY, ITEM 2.1, 2.3, AND 2.4 ARE CUTS FROM
3 THE SHEET THAT'S ALREADY MARKED INTO EVIDENCE?

4 A YES.

5 Q AND YOU ANALYZED THE DNA THAT WAS EXTRACTED FROM THESE
6 CUTTINGS THAT WAS TAKEN FROM THAT SHEET ---

7 A YES.

8 Q --- IS THAT CORRECT? AND ISN'T IT TRUE THAT YOU FOUND
9 SEMEN ON EACH OF THOSE CUTTINGS, 2.1, 2.3, AND 2.4?

10 A YES, IT IS.

11 Q AND WERE YOU ABLE TO IDENTIFY WHERE THAT SEMEN CAME
12 FROM?

13 A NO.

14 Q DID THAT SEMEN MATCH THE DNA PROFILE OF MR. JOHNSON?

15 A I DID NOT TEST -- I DIDN'T TEST THE STANDARD FROM MR.
16 JOHNSON.

17 Q BUT THERE WAS SEMEN ON THE THREE CUTTINGS THAT WERE
18 TAKEN FROM THE SHEET?

19 A YES, THE TESTING I DID CAME UP POSITIVE.

20 Q FINGERNAIL SCRAPINGS 1.8, I BELIEVE?

21 A THAT WOULD HAVE BEEN IN THE KIT HERE.

22 Q DID YOU TEST THAT?

23 A YES, I DID.

24 Q YOU DID. AND THESE SCRAPINGS WERE TAKEN FROM [REDACTED]

25 [REDACTED] FINGERNAILS?

KIMBERLY HAHN - CROSS BY MS. SMART

PAGE 258

1 A YES.

2 Q AND ISN'T IT TRUE THAT YOU DIDN'T NOTE ANY SEROLOGICAL
3 EVIDENTIARY VALUE AT ALL FROM ---

4 A WELL, THEY SEPARATE THE RIGHT FROM THE LEFT, EACH ONE
5 IS IN A SEPARATE PAPER. SO I LOOKED AT EACH ONE. YOU OPEN
6 IT UP AND LOOK AT IT VISUALLY, AND YOU CAN SWAB IT. YOU
7 TAKE A -- LIKE A COTTON SWAB AND RUB THE END OVER IT TO SEE
8 IF THERE'S ANYTHING THERE. ON THE RIGHT-HAND SCRAPING I
9 DID GET A LITTLE BIT OF -- IT LOOKS KIND OF LIKE DIRT OR
10 ANYTHING UP UNDER THE FINGERNAIL CAN BE SKIN CELLS OR
11 ANYTHING.

12 AND THEN ON THE LEFT FINGERNAIL SCRAPING, I LOOKED AT
13 THE SAME THING, AND THERE WAS NOTHING THERE THAT I COULD
14 SEE VISUALLY THAT LOOKED LIKE I COULD USE.

15 Q AND 4.1.1?

16 A 4.1.1 WAS CUTTINGS FROM A PAIR OF PANTS.

17 Q AND DID YOU FIND ANYTHING ON THE CUTTINGS FROM -- DID
18 YOU FIND HUMAN DNA?

19 A NO, I DID NOT.

20 MS. SMART: THANK YOU.

21 THE COURT: REDIRECT?

22 MS. MILLICAN: THE STATE HAS NO FURTHER QUESTIONS FOR
23 THIS WITNESS, YOUR HONOR. MAY SHE BE EXCUSED?

24 THE COURT: ANY OBJECTION, MS. SMART?

25 MS. SMART: NO, YOUR HONOR.

1 THE COURT: YES, MS. HAHN, YOU ARE EXCUSED. THANK YOU
2 FOR COMING.

3 (THE WITNESS LEAVES THE WITNESS STAND.)

4 THE COURT: MS. MILLICAN, LET'S GET THESE EXHIBITS
5 TOGETHER AND MAKE SURE THEY'RE BACK TO THE COURT REPORTER
6 SO WE KEEP THEM ALL TOGETHER.

7 (PAUSE.)

8 THE COURT: ALL RIGHT. MS. MILLICAN, YOU MAY CALL
9 YOUR NEXT WITNESS.

10 MS. MILLICAN: THE STATE CALLS DON BODIKER.

11 (PAUSE.)

12 MS. MILLICAN: HE'S TO BE HERE AT 10:00 O'CLOCK, AND
13 IT'S 5 UNTIL.

14 THE COURT: HAVE YOU GOT SOMEBODY THAT YOU CAN GO ---

15 MS. MILLICAN: OUT OF ORDER WITH? NOT THAT'S PRESENT,
16 YOUR HONOR. MY OTHER -- MY LAST WITNESS FOR TODAY IS
17 ACTUALLY ALSO SUBPOENAED IN ORANGEBURG FOR THIS MORNING.
18 AND SHE'S COMING HERE AS SOON AS SHE FINISHES HER TESTIMONY
19 THERE.

20 THE COURT: OKAY.

21 MS. MILLICAN: SHE'S JUST ANOTHER SLED FORENSIC
22 TECHNICIAN IN THE CHAIN.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL
24 TAKE A BREAK UNTIL WE CAN MAKE SURE THE WITNESS IS HERE.
25 WE'LL TAKE ABOUT 10 MINUTES OR AS SOON AS THE WITNESS GETS

1 HERE, WE'LL BE READY TO GO. SO IF YOU'LL GO TO YOUR JURY
2 ROOM, JUST RELAX. JUST LEAVE YOUR PADS IN YOUR CHAIRS.
3 I'M GOING TO MAKE SURE THAT A BAILIFF STAYS HERE IN THE
4 COURTROOM TO MAKE SURE THAT YOUR NOTES ARE SECURE AND THAT
5 NO ONE TAMPERS WITH THOSE.

6 JUST RELAX FOR A FEW MINUTES, AND WE'LL RETURN YOU TO
7 THE COURTROOM JUST AS SOON AS WE CAN. THANK YOU.

8 (THE JURY RETIRES TO THE JURY ROOM AT 9:55 A.M.)

9 THE COURT: WE WILL BE IN RECESS. LET ME KNOW, MS.
10 MILLICAN, AS SOON AS YOUR WITNESS GETS HERE, AND LET ME
11 TALK TO COUNSEL AT SIDE BAR JUST A MINUTE ABOUT SCHEDULING.

12 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

13 (A RECESS WAS TAKEN.)

14 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH
15 REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON,
16 JR. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS
17 ALSO PRESENT REPRESENTED BY COUNSEL.

18 WE'VE BEEN TALKING ABOUT THE SCHEDULING SITUATION.
19 AND MY UNDERSTANDING IS, MS. MILLICAN, THAT YOU HAVE A
20 WITNESS THAT IS HERE TO TESTIFY THAT WILL BE PRETTY SHORT
21 AND PERHAPS A STIPULATION THAT NEEDS TO BE PUBLISHED; IS
22 THAT CORRECT?

23 MS. MILLICAN: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: OKAY. AND THEN THE STATE ANTICIPATES ONE
25 ADDITIONAL WITNESS WHO IS IN ROUTE FROM COLUMBIA; IS THAT

1 CORRECT?

2 MS. MILLICAN: YES, YOUR HONOR.

3 THE COURT: OKAY. THAT BEING THE CASE, THEN I WOULD
4 EXPECT -- FROM WHAT I UNDERSTAND, THE WITNESS MAY BE HERE
5 BY 12:30, BUT IN ORDER TO ENSURE THAT WE HAVE PLENTY OF
6 TIME, I THINK IT WOULD BE BETTER TO GIVE HER UNTIL 1:00
7 O'CLOCK. WE COULD PROBABLY FINISH THE TESTIMONY OF THE
8 STATE BY 1:30. AND THEN DEPENDING ON THE DEFENDANT'S
9 SITUATION, CAN ARGUE AND CHARGE THIS AFTERNOON EARLY. SO I
10 THINK THAT WE WILL TRY TO WORK WITH THAT.

11 MY PLAN THEN WOULD BE TO HANDLE THE WITNESS THAT WE'VE
12 GOT NOW, THE STIPULATION THAT WE'VE GOT NOW, AND THEN TO
13 EXCUSE THE JURY UNTIL 1:00 O'CLOCK AND ALLOW THEM TO GET
14 LUNCH BEFORE THEY COME BACK.

15 ANY OBJECTION TO THAT PROCEDURE, MS. MILLICAN?

16 MS. MILLICAN: NOT BY THE STATE, YOUR HONOR.

17 THE COURT: MS. SMART?

18 MS. SMART: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. THAT BEING THE CASE, LET'S GO
20 AHEAD AND GET YOUR STIPULATION WRITTEN OUT SO I CAN PUBLISH
21 THAT AFTER WE BRING THE JURY IN.

22 IN THE MEANTIME, WHILE SHE'S WRITING DOWN THAT
23 STIPULATION, I'M GOING TO STEP DOWN THE HALL. I'VE GOT
24 SOMETHING I WOULD LIKE TO GO OVER WITH MS. TANNER. I'VE
25 GOT IT ON MY DESK. LET ME GET IT. I'LL BE RIGHT BACK.

1 (PAUSE.)

2 THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD
3 TO THE MATTER OF STATE VERSUS NATHANIEL JOHNSON. THE
4 PARTIES HAVE HANDED TO ME A STIPULATION, IT WILL BE THE
5 SECOND STIPULATION THAT HAS BEEN ENTERED IN THIS CASE, IT
6 HAS BEEN SIGNED BY BOTH THE ASSISTANT SOLICITOR AND THE
7 ATTORNEY FOR THE DEFENDANT.

8 MS. MILLICAN, PRONOUNCE LEITZEL?

9 MS. MILLICAN: YOUR HONOR, THAT'S CORRECT.

10 THE COURT: OKAY. ALL RIGHT. AS SOON AS THE JURY
11 COMES BACK, I WILL PUBLISH THIS TESTIMONY -- THIS
12 STIPULATION, AND THEN I'LL ALLOW YOU TO CALL THE NEXT
13 WITNESS THAT YOU'VE GOT. AND THEN I'M GOING TO ADVISE THE
14 JURY THAT BECAUSE OF THE STIPULATIONS THAT HAVE BEEN
15 ENTERED, IT HAS SHORTENED THE CASE CONSIDERABLY, AND THAT'S
16 THE REASON THAT WE ARE GOING TO HAVE A GAP BEFORE THE
17 WITNESS GETS HERE FROM COLUMBIA, SO THAT IT'S NOT REALLY
18 ANYBODY'S FAULT. BUT THESE STIPULATIONS HAVE MADE IT
19 EASIER FOR THE PRESENTATION OF THE TESTIMONY. AND THEN WE
20 WILL ADJOURN UNTIL 1:00 O'CLOCK, ALLOW THE JURY AND
21 EVERYBODY TO GET THEIR LUNCH AND BE READY TO GO AT 1:00
22 O'CLOCK AND GO STRAIGHT THROUGH AND FINISH UP.

23 MS. MILLICAN: YOUR HONOR, THE STATE DOES HAVE A
24 MOTION TO ADMIT CERTAIN PIECES OF EVIDENCE THAT MS. LEITZEL
25 WOULD BE THE LAST LINK IN THE CHAIN FOR. SHOULD I GO AHEAD

1 AND DO THAT NOW OR WAIT UNTIL AFTER THE ---

2 THE COURT: WE'LL DO EVERYTHING WE CAN EXCEPT FOR THE
3 WITNESS THAT YOU'VE GOT COMING FROM COLUMBIA. IN OTHER
4 WORDS, I'LL PUBLISH THIS, YOU CALL YOUR WITNESS. THEN YOU
5 GO AHEAD AND MOVE FOR THE ADMISSION OF THOSE THINGS, AND
6 I'LL CONSIDER THAT AND DO ALL THAT. AND THEN WHEN
7 EVERYTHING IS DONE EXCEPT FOR THAT WITNESS FROM COLUMBIA,
8 WE CAN EXCUSE THE JURY UNTIL 1:00 O'CLOCK.

9 MS. MILLICAN: THANK YOU, YOUR HONOR.

10 THE COURT: OKAY. ANY PROBLEMS WITH THAT PROCEDURE,
11 MS. SMART?

12 MS. SMART: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT. THANK YOU. BRING THE JURY IN
14 PLEASE.

15 (STIPULATION OF TESTIMONY OF MARSHA LEITZEL AND
16 STATE'S EXHIBIT NO. 17 MARKED FOR IDENTIFICATION AS COURT'S
17 EXHIBIT NO. 3.)

18 (THE JURY RETURNS TO THE COURTROOM AT 10:40 A.M.)

19 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES
21 AND GENTLEMEN. AND THANK YOU FOR YOUR PATIENCE, AND I
22 APOLOGIZE FOR KEEPING YOU WAITING IN THE JURY ROOM.
23 SOMETIMES COORDINATION IS AS MUCH OF A PROBLEM WITH GETTING
24 TRIALS DONE AS ANYTHING ELSE, ESPECIALLY WHEN YOU HAVE
25 WITNESSES COMING FROM VARIOUS LOCATIONS, WHICH IS WHAT THE

1 CASE IS HERE. WE'VE STILL GOT ONE PROBLEM THAT WE'RE GOING
2 TO HAVE ON THAT.

3 BUT ONE OF THE REASONS THAT THERE'S BEEN A LITTLE BIT
4 OF A GAP IN SOME OF THESE MATTERS ALSO IS BECAUSE THE
5 PARTIES HAVE ENTERED INTO A COUPLE OF STIPULATIONS, ONE OF
6 WHICH I PUBLISHED TO YOU YESTERDAY. AND, OF COURSE, THAT
7 SAVED SOME TESTIMONY. YOU WILL RECALL THAT STIPULATION.

8 AND THE PARTIES HAVE NOW ENTERED INTO ANOTHER
9 STIPULATION THAT'S GOING TO ALLEVIATE THE NECESSITY OF
10 CALLING A WITNESS.

11 THAT STIPULATION IS AS FOLLOWS: THE DEFENSE FOR
12 NATHANIEL JOHNSON, JR. STIPULATES TO THE TESTIMONY OF
13 MARSHA LEITZEL, L-E-I-T-Z-E-L, DNA FORENSIC TECHNICIAN FOR
14 SLED, WHO OPENED THE CSC/RAPE KIT, STATE'S NO. 17, WILL
15 PROVE THAT THE CUSTODY AND CONTROL OF STATE'S NO. 17 IS
16 PART OF THE UNBROKEN CHAIN OF CUSTODY AND THAT MARSHA
17 LEITZEL HANDLED THE EVIDENCE IN THE MANNER WITNESS KIMBERLY
18 HAHN TESTIFIED TO ON THE RECORD.

19 AND THIS STIPULATION IS AGREED TO BY BOTH PARTIES AND
20 YOU SHOULD TREAT IT AS AN ACCEPTED FACT IN THIS CASE.

21 ALL RIGHT. MS. RUTLEDGE, THIS IS THE COURT'S EXHIBIT.

22 ALL RIGHT. MS. MILLICAN, YOU MAY CALL YOUR NEXT
23 WITNESS.

24 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS
25 DON BODIKER.

DON BODIKER -- DIRECT BY MS. MILLICAN

265

1 DON BODIKER, BEING FIRST DULY

2 SWORN, TESTIFIED AS FOLLOWS:

3 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
4 SPELL IT FOR THE COURT.

5 WITNESS: (NO RESPONSE.)

6 DIRECT EXAMINATION BY MS. MILLICAN:

7 Q PLEASE STATE YOUR NAME FOR THE RECORD AND SPELL IT FOR
8 THE COURT REPORTER.

9 A MY NAME IS DON BODIKER. LAST NAME IS SPELLED
10 B-O-D-I-K-E-R.

11 Q WHAT'S YOUR OCCUPATION, MR. BODIKER?

12 A I'M A REGISTERED NURSE WITH BEAUFORT MEMORIAL
13 HOSPITAL.

14 Q HOW LONG HAVE YOU BEEN A REGISTERED NURSE?

15 A ABOUT 14 YEARS.

16 Q WERE YOU WORKING ON JANUARY 19TH OF 2007?

17 A YES, I WAS.

18 Q DID YOU DRAW BLOOD PURSUANT TO A COURT ORDER ON THAT
19 DATE?

20 A YES, I DID.

21 Q WHO DID YOU DRAW BLOOD FROM?

22 A NATHANIEL JOHNSON.

23 Q HOW MUCH BLOOD DID YOU TAKE FROM THE DEFENDANT?

24 A ABOUT 2 C.C.'S.

25 Q HOW WAS THE DEFENDANT'S BLOOD CONTAINED AFTER YOU DREW

DON BODIKER - DIRECT BY MS. MILLICAN

266

1 IT?

2 A IT WAS SET UP IN A EVIDENCE RECEIVING KIT THAT WE HAVE
3 TO USE.

4 Q WHAT DOES IT LOOK LIKE? DOES IT COME IN A TUBE? DO
5 YOU ---

6 A IT'S IN A SMALL BOX THAT WE GET, AND WHAT WE DO IS WE
7 GATHER THE EQUIPMENT THAT WE NEED, SUCH AS OUR GLOVES, OUR
8 VACUCONTAINER (PHONETIC), OUR NEEDLE, AND OUR TUBE THAT WE
9 USE TO COLLECT THAT BLOOD WITH. WE THEN GO ABOUT PUTTING A
10 TOURNIQUET ON TO THE PATIENT, ALLOWING THE VEIN TO FILL,
11 AND THEN SWABBING THE AREA WITH ALCOHOL AND USING THE
12 VACUCONTAINER AND TUBE TOGETHER TO PULL THAT BLOOD.

13 Q DID YOU SEAL THE VILE OF BLOOD THAT YOU TOOK?

14 A YES, I DID.

15 Q DID YOU INITIAL OR SIGN OR SEAL A SEAL OR WRITE
16 ANYTHING ON THAT VILE?

17 A YES, I DID.

18 Q WHAT DID YOU DO WITH THE BLOOD SAMPLE OR BLOOD
19 STANDARD AFTER YOU DREW IT FROM THE DEFENDANT AND SEALED
20 IT?

21 A ONCE THAT WAS ALL SEALED AND EVERYTHING, I HANDED IT
22 OVER TO THE INVESTIGATING OFFICER THAT WAS THERE AT THE
23 TIME.

24 Q UNTIL YOU GAVE THAT SAMPLE TO SERGEANT JEFF PURDY WITH
25 THE BEAUFORT COUNTY SHERIFF'S OFFICE, DID THE SAMPLE EVER

DON BODIKER — DIRECT BY MS. MILLICAN

267

- 1 LEAVE YOUR CUSTODY OR CONTROL?
- 2 A NO.
- 3 MS. MILLICAN: NO FURTHER QUESTIONS OF THIS WITNESS,
- 4 YOUR HONOR.
- 5 THE COURT: MS. SMART.
- 6 MS. SMART: NO QUESTIONS, YOUR HONOR.
- 7 THE COURT: ALL RIGHT. THANK YOU, MR. BODIKER. YOU
- 8 MAY STEP DOWN.
- 9 MS. MILLICAN: MAY THIS WITNESS BE EXCUSED?
- 10 THE COURT: ANY OBJECTION?
- 11 MS. SMART: WITHOUT OBJECTION.
- 12 THE COURT: ALL RIGHT. THE WITNESS IS EXCUSED.
- 13 (THE WITNESS LEAVES THE WITNESS STAND.)
- 14 MS. MILLICAN: THANK YOU, YOUR HONOR.
- 15 THE COURT: ALL RIGHT. MS. MILLICAN, ARE THERE
- 16 MATTERS OF EVIDENCE THAT YOU WISH TO ADDRESS AT THIS TIME?
- 17 MS. MILLICAN: YES, YOUR HONOR. BASED ON THE
- 18 DEFENSE'S STIPULATION TO MS. LEITZEL'S TESTIMONY, THE STATE
- 19 MOVES AT THIS TIME TO ADMIT STATE'S EXHIBIT NO. 17, STATE'S
- 20 EXHIBIT NO. 15, AND STATE'S EXHIBIT NO. 12 INTO EVIDENCE.
- 21 THE COURT: ALL RIGHT. IDENTIFY THOSE FOR ME. TELL
- 22 ME WHAT EACH ONE IS.
- 23 MS. MILLICAN: STATE'S EXHIBIT NO. 17 IS THE CSC KIT,
- 24 THE RAPE KIT.
- 25 THE COURT: OKAY.

1 MS. MILLICAN: IT INCLUDES ALL THE SLED NOS. 1.1
2 THROUGH 1.10.

3 STATE'S EXHIBIT NO. 15 ARE THE THREE CUTTINGS FROM THE
4 FITTED SHEET.

5 AND STATE'S EXHIBIT NO. 12, WHICH ARE THE SWABS FROM
6 THE VICTIM'S BITE WOUND.

7 THE COURT: ALL RIGHT. MS. SMART, ANY OBJECTION TO
8 THE ADMISSION OF STATE'S NO. 12, STATE'S 15, AND STATE'S
9 NO. 17?

10 MS. SMART: NO OBJECTION.

11 THE COURT: ALL RIGHT. THEY WILL BE ADMITTED INTO
12 EVIDENCE WITHOUT OBJECTION. I DON'T KNOW, MS. RUTLEDGE, IF
13 THEY HAVE I.D. MARKINGS ON THEM OR IF THEY'RE ALREADY
14 MARKED. THEY ARE IN EVIDENCE.

15 MS. MILLICAN: THANK YOU, YOUR HONOR.

16 (STATE'S EXHIBIT NOS. 12, 15, AND 17 RECEIVED IN
17 EVIDENCE.)

18 THE COURT: ALL RIGHT. TELL ME WHERE THE STATE STANDS
19 AT THIS POINT, HOW MANY WITNESSES YOU ANTICIPATE?

20 MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE
21 ANTICIPATES ONE LAST WITNESS, AND SHE IS ON HER WAY FROM
22 COLUMBIA AS WE SPEAK.

23 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,
24 SOMETIMES IT IS -- AS I SAY, THE COORDINATION IS SOMEWHAT
25 DIFFICULT. AND, OF COURSE, THIS MATTER HAS MOVED ALONG

1 QUICKER THAN BOTH COUNSEL HAVE EXPECTED BECAUSE OF THE
2 STIPULATIONS THAT HAVE BEEN ENTERED IN TO. AND I'M NOT
3 GOING TO KEEP YOU WAITING IN YOUR JURY ROOM BACK THERE
4 WHILE WE WAIT ON THIS WITNESS TO GET HERE FROM COLUMBIA. I
5 DON'T THINK THAT'S FAIR TO YOU.

6 I THINK THE BEST THING FOR US TO DO IS TO GO AHEAD AND
7 TAKE A RATHER LONG AND EXTENDED LUNCH RECESS AND MAKE SURE
8 THAT SHE IS HERE. WE WERE ADVISED BASED AS TO WHAT TIME
9 SHE WAS LEAVING COLUMBIA AND WOULD ANTICIPATE THAT SHE
10 WOULD BE HERE BY 12:30, BUT I'M GOING TO MAKE SURE THAT
11 SHE'S GOING TO BE HERE BY 1:00.

12 SO I'M GOING TO RECESS AT THIS TIME UNTIL 1:00
13 O'CLOCK, ALLOW YOU TO GET YOUR LUNCH AND ASK YOU TO COME
14 BACK TO YOUR JURY ROOM AT 1:00 O'CLOCK.

15 AGAIN, PLEASE TURN YOUR PADS OVER TO THE BAILIFFS.
16 THEY WILL TAKE CHARGE OF THEM UNTIL WE COME BACK AT 1:00
17 O'CLOCK, AND WE WILL HAVE THIS ONE ADDITIONAL STATE'S
18 WITNESS AT THAT TIME. AND THEN WE WILL PROCEED WITH THE
19 REMAINDER OF THE THINGS THAT WE NEED TO DO THEN.

20 AGAIN, WHILE YOU ARE AWAY FROM THE COURTHOUSE OVER
21 THIS COUPLE OF HOURS, DO NOT DISCUSS THIS CASE WITH ANYONE.
22 DO NOT ALLOW ANYONE TO DISCUSS IT WITH YOU. AND WHEN
23 YOU'RE REASSEMBLING IN THE JURY ROOM, DO NOT DISCUSS IT
24 AMONG YOURSELVES. IT'S STILL PREMATURE FOR YOU TO BE IN
25 ANY DISCUSSION OF THIS CASE. YOU HAVE NOT HEARD ALL THE

1 EVIDENCE NOR THE TESTIMONY OF COUNSEL AND THE INSTRUCTIONS
2 ON THE LAW BY THE COURT. AND ANY DISCUSSION WOULD BE
3 PREMATURE AT THIS TIME.

4 WITH THOSE ADMONITIONS THEN, I'M GOING TO EXCUSE YOU,
5 ASK YOU TO TURN YOUR NOTE PADS OVER TO THE BAILIFFS. AND
6 PLEASE BE BACK IN YOUR JURY ROOM AT 1:00 O'CLOCK. THANK
7 YOU VERY MUCH FOR YOUR PATIENCE.

8 (THE JURY EXITS THE COURTROOM AT 10:50 A.M.)

9 THE COURT: WHILE WE HAVE A LITTLE TIME, MS. SMART, I
10 WOULD LIKE TO GO AHEAD AND ADVISE THE DEFENDANT OF HIS
11 FIFTH AMENDMENT RIGHT WITHOUT REQUIRING A DECISION ON HIS
12 PART AT THIS TIME.

13 LET THE RECORD REFLECT THAT MR. JOHNSON IS STANDING.

14 MR. JOHNSON, I NOW WANT TO ADDRESS YOU. YOU MAY BE
15 CALLED AS A WITNESS TO TESTIFY IN YOUR OWN BEHALF. I NOW
16 ADVISE YOU THAT YOU HAVE THE RIGHT TO INVOKE THE
17 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE
18 CONSTITUTION OF THE UNITED STATES AND A SIMILAR COUNTERPART
19 PROVISION OF THE CONSTITUTION OF THE STATE OF SOUTH
20 CAROLINA.

21 THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED
22 STATES PROVIDES IN PART THAT NO PERSON SHALL BE COMPELLED
23 IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF.

24 THIS PROVISION ON CONSTITUTIONAL LAW MEANS THAT YOU
25 CANNOT BE COMPELLED OR REQUIRED TO TESTIFY IN THIS CASE.

1 THIS IS A RIGHT AND A PRIVILEGE WHICH THE LAW EXTENDS TO
2 YOU. IT IS A PERSONAL PRIVILEGE AND NO ONE CAN WAIVE THIS
3 RIGHT EXCEPT YOU.

4 YOU HAVE THE RIGHT NOT TO TESTIFY, BUT YOU ALSO HAVE
5 THE RIGHT TO TESTIFY.

6 THE COURT WILL GRANT YOU THE RIGHT TO CONSULT WITH
7 YOUR LAWYER BEFORE YOU MAKE A DECISION.

8 IF YOU ELECT NOT TO TESTIFY, YOUR FAILURE TO TESTIFY
9 CANNOT BE USED BY THE STATE AS AN INFERENCE OF YOUR GUILT,
10 AND YOUR FAILURE TO TESTIFY CANNOT BE CONSIDERED BY THE
11 JURY IN ITS DELIBERATIONS.

12 AND I WOULD INSTRUCT THE JURY THAT THEY ARE NOT TO
13 CONSIDER YOUR ELECTION NOT TO TESTIFY IN ANY WAY
14 WHATSOEVER.

15 HOWEVER, IF YOU ELECT TO TESTIFY AND WAIVE THE
16 PRIVILEGE EXTENDED TO YOU BY THE CONSTITUTION, I ADVISE YOU
17 THAT YOU WOULD THEN ASSUME THE ROLE OF A WITNESS IN THIS
18 CASE, AND YOU WOULD WAIVE OR GIVE UP YOUR CONSTITUTIONAL
19 PRIVILEGE AGAINST SELF INCRIMINATION.

20 THIS MEANS THAT IF YOU VOLUNTARILY TAKE THE WITNESS
21 STAND AND TESTIFY, YOU THEN SUBJECT YOURSELF TO THE SAME
22 RULES THAT GOVERN OTHER WITNESSES AND YOU MAY BE EXAMINED
23 AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE, AND
24 YOU MAY BE IMPEACHED TO THE SAME EXTENT AS ANY OTHER
25 WITNESS, ALL OF WHICH ARE SUBJECT TO THE RULES OF LAW AND

1 THE RULES OF EVIDENCE.

2 I FURTHER ADVISE YOU THAT IF YOU ELECT TO TAKE THE
3 WITNESS STAND AND TESTIFY, THAT THIS DECISION ON YOUR PART
4 MUST BE MADE FREELY, VOLUNTARILY, INTELLIGENTLY, AND WITH
5 KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY THE
6 CONSTITUTION AND WITH KNOWLEDGE OF THE CONSEQUENCES OF YOUR
7 ELECTION TO TESTIFY.

8 DO YOU UNDERSTAND WHAT I HAVE DISCUSSED WITH YOU?

9 MR. JOHNSON: YES, YOUR HONOR.

10 THE COURT: DO YOU HAVE ANY QUESTIONS OF ME REGARDING
11 YOUR FIFTH AMENDMENT RIGHTS?

12 MR. JOHNSON: NO QUESTIONS.

13 THE COURT: ALL RIGHT. I WILL GIVE YOU AN OPPORTUNITY
14 TO CONSULT WITH YOUR LAWYER. I WILL NOT REQUIRE THAT YOU
15 GIVE ME AN ANSWER AT THIS POINT. IN FACT, IT WOULD NOT BE
16 APPROPRIATE UNTIL AFTER THE STATE HAS RESTED. BUT BETWEEN
17 NOW AND THE TIME THAT I AM GOING TO REQUIRE AN ANSWER FROM
18 YOU AS TO WHETHER YOU DO OR DO NOT WISH TO TESTIFY, WHICH
19 WILL BE ABOUT 2 OR 3 HOURS FROM NOW, I WANT YOU TO MAKE
20 SURE THAT YOU UNDERSTAND YOUR RIGHTS WITH YOUR LAWYER AND
21 BE PREPARED TO GIVE ME AN ANSWER AS TO WHETHER YOU DO OR DO
22 NOT WISH TO TESTIFY LATER ON TODAY.

23 DO YOU UNDERSTAND?

24 MR. JOHNSON: YES, SIR.

25 THE COURT: ALL RIGHT. YOU MAY BE SEATED.

1 (COMPLIED.)

2 THE COURT: ALL RIGHT. ANYTHING ON BEHALF OF THE
3 STATE BEFORE WE RECESS UNTIL 1:00 O'CLOCK?

4 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

5 THE COURT: ALL RIGHT. FROM THE DEFENSE?

6 MS. SMART: NOTHING, YOUR HONOR.

7 THE COURT: ALL RIGHT. WE'LL BE IN RECESS THEN UNTIL
8 1:00 O'CLOCK.

9 COUNSEL, I DO HAVE COPIES OF THE VERDICT FORMS IF YOU
10 ALL WOULD LIKE TO REVIEW THOSE. I'M NOT PRECLUDING YOU
11 FROM YOUR DIRECTED VERDICT MOTIONS, MS. SMART. BUT IF YOU
12 WANT TO LOOK AT THEM, I'VE PREPARED SOME PROPOSED VERDICT
13 FORMS FOR YOUR REVIEW.

14 (COURT IS IN RECESS FOR LUNCH.)

15 (INTERNET PRINTOUT MARKED FOR IDENTIFICATION AS
16 STATE'S EXHIBIT NO. 18.)

17 THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD
18 TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON, JR.
19 LET THE RECORD REFLECT THAT MR. JOHNSON IS PRESENT WITH HIS
20 COUNSEL. THE STATE IS ALSO PRESENT REPRESENTED BY COUNSEL.

21 I UNDERSTAND ALL THE JURORS HAVE RETURNED FROM THEIR
22 LUNCH RECESS, AND I ALSO UNDERSTAND, MS. MILLICAN, THAT
23 YOUR WITNESS IS HERE; IS THAT CORRECT?

24 MS. MILLICAN: YES, YOUR HONOR, SHE IS.

25 THE COURT: ALL RIGHT. READY TO GO FORWARD?

ROBIN TAYLOR - DIRECT BY MS. MILLICAN

274

1 MS. MILLICAN: I AM, YOUR HONOR.

2 THE COURT: ANYTHING FURTHER BEFORE WE BRING THE JURY
3 IN, MS. SMART?

4 MS. SMART: NO, YOUR HONOR.

5 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

6 (THE JURY RETURNS TO THE COURTROOM AT 1:04 P.M.)

7 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

8 THE COURT: THANK YOU VERY MUCH. AND THANK YOU FOR
9 YOUR PROMPTNESS, LADIES AND GENTLEMEN, IN BEING BACK HERE.
10 WE ARE NOW READY TO PROCEED.

11 MS. MILLICAN, YOU MAY CALL YOUR NEXT WITNESS.

12 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE CALLS
13 SLED AGENT ROBIN TAYLOR.

14 ROBIN TAYLOR, BEING FIRST
15 DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: PLEASE BE SEATED. STATE YOUR NAME AND
17 SPELL IT FOR THE COURT.

18 WITNESS: MY NAME IS ROBIN TAYLOR. T-A-Y-L-O-R.

19 DIRECT EXAMINATION BY MS. MILLICAN:

20 Q MS. TAYLOR, WHERE DO YOU WORK?

21 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
22 DIVISION.

23 Q WHAT'S YOUR OCCUPATION?

24 A I AM A FORENSIC DNA ANALYST.

25 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE SOUTH

ROBIN TAYLOR -- DIRECT BY MS. MILLICAN

275.

1 CAROLINA LAW ENFORCEMENT DIVISION?

2 A THIS MONTH WILL BE 17 YEARS.

3 Q WHAT DO YOUR DUTIES ENTAIL?

4 A MAINLY WE RECEIVE EVIDENCE IN FROM CRIME SCENES OR
5 FROM CRIMES -- FROM OUTSIDE AGENCIES, AND KNOWN BLOOD
6 STANDARDS ALSO FROM PEOPLE INVOLVED IN THOSE CRIMES, AND
7 MAKE DNA COMPARISONS.

8 MS. MILLICAN: YOUR HONOR, THE STATE MOVES AT THIS
9 TIME THAT ROBIN TAYLOR BE DECLARED AN EXPERT IN FORENSIC
10 DNA ANALYSIS.

11 THE COURT: ANY VOIR DIRE WITH REGARD TO
12 QUALIFICATIONS OR WILL THE DEFENSE STIPULATE TO HER
13 QUALIFICATIONS?

14 MS. SMART: YOUR HONOR, WE'LL STIPULATE TO HER
15 QUALIFICATIONS.

16 THE COURT: ALL RIGHT. THE COURT THEN WOULD FIND MS.
17 TAYLOR AS AN EXPERT IN THE FIELD OF DNA ANALYSIS.

18 AND AGAIN, LADIES AND GENTLEMEN, LET ME REMIND YOU
19 WHAT THAT MEANS. ORDINARILY A WITNESS WHO IS NOT AN EXPERT
20 CAN ONLY TESTIFY TO THOSE MATTERS WITHIN THEIR PERCEPTION.
21 HOWEVER, IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED
22 KNOWLEDGE WILL ASSIST YOU IN REACHING A DECISION ON SOME
23 ISSUE IN THIS CASE, THEN A WITNESS WHO IS QUALIFIED AS AN
24 EXPERT MAY GIVE AN OPINION. AND I'VE QUALIFIED THIS
25 WITNESS AS AN EXPERT WHICH ENTITLES HER TO GIVE HER OPINION.

ROBIN TAYLOR - DIRECT BY MS. MILLICAN

276

1 ON THE MATTERS WITHIN HER EXPERTISE.

2 ALL RIGHT.

3 MS. MILLICAN: THANK YOU, YOUR HONOR.

4 Q MS. TAYLOR, DID YOU RECEIVE EVIDENCE IN THE CASE OF
5 STATE VERSUS NATHANIEL JOHNSON, JR.?

6 A YES, I DID.

7 Q WHEN DID YOU RECEIVE THE DEFENDANT'S EVIDENCE?

8 A I RECEIVED A BLOOD STANDARD FROM NATHANIEL JOHNSON,
9 JR. ON JANUARY 24.

10 Q FROM THE TIME THAT RAMONA COOPER WITH BEAUFORT COUNTY
11 SHERIFF'S OFFICE TURNED THAT EVIDENCE IN TO SLED IN
12 COLUMBIA, WHO ALL HANDLED IT BEFORE YOU RECEIVED IT FOR
13 ANALYSIS?

14 MS. TAYLOR: YOUR HONOR, MAY I REFER TO MY NOTES TO
15 REFRESH MY MEMORY?

16 THE COURT: YES, MA'AM.

17 A (PAUSE.) THIS ITEM IS ITEM NO. 7. IT WAS RECEIVED AT
18 SLED ON JANUARY 24TH, 2007, LOGGED IN TO OUR COMPUTER
19 SYSTEM BY FORENSIC TECHNICIAN NIKKI PERRY. IT WAS THEN
20 TRANS -- OR PLACED IN DNA INTAKE EVIDENCE STORAGE BY
21 ANOTHER FORENSIC TECHNICIAN, AMY STEPHENS. THEN A
22 TECHNICIAN FROM THE DNA LABORATORY MOVED IT FROM THE
23 EVIDENCE AREA UP TO A SECURE REFRIGERATOR IN MY ACTUAL
24 DEPARTMENT THAT'S DESIGNATED FOR MY EVIDENCE.

25 ALL OF THIS HAPPENED ON THE SAME DAY, ON JANUARY 24.

ROBIN TAYLOR -- DIRECT BY MS. MILLICAN

277

1 AND I ALSO TOOK THIS EVIDENCE -- OR THIS BLOOD STANDARD IN
2 TO MY POSSESSION ON JANUARY 24. IT HAS SINCE BEEN RETURNED
3 DOWN TO THE EVIDENCE AREA.

4 Q WHO IF ANY OF THOSE PEOPLE BROKE THE EVIDENCE SEAL
5 BEFORE YOU RECEIVED IT?

6 A THE SEAL ON THE EVIDENCE WAS INTACT WHEN I RECEIVED
7 IT.

8 Q IN WHAT CONDITION DID YOU RECEIVE THE DEFENDANT'S
9 BLOOD STANDARD? HOW WAS IT PACKAGED?

10 A IT WAS PACKAGED IN A PLASTIC HEAT-SEALED POUCH. IT'S
11 SEALED WITH A HEAT APPLIANCE AND INITIALED AND DATED BY THE
12 PERSON WHO SUBMITTED THE EVIDENCE. AND THERE WERE NO OTHER
13 BREAKS IN THAT SEAL PRIOR TO MY RECEIVING IT.

14 Q DID YOU ANALYZE SLED SPECIMEN NO. 7 FOR DNA?

15 A YES, I DID.

16 Q AND THAT'S THE DEFENDANT'S BLOOD STANDARD?

17 A YES, IT IS.

18 Q PLEASE EXPLAIN TO THE JURY THE PROCEDURE YOU FOLLOWED
19 BEFORE YOUR DNA ANALYSIS OF THAT BLOOD?

20 A WELL, THE FIRST THING I'M GOING TO DO WITH A LIQUID
21 BLOOD STANDARD IS TO DRY IT. I PLACED IT ON A PIECE OF
22 FILTER PAPER THAT WAS PROPERLY LABELED WITH THE LABORATORY
23 CASE NUMBER AND THE NAME OF THE DEFENDANT. I ALLOWED IT TO
24 DRY, AND THEN PROCEEDED TO TAKE A VERY SMALL CUTTING FROM
25 THAT. APPLIED SOME LIQUID REAGENTS TO RELEASE THAT DNA

ROBIN TAYLOR -- DIRECT BY MS. MILLICAN

278

1 FROM THE FILTER PAPER THAT IT HAD BEEN DEPOSITED ON.

2 I USED A MACHINE TO PURIFY AND CLEAN UP THE DNA, AND
3 THEN USED YET ANOTHER PROCEDURE TO FIND OUT HOW MUCH I HAD
4 -- HOW MUCH DNA I HAD IN THAT SMALL CUTTING.

5 AND AT THAT POINT I LOADED A PARTICULAR AMOUNT INTO A
6 MACHINE CALLED A THERMAL CYCLER. AND WHAT THAT DOES IS
7 JUST TAKE A VERY SMALL AMOUNT OF DNA AND COPY IT OVER AND
8 OVER AND OVER AGAIN SO THAT I GET A TARGETED AMOUNT TO LOAD
9 ONTO THE FINAL MACHINE THAT WE USE. AND WHEN THE RESULTS
10 CAME OFF OF THAT, I USED OUR COMPUTER PROGRAMS AND ANALYZED
11 THE SAMPLE AGAINST THE EVIDENCE THAT HAD ALREADY BEEN RUN.

12 Q DID YOU DEVELOP A DNA PROFILE USING THAT BLOOD
13 STANDARD PROVIDED BY THE DEFENDANT?

14 A YES, I DID.

15 Q DID YOU COMPARE THAT PROFILE TO THE PROFILES KIMBERLY
16 HAHN HAD DEVELOPED USING STATE'S EVIDENCE NO. 17 WHICH
17 WOULD BE SLED'S 1.7, 1.8, AND 1.9; STATE'S EXHIBIT 12 WHICH
18 IS SLED'S NO. 3.1, 3.2; AND DEFENSE EXHIBIT NO. 2 WHICH
19 WOULD BE SLED 2.1; AND STATE'S 15, 2.3 AND 2.4 SLED
20 NUMBERS?

21 A YES, I COMPARED THE DNA PROFILE THAT I DEVELOPED FROM
22 NATHANIEL JOHNSON TO ALL OF THE DNA PROFILES THAT KIMBERLY
23 HAHN HAD DEVELOPED BEFORE SHE LEFT SLED.

24 Q WHAT WERE THE RESULTS OF YOUR COMPARISON?

25 A THE DNA PROFILE DEVELOPED FROM THE SEMEN ON ITEMS 1.7,

ROBIN TAYLOR - DIRECT BY MS. MILLICAN

279

1 2.1, 2.3, AND 2.4 WHICH 1.7 IS MISCELLANEOUS BODY FLUID
2 SWABS FROM THE SEXUAL ASSAULT KIT; 2.1 IS A CUTTING FROM A
3 FITTED SHEET; 2.3 IS ALSO A CUTTING FROM A FITTED SHEET;
4 AND 2.4, AGAIN, ANOTHER CUTTING FROM THE FITTED SHEET. THE
5 DNA PROFILE DEVELOPED ON THE SEMEN ON THOSE ITEMS MATCHED
6 THE DNA PROFILE OF NATHANIEL JOHNSON.

7 AND THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED
8 INDIVIDUAL WHO WOULD HAVE THAT SAME PROFILE AS THE SEMEN ON
9 THOSE ITEMS IS 1 IN 76 QUADRILLION.

10 Q MS. TAYLOR, WOULD YOU PLEASE TAKE A LOOK AT WHAT'S
11 BEEN MARKED AS STATE'S EXHIBIT NO. 18. WHAT IS THAT
12 GENERALLY?

13 A THIS APPEARS TO BE A PRINTOUT FROM THE INTERNET AT THE
14 CITE CENSUS DOT GOV, AND IT'S WORLD POPULATION INFORMATION.

15 MS. MILLICAN: YOUR HONOR, THE STATE MOVES THAT THE
16 COURT TAKE JUDICIAL NOTICE OF THE CENSUS FACTS REPORTED IN
17 THE U.S. WORLD POPULATION CENSUS AND ADMIT STATE'S EXHIBIT
18 NO. 18 BASED ON IT BEING A RELIABLE STATISTIC GENERATED BY
19 AN ACCURATE, WELL-KNOWN SOURCE, WHICH WOULD NOT BE
20 REASONABLY QUESTIONED.

21 THE COURT: ANY OBJECTION TO JUDICIAL NOTICE OF THIS
22 FACT, MS. SMART?

23 MS. SMART: NONE, YOUR HONOR.

24 THE COURT: ALL RIGHT. IT WILL BE SO ADMITTED. DO
25 YOU WANT TO MARK IT?

ROBIN TAYLOR - DIRECT BY MS. MILLICAN

280

1 MS. MILLICAN: IT'S BEEN MARKED, YOUR HONOR.

2 THE COURT: ALL RIGHT. IT'S STATE'S WHAT?

3 MS. MILLICAN: STATE'S 18, YOUR HONOR.

4 THE COURT: STATE'S NO. 18. ALL RIGHT. ADMITTED AS
5 STATE'S 18 WITHOUT OBJECTION.

6 (STATE'S EXHIBIT NO. 18 RECEIVED IN EVIDENCE.)

7 Q MS. TAYLOR, WHAT DID THE U.S. CENSUS BUREAU REPORT THE
8 WORLD POPULATION IS TODAY, MARCH 14?

9 A 6 BILLION 582 MILLION 196 THOUSAND 843.

10 MS. MILLICAN: YOUR HONOR, MAY THE WITNESS STEP DOWN
11 FOR JUST A MOMENT TO WRITE THIS NUMBER OUT?

12 THE COURT: YES. PLEASE STEP DOWN.

13 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

14 A (COMPLIED.)

15 THE COURT: WHAT ARE YOU ASKING HER TO DO, MS.
16 MILLICAN?

17 MS. MILLICAN: I ASKED MS. TAYLOR IF SHE COULD PLEASE
18 WRITE THAT FIGURE ON THE BOARD FOR THE JURY TO SEE.

19 THE COURT: WHICH FIGURE?

20 MS. MILLICAN: THE FIGURE OF THE POPULATION IN THE
21 WORLD AS OF TODAY.

22 THE COURT: ALL RIGHT.

23 A (COMPLIED.)

24 Q AND, MS. TAYLOR, COULD YOU WRITE THE FIGURE -- THE
25 PROBABILITY NUMBER, THE 76 QUADRILLION NUMBER BELOW THAT

ROBIN TAYLOR - DIRECT BY MS. MILLICAN

281

1 FOR THE JURY.

2 A I HAVE TO START FROM THIS END. (COMPLIED.) I RAN OUT
3 OF ROOM.

4 Q JUST WRAP IT AROUND.

5 A (COMPLIED.) 76 QUADRILLION. THAT IS 76 WITH 15 ZEROS
6 BEHIND IT.

7 Q THANK YOU, MS. TAYLOR. IS THERE ANY OTHER PERSON
8 LIVING IN THE WORLD TODAY THAT COULD HAVE CONTRIBUTED TO
9 THE SEMEN IN THESE ITEMS THAT YOU TESTED?

10 A NO. IN MY OPINION IT'S UNIQUE TO THIS INDIVIDUAL.

11 MS. MILLICAN: THANK YOU, YOUR HONOR. THE STATE HAS
12 NO FURTHER QUESTIONS OF THIS WITNESS AT THIS TIME.

13 THE COURT: ALL RIGHT. HAVE A SEAT BACK UP HERE
14 PLEASE, MA'AM.

15 (THE WITNESS RETURNS TO THE WITNESS STAND.)

16 THE COURT: CROSS EXAMINATION, MS. SMART.

17 MS. SMART: I DON'T HAVE ANY QUESTIONS FOR THIS
18 WITNESS, YOUR HONOR.

19 THE COURT: ALL RIGHT. THANK YOU. MS. TAYLOR, YOU
20 MAY STEP DOWN. WOULD YOU LIKE TO HAVE THE WITNESS EXCUSED?

21 MS. MILLICAN: YES, YOUR HONOR, PLEASE. THANK YOU.

22 THE COURT: ANY OBJECTION?

23 MS. SMART: NO OBJECTION, YOUR HONOR.

24 THE COURT: YOU ARE EXCUSED. THANK YOU FOR COMING.

25 (THE WITNESS LEAVES THE WITNESS STAND.)

1 THE COURT: ALL RIGHT. MS. MILLICAN.

2 MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE
3 WOULD JUST LIKE TO IN AN ABUNDANCE OF CAUTION GO OVER ALL
4 THE EVIDENCE THE STATE HAD INTRODUCED TO ADMIT.

5 THE COURT: ALL RIGHT. GO AHEAD AND MAKE SURE WHAT
6 YOU THINK HAS BEEN INTRODUCED AND THEN MAKE SURE THAT IT
7 HAS. LET'S CHECK IT WITH THE COURT REPORTER. GO AHEAD.

8 MS. MILLICAN: OKAY. STATE'S NO. 17. STATE'S NO. 15.
9 STATE'S NO. 12. STATE'S NO. 14. STATE'S NO. 1 THROUGH 3.
10 STATE'S NO. 16. STATE'S NO. 13. STATE'S NOS. 4 THROUGH
11 10. AND STATE'S NO. 18.

12 THE COURT: ALL RIGHT. IT APPEARS ALL OF THOSE HAVE
13 BEEN INTRODUCED INTO EVIDENCE.

14 MS. MILLICAN: AT THIS POINT, YOUR HONOR, THE STATE
15 WOULD REST.

16 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE
17 HEARD THE ASSISTANT SOLICITOR ANNOUNCE THAT THE STATE HAS
18 RESTED, WHICH MEANS THAT THEY HAVE PRESENTED ALL OF THE
19 TESTIMONY OR EVIDENCE THAT THEY WILL PRESENT TO YOU AT THIS
20 TIME.

21 THERE ARE CERTAIN MATTERS OF LAW WHICH I NOW NEED TO
22 TAKE UP WITH THE ATTORNEYS. THIS WILL NOT TAKE US LONG,
23 BUT AFTER WE HAVE COMPLETED THOSE, THEN WE WILL BE READY TO
24 GO FORWARD.

25 BUT I DO NEED TO DO THESE ON THE RECORD AND OUTSIDE OF

1 YOUR PRESENCE. SO FOR JUST A FEW MINUTES I'M GOING TO ASK
2 THAT YOU GO TO YOUR JURY ROOM AND DO NOT DISCUSS THE CASE
3 AMONG YOURSELVES. IF YOU'LL JUST LEAVE YOUR PADS IN YOUR
4 SEATS, WE'LL BRING YOU BACK IN THE COURTROOM VERY SHORTLY.

5 THANK YOU. YOU MAY GO WITH THE BAILIFF.

6 (THE JURY RETIRES TO THE JURY ROOM AT 1:17 P.M.)

7 THE COURT: ALL RIGHT. MS. SMART, ANY MOTIONS ON
8 BEHALF OF THE DEFENDANT?

9 MS. SMART: YOUR HONOR, I MOVE FOR A DIRECTED VERDICT.
10 THE STATE HAS NOT MET EACH AND EVERY ELEMENT FOR EACH --
11 FOR THE CRIMINAL SEXUAL CONDUCT, THE KIDNAPING, THE
12 POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

13 THE COURT: WELL, LET'S ADDRESS EACH ONE OF THEM.
14 TELL ME WHAT -- YOU MOVE FOR A DIRECTED VERDICT ON THE
15 BASIS OF THE CSC. WHAT HAS THE STATE NOT PROVEN? AND
16 KEEPING IN MIND THAT UNDER RULE 19 MY JOB IS NOT TO WEIGH
17 THE -- NOT THE WEIGHT OF THE EVIDENCE, BUT THE EXISTENCE OF
18 THE EVIDENCE AT A MOTION OF DIRECTED VERDICT. THE QUESTION
19 OF HOW MUCH WEIGHT TO GIVE TO THE EVIDENCE IS FOR THE
20 JURY'S DETERMINATION. THE COURT LOOKS ONLY AT WHETHER OR
21 NOT THERE IS EVIDENCE IN THE RECORD.

22 BUT LET'S ADDRESS EACH ONE OF THEM ON AN INDIVIDUAL
23 BASIS. IF YOU'RE GOING TO MOVE WITH REGARD TO CSC, WHAT DO
24 YOU THINK THE STATE HAS FAILED TO PROVE IN THE CSC?

25 MS. SMART: YOUR HONOR, WE WOULD SUBMIT THAT THE STATE

1 PROVED AN ATTEMPT AND NOT THE ACT.

2 THE VICTIM TESTIFIED THAT HE ATTEMPTED TO RAPE HER,
3 THAT HE FOUGHT -- SHE FOUGHT HIM OFF. SHE PUT HER HAND
4 DOWN THERE TO KEEP HIS PENIS FROM GOING INTO HER VAGINA.
5 WE WOULD SUBMIT TO THE COURT THAT THAT WOULD BE AN ATTEMPT
6 AND NOT A COMPLETED ACT.

7 THE COURT: ALL RIGHT. WHAT SAY YOU, MS. MILLICAN?

8 MS. MILLICAN: YOUR HONOR, THE VICTIM TESTIFIED THAT
9 THE DEFENDANT'S PENIS WENT INTO HER VAGINA AS PLAINLY AS I
10 JUST SAID IT. SHE TESTIFIED THAT HIS FINGERS ALSO WERE
11 INSIDE HER VAGINA.

12 THE COURT: OKAY. THAT'S MY RECOLLECTION OF THE
13 TESTIMONY AS WELL. THE COURT WOULD THEREFORE -- SINCE
14 THERE IS EVIDENCE IN THE RECORD BY WHICH THE JURY COULD
15 DETERMINE THAT ELEMENT HAS BEEN MET, THE COURT WILL
16 RESPECTFULLY DENY THE MOTION FOR A DIRECTED VERDICT.

17 NEXT?

18 MS. SMART: WITH REGARD TO THE KIDNAPING, YOUR HONOR,
19 THE VICTIM CONSTANTLY TESTIFIED THAT THE DEFENDANT ASKED
20 HER TO GO TO THE BEDROOM OR ASKED HER TO LAY DOWN OR ASKED
21 HER TO DO THOSE THINGS. ALTHOUGH HER TESTIMONY WAS THAT HE
22 HAD A WEAPON, BUT BASICALLY SHE SAID THAT HE ASKED HER TO
23 DO THESE THINGS AND SHE COMPLIED.

24 SO BASED ON THAT, WE WOULD SUBMIT THAT SHE HAD THE
25 OPPORTUNITY TO LEAVE.

1 THE COURT: MS. MILLICAN?

2 MS. MILLICAN: YOUR HONOR, THE STATE WOULD SUBMIT THAT
3 THE USE OF A WEAPON WOULD BE A MEANS OF FORCE BY MOVING A
4 PERSON. HE MADE HER DO IT FROM ONE PLACE TO ANOTHER
5 AGAINST HER WILL. SHE WAS NOT ALLOWED TO ESCAPE. SHE WAS
6 CONFINED TO THE BEDROOM. SHE ACTUALLY TESTIFIED THAT SHE
7 FINALLY ESCAPED -- THAT WAS THE WORD SHE USED. IT'S A
8 DETERMINATION FOR THE JURY FROM THE STATE'S PERSPECTIVE.

9 THE COURT: ALL RIGHT. THE ELEMENTS OF KIDNAPING ARE
10 THE UNLAWFUL SEIZURE, CONFINING, INVEIGLING, DECOYING,
11 ABDUCTING, OR CARRYING AWAY OF A PERSON BY ANY MEANS
12 WITHOUT AUTHORITY OF LAW.

13 IT WOULD SEEM LIKE TO ME THAT IT WOULDN'T EVEN HAVE TO
14 BE IN THE BEDROOM. THE CONFINING OF THE -- THERE'S NO
15 QUESTION ABOUT THE TESTIMONY HERE, THE CONFINING OF THE
16 VICTIM IN THIS CASE TO HER HOME WITHOUT NECESSARILY EVEN
17 MAKING HER GO TO ANOTHER ROOM WITHIN THE HOME I THINK IS
18 EVIDENCE OF KIDNAPING BY WHICH THE JURY COULD CONCLUDE THAT
19 THE ELEMENTS HAVE BEEN MET.

20 AGAIN, MY JOB IS TO DETERMINE THE EXISTENCE AND NOT
21 THE WEIGHT TO BE GIVEN TO THE EVIDENCE.

22 AND SO I WOULD RESPECTFULLY DENY THAT MOTION AS WELL.

23 ALL RIGHT. YES, MA'AM.

24 MS. SMART: WITH REGARD TO THE BURGLARY, YOUR HONOR,
25 THE VICTIM TESTIFIED THAT SHE ALLOWED THE VICTIM (SIC) IN

1 HER HOME -- I'M SORRY, THE SUSPECT IN HER HOME. SHE OPENED
2 THE DOOR. SO HE ENTERED THE DWELLING WITH THE CONSENT OF
3 THE VICTIM.

4 THE COURT: ALL RIGHT. MS. MILLICAN.

5 MS. MILLICAN: YOUR HONOR, THE ENTERING OF A DWELLING
6 WITHOUT CONSENT CAN BE BY USE OF DECEPTION, TRICK, OR
7 MISREPRESENTATION TO GET THAT CONSENT. AND I BELIEVE I
8 ACTUALLY HAVE CASE LAW ON THIS POINT.

9 THE COURT: ALL RIGHT. THIS ONE I WAS EXPECTING, AND
10 I WAS HOPING YOU WOULD HAVE THE CASES.

11 MS. MILLICAN: I DO HAVE THE CASES.

12 THE COURT: ALL RIGHT.

13 MS. MILLICAN: AND I BELIEVE ---

14 THE COURT: I THINK THE TESTIMONY IS CLEAR THAT SHE
15 OPENED THE DOOR, THAT THERE WAS NO BREAKING. SO WE'VE GOT
16 TO DECIDE IF IT MEETS THE ELEMENTS OF KIDNAPING OTHER THAN
17 THAT -- I MEAN, OF BURGLARY OTHER THAN THAT.

18 MS. MILLICAN: YOUR HONOR, THE STATE WOULD POINT OUT
19 TWO CASES. THE STATE VERSUS DIXON, STATE VERSUS JOHNSON,
20 AND STATE VERSUS TYSON MACK, WHICH I BELIEVE YOUR HONOR'S
21 FAMILIAR WITH. I HAVE COPIES OF THESE CASES IF YOU'D LIKE
22 FOR ME TO HAND THEM UP.

23 THE COURT: YES, IF YOU WOULD. AND I AM FAMILIAR WITH
24 THE TYSON MACK CASE.

25 (PAUSE.)

1 THE COURT: ALL RIGHT. OF COURSE, I AM FAMILIAR WITH
2 THE TYSON MACK CASE IN THAT IT WAS A CASE THAT I HEARD IN
3 SUMTER. THAT REALLY IS A QUESTION OF WHETHER OR NOT THERE
4 WAS SUFFICIENT EVIDENCE -- CIRCUMSTANTIAL EVIDENCE TO SHOW
5 THE ENTRY OF THE DEFENDANT INTO THE BUSINESS.

6 IT IS NOT REALLY THE FACTUAL SITUATION THAT WE HAVE
7 HERE, NEITHER IS THE JOHNSON CASE, WHICH IS A CASE OF A
8 DEFENDANT LAWFULLY IN A BUSINESS, REMAINING IN THE BUSINESS
9 AFTER THE BUSINESS CLOSED -- AS TO WHETHER THAT COULD BE
10 BURGLARY.

11 IN BOTH OF THOSE INSTANCES, OF COURSE, THEY WERE
12 AFFIRMED THAT BURGLARY WAS PRESENT.

13 HOWEVER, IT WOULD APPEAR TO THE COURT THAT THE DIXON
14 CASE IS CONTROLLING. THAT CASE STATES VERY CLEARLY THAT
15 EVEN THOUGH THE VICTIM VOLUNTARILY LET THE DEFENDANT INTO
16 THE BUILDING -- I.E., THE VICTIM'S HOME -- THE DEFENDANT
17 GAINED ENTRANCE THROUGH DECEIT, TRICKERY, ARTIFICE, OR
18 MISREPRESENTATION.

19 AND IT WOULD APPEAR THAT THERE IS EVIDENCE IN THE
20 RECORD IN THIS CASE BY WHICH THE JURY COULD CONCLUDE THAT
21 THAT WAS THE WAY THAT THE DEFENDANT GAINED ENTRY INTO THIS
22 VICTIM'S HOME. IT WOULD BE A FACT DETERMINATION FOR THE
23 JURY -- A FACTUAL MATTER FOR THE JURY'S DETERMINATION. BUT
24 I BELIEVE THAT SINCE BURGLARY CAN BE PREDICATED UPON ENTRY
25 BEING OBTAINED BY TRICKERY OR MISREPRESENTATION, THEN THAT

1 WOULD BE A FACTUAL DETERMINATION AND I WOULD RESPECTFULLY
2 DENY THE MOTION FOR A DIRECTED VERDICT ON THAT QUESTION AS
3 WELL.

4 MS. SMART: YOUR HONOR, IF I MAY JUST FOR THE RECORD.
5 I WOULD SUBMIT TO THE COURT THAT THE DEFENDANT -- THAT THE
6 VICTIM TESTIFIED THAT THE DEFENDANT WANTED TO COME INTO HER
7 HOME TO USE THE TELEPHONE, AND HE DID IN FACT USE THE
8 TELEPHONE. NOT ONLY DID HE USE THE TELEPHONE ONCE, BUT HE
9 USED THE TELEPHONE TWICE.

10 I WOULD SUBMIT TO THE COURT THAT HE DID NOT -- IT WAS
11 NOT DECEIT, TRICKERY, ARTIFICE, OR MISREPRESENTATION. HE
12 DID DO EXACTLY WHAT HE ASKED HER TO DO.

13 THE COURT: WELL, I THINK IT'S A WONDERFUL POINT TO
14 ARGUE, MS. SMART. BUT I THINK IT IS CIRCUMSTANTIAL
15 EVIDENCE WHEN THIS DEVELOPED -- WHAT HAPPENED. IF THE JURY
16 BELIEVES WHAT HAPPENED WHILE HE WAS IN THE HOME AND WHAT
17 THE VICTIM SAYS HAPPENED TO HER WHILE HE WAS THERE, THE
18 JURY COULD ALSO CONCLUDE THAT THE TELEPHONE WAS ALL A
19 RUSE, WHICH WOULD BE TRICKERY. AND, THEREFORE, I THINK
20 THAT'S A JURY DETERMINATION. BUT I UNDERSTAND YOUR
21 POSITION. AND IF I'M WRONG, THAT'S WHY WE HAVE A COURT OF
22 APPEALS.

23 ALL RIGHT. I WILL RESPECTFULLY DENY THAT MOTION. AND
24 THE OTHER THING, OF COURSE, WOULD YOU HAVE ANY MOTION WITH
25 REGARD TO THE POSSESSION OF A WEAPON? IT'S CONTINGENT

1 UPON, OF COURSE, A CONVICTION OF ONE OF THE OTHER THREE.

2 MS. SMART: NO, SIR, YOUR HONOR.

3 THE COURT: ALL RIGHT. AND I WOULD SO CHARGE THE JURY
4 THAT THEY COULD NOT FIND HIM GUILTY OF THE POSSESSION OF A
5 WEAPON DURING COMMISSION OF A VIOLENT CRIME UNLESS THEY
6 FIND HIM GUILTY OF ONE OF THE THREE PRINCIPLE CRIMES.

7 YOU WOULD AGREE, WOULD YOU NOT, MS. SMART, THAT ANY
8 ONE OF THE THREE IS A VIOLENT CRIME WITHIN THE MEANING OF
9 THE STATUTE?

10 MS. SMART: YES, SIR.

11 THE COURT: OKAY. ALL RIGHT.

12 MR. JOHNSON, IF YOU WOULD STAND FOR A MINUTE. LET ME
13 TALK TO YOU.

14 MR. JOHNSON: (COMPLIED.)

15 THE COURT: BEFORE WE TOOK OUR LUNCH RECESS, I ADVISED
16 YOU OF YOUR RIGHTS UNDER THE FIFTH AMENDMENT OF THE
17 CONSTITUTION AND YOUR PRIVILEGE AGAINST SELF INCRIMINATION,
18 INVITED YOU TO DISCUSS THE MATTER WITH YOUR ATTORNEY. AND
19 I WANT TO GO BACK TO THAT. HAVE YOU HAD A CHANCE TO TALK
20 WITH YOUR LAWYER ABOUT YOUR CONSTITUTIONAL RIGHTS?

21 MR. JOHNSON: YES, I HAVE.

22 THE COURT: AND YOU UNDERSTOOD WHAT I TOLD YOU ABOUT
23 YOUR CONSTITUTIONAL RIGHT AND YOUR PRIVILEGE AGAINST SELF
24 INCRIMINATION; IS THAT CORRECT?

25 MR. JOHNSON: YES, SIR.

1 THE COURT: YOU ALSO UNDERSTAND WHAT MS. SMART TOLD
2 YOU ABOUT THAT, ABOUT YOUR CONSTITUTIONAL RIGHTS?

3 MR. JOHNSON: YES, SIR.

4 THE COURT: OKAY. DO YOU HAVE ANY QUESTIONS OF EITHER
5 HER OR ME WITH REGARD TO YOUR PRIVILEGE AGAINST SELF
6 INCRIMINATION?

7 MR. JOHNSON: NO, SIR.

8 THE COURT: HAVE YOU MADE A DECISION AS TO WHETHER YOU
9 DO OR DO NOT WISH TO TESTIFY IN THIS CASE?

10 MR. JOHNSON: I DO NOT WISH TO TESTIFY.

11 THE COURT: OKAY. AND SO YOU HAVE MADE A DECISION AND
12 THAT DECISION IS THAT YOU DO NOT WISH TO TESTIFY?

13 MR. JOHNSON: YES, SIR.

14 THE COURT: IS THIS DECISION ON YOUR PART FREELY AND
15 VOLUNTARILY MADE?

16 MR. JOHNSON: YES, SIR.

17 THE COURT: HAS ANYONE FORCED YOU TO MAKE THIS
18 DECISION?

19 MR. JOHNSON: NO, SIR.

20 THE COURT: ALL RIGHT. THE COURT THEN BASED UPON THE
21 ADVICE OF HIS COUNSEL AS WELL AS THE INSTRUCTION GIVEN HIM
22 BY THE COURT REGARDING HIS PRIVILEGE AGAINST SELF
23 INCRIMINATION HAS MADE A FREE, VOLUNTARY, KNOWING, AND
24 INTELLIGENT DECISION TO EXERCISE THAT CONSTITUTIONAL RIGHT
25 AND HAS ELECTED NOT TO TESTIFY IN THIS MATTER, AND I FIND

1 THAT SUCH A DECISION IS FREE AND VOLUNTARILY MADE ON HIS
2 PART.

3 THANK YOU, SIR, YOU MAY BE SEATED.

4 MR. JOHNSON: (COMPLIED.)

5 THE COURT: MS. SMART, DOES THE DEFENSE ANTICIPATE ANY
6 FURTHER EVIDENCE OTHER THAN THAT?

7 MS. SMART: WITH THAT, SIR, THE DEFENSE WOULD REST.

8 THE COURT: THE DEFENSE WOULD REST. ALL RIGHT.

9 THAT BRINGS US TO THE ISSUE OF CLOSING ARGUMENTS.
10 WHAT'S THE STATE'S POSITION WITH REGARD TO CLOSING
11 ARGUMENTS AND WHO HAS THE LAST ARGUMENT TO THE JURY?

12 MS. MILLICAN: THE STATE WILL WAIVE INITIAL CLOSING,
13 BUT WOULD CERTAINLY SEEK TO CLOSE LAST SEEING THAT THE
14 DEFENSE DID SUBMIT EVIDENCE.

15 THE COURT: OKAY. DO YOU AGREE WITH THAT, MS. SMART?

16 MS. SMART: YES, SIR.

17 THE COURT: ALL RIGHT. SO THE STATE WILL OPEN -- I
18 MEAN, THE STATE IS GOING TO WAIVE OPENING. THE DEFENSE
19 WILL OPEN AND THEN THE STATE WILL CLOSE.

20 HOW MUCH TIME DO YOU THINK YOU NEED, MS. SMART? I'M
21 NOT GOING TO MAKE YOU ARGUE AGAINST THE CLOCK, BUT ---

22 MS. SMART: I THINK NO LONGER THAN 45 MINUTES IF THAT
23 LONG.

24 THE COURT: HOW LONG?

25 MS. SMART: IF 45 MINUTES -- I DOUBT THAT VERY

1 SERIOUSLY.

2 THE COURT: WELL, I'M NOT SURE I'M GOING TO GIVE YOU
3 THAT LONG. ONE TIME I MADE THE MISTAKE EARLY ON IN MY
4 CAREER ON THE BENCH I MADE THE MISTAKE OF NOT ASKING THE
5 LAWYERS HOW LONG THEY NEEDED TO ARGUE. IT WAS A LITTLE
6 WRECK CASE THAT I THOUGHT COULD HAVE BEEN ARGUED IN 15
7 MINUTES. AND 55 MINUTES LATER THE LAWYER WAS STILL GOING
8 STRONG.

9 SO HOW LONG DO YOU THINK YOU NEED, MS. MILLICAN?

10 MS. MILLICAN: YOUR HONOR, I TRY TO MAKE A POLICY NOT
11 TO EXTEND PAST 25 MINUTES.

12 THE COURT: WELL, I TELL YOU BOTH LIKE I TELL MY
13 PREACHER, ANYTHING BEYOND 20 MINUTES IS LOST ANYHOW.

14 MS. MILLICAN: SO THE EXTRA 5 IS EXTRA.

15 THE COURT: I THINK LET'S TRY TO HOLD IT TO 30 MINUTES
16 ON EACH SIDE. I THINK 30 MINUTES OUGHT TO BE SUFFICIENT
17 TIME. LET'S TRY TO HOLD IT TO 30 MINUTES ON EACH SIDE.

18 ANY SPECIAL REQUEST TO CHARGE ON BEHALF OF THE STATE?

19 MS. MILLICAN: THE STATE WOULD DEFER TO THE COURT,
20 YOUR HONOR.

21 THE COURT: FROM DEFENSE?

22 MS. SMART: NONE, YOUR HONOR.

23 THE COURT: I'LL TELL YOU WHAT I'M GOING TO CHARGE.
24 IN ADDITION TO THE GENERAL FELONY CHARGE THAT INCLUDES
25 PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF AND THOSE

1 THINGS, I WILL CHARGE, OF COURSE, REASONABLE DOUBT,
2 CIRCUMSTANTIAL EVIDENCE. I USE THE GRIPPON CIRCUMSTANTIAL
3 EVIDENCE CHARGE.

4 I WILL CHARGE THE EXERCISE THE DEFENDANT'S RIGHT NOT
5 TO TESTIFY IS NOT TO BE HELD AGAINST HIM.

6 I'M GOING TO GIVE A CHARGE ON EXPERT WITNESSES SINCE
7 THERE ARE EXPERT WITNESSES IN THIS CASE.

8 AND THEN, OF COURSE, THE ELEMENTS OF THE FOUR CRIMES
9 THAT ARE INVOLVED HERE.

10 I THINK THAT WILL COVER EVERYTHING. ALL RIGHT. WITH
11 THAT THEN WE WILL GO FORWARD WITH THE CLOSING ARGUMENTS AT
12 THIS TIME.

13 BRING THE JURY IN PLEASE.

14 (THE JURY RETURNS TO THE COURTROOM AT 1:35 P.M.)

15 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.

16 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES
17 AND GENTLEMEN. WE HAVE FINISHED THOSE MATTERS, AND WE ARE
18 NOW READY TO PROCEED.

19 THE STATE HAS PRESENTED THEIR CASE AND NOW THE DEFENSE
20 HAS THE RIGHT TO PRESENT ANYTHING TO YOU THAT THEY WISH TO
21 PRESENT. MS. SMART.

22 MS. SMART: YOUR HONOR, THE DEFENSE RESTS.

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE
24 HEARD THAT THE DEFENSE IN THIS CASE HAS RESTED; THAT MEANS
25 NOW THAT YOU HAVE HEARD ALL OF THE TESTIMONY THAT YOU WILL

1 HEAR IN CONNECTION WITH THIS CASE.

2 THERE ARE ONLY TWO THINGS THAT REMAIN TO BE DONE;
3 THOSE ARE THE ARGUMENTS OF COUNSEL AND THE INSTRUCTIONS ON
4 THE LAW BY THE COURT.

5 I WILL TELL YOU NOW AS I DID AT THE BEGINNING OF THIS
6 TRIAL THAT THE ARGUMENTS OF COUNSEL ARE NOT EVIDENCE IN
7 THIS CASE. THEY ARE SIMPLY THE LAWYERS' VIEWS OF WHAT THEY
8 THINK THE EVIDENCE SHOWS.

9 YOU WILL DECIDE THIS CASE BASED UPON THE EVIDENCE THAT
10 YOU HEARD FROM THIS WITNESS STAND, AS WELL AS FROM ANY
11 EXHIBITS THAT HAVE BEEN INTRODUCED INTO EVIDENCE.

12 BUT THE LAWYERS DO HAVE THE RIGHT AND NOT ONLY THE
13 RIGHT BUT THE DUTY ON BEHALF OF THEIR CLIENTS TO ADDRESS
14 YOU NOW AND TO GIVE YOU THEIR VIEWS OF WHAT THEY THINK THE
15 EVIDENCE SHOWS.

16 WHEN THEY HAVE CONCLUDED THAT, I WILL THEN INSTRUCT
17 YOU ON THE LAW OF SOUTH CAROLINA AS IT APPLIES TO THE FACTS
18 IN THIS CASE AS YOU MAY FIND THOSE FACTS TO BE, AND THEN
19 YOU WILL BE ALLOWED TO GO TO YOUR JURY ROOM TO DELIBERATE
20 YOUR VERDICT.

21 YOU WILL HEAR FIRST FROM MS. SMART ON BEHALF OF THE
22 DEFENDANT, AND THEN FROM MS. MILLICAN ON BEHALF OF THE
23 STATE. AND AFTER THAT I WILL GIVE YOU THE CLOSING CHARGE
24 WITH REGARD TO THE INSTRUCTIONS ON THE LAW.

25 MS. SMART.

CLOSING ARGUMENTS BY MS. SMART

295

1 MS. SMART: MAY IT PLEASE THE COURT.

2 THE COURT: YES, MA'AM.

3 CLOSING ARGUMENTS BY MS. SMART ON BEHALF OF THE DEFENDANT:

4 LADIES AND GENTLEMEN OF THE JURY, WE'VE COME A LONG
5 WAY. YOU'VE HEARD A LOT OF TESTIMONY. BUT MR. JOHNSON
6 HOPES BY NOW THAT YOU HAVE CONCLUDED THAT HE WAS HAVING AN
7 AFFAIR WITH [REDACTED] AND AS AWFUL AS THAT MAY SOUND,
8 AS IMMORAL AS THAT MAY SOUND, WE HOPE THAT THE EVIDENCE
9 PRESENTED BY THE STATE HAS LED YOU TO THAT CONCLUSION.

10 AND THEN YOU MAY ASK, WELL, HOW WOULD WE HAVE GOTTEN
11 THERE? AND THAT'S MY JOB TO TELL YOU. WHAT EVIDENCE WOULD
12 LEAD YOU TO BELIEVE THAT THERE WAS AN AFFAIR?

13 LET'S START WITH WHAT I THOUGHT WAS VERY, VERY
14 SIGNIFICANT. [REDACTED] CONTINUED TO SAY, I TOLD HIM MY
15 HUSBAND WAS ABOUT TO COME HOME. AND IF HE FOUND US THERE,
16 HE WOULD KILL US BOTH.

17 SHE TOLD HIM HOW VIOLENT HE WAS. BUT SHE WAS
18 CONCERNED ABOUT HER HUSBAND COMING HOME AND FINDING THEM
19 AND THEN KILLING THEM AS A RESULT OF SEEING THEM IN THEIR
20 MARITAL HOME.

21 SO IF YOU'VE CONCLUDED THEN THAT THEY WERE HAVING AN
22 AFFAIR, YOU WOULD ALSO HAVE TO CONCLUDE THAT SHE WASN'T A
23 CREDIBLE WITNESS BECAUSE SHE NEVER ADMITTED THAT THERE WAS
24 AN AFFAIR. SHE SAID SHE DIDN'T KNOW HIM. SHE SAID THAT
25 SHE DIDN'T INVITE HIM INTO THE HOUSE.

CLOSING ARGUMENTS BY MS. SMART

296

1 SO LET'S TALK ABOUT HER LYING TO YOU. LET'S TALK
2 ABOUT HER LYING TO LAW ENFORCEMENT, AND WE'LL START FROM
3 THE BEGINNING.

4 SHE TOLD YOU THAT SHE OPENED THE DOOR FOR A STRANGER.
5 SHE SAID SHE DID THIS BECAUSE -- SHE GAVE SEVERAL REASONS
6 WHY IT WAS OKAY FOR A WOMAN OF HER STATURE TO OPEN THE DOOR
7 FOR A STRANGER. SHE SAID [REDACTED] BEING BUILT ACROSS
8 THE STREET. SHE SAID AS A RESULT OF THE HOUSE BEING BUILT,
9 THERE WERE A LOT OF PEOPLE IN THE AREA. THERE WERE A LOT
10 OF PEOPLE WORKING. AND IT WASN'T UNCOMMON THAT SOMEONE
11 WOULD COME TO HER HOUSE.

12 AND SHE SAID, AS A RESULT OF THAT, SHE FELT SAFE. SHE
13 FELT LIKE IT WAS OKAY.

14 BUT THEN SHE SAID, [REDACTED] THE DOOR FOR THE
15 STRANGER BECAUSE SHE ASKED HIM WHAT HE WANTED, AND HE TOLD
16 HER HE WANTED TO USE THE TELEPHONE.

17 AND THEN SHE SAID SHE OPENED THE DOOR FOR THE STRANGER
18 BECAUSE SHE SAW TWO MEN WORKING AND SHE FELT SAFE.

19 SO WHY IS THAT IMPORTANT? SHE OPENED THE DOOR FOR THE
20 STRANGER. THE STRANGER CAME IN. AND THE STRANGER --
21 ACCORDING TO HER -- ATTEMPTED TO RAPE HER. SHE FELT SAFE
22 BECAUSE THERE WERE TWO MEN WORKING, BUT THERE'S NO
23 INDICATION THAT SHE YELLED. THERE'S NO INDICATION THAT SHE
24 SCREAMED. THERE WAS NO INDICATION THAT SHE ATTEMPTED TO
25 GET ANY HELP FROM THOSE TWO PEOPLE WHO SHE FELT SAFE

CLOSING ARGUMENTS BY MS. SMART

297

1 OPENING THE DOOR FOR.

2 MAYBE SHE LIED. MAYBE SHE DIDN'T. BUT THAT'S YOUR
3 DECISION TO MAKE. YOU HAVE TO DETERMINE HOW CREDIBLE THOSE
4 STATEMENTS WERE.

5 NEXT, SHE TELLS YOU THAT SHE FELT SAFE. SHE LOOKED
6 OUT THE WINDOW AND SHE SAW THAT MAN. AND SHE FELT SAFE.

7 SHE TOLD YOU ABOUT THESE PHONE CALLS. SHE SAID HE
8 CAME AND HE ASKED TO USE THE PHONE AND HE MADE A PHONE
9 CALL.

10 SHE TOLD ONE OF THE OFFICERS, THERE WASN'T AN ANSWER.
11 SHE TOLD THE OTHER OFFICER THERE WAS AN ANSWERING MACHINE.
12 WHY IS THAT SIGNIFICANT? SHE SAID THIS STRANGER MADE
13 ANOTHER PHONE CALL AND THERE WAS ANOTHER ANSWERING MACHINE.
14 BUT HE DIDN'T LEAVE A MESSAGE ON THE ANSWERING MACHINE.

15 THIS STRANGER COMES TO YOUR HOUSE, USES YOUR
16 TELEPHONE, TELLS YOU THAT HE GOT AN ANSWERING MACHINE BUT
17 DOESN'T LEAVE A MESSAGE. AND THEN HE ~~ASKED YOU~~ DO YOU
18 KNOW MR. GREEN?

19 NO, I DON'T KNOW MR. GREEN. BUT I WILL TAKE A MESSAGE
20 FOR MR. GREEN, BECAUSE I DON'T KNOW MY NEIGHBOR WHO LIVES
21 ACROSS THE STREET.

22 SO EARLIER SHE SAID SHE FELT SAFE BECAUSE THIS HOUSE
23 WAS BEING BUILT AND BECAUSE THIS HOUSE WAS BEING BUILT,
24 THERE WAS A LOT OF PEOPLE THERE.

25 NOW SHE'S SAYING THERE'S SOMEONE WHO LIVES IN THE

CLOSING ARGUMENTS BY MS. SMART

298

1 HOUSE ACROSS THE STREET AND HE MAY OR MAY NOT BE MR. GREEN.
2 BUT JUST IN CASE HE IS MR. GREEN, I'LL TAKE A MESSAGE FOR
3 HIM. SHE'S TAKING A MESSAGE FROM A STRANGER TO GIVE TO A
4 STRANGER WHEN THAT STRANGER HAD AN ANSWERING MACHINE. HE
5 COULD HAVE LEFT THE MESSAGE. HE WOULD HAVE LEFT THE
6 MESSAGE IF IN FACT THAT WERE THE CASE.

7 BUT SHE VOLUNTEERED TO TAKE A MESSAGE FROM A STRANGER
8 TO GIVE TO A STRANGER.

9 AND SO THE SURVEYORS -- THE SURVEYORS SAID, WELL, I
10 NOTICED THIS GENTLEMAN BECAUSE WE WERE IN AN ISOLATED AREA.
11 WE WERE IN AN AREA AND THE ENTIRE TIME WE WERE WORKING I
12 ONLY SAW ONE CAR; THAT ONE CAR LEFT HER HOUSE AND THE NEXT
13 PERSON I SAW WAS THE PERSON ON THE BICYCLE.

14 SO THE SURVEYORS THEN PAINTED ANOTHER PICTURE. THE
15 AREA WASN'T THAT BUSY. THERE WEREN'T VERY MANY PEOPLE.
16 WERE THE SURVEYORS INCORRECT ABOUT HOW MANY PEOPLE OR WAS
17 ~~THE SURVEYORS~~ INCORRECT ABOUT HOW BUSY THE AREA WAS THAT
18 GAVE HER THE SAFETY NET TO OPEN THE DOOR FOR THIS STRANGER?

19 THEN SHE TOLD YOU ABOUT ONCE THIS STRANGER ENTERED THE
20 HOUSE, SHE MADE THE STATEMENT THAT SHE WAITED FOR HIM TO GO
21 TO THE BEDROOM. AND SO I ASKED HER TO SHOW YOU WHERE SHE
22 WAS ON THE DIAGRAM IN THE HOUSE.

23 SHE SAID THAT THIS STRANGER POINTED TO HER BEDROOM.
24 BUT HE WAS ONLY IN THE KITCHEN AREA AND HER BEDROOM WAS A
25 COUPLE OF ROOMS AWAY. SO IF THIS STRANGER HAD NOT BEEN TO

CLOSING ARGUMENTS BY MS. SMART

299

1 HER HOUSE BEFORE, HOW THEN DID HE KNOW WHICH DIRECTION WAS
2 HER BEDROOM AND HOW OR WHY WOULD SHE EXPECT HIM TO LEAD THE
3 WAY? BUT SHE DID. SHE SAID, WHEN HE POINTED -- IN HER
4 STATEMENT, WHEN HE POINTED THE GUN AT HER, SHE THOUGHT HE
5 WOULD GO FIRST BUT HE THEN DIRECTED HER IN THE DIRECTION OF
6 HER BEDROOM.

7 BUT, YET, HE WAS A STRANGER, AND SHE ONLY LET HIM IN
8 TO USE THE TELEPHONE.

9 SO IF YOU'VE DRAWN THE CONCLUSION THAT THEY WERE IN A
10 RELATIONSHIP, NOW YOU'RE ASKING YOURSELF, WHEN? HOW LONG?
11 WHERE?

12 WELL, SHE TOLD YOU THAT. SHE TOLD INVESTIGATOR
13 CHAPMAN THAT. SHE SAID, YOU KNOW WHAT, HE LOOKED VERY
14 SIMILAR TO A MAN THAT I MET AT SCOTT HILL PARK. THIS MAN
15 CAME UP TO ME AND HE TOLD ME THAT I WAS PRETTY. HE TOLD ME
16 THAT HE HAD MONEY. HE TOLD ME THAT HE RETIRED EARLIER.
17 AND THAT PARK IS JUST DOWN THE STREET FROM MY HOUSE. MY
18 CHILDREN WERE WITH ME. I RAN. I LEFT. BUT I MET HIM AT
19 SCOTT HILL PARK.

20 AND I'M NOT SAYING FOR CERTAIN THAT THAT'S THE SAME
21 MAN, BUT THEY WERE VERY SIMILAR. THEY LOOKED VERY SIMILAR.

22 AND THEN LET'S TALK ABOUT HOW MUCH SHE COOPERATED WITH
23 LAW ENFORCEMENT. SHE WAS JUST RAPED. INVESTIGATOR --
24 DEPUTY MERRILL ASKED HER OR INQUIRED OF HER, DID SHE KNOW
25 WHICH DIRECTION HER ASSAILANT LEFT?

1 HER RESPONSE TO DEPUTY MERRILL WAS, I LEFT HIM IN THE
2 HOUSE. I DON'T KNOW WHICH DIRECTION HE LEFT. I WAS SO
3 AFRAID I RAN OUT OF THE BACK DOOR. I DIDN'T SEE HIM LEAVE.

4 ON CROSS EXAMINATION I ASKED HER, DID SHE TELL THE
5 SURVEYORS WHICH DIRECTION THIS ASSAILANT LEFT?

6 SHE SAID, NO, NO. I DIDN'T SEE HIM LEAVE. I DON'T
7 KNOW WHICH DIRECTION HE LEFT. THEY TOLD ME THAT HE LEFT ON
8 A BICYCLE AND HE LEFT IN THIS DIRECTION.

9 SO WE SEQUESTERED OUR WITNESSES, SO THE SURVEYORS
10 WEREN'T IN HERE. THEY DIDN'T KNOW WHAT SHE HAD TESTIFIED
11 TO AND THEY CAME IN SEPARATELY. BUT EACH OF THEM TOLD YOU
12 THAT SHE CAME OUT OF THE HOUSE AND TOLD THEM THAT A MAN
13 LEFT HER HOUSE AFTER HE ROBBED HER AND ATTEMPTED TO RAPE
14 HER. BUT THAT MAN LEFT HER HOUSE ON A BICYCLE. SHE TOLD
15 BOTH OF THEM THAT TWO SEPARATE TIMES.

16 AND I THINK IT WAS INTERESTING THAT THE FIRST THING
17 SHE TOLD THE SURVEYORS HE DID WAS HE ROBBED HER, AND HE
18 ATTEMPTED TO RAPE HER.

19 SO, OF COURSE, THE SURVEYOR'S RESPONSE WAS TO CALL LAW
20 ENFORCEMENT. AND THEY TOLD LAW ENFORCEMENT THAT HE LEFT
21 AND WENT TOWARD SCOTT HILL ROAD OR SCOTT HILL PARK.

22 BUT SHE SAID WHEN THE LAW ENFORCEMENT OFFICERS ASKED
23 HER, WHERE DID HE GO? I DIDN'T SEE HIM LEAVE. WHY
24 WOULDN'T SHE TELL THEM? WHY WOULDN'T SHE TELL THEM? THEY
25 ARRIVED MINUTES AFTER HE LEFT. AND IF THEY KNEW WHICH

CLOSING ARGUMENTS BY MS. SMART

301

1 DIRECTION HE WAS GOING, THEY COULD HAVE CAPTURED HIM.

2 SO THEN SHE'S ASKED TO DESCRIBE. SHE GIVES A
3 DESCRIPTION OF HIM. HOURS LATER THE MAN WHO HELD HER DOWN
4 ON THE BED, SHE LOOKED IN HIS FACE, SHE WAS ABLE TO GET A
5 FINGER IN HIS MOUTH AND HE BIT HER. HE'S ON TOP OF HER.
6 HE'S IN HER FACE. WITHIN HOURS SHE'S GIVEN A PHOTO LINE-UP
7 BY INVESTIGATOR CHAPMAN. SHE DOESN'T PICK HIM OUT. SHE
8 DOESN'T PICK HIM OUT, BUT SHE TELLS YOU HE LOOKS THE SAME
9 WAY. HE LOOKS THE SAME WAY, HE'S JUST FATTER NOW. BUT SHE
10 COULD CERTAINLY PICK HIM OUT YESTERDAY, A YEAR LATER. BUT
11 HOURS AFTER HE LEFT HER HOUSE AND HE RAPED HER, SHE REFUSED
12 TO PICK HIM OUT OF A PHOTO LINE-UP. HE WOULD HAVE BEEN
13 ARRESTED IMMEDIATELY. THEY WOULD HAVE BEEN ABLE TO
14 IDENTIFY HIM.

15 BUT SHE DIDN'T COOPERATE. SHE WOULD NOT PICK HIM OUT
16 OF THE PHOTO LINE-UP. SHE WOULD NOT TELL THEM WHICH
17 DIRECTION HE LEFT. AND SHE DID NOT TELL LAW ENFORCEMENT
18 THAT HE LEFT ON A BICYCLE. BUT SHE TOLD A NURSE AT
19 BEAUFORT MEMORIAL HOSPITAL HE FLED ON A BICYCLE.

20 BUT WHEN I ASKED HER DID SHE TELL THE NURSE THAT HE
21 FLED ON A BICYCLE, SHE SAID, NO, I DIDN'T TELL THE NURSE
22 THAT.

23 THE NURSE WASN'T HERE FOR HER TESTIMONY. SO WHEN
24 NURSE CLEGG CAME IN, I ASKED HER, DID SHE TELL YOU THAT THE
25 ASSAILANT LEFT ON THE BICYCLE?

CLOSING ARGUMENTS BY MS. SMART

302

1 SHE SAID, YES, HE LEFT ON THE BICYCLE. THE PATIENT
2 TOLD ME THAT HE FLED ON THE BICYCLE.

3 AND SO WHAT ELSE DOES SHE SAY? SHE TOLD ALL THE
4 WITNESSES, MY HUSBAND'S A VIOLENT MAN. I KEPT TELLING HIM
5 IF HE CAUGHT US, HE WOULD KILL US. IF HE CAUGHT US, HE
6 WOULD KILL US.

7 SO SHE SAID SHE HAD A ROUTINE GOING THAT EVERY DAY SHE
8 WOULD BE HOME BECAUSE SHE WAS PREPARING FOR HER HUSBAND TO
9 COME HOME. AND HER HUSBAND USUALLY CAME HOME ABOUT 5:00
10 O'CLOCK, BUT THIS TIME HE WAS IN TRAINING SO HIS SCHEDULE
11 CHANGED. SO THIS WAS OUT OF THEIR ROUTINE. HE WASN'T
12 COMING HOME AT THE SAME TIME. SHE KNEW HE WOULD BE HOME
13 EARLIER THAN HE TYPICALLY COMES HOME.

14 SO WHEN MR. JOHNSON COMES OVER, YOU'VE GOT TO GET OUT
15 OF HERE, MY HUSBAND'S COMING HOME. MY HUSBAND'S COMING
16 HOME AND HE'S A VIOLENT MAN. AND IF HE CATCHES US, HE'S
17 GOING TO KILL US.

18 SHE DIDN'T SAY IF HE CATCHES YOU RAPING ME, HE'S GOING
19 TO KILL YOU. SHE SAID, IF HE CATCHES US -- IF HE FOUND US
20 HERE, HE WOULD KILL US.

21 SO THEN SHE TOLD YOU WE STRUGGLED ON THE BED. THIS
22 MAN -- SHE FOUGHT HIM OFF. SHE VIOLENTLY -- SHE PUSHED
23 HIM. SHE HELD HIM OFF WITH HER LEFT HAND WHILE SHE HELD
24 HIM UP WITH HER RIGHT HAND, AND HE BIT HER ON THE RIGHT
25 HAND AND SHE TRIED TO PULL HIS PENIS OUT WITH HIS LEFT HAND

CLOSING ARGUMENTS BY MS. SMART

303

1 -- WITH HER LEFT HAND, AND SHE TRIED TO COVER HERSELF UP
2 WITH THE LEFT HAND.

3 BUT WHEN THEY SUBMITTED THE SCRAPINGS FROM HER LEFT
4 HAND FOR DNA ANALYSIS, THERE WAS NOTHING. NOTHING. SHE
5 HAD HER HAND DOWN HERE. NO SEMEN. NO DNA. NOTHING ON THE
6 HAND THAT SHE HAD WHERE SHE WAS BEING RAPED.

7 BUT, OF COURSE, THERE WOULD BE DNA ON HER RIGHT HAND
8 BECAUSE THAT WAS IN HIS FACE.

9 AND THEN I ASKED HER SPECIFICALLY, I SAID, IF HE HAD
10 EJACULATED, WOULD YOU HAVE KNOWN? YES, I WOULD HAVE KNOWN.
11 AND, NO, HE DID NOT EJACULATE.

12 THE STATE CAME BACK AND SAID, WELL, DO YOU KNOW WHAT
13 EJACULATION IS? SHE SAID YES AND SHE TOLD YOU WHAT
14 EJACULATION WAS AND SHE SAID THAT SEMEN WOULD COME OUT IF
15 HE HAD EJACULATED.

16 BUT SHE TOLD YOU THAT HE DID NOT EJACULATE, AND I
17 BELIEVE IT. I BELIEVE THAT BECAUSE SHE SAID SHE HAD HER
18 PANTS ON, THAT HER PANTS WERE TO HER THIGHS.

19 THE STATE CUT -- THE DNA TECH CUT A PIECE OF HER
20 PANTS, BUT THERE WAS NO DNA ON HER PANTS. THERE WAS NO
21 SEMEN ON HER PANTS. SO, NO, HE DIDN'T EJACULATE.

22 BUT THE SHEETS OFF OF HER BED -- THREE CUTTINGS.
23 THREE DNA'S. THREE OF MR. JOHNSON'S SEMEN.

24 SO IF HE DIDN'T EJACULATE THAT DAY, AND SHE KNOWS WHAT
25 EJACULATION IS AND SHE KNOWS HE DIDN'T EJACULATE, WHERE DID

CLOSING ARGUMENTS BY MS. SMART

304

1 THE SEMEN COME FROM? HOW DID THE SEMEN GET ON THE SHEETS?

2 SHE ALSO TOLD YOU THAT SHE WAS ON THE EDGE OF THE BED.

3 SHE STOOD HERE, SHE SHOWED YOU THE PICTURE. SHE SAID, I

4 WAS ON THE BED. HE WAS ON TOP OF ME, AND WE WERE IN THIS

5 ONE SPOT. ALTHOUGH WE FOUGHT, ALTHOUGH WE STRUGGLED, WE

6 WERE IN THIS SPOT.

7 WHEN YOU TAKE THAT SHEET BACK TO THE JURY ROOM AND YOU

8 HOLD THAT SHEET UP AND YOU SEE WHERE MR. JOHNSON'S SEMEN

9 WAS ON THAT SHEET, YOU ASK YOURSELF: HOW DID IT GET THERE?

10 IF THEY WERE ONLY IN THIS SPOT AND SEMEN IS UP AND DOWN THE

11 SHEET, WHERE DID IT COME FROM ESPECIALLY SINCE HE DIDN'T

12 EJACULATE -- AT LEAST HE DIDN'T EJACULATE THAT DAY, BECAUSE

13 THAT'S WHAT SHE TOLD YOU.

14 AND SHE SAID THEY STRUGGLED. I FOUGHT HIM. I FOUGHT

15 HIM. I STRUGGLED. I STRUGGLED. I FOUGHT HIM.

16 BUT THE PICTURE TELLS A THOUSAND WORDS. THERE ARE

17 THREE SETS OF SHEETS ON THE PICTURE RIGHT WHERE SHE SAID

18 THEY STRUGGLED. THIS BIG MAN STRUGGLED WITH HER AND THE

19 SHEETS WEREN'T DISTURBED, THEY WEREN'T EVEN PARTIALLY ON

20 THE FLOOR. THERE WERE THREE SEPARATE SETS. DOES THAT

21 INDICATE THAT A STRUGGLE OCCURRED?

22 SO SHE SAID HE YANKED THE PHONE OUT OF THE WALL. THE

23 BED DIDN'T TUMBLE OVER. THE SHEETS DIDN'T FALL OFF. HE

24 VIOLENTLY THREW HER TO THE FLOOR. THERE'S NO SIGNS OF A

25 STRUGGLE. NONE WHATSOEVER.

CLOSING ARGUMENTS BY MS. SMART

305

1 SHE FOUGHT HIM. NO DNA EVIDENCE ON THE HAND THAT SHE
2 HELD HIM OFF.

3 THE STATE SHOWED YOU PICTURES OF A BITE MARK. HE BIT
4 HER FINGER. HE BIT HER FINGER. HE BIT HER FINGER. HE BIT
5 HER FINGER. IS THAT EVIDENCE OF RAPE? HE BIT HER FINGER.

6 I WASN'T CERTAIN ABOUT THIS SO I WANTED TO REFRESH MY
7 MEMORY BEFORE I SAID THIS TO YOU. BUT I ASKED HER ON CROSS
8 EXAMINATION, I SAID, WHAT TIME DID THE ASSAILANT LEAVE --
9 BECAUSE I WAS TRYING TO ESTABLISH A TIME LINE BECAUSE I
10 WANTED TO KNOW WHAT TIME DID HE LEAVE, HOW MUCH TIME LAPSED
11 BEFORE HER HUSBAND CAME HOME? BECAUSE SHE KEPT SAYING HER
12 HUSBAND WAS ON THE WAY.

13 AND INTERESTINGLY ENOUGH, I NOTED ON THE TAPE HER
14 RESPONSE TO MY QUESTION WHAT TIME THE ASSAILANT LEFT WAS:
15 YOU MEAN EVERY DAY?

16 I SAID, LET'S PLAY THAT AGAIN. WHAT TIME DID THE
17 ASSAILANT LEAVE? YOU MEAN EVERY DAY? OKAY. I WAS REALLY
18 TALKING ABOUT THAT DAY. BUT HER RESPONSE WAS, YOU MEAN
19 EVERY DAY?

20 THIS STRANGER LEFT HER HOUSE EVERY DAY. HER HUSBAND
21 WAS IN TRAINING. HIS SCHEDULE WAS DIFFERENT. SOMEBODY
22 FORGOT TO TELL MR. JOHNSON. HE CAME IN ON HIS BICYCLE AS
23 HE TYPICALLY DOES, BUT HE HAD TO GET OUT OF THERE THAT DAY
24 AND SHE HAD TO RUN HIM OFF BEFORE HER HUSBAND CAME HOME.

25 HER CLOTHING WASN'T TORN. THERE WAS NO EVIDENCE OF A

CLOSING ARGUMENTS BY MS. SMART

306

1 STRUGGLE ON HER BODY. AND THE MOST IMPORTANT THING I ASKED
2 THE -- THE NURSE AGAIN WHEN WE TALK ABOUT TRAUMA -- TALK
3 ABOUT TRAUMA TO THE VAGINA. SHE RAN DOWN A LIST OF THE
4 BODY PARTS THAT I CAN'T REPEAT. THERE WAS NO TRAUMA.
5 THERE WAS NO TRAUMA TO HER VAGINA. SHE WAS VIOLENTLY RAPED
6 BUT THERE WAS NO TRAUMA. THERE WAS NO BRUISING.

7 THE ONLY BRUISING ON THE RAPE KIT WAS THE BITE TO HER
8 FINGER. WE'RE NOT TALKING ABOUT A MAN OF MY STATURE.
9 WE'RE TALKING ABOUT THAT MAN, THAT MAN. BUT THERE WAS NO
10 TRAUMA TO HER LEGS. SHE WASN'T BRUISED. BUT SHE WAS --
11 SHE WAS HELD DOWN BY THAT MAN. SHE WAS THROWN TO THE FLOOR
12 BY THAT MAN. BUT SHE WASN'T BRUISED.

13 SO THE LACK OF EVIDENCE OF THE STRUGGLE, THE LACK OF
14 EVIDENCE OF THE RAPE, THE INCONSISTENT STATEMENTS. SHE DID
15 NOT IDENTIFY HER ASSAILANT.

16 AND YOU HAVE THE PICTURES. YOU HAVE THE PICTURES FROM
17 THE PHOTO LINE-UP THAT SHE WAS GIVEN 2 HOURS --
18 APPROXIMATELY 2 HOURS AFTER HE LEFT, AND YOU HAVE THE
19 SKETCH THAT WAS DRAWN BY THE STATE'S SKETCH ARTIST.

20 WHEN INVESTIGATOR CHAPMAN WENT BACK, SHE SAYS, HIS
21 PICTURE IS ETCHED IN MY FACE, SO I CAN GIVE A DESCRIPTION
22 OF HIM TO THE SKETCH ARTIST. AND SHE DOES THAT. SHE DOES
23 THAT, SHE DESCRIBES HIM. THE SKETCH ARTIST DRAWS HIM, AND
24 THEN THE COMMUNITY CALLS AND SAYS, THAT'S NATHANIEL, THAT'S
25 NATHANIEL.

CLOSING ARGUMENTS BY MS. SMART

307

1 BUT SHE COULDN'T PICK HIM OUT OF THE PHOTO LINE-UP?

2 YOU LOOK AT THE PICTURES. YOU LOOK AT HIM. YOU

3 DIDN'T HAVE THE INTIMATE, CLOSE, PHYSICAL -- THE DISTANCE

4 BETWEEN THE TWO OF YOU ARE DIFFERENT. BUT YOU USING YOUR

5 EVERY DAY EXPERIENCES, YOU LOOK AT THAT PHOTO LINE-UP AND

6 YOU LOOK AT HIM, AND YOU DECIDE SHOULD SHE HAVE PICKED HIM

7 OUT OF THE PHOTO LINE-UP?

8 DOES THAT GO TOWARDS HER CREDIBILITY? ABSOLUTELY.

9 ABSOLUTELY, BECAUSE WHY WOULDN'T SHE? SHE NEVER TOLD LAW

10 ENFORCEMENT WHO HE WAS. NEVER. SHE DID NOT IDENTIFY HIM

11 UNTIL YESTERDAY. THAT WAS THE FIRST TIME SHE IDENTIFIED

12 HIM, YESTERDAY. AND SHE KEPT SAYING, I CAN SAY FOR

13 CERTAIN. I CAN SAY FOR CERTAIN. IT WAS A YEAR AGO. BUT

14 YESTERDAY SHE COULD SAY FOR CERTAIN THAT IT WAS HIM.

15 YESTERDAY IT WAS HIM.

16 WITHIN HOURS AFTERWARDS, WHEN SHE HAS A PICTURE IN

17 FRONT OF HER OF HIM, SHE COULDN'T IDENTIFY HIM. SHE

18 WOULDN'T IDENTIFY HIM.

19 TAKING ALL OF THAT INTO CONSIDERATION, ALL OF THE

20 INCONSISTENCIES, ALL THE PHYSICAL EVIDENCE -- INITIALLY I

21 WOULD WANT YOU TO THINK THAT WASN'T MY CLIENT'S DNA. I

22 WOULD HAVE ATTACKED THE DNA EVIDENCE. BUT IN LIGHT OF THE

23 FACT THAT SHE TOLD YOU THAT HE DIDN'T EJACULATE, I WANTED

24 YOU TO KNOW THAT THAT WAS HIS SEMEN. I WANTED YOU TO KNOW

25 THAT THAT WAS HIS SEMEN ALL OVER HER SHEETS.

CLOSING ARGUMENTS BY MS. MILLICAN

308

1 AND THAT'S WHY IT'S INTRODUCED INTO EVIDENCE SO YOU
2 WOULD HAVE THE OPPORTUNITY TO TAKE THE PICTURE BACK WITH
3 YOU, TO TAKE THE SHEETS BACK WITH YOU, AND YOU CAN HEAR HER
4 TESTIMONY AGAIN IF YOU'D LIKE. AND TAKE ALL OF THAT INTO
5 CONSIDERATION.

6 YOU TAKING NOTES, IF YOU NEED TO HEAR ANY OF THE
7 TESTIMONY, THE JUDGE WILL ALLOW YOU TO DO THAT.

8 BUT RIGHT NOW WE SUBMIT TO YOU THAT THE ONLY THING
9 THAT WAS PROVEN FROM THIS TESTIMONY -- FROM THAT TESTIMONY
10 IS THAT THEY WERE HAVING AN AFFAIR AND THEY WERE ABOUT TO
11 GET CAUGHT. AND DESPERATE WOMEN DO DESPERATE THINGS.

12 HER HUSBAND ARRIVED WITHIN MINUTES AFTER MR. JOHNSON
13 LEFT, SO MUCH SO THAT THE SURVEYOR SAID, YOU HAD TO HAVE
14 SEEN HIM. IF YOU CAME FROM THAT WAY, HE JUST LEFT. AND
15 SHE KNEW THAT HE WAS ABOUT TO COME HOME AND SHE KNEW THAT
16 HE WAS A VIOLENT MAN AND SHE KNEW THAT HE WOULD KILL THEM
17 BOTH.

18 THANK YOU.

19 THE COURT: ALL RIGHT. MS. MILLICAN.

20 MS. MILLICAN: THANK YOU, YOUR HONOR.

21 CLOSING ARGUMENTS BY MS. MILLICAN ON BEHALF OF THE STATE:

22 LADIES AND GENTLEMEN, I ASK YOU TO COME TO THIS TRIAL
23 WITH YOUR LIFETIME EXPERIENCES IN YOUR POCKET, YOUR COMMON
24 SENSE, AND TO TAKE IN ALL THIS EVIDENCE -- ALL THE
25 TESTIMONY YOU HEARD, ALL THE EVIDENCE YOU SAW, AND TO WEIGH

CLOSING ARGUMENTS BY MS. MILLICAN

309

1 THE CREDIBILITY OF THAT EVIDENCE BASED ON YOUR EXPERIENCE
2 AND YOUR COMMON SENSE. AND I APPRECIATE THE FACT THAT YOU
3 HAVE PAID SUCH GOOD ATTENTION TAKING NOTES AND WATCHING
4 VERY CLOSELY.

5 AND I KNOW BASED ON ALL OF THOSE THINGS THAT YOU ALL
6 HAVE GOT IN YOUR MIND A GOOD UNDERSTANDING OF WHAT HAS
7 HAPPENED IN THIS CASE.

8 STATE'S EXHIBIT NO. 1, PICTURE OF [REDACTED] STANDING IN HER
9 KITCHEN. YOU'VE NEVER BEEN IN THIS VICTIM'S HOUSE, I'M
10 ASSUMING. BUT LOOKING AT THIS PICTURE, CAN YOU TELL WHERE
11 HER BEDROOM IS? CAN YOU TELL WHERE HER BEDROOM IS? DID
12 YOU HAVE TO GO TO HER BEDROOM TO KNOW WHERE IT IS IF YOU'RE
13 STANDING RIGHT THERE?

14 [REDACTED] COULD NOT DETERMINE THE DAY OF HER ATTACK, SEVERAL
15 HOURS AFTER IT HAPPENED, WHICH ONE OF THESE MEN WAS THE ONE
16 ON TOP OF HER. HOURS AFTER IT HAPPENED SHE WAS --
17 ACCORDING TO INVESTIGATOR CHAPMAN, APPEARED TO STILL BE IN
18 SHOCK. ACCORDING TO THE NURSE AT THE HOSPITAL, SHE HAD A
19 GOOD DESCRIPTION IN HER MIND, BUT SHE WAS CERTAINLY --
20 APPEARED TO BE SOMEONE WHO HAD BEEN TRAUMATIZED.

21 CAN YOU PICK HIM OUT? HE'S SITTING RIGHT THERE. CAN
22 YOU LOOK AT THESE TWO LINE-UPS AND PICK HIM OUT?

23 DID [REDACTED] WANT TO SEND A MAN TO PRISON THAT SHE WASN'T
24 SURE ABOUT? SHE DESCRIBED HIM TO SOMEBODY. DOES THAT LOOK
25 LIKE HIM? DOES THAT LOOK LIKE THESE MEN IN THE PHOTO LINE-

1 UPS?

2 LADIES AND GENTLEMEN, THE DEFENSE WOULD HAVE YOU
3 BELIEVE THAT THERE IS AN AFFAIR. AND, AGAIN, BACK TO THE
4 COMMON SENSE AND LIFETIME EXPERIENCES -- I'M NOT GOING TO
5 GO IN TO DEFENDING ALL OF THOSE THINGS BECAUSE I BELIEVE
6 YOU ALL HAVE A GOOD IDEA OF WHAT HAPPENED THAT DAY AND YOU
7 DON'T NEED ME TO GO OVER THE REASONS THAT THEY DID NOT HAVE
8 AN AFFAIR.

9 YOU HAVE THE POWER AND CONTROL TODAY. FEBRUARY THE
10 7TH, 2006 THAT MAN DID, RIGHT THERE, HE DID. TODAY IT'S
11 YOURS. TODAY YOU CAN BALANCE THE SCALES OF JUSTICE AND PUT
12 THINGS SOMEWHAT BACK THE WAY THEY SHOULD BE. YOU HAVE THAT
13 AWESOME RESPONSIBILITY.

14 [REDACTED] POINTED TO THE DEFENDANT AND SAID [REDACTED] THAT'S HIM.
15 DEFINITELY THAT'S HIM. THAT IS HIM. I DON'T KNOW HOW MANY
16 TIMES SHE POINTED AT HIM AND SAID, HIM. HIM. DESCRIBE THE
17 COLOR OF HIS SHIRT? THAT IS HIM. THAT IS HIM.

18 SHE WAS ABLE TO GIVE ENOUGH DETAIL TO A SKETCH ARTIST
19 TO RENDER A DRAWING THAT EVEN HE SAYS, THAT DOES LOOK LIKE
20 ME. I DON'T KNOW ANYTHING ABOUT IT REALLY, THOUGH I HEARD
21 SOMETHING ABOUT IT MAYBE.

22 TALKING ABOUT INCONSISTENCES, THE DEFENDANT TOLD
23 POLICE THAT HE WAS WORKING AT SUCCESSION GOLF COURSE THAT
24 DAY. NOT ONLY WAS HE NOT WORKING THERE THAT DAY, HE HADN'T
25 WORKED THERE IN OVER A YEAR. WHERE ARE THE GLARING

CLOSING ARGUMENTS BY MS. MILLICAN

311

1 INCONSISTENCIES IN THE EVIDENCE THAT HAS BEEN PRESENTED TO
2 YOU?

3 IS IT WHETHER OR NOT HER PANTS WERE PULLED DOWN TO
4 HERE OR DOWN TO HERE OR ALL THE WAY OFF? AND TELL ME, DOES
5 IT MAKE A DIFFERENCE TO ANY OF YOU IF YOUR PANTS ARE DOWN
6 FAR ENOUGH THAT SOMEONE COULD PUT A PENIS INTO YOUR BODY IF
7 THEY'RE HALFWAY DOWN OR THREE-QUARTERS OF THE WAY DOWN OR
8 ON THE FLOOR? DOES IT MATTER? DO YOU FEEL NAKED?

9 FRANK DILSAVER, THE SURVEYOR, TESTIFIED THAT THE AREA
10 WAS VERY ISOLATED. HE ONLY SAW ONE MAN -- ONE BLACK MAN GO
11 BY THAT AFTERNOON, THAT'S IT, ON A BIKE.

12 MIKE LYNCH DREW THE SKETCH. THE DEFENDANT EVEN SAID
13 IT LOOKS LIKE HIM, LOOKS LIKE A BLACK AND WHITE PHOTOGRAPH
14 OF HIM. PRETTY GOOD RENDERING.

15 BRIAN CHAPMAN SAID THE NAME, NATHANIEL JOHNSON, JR.
16 CAME UP AGAIN AND AGAIN IN HIS INVESTIGATION.

17 KIMBERLY HAHN, THE DNA FORENSIC EXPERT, TESTIFIED THAT
18 HIS SALIVA DNA FROM THE SPOON WAS CONSISTENT WITH MALE
19 SEMEN DNA FOUND ON THE VICTIM, [REDACTED] BODY.

20 ROBIN TAYLOR, THE SECOND DNA EXPERT THAT YOU HEARD
21 FROM TESTIFIED THAT THE PROBABILITY THE DEFENDANT WAS THE
22 ONE WHO LEFT THE SPERM ON [REDACTED] BODY IS 1 IN 76
23 QUADRILLION. AND NOW WE HEAR, OH, IT WAS AN AFFAIR.

24 THE QUESTION IS NOT WHO DID IT. WE KNOW WHO DID IT.
25 1 IN 76 QUADRILLION. WHO DID IT? WE KNOW.

CLOSING ARGUMENTS BY MS. MILLICAN

312

1 OUT OF THE NUMBER OF PEOPLE IN THIS WORLD TODAY, HIM,
2 HE'S THE ONLY ONE; THAT IS IT. THERE'S NOBODY ELSE.

3 AN AFFAIR. WHY? WHY THEN IT'S NOT AN AFFAIR?

4 WELL, HE COULD. LOOK AT HIM. HE'S A MASSIVE MAN.

5 LOOK AT HER. ENGLISH IS HER SECOND LANGUAGE, WHICH SHE

6 DID, YOU KNOW, HER VERY BEST AND A GOOD JOB TESTIFYING SO

7 THAT YOU COULD UNDERSTAND. DID YOU UNDERSTAND HER? COULD

8 YOU UNDERSTAND HER? COULD YOU MAKE SENSE OF WHAT SHE HAD

9 TO SAY, OF HER STORY? DID IT MAKE SENSE?

10 BECAUSE YOU ALL HAVE THE POWER -- YOU ALL HAVE THE

11 CONTROL. AND WHAT EVIDENCE IS PRESENTED TO YOU CANNOT BE

12 TOLD TO YOU BY ANY OF US. YOU KNOW WHAT YOU SAW AND WHAT

13 YOU HEARD.

14 THERE'S NO WAY TO TWIST IT. THERE'S NO WAY TO CUT IT

15 UP AND DICE IT AND THROW IT BACK AT YOU. YOU KNOW WHAT YOU

16 HEARD. YOU KNOW WHAT YOU BELIEVE. AND YOU KNOW WHAT

17 HAPPENED THAT DAY.

18 HE DID IT BECAUSE HE COULD. SHE LIVED IN ISOLATION.

19 ALL HER NEIGHBORS WERE AT WORK THAT AFTERNOON. SHE OPENED

20 THE DOOR. SHE ANSWERED THE DOOR.

21 DID SHE SEEM TO YOU TO KIND OF BEAT HERSELF UP ABOUT

22 THE FACT THAT SHE OPENED THAT DOOR TO SOMEBODY SHE DIDN'T

23 KNOW? DID SHE SEEM TO REGRET THAT IN A VERY DEEP WAY, THAT

24 SHE MAYBE PERHAPS FELT FOOLISH ABOUT THAT? DO YOU THINK

25 THAT MAYBE SHE FELT BAD ABOUT THAT?

CLOSING ARGUMENTS BY MS. MILLICAN

313

1 THE DEFENDANT TOOK THE OPPORTUNITY BECAUSE IT WAS
2 THERE. HE TOOK WHAT HE WANTED BECAUSE HE COULD.

3 I ALSO TOLD YOU IN MY OPENING STATEMENT THAT I WOULD
4 GO OVER WITH YOU MORE FULLY OVER THE ELEMENTS OF THE CRIME
5 THAT HE'S CHARGED WITH. I'M GOING TO DO THAT NOW. I'M
6 GOING TO GO THROUGH IT. AND THE JUDGE WILL GO THROUGH THIS
7 IN BETTER ~~DETAIL~~, BUT I'M JUST GOING TO TOUCH THE MAIN
8 POINTS THAT APPLY TO THE EVIDENCE YOU'VE SEEN SO FAR.

9 BURGLARY IN THE FIRST DEGREE IS THE FIRST CHARGE WE'RE
10 GOING TO DISCUSS. ENTERING A DWELLING WITHOUT CONSENT.

11 NOW, GRANTED, WHEN HE KNOCKED ON THE DOOR, SHE LOOKED
12 OUT THE WINDOW, THOUGHT -- TESTIFIED THAT SHE THOUGHT, NICE
13 LOOKING MAN. THERE'S BEEN PEOPLE WORKING AROUND, PROBABLY
14 OKAY. OPENED THE DOOR.

15 IF SOMEBODY ENTERS A BUILDING USING DECEPTION, TRICK,
16 OR MISREPRESENTATION TO GET CONSENT IN, IT IS STILL NO
17 CONSENT. IT IS STILL NO CONSENT.

18 DO WE KNOW IF THE DEFENDANT REALLY NEEDED TO MAKE A
19 PHONE CALL? WHO IS MR. GREEN? ~~WHO?~~ WHO IS HE? DOES HE
20 EXIST? WHAT DO YOU THINK? WHY WAS IT SO IMPORTANT FOR THE
21 DEFENDANT TO CALL SOMEBODY AT HOME FROM ACROSS THE STREET?
22 WHAT COULDN'T WAIT IF HE'S NOT HOME? DOES THAT MAKE ANY
23 SENSE YOU WOULD CALL A HOUSE TWICE OR CALL A NUMBER -- CALL
24 TWO NUMBERS EVEN -- WHATEVER IT WAS HE'S CLAIMING HE WAS
25 DOING. DOES IT MAKE ANY SENSE? THE PERSON LIVED ACROSS

CLOSING ARGUMENTS BY MS. MILLICAN

314

1 THE STREET ACCORDING TO HIM.

2 WHO WAS THIS PERSON? THERE WAS NOBODY.

3 SO WHY DID HE DO IT? HE WAS JUST SEEING -- WAS HE
4 JUST SEEING IF ANY NEIGHBORS WERE HOME? IS THAT A GOOD
5 REASON TO SAY YOU'RE CALLING A NEIGHBOR? ARE YOUR
6 NEIGHBORS HOME?

7 THERE WERE TWO OTHER HOUSES BY ~~THE~~. DO YOU KNOW THE
8 PEOPLE NEXT DOOR? YEAH, SHE SAID. SHE TESTIFIED THAT SHE
9 KNOWS THOSE PEOPLE NEXT DOOR.

10 DO YOU KNOW THE PERSON ACROSS THE STREET? NO, I DON'T
11 KNOW. NEW HOUSE. PEOPLE JUST MOVED IN, HAVEN'T MET THEM.
12 IT LOOKS LIKE AN OPPORTUNITY AGAIN.

13 OH, I KNOW THAT GUY THEN. I NEED TO CALL HIM. I NEED
14 TO USE YOUR PHONE. WAS IT A TRICK? DID HE REALLY NEED TO
15 USE THE PHONE TO COME INTO HER HOUSE? DID HE HAVE ANOTHER
16 PLAN FORMULATED IN HIS MIND WHEN HE KNOCKED ON THAT DOOR
17 BEFORE HE STEPPED FOOT THROUGH HER THRESHOLD?

18 INTENT TO COMMIT A CRIME THEREIN WHEN ENTERING -- IT'S
19 ANOTHER PART OF BURGLARY FIRST. DID HE FORMULATE THE PLAN
20 TO ROB OR KIDNAP THAT WOMAN WHEN HE KNOCKED ON THE DOOR AND
21 WAS STANDING ON HER PORCH WITH A GUN ON HIS BODY HIDDEN
22 AWAY SOMEWHERE?

23 WHY WOULD A PERSON GO KNOCK ON ANOTHER PERSON'S DOOR
24 AND GO IN THEIR HOME WITH A WEAPON WITH NO ILL-INTENT IN
25 MIND -- WITH NO ILL-INTENT IN MIND AND THEN TO FOLLOW IT UP

CLOSING ARGUMENTS BY MS. MILLICAN

315

1 WITH DOING WHAT THIS MAN DID TO THIS WOMAN? DOES THAT MAKE
2 SENSE? DO YOU UNDERSTAND? DO YOU HAVE A GOOD
3 UNDERSTANDING OF WHAT YOU THINK HAPPENED? [REDACTED]

4 HOW MUCH TIME DID THE DEFENDANT WASTE ONCE HE WAS IN
5 THAT DOOR TO PULL OUT THAT GUN AND USE IT ON HER? SHE
6 TURNS AROUND AND LOOKS UP. HOW MUCH TIME WAS THAT? DID HE
7 HANG OUT? DID HE HAVE TEA? HE DIDN'T WASTE A LOT OF TIME
8 FROM THE TIME HE WALKED IN THAT DOOR UNTIL HE EXECUTED.

9 WHAT WAS HIS INTENT BEFORE HE CAME IN THAT DOOR?

10 ENTERING A DWELLING WITHOUT CONSENT, INTENT TO COMMIT
11 A CRIME THEREIN WHEN ENTERING. FOUR POSSIBILITIES.
12 POSSIBILITIES NO. 1 -- IT COULD BE ANY ONE OF THESE. THE
13 DEFENDANT WAS ARMED WITH A DEADLY WEAPON. ACCORDING TO HER
14 TESTIMONY, HE HAD A DEADLY WEAPON.

15 OR THE DEFENDANT CAUSED PHYSICAL INJURY TO SOMEONE NOT
16 PARTICIPATING IN THE CRIME. IT WAS HER HOUSE. SHE WAS
17 TRYING TO HELP SOMEONE. WAS SHE PHYSICALLY INJURED? IS
18 RAPE PHYSICAL INJURY? SHE WAS BITTEN. SHE WAS RAPED.

19 THE DEFENDANT -- OR THE DEFENDANT USED OR THREATENED
20 TO USE A DANGEROUS OBJECT, OR THE DEFENDANT DISPLAYED WHAT
21 APPEARED TO BE A DEADLY WEAPON. SO THAT LAST ONE WOULD BE
22 EVEN IF IT WASN'T A GUN AND SHE BELIEVED IT WAS, IT
23 APPEARED TO BE. DO YOU BELIEVE THE DEFENDANT POINTED A GUN
24 AT [REDACTED]

25 SHE TESTIFIED THAT SHE SAW IT, THAT SHE HEARD IT RACK.

1 CAN YOU SEE IT FROM HER DESCRIPTION? CAN YOU HEAR IT RACK
2 IN YOUR MIND?

3 [REDACTED] TESTIFIED AND THE NURSE, KIMBERLY CLEGG, ALSO
4 TESTIFIED THAT SHE DID HAVE PHYSICAL INJURY. HE DID INJURE
5 HER PHYSICALLY. HE DID RAPE HER. THERE WAS EVIDENCE OF
6 RAPE. AND SHE DID HAVE A BITE WOUND TO HER FINGER, WHICH
7 FORENSIC EXPERTS CAME BACK AND SAID IT MATCHED HIM AS WELL.

8 SHE HAD FINGERNAIL SCRAPINGS DONE UNDER ONE HAND. HE
9 ALSO CAME BACK -- IS THAT DEFENSIVE TO SCRATCH SOMEBODY,
10 GET BITTEN TRYING TO PUSH HIM OFF? CAN YOU PICTURE IT?

11 WHAT WAS SHE DOING WITH HER HANDS? SHE SAID SHE HAD
12 ONE HAND DOWN TRYING TO COVER HERSELF, TRYING TO KEEP HIM
13 FROM PUTTING HIS PENIS INTO HER VAGINA AND THE OTHER HAND
14 TRY TO FIGHT HIM OFF. WHAT ELSE CAN SHE DO? IF YOU'RE
15 THAT PERSON, WHAT ELSE CAN YOU DO? CAN YOU PICTURE IT? DO
16 YOU UNDERSTAND WHAT SHE WAS DESCRIBING?

17 KIMBERLY CLEGG, THE NURSE, ALSO TESTIFIED THAT TRAUMA
18 IS NOT ALWAYS COMMON WITH RAPE VICTIMS. IT IS NOT UNCOMMON
19 TO HAVE A RAPE VICTIM WHO DOES NOT SHOW TRAUMA. YOU HEARD
20 THE EVIDENCE. YOU'VE SEEN THE EVIDENCE.

21 THE NEXT CHARGE, KIDNAPING. KIDNAPING IS TO REMOVE A
22 PERSON AGAINST HIS WILL BY UNLAWFUL FORCE OR FRAUD OR TO
23 CARRY AWAY OR TO REMOVE A PERSON. THE STATUTE IS 16-3-910,
24 STATE SPECIFICALLY TO UNLAWFULLY SEIZE, CONFINE, INVEIGLE,
25 DECOY, KIDNAP, ABDUCT, OR CARRY ANY OTHER PERSON BY ANY

CLOSING ARGUMENTS BY MS. MILLICAN

317

1 MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW.

2 DO WHAT I TELL YOU OR I'LL KILL YOU. MADE HER GO
3 TO THE BEDROOM. HE MADE ~~HER~~ TAKE HER PANTS DOWN WITH A GUN
4 TO HER HEAD. YOU CAN DECIDE WHETHER OR NOT YOU FEEL MADE
5 TO DO SOMETHING WITH A GUN TO YOUR HEAD.

6 SHE STATED, I FINALLY ESCAPED. IF ~~HE~~ WAS NOT
7 KIDNAPED, WHY WOULDN'T SHE JUST LEAVE SOONER? KIDNAPING
8 DOESN'T HAVE TO BE SOMEBODY BEING BOUND AND ~~TIED~~ AND
9 STUCK IN A TRUNK.

10 I READ TO ~~THE~~ STATUTE. YOU ALL UNDERSTAND.

11 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, RAPE,
12 STATUTE NO. 16-3-652, THE DEFENDANT ENGAGED ~~IN~~ IN SEXUAL
13 BATTERY OF THE VICTIM AND ANY OF THE FOLLOWING APPLY: THE
14 DEFENDANT USES AGGRAVATED FORCE TO ACCOMPLISH THE SEXUAL
15 BATTERY; OR THE VICTIM SUBMITS TO SEXUAL BATTERY UNDER
16 CIRCUMSTANCES WHERE THE VICTIM IS BEING FORCIBLY CONFINED,
17 KIDNAPED, ROBBED, BURGLARIZED, OR ANY SIMILAR ACT.

18 NOW, AGGRAVATED FORCE IS THE PHYSICAL FORCE OR
19 PHYSICAL VIOLENCE HIGH AND AGGRAVATED, OR THE THREAT OF
20 USING A DEADLY WEAPON TO OVERCOME THE VICTIM.

21 A SEXUAL BATTERY IS SEXUAL INTERCOURSE OR ANY
22 INTRUSION HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY OR
23 OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
24 PERSON'S BODY.

25 HE PUT A GUN TO HER HEAD. HE PUT HIS PENIS IN HER

CLOSING ARGUMENTS BY MS. MILLICAN

318

1 VAGINA. HE PUT HIS FINGERS IN HER VAGINA. HE BURGLARIZED
2 HER HOME AND HE KIDNAPED HER IN HER OWN HOME.

3 DO YOU UNDERSTAND [REDACTED]'S ENGLISH? DID YOU UNDERSTAND
4 HER STORY? EVEN IF HER ENGLISH WASN'T PERFECT AND EVEN IF
5 THERE ARE LITTLE TINY THINGS IN HER STORY THAT MAYBE
6 WEREN'T [REDACTED] FECT, DID YOU UNDERSTAND IT? DID IT MAKE SENSE?
7 DID IT MAKE SENSE TO YOU?

8 [REDACTED] SAID THE DEFENDANT LOOKED OKAY AND SHE OPENED THE
9 DOOR. I OPENED THE DOOR. I OPENED THE DOOR. I COULD
10 ARGUE THAT THE DEFENDANT USED [REDACTED] NAIVETY TO OVERCOME
11 HER. HE JUST TOOK ADVANTAGE OF HER.

12 IS [REDACTED] A LIAR AS THE DEFENSE ATTORNEY SAID OR IS [REDACTED] A
13 SWEET, NAIVE WOMAN WHO -- WHO THOUGHT, YOU KNOW, SHE OPENED
14 THE DOOR TO HELP SOMEBODY SHE DIDN'T KNOW BUT THOUGHT MAYBE
15 WHEN HE STUCK HIS FINGERS INTO HER VAGINA TO SEE IF SHE WAS
16 PREGNANT, WHO THOUGHT BECAUSE HE DIDN'T FINISH THE SEX ACT
17 WITH HER HE DIDN'T EJACULATE.

18 AGAIN, EJACULATION VERSUS PRE-EJACULATION. YOU ALL
19 HAVE YOUR LIFETIME EXPERIENCES AND COMMON SENSE. I'LL
20 LEAVE IT TO YOU ALL TO DETERMINE WHETHER OR NOT THERE WAS
21 SEMEN ON HER VAGINA BECAUSE HE DID OR DID NOT EJACULATE.

22 SHE TOLD THE DEFENDANT, I'M PREGNANT, MY HUSBAND'S
23 COMING HOME. YOU HAVE TO GO. WHAT WOULD YOU TELL AN
24 ATTACKER IN YOUR HOME? WHAT WOULD YOU HAVE -- WHAT WOULD
25 YOU DO -- WHAT WOULD YOU COME UP WITH? YOU'VE GOT THAT

CLOSING ARGUMENTS BY MS. MILLICAN

319

1 FAST TO THINK ABOUT IT. WHAT ARE YOU GOING TO SAY?

2 HER HUSBAND WAS A JEALOUS MAN AND SHE WAS HAVING AN
3 AFFAIR?

4 BRIAN PATE, THE OTHER SURVEYOR, WHY DID HE SEE HER RUN
5 DOWN THE ROAD HOLDING HER PANTS UP BAREFOOT IN THE MIDDLE
6 OF THE DAY?

7 THE DEFENDANT WAS ON HIS WAY OUT AS SHE WAS RUNNING
8 HIM OFF, AND HE WAS ALREADY GOING. THE HUSBAND WASN'T HOME
9 YET UNTIL THEY GOT BACK UP THE ROAD.

10 LET'S SEND THE WOMAN OUT INTO THE STREET IN BROAD
11 DAYLIGHT WITH HER PANTS HALF DOWN BAREFOOT. HE DOES. THAT
12 MAN. THAT MAN. 1 IN 76 QUADRILLION DOES.

13 DIDN'T LOOK BACK. SHE RAN. SHE GRABBED THE PANTS
14 SHE FOUND ON THE FLOOR THAT WEREN'T EVEN HERS, PULLED THEM
15 UP AS FAR AS SHE COULD AND STARTED RUNNING, RAN AS FAST AS
16 SHE COULD, WOULD NOT LOOK BACK, RAN AROUND THE OTHER
17 TRAILER.

18 WHY DID SHE DO THAT? DO YOU HAVE ANY UNDERSTANDING OF
19 WHY SHE MIGHT HAVE RUN AROUND THE OTHER TRAILER INSTEAD OF
20 JUST CUT STRAIGHT TO THE ROAD? WHY WOULD SHE HAVE DONE
21 THAT? WAS SHE CONCERNED THAT MAYBE IF SHE WAS ON THE OTHER
22 SIDE OF THE TRAILER, HE WOULDN'T SHOOT HER? WAS SHE JUST
23 TRYING TO GET SOMETHING BETWEEN HER AND THIS MAN? WHY
24 WOULD SHE DO THAT?

25 LADIES AND GENTLEMEN, YOU'VE HEARD THE STORY. YOU'VE

CHARGE OF THE COURT

320

1 HEARD THE ARGUMENTS. YOU'VE SEEN THE EVIDENCE. YOU
2 UNDERSTAND WHAT'S HAPPENED. YOU KNOW WHAT'S HAPPENED.

3 ON FEBRUARY THE 7TH, 2006 NATHANIEL JOHNSON, JR.
4 BURGLARIZED, KIDNAPED, RAPED, AND USED A DEADLY WEAPON TO
5 DO THESE THINGS TO ANA RODRIGUEZ. AND TODAY NOW YOU HAVE
6 THE POWER AND CONTROL TO DO SOMETHING ABOUT IT, TO FIND
7 JUSTICE.

8 LADIES AND GENTLEMEN, FIND NATHANIEL JOHNSON, JR.
9 GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE,
10 BURGLARY IN THE FIRST DEGREE, KIDNAPING, AND USE OF A
11 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

12 THANK YOU.

13 CHARGE OF THE COURT:

14 ALL RIGHT. MR. FOREMAN AND LADIES AND GENTLEMEN OF
15 THE JURY, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE
16 FOLLOWED VERY PATIENTLY AND LISTENED VERY ATTENTIVELY TO
17 THE PRESENTATION OF THE EVIDENCE IN THIS CASE AND ALSO TO
18 THE ABLE ARGUMENTS MADE BY THE SOLICITOR, MS. MILLICAN, ON
19 BEHALF OF THE STATE, AND MS. SMART ON BEHALF OF THE
20 DEFENDANT, AND I THANK YOU FOR THAT.

21 IT NOW BECOMES THE DUTY OF THE TRIAL JUDGE UNDER THE
22 CONSTITUTION OF THIS STATE TO CHARGE AND INSTRUCT YOU ON
23 THE LAW APPLICABLE TO THIS CASE, AND IT IS YOUR DUTY AS
24 JURORS TO ACCEPT AND APPLY THE LAW AS THE COURT WILL NOW
25 STATE IT TO YOU. AND AS JURORS IT IS YOUR EXCLUSIVE DUTY

CHARGE OF THE COURT

321

1 TO DECIDE ALL OF THE ISSUES OF FACT IN THIS CASE, AND FOR
2 THAT PURPOSE, TO DETERMINE THE EFFECT, THE VALUE, THE
3 WEIGHT, AND THE TRUTH OF THE EVIDENCE.

4 BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO
5 EXPECT THAT YOU WILL CONSCIOUSLY CONSIDER AND EVALUATE THE
6 EVIDENCE AND APPLY THE LAW OF THE CASE THERETO TO THE END
7 THAT BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT
8 WILL RECEIVE A FAIR AND IMPARTIAL TRIAL.

9 NOW, WHEN I USE THE WORD DEFENDANT, I REFER OF COURSE
10 TO NATHANIEL JOHNSON, JR.

11 THE STATE OF SOUTH CAROLINA BY THE FOUR INDICTMENTS IN
12 THIS CASE CHARGE THE DEFENDANT NATHANIEL JOHNSON, JR. WITH
13 FOUR SEPARATE OFFENSES.

14 HE'S CHARGED WITH THE OFFENSE OF KIDNAPING, CRIMINAL
15 SEXUAL CONDUCT IN THE FIRST DEGREE, BURGLARY IN THE FIRST
16 DEGREE, AND THE POSSESSION OF A WEAPON DURING THE
17 COMMISSION OF A VIOLENT CRIME.

18 TO THESE CHARGES AND TO THESE INDICTMENTS THE
19 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY. THESE PLEAS OF
20 NOT GUILTY BY THE DEFENDANT PLACE THE BURDEN OF PROOF ON
21 THE STATE TO PROVE BY EVIDENCE THE GUILT OF THE DEFENDANT
22 BEYOND A REASONABLE DOUBT BEFORE YOU THE JURY COULD FIND
23 THE DEFENDANT GUILTY.

24 THE DEFENDANT, MR. JOHNSON, IS PRESUMED IN THE LAW
25 INNOCENT OF THE CHARGES CONTAINED IN THE INDICTMENT. IT IS

CHARGE OF THE COURT

322

1 A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT
2 A DEFENDANT IRRESPECTIVE OF THE ENORMITY OF THE CHARGES
3 AGAINST HIM WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIMES
4 FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT OF THE
5 DEFENDANT HAS BEEN PROVEN BY EVIDENCE WHICH SATISFIES YOU,
6 THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
7 DOUBT.

8 THIS PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
9 THEORY, IT IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF
10 INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY ACCUSED IS
11 ENTITLED.

12 OUR SUPREME COURT HAS DECLARED THAT THE PRESUMPTION OF
13 INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE
14 SHOULDERS OF A DEFENDANT AND IT REMAINS WITH HIM AND
15 ASSIGNS TO HIM THAT CLASS, THE INNOCENT, UNTIL THAT
16 PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPED FROM HIS
17 PERSON BY EVIDENCE SATISFYING YOU, THE JURY, OF HIS GUILT
18 BEYOND A REASONABLE DOUBT.

19 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT
20 FROM THE TIME OF HIS ARRAIGNMENT AND APPEARANCE IN THIS
21 COURT AND CONTINUES WITH THE DEFENDANT AFTER YOU RETIRE TO
22 YOUR JURY ROOM TO DELIBERATE YOUR VERDICT.

23 THE PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO
24 THE BENEFIT OF THE DEFENDANT UNTIL YOU, THE JURY, REACH THE
25 CONCLUSION THAT THE STATE HAS PROVEN THE GUILT OF THE

CHARGE OF THE COURT

323

1 DEFENDANT BEYOND A REASONABLE DOUBT.

2 NOW, THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF A
3 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT BEYOND
4 A REASONABLE DOUBT.

5 WHAT IS A REASONABLE DOUBT? IT IS NOT AN IMAGINARY OR
6 A FANCIFUL DOUBT OR A WEAK DOUBT. IT IS A SUBSTANTIAL
7 DOUBT. IT IS A DOUBT WHICH THE WORDS IMPLY, A DOUBT FOR
8 WHICH YOU CAN GIVE OR ASSIGN A REASON BASED ON THE
9 TESTIMONY AND THE EVIDENCE IN THE CASE.

10 A REASONABLE DOUBT IS NOT ANY SORT OF A DOUBT. YOU
11 AND I KNOW FROM EVERYDAY LIFE EXPERIENCES THAT YOU MAY HAVE
12 A SORT OF A DOUBT ABOUT ANY MATTER THAT ARISES NO MATTER
13 HOW TRIVIAL IT MAY BE OR HOW SERIOUS IT MAY BE.

14 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
15 SINCERE, CONSCIOUS JUROR IN SEARCH OF THE TRUTH HESITATE TO
16 ACT.

17 PROOF BEYOND A REASONABLE DOUBT IS PROOF WHICH LEAVES
18 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

19 IF YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE OR ASSIGN A
20 REASON AS TO THE GUILT OF THE DEFENDANT, THEN HE IS
21 ENTITLED TO A VERDICT OF NOT GUILTY.

22 REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN
23 THE CASE OR FROM THE LACK OR ABSENCE OF EVIDENCE IN THE
24 CASE.

25 YOU, THE JURY, MUST MAKE THE DETERMINATION OF WHETHER

CHARGE OF THE COURT

324

1 OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE
2 DEFENDANT.

3 THE VERY FACT, HOWEVER, THAT A JURY ENGAGES IN A FULL
4 AND FREE DISCUSSION OF THE ISSUE OF GUILT OR NON-GUILT IN A
5 CASE WITH THE ORDINARY CONVERSATIONAL EBB AND FLOW ON THESE
6 ISSUES DOES NOT AUTOMATICALLY MEAN THAT REASONABLE DOUBT
7 EXISTS IN THIS CASE OR IN ANY OTHER CASE.

8 A REASONABLE DOUBT IS NOT A WEAK DOUBT OR A SLIGHT
9 DOUBT, NOR IS IT A WHIMSICAL, FANCIFUL, OR IMAGINARY DOUBT,
10 BUT IT IS A DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO
11 HESITATE TO ACT.

12 I CHARGE YOU THAT THE DEFENDANT IS ENTITLED TO EVERY
13 REASONABLE DOUBT ARISING IN THE WHOLE CASE OR ARISING IN
14 ANY FACT NECESSARY FOR CONVICTION.

15 IF UPON ANY ISSUE OF FACT ESSENTIAL TO CONVICTION AND
16 A VERDICT OF GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW
17 THAT ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO
18 RESOLVE THAT ISSUE IN FAVOR OF THE DEFENDANT.

19 A DEFENDANT, LADIES AND GENTLEMEN, IS NOT REQUIRED TO
20 PROVE HIS INNOCENCE, BUT THE STATE IS REQUIRED BY LAW TO
21 PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSE CHARGED
22 AGAINST THE DEFENDANT BY EVIDENCE WHICH SATISFIES YOU, THE
23 JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
24 DOUBT BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM
25 GUILTY.

CHARGE OF THE COURT

325

1 IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE
2 DOUBT AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT AS TO
3 ANY CHARGE, HE IS ENTITLED TO THAT REASONABLE DOUBT AND
4 WOULD BE ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT
5 GUILTY.

6 BUT ON THE OTHER HAND IF UPON THE WHOLE CASE ON ANY
7 CHARGE YOU FIND THAT THE STATE HAS PROVEN BY EVIDENCE WHICH
8 SATISFIES YOU, THE JURY, OF THE GUILT OF THE DEFENDANT
9 BEYOND A REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCES IT
10 WOULD EQUALLY BE YOUR DUTY TO CONVICT THE DEFENDANT AND
11 FIND HIM GUILTY.

12 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU THAT THE
13 INDICTMENTS IN THIS CASE WHICH I HOLD IN MY HAND ARE NOT
14 EVIDENCE AND CANNOT BE CONSIDERED BY THE JURY AS EVIDENCE
15 IN THE CASE. THE INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN
16 INSTRUMENTS WHICH CONTAIN THE CHARGES AGAINST THE
17 DEFENDANT, AND THEY SERVE AS THE FORMAL DOCUMENTS BY WHICH
18 THIS CASE IS BROUGHT TO TRIAL.

19 DURING THIS TRIAL YOU AND I HAVE CERTAIN DUTIES TO
20 PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO
21 PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE
22 DUTY TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF
23 EVIDENCE OFFERED DURING THE PROGRESS OF THE TRIAL.

24 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE
25 YOU, AND YOU ARE TO DISREGARD AND DISABUSE FROM YOUR MIND

CHARGE OF THE COURT

326

1 ANY EVIDENCE ORDERED STRICKEN FROM THE RECORD OF THIS CASE
2 DURING THE PROGRESS OF THE TRIAL IF THERE BE ANY. AND YOU
3 ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED
4 FROM THE WITNESS STAND, TOGETHER WITH ANY EXHIBITS WHICH
5 HAVE BEEN INTRODUCED INTO THE RECORD OF THIS CASE AND ANY
6 STIPULATIONS OF COUNSEL MADE INTO THE RECORD.

7 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE
8 APPLICABLE LAW IN THIS CASE. AS THE PRESIDING JUDGE, I AM
9 THE SOLE JUDGE OF THE LAW. AND IT IS YOUR DUTY TO ACCEPT
10 AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU HAVE A
11 PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW
12 OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE
13 LAW IS, YOU ARE OBLIGATED UNDER YOUR OATH TO ABANDON THIS
14 PRECONCEPTION ON YOUR PART, BECAUSE YOU ARE SWORN TO ACCEPT
15 THE LAW PRECISELY AS I NOW STATE IT TO YOU.

16 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE
17 JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.
18 YOU, THE JURY, ARE THE JUDGE OF THE FACTS IN THIS CASE.

19 THE COURT IS THE JUDGE OF THE LAW.

20 THE CONSTITUTION OF THIS STATE HAS DECLARED THAT THE
21 TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON, OR
22 MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS OF THE
23 CASE.

24 YOU ARE NOT TO INFER FROM ANYTHING THAT I HAVE SAID
25 DURING THE PROGRESS OF THIS TRIAL, IN RULING UPON THE

CHARGE OF THE COURT

328

1 ITS ENTIRETY.

2 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED ANY
3 INTEREST, ANY BIAS, OR ANY PREJUDICE IN THE CASE.

4 AND YOU MAY CONSIDER THE DEMEANOR OF A WITNESS, THAT
5 IS THE APPEARANCE OF A WITNESS FROM THE WITNESS STAND.

6 AND YOU MAY CONSIDER THE OPPORTUNITY FOR KNOWLEDGE
7 CONCERNING THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED.

8 THESE CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY
9 BUT IF IN YOUR GOOD JUDGMENT THERE IS SOUND REASON IN THE
10 RECORD FOR SO DOING, BECAUSE YOUR OBJECTIVE, LADIES AND
11 GENTLEMEN, IS TO FIND THE TRUTH WHETHER IT COMES FROM ONE
12 OR MORE WITNESSES.

13 AND IN DOING SO, IN EXERCISING YOUR MENTAL PROCESSES
14 AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE, THE LAW
15 SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT, YOUR
16 COMMON SENSE, YOUR SENSE OF LOGIC AND REASON, AND YOUR
17 EXPERIENCES IN LIFE.

18 YOU THEN APPLY THESE ATTRIBUTES OF ABILITY TO THE
19 EVIDENCE AND DETERMINE WHAT YOU CONSIDER TO BE THE TRUTHFUL
20 EVIDENCE, AND TO THESE TRUE STATE OF FACTS AS DETERMINED BY
21 YOU, THE JURY, YOU THEN TAKE AND APPLY THE LAW AS I NOW
22 STATE IT TO YOU AND THUS ARRIVE AT A VERDICT IN THIS CASE.

23 NOW, AS I SAID, THE DEFENDANT IN THIS CASE IS CHARGED
24 IN FOUR INDICTMENTS WITH FOUR SEPARATE CRIMES AND I AM
25 GOING TO DEFINE EACH ONE OF THESE OFFENSES FOR YOU.

CHARGE OF THE COURT

327

1 ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING THAT I
2 SAY TO YOU NOW DURING THE COURSE OF THIS CHARGE TO YOU THAT
3 I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE. I DO NOT.
4 THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE
5 FACTS. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO
6 DETERMINE.

7 AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE AS I
8 HAVE STATED TO YOU THE EFFECT, THE VALUE, THE WEIGHT, AND
9 THE TRUTH OF THE EVIDENCE PRESENTED DURING THE COURSE OF
10 THIS TRIAL.

11 NECESSARILY, THEN, YOU MUST ASSESS THE CREDIBILITY OF
12 THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
13 IS SIMPLY A LEGALISTIC TERM MEANING BELIEVABILITY. IT
14 BECOMES YOUR DUTY THEN TO ANALYZE AND EVALUATE THE EVIDENCE
15 AND TO DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS
16 TRUTH.

17 I CHARGE YOU THAT IN DETERMINING THE QUESTION OF
18 CREDIBILITY OR BELIEVABILITY OF THE WITNESSES, YOU MAY
19 BELIEVE ONE WITNESS AS AGAINST SEVERAL WITNESSES OR SEVERAL
20 WITNESSES AS AGAINST ONE WITNESS.

21 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS
22 AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME
23 WITNESS.

24 YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
25 ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF A WITNESS IN

CHARGE OF THE COURT

329

1 SINCE I HAVE THEM IN THIS ORDER, I WILL JUST DEFINE
2 THEM IN THIS ORDER. THE INDICTMENT NUMBERS MAY VARY A
3 LITTLE BIT, BUT I AM GOING TO DEFINE FIRST FOR YOU THE
4 CRIME OF CRIMINAL SEXUAL CONDUCT WHICH IS CONTAINED IN THE
5 CHARGE IN INDICTMENT NO. 1641.

6 THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL CONDUCT
7 IN THE FIRST DEGREE. THE FIRST ELEMENT WHICH THE STATE
8 MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT
9 ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM.

10 A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS,
11 FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION HOWEVER SLIGHT
12 OF ANY PART OF A PERSON'S BODY OR OF AN OBJECT INTO THE
13 GENITAL OR ANAL OPENINGS ON ANOTHER PERSON'S BODY EXCEPT
14 WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED
15 TREATMENT OR DIAGNOSTIC PURPOSES.

16 IF YOU FIND THE STATE HAS NOT SHOWN BEYOND A
17 REASONABLE DOUBT THAT THE SEXUAL BATTERY OCCURRED, YOU
18 WOULD STOP DELIBERATING AND YOUR VERDICT WOULD BE NOT
19 GUILTY.

20 IF YOU FIND A SEXUAL BATTERY HAD OCCURRED, THEN YOU
21 MUST DECIDE WHETHER THE STATE HAS PROVEN BEYOND A
22 REASONABLE DOUBT THAT THE DEFENDANT USED AGGRAVATED FORCE
23 TO ACCOMPLISH THE SEXUAL BATTERY. AGGRAVATED FORCE MEANS
24 THE USE OF PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH
25 AND AGGRAVATED NATURE TO OVERCOME THE VICTIM. THIS

CHARGE OF THE COURT

330

1 INCLUDES THE THREAT OF USING A DEADLY WEAPON.

2 SECONDLY, THAT THE VICTIM SUBMITTED TO SEXUAL BATTERY
3 WHILE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE
4 CONFINEMENT, KIDNAPING, ROBBERY, EXTORTION, BURGLARY,
5 HOUSEBREAKING, OR ANY OTHER SIMILAR ACT OR OFFENSE.

6 AND THAT WOULD BE THE DEFINITION OF CRIMINAL SEXUAL
7 CONDUCT IN THE FIRST DEGREE.

8 THE CRIME THAT IS ALLEGED IN INDICTMENT NO. 1640 IS
9 THAT OF KIDNAPING. AND I WOULD TELL YOU THAT SECTION
10 16-3-910 OF OUR CODE IS CAPTIONED KIDNAPING. AND IT READS
11 IN PART: WHOEVER SHALL UNLAWFULLY SEIZE, CONFINED,
12 INVEIGLE, DECOY, KIDNAP, ABDUCT, OR CARRY AWAY ANY OTHER
13 PERSON BY ANY MEANS WHATSOEVER WITHOUT AUTHORITY OF LAW
14 SHALL BE GUILTY OF A FELONY.

15 THE WORD UNLAWFULLY APPLIES TO EACH OF THE SUBSEQUENT
16 WORDS OF SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP, ABDUCT,
17 AND CARRY AWAY AND ALSO TO ANY OTHER PERSON.

18 ALSO EACH OF THE WORDS STARTING WITH SEIZE THROUGH
19 CARRY AWAY RELATES TO AND INCLUDES ONLY ANY OTHER PERSON.

20 THE TERM UNLAWFULLY MEANS AGAINST THE LAW OR ILLEGAL,
21 WITHOUT AUTHORITY OF LAW. IT MEANS WITHOUT AUTHORIZATION
22 OF LAW OR WITHOUT THE LEGAL POWER UNDER THE LAW OR WITHOUT
23 BASIS OR SANCTION IN THE LAW.

24 SEIZE MEANS TO TAKE AWAY OR TO TAKE HOLD OF FORCIBLY.

25 CONFINED MEANS TO IMPRISON OR SHUT UP OR RESTRAIN.

CHARGE OF THE COURT

331

1 KIDNAPING IS A FORCIBLE TAKING AND REMOVAL OF THE
2 PERSON FROM ONE PLACE TO ANOTHER AGAINST HIS WILL
3 UNLAWFULLY AND WITHOUT AUTHORITY OF LAW.

4 ABDUCT MEANS TO TAKE A PERSON AWAY UNLAWFULLY BY FORCE
5 OR TO KIDNAP WITHOUT CONSENT.

6 CARRYING AWAY MEANS MOVING FROM ONE PLACE TO ANOTHER
7 UNLAWFULLY WITHOUT AUTHORITY OF LAW AND WITHOUT THE CONSENT
8 OF THE PERSON BEING CARRIED AWAY.

9 THE CARRYING AWAY NEED NOT BE OF A SPECIFIC DISTANCE
10 IF IT IS ONLY A SUFFICIENT LENGTH TO ESTABLISH THAT IT WAS
11 UNLAWFULLY AND WITHOUT AUTHORITY OF LAW AND WITH THE
12 PURPOSE TO VIOLATE THE LAW.

13 UNDER THE STATUTE THE STATE NEED NOT PROVE EACH OF THE
14 TERMS, SEIZE, CONFINED, INVEIGLE, DECOY, KIDNAP, ABDUCT, OR
15 CARRY AWAY. PROOF OF ANY ONE IS SUFFICIENT PROVIDED THE
16 STATE PROVES THAT THIS WAS DONE, THAT IT WAS DONE
17 UNLAWFULLY, AND WITHOUT AUTHORITY OF LAW, AND WITHOUT THE
18 CONSENT OF THE VICTIM. THIS IS BECAUSE ALL OF THE TERMS
19 UNDER THE STATUTE THAT I HAVE READ TO YOU ARE EMBRACED
20 WITHIN THE CAPTION KIDNAPING.

21 EACH OF THE TERMS, HOWEVER, REQUIRES A TAKING AND
22 CARRYING AWAY WITHOUT CONSENT, AND I HAVE CHARGED CONSENT
23 ONCE GIVEN MAY BE WITHDRAWN.

24 SO AGAIN, JUST IN SHORT I WOULD TELL YOU THAT THE
25 CRIME OF KIDNAPING IS THE DEPRIVATION OF FREEDOM AND THE

CHARGE OF THE COURT

332

1 IMPOSITION OF CONFINEMENT AGAINST ANOTHER PERSON BY ANY
2 MEANS WHATSOEVER.

3 NOW THE CRIME OF BURGLARY IS ALSO CHARGED AGAINST THE
4 DEFENDANT. AND THE STATE MUST PROVE BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT
6 CONSENT. A DWELLING IS ANY BUILDING OR PORTION OF A
7 BUILDING IN WHICH A PERSON ORDINARILY SLEEPS. A BUILDING
8 CONSTRUCTED AS A DWELLING THAT HAS NEVER BEEN OCCUPIED
9 CANNOT BE CONSIDERED A DWELLING FOR PURPOSES OF BURGLARY.

10 BUT A BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE
11 TEMPORARILY ABSENT FROM THE BUILDING.

12 IN ORDER TO PROVE THAT THE DEFENDANT ENTERED THE
13 DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT THE
14 DEFENDANT'S ENTIRE BODY ENTERED THE BUILDING.

15 IF A PERSON ENTERS A BUILDING BY USING DECEPTION,
16 ARTIFICE, TRICK, OR MISREPRESENTATION TO GET CONSENT TO
17 ENTER, THIS IS AN ENTRY WITHOUT CONSENT.

18 NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
19 THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A
20 FELONY OR A MISDEMEANOR, AT THE TIME OF ENTRY.

21 THE MERE ENTRY INTO THE DWELLING WITHOUT CONSENT IS
22 NOT BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED
23 AFTER THE ENTRY, IT IS NOT BURGLARY.

24 ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT
25 A CRIME AT THE TIME OF ENTRY, IT IS A BURGLARY EVEN IF THE

CHARGE OF THE COURT

333

1 INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER
2 THAT THE INTENDED CRIME WAS NOT COMPLETED.

3 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
4 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
5 NATURALLY AND REASONABLY INFER INTENT.

6 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
7 DOUBT THAT WHEN ENTERING, WHILE IN THE DWELLING, OR WHILE
8 FLEEING THE DEFENDANT WAS ARMED WITH A DEADLY WEAPON OR
9 EXPLOSIVE.

10 A DEADLY WEAPON IS ANY ARTICLE, INSTRUMENT, OR
11 SUBSTANCE WHICH LIKELY WOULD CAUSE DEATH OR GREAT BODILY
12 HARM. WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY
13 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.

14 THE FOLLOWING ARE EXAMPLES OR INSTRUMENTS WHICH MAY BE
15 DEADLY WEAPONS. A PISTOL, A SHOTGUN, A RIFLE, A DIRK, A
16 DAGGER, A KNIFE OR SLINGSHOT, METAL KNUCKLES, RAZOR,
17 LIGHTER FLUID.

18 A GUN MAY BE A DEADLY WEAPON EVEN IF IT IS NOT
19 OPERATING.

20 THAT'S ONE OF THE CIRCUMSTANCES OF AGGRAVATION. OR
21 YOU COULD ALSO DETERMINE THAT AN ELEMENT OF FIRST DEGREE
22 BURGLARY -- NOT BOTH OF THESE DON'T HAVE TO BE PRESENT BUT
23 AT LEAST ONE OF THEM DOES, THAT WHEN ENTERING OR WHILE IN
24 THE DWELLING OR WHILE FLEEING THE DEFENDANT CAUSED PHYSICAL
25 HARM TO ANYONE NOT PARTICIPATING IN THE CRIME.

CHARGE OF THE COURT

334

1 NOW, LADIES AND GENTLEMEN, THE FOURTH CHARGE IS ONE OF
2 POSSESSION OF A WEAPON DURING THE COMMISSION OF A CRIME OF
3 VIOLENCE. AND I WOULD TELL YOU, YOU WOULD NOT EVEN REACH
4 THIS CHARGE UNLESS YOU FIND THE DEFENDANT GUILTY OF AT
5 LEAST ONE OF THE OTHER THREE. ALL THREE OF THE CHARGES OF
6 KIDNAPING, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, AND
7 BURGLARY ARE ALL CONSIDERED VIOLENT CRIMES. SO BEFORE YOU
8 WOULD EVEN GO TO THIS LAST CHARGE, YOU WOULD HAVE TO FIND
9 THE DEFENDANT GUILTY OF AT LEAST ONE OF THOSE VIOLENT
10 CRIMES.

11 IF YOU FIND THE DEFENDANT NOT GUILTY OF ALL THREE OF
12 THOSE, THEN YOU WOULD NOT EVEN REACH THIS CHARGE.

13 BUT I WOULD TELL YOU THAT THE DEFENDANT IS CHARGED
14 WITH POSSESSION OF A WEAPON DURING THE COMMISSION OF A
15 CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
16 THE DEFENDANT WAS IN POSSESSION OF A FIREARM OR VISIBLY
17 DISPLAYED WHAT APPEARED TO BE A FIREARM DURING THE
18 COMMISSION OF A VIOLENT CRIME.

19 I PREVIOUSLY TOLD YOU SOME DEFINITIONS OF A FIREARM.
20 BUT A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
21 REVOLVER, PISTOL, OR OTHER WEAPON WHICH IS DESIGNED TO OR
22 MAY READILY BE CONVERTED TO EXPEL A PROJECTILE.

23 IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF
24 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME YOU MUST
25 FIRST FIND THE DEFENDANT GUILTY OF COMMITTING THE VIOLENT

CHARGE OF THE COURT

335

1 CRIME. AND AS I HAVE TOLD YOU, KIDNAPING, BURGLARY FIRST,
2 AND CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE ARE ALL
3 CONSIDERED VIOLENT CRIMES, SO YOU WOULD HAVE TO FIND THE
4 DEFENDANT GUILTY OF AT LEAST ONE OF THOSE BEFORE YOU WOULD
5 REACH THIS FOURTH CHARGE AGAINST THE DEFENDANT.

6 NOW, LADIES AND GENTLEMEN, JUST A FEW OTHERS
7 MISCELLANEOUS MATTERS THAT I DO WANT TO INSTRUCT YOU ON.
8 THERE ARE GENERALLY TWO TYPES OF EVIDENCE WHICH ARE
9 GENERALLY PRESENTED DURING A TRIAL; DIRECT EVIDENCE AND
10 CIRCUMSTANTIAL EVIDENCE.

11 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
12 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH
13 AS AN EYEWITNESS.

14 CIRCUMSTANTIAL EVIDENCE IS PROOF OF THE CHAIN OF FACTS
15 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

16 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
17 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR
18 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
19 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN IS
20 REQUIRED OF DIRECT EVIDENCE.

21 YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THIS CASE, AND
22 AFTER WEIGHING ALL OF THE EVIDENCE IF YOU ARE NOT CONVINCED
23 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU
24 WOULD FIND THE DEFENDANT NOT GUILTY.

25 ON THE OTHER HAND AFTER WEIGHING ALL OF THE EVIDENCE

CHARGE OF THE COURT

336

1 IF YOU ARE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A
2 REASONABLE DOUBT, YOU WOULD FIND THE DEFENDANT GUILTY.

3 NOW, YOU ALSO RECALL THAT I HAVE ADMITTED AND THE
4 COURT HAS ADMITTED TESTIMONY OF WITNESSES WHOM WE CONSIDER
5 EXPERT WITNESSES. THE RULES OF EVIDENCE ORDINARILY DO NOT
6 PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN
7 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WHO ARE CALLED
8 EXPERT WITNESSES.

9 A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS BECOME
10 AN EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY
11 STATE AN OPINION AS TO THE RELEVANT AND MATERIAL MATTER IN
12 WHICH THE WITNESS CLAIMS TO BE AN EXPERT AND MAY ALSO STATE
13 THE REASONS FOR THE OPINION.

14 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
15 EVIDENCE IN THIS CASE AND LIKE ANY OTHER EVIDENCE, GIVE IT
16 THE WEIGHT YOU THINK IT DESERVES.

17 IF YOU DECIDE THAT THE OPINION OF THE EXPERT IS NOT
18 BASED ON SUFFICIENT EDUCATION OR EXPERIENCE OR YOU CONCLUDE
19 THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT
20 SOUND OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE,
21 YOU MAY DISREGARD THE OPINION ENTIRELY.

22 AN EXPERT'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT
23 THAN THAT OF ANY OTHER WITNESS SIMPLY BECAUSE THE WITNESS
24 IS AN EXPERT.

25 AND, FINALLY, LADIES AND GENTLEMEN, I WANT TO TELL YOU

CHARGE OF THE COURT

337

1 THIS. I TELL YOU NOW AND I EMPHASIZE TO YOU THAT THE
2 ELECTION OF A DEFENDANT IN THE TRIAL OF A CRIMINAL CASE NOT
3 TO TESTIFY ON HIS OWN BEHALF IS NOT A FACTOR TO BE
4 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN
5 YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR
6 INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY
7 YOU IN ANY MANNER WHATSOEVER AGAINST THE DEFENDANT OR
8 MITIGATE AGAINST HIM IN ANY RESPECT WHATSOEVER.

9 A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN
10 SILENT, AND THE ASSERTION OF SUCH CONSTITUTIONAL RIGHT
11 CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR
12 DELIBERATIONS.

13 UNDER YOUR OATH THEN, YOU ARE TO REACH NO INFERENCE
14 AND DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT A
15 DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY.

16 THE ELECTION OF THIS DEFENDANT NOT TO TESTIFY SHOULD
17 NOT EVEN BE DISCUSSED IN YOUR JURY ROOM. THE BURDEN OF
18 PROOF AS I HAVE STATED TO YOU IS UPON THE STATE. IT IS NOT
19 INCUMBENT UPON THE ACCUSED TO PROVE HIS INNOCENCE.

20 THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE THE
21 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT AND THE
22 ELECTION OF A DEFENDANT NOT TO TESTIFY IS NOT A FACTOR TO
23 BE CONSIDERED BY YOU IN DETERMINING THE GUILT OR INNOCENCE
24 OF THE DEFENDANT.

25 NOW, LADIES AND GENTLEMEN, AS YOU WELL KNOW DURING

CHARGE OF THE COURT

338

1 THIS TRIAL I HAVE PERMITTED THOSE JURORS WHO WANTED TO, TO
2 TAKE NOTES. YOU MAY TAKE THESE NOTES WITH YOU TO YOUR JURY
3 ROOM AND USE THEM DURING YOUR DELIBERATIONS IF YOU WISH.
4 AS I TOLD YOU AT THE BEGINNING OF THE TRIAL, YOUR NOTES
5 ONLY ARE INTENDED TO BE AN AID TO YOUR MEMORY AND SHOULD
6 NOT TAKE PRECEDENCE OVER YOUR INDEPENDENT RECOLLECTION.
7 THOSE JURORS WHO HAVE NOT TAKEN NOTES SHOULD RELY ON THEIR
8 OWN MEMORY OF THE EVIDENCE AND SHOULD NOT BE INFLUENCED BY
9 THE FACT THAT ANOTHER JUROR HAS TAKEN NOTES, SINCE THE
10 NOTES ARE ONLY FOR THE NOTE TAKER'S OWN PERSONAL USE IN
11 ASSISTING HIS OR HER MEMORY OF THE EVIDENCE.

12 AT THE END OF YOUR DELIBERATIONS, PLEASE TEAR OUT FROM
13 YOUR NOTEBOOKS ANY NOTES YOU HAVE MADE AND GIVE THEM TO
14 YOUR FOREPERSON. THE BAILIFF WILL COLLECT THE NOTEBOOKS
15 AND PENCILS WHEN YOU RETURN TO THE COURTROOM, AND I WILL
16 ASK THE FOREPERSON TO GIVE THE BAILIFF YOUR NOTES WHEN YOUR
17 VERDICT IS RETURNED. I WILL DESTROY YOUR NOTES IMMEDIATELY
18 AFTER THE TRIAL AND NO ONE INCLUDING MYSELF WILL LOOK AT
19 THEM.

20 AGAIN, THOUGH, I WILL TELL YOU AS I DID AT THE
21 BEGINNING, THAT YOU WILL NOT HAVE A WRITTEN TRANSCRIPT OF
22 THE TRIAL TO CONSULT, AND IT IS DIFFICULT AND TIME
23 CONSUMING FOR THE COURT REPORTER TO READ BACK OR PLAY BACK
24 THE LENGTHY TESTIMONY. I NOTICE THAT YOU HAVE GIVEN CLOSE
25 ATTENTION TO THE TESTIMONY, AND I THINK YOU WILL BE ABLE TO

CHARGE OF THE COURT

339

1 RECALL THE MATTERS THAT YOU NEED TO RECALL TO REACH A
2 VERDICT IN THIS CASE.

3 NOW, LADIES AND GENTLEMEN, I HAVE JUST ABOUT FINISHED
4 MY INSTRUCTIONS TO YOU, BUT I WANT TO TELL YOU THAT IT HAS
5 BEEN SAID THAT WHEN YOU SERVE ON A JURY, YOU ARE NOT
6 PARTISANS OR ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR
7 FOR THIS DEFENDANT. OBVIOUSLY, SUCH A PERVERTED SYSTEM OF
8 JUSTICE WOULD BE INTOLERABLE.

9 YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE
10 DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY
11 THEN BY YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN
12 THIS CASE, GIVING TO THE DEFENDANT THE BENEFIT OF EACH
13 REASONABLE DOUBT ON EACH AND EVERY ISSUE, AND THEN TO THE
14 FACTS WHICH YOU DETERMINE TO BE TRUE, YOU THEN TAKE AND
15 APPLY THE LAW WHICH THE COURT HAS GIVEN TO YOU, AND ARRIVE
16 AT A VERDICT WHICH DOES SPEAK THE TRUTH, BECAUSE THE WORD
17 VERDICT, LADIES AND GENTLEMEN, COMES FROM THE LATIN PHRASE
18 VEREDICTO, MEANING TO SPEAK THE TRUTH. AND WHEN YOU HAVE
19 DONE THAT, YOU WILL HAVE SATISFIED YOUR OATH AS JURORS AND
20 YOU WILL HAVE DISCHARGED YOUR DUTY TO THIS COURT.

21 NOW, LADIES AND GENTLEMEN, I WANT TO INSTRUCT YOU ON
22 THE FORMS OF VERDICT IN THIS CASE, AND ON EACH CHARGE THERE
23 ARE TWO POSSIBLE VERDICTS: YOU WILL CONSIDER EACH CHARGE
24 SEPARATELY. AND IF YOU FIND THAT THE STATE HAS FAILED TO
25 PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT

CHARGE OF THE COURT

340

1 AS TO ANY CHARGE, YOUR VERDICT WOULD BE TWO WORDS, NOT
2 GUILTY.

3 IF THE STATE HAS PROVEN THE GUILT OF THE DEFENDANT
4 BEYOND A REASONABLE DOUBT, YOUR VERDICT WOULD BE ONE WORD,
5 GUILTY.

6 THE VERDICT THAT YOU RENDER IN THIS CASE MUST BE THE
7 VERDICT OF EACH AND EVERY JUROR. IT MUST BE YOUR UNANIMOUS
8 VERDICT. ALL 12 MUST AGREE ON THE VERDICT WHICH YOU
9 AUTHORIZE YOUR FOREMAN TO WRITE.

10 NOW, MR. FOREMAN, I HAVE PREPARED ON SEPARATE SHEETS
11 OF PAPER -- AND I'M GOING TO TALK FIRST JUST ABOUT THE
12 THREE VERDICT FORMS ON THE BURGLARY, THE CRIMINAL SEXUAL
13 CONDUCT, AND THE KIDNAPING CHARGES. I HAVE PREPARED THREE
14 SEPARATE VERDICT FORMS FOR YOUR USE, AND I WOULD TELL YOU
15 FIRST OF ALL THAT THE ORDER IN WHICH I HAVE PUT YOUR
16 POSSIBLE VERDICTS ON THESE VERDICT FORMS HAS NO
17 SIGNIFICANCE WHATSOEVER.

18 YOU SHOULD NOT INFER FROM THE ORDER IN WHICH I HAVE
19 PUT THE POSSIBLE VERDICTS ON HERE THAT I HAVE ANY OPINION
20 AS TO WHAT YOUR VERDICT SHOULD BE. I DO NOT. BUT
21 OBVIOUSLY IN PUTTING SOMETHING DOWN ON A PIECE OF PAPER, I
22 HAD TO PUT SOMETHING FIRST AND PUT SOMETHING SECOND.

23 BUT ACROSS THE TOP ON ALL THREE PAGES ARE THE STATE
24 AND THE FORMALITIES OF THE CASE, THE CASE NUMBER, AND THE
25 NAME, AND RIGHT HERE IS VERDICT. AND EACH ONE OF THEM

CHARGE OF THE COURT

341

1 SAYS: WE THE JURY BY UNANIMOUS CONSENT ON THE CHARGE OF --
2 AND ONE IS BURGLARY FIRST, ONE IS CRIMINAL SEXUAL CONDUCT
3 FIRST, AND ONE IS KIDNAPING -- FIND THE DEFENDANT,
4 NATHANIEL JOHNSON, EITHER GUILTY OR NOT GUILTY AND YOU
5 WOULD SIMPLY MAKE AN "X" OR A CHECK ON EACH SEPARATE
6 VERDICT FORM AND SIGN YOUR NAME HERE.

7 AND THEN IF AND ONLY IF YOU FIND THE DEFENDANT GUILTY
8 OF ONE -- NOT ALL, BUT ONE OF THOSE THREE, YOU CAN THEN GO
9 AND CONSIDER THE POSSESSION OF A WEAPON DURING THE
10 COMMISSION OF A VIOLENT CRIME WHICH IS THIS LAST VERDICT
11 FORM.

12 AND IT SAYS: IF YOU FIND THE DEFENDANT GUILTY OF
13 BURGLARY FIRST OR CRIMINAL SEXUAL CONDUCT FIRST DEGREE OR
14 KIDNAPING, YOU MAY CONSIDER THIS INDICTMENT FOR POSSESSING
15 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

16 IF YOU FIND HIM NOT GUILTY ON EACH OF THESE KINDS, DO
17 NOT CONSIDER THIS CHARGE.

18 AND THEN YOU WOULD FIND ON THE CHARGE OF POSSESSION OF
19 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WE FIND
20 THE DEFENDANT EITHER GUILTY OR NOT GUILTY.

21 NOW, LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO
22 YOUR JURY ROOM, GOING TO ASK THAT YOU NOT BEGIN YOUR
23 DELIBERATIONS JUST YET. THE LAW REQUIRES THAT I TAKE UP
24 CERTAIN MATTERS OF LAW WITH THE ATTORNEYS IN THIS CASE.
25 AND IF IT IS NOT NECESSARY FOR ME TO BRING YOU BACK INTO

1 THE COURTROOM FOR ADDITIONAL INSTRUCTIONS, THE BAILIFFS
2 WILL BRING YOU THE VERDICT FORMS, THEY WILL BRING YOU THE
3 EXHIBITS, AND TELL YOU TO BEGIN YOUR DELIBERATIONS.

4 AND THEN AS SOON AS YOU HAVE REACHED A VERDICT, KNOCK
5 ON THE DOOR, AND WE WILL RETURN YOU TO THE COURTROOM AS
6 SOON AS POSSIBLE.

7 SO IF YOU WOULD, GO TO YOUR JURY ROOM AND YOU MAY TAKE
8 YOUR NOTES BUT DO NOT BEGIN YOUR DELIBERATIONS JUST YET.
9 THANK YOU VERY MUCH.

10 (THE JURY RETIRES TO THE JURY ROOM AT 2:51 P.M.)

11 THE COURT: ARE THERE ANY ADDITIONS OR EXCEPTIONS ON
12 BEHALF OF THE STATE, MS. MILLICAN?

13 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.

14 THE COURT: ON BEHALF OF THE DEFENDANT, MS. SMART?

15 MS. SMART: NO OBJECTION, YOUR HONOR.

16 THE COURT: ALL RIGHT. COUNSEL, WITH REGARD TO THE
17 ALTERNATE, I PROPOSE TO EXCUSE THE ALTERNATE. EVERYONE
18 SEEMS TO HAVE REMAINED HEALTHY AND WE'VE GOT EVERYBODY
19 HERE. ANY OBJECTION TO THAT PROCEDURE?

20 MS. MILLICAN: NOT FROM THE STATE, YOUR HONOR.

21 THE COURT: MS. SMART, ANY OBJECTION TO EXCUSING THE
22 ALTERNATE AT THIS POINT?

23 MS. SMART: NO, SIR.

24 THE COURT: OKAY. ALL RIGHT. IF YOU WOULD GET THE
25 EXHIBITS TOGETHER. MR. BAILIFF, HERE ARE THE VERDICT

1 FORMS. ASK THE ALTERNATE TO COME BACK IN HERE. AND GIVE
2 THOSE TO THE JURY AND TELL THEM THAT THEY MAY BEGIN THEIR
3 DELIBERATIONS.

4 (PAUSE.)

5 THE COURT: YES, MA'AM.

6 MS. SMART: I'D LIKE TO RENEW ALL MY PREVIOUS MOTIONS
7 FOR THE SAME REASONS.

8 THE COURT: ALL RIGHT. I DON'T THINK THAT'S
9 NECESSARY, BUT THAT'S NOTED.

10 (PAUSE.)

11 THE COURT: ALL RIGHT. TAKE THE EXHIBITS AND THE
12 VERDICT FORMS AND TELL THE JURY TO BEGIN THEIR
13 DELIBERATION.

14 MS. MILLICAN: OH, YOUR HONOR, FOR THE SHEET, THE BIG
15 PIECE OF SHEET ---

16 THE COURT: THE WHAT?

17 MS. MILLICAN: SEND BACK SOME GLOVES FOR THE JURORS ON
18 THAT IF THEY DECIDE TO TAKE THAT OUT OF THAT PACKAGING,
19 IT'S JUST A ---

20 OFFICER: IT'S IN A BIO-HAZARD BAG.

21 THE COURT: DO YOU ALL HAVE SOME GLOVES?

22 (PAUSE.)

23 MS. MILLICAN: WE CAN PROBABLY FIND SOME.

24 THE COURT: ALL RIGHT.

25 MS. MILLICAN: HERE WE GO. I FIGURED WE COULD TRACK

1 SOME DOWN. THANKS.

2 THE COURT: ALL RIGHT. WE'LL LET THEM TAKE THOSE BACK
3 THERE.

4 (THE EXHIBITS AND VERDICT FORMS WERE SENT TO THE JURY
5 TO BEGIN DELIBERATIONS AT 2:55 P.M.)

6 (THE ALTERNATE IS EXCUSED.)

7 THE COURT: ALL RIGHT. ANY OBJECTION TO THAT METHOD
8 OF HANDLING THE ALTERNATE?

9 MS. MILLICAN: NOT FROM THE STATE, YOUR HONOR.

10 THE COURT: ALL RIGHT. I DON'T KNOW WHERE MS. SMART
11 WENT, BUT I ASSUME IT'S OKAY. SHE ALREADY TOLD ME SHE
12 DIDN'T HAVE ANY OBJECTION.

13 ANYTHING ELSE FROM THE STATE THIS AFTERNOON?

14 (PAUSE.)

15 THE COURT: WE'LL BE AT EASE UNTIL WE HEAR FROM THE
16 JURY.

17 (THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

18 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH
19 REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON,
20 JR. MR. JOHNSON IS PRESENT IN COURT WITH HIS ATTORNEY.
21 THE STATE'S COUNSEL IS ALSO HERE.

22 TO BRING EVERYBODY UP TO DATE AND PUT ON THE RECORD
23 WHAT HAS TRANSPIRED. THE BAILIFF CAME TO ME ABOUT HALF AN
24 HOUR AGO AND INDICATED THAT THE FOREMAN HAD COME TO THE
25 DOOR AND ASKED OR SAID THAT THEY'RE NOT CLOSE TO A DECISION

1 AND DO THEY NEED TO MAKE A DECISION TODAY?

2 I TOLD THE BAILIFF TO HAVE THE FOREMAN PUT THE
3 QUESTION IN WRITING AND SUBMIT IT, AND HE DID. AND I HAVE
4 THAT IN WRITING. AND THAT IS THE QUESTION. WE ARE NOT
5 CLOSE TO A DECISION. DO WE HAVE TO MAKE A DECISION TODAY?
6 SIGNED RAYMOND JOHNSON, SR., FOREMAN.

7 I'M GOING TO GIVE THE NOTE TO THE COURT REPORTER, HAVE
8 HER MARK IT AS COURT'S EXHIBIT NO. 4 AND MAKE IT A PART OF
9 THE RECORD.

10 (NOTE FROM JURY MARKED FOR IDENTIFICATION AS COURT'S
11 EXHIBIT NO. 4.)

12 THE COURT: UPON RECEIVING THAT NOTE I HAD BOTH
13 COUNSEL COME TO CHAMBERS AND WE DISCUSSED IT AND CONCLUDED
14 THAT WE WOULD LEAVE IT UP TO THE JURY. AND IF THEY WANTED
15 TO CONTINUE WORKING, THEY COULD DO SO. OR IF THEY WOULD
16 LIKE TO GO HOME AND COME BACK AND START FRESH TOMORROW,
17 THEY COULD DO THAT AS WELL.

18 I THEN ASKED THE BAILIFF TO HAVE THE FOREMAN COME TO
19 MY CHAMBERS WITH COUNSEL PRESENT, AND I ASKED HIM TO GET A
20 CONSENSUS FROM THE JURY AS TO WHETHER THEY WANTED TO GO
21 HOME AND COME BACK.

22 AFTER A SUFFICIENT AMOUNT OF TIME HE HAD NOT LET US
23 KNOW ANYTHING, SO I HAD HIM COME BACK. HE ADVISED IN THE
24 PRESENCE OF COUNSEL THAT THEY WISHED TO CONTINUE WORKING
25 FOR A WHILE TONIGHT TO SEE IF THEY COULD RESOLVE THE ISSUE.

1 I TOLD HIM AT THAT TIME THAT THAT WAS PERFECTLY ALL
2 RIGHT. OR IF THEY DECIDED AT ANY TIME IF THEY WANTED TO GO
3 HOME, TO LET US KNOW. AND ALSO IF I COULD BE OF ANY HELP
4 TO THEM ON THE LAW, I WOULD BE GLAD TO DO THAT BUT THAT I
5 OBVIOUSLY COULD NOT SAY ANYTHING ABOUT THE FACTS.

6 AND WITH THAT HE WENT BACK TO THE JURY, AND THEY HAVE
7 RESUMED THEIR DELIBERATIONS. IS THAT AN ACCURATE
8 RECITATION OF WHERE WE STOOD FROM YOUR STANDPOINT, MS.
9 MILLICAN?

10 MS. MILLICAN: YES, YOUR HONOR.

11 THE COURT: MS. SMART?

12 MS. SMART: YES, YOUR HONOR.

13 THE COURT: AND ANY OBJECTION TO THAT PROCEDURE?

14 MS. MILLICAN: NOT FROM THE STATE.

15 THE COURT: ANY OBJECTION, MS. SMART?

16 MS. SMART: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. THAT BEING THE CASE, THE JURY
18 HAS DECIDED TO WORK FOR A WHILE LONGER SO WE WILL BE AT
19 EASE UNTIL WE HEAR FROM THE JURY.

20 (THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

21 (NOTE FROM JURY MARKED FOR IDENTIFICATION AS COURT'S
22 EXHIBIT NO. 5.)

23 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD WITH
24 REGARD TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON,
25 JR. MR. JOHNSON IS PRESENT WITH HIS COUNSEL. MS. MILLICAN

1 IS HERE ON BEHALF OF THE STATE.

2 BEFORE I COULD GET BACK TO THE OFFICE, WE HAD ANOTHER
3 NOTE FROM THE JURY WHICH HAS BEEN MARKED AS COURT'S EXHIBIT
4 NO. 5. THIS NOTE SAYS, YOUR HONOR, WE WOULD LIKE TO
5 REQUEST THE DIAGRAM OF THE TWO TRAILERS, ROAD, AND
6 SURROUNDING AREA. AND IT'S SIGNED BY THE FOREMAN.

7 MY PROPOSAL WOULD BE IF AGREEABLE TO THE PARTIES -- OR
8 I'LL LISTEN TO WHATEVER YOU WOULD LIKE TO SAY -- WOULD BE
9 TO SIMPLY RATHER THAN MARCH THE WHOLE JURY IN HERE TO TELL
10 THEM THIS, WOULD BE JUST TO BRING THE FOREMAN IN AND LET ME
11 TELL HIM THAT THOSE ITEMS WERE NOT INTRODUCED INTO EVIDENCE
12 AND THEREFORE CANNOT GO TO THE JURY ROOM.

13 ANY OBJECTION TO THAT?

14 MS. MILLICAN: NO OBJECTION, YOUR HONOR.

15 THE COURT: ANY OBJECTION TO THAT?

16 MS. SMART: NO OBJECTION, YOUR HONOR.

17 THE COURT: ALL RIGHT. BRING ME THE FOREMAN ONLY
18 PLEASE. THE REST OF THEM QUIT DELIBERATING WHILE HE'S OUT
19 OF THE ROOM.

20 (THE FOREMAN ENTERS THE COURTROOM AT 5:20 P.M.)

21 THE COURT: YOU CAN JUST STAND RIGHT THERE, MR.
22 FOREMAN. I HAVE YOUR SECOND NOTE. AND, OF COURSE, THE
23 NOTE WAS: WE WOULD LIKE TO REQUEST THE DIAGRAM OF THE TWO
24 TRAILERS, ROAD, AND SURROUNDING AREA.

25 ALL I CAN TELL YOU IS THAT THOSE ITEMS WERE NOT

1 OFFERED OR ADMITTED INTO EVIDENCE AND THEREFORE THEY CANNOT
2 BE TAKEN TO THE JURY ROOM WITH YOU, AND SO I CANNOT LET YOU
3 HAVE THOSE. ALL RIGHT?

4 FOREMAN: YES, SIR.

5 THE COURT: THANK YOU, SIR.

6 (THE FOREMAN RETURNS TO THE JURY ROOM AT 5:21 P.M.)

7 THE COURT: ANY OBJECTION TO THAT PROCEEDING ON BEHALF
8 OF THE STATE, MS. MILLICAN?

9 MS. MILLICAN: NO, YOUR HONOR.

10 THE COURT: ON BEHALF OF THE DEFENSE?

11 MS. SMART: NONE, YOUR HONOR.

12 THE COURT: ALL RIGHT. BE AT EASE AGAIN. THANK YOU.

13 (THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

14 THE COURT: ALL RIGHT. BACK ON THE RECORD WITH REGARD
15 TO THE MATTER OF THE STATE VERSUS NATHANIEL JOHNSON. MR.
16 JOHNSON IS PRESENT WITH HIS COUNSEL. THE STATE IS ALSO
17 PRESENT WITH MS. MILLICAN.

18 COUNSEL, I HAVE NOT HEARD ANYTHING FROM THE JURY.
19 WHAT I WOULD PROPOSE -- IT'S BEEN ABOUT AN HOUR SINCE THEY
20 SAID THEY WOULD CONTINUE TO WORK FOR A WHILE -- ACTUALLY
21 ABOUT 45 MINUTES, I GUESS. BUT WHAT I THOUGHT I WOULD DO
22 IF IT'S AGREEABLE WITH COUNSEL IS BRING THE FOREMAN IN AND
23 TELL HIM THAT THEY ARE WELCOME TO WORK AS LONG AS THEY WANT
24 TO, WE'RE NOT TRYING TO STARVE THEM TO DEATH THOUGH. IF
25 THEY WANT TO HAVE DINNER BROUGHT IN, WE WOULD BRING DINNER

1 IN. IT WILL TAKE US ABOUT AN HOUR OR, AGAIN, GIVE THEM THE
2 OPTION OF COMING BACK TOMORROW AND SEE WHAT THEY WANT TO
3 DO, KIND OF LEAVE IT UP TO THE JURY.

4 ANY OBJECTION TO THAT?

5 MS. MILLICAN: NOT FROM THE STATE.

6 THE COURT: ANY OBJECTION, MS. SMART?

7 MS. SMART: NO, YOUR HONOR.

8 THE COURT: OKAY. I JUST THINK THAT IT IS AFTER 6:00
9 AND IT WILL TAKE US 45 MINUTES OR AN HOUR TO GET SOMETHING
10 HERE IF THEY WANT TO CONTINUE TO DELIBERATE, SO I THINK WE
11 NEED TO OFFER TO GET FOOD FOR THEM.

12 IF IT'S ALL RIGHT WITH YOU, AGAIN, RATHER THAN BRING
13 EVERYBODY IN AND LET THEM ALL MARCH BACK OUT AND DECIDE
14 WHAT TO DO, I THINK I WILL JUST BRING THE FOREMAN IN AND
15 EXPLAIN THE OPTIONS TO HIM AND LET HIM GO TALK TO THE
16 JURORS.

17 BRING THE FOREMAN PLEASE, SIR.

18 (THE FOREMAN ENTERS THE COURTROOM AT 6:10 P.M.)

19 THE COURT: ALL RIGHT. MR. JOHNSON, I JUST WANTED TO
20 EXPLAIN TO YOU WHERE WE ARE AND WHAT YOUR OPTIONS ARE. I
21 WANT YOU TO KNOW THAT WE'RE NOT TRYING TO STARVE YOU TO
22 DEATH. AND WE HAVE SEVERAL OPTIONS. WE CAN BRING DINNER
23 IN AND YOU ALL CAN CONTINUE TO DELIBERATE. IT WILL TAKE US
24 ABOUT AN HOUR TO GET DINNER ORDERED AND GET IT HERE. IN
25 THE MEANTIME YOU CAN KEEP WORKING, AND WE WOULD HAVE

1 SOMETHING FOR YOU TO EAT IN PROBABLY ABOUT AN HOUR, I'D SAY
2 BY 7:00 OR 7:10. THAT WOULD BE THE FIRST OPTION.

3 THE SECOND OPTION WOULD BE NOT TO ORDER DINNER AND
4 ALLOW YOU JUST TO CONTINUE WORKING IF YOU THINK THAT YOU
5 WOULD LIKE TO DO THAT.

6 AND THE THIRD OPTION WOULD BE TO EXCUSE YOU FOR THE
7 EVENING AND LET YOU GO HOME AND COME BACK TOMORROW.

8 SO THOSE ARE THE THREE OPTIONS. IF YOU WOULD LIKE TO
9 DISCUSS IT WITH THE JURORS ---

10 FOREMAN: WE PICK ONE.

11 THE COURT: YOU WANT TO GO AHEAD AND BRING DINNER IN?

12 FOREMAN: YES.

13 THE COURT: OKAY. ALL RIGHT. WE WILL ORDER DINNER
14 FOR YOU. THANK YOU.

15 (THE FOREMAN RETURNS TO THE JURY ROOM AT 6:12 P.M.)

16 THE COURT: ALL RIGHT. MR. BAILIFF, IF YOU WILL TAKE
17 CARE OF DINNER, WE'LL DO THAT. IT LOOKS LIKE WE'RE GOING
18 TO BE HERE A WHILE, COUNSEL.

19 (THE COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

20 THE COURT: ALL RIGHT. LET THE RECORD REFLECT WE'RE
21 BACK ON THE RECORD WITH REGARD TO STATE VERSUS NATHANIEL
22 JOHNSON, JR. MR. JOHNSON IS PRESENT IN COURT WITH HIS
23 ATTORNEY, MS. SMART. THE STATE IS REPRESENTED BY MS.
24 MILLICAN, WHO IS ALSO PRESENT.

25 COUNSEL, I UNDERSTAND THE JURY HAS REACHED A VERDICT.

VERDICTS OF THE JURY

351

1 ANYTHING BEFORE WE BRING THE JURY IN, MS. MILLICAN?
2 MS. MILLICAN: NOTHING FROM THE STATE, YOUR HONOR.
3 THE COURT: ANYTHING FROM THE DEFENSE?
4 MS. SMART: NOTHING, YOUR HONOR.
5 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.
6 (THE JURY RETURNS TO THE COURTROOM AT 7:58 P.M.)
7 BAILIFF: YOUR HONOR, ALL JURORS ARE PRESENT.
8 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. MR.
9 FOREMAN, I UNDERSTAND THE JURY HAS REACHED A VERDICT; IS
10 THAT CORRECT?
11 FOREMAN: YES, SIR, WE HAVE.
12 THE COURT: WOULD YOU HAND IT UP TO THE BAILIFF
13 PLEASE.
14 (PAUSE.)
15 THE COURT: ALL RIGHT. FROM THE STANDPOINT OF FORM,
16 THE VERDICTS APPEAR TO BE CORRECT. I'M GOING TO PUT THEM
17 IN THEIR NUMERICAL ORDER.
18 MS. SMART, WOULD YOU AND YOUR CLIENT STAND PLEASE.
19 MADAM CLERK, YOU MAY PUBLISH THE VERDICT.
20 VERDICT OF THE JURY:
21 CLERK: THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL
22 JOHNSON, JR. CASE NO. 06-GS-07-1640, WE THE JURY BY
23 UNANIMOUS CONSENT ON THE CHARGE OF KIDNAPING FIND THE
24 DEFENDANT NATHANIEL JOHNSON, JR., GUILTY. SIGNED BY THE
25 FOREMAN, RAYMOND JOHNSON.

VERDICTS OF THE JURY

352

1 THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON,
2 JR., 06-GS-07-1641, WE THE JURY BY UNANIMOUS CONSENT ON THE
3 CHARGE OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE FIND
4 THE DEFENDANT, NATHANIEL JOHNSON, JR., GUILTY. SIGNED BY
5 THE FOREMAN, RAYMOND JOHNSON, SR.

6 THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON,
7 JR., 06-GS-07-1642, WE THE JURY BY UNANIMOUS CONSENT ON THE
8 CHARGE OF BURGLARY IN THE FIRST DEGREE FIND THE DEFENDANT,
9 NATHANIEL JOHNSON, JR., NOT GUILTY. SIGNED BY THE FOREMAN,
10 RAYMOND JOHNSON, SR.

11 THE STATE OF SOUTH CAROLINA VERSUS NATHANIEL JOHNSON,
12 JR., 06-GS-07-1643, ON THE CHARGE OF POSSESSION OF A WEAPON
13 DURING THE COMMISSION OF A VIOLENT CRIME WE FIND THE
14 DEFENDANT NATHANIEL JOHNSON, JR., NOT GUILTY. SIGNED BY
15 RAYMOND JOHNSON, SR., FOREMAN.

16 MR. FOREMAN, IS THIS YOUR VERDICT?

17 FOREMAN: YES, IT IS.

18 CLERK: IF ALL AGREE, PLEASE RAISE YOUR RIGHT HAND.

19 (ALL JURORS' RIGHT HANDS WERE RAISED.)

20 THE COURT: THANK YOU. MS. SMART, YOU MAY BE SEATED.

21 (COMPLIED.)

22 THE COURT: ANYTHING BEFORE THE JURY IS DISCHARGED?

23 MS. SMART: NOTHING FROM THE DEFENSE, YOUR HONOR.

24 (THE JURY WAS EXCUSED.)

25 THE COURT: ALL RIGHT. MS. SMART, MOTIONS ON BEHALF

1 OF THE DEFENDANT.

2 MS. SMART: THE COURT'S INDULGENCE, YOUR HONOR.

3 (PAUSE.)

4 MS. SMART: YOUR HONOR, AT THIS TIME I MOVE FOR A NEW
5 TRIAL, AND I BASE THAT MOTION ON THE BASIS FROM MY PREVIOUS
6 MOTIONS.

7 THE COURT: ALL RIGHT. I WOULD RESPECTFULLY DENY THAT
8 MOTION. IN MY VIEW THE PREVIOUSLY RULINGS OF THE COURT
9 WERE CORRECT, INCLUDING THE RULING ON THE MISTRIAL MOTION,
10 AS WELL AS THE RULINGS ON THE MOTIONS FOR A DIRECTED
11 VERDICT.

12 I FEEL THAT THE JURY WAS VERY DILIGENT IN THEIR
13 EFFORTS IN THIS CASE. AS YOU CAN SEE, THEY FOUND THE
14 DEFENDANT GUILTY OF SOME OF THE CHARGES BUT NOT GUILTY ON
15 OTHER CHARGES. SO IT OBVIOUSLY IS SOMETHING THAT THE JURY
16 PAID A GREAT DEAL OF ATTENTION TO AND LISTENED VERY CLOSELY
17 TO THE TESTIMONY AND WEIGHED OUT THE EVIDENCE IN THIS CASE.

18 IT'S FURTHER EVIDENCED BY THE FACT, OF COURSE, THAT
19 ACCORDING TO MY NOTES, THE MATTER WENT TO THE JURY ABOUT 10
20 MINUTES TO 3:00, AND THEY RETURNED THE VERDICT ABOUT 7:53
21 OR ADVISED US THEY HAD A VERDICT ABOUT 7:53, SOME 5 HOURS
22 LATER.

23 BUT I DO THINK THAT THE COURT'S EARLIER RULINGS ON ALL
24 OF THE MOTIONS THAT WERE MADE AT THE TIME WERE CORRECT, AND
25 I WOULD RESPECTFULLY DENY THE MOTION FOR A NEW TRIAL ON THE

1 TWO CHARGES ON WHICH THE DEFENDANT WAS FOUND GUILTY.

2 ALL RIGHT. MS. MILLICAN, DO YOU HAVE THE SENTENCING
3 SHEETS?

4 MS. MILLICAN: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. COME AROUND PLEASE.

6 (COMPLIED.)

7 THE COURT: ALL RIGHT. THE COURT NOW HAS COPIES OF
8 THE SENTENCING SHEETS ON THE TWO CHARGES OF KIDNAPING AND
9 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. BEFORE I CALL
10 ON DEFENSE COUNSEL FOR MITIGATION, LET ME FIND OUT OR ASK
11 THE SOLICITOR PLEASE FOR PRIOR CRIMINAL RECORD.

12 MS. MILLICAN: THANK YOU, YOUR HONOR. IN 1986 THE
13 DEFENDANT WAS CONVICTED OF ASSAULT AND BATTERY AND
14 TAMPERING WITH A MOTOR VEHICLE.

15 IN 1992, DRIVING UNDER THE INFLUENCE AND FRAUDULENT
16 CHECK.

17 IN 1993, DISORDERLY CONDUCT AND ASSAULT AND BATTERY OF
18 A HIGH AND AGGRAVATED NATURE, RECEIVING STOLEN GOODS.

19 IN 1997, THE DEFENDANT WAS CONVICTED OF BURGLARY IN
20 THE THIRD DEGREE, USE OF VEHICLE WITHOUT PERMISSION, PETIT
21 LARCENY, AND SIMPLE ASSAULT AND BATTERY. ALSO 1997 A
22 PAROLE REVOCATION.

23 1998, THE DEFENDANT WAS CONVICTED OF CRIMINAL DOMESTIC
24 VIOLENCE.

25 IN 2000, TRESPASSING.

1 IN 2005, DRIVING UNDER SUSPENSION.

2 YOUR HONOR, THE DEFENDANT HAS A CONVICTION FROM
3 FLORIDA FROM 1990 FROM DRINKING INTOXICATING LIQUORS IN
4 PUBLIC; THAT'S THE EXTENT OF THE DEFENDANT'S RECORD, YOUR
5 HONOR.

6 THE COURT: ALL RIGHT. I'LL ADDRESS THE PROSECUTION
7 AND ALSO [REDACTED], AS THE VICTIM IN
8 THIS CASE, YOU OF COURSE HAVE THE RIGHT TO BE PRESENT
9 THROUGHOUT THE CASE, AND YOU HAVE BEEN. YOU ALSO HAVE THE
10 RIGHT TO ADDRESS THE COURT. SO IF THERE IS ANYTHING YOU
11 WOULD LIKE TO TELL ME, COME ON UP, AND I'LL BE GLAD TO HEAR
12 FROM YOU.

13 VICTIM: I AM KIND OF SAD, DISAPPOINTED. I KNOW THAT
14 GOD EXIST. I KNOW THAT IF IN THIS MOMENT HE IS NOT GOING
15 TO HAVE WHAT HE REALLY HAVE TO HAVE BECAUSE OF HE TRIED TO
16 KILL ME, HE RAPED ME. HE PUT MY LIFE UPSIDE DOWN. MY
17 FAMILY, MYSELF, WE -- WE ALL HAD A AWFUL EXPERIENCE. AND
18 IT'S PRETTY SAD. IT'S PRETTY SAD THAT WE ARE NO ABLE TO
19 SHOW THE JURY IN THE RIGHT WAY TO -- TO LET THEM KNOW HOW
20 AWFUL, HOW HARD, HOW BAD WAS EVERYTHING. THE ONLY THING
21 THAT ---

22 THE COURT: LET ME MAKE SURE YOU UNDERSTAND, [REDACTED].
23 [REDACTED]. AND I THINK YOU DO, BUT I WANT TO MAKE SURE YOU
24 UNDERSTAND. THE JURY FOUND THE DEFENDANT GUILTY OF BOTH
25 THE KIDNAPING AND THE SEXUAL ASSAULT ON YOU. YOU

1 UNDERSTAND THAT?

2 VICTIM: YES, SIR.

3 THE COURT: OKAY. WHAT THEY FOUND HIM NOT GUILTY OF
4 WAS THE BURGLARY AND THE WEAPONS CHARGES.

5 VICTIM: I UNDERSTAND THAT.

6 THE COURT: OKAY. ALL RIGHT. GO AHEAD.

7 VICTIM: [REDACTED] A [REDACTED] D. I KNOW THAT.
8 HE KNOW THAT. SADLY WE -- WE -- WE COULDN'T SHOW THE JURY
9 THAT. SADLY, I WAS NO ABLE TO TELL THEM THE TRUE ABOUT
10 WHAT REALLY HAPPENED THIS DAY. I --I COULDN'T TELL THEM
11 HOW TERRIFY I WAS. I ALWAYS THINKING THAT HE WILL COME
12 BACK AND KILL ME. HE WILL COME BACK AND KILL MY BABIES.
13 SADLY, WE COULDN'T SAY THAT. BUT GOD KNOWS.

14 THE COURT: THANK YOU, MA'AM.

15 ALL RIGHT. MS. MILLICAN, ANYTHING ELSE ON BEHALF OF
16 THE STATE?

17 MS. MILLICAN: THE ONLY THING FURTHER, YOUR HONOR,
18 JUST THE STATE ASKS FOR A MAXIMUM SENTENCE ON BOTH OF THESE
19 TO RUN CONSECUTIVE.

20 THE COURT: ALL RIGHT. BEFORE I CALL ON YOU, MS.
21 SMART, LET ME MAKE SURE THE DEFENDANT DOES UNDERSTAND THE
22 EXTENT OF THE PUNISHMENT THAT HE IS FACING.

23 MR. JOHNSON, ON THE CRIME OF BURGLARY [REDACTED] FIRST
24 DEGREE, THE JURY FOUND YOU NOT GUILTY ON THAT. ON THAT
25 CHARGE YOU COULD HAVE RECEIVED A MINIMUM OF 15 YEARS AND A

1 MAXIMUM OF LIFE IMPRISONMENT. YOU UNDERSTAND THAT?

2 MR. JOHNSON: YES, SIR.

3 THE COURT: AND ON THE CRIME OF CRIMINAL SEXUAL
4 CONDUCT IN THE FIRST DEGREE, YOU COULD RECEIVE UP TO 30
5 YEARS IN PRISON. YOU UNDERSTAND THAT?

6 MR. JOHNSON: YES, SIR.

7 THE COURT: AND ON THE CRIME OF KIDNAPING, YOU COULD
8 RECEIVE UP TO 30 YEARS IN PRISON. DO YOU UNDERSTAND THAT?

9 MR. JOHNSON: YES, SIR.

10 THE COURT: AND, OF COURSE, ON THE USE OF A FIREARM
11 DURING THE COMMISSION OF A VIOLENT CRIME, THAT IS A
12 SEPARATE CRIME FOR WHICH YOU COULD RECEIVE AN ADDITIONAL 5
13 YEARS, BUT THE JURY FOUND YOU NOT GUILTY OF THAT. DO YOU
14 UNDERSTAND THAT?

15 MR. JOHNSON: YES, SIR.

16 THE COURT: AND YOU UNDERSTAND THAT THESE TWO CRIMES
17 OF WHICH THE JURY DID FIND YOU GUILTY ARE CONSIDERED
18 VIOLENT CRIMES UNDER OUR LAW. YOU UNDERSTAND THAT?

19 MR. JOHNSON: YES, SIR.

20 THE COURT: HAS YOUR ATTORNEY EXPLAINED TO YOU WHAT IS
21 MEANT BY A VIOLENT CRIME AND THE EFFECT THAT IT WILL HAVE
22 ON YOUR ELIGIBILITY FOR PAROLE?

23 MR. JOHNSON: NO, SIR.

24 THE COURT: HAVE YOU EXPLAINED IT TO HIM?

25 MS. SMART: NO, SIR.

1 THE COURT: ALL RIGHT. I WANT YOU TO DO THAT. ALSO,
2 DO YOU UNDERSTAND -- AND BEFORE WE COME TO THAT, DO YOU
3 UNDERSTAND THIS IS CONSIDERED -- BOTH OF THESE ARE
4 CONSIDERED MOST SERIOUS CRIMES, AND THAT IF YOU WERE TO NOW
5 HAVE ANOTHER MOST SERIOUS CRIME WHEN YOU GET OUT OF PRISON,
6 THAT YOU WOULD BE FACING LIFE IN PRISON WHETHER IT'S A
7 CRIME THAT CARRIES LIFE OR NOT. IF YOU HAVE TWO MOST
8 SERIOUS OR THREE SERIOUS OFFENSES OR CONVICTIONS UNDER OUR
9 LAW, UNDER OUR TWO STRIKES, THREE STRIKES LAW, YOU WOULD BE
10 FACING LIFE IN PRISON. YOU UNDERSTAND THAT?

11 MR. JOHNSON: YES, SIR.

12 THE COURT: YOU ALSO UNDERSTAND THAT WHEN YOU ARE
13 RELEASED FROM PRISON, THAT YOU WILL HAVE TO REGISTER AS A
14 SEX OFFENDER. YOU UNDERSTAND THAT?

15 MR. JOHNSON: YES, SIR.

16 THE COURT: ALL RIGHT. AND YOU UNDERSTAND THAT THESE
17 ARE ALSO CONSIDERED NO-PAROLE OFFENSES. SO WHATEVER I
18 SENTENCE YOU TO MEANS THAT YOU WILL HAVE TO SERVE 85
19 PERCENT OF WHATEVER SENTENCE I SENTENCE YOU TO BEFORE YOU
20 WILL BE RELEASED TO ANY KIND OF COMMUNITY SUPERVISION. YOU
21 UNDERSTAND THAT?

22 MR. JOHNSON: YES, SIR.

23 THE COURT: ALL RIGHT. I BELIEVE HE UNDERSTANDS THE
24 CONSEQUENCES OF THE VARIOUS SENTENCES WITH THE EXCEPTION
25 PERHAPS OF VIOLENT. TAKE A MINUTE AND EXPLAIN TO HIM WHAT

1 IS MEANT BY A VIOLENT CRIME.

2 (PAUSE.)

3 MS. MILLICAN: YOUR HONOR, THE STATE HAS -- I DON'T
4 BELIEVE THAT I MARKED THE BOX MOST SERIOUS ON EACH OF THOSE
5 TWO SENTENCING SHEETS.

6 THE COURT: OKAY.

7 (PAUSE.)

8 THE COURT: ALL RIGHT. YOU UNDERSTAND NOW WHAT IS
9 MEANT AS FAR AS VIOLENT IS CONCERNED AND ITS EFFECT ON YOUR
10 PAROLE ELIGIBILITY?

11 MR. JOHNSON: YES, SIR.

12 THE COURT: OKAY. ALL RIGHT. MS. SMART, I'LL BE GLAD
13 TO HEAR FROM YOU WITH REGARD TO ANYTHING YOU'D LIKE TO TELL
14 ME IN WAY OF MITIGATION.

15 MS. SMART: MAY IT PLEASE THE COURT, YOUR HONOR. MR.
16 JOHNSON IS FROM BEAUFORT COUNTY, HAS LIVED HERE HIS ENTIRE
17 LIFE. HIS FAMILY IS HERE. AND WE WOULD SUBMIT TO THE
18 COURT THAT IN LIGHT OF THE FACT THAT HE DOES HAVE SOME
19 CRIMINAL CHARGES, THAT THIS IS THE FIRST VIOLENT EVENT THAT
20 HE HAS BEEN CONVICTED OF. WE'D LIKE THE COURT TO TAKE THAT
21 INTO CONSIDERATION WHEN THE COURT IS FASHIONING ITS
22 SENTENCE.

23 WE APPRECIATE THAT THERE IS NO MANDATORY MINIMUM
24 SENTENCE ON THIS, AND WE'D ASK THAT THE COURT TO CONSIDER A
25 CONCURRENT SENTENCE. I KNOW THAT THE STATE HAS RECOMMENDED

1 A CONSECUTIVE SENTENCE. BUT WE'D ASK THAT THE COURT
2 CONSIDER CONCURRENT SENTENCE, AND ALSO TAKE INTO
3 CONSIDERATION THE AMOUNT OF TIME THAT MR. JOHNSON HAS
4 ALREADY BEEN INCARCERATED AT THE BEAUFORT COUNTY DETENTION
5 CENTER.

6 THE COURT: AND HOW LONG IS THAT? WHEN WAS HE
7 INCARCERATED? FROM THE TIME OF THE ARREST ON THIS CHARGE,
8 SHORTLY AFTER FEBRUARY THE 7TH?

9 MS. SMART: HE SAYS IT WAS FEBRUARY 13TH OF 2006.

10 THE COURT: FEBRUARY 13TH OF 2006.

11 ALL RIGHT. MS. SMART, I'D BE GLAD TO HEAR FROM THE
12 DEFENDANT. BUT TELL HIM, OF COURSE, I DON'T KNOW WHAT HIS
13 INTENTIONS ARE. BUT ANYTHING THAT HE TELLS ME IS ON THE
14 RECORD AND IT COULD HAVE SOME EFFECT ON HIS APPEALS. SO IF
15 HE WANTS TO TELL ME ANYTHING, I'D BE GLAD TO HEAR FROM HIM.
16 BUT CAUTION HIM NOT TO COMPROMISE HIS APPEAL POSITION.

17 MS. SMART: YOUR HONOR, HE WOULD NOT LIKE TO ADDRESS
18 THE COURT AT THIS TIME.

19 THE COURT: OKAY.

20 SENTENCE OF THE COURT:

21 ALL RIGHT. MR. JOHNSON, I THINK THIS WAS A VIOLENT
22 CRIME AND ONE THAT DESERVES A VERY STIFF SENTENCE. THE
23 SENTENCE OF THE COURT ON BOTH CHARGES, KIDNAPING AND
24 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, IS THE
25 DEFENDANT IS COMMITTED TO THE STATE DEPARTMENT OF

SENTENCE OF THE COURT

361

1 CORRECTIONS FOR A TERM OF 30 YEARS. THEY ARE TO RUN
2 CONCURRENT. HE WILL BE GIVEN CREDIT FOR JAIL TIME SINCE
3 FEBRUARY 13TH, 2006.

4 I'M NOT RUNNING THEM CONSECUTIVE, BUT THEY ARE 30 YEAR
5 SENTENCE TO RUN CONCURRENT WITH CREDIT FOR JAIL TIME.

6 GOOD LUCK TO YOU, SIR.

7 MR. JOHNSON: THANK YOU.

8 MS. SMART: THANK YOU, YOUR HONOR.

9 MS. MILLICAN: THANK YOU, YOUR HONOR.

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

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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
3 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
4 ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
6 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR
7 BEAUFORT COUNTY, SOUTH CAROLINA ON THE 12TH, 13TH, AND 14TH
8 DAYS OF MARCH 2007.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
10 NOR INTEREST TO ANY PARTY HERETO.

11

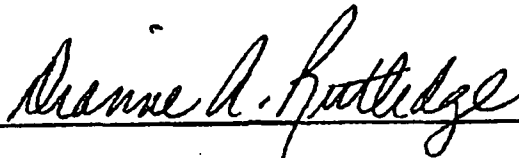
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AUGUST 6, 2007

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COURT REPORTER

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Office of the Clerk of Court

RANDOM STRIKE SHEET

JUDGE NAME: King, Howard P.
 TR. TYPE: Criminal
 PA. L ID: 2006GS0701640
 COURTROOM CTR

DESCRIPTION: State vs. Nathaniel Johnson

Sorted by: Random Nbr

Trial

NAME	JURY NBR	RACE	SEX	STATE/PLAINTIFF / DEFENDANT			REMARKS
				Pl	Stk	Court	
1 Durant, Debra W	56	W	F	()	()	()	✓
2 Rodgers, Delores J	167	W	F	()	()	()	✓
3 Johnson, Raymond <i>former</i>	103	B	M	()	()	()	✓
4 Miller, Earl C III	141	W	M	()	()	()	✓
5 Flanagan-Wurtz, Janet	62	W	F	()	<i>D1</i>	<i>D</i>	
6 Lorris, Paul S	125	W	M	()	<i>D2</i>	()	
7 Falciglia, Patrick P	60	W	M	()	<i>D3</i>	()	
8 Stokes, Isabel L	194	W	F	()	<i>D1</i>	()	
9 Shaw, Louise J	179	W	F	()	()	()	✓
Major, Daniel	127	B	M	()	<i>D2</i>	()	
11 Wingo, David L	225	W	M	()	()	()	✓
12 Buckenroth, Barbara R	27	W	F	()	()	()	✓
13 Callaway, Ray J	32	W	M	()	()	()	✓
14 Burns, Kathleen G	234	W	F	()	()	()	✓
15 Aiello, Rebecca G	3	W	F	()	<i>D4</i>	()	
16 Haworth, James J	85	W	M	()	()	()	✓
17 Trice, Austin	205	W	M	()	<i>D5</i>	()	
18 Hagedorn, William E	80	W	M	()	<i>D6</i>	()	
19 Salazar, Randolph C	172	H	M	()	<i>D7</i>	()	
20 Hipp, Barbara A	91	B	F	()	<i>D3</i>	()	
21 Marks, Joyce E	130	W	F	()	()	()	✓
22 Kovalanchik, Henry P	112	W	M	()	()	()	✓
23 VanKeuren, Dean E	207	W	M	()	()	()	✓
24 Olson, Jane L	155	W	F	()	()	()	

Office of the Clerk of Court

RANDOM STRIKE SHEET

JUDGE NAME : King, Howard P.

TRIAL TYPE : Criminal

PA. L ID : 2006GS0701640

COURTROOM CTR

DESCRIPTION : State vs. Nathaniel Johnson

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STATE/			REMARKS
				PLAINTIFF	DEFENDANT	Chal Strk Court	
25 Taylor, Lillian L	198	W	F	()	()	()	
26 Middleton, Michael W	140	W	M	()	()	()	
27 Grant, Sara L	74	B	F	()	()	()	
28 Jones, Gevrey D	105	W	F	()	()	()	
29 Magruder, Carol A	236	W	F	()	()	()	
30 Kelly, Anna P	109	W	F	()	()	()	
31 Stevenson, William D III	193	W	M	()	()	()	
32 Maurer, Gary S	134	W	M	()	()	()	
33 Bailey, Ronald C	11	W	M	()	()	()	
Spann, Gaynelle M	191	W	F	()	()	()	
35 Purcell, William J	163	W	M	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL JOHNSON,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE C. DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION.....14

CERTIFICATE OF COUNSEL 15

TABLE OF AUTHORITIES

Cases

<u>McElveen v. Ferre</u> , 299 S.C. 377, 385 S.E.2d 39 (Ct. App. 1989).....	13
<u>State v. Covert</u> , 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2007).....	10, 13
<u>State v. Diddlemeyer</u> , 296 S.C. 235, 371 S.E.2d 793 (1988)	11
<u>State v. Hartfield</u> , 272 S.C. 407, 252 S.E.2d 139 (1979).....	11
<u>State v. Johnson</u> , 293 S.C. 321, 360 S.E.2d 317 (1987).....	12
<u>State v. Patterson</u> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).....	10
<u>State v. Primus</u> , 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000)	12, 13

Rules

Rule 608, SCORE.....	8, 9, 10

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to grant the mistrial motion when the evidence of a prior bad act was not admissible?

STATEMENT OF THE CASE

On September 21, 2006, the Beaufort County Grand Jury indicted Nathaniel Johnson, Jr. on the charges of criminal sexual conduct first degree (CSC), kidnapping, burglary first degree, and possession of a firearm during the commission of a violent crime. On March 12-14, 2007, Johnson proceeded to trial before the Honorable Howard P. King and a jury. He was represented by Stephanie Smart, Esquire. The jury returned a verdict of guilty on the CSC first degree and the kidnapping charge and a verdict of not guilty on the burglary first degree and possession of a firearm during the commission of a violent crime. Judge King sentenced Johnson to thirty years on the CSC conviction and to thirty years on the kidnapping to run concurrently.

Johnson's attorney filed a notice of appeal on March 28, 2007. This appeal follows.

EXHIBIT

ARGUMENT

The trial court erred in failing to grant the mistrial motion when the evidence of a prior bad act was not admissible.

On February 7, 2006, [REDACTED], a married mother with three children, was at home during the early afternoon. A man whom she later identified as Johnson knocked on her door. She consented for him to come in and use the telephone. After using the phone, the man pulled a gun and forced her to the bedroom where he did rape her after an intense fight. [REDACTED] then ran from the home and found some workmen in the area who helped her. ROA p. 1, lines 3 – 20, p. 12, lines 11 – 22, p. 18, line 11 – p. 19, line 10.

Johnson did not testify but through his attorney in her closing statement maintained that he and [REDACTED] were having an affair. The evidence of this, according to his attorney, was her statement that her husband would kill them both if he came home and found them; that workmen were in the area and she never yelled for help; that she did not pick him out of two photo lineups; and there was no sign of a struggle in the home. ROA p. 98, lines 4 – 22, p. 99, lines 21 – 25, p. 100, lines 2 – 16, p. 101, lines 14 – 25.

During the direct testimony of Brian Chapman, an investigator with the Beaufort County Sheriff's Department, he testified that a sketch was completed from the description provided by [REDACTED]. This sketch was circulated throughout the community and Johnson was identified as a suspect. ROA p. 79, lines 3-4, p. 80, line 6 – p. 81, line 5. He learned Johnson's address and went to serve a search warrant there. ROA p. 81, lines 6 – 16. When asked if the defendant was present, Chapman testified:

A: He was. Initially he was ---the reason we served the search warrant, he was arrested for unrelated charges, and then the search warrant was served after his arrest.

Q: Did you advise the defendant of his Miranda rights?

A: I did.

Ms. Smart: Objection, Your Honor. Side bar.

The Court: All right.

(A bench conference was held off the record in the presence of the jury, but out of the hearing of the jury.)

The Court: Ms. Rutledge, if you'll make a note on your tape where you are right now for my benefit, please. All right. You may proceed.

Ms. Milligan: Thank you, Your Honor.

ROA p. 81, lines 17 – p. 82, line 5.

The State continued with the direct questioning of Chapman. Later, after numerous questions and still during his direct testimony, when asked by the State if he were able to obtain a DNA sample from the defendant Johnson, Chapman replied:

A. He was in the Beaufort County Detention Center...

Ms. Smart: Objection, your honor.

The Court: All right. The jury will disregard where he was, just tell how you came to get the sample. The first part of that statement will be stricken.

ROA p. 83, lines 12 – 23.

The judge then excused the jury and allowed the State to proffer the testimony regarding the circumstances of how the DNA was obtained. The judge said:

The Court: All right. Ms. Milligan, you may proffer the testimony keeping in mind the prohibitions under Rule 608 specific instances of conduct. But I'll hear from you.

ROA p. 84, lines 4 – 15.

During the proffer, the judge asked investigator Chapman why Johnson was in the Beaufort County Detention Center, and Chapman replied that he was arrested for unrelated charges to this incident. ROA p. 85, lines 18 – 22. Then the judge asked the defense, Ms. Smart, what her position was regarding the proffer by the State.

The Court: All right. What's your position with regard to the proffer as made by Ms. Milligan---not the questions I asked, because I asked him and that's when he said the unrelated charges, which I don't think is admissible. But go ahead with whatever arguments you might have.

Ms. Smart: Your Honor, clearly, prior bad acts are inadmissible. And when---

The Court: Will you stipulate that the officer obtained a sample of his DNA?

Ms. Smart: Yes. They have two samples.

ROA p. 86, lines 1 – 11.

The court directed the State and defense to get together and write the stipulation concerning the obtaining of the DNA from Johnson. ROA p. 86, lines 20-22. After the stipulation was agreed to, the judge said:

The Court: With regard to this particular part of the testimony, my recollection is that this defendant has not testified in the presence of the jury or maybe he did. I'm not sure.

ROA p. 87, lines 19 – 22.

After explaining that he was going to publish the stipulation to the jury, the judge asked the defense if she had any objection to that. The defense attorney, Ms. Smart, replied:

Ms. Smart: None by the defense, Your Honor. However, I would have to renew my objection for the record—I'm sorry. Renew my motion. I don't think I made my motion.

ROA p. 88, lines 3 – 15.

The judge then stated what he believed the process had been regarding the defense's objection and motion.

The Court: Now, prior to that the witness did testify as I recall that he (Johnson) was arrested for unrelated charges. And after the answer was given, the next question, which I thought is what the objection was going to be—but to the previous question and answer which had already been given. And that was the objection that was interposed at that time, and that's the timing of it as I recall. Ay which time, Ms. Smart requested a side bar and we had a side bar, and she indicated that she objected to the testimony about being arrested for unrelated charges and had a motion in connection with that. I told her that I would mark it as a motion being timely made at that point. And I 'll be glad to hear from you with regard to your motion, Ms. Smart.

ROA p. 89, lines 2 – 17.

The defense argued that the rules of evidence indicate that prior bad acts are inadmissible unless the defendant were to take the stand. She said there is case law saying that arrests are not admissible. ROA p. 89, lines 18 – 22. The judge asked if her objection and motion were based on Rule 608 and she said yes. ROA p. 92, lines 3 – 6.

She continued to argue that Johnson had not testified and that the jury had heard twice that he has a prior criminal history for unrelated charges and that that was prejudicial to her client, Johnson. The judge disagreed saying that the jury has heard it only once. The defense pointed out the two times which were after the search warrant testimony and the DNA testimony. The judge said that Johnson being at the detention did not necessarily imply an arrest. The defense attorney said that the jury then knew that when he was being questioned about this incident, he was at the Beaufort County Detention Center on unrelated

charges and that was clearly a bad act. The judge said: "I don't quite agree with you."

ROA p. 90, lines 1 – 25.

The State argued that this was just a minor thing that he was arrested on unrelated charges as it was just an arrest and not a conviction. The State's argument focused on the taking of the DNA and establishing the chain. The State continued to argue this even after the judge explained that the concern was the testimony regarding his arrest for unrelated charges before they even got to the DNA. ROA p. 91, lines 1 – 25. Regarding Rule 608, the State said that the testimony was not offered to attack Johnson's credibility but that it was part of establishing a chain of evidence. ROA p. 93, lines 8 – 16.

The judge denied the defense's motion for a mistrial. ROA p. 93, lines 18-19. He stated that the testimony only said he had been arrested for unrelated charges which the judge said was not evidence of a specific bad act. However, the judge had previously said that the testimony by Investigator Chapman regarding Johnson's arrests for unrelated charges was not admissible. ROA p. 86, lines 1 – 5. Even with saying this, the judge did not offer a ruling on the first objection nor did he issue a curative instruction when the testimony was first admitted. ROA p. 81, line 18 – p. 82, line 5. He found that Rule 608 was not applicable because it did not go to the credibility of the witness and that the probative value outweighed any prejudicial effect. ROA p. 93, line 25 – p. 94, line 3, p. 94, lines 23 -25. However, the judge had clearly thought Rule 608 may be a problem as he warned the State to be mindful of it. ROA p. 84, lines 13 – 18. The judge stated on the record that prior to trial, the defense counsel was asked if she would stipulate to the chain of evidence and she said no. The judge then said: "This could have been avoided very easily by stipulating in advance the stipulation that the parties have now entered into". ROA p. 94, lines 4 – 14.

The judge then told the defense that he did not think a curative instruction was necessary but he would instruct the jury to disregard any testimony of any arrest. The defense said that was sufficient. ROA p. 94, line 24 – p. 95, line 11.

The decision to grant or deny a motion for a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. Id. A trial court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Covert, 368 S.C. 188, 628 S.E.2d 482 (Ct. App. 2007). In Johnson's case, the trial judge abused his discretion based on an error of law which was extremely prejudicial to Appellant Johnson. The judge denied the defense' motion for a mistrial in error.

Rule 608 (b) of the South Carolina Rules of Evidence states:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined had testified.

Rule 608, SCRE.

Although Rule 608 may not be totally applicable since the witness was testifying on direct and not on cross-examination, Investigator Chapman's testimony at the first instance when he stated that he served the search warrant because Johnson had been arrested on unrelated charges certainly impacted the character of Appellant Johnson not only for truthfulness but also for any other bad acts. Prior bad acts which are independent and unconnected to crime for which accused is on trial, are inadmissible for purposes of proving that accused possesses criminal character or has propensity to commit crime. State v. Diddlemeyer, 296 S.C. 235, 371 S.E.2d 793 (1988).

The State's argument that the testimony was not introduced to attack the credibility of Johnson but was necessary to prove the chain of evidence does not apply to the first instance regarding the arrest for unrelated charges because the DNA evidence had not even been discussed at that point. At the second instance when Chapman said Johnson was in the detention center was introduced under the guise of being necessary to prove the chain of evidence but was again only a "back door" way of the State making sure that the jury knew Johnson had a criminal history. The State did not offer any argument as to why the first testimony about the arrests should be admitted.

In the case of State v. Hartfield, 272 S.C. 407, at 411, 252 S.E.2d 139 at 141 (1979), the court said:

It is common knowledge that a substantial portion of the population...look with disdain upon homosexuals. When used for any other purpose than to prove or disprove some fact in issue, evidence of homosexual relationship tends to become an attack upon the character of the defendant.

The same analysis applies to a person who is incarcerated in jail or prison. It is common knowledge that a substantial portion of the population look with disdain upon

people who are sent to jail. Therefore, the testimony that Johnson had been arrested for unrelated charges was more prejudicial than probative.

Evidence of other crimes is never admissible unless necessary to establish material fact or element of crime charged, and even if evidence of other crimes is deemed relevant and admissible, evidence may still be excluded if its probative value is substantially outweighed by danger of undue prejudice or misleading jury. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987). In Johnson's case, the evidence that he had been arrested on unrelated charges was not necessary to prove a fact or element of the crime. It was more prejudicial than probative.

The South Carolina Court of Appeals held in State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct. App. 2000) that the defendant was not required to request curative instruction, mistrial or new trial in order to preserve issue for review because the objection had been overruled. If the objection had been sustained, then the mistrial motion and curative instruction would have been necessary to preserve the issue for appeal. Id. In Johnson's case, the judge did not rule on the first objection immediately but proceeded with the trial for quite some time. The judge stopped to hear the defense's motion only after the second time the testimony was offered. The defense did make the objection to the testimony about the arrests on unrelated charges. The actions of the court in proceeding without ruling on the objection and not offering an immediate curative instruction indicate that the judge had overruled the defense objection to the first testimony by Chapman concerning the unrelated arrests. ROA p. 81, line 18 – p. 82, line 5.

When objection is timely made to improper remarks of counsel, judge should rule on objection, give curative charge to jury and instruct counsel to desist from improper remarks.

McElveen v. Ferre, 299 S.C. 377, 385 S.E.2d 39 (Ct. App. 1989). In State v. Primus, *supra*, the Court ruled that because the solicitor's argument was improper, the trial court erred in allowing it, but that the court should have sustained defense counsel's objection and immediately issued a curative instruction. In Johnson's trial, the judge did not immediately rule on the objection and did not immediately issue a curative instruction.

Defense counsel knew from the judge's demeanor during the trial, that it was futile to object to the curative instruction. In State v. Covert, *supra*, Justice Anderson wrote in his concurring opinion that our courts have adopted the doctrine of futility which recognizes that in circumstances where it would be futile to raise an objection to the trial judge, failure to raise the objection will be excused. Johnson's counsel was being punished or coerced by the court into stipulating to the chain of evidence. The judge interrupted her when she initially tried to explain her objection by asking her if she would stipulate to the chain. The judge said in his ruling that defense counsel had the opportunity before trial to stipulate to the chain. Defense counsel did not want her client to suffer any further consequences.

The mistrial should have been granted because the prejudice clearly outweighed the probative value. The jury was told twice that Johnson was in jail and once that he had other charges. Johnson did not even testify and the jury still heard the criminal history. This in itself was unfair and prejudicial. No curative instruction can remove from the minds of the jury what is already before it and especially when it was placed before it twice.

For the above reasons, the conviction should be vacated.

CONCLUSION

Based on the foregoing reasons, the conviction should be vacated.

Respectfully submitted,

LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of April, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 7, 2008

LaNelle C. DuRant
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL JOHNSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of April, 2008.

LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2008.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017.

2009CPO701050

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Beaufort)

2009 MAR -9 PM 2:18

Mr. Nathaniel Johnson #211574
Full name and prison number, if any, of applicant.)BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

APPLICATION FOR

v.)

POST-CONVICTION RELIEF

The State
Name of Respondent)INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Beaufort County Detention Center
2. Name and location of Court which imposed sentence Court of General Sessions
Beaufort, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 06-ES-07-1640, 1641, 1642, 1643
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 12th - 14th 2007 30yrs.
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty the jury returned a verdict of guilty
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes.
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. St. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Unpublished Opinion No. 2008-UP-690
- ii. We decide this case without oral argument pursuant
- iii. to Rule 215, SCAER.
- (c) the date of each such result:
- i. Submitted December 1st 2008 - Filed December 11th 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. This opinion has no precedential value. It should not be cited
- ii. or relied on as precedent in any proceeding except as provided
- iii. by Rule 239(d)(2) SCAER.
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Prosecutorial misconduct
- (b) Violations of my Sixth, Fifth, and Fourteenth Amendments that
- (c) guarantee of due process of law. ineffective counsel.

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

- (a) Prosecutorial misconduct - where the prosecutors may conceal evidence or misrepresent it or influence juries by impugning the character of witness
- (b) Guarantee of due process of law - which included, preindictment lineups, ^{a)} booking procedures, ^{b)} grand jury investigations, ^{c)} Appeal beyond the first review, ^{d)} disciplinary proceedings in correctional institutions, ^{e)} parole and revocation hearings.
- (c) ineffective counsel - whereas my attorney did not object in a timely matter nor do attorney represent in the best interest of client.

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

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

NO

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

NO

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

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

NO

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

- (a) the specific nature thereof:

i. 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. _____

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

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

- (a) Prosecutorial misconduct. Courts have been more concerned prosecuting who use their discretion in a vindictive manner to punish defendants for their
- (b) due process of law. lack of understanding.
- (c) Ineffective Counsel. Same to the law. Defendant exercised his Miranda rights.

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

- (a) your arraignment and plea? NO Representation Relief of Counsel Mr. Bell
- (b) your trial, if any? yes Mrs. Stephanie Smart
- (c) your sentencing? yes 30 yrs.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes. Direct Appeal
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

15). Prosecutorial misconduct vindictive behaviors used by prosecutors on defendants who exercise their legal rights

a) Ineffective Counsel - in the pretrial services I've been appointed Mr. Bell as attorney. Defendant exercised his legal rights in request for relief of counsel which was granted. They appointed Mrs. Stephanie Smart from the same office which was bias and prejudice. Therefore, defendant could not be properly represented with guarantee due process of law.

Defendant exercised his miranda rights

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

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

- i. Mr. Bell Beaufort, SC. Public Defender Office
- ii. Mrs. Stephanie Smart Beaufort, SC. Public Defender Office
- iii. Ms. La Nelle Durant 1330 Lady Street, Suite 40 Columbia, SC 29201

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

- i. Pretrial Services Request for Relief of Counsel.
- ii. Jury trial Courts Trial attorney Mrs. Stephanie Smart
- iii. SC. Courts of Appeal Appellate attorney Ms. La Nelle Durant

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

Judicial reprieve, or intermediate sanctions, or a
Residential Community Corrections, or Community treatment program

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

NO

STATE OF SOUTH CAROLINA)

COUNTY OF Beaufort)

VERIFICATION

I, Nathaniel Johnson #., 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.

Nathaniel Johnson

Sworn to and subscribed before me

This 5 day of March, 2009.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

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

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

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

Nathaniel Johnson
Applicant

Sworn to and subscribed before me

This 5 day of March, 2009.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Nathaniel Johnson, #211574,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2009-CP-07-1050

RETURN

2009 JUL 16 PM 12:41
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

In response to the post-conviction relief application filed on March 9, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct – 1st degree (2006-GS-07-1641), burglary – 1st degree (2006-GS-07-1642), and use of a firearm during commission of a violent crime (2006-GS-07-1643). Stephanie Smart, Esquire, represented the Applicant. On March 12-14, 2007, the Applicant proceeded to trial, after which a jury found him guilty of kidnapping and criminal sexual conduct and not guilty of burglary – 1st degree and use of a firearm during commission of a violent crime. The Honorable Howard P. King sentenced the Applicant to confinement for thirty (30) years for kidnapping and thirty (30) years for criminal sexual conduct. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by the parties, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2008-UP-690 (S.C. Ct. App. filed December 11, 2008). The Remittitur was issued on December 30, 2008.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

Attached and incorporated herein by reference are the records of the Beaufort County Clerk of Court, the records of the South Carolina Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' Opinion affirming the conviction, and the Remittitur dated December 30, 2008.

III.

In the Applicant's first claim, he alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds

for relief. Moreover, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

IV.

The Applicant also alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Finally, the Applicant alleges that his counsel was ineffective. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. 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, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

July 14, 2009.

State of South Carolina)	In the Court of Common Pleas
)	Fourteenth Judicial Circuit
County of Beaufort)	2009-CP-07-01050

Nathaniel Johnson,)

Applicant,)

Vs.)

Transcript of Record

State of South Carolina,)

Defendant.)

August 30, 2011

Beaufort, South Carolina

B e f o r e:

The Honorable D. Craig Brown, Judge

A p p e a r a n c e s:

Timothy M. Wogan, Esquire
Attorney for the Applicant

Matthew J. Friedman, Esquire
Attorney for the Defendant

Bonnie H. Kelly
Circuit Court Reporter

1	<u>I N D E X</u>			
2	<u>WITNESS/DESCRIPTION</u>			<u>PAGE NO.</u>
3	DIRECT	CROSS	REDIRECT	RECROSS
4	STEPHANIE SMART-GITTINGS			
5	MR. WOGAN	4		
6	MR. FRIEDMAN	49		
7	DIRECT	CROSS	REDIRECT	RECROSS
8	NATHANIEL JOHNSON			
9	MR. WOGAN	52		
10	RULING BY THE COURT			58
11	CERTIFICATE PAGE			60

E X H I B I T S

NO.	DESCRIPTION	EVID
A-1	SLED Report, 02/14/07	56
A-2	SLED Report, 08/11/2006	57
A-3	SLED Report, 06/20/2006	57
A-4	Beaufort County Sheriff's Department Documents	57
A-5	Expert Documents	58

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 4

1 THE COURT: Mr. Wogan, you ready to proceed, sir?

2 MR. WOGAN: Yes, Your Honor.

3 THE COURT: Mr. Johnson, if you'd come around, please,
4 sir.

5 (Mr. Johnson complies.)

6 THE COURT: State ready to proceed

7 MR. FRIEDMAN: Yes, Your Honor.

8 THE COURT: All right. All right. Mr. Wogan, you may
9 proceed.

10 MR. WOGAN: Your Honor, I'd like to call my first
11 witness, Stephanie Smart-Gittings.

12 THE COURT: Ms. Gittings, if you'd come around and be
13 sworn.

14 (The witness complies.)

15 THE COURT: How are you doing today?

16 THE WITNESS: I'm doing well, Judge.

17 STEPHANIE SMART-GITTINGS,
18 having been first duly sworn, testifies as follows:

19 DIRECT EXAMINATION BY MR. WOGAN:

20 Q Stephanie, how are you doing today?

21 A I'm doing well. Thank you.

22 Q Good. Why don't you go ahead and state your full name
23 for the court reporter.

24 A Stephanie Smart, S-m-a-r-t; Gittings, G-i-t-t-i-n-g-s.

25 Q Do you mind if I call you "Stephanie"?

1 A Of course not.

2 Q I've known you for a number of years. How long have
3 you been practicing?

4 A Since 1999.

5 Q Okay. And that entire time has it been with the
6 Public Defender's Office?

7 A Yes.

8 Q Okay. And that has been entirely, obviously, the --
9 the defense of criminally accused?

10 A Yes.

11 Q Okay. And how did you get to the point where you
12 represented Mr. Nathaniel Johnson?

13 A Mr. Bell, in the Beaufort Public Defender's Office,
14 had been appointed the case. I believe Mr. Johnson made a
15 motion to have Mr. Bell relieved, and Judge King appointed
16 me to represent him.

17 Q And what were those -- what were you representing him
18 for? What charges?

19 A Burglary first, criminal sexual conduct, kidnapping,
20 and arm robbery.

21 Q Okay. And at what point into the process did you
22 become involved in the case?

23 A Within months of the trial notice, I believe. Maybe
24 three months at the most.

* 25 Q Was there a preliminary hearing in this case?

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS-6-

1 A I don't recall.

2 Q You -- you don't recall attending one?

3 A Mr. Bell had represented him, I think up until the
4 trial notice.

5 Q Okay. Do you recall when the -- the incident -- this
6 incident -- underlying incident took place?

7 A I don't.

8 Q February of 2006. Would that ---

9 A Probably ---

10 Q --- be generally ---

11 A --- about that time, yeah.

12 Q How long -- and you may have already answered this and
13 I apologize. How long had Mr. Johnson been arrested on
14 these charges at the time you got involved in the case?

15 A I don't know.

16 Q Would you -- do you have a copy of your file?

17 A I don't have my -- I sent the file back to the office.
18 I don't have the file.

19 Q And you -- since 1999, how many "D" -- DNA cases have
20 you handled?

21 A This is my first.

22 Q This was your first DNA case?

23 A Yes.

24 Q Did you file a Rule 5 and a *Brady* motion in this case?

25 A Mr. Bell did.

1 Q Mr. Bell did. Okay. And did you review the file
2 before today's hearing?

3 A Yes.

4 Q Okay. Do you recall seeing that Rule 5 and that
5 Brady?

6 A The discovery? The motion that was filed or the --
7 the ---

8 Q The motion ---

9 A --- discovery that ---

10 Q --- that was filed.

11 A I can't recall.

12 Q Do you recall receiving documents from the Solicitor's
13 Office based on that Rule 5 and the Brady?

14 A Absolutely.

15 Q Okay. Do you believe that you were involved in the
16 case when the first production of documents from the
17 Solicitor's Office and the Police Department took place?

18 A I was not.

19 Q Mr. Bell was?

20 A Yes.

21 Q Okay. And did Mr. Bell turn the entire file over to
22 you when you took over the case?

23 A Yes.

24 Q Okay. But you do remember receiving documents from
25 the Solicitor's Office and from the Police Department?

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 8

1 A Yes.

2 Q What is your general process in working criminal
3 cases? Just give me -- give us an idea of what you
4 generally do, your standard practice is once you've been
5 appointed to a case?

6 A Back then, when the receptionist would open the file,
7 our investigator, either Mr. Chapman or Mr. Young, would go
8 to the jail, interview the client, and then give the file
9 to the attorney.

10 If the client was in jail, then we would do -- I -- I
11 would do a subsequent jail visit, conduct any interviews if
12 they give me names of witnesses. Mr. Chapman and -- or Mr.
13 Young and myself would go out interview witnesses. And
14 then we'll meet with the client and proceed thereafter,
15 whether or not the case was a -- would proceed as a trial
16 or as a guilty plea.

17 Q And that is not the Mr. Chapman who's the police
18 officer, Mr. Chapman in this case?

19 A Rick Chapman.

20 Q What's that?

21 A Rick Chapman.

22 Q Okay. All right. Do you recall going to the jail and
23 meeting with Mr. Johnson?

24 A Yes. We were appointed -- I was appointed to the case
25 during a term of court. And I think the subsequent term of

1 court was when we were ordered to try the case. I was in
2 pre-term labor, so I was surprised that Judge King ordered
3 me to try the case. But I did subsequently meet with Mr.
4 Johnson, I believe several times, and discussed the case
5 thereafter.

6 * Q Let me ask you this question: What was the period of
7 time between the time you were appointed and the time you
8 were ordered to trial?

9 A Maybe two months, if I recall.

10 Q And at that point, you were in pre-term labor?

11 A Uh-huh. Yes.

12 Q Did you file a motion to have the case continued?

13 A I asked Judge King why he appointed me the case, and
14 he said, "Ms. Smart, do the case." So I didn't file any
15 subsequent motions. No.

16 Q And that would include a motion for continuance?

17 A No, I didn't file a motion for continuance.

18 Q Did you feel that you could properly prepare this case
19 within that period of time, given the fact that you had
20 health conditions?

21 A I did. I didn't take my bed rest. I went out to the
22 scene with Mr. Chapman. I interviewed -- there were two
23 witnesses, two eyewitnesses, I -- I think maybe worked for
24 the electrical company or -- or something. But there were
25 two witnesses that I interviewed.

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 10

1 * Met with Mr. Johnson on several occasions to discuss
2 the defense of the case. I had retained a DNA expert and I
3 worked with him. And when I talked to Mr. Johnson about a
4 DNA issue, he just changed my defense on me.

5 Q Okay. The two witnesses that you went out to talk to,
6 were they -- were they the construction workers that were
7 by the house ---

8 A Yes.

9 Q --- when the event ---

10 A Yes.

11 Q --- took place?

12 All right. And you believe that it was a period of
13 months between being appointed and trying this case?

14 A Yes.

15 Q When you say "period of months," would it be one
16 month? two months? three months?

17 A Two months at the most.

18 Q Is there a reason why you did not file for a
19 continuance?

20 A Mr. Hood didn't like us to file for continuances. So
21 when I talked to him about it and he said you can do it,
22 and you know, I -- I just did it.

23 Q So you -- you -- so your decision on whether to file a
24 motion for a continuance was based on your conversation
25 with Mr. Hood?

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 11

1 A And the fact that I knew that I had done the -- the
2 ground work when it was trial time. So I was very well
3 prepared to try the case.

4 I didn't think that I needed any further time. I had
5 spoken to all the witnesses, spent quality time with Mr.
6 Johnson, so I was very well prepared to go forward.

7 Q How many times do you believe that you met with Mr.
8 Johnson prior to trial?

9 A Probably about two to three times. And I think the
10 night before the trial, when we went over DNA evidence and
11 then he -- he changed his story and told me that --
12 initially he had said that he didn't rape the lady, that it
13 was a misidentification case. And that's why we retained
14 the DNA expert, so that we could challenge the DNA
15 evidence.

16 And I believe on the eve of the trial, maybe two
17 nights before the trial, he told me that he had had a
18 relationship with the lady -- with the victim in the case,
19 and that he didn't want me to vigorously cross-examine the
20 victim, because he was in love with her. And so that
21 completely changed my defense strategy.

22 Q Do you recognize the name "Ronald Ostrowski"?

23 A Yes.

24 Q Who is Ronald Ostrowski?

25 A He's the DNA expert.

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 12

1 Q Is he the expert that you consulted with?

2 A Yes.

3 MR. WOGAN: Your Honor, may I approach?

4 THE COURT: Yes, sir.

5 Q Stephanie, you have graciously allowed me to review
6 your entire file. And in -- in that file -- since you
7 don't have it today -- in that file was information related
8 to Dr. Ostrowski.

9 Can you tell me when your first thought or concern to
10 hire an expert -- when you developed that concern and --
11 and said to yourself, I need to get an expert?

12 A The date of this letter is February the 28th.

13 Q Okay. And do you believe that would have been the
14 first day that you would have spoken to Dr. Ostrowski?

15 A We'd spoken on the phone prior to this. And then I
16 submitted the letter to him, so that I could obtain
17 funding.

18 Q Do you recall how you got to Dr. Ostrowski?

19 A Wallace Avis from the Aiken Public Defender's Office
20 had used her -- used him -- I'm sorry -- and suggested that
21 we use him.

22 Q And did -- were you required to get an order to retain
23 this expert?

24 A Yes.

25 Q Okay. And prior to the trial, how many conversations

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 13

1 do you think you had with Dr. Ostrowski?

2 A I looked at his bill prior to coming here. So I know
3 there were at least six conversations with him.

4 Q Okay. And I believe in this compilation of documents
5 may be Dr. Ostrowski's bill. Would that help -- reviewing
6 that, would that help refresh your memory how many
7 conversations you had with the DNA -- or the expert prior
8 to trial?

9 (Brief pause while witness reviews document.)

10 A From his bill, looks like I only had one conversation
11 with him.

12 Q Okay. And do you recall receiving this February 28,
13 2007 letter back from Dr. Ostrowski?

14 A It's a fax. So I'm not sure if he faxed this back to
15 me, or we faxed it to him.

16 Q But clearly that letter was addressed to you.

17 A Yes.

18 Q And it's signed by him.

19 A Yes.

20 Q Okay. And attached to that letter, is there a list of
21 documents that he felt were necessary -- or that he had
22 mentioned were necessary for you to try to obtain?

23 A Yes.

24 Q Okay. And the first one would be -- according to his
25 letter, would be hard copies of all electropherograms?

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 14

1 A Yes.

2 Q Correct?

3 A Yes.

4 THE COURT REPORTER: I'm sorry?

5 MR. WOGAN: E-l-e-c-t-r-o-p-h-e-r-o-g-r-a-m-s.

6 Q Did you obtain those prior to trial?

7 A I honestly don't recall.

8 Q If ---

9 A It's not in this packet that you gave me, so I don't
10 recall.

11 Q And that packet that I gave you would be your file?

12 A No.

13 Q Okay. This is important. If we need to, I'll ask the
14 Judge so we can go back and get your file to find out
15 whether any of those documents, that the expert was
16 requesting you obtain, are in your file.

17 A If necessary, I could ask Mr. Chapman to bring that
18 over here. But I think to relevancy, when Mr. Johnson told
19 me that he had had ~~sexual~~ sex with the victim and I
20 abandoned the DNA defense, I don't think it's relevant.

21 Q Okay. So you -- you do not believe that obtaining
22 that information would be relevant to the DNA defense?

23 A If I had called him to testify, it would have been.

24 * But when -- when we reviewed the results of the DNA -- and
25 if I recall, there was a sheet, a bedsheet. The testimony

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 15

1 from the victim was that the incident had occurred at the -
2 - the foot of the bed.

3 * And so we -- we were analyzing the DNA to compare it
4 to Mr. Johnson, because there were different specimens of
5 DNA. And Mr. Johnson's DNA was all over the bedsheet.

6 And when I discussed that with him, that's when he
7 admitted that they had had consensual sex and they had this
8 relationship -- ongoing relationship. And when I discussed
9 that with Mr. Johnson and he said that the DNA wasn't an
10 issue anymore, because it was his DNA -- he admitted that
11 it was his DNA -- then I didn't think that the DNA analysis
12 was an issue.

13 Q Let's go ahead and -- and since we're talking about
14 the DNA, let's go ahead and see if we can get some -- some
15 clarification on the DNA.

16 I'm gonna show you what appear to be some documents
17 from the Beaufort County Sheriff's Office related to this
18 case. The first document I'm looking at is -- it says "CSC
19 Kit" with name [REDACTED]."

20 Based on your many years at the Public Defender's
21 Office, have you seen a document like this before?

22 A Yes.

23 Q And what is this document?

24 A Evidence Submittal Form.

25 Q Okay. And that -- could it be -- could we -- can we

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 16

1 believe this is Evidence Submittal Form for a criminal
2 sexual conduct kit for Anna Rodriguez.

3 A Yes.

4 Q Okay. And then the second one is -- mine has (as
5 read): "No. 1, bedsheet collected from victim's bed; No.
6 2, two Q-Tip swabs from victim's bite wound; No. 3, one
7 Memorex CDR/pictures of victim's injuries."

8 Is that what your document shows?

9 A Yes.

10 Q Would this be an evidence submittal that the -- that
11 someone from the Sheriff's Department is submitting this
12 type of evidence into the Sheriff's department?

13 A Yes.

14 Q No. 3, mine is (as read): "One evidence bag
15 containing one pair of pants."

16 A That's correct.

17 Q And again, that would be evidence submittal from a
18 deputy to the Sheriff's Department Evidence Department with
19 -- for a pair of pants.

20 A Yes.

21 Q All right. Next one is a (as read): "Paper bag with
22 one black and yellow jacket, with cap "XL," and one pocket
23 label."

24 A That's correct.

25 Q Same thing that -- the deputy would be submitting that

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 17

1 into evidence at -- into the Evidence Department of the
2 Sheriff's Department.

3 A Yes. Correct.

4 Q Okay. Next one is a (as read): "Plastic spoon from
5 Nathaniel Johnson, and a napkin from Nathaniel Johnson."
6 Evidence Submittal Form to the Sheriff's Department?

7 A Yes.

8 Q And then the last one I've got is a (as read): "Daisy
9 BB gun and a Crossman Airgun BB pistol."

10 A Yes.

11 Q Okay. Based on your recollection of this case, was
12 there any other physical evidence that was submitted to the
13 Sheriff's Department other than what we've just gone
14 through?

15 A No.

16 Q What is a criminal sexual conduct kit?

17 A A rape kit.

18 Q And when you said the -- the sheet you were talking
19 earlier -- is that on page No. 2 that they're talking about
20 the bedsheet collected from victim's bed, is that the
21 bedsheet you were talking about?

22 A Yes.

23 Q And you -- did you feel that that was an important
24 piece of evidence?

25 A Yes.

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 18

1 Q Did you think that DNA on that piece of evidence was -
2 - was -- would have been important one way or the other for
3 the jury?

4 A Yes.

5 Q Okay. And -- and so DNA in this case and DNA being on
6 that bedsheet was an important piece of evidence that the
7 jury was going to hear.

8 A Yes.

9 Q Okay. And that important piece of evidence could help
10 sway the jury towards a guilty conviction; did you believe
11 that?

12 A Actually, I was hoping that it would sway the jury to
13 a not guilty, because as I stated earlier, she had
14 indicated that the incident had taken place at the foot of
15 the bed. And the evidence was contrary to what her
16 testimony was, that he had not -- the only part of the bed
17 that he had been on was the foot of the bed. And she also
18 testified that he did not ejaculate.

19 And so my argument was that they had -- they were, in
20 fact, lovers. And the evidence showed that they were
21 lovers, because the DNA -- his semen was covered --
22 covering the bedsheet.

23 And so because he had told me that they had this
24 consensual relationship, I used all the DNA evidence to his
25 advantage to say it can't possibly have occurred the way

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 19

1 she tells you that it occurred, because his semen is all
2 over this bed, which would corroborate our defense that
3 this was a consensual relationship.

4 Q Did you explain that to the jury in your opening
5 statements?

6 A I can't recall, but I have the transcript. But I do
7 recall maybe using it in my closing, because I read it
8 either in the advance sheet or in the transcript.

9 Q So your ---

10 A And I also remember holding the sheet up and showing
11 where the semen was all over the sheet.

12 Q So your thought was the DNA was gonna be helpful for
13 Mr. Nathaniel Johnson.

14 A Because he told me that he had had sex with her on
15 numerous occasions.

16 Q If -- if you had your choice, would you have wanted to
17 keep that DNA evidence out?

18 A If he had -- if he had not told me that they had had
19 consensual sex and that they were in a relationship, then I
20 would have tried. And that's the only reason why we
21 retained the expert, because he had initially said that it
22 was a case of mistaken identity.

23 And she had not identify him in a photo line-up, and I
24 -- I capitalized on that to show that they had had an
25 existing relationship, because she didn't identify him in a

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 20-

1 photo line-up. The picture that she described for the
2 sketch artist wasn't exactly like him. And my argument to
3 the jury was she was trying to protect him by not
4 identifying him.

5 And also, the facts were that her husband came up as
6 he was leaving on a bicycle. And I argued to the jury that
7 the reason why she screamed "rape" was because her husband
8 showed up.

9 Q Would it be your belief that the only thing based on
10 the bad -- what you believe to be a bad identification, the
11 only thing connecting him to the scene of this incident was
12 the DNA?

13 A Right.

14 Q All right. Did you consider at all filing a pre-trial
15 motion to exclude the DNA?

16 A I did not.

17 Q Did you file a pre-trial motion to attempt to exclude
18 the DNA?

19 A I did not. And again, that's based on the fact that
20 he told me he had a consensual relationship.

21 Q Irrespective of what your client told you at that
22 point, you agree that the only thing connecting him to the
23 scene of this incident was DNA evidence.

24 A Right. Because there was no -- I don't believe that
25 there was a pre-trial identification.

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 21

1 Q And -- and you entered into evidence this bedsheet.

2 A I didn't enter it. The State entered it into
3 evidence. But of course, I tried to use it to my
4 advantage.

5 Q If your -- did you say you have the transcript up
6 there?

7 A Uh-huh.

8 Q Would you turn to page 202?

9 (The witness complies.)

10 A I -- correction. I entered it into evidence.

11 Q So you entered this sheet that you said had the client
12 DNA all over it into evidence?

13 A Yes.

14 Q And if I remember correctly, the -- somebody from SLED
15 took out five samples of this sheet; is that correct?

16 A That's correct.

17 Q Is that your recollection?

18 A Yes.

19 Q Okay. And of those five samples that were taken off
20 of this sheet, how many of those samples tested positive
21 for -- were consistent with my client's DNA?

22 A I can't recall.

23 Q Okay.

24 A If you could direct me to it.

25 Q Well, let me -- let me -- let me lay the foundation

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS-22

1 here for the -- for this positive and negative stuff.

2 Do you recall the -- the pieces of evidence that were
3 sent to SLED for testing? Do you remember -- recall what
4 they were?

5 A From the evidence of the submittal sheet, yes, I do.

6 Q Okay. Have you ever seen any document similar to what
7 I just handed you?

8 A Yes.

9 Q Okay. And what would you -- how would you identify
10 that document?

11 A This is a -- a SLED evidence report. Evidence was
12 submitted for analysis and -- there was a fitted sheet and
13 pants from [REDACTED] who was the victim in this case,
14 and the results of that analysis.

15 And this particular -- there was -- there was hair --
16 there was evidence found on the sheet, but no hair found on
17 the pants. And the evidence that was collected from the
18 sheet was sent to the DNA department.

19 Q So that would be the evidence slip or document from
20 SLED for the fitted sheet that we're talking about ---

21 A Yes.

22 Q --- and a pair of pants that were taken from the
23 victim.

24 A Yes.

25 Q All right. And that's the fitted sheet that you

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 23

1 entered into evidence.

2 A Yes.

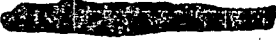
3 Q And that's the fitted sheet that had -- according to
4 your testimony, had my client's DNA all over it.

5 A Yes.

6 Q And if you -- if you would refer back to the Sheriff's
7 Department documents that I just gave you, who turned --
8 who turned that sheet into the Sheriff's Department
9 evidence?

10 A Lance Corporal Chapman.

11 Q And Lance Corporal Chapman was a witness at the trial
12 of this case; was he not?

13 A Yes. 

14 Q Okay. And who received that sheet from the Sheriff's
15 Department?

16 A Aileen Rios.

17 Q Was Ms. Rios a witness at this trial?

18 A I can't recall.

19 Q Okay. I'll refer you to the trial transcript.

20 A Okay.

21 Q In the first couple of pages it lists the witnesses,
22 and see if you can review that.

23 (The witness complies.)

24 A She was -- I don't believe she was.

25 * Q Okay. And if you'll look at the SLED statement

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 24

1 regarding the fitted sheet and the pants, who was the
2 forensic technician who dealt with the fitted sheet and the
3 pants?

4 A Emily Rhinehart.

5 Q Okay.

6 A Or Janice Bryson.

7 Q Was Janice Bryson a -- a witness at this -- this
8 trial?

9 A She was not.

10 Q Okay. And her lieutenant is Emily Rhinehart. Is
11 Emily -- was Emily Rhinehart a witness at this trial?

12 A She was not.

13 Q Okay. If you could turn to the trial transcript on
14 page 246.

15 (The witness complies.)

16 A Okay.

17 Q Okay. Down at line 22. If you'll read line 22
18 through 25.

19 A (As read) "Your Honor, for purposes of the record, the
20 State would seek to just have No. 15, the State's number,
21 assigned to items 2.1, 2.3, and 2.4, which are three
22 cuttings of the sheet as a group."

23 Q Okay. And would that indicate to you that the State
24 had three cuttings out of the sheet that were important
25 enough to them that they're identifying it?

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 25

1 A That's correct.

2 Q Okay. And then on page 247, line 9, the Court
3 addresses you and -- or apparently the solicitor, and says
4 (as read): "All right. Show him, Ms. Smart, the ones that
5 he proposed to introduce as State's No. 15."

6 Would that indicate to you that they're attempting to
7 introduce those three cuttings into evidence as State's No.
8 15?

9 A That's correct.

10 Q Okay. And if you'll look at page 247, line 19. Did
11 you have any objection to them introducing those three
12 cuttings?

13 A No objection.

14 Q Okay. Given what we spoke about, were you concerned
15 at all regarding the chain of custody of the sheet?

16 A I was not.

17 Q Okay. At that point in the trial, given the fact that
18 Ms. Rios, Ms. Bryson, and/or Ms. Rhinehart were not
19 witnesses in the trial, do you believe you had a proper
20 chain of custody for that sheet?

21 A I did not -- I don't know if I stipulated to the chain
22 of custody or not, but I certainly didn't challenge it.

23 Q Did you consider the DNA evidence so unimportant in
24 this case that you would stipulate to a chain of custody?

25 A In this, like I said, because he had said that he --

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 26

1 it was his DNA, then I -- I felt like I could stipulate to
2 it.

3 Q Did you explain to him how -- would you consider this
4 DNA evidence in front of the jury to be -- be damning to
5 his case, given the fact that it's the only piece of
6 evidence you said that places him at the scene of the
7 incident?

8 A Initially, for my initial defense that it was not him,
9 yes.

10 Q Did you explain that to him?

11 A I did.

12 Q Okay. Did you explain to him that -- that it was so
13 important that you needed to try to exclude it before
14 trial?

15 A I didn't -- I don't know if I explained that to him.
16 I can't recall. I do remember just being frustrated with
17 him that he changed the defense prior to trial, right
18 before trial. And I explained to him that I literally
19 stayed up nights for weeks trying to get ready. And then
20 at the last minute he tells me that he has a relationship
21 with this lady, and he doesn't want me to attack her.

22 And I explained to him -- I remember telling him,
23 "Well, she doesn't love you, because she's coming forward
24 with this trial. And you're telling me that you love her
25 and you don't want to testify and you don't want me to

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 27

1 attack her."

2 So I remember the frustration that I felt when he told
3 me that he had a relationship with her and he didn't want
4 me to attack her.

5 Q Not attacking -- by challenging the DNA evidence and
6 chain of custody, you would not be attacking her, would
7 you?

8 A Well, I wanted it to be his DNA, because it was
9 contrary to the facts. It was contrary to what her
10 testimony was. Her testimony, again, was it only happened
11 at the foot of the bed. And the evidence, obviously,
12 showed that it happened more than what she testified that
13 it happened to. And then I was hoping that the jury would
14 believe that it was consensual sex.

15 Q And in fact, you were excited about the DNA evidence,
16 right?

17 A I don't know if I was excited about it. When I told
18 him that the -- and I don't recall whether Mr. Bell had
19 ever discussed the case with him. So when I discussed the
20 case with him, and I told him that it in -- in fact, had
21 come back as his DNA and he said that it wasn't, that's
22 when we hired the expert to challenge the DNA.

23 And then, like I said, when he changed his story, and
24 said that it was a consensual relationship, then the whole
25 -- the entire defense strategy had to change.

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS-28

1 Q Do you believe you have an obligation that if you, as
2 a lawyer, do not believe that there's proper chain of
3 custody, you have to -- you should challenge that in the
4 court?

5 A I had no reason to believe there wasn't proper chain
6 of custody. I had already -- I had been to the evidence
7 locker to see the evidence; I had spoken to Aileen Rios
8 several times; I'd spoken to Mr. Chapman about the
9 evidence. So I -- there was no question in my mind that
10 the evidence had been tampered with or that it hadn't been
11 secured. I wasn't concerned about that at all.

12 Q Don't you owe it to your client to bring Ms. Rios into
13 this courtroom and place her under oath and challenge that
14 chain of custody, given the fact that that's the only
15 evidence placing Mr. Johnson at the scene of this incident?
16 Don't you believe you have an obligation to him for that?

17 A If the defense would have been miss -- you know,
18 mistaken identity, then yes, absolutely I did.

19 Q Do you think you should have brought her in here and
20 placed her under oath?

21 A No, I don't.

22 Q You believe it's sufficient for a lawyer to just
23 assure themselves that there's proper chain of custody and
24 stipulate ---

25 MR. FRIEDMAN: Objection, Your Honor. That's asked

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 29

1 and answered.

2 THE COURT: Let him finish his question first, okay,
3 Mr. Friedman ---

4 MR. FRIEDMAN: I'm sorry.

5 THE COURT: --- and I'll hear your objection.

6 Q I don't know if I remember it, Your Honor, at this
7 point. I think: Do you believe it's sufficient that it's
8 proper for you as a lawyer, just in your mind, to make up
9 the -- come up with the opinion the chain of custody has
10 been met; and that you're -- you should not bring them into
11 the courtroom under examination/cross-examination and under
12 oath, to challenge that, given the importance of this
13 evidence?

14 A Do I believe that the chain of custody is important?
15 Absolutely. And -- and that is why I -- I didn't rely on
16 our investigators to go to the Sheriff's Office to look at
17 the evidence. I went myself. And I made sure that the
18 seals were in order.

19 I had talked to the -- Mr. Chapman, I talked to Ms.
20 Rios, and viewed the evidence the way it was prior to
21 coming into trial.

22 Q I'll just ---

23 A If I had believed that the evidence -- evidence had
24 been tampered with; or if it had not been under lock; or
25 had the chain of custody been tampered with, then I must

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 30

1 certainly would have challenged the chain. But I had no
2 reason to believe that the evidence had been tampered with.

3 Q Tell me how the sheet was handled once it got to SLED
4 to cut out these samples.

5 A I don't have my file with me.

6 Q Well, you need -- we might need to get it.

7 A Do you -- do you have a copy?

8 Q Let me see if I -- let me see if I can get you to a
9 place in the transcript very quickly. How bout on page
10 245, line 5 -- I'm sorry, line 3. And this is direct by
11 the solicitor.

12 The question is (as read): "Please look at what's
13 been marked as Defense Exhibit No. 2," which if you look at
14 the transcript, is the sheet that you entered into evidence
15 that apparently had my client's DNA all over it.

16 And the answer from Ms. Hahn, who's with SLED --
17 forensic expert at SLED, said (as read): "I would not have
18 received this. This would have gone down to evidence
19 processing downstairs. They get all the -- all pieces of
20 items, you know, clothing and everything. And they would
21 make the cuttings, and the cuttings are actually given to
22 us. So I would have never seen this."

23 Do you believe, based on that, that there is a proper
24 chain of custody for this sheet or for these cuttings that
25 were entered into evidence; the sheet being entered into

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 31

1 evidence by you, and the cuttings being entered into
2 evidence by the State?

3 A Do I believe it was a proper chain of custody?

4 Q Yes, ma'am.

5 A I do.

6 Q Based on what?

7 A Based on the fact that the -- the way the evidence was
8 -- from my looking at the evidence, the evidence was
9 packaged properly in the brown bag.

10 The DNA department or -- they cut the piecings out to
11 send it to the DNA -- the cuttings out to send to DNA for
12 analysis. They didn't send the entire sheet, they just
13 sent the cuttings up. And the cuttings were analyzed.
14 They prepared the separate report, and that report was sent
15 to us.

16 Q And you've used the word "they" numerous times. Who
17 are "they"?

18 A I believe I testified to that earlier. "They" being -
19 - who -- when you say "they" being who analyzed it?

20 Q Well, you said "they" cut the pieces out, "they" took
21 the sheet ---

22 A SLED did.

23 Q --- "they" sent it upstairs. But who at SLED? Do we
24 know?

25 A I -- I don't have that. I can't recall who at SLED

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 32

1 did it -- did the analysis or did the cuttings.

2 Q Can you point to anything in the record to show that
3 you did anything to try to figure that out?

4 A I did not.

5 (Mr. Wogan hands a document to the witness.)

6 Q I just handed you the -- the document. Have you ever
7 seen a document like this before?

8 A I have. This is my handwriting to the right.

9 Q Okay. And what is this document?

10 A It's a serology analysis.

11 Q And the date on it over on the top right-hand side?
12 Right under DNA analysis.

13 A (As read) "August 11, 2006."

14 (Mr. Wogan hands a document to the witness.)

15 Q Does this look like a similar document?

16 A This is.

17 Q Okay. And what is the date of this document?

18 A (As read) "February 14, 2007."

19 Q So tell me what your recollection is of -- we spoke
20 about the sheet and the cuttings. Tell me what your
21 recollection is regarding -- let me see -- the August 11,
22 2006 SLED DNA analysis that I gave you. Tell me what your
23 recollection is why we have two DNA analysis.

24 A I honestly can't recall. Let me look at this and see.

25 (The witness reviews the document.)

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 33

1 A One is a serology, and one is a DNA. So the August
2 11, 2006 is serology, and the February 14, 2007 was a DNA
3 supplemental. And it looks like --

4 Q Might -- if -- I might be able to help. If you'll
5 look at the Sheriff's Department evidence slip for the
6 criminal sexual conduct kit, and the August 11, 2006 SLED
7 DNA report. Would it be -- would it be -- would it be your
8 recollection that the Sheriff's Department had this rape
9 kit, the CSC kit, and sent it up to SLED for testing, but
10 at that point did not have any sample or standard from Mr.
11 Johnson? Does that refresh your memory at all?

12 *A I wasn't involved with the -- the Schmerber motion, if
13 there was one.

14 Q And -- and all -- I'm not talking about Mr. Johnson's
15 blood yet. That would be the February 2007.

16 A Okay.

17 Q Okay. I'm talking about the criminal sexual conduct
18 kit. Did you review that SLED DNA analysis for the rape
19 kit?

20 A I did -- I -- the August 11th I reviewed it, because
21 this is hand -- my handwriting all over this document.

22 Q Okay.

23 A And notes that I made.

24 Q Do you remember reviewing the February 14, 2007 SLED
25 DNA report?

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 34

1 A I do, because my handwriting is on this document as
2 well.

3 Q And do you have -- you mentioned the *Schmerber* motion.
4 Is it your recollection that they -- somebody had filed a
5 motion to obtain a blood sample from Mr. Johnson?

6 A I can't recall. But obviously they had to, because
7 they had to have something to compare it with.

8 Q Do you ---

9 A But I can't recall whether or not it was Mr. --
10 whether Mr. James represented -- Mr. Bell represented him
11 at that time or I did.

12 Q Do you remember if there was any commotion related to
13 -- to obtaining Mr. Johnson's blood? And when I say
14 "commotion," I mean was a second order necessary in order
15 to obtain the blood by force if necessary?

16 A (No audible response.)

17 Q Does that refresh your memory at all?

18 A It must have been if you ask this question.

19 Q I -- I don't know. I don't know if it refreshes your
20 memory or not.

21 A Honestly, I don't remember.

22 Q Let's go back to the criminal sexual conduct kit, the
23 evidence document from the Sheriff's Department. Who
24 delivered -- based on that document, who delivered the kit
25 to -- to evidence at the Sheriff's Department?

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 35

1 A Matrinko..

2 Q And ---

3 A It looks like he submitted it in February of '06.

4 Q To ...?

5 A It was received by Ms. -- Officer Rios.

6 Q Okay. And again, Ms. Rios was not a witness at the
7 trial.

8 A No.

9 Q Okay. Did you ask -- when -- Officer Matrinko was,
10 correct?

11 A I believe he was.

12 Q Okay. And you had an opportunity to cross-examine Mr.
13 Matrinko, to find out who he gave that to and how he gave
14 it to them, the criminal sexual conduct kit, correct?

15 (Brief pause as witness reviews documents.)

16 Q If I can help you, page 230, line 19.

17 A Court's indulgence, Your Honor.

18 (Brief pause as witness continues to review
19 documents.)

20 A Yes. I had no questions for him.

21 Q So you asked him no questions regarding the -- any --
22 any chain of custody questions.

23 A I did not.

24 Q Okay. And then, I believe, Ms. Cooper from the
25 Sheriff's Department was a witness in this case, correct?

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 36

1 A Yes.

2 Q And she -- and would it be -- would it -- would it
3 comport with your recollection that she is the lady from
4 the Sheriff's Department that runs all this evidence up to
5 SLED?

6 A Yes.

7 Q And you asked Ms. Cooper some questions at trial
8 regarding that, correct?

9 A I did.

10 Q Do you recall -- I know you don't recall the *Schmerber*
11 motion or being present at the *Schmerber* motion. Do you
12 recall asking Ms. Cooper about the sample of blood that was
13 taken from my client?

14 (Brief pause as the witness reviews documents.)

15 A It doesn't look as if I did.

16 Q You asked Ms. Cooper no questions regarding chain of
17 custody about my client's blood?

18 A I believe I only asked her about photo line-ups.

19 Q So we don't know how the blood got up to SLED.

20 A Not from cross-examination, no.

21 (Brief pause as the witness reviews documents.)

22 A Actually -- I'm sorry. On direct examination, it
23 looks like Ms. Cooper said that she had taken the blood --
24 the blood standard to SLED.

25 Q Okay. All right. So Officer Cooper. or Ms. Cooper

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 37

1 from the Sheriff's Department, is taking all of this -- all
2 of the -- the blood up -- up to SLED along with the other
3 evidence.

4 A Yes.

5 Q Okay. Do you remember a Ms. Hahn from SLED?

6 A Yes.

7 Q And she was a witness at this trial, correct?

8 A She was.

9 Q Okay. Do remember a Marsha Leitzel, L-e-i-t-z-e-l?

10 A Yes.

11 Q Okay. And who is -- who is Ms. Marsha Leitzel?

12 A The DNA forensic technician for SLED who opened the
13 rape kit.

14 Q Was she -- she opened the rape kit?

15 A Yes.

16 Q Was she a witness at this trial?

17 A No, I stipulated.

18 Q Okay. Why did you stipulate on such an important
19 matter?

20 A My defense was that it was consensual sex.

21 Q Would you agree that all these issues could have been
22 dealt with before the trial of this matter? All -- when I
23 say that, I mean all of these -- the admissibility of DNA.
24 All of these issues regarding chain of custody and the
25 admissibility of DNA could have been dealt with before the

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 38

1 actual trial.

2 A If they were an issue, then, yes.

3 Q Okay. And had that -- had that hearing been ruled in
4 your favor, would you still want the DNA to be introduced
5 into evidence?

6 A Meaning had it not been Mr. Johnson's DNA?

7 Q No. Had all of this information been presented to the
8 Court on a motion -- a pretrial motion dealing with the
9 admissibility of this DNA evidence; the sheet; the sheet
10 cuttings; what we went through to get his blood; and all
11 this other stuff; Ms. Leitzel; Hahn; Rios -- had all that
12 been dealt with before the hearing, and that hearing been
13 decided in your favor to exclude all of that DNA evidence,
14 would you still consent or stipulate that the DNA should be
15 admitted to the jury?

16 MR. FRIEDMAN: Objection, Your Honor. Speculation.

17 THE COURT: Overruled. I'll allow it. Go ahead and
18 answer the question, if you know the answer.

19 A I can't -- I don't know how I would have thought back
20 then. I don't know. I think now, if his defense was it
21 was consensual sex, I still probably would have done it to
22 show the jury that, again, him -- apparently they had had
23 sex more than this witness has testified to, and basically
24 to show that the witness wasn't credible. And she's the
25 only eyewitness to the rape. And the evidence was contrary

~~DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS~~ 39

1 to what her testimony was.

2 Q Let me ask you this question: If you weren't
3 concerned about the DNA enough that you probably would have
4 still -- even if you'd won the motion, you probably still
5 would have brought it in front of the jury, why did you
6 hire an expert?

7 A Because initially he said that it wasn't him, that it
8 was a case of misidentification. And so my defense, based
9 on the fact that it wasn't him, was I need to challenge
10 this DNA.

11 And when I discussed that with him and he changed his
12 story and said that it was him and that they had in fact
13 been seeing each other, then it completely changed my
14 defense strategy.

15 And now the DNA becomes to me more helpful than
16 hurtful, because it contradicts her statement.

17 Q If you would look at Dr. -- if you'll look at the Dr.
18 -- Dr. Ostrowski's bill. Even two days before trial --
19 based on your review of that bill, even two days before
20 trial, he was composing and sending you cross-examination
21 questions for the DNA.

22 A Right. Because that is what he was retained to do.

23 Q And so is it your testimony that a day or two ---

24 A Yes.

25 Q --- before trial, Nathaniel Johnson changed his

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS-40-

1 position and instructed -- did he instruct you?

2 A Yes.

3 Q He instructed you to go forward -- to -- to go forward
4 with the DNA evidence and that this was an affair?

5 A Yes. I was -- I was very upset with Mr. Johnson when
6 he did that, simply because of all the time and effort and
7 the money that we had put in to retaining the expert, for
8 him to change his mind at literally the last minute. I was
9 very upset with him when he did that. And I was upset with
10 him when he didn't want me to -- to cross-examine Ms.
11 Rodriguez.

12 The difficulty -- because it's -- I mean I -- I
13 explained to him I had been up for hours, you know, not
14 sleeping at night because I'm working on your case, and now
15 you're telling me that everything that I had done, I did
16 for nothing. And now you want me to completely change the
17 strategy, which meant that I literally had to go back out
18 to the scene again to look at -- to look at it from a
19 different perspective.

20 Q Based on the fact that you were so upset about this,
21 did you make any notes to memorialize his change of opinion
22 that changed your trial strategy three days before trial?

23 A I don't know if I made any notes, but I -- I remember,
24 because Mr. Chapman had to go back out there with me. And
25 he wasn't happy about having to go back out there.

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 41

1 Q Why was he not happy about going back out there?

2 A Because I came to him at the last minute and said, you
3 know, we're gonna have to go back out there. And he says,
4 "Well, we've already been there. Why do we have to go
5 back?"

6 And then I explained to him that -- what he had said
7 and why I needed to go back. And I remember that, because
8 at that time they wouldn't let me go anyplace by myself
9 because I was pregnant. So I had to -- to take someone
10 back out there with me.

11 Q If you'll look at page 276, line 17.

12 A I'm sorry. Line what?

13 Q Line 17.

14 A Okay.

15 Q If you'll just take a moment just to -- you can read
16 that to yourself, and I just want to ask you a couple of
17 questions.

18 (The witness complies.)

19 THE COURT: What page is that again, sir?

20 MR. WOGAN: I'm sorry, Your Honor. 276, line 17.

21 Q Okay. Did -- does that portion of the transcript
22 state that it was logged in by Nicky Perry at SLED?

23 A Yes.

24 Q And when I say "it", I'll represent to you that No. 7
25 is ---

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 42

1 A No. 7.

2 Q --- is the defendant's blood sample.

3 A Yes.

4 Q Okay. Was Nicky Perry a witness at this trial?

5 A She was not.

6 Q Okay. And then it states it was placed into the
7 evidence area by Amy -- Amy Stevens, correct?

8 A Yes.

9 Q Was she a witness at this trial?

10 A She was not.

11 Q Okay. And then it states something about it being
12 moved to the evidence area -- from the evidence area "up to
13 Taylor's Department."

14 A Yes.

15 Q And does Ms. Taylor, in her testimony, know even who
16 moved that from the evidence department up to her
17 department based on her testimony?

18 A She just said a technician from the DNA lab.

19 Q Okay. Did you cross-examine her at all regarding
20 that?

21 A I did not.

22 Q Do you think those are important questions to have
23 answered?

24 A If DNA was an issue, yes, it would have been.

25 Q So all of this hinges on the fact that you do not

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 43

1 believe that my client's DNA was all over that sheet ---

2 A I ---

3 Q --- was issue in this trial at all?

4 A I believe that it was an issue that goes to, again,
5 the credibility of the witness -- from the victim, Ms.

6 [REDACTED]

7 Q The trial transcript has you repeatedly asking Ms.

8 [REDACTED] about inconsistencies in her statement, correct -

9 --

10 A Yes.

11 Q --- in her statements? Her numerous statements?

12 A Yes.

13 Q So if you wanted to highlight inconsistencies, you
14 clearly could highlight inconsistencies in other state --
15 in statements that were made by her, in written statements
16 to the police department and to the hospital; and you
17 really didn't need to highlight the inconsistency with the
18 DNA; would you agree with that?

19 A Can you repeat that a little slower?

20 THE COURT: Please rephrase your question.

21 MR. WOGAN: I -- I apologize.

22 Q That you believed that the DNA was important and could
23 be used to highlight an inconsistency of [REDACTED].

24 A Yes.

25 Q Okay. And do you believe that's the most compelling

DIRECT EXAMINATION BY MR. WOGAN---STEPHANIE SMART-GITTINGS 44

1 reason why you would not challenge the DNA evidence?

2 A Well, in order for it to be important for the defense,
3 it would have had to have been his DNA. If my argument was
4 you're having sex with this man during -- while your
5 husband's at work, and this particular day you knew your
6 husband was coming home and that's why you screamed rape.

7 Q And you thought the DNA was important to -- for
8 inconsistencies.

9 A But if the DNA evidence was not his, then that
10 argument would not have been any good. And so it would
11 have been counterintuitive to challenge the DNA to say that
12 it's not his, if my argument to the jury was gonna be:
13 "This witness is not believable, because she said, No. 1,
14 he did not ejaculate, and that's inconsistent, because
15 there's semen -- his semen all over this bedsheet. And she
16 said that the incident only occurred at the foot of the
17 bed, when that's inconsistent, because his semen is the top
18 of the sheet, the middle of the sheet, the sides of the
19 sheet, and -- and also at the foot of the sheet.

20 So in order for my defense to be "this was a
21 consensual relationship," then I couldn't have challenged
22 his DNA, because now I have nothing to show that there's a
23 consensual relationship.

24 Because he wasn't gonna testify, and he didn't want me
25 to ask her about the relationship. I believe he was

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 45

1 concerned, because the victim's husband had come to court,
2 but he didn't remain in the courtroom. He left. And I
3 believe I -- I might have said that.

4 Q My question was that you thought the DNA was important
5 to highlight any inconsistency.

6 A Yes.

7 Q And would you agree that you had other things in the
8 record, including very inconsistent written statements,
9 that you could have used to highlight that inconsistency?

10 A I think I did use her inconsistent statements.

11 Q Now, there was -- there was an issue -- do you recall,
12 was there a photo line-up in this case?

13 A Yes.

14 Q Okay. Was there -- was there a sketch in this case?

15 A Yes.

16 Q And was the sketch done by a SLED agent?

17 A I can't recall who it was done by. I can't remember
18 who actually did the -- the sketch -- who drew the sketch.

19 Q Does Mr. Lynch ring a bell as a -- as SLED forensic
20 artist?

21 A I can't recall.

22 Q But you do recall that there was -- and I -- I
23 apologize. You do recall that there was a sketch?

24 A There was a ---

25 Q And you also recall -- I -- I'm sorry I didn't mean to

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 46

1 interrupt.

2 A There was a sketch.

3 Q Okay. And you also recall that there was a line-up?

4 A Yes.

5 Q Okay. Do you recall whether [REDACTED] was able to
6 identify Mr. Johnson in the line-up?

7 A She did not.

8 Q Okay. And let me turn your attention to page No. 22
9 of the transcript, line 21.

10 (The witness reviews the document.)

11 A Yes.

12 Q And after reading that, does -- do you -- does it
13 refresh your recollection that you had two pretrial motions
14 -- I'm sorry -- one pretrial motion before the trial
15 started related to the sketch and the line-ups and in-court
16 identification?

17 A From this line, it looks like there was a pretrial
18 motion with regard to identification.

19 Q And what was your concern for that pretrial motion?

20 A That the interpreters weren't here. It was a -- it
21 had to do with in-court identification. But the victim was
22 Hispanic, and the interpreters weren't here -- weren't
23 there.

24 Q Okay. And did you ultimately withdraw -- withdraw the
25 motion? And I'll direct you -- your attention to page 27.

DIRECT EXAMINATION BY MR. WOGAN -- STEPHANIE SMART-GITTINGS 47

1 (Brief pause as the witness reviews the document.)

2 A I did.

3 Q And you also withdrew it to the point that you waived
4 Mr. Johnson's right to appeal on that issue; is that
5 correct? Specifically waived that right.

6 A Yes.

7 Q Why did you do that?

8 A I -- I don't recall. Because we took a recess, and I
9 don't know if something happened during the recess that
10 made me withdraw the motion. I can't recall.

11 Q If -- have you often withdrawn motions and
12 specifically all -- and specifically said you also waive
13 the right to appeal on that issue?

14 A I don't recall.

15 Q Do -- I guess my question is: Do you often do that?
16 Do you recall doing that in the past other than this case?

17 A No.

18 Q Then you would agree with me that that means that that
19 issue is gone forever, that he can't appeal it? If the
20 judge was wrong in that case, he can't appeal that to the
21 Court of Appeals or the Supreme Court.

22 A Right.

23 Q One last area, and I'll be very brief, Your Honor. I
24 appreciate your patience.

25 Is this -- Officer Chapman was a witness in this case,

DIRECT EXAMINATION BY MR. WOGAN - STEPHANIE SMART-GITTINGS 48

1 correct? The police officer.

2 A Yes.

3 Q Okay. And do you recall an issue when Officer Chapman
4 was testifying regarding a statement he made about my
5 client and your client, Mr. Johnson, being in jail at the
6 time they obtained a DNA sample?

7 A Yes.

8 Q And do you recall Officer Chapman saying that he was
9 in jail on a unrelated offense?

10 A Yes.

11 Q Okay. And did you timely object to that?

12 A I did not.

13 Q Do you believe that was objectionable testimony?

14 A Yes.

15 Q And your testimony today is that you did not timely
16 object to that.

17 A I did not.

18 Q Okay. Are you aware that Mr. Johnson appealed that
19 exact issue to the Court of Appeals?

20 A Yes.

21 Q And what was the outcome of the Court of Appeals case?

22 A I believe -- let me look at the case.

23 (Brief pause.)

24 MR. WOGAN: Your Honor, I have a copy. It's very ---

25 THE COURT: I've got a copy. (Indicates) Is this what

1 you're talking about?

2 MR. WOGAN: Yes. Yes, Your Honor.

3 THE COURT: Here you go.

4 MR. WOGAN: Thank you.

5 THE COURT: Ms. Gittings.

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: Let the record reflect that I've handed
8 Ms. Gittings a copy of the Court of Appeals opinion that
9 Mr. Wogan has questioned her about.

10 DIRECT EXAMINATION BY MR. WOGAN (Continues):

11 A That the issue hadn't been preserved, because I didn't
12 contemporaneously object to the curative instruction.

13 MR. WOGAN: I have nothing further, Your Honor.

14 THE COURT: Mr. Friedman.

15 MR. FRIEDMAN: Thank you, Your Honor.

16 CROSS-EXAMINATION BY MR. FRIEDMAN:

17 Q Ms. Smart-Gittings, do you recall discussing the
18 elements of the charges and what the State was required to
19 prove with the applicant?

20 A Yes.

21 Q Do you recall discussing potential defenses with him?

22 A Yes.

23 Q And I believe you testified that his initial defense
24 was misidentification; is that right?

25 A Yes.

CROSS-EXAMINATION BY MR. FRIEDMAN - STEPHANIE SMART-GITTINGS 50

1 Q And I believe you also testified that he eventually
2 changed his -- his theory of the defense; is that right?

3 A Yes.

4 Q What -- what was his new theory?

5 A It was consensual sex.

6 Q And when did he tell you about that? How long before
7 the trial?

8 A Right before the trial.

9 Q I believe you testified that you had retained a -- a
10 DNA expert before he told you about his new theory?

11 A We did.

12 Q Did you think you needed that DNA expert after he
13 changed his defense?

14 A I didn't.

15 Q Did you think you had enough time to prepare for
16 trial?

17 A I'm sorry?

18 Q Did you have enough time to prepare for trial?

19 A I did.

20 Q Were you able to discuss the DNA evidence with the
21 applicant?

22 A Yes.

23 Q Now, if -- if his DNA was found on the bedsheet, would
24 that have been consistent with his new defense?

25 A I'm sorry?

1 Q If his DNA was found on the bedsheet, was that
2 consistent with his new defense?

3 A Yes.

4 Q Did you see any basis to move to suppress the DNA
5 evidence?

6 A No.

7 Q Did you see any basis to challenge the chain of
8 custody?

9 A No.

10 Q And you were asked about Officer Chapman's testimony,
11 about he brought up an unrelated charge?

12 A Yes.

13 Q Do you recall if he -- if he specified what the
14 unrelated charge was?

15 A He did not.

16 Q Do you recall whether or not the Court gave a curative
17 instruction?

18 A He did.

19 MR. FRIEDMAN: I have nothing further, Your Honor.

20 THE COURT: Mr. Wogan, anything else?

21 MR. WOGAN: Nothing further from me, Your Honor.

22 THE COURT: All right. Ms. Gittings, you may step
23 down.

24 (The witness complies.)

25 THE COURT: Call your next witness, please.

DIRECT EXAMINATION BY MR. WOGAN - NATHANIEL JOHNSON 52

1 MR. WOGAN: Your Honor, I call Nathaniel Johnson.

2 THE COURT: All right. Mr. Johnson, you come around,
3 be sworn, please, sir.

4 NATHANIEL JOHNSON, having
5 been first duly sworn, testifies as follows:

6 THE COURT: Mr. Wogan, you may proceed.

7 DIRECT EXAMINATION BY MR. WOGAN:

8 Q Okay. Nathaniel, would you state your full name for
9 the record, please?

10 A Yes. Nathaniel Johnson, Junior.

11 Q And where are you currently incarcerated?

12 A I'm currently incarcerated at Leiber Correctional
13 Institution.

14 Q Okay. And on what charges, what offense?

15 A Criminal sexual conduct in the first degree, and
16 kidnapping.

17 Q And what was your sentence?

18 A Thirty years on CSC, first; 30 years on kidnapping,
19 ran concurrent.

20 Q And what happened to the other -- the charge of the
21 firearm and the burglary?

22 A I was found not -- not guilty.

23 Q And I met you up at Leiber one day. Do you recall
24 that?

25 A Yes, sir.

1 Q Okay. And you and I have had a telephone conversation
2 yesterday?

3 A Yes, sir.

4 Q Okay. And we discussed the possibility, if you are
5 granted a new trial, that you could be facing both those
6 charges again; and that you could be sentenced -- if found
7 guilty, you could be sentenced on both those charges to run
8 consecutively.

9 A Yes, sir.

10 Q And you understand that.

11 A Yes, sir.

12 Q Okay. And you informed me that you still wish to
13 proceed and go forward today with your PCR.

14 A Yes, sir, I still wish to proceed.

15 Q Okay. Let's talk a little bit about -- how many times
16 prior to trial did Ms. -- Ms. Gittings meet with you?

17 A Two times to be exact.

18 Q Do you recall how closely related those two times were
19 to the trial?

20 A Yes. I'd been incarcerated for -- at the Beaufort
21 County Detention Center for about seven months. And at
22 that time, Mr. James Bell was my pretrial attorney.

23 And I -- there was some issues between me and Mr.
24 Bell, and -- and we could not come to an understanding
25 between the -- the client and the lawyer privilege. So I

1 asked him to be relieved. And ---

2 Q If I could stop you real quick. How many -- if you
3 can just tell me, was it within a month, was it within two
4 months, was it in three months that Ms. Smart-Gittings came
5 to see you?

6 A It had to have been maybe two months afterwards.

7 Q And do you recall during those visits discussing the
8 DNA evidence?

9 A Never.

10 Q Do you recall discussing with her the theory of the
11 case?

12 A She told me the seriousness of the crime, but not the
13 theory of the case.

14 Q Did you ever tell -- say to Ms. Smart, "I want you to
15 be easy on [REDACTED]"

16 A No, sir.

17 Q Did you ever say to Ms. Smart, "I want you to only go
18 forward on the theory of affair?"

19 A No, sir. Never told her that I was in love with her
20 either.

21 Q Did you know the DNA evidence existed before your
22 trial?

23 A No, sir.

24 Q Had you known that there was DNA evidence, your DNA
25 evidence at the scene of this incident, would you have

1 asked Ms. Gittings to try to find a way to keep that out of
2 the court?

3 A No, sir.

4 Q Okay. Were you ever -- did she ever speak to you
5 about any pleas that may have been a possibility?

6 A No, sir.

7 Q Did you instruct her to go forward with the trial?

8 A Yes, sir.

9 Q And just so I'm clear, there was never any discussion
10 over the DNA evidence or whether it should be used at trial
11 or not used at the trial?

12 A No, sir. There was no discussion.

13 Q Are you asking the Court to grant you a new trial
14 today?

15 A Yes, sir. [REDACTED]

16 Q And do you believe that -- that you will -- strike
17 that.

18 MR. WOGAN: I have no further questions, Your Honor.

19 THE COURT: Mr. Friedman?

20 MR. FRIEDMAN: I have no questions, Your Honor.

21 THE COURT: All right, sir. You may step down. Thank
22 you.

23 THE WITNESS: Thank you.

24 (The witness complies.)

25 MR. WOGAN: Nothing further, Your Honor.

1 THE COURT: Anything, Mr. Friedman?

2 MR. FRIEDMAN: No witnesses, Your Honor.

3 MR. WOGAN: The only thing I would like to do is just
4 mark -- mark those.

5 THE COURT: All right. If you all will come forward,
6 Mr. Friedman, Mr. Wogan, and make sure that whatever
7 exhibits -- any objections, Mr. Friedman?

8 MR. FRIEDMAN: No, I don't think so, Your Honor.
9 Pretty much ---

10 THE COURT: Look at exhibits. If there are multiple
11 pages to exhibits, make sure you state for the record the
12 number of pages in those exhibits, so it's clear on the
13 record.

14 THE COURT REPORTER: How many do you have?

15 MR. WOGAN: Five total.

16 THE COURT REPORTER: Okay. So Applicant's 1 is...

17 MR. WOGAN: No. 1 is going to be February 14, 2007
18 SLED Forensic Report.

19 THE COURT REPORTER: How many pages?

20 MR. WOGAN: Five pages.

21 (Marked Applicant's Exhibit No. 1, SLED forensic
22 report dated 2/14/07; 5 pages.)

23 THE COURT REPORTER: Okay. Go ahead, please.

24 MR. WOGAN: Yes, ma'am. No. 2 is going to be August
25 11, 2006 SLED Forensic Report, six pages.

1 (Marked Applicant's Exhibit No. 2, SLED forensic
2 report dated 8/11/06; 6 pages.)

3 THE COURT REPORTER: Okay.

4 MR. WOGAN: Applicant's No. 3 is June 20, 2006.

5 THE COURT REPORTER: 20th?

6 MR. WOGAN: June 20, 2006. Yes, ma'am. SLED Forensic
7 Report, two pages.

8 (Marked Applicant's Exhibit No. 3, SLED forensic
9 report dated 6/20/06; 2 pages.)

10 THE COURT REPORTER: Uh-huh.

11 MR. WOGAN: The next one is a compilation of Beaufort
12 County Sheriff's Office evidence slips; six.

13 (Marked Applicant's Exhibit No. 4, Beaufort County
14 Sheriff's Office documents, 6 pages.)

15 MR. WOGAN: Your Honor, if I might. This last exhibit
16 here -- I don't know if you're gonna -- I don't know what I
17 was doing, but this was a little sticky -- stick-it --
18 sticky note in her file. And I wrote this information down
19 here on it.

20 It's just a fax telephone number, it says "scan and e-
21 mail"; and then it's the doctor's e-mail address. That is
22 my writing, from "fax" down.

23 THE COURT: Okay.

24 MR. WOGAN: (To the court reporter) This will be
25 compilation of expert documents. Eight -- eight pages.

1 (Marked Applicant's Exhibit No. 5, compilation of
2 expert documents; 8 pages.)

3 THE COURT: Let me go ahead and put this on the
4 record. Just -- gonna go ahead and rule on a couple of
5 things here.

6 There were three issues raised in applicant's post-
7 conviction relief application: One being prosecutory
8 misconduct along with some other -- (as read): "And the
9 prosecutors may conceal evidence or misrepresent or
10 influence juries by impugning the character of witnesses."

11 No testimony with regards to any of that today; and
12 therefore, my ruling on that one is a dismissal of those --
13 those allegations.

14 Violation of due process of the law: Heard nothing
15 with regards to anything on either of those issues. I did
16 not give you all an opportunity to argue. Anything you
17 want to add, Mr. Wogan?

18 MR. WOGAN: No, Your Honor.

19 THE COURT: Mr. Friedman?

20 MR. FRIEDMAN: No, Your Honor.

21 THE COURT: All right. So the only remaining issue is
22 the ineffective assistance of counsel. And I will let you
23 know on that.

24 Also, this is not to anybody in particular, but it is
25 right now, just get the word out. Because when I was in

1 private practice -- this can be frustrating for someone
2 such as Mr. Wogan to be cross-examining someone such as
3 you, Ms. Gittings, who represented a defendant, and for you
4 not to have your file.

5 And that happened when I was in Mr. Wogan's shoes on a
6 number of occasions. And it -- it can be frustrating when
7 you can't get a response.

8 So I would just encourage you to come with your file
9 and be prepared to go forward on these hearings, okay?

10 MR. WOGAN: Thank you, Your Honor.

11 THE COURT: All right. Anything further ---

12 MR. FRIEDMAN: Nothing further.

13 THE COURT: --- on this matter? All right.

14 (Off the record at 2:57 p.m.)

15

16 --- END OF TRANSCRIPT OF RECORD ---

17

18

19

20

21

22

23

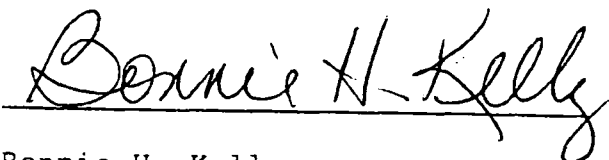
24

25

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript ~~of record~~ of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 30th day of August, 2011.

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



Bonnie H. Kelly,

Court Reporter

Columbia, South Carolina

February 5, 2012

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

LCPL Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758
Beaufort, SC 29901

DNA ANALYSIS

February 14, 2007

SLED LAB: L06-2390

Your Case No: 200602070359

Incident Date: 2/7/2006

[S] Nathaniel Johnson, Jr

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

- 7 Blood standard from Nathaniel Johnson, Jr. (All other items were previously analyzed. Refer to report dated August 11, 2006 signed by Kimberly A. Hahn)

EXAMINATIONS

DNA analysis was performed on the item 7 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1.

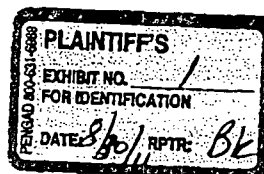
RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 matches the DNA profile of Nathaniel Johnson, Jr. The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 76 quadrillion.

The partial DNA profile developed from item 5 also matches Nathaniel Johnson, Jr.



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SLED LAB No. L06-02390
February 14, 2007

Page 2 of 5

The partial DNA profile developed from the male contributor to items 1.8R and 1.9 is consistent with Nathaniel Johnson, Jr.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [redacted] and Nathaniel Johnson, Jr. cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

Is it possible that someone else contributed to these mixtures?

Table 1 - Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317	D7S820	Amelogenin
~~1.2~~	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	28,(31.2)	12,13	8,(11), 13	(9),11, (12),13	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12),13	(9),11, (12),13	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	14,15	(28),30, 31.2	11,(13), 16	(8),11, 12,(13)	9,12 (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	28	(11),12, 13,(16)	8,(11) 13	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	28,(30)	(11),12, 13	8,(11), 13	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	11,12, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	15,17, (18)	(22),24, 25	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

(-) = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

if he didn't execute how did he get there how long was it there would she have known



SLED LAB No. L06-02390

Page 3 of 5

February 14, 2007

Table 2 - Cofiler

Items	D3S1358	D16S539	TH01	TPOX	CSF1PO	D7S828	Amelogenin
[REDACTED] 1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, 8	9	10,11	11,12, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11),12, 13	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), 8	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	11,12, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,15, 16	12,13	6,7, 8	8,9, (11)	10,11	11,12, 13	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	XY(Y)

() = alleles between 75 and 149 rfu

-- no results

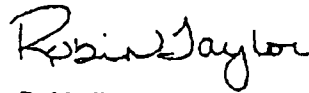
Bold = major contributor



SLED LAB No. L06-02390
February 14, 2007

Page 4 of 5

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Robin Taylor
Forensic Scientist

cc: Beaufort County Solicitor's Office



SLED LAB No. L06-02390
February 14, 2007

Page 5 of 5

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D198433	vWA	TPOX	D18S51	D5S818	FGA	Ame- genia
7 Johnson	14,15	28	11,12	10,11	16	6,8	11,13	12,13	19,25	13,2,16	15,18	9	12,13	8,13	22,24	XY



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12:00:30 p.m. 02-27-2007

6/8

2006-0007-359 459

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

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ROBERT M. STEWART
Chief

AUG 16 2006

Beaufort County Sheriff's Office

LCPL. Brian Chapman
Beaufort County Sheriff's Office
PO Box 1758

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Beaufort, SC 29902
I certify this is a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

DNA ANALYSIS

August 11, 2006

SLED LAB: L06-02390

Your Case No: 20060207-359

Incident Date: 02/07/2006

(S) Nathaniel Johnson

Michael M. Hatfield

Chief Deputy Beaufort County Sheriff's Office

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1.0 Sexual Assault Evidence Collection
Kit from [redacted]

1.2 Blood standard

1.2 See DNA analysis.

1.4 Smears (vaginal and oral)

1.4 No analysis performed.

1.5 Vaginal swabs

1.5 No semen identified.

1.6 Oral swabs

1.6 No semen identified.

1.7 Miscellaneous body fluids

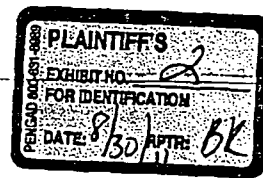
Semen identified. See DNA analysis.

1.8 R Fingernail scrapings (Right)

1.8 R See DNA analysis.

*No semen
inside her
on her
but on bed.
Collected
from
when?*

*found on
VS body*



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Items Submitted:

1.8 L Fingernail scrapings (Left)

1.9 Bite mark swabs

1.10 Known head hairs

~~2.1 Cutting from fitted sheet~~

2.2 Cutting from fitted sheet

~~2.3 Cutting from fitted sheet~~~~2.4 Cutting from fitted sheet~~

2.5 Cutting from fitted sheet

2.6 Trace evidence collected from fitted sheet

3.0 Swabs

3.1 Swab one taken from bite wound

3.2 Swab two taken from bite wound

4.1.1 Cutting from pants

5.0 Plastic spoon said to have been used by Nathaniel Johnson, Jr.

6.0 Napkin said to have been used by Nathaniel Johnson, Jr.

Results of Examinations:

1.8 L Nothing of apparent serological evidentiary value found.

1.9 See DNA analysis.

1.10 No analysis performed.

~~2.1 Semen identified. See DNA analysis.~~

2.2 No analysis performed.

~~2.3 Semen identified. See DNA analysis.~~~~2.4 Semen identified. See DNA analysis.~~

2.5 No analysis performed.

2.6 No analysis performed.

3.1 See DNA analysis.

3.2 See DNA analysis.

4.1.1 See DNA analysis.

5.0 See DNA analysis.

6.0 See DNA analysis.

*do u recognize this
Amado u recognize it
what is it
did u test this item
+ DNA*

admitted.

#15

no human DNA

admitted

admitted

Were results obtained

Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office



DNA ANALYSISITEMS ANALYZED:

- 1.2 Blood standard from [REDACTED]
- 1.7 Miscellaneous body fluids *from [REDACTED]*
- 1.8 Fingernail scrapings from right hand
- 1.9 Bite mark swabs
- 2.1 Cutting from fitted sheet
- 2.3 Cutting from fitted sheet
- 2.4 Cutting from fitted sheet
- 3.1 Swab one taken from bite wound
- 3.2 Swab two taken from bite wound
- 4.1.1 Cutting from pants
- 5.0 Plastic spoon said to have been used by Nathaniel Johnson, Jr.
- 6.0 Napkin said to have been used by Nathaniel Johnson, Jr.

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Michael M. Hatfield
Chief Deputy, Beaufort County Sheriff's Office

EXAMINATIONS

DNA analysis was performed on items 1.2, 1.7, 1.8, 1.9, 2.1, 2.3, 2.4, 3.1, 3.2, 5.0, and 6.0 using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.

RESULTS

The DNA profile developed from the semen on items 1.7, 2.1, 2.3, and 2.4 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS) for comparison purposes.

The partial DNA profile developed from the male contributor to items 1.8 R and 1.9 is consistent with the semen donor to item 1.7.

The partial DNA profile developed from item 5.0 is also consistent with the semen donor to item 1.7.

The DNA profiles developed from items 3.1 and 3.2 are mixtures. [REDACTED] and the unidentified male individual from item 1.7 cannot be excluded as contributors to these mixtures. The probability of randomly selecting an unrelated individual who could have contributed to the mixture from item 3.1 is approximately 1 in 330 thousand.

The partial DNA profile developed from item 6.0 is too weak to reliably interpret.

No human DNA was extracted from item 4.1.1.

*Pants that she had on, only
pulled to her waist NO DNA but DNA
in [REDACTED]*



Table 1 - Profiler Plus

Items	D3S1358	vWA	FGA	D8S1179	D21S11	D18S51	D5S18	D13S317	D7S820	Amelo- genin
[REDACTED] 1.2	15,16	15,17	24,25	14	30,31.2	[REDACTED]	1,12	9,12	12,13	X
Misc. body fluids 1.7 F	15,16	15,17	24,25	14	30,31.2	11,16	11,12	9,12	12,13	X
Misc. body fluids 1.7 M	16	15,18	22,24	14,15	28,(31.2)	12,13	8,(11), 13	(9),11, (12),13	11,12	XY
Fingernail scrapings 1.8 R	(15),16	15,(17), (18)	(22,24)	14,15	28,(30)	(12)	8,(11), (12),13	(9,11), (12,13)	-	XY
Bite mark swabs 1.9	15,16	15,17	24,25	14,15	(28),30, 31.2	11,(13), 16	8,(11), 12,(13)	9,12 (13)	12,13	XY
Cutting-fitted sheet 2.1 F	16	15,18	22,24	14,15	28	(11),12, 13,(16)	8,(11) 13	11,13	11,12	XY
Cutting-fitted sheet 2.1 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.3 F	16	15,18	22,24	14,15	28,(30)	(11),12, 13	8,(11), 13	11,13	11,12	XY
Cutting-fitted sheet 2.3 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,12, 13,16	8,11, 12,13	9,11, 12,13	11,12, (13)	XY
Cutting-fitted sheet 2.4 M	16	15,18	22,24	14,15	28	12,13	8,13	11,13	11,12	XY
Swab one from bite wound 3.1	15,16	15,17, 18	22,24, 25	14,15	28,30, 31.2	11,(12), 13,16	8,11, 12,13	9,11, 12,13	(11),12, 13	XY
Swab two from bite wound 3.2	15,16	15,17, (18)	(22),24, 25	14,15	28,30, 31.2	11,(12), (13),16	8,11, 12,13	9,(11), 12,13	12,13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	15,18	22,(24)	14,15	28	12,13	8,(13)	(11),(13)	(11),(12)	XY
Napkin from Nathaniel Johnson 6.0	(17)	(17)	-	(14),(15)	-	-	-	-	(10)	(Y)

() = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

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Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office



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SCANNED 08/16/2006

Table 2 - Cofiler

Items	D3S1358	D16S539	TH01	TPOX	CSF1PO	D7S820	Amelogenin
1.2	15,16	12	7	8	10,11	12,13	X
Misc. body fluids 1.7 F	15,16	12	7	8	10,11	12,(13)	X
Misc. body fluids 1.7 M	16	12,13	6,7, 8	9	10,11	11,12, (13)	XY
Fingernail scrapings 1.8 R	16	12,(13)	(6),7, (8)	8,9	10,(11)	-	XY
Bite mark swabs 1.9	15,16	12	6,7	8,9	10,11	(11),12, 13	X(Y)
Cutting-fitted sheet 2.1 F	16	12,13	6,(7), 8	(8),9	10,11	11,12	XY
Cutting-fitted sheet 2.1 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.3 F	16	12,13	6,8	8,9	10,11	11,12	XY
Cutting-fitted sheet 2.3 M	16	12,13	6,8	9	10,11	11,12	XY
Cutting-fitted sheet 2.4 F	15,16	12,13	6,7, 8	8,9	10,11	11,12, 13	XY
Cutting-fitted sheet 2.4 M	16	12,13	6,8	9	10,11	11,12	XY
Swab one from bite wound 3.1	14,15, 16	12,13	6,7, 8	8,9, (11)	10,11	11,12, 13	XY
Swab two from bite wound 3.2	15,16	12,13	6,7, 8	8,9	10,11	(11),12, 13	XY
Plastic Spoon from Nathaniel Johnson 5.0	16	(12),(13)	(6),(8)	9	(11)	-	XY
Napkin from Nathaniel Johnson 6.0	(17)	-	-	-	-	-	(X)(Y)

() = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

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with the Office of Sheriff for Beaufort County.

Michael M. Holtfield
Chief Deputy Beaufort County Sheriff's Office

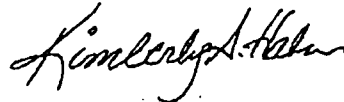


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Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

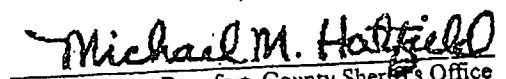
Please submit the suspect's blood standard for comparison purposes.



Kimberly A. Hahn
Forensic Scientist

cc: Beaufort County Solicitor's Office

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with the Office of Sheriff for Beaufort County.


Chief Deputy Beaufort County Sheriff's Office

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SCANNED



RECEIVED

ROBERT M. STEWART
Chief

JUN 30 2006

Inv. Brian Chapman
Beaufort County Sheriff's Office
P. O. Box 1758
Beaufort, SC 29901

Beaufort County Sheriff's Office

EVIDENCE PROCESSING

June 20, 2006

SLED LAB: L06-02390

Your Case No: 20060207359

Incident Date: 02/07/2006

[REDACTED]

(S) Nathaniel Johnson, Jr.

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item: 2 Fitted sheet

RESULTS:

All potential evidence collected was sent to the DNA Department.

Item: 4 Pants from [REDACTED]

RESULTS:

No hair found.

All potential evidence collected was sent to the DNA Department.



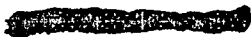
Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SCANNED 06/30/2006



Janice S. Bryson

Janice S. Bryson
Forensic Technician

Emily B. Reinhart

Emily B. Reinhart, Lieutenant

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatzfeld
Chief Deputy Beaufort County Sheriff's Office



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

BEAUFORT, SOUTH CAROLINA 29901

SHERIFF 470-3200
CHIEF DEPUTY 470-3192
CRIMINAL RECORDS 470-3186
CIVIL RECORDS 470-3188
FAX # 470-3187

Evidence Submittal Form

20060207-359
[REDACTED]
unknown
Criminal Sexual Conduct

Item Number	Description of Evidence
1	(1) bed sheet collected from victim's bed (Biohazard)
2	(2) Q-tip swabs [redacted] and [redacted] victim's bite wound. (labeled swab #1 and #2)
3	(1) Memorex CD-R of pictures of victim's injuries

Certified to be a true and correct
copy of the original document on file
with the Office of Sheriff for Beaufort County.

Michael M. Hatfield
Chief Deputy Beaufort County Sheriff's Office

Received by (Sign) E. E. E. E. Date 2/8/06



SCANNED

**OFFICE OF SHERIFF
BEAUFORT COUNTY**

P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF 470-3200
CHIEF DEPUTY 470-3192
CRIMINAL RECORDS 470-3186
CIVIL RECORDS 470-3188
FAX # 470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number:
Victim (s):
Suspect (s):
Incident Type:

20060207359
UNKNOWN
CRIMINAL SEXUAL CONDUCT

[illegible]

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

Submitted by (Print) J. MERRILL Date _____

ERIO'S

Received by (Print) _____ Date _____

Submitted by (Sign) [Signature] Date 2/9/06

Received by (Sign) Elmer R. [Signature] Date 1:55 2/9/06



**OFFICE OF SHERIFF
BEAUFORT COUNTY**

P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF 470-3200
CHIEF DEPUTY 470-3192
CRIMINAL RECORDS 470-3188
CIVIL RECORDS 470-3188
FAX # 470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number:
Victim (s):
Suspect (s):
Incident Type:

20060207 359
[REDACTED]
WFE 1017
CSC 137

[illegible]

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

Submitted by (Print) B Baird Date _____

Received by (Print) ERIO'S Date _____

Submitted by (Sign) [Signature] Date 2/14/06
Received by (Sign) [Signature] Date 12 AM 2/14/06



**OFFICE OF SHERIFF
BEAUFORT COUNTY**

P.O. BOX 1758
BEAUFORT, SOUTH CAROLINA 29901

AREA CODE (843)

SHERIFF 470-3200
CHIEF DEPUTY 470-3192
CRIMINAL RECORDS 470-3186
CIVIL RECORDS 470-3188
FAX # 470-3187

P.J. Tanner
Sheriff

Evidence Submittal Form

Case Number:

Victim (s):

Suspect (s):

Incident Type:

20060207-359

UNKNOWN

Criminal Sexual Conduct / Armed Robbery

Item Number	Description of Evidence
# 9	(1) plastic spoon from Nathaniel Johnson
# 10	(1) Napkin from Nathaniel Johnson * Note -> originally labeled plastic spoon in description by PFC. Teasdale and corrected by LCPL Chapman
Certified to be a true and correct copy of the original document on file with the Office of Sheriff for Beaufort County. <i>Michael M. Halfield</i> Chief Deputy Beaufort County Sheriff's Office	

Evidence submitted is provisionally accepted as being correctly described as listed above. Officer agrees that the actual inventory of evidence conducted by the evidence division will be the correct inventory.

LCR B. Chapman 04-21-00
Submitted by (Print) Date

Submitted by (Print)

Date _____

EROS

Received by (Print)

Date _____

Submitted by (Sign) LCPL. B. Chapman 04-21-06 Date

Submitted by (Sign) _____

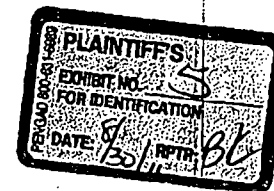
Date: _____

Received by (Sign)

Received by (Sign)

Date _____

1232
4/21/06
Date



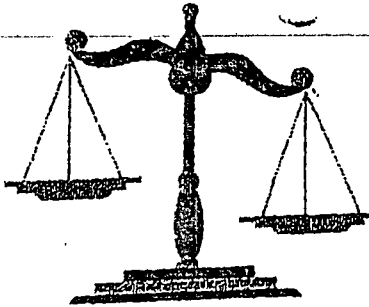
Dr. Ronald Ostrowski
828-461-8346 (C)
704-483-5375 ←
Robin Taylor case No.
L 0002390
NJ 803-896-7321

6948 Shade Tree Lane
S Cherrills Ford, NC 28673

FAX 704 483-5375

SCAN + Email

⇒ [RonaldS @ Bellsouth.net]



FAX

COUNTY COUNCIL OF BEAUFORT COUNTY
OFFICE OF THE PUBLIC DEFENDER
Human Resources Building • 1905 Duke Street • Room 210
P O Box 525
Beaufort, SC 29901-0525

Phone: (843) 470-4525 Fax: (843) 470-4533

DATE:

3/9/07

PLEASE DELIVER THE FOLLOWING TO:

NAME:

Dr. Orowski

AGENCY:

FAX PHONE #

704-483-5375

FROM:

Stephanie Smart Gitting

NOTES:

Trial can not be continued. Testimony
begins Tues 3/13/07.

The information contained in this facsimile message is legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of the telecopy is strictly prohibited. If you have received this telecopy in error, then please immediately notify us by telephone (collect-if long distance), and return the original message to us at the address above via the United States Postal Service. We will gladly reimburse you for any reasonable costs incurred in complying with this request. Thank you.

THIS DOCUMENT CONSISTS OF _____ PAGES, INCLUDING THIS PAGE.

1 of 3 sheets (including this sheet)

February 28, 2007

Stephanic Smart Gittings, Esq.
Office of Public Defender
P.O. Box 525
Beaufort, SC 29901

Dear Ms. Gittings:

As per our conversation today, I did receive the SLED laboratory report. Please be aware that this is not evidence. I have included two pages of discovery items that need to be requested.

My hourly rate is \$185. I anticipate a total billing of approximately \$2,500. This amount is based on my experience in 400 forensic DNA cases. Please send me a copy of the Court Order approving my consulting fee.

I will provide for you the following:

- reading and analyzing DNA reports
- preparing discovery items
- a layman's lecture relative to DNA for you
- telephone conversations, fax, etc.
- preparation of cross-examination questions

If you should need my assistance in the court room, this endeavor would add an additional \$2,500 to my fee.

I look forward to assisting you in the SC v. N. Johnson case. If you have any questions at this time, please do not hesitate to contact me.

Sincerely,



Ronald S. Ostrowski, Ph.D.

Discovery Items

- Hard copies of all electropherograms. These results must be of the same quality and resolution as those possessed by the State.
- Software: A list of all commercial software programs used in the DNA testing in this case, including name of the software program, manufacturer and version used in this case.
- Electronic data for all analyzed DNA results.
- STR Frequency Tables: Copies of any allelic frequency tables relied upon in making statistical estimates in this case. If the laboratory relied upon published or publicly available data this request can be satisfied by providing a specific reference source.
- Case file: Complete copy of the case file, including all records made by the laboratory in connection with this case. If the file includes photographs, please include photographic quality copies.
- Chain of Custody and Current Disposition of Evidence: Copies of all records that document collection, treatment, and handling of biological evidence in this case, from the initial point of collection to the current disposition. This information should include documentation which indicates where and how materials were stored (temperature and type of container), the amount of evidence which was consumed in testing, the amount of material which remains, and where and how the remaining evidence is stored (temperature and type of container).
- Copy of the Unexpected Results Log.
- Instances of Unintended DNA Transfer or Sample Contamination: Copies of all records maintained in the laboratory that document instances of unintended transfer of DNA or sample contamination, such as instances of negative controls that demonstrated the presence of DNA or the detection of unexpected extra alleles in the control or reference samples, and any corrective measures taken.

- Copies of all work done toward internal laboratory validation of DNA testing and analysis. This should contain records and results including, but not limited, to acceptable heterozygous peak ratios, stutter frequency, mixed sample studies, etc.
- Accreditation: Copies of all licenses or other certificates of accreditation held by the DNA testing laboratory relative to capillary gel electrophoresis DNA analysis.
- Laboratory Personnel: Background information about each person involved in sample collection and conducting or reviewing DNA testing in this case, including
 - current resume
 - job description
 - a summary of proficiency test results
- Detailed proficiency testing results for all laboratory personnel involved in DNA testing through capillary gel electrophoresis.

If you have any questions, please do not hesitate to contact me.

CONTEMPORARY RECORD*SC v. Nathaniel Johnson*

Feb. 28	5 min.	Initial conversation with Stephanie Smart (SS).
	20 min.	Read boilerplate report.
	20 min.	Prepared and faxed discovery memo and fee letter to SS.
Mar. 1	5 min.	Phone to SS; left message.
Mar. 9	5 min.	Received and read Court Order.
	5 min.	Phone to SS; left message.
	5 min.	Phone to SS; left message.
	3 hr., 15 min.	Received, read and analyzed DNA reports.
Mar. 10	2 hr., 20 min.	Prepared cross examination questions and faxed to SS.
Mar. 22	5 min.	Phone to SS; left message.
Apr. 10	5 min.	Phone to SS; left message.
Apr. 24	5 min.	Closure conversation with Maxine Haynes.
Apr. 30	15 min.	Bill preparation.

TOTAL TIME: 7.17 hr. x \$185 per hr.

TOTAL BILLING: \$1,326.45



Ronald S. Ostrowski, Ph.D.
SS# 334-32-1847

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF BEAUFORT)

2007 MAR -9 AM 11:36

STATE OF SOUTH CAROLINA,)

BEAUFORT COUNTY
CLERK OF COURT
INDICTMENT NOS. 2006GS07-1643
BEAUFORT, S.C.

versus)

MOTION AND ORDER

NATHANIEL JOHNSON,)

Defendant.)

Defendant, through counsel, Stephanie J. Smart, Beaufort County Assistant Public Defender, hereby moves this court for an order allowing for payment a DNA Expert, Ronald S. Owstraski, Ph.D.

The Defendant is charged Kidnapping, Criminal Sexual Conduct 1st Degree, Bruglary 1st Degree and Possession of a Weapon. He is indigent. It appears to the Court's satisfaction that the services of a DNA Expert are reasonably necessary to assist in the defense and representation of the Defendant. Pursuant to Section 17-3-80, Code of Laws of South Carolina, 1976, amended, due to the nature of the case, it appears that the relief requested is reasonable, necessary and proper.

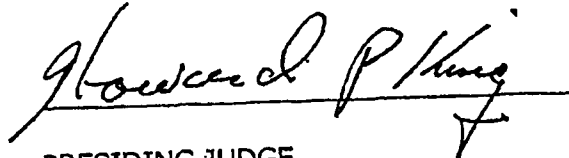
NOW THEREFORE, for good cause shown,

IT IS ORDERED that the Beaufort County Public Defender's Office is authorized to retain the services of a DNA Expert, and

142
JHSK

IT IS FURTHER ORDERED that counsel is authorized to incur reasonable fees therefore, not to exceed Twenty-Five Hundred Dollars (\$2500), subject to the approval of the Court as authorized by law, without further order of the Court. Ms. Smart may apply to this Court for further relief if necessary, pursuant to Section 17-3-50(C), Code of Laws of South Carolina, 1976, as amended.

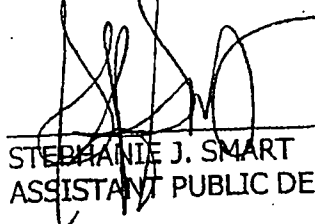
AND IT IS SO ORDERED.


PRESIDING JUDGE
FOURTEENTH JUDICIAL CIRCUIT

BEAUFORT, SOUTH CAROLINA

March 9, 2007

I SO MOVE:


STEPHANIE J. SMART
ASSISTANT PUBLIC DEFENDER

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Nathaniel Johnson, #211574,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2009-CP-07-1050

ORDER DENYING
POST-CONVICTION RELIEF11 OCT 17 PM 3:47
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 9, 2009. The Respondent made its Return on July 14, 2009. An evidentiary hearing into the matter was convened on August 30, 2011, at the Beaufort County Courthouse. The Applicant was present at the hearing and was represented by Timothy M. Wogan, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant testified on his own behalf at the PCR hearing. Trial counsel, Stephanie Smart-Gittings, Esquire, testified at the hearing. This Court had before it the records of the Beaufort County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the Final Brief of Appellant, Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, the Remittitur dated December 30, 2008, the PCR application, Respondent's Return thereto, three SLED forensic reports dated February 14, 2007, June 20, 2006, and August 11, 2006, evidence submittal forms from the Beaufort County Sheriff's Office, and an invoice from DNA expert Dr. Ronald Ostrowski.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2006 term of the Beaufort County Grand Jury for kidnapping (2006-GS-07-1640), criminal sexual conduct – 1st degree (2006-GS-07-1641), burglary – 1st degree (2006-GS-07-1642), and use of a firearm during commission of a violent crime (2006-GS-07-1643). Stephanie Smart, Esquire, represented the Applicant. On March 12-14, 2007, the Applicant proceeded to trial, after which a jury found him guilty of kidnapping and criminal sexual conduct and not guilty of burglary – 1st degree and use of a firearm during commission of a violent crime. The Honorable Howard P. King sentenced the Applicant to confinement for thirty (30) years for kidnapping and thirty (30) years for criminal sexual conduct. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After full briefing by the parties, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2008-UP-690 (S.C. Ct. App. filed December 11, 2008). The Remittitur was issued on December 30, 2008.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct in that prosecutors may conceal evidence or misrepresent or influence juries by impugning the character of witnesses.
2. Violation of due process of law.
3. Ineffective assistance of counsel in that counsel did not object in a timely manner or represent best interest of client.

At the hearing, Applicant only proceeded on the issue of ineffective assistance of counsel.

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).

Applicant testified that he asked that Mr. Bell be relieved as his counsel. He testified that he did not recall discussing DNA evidence with his attorney. He asserted that he never told counsel that he was in love with the victim, and he did not tell counsel to only go forward on the theory that he was having an affair with the victim.

Trial counsel testified that she was appointed after James Bell, Esquire, was relieved as counsel, which was about three months before trial. She testified that she met with Applicant at the jail several times prior to trial. She asserted that she had adequate time to prepare for trial. Counsel testified that she spoke with the eyewitnesses from the electric company and retained a DNA expert. She testified that this matter was her first trial involving DNA evidence. She asserted that Applicant's original defense was misidentification, and then he changed his story the day before the trial and indicated that he knew the victim and was in a relationship with her. Trial counsel testified that Applicant told her he was in love with the victim and did not want counsel to vigorously cross-examine her at trial or question her about their relationship. Counsel testified that once Applicant changed his story and indicated that it was consensual sex then the

DNA defense was not relevant. Counsel asserted that she discussed with Applicant that the DNA expert was not necessary with his new defense. She testified that she argued that the Applicant's DNA on the bed sheet corroborated Applicant's theory that the victim and Applicant were lovers. She testified that she used the DNA evidence to Applicant's advantage. Counsel contended that she would have tried to keep the DNA evidence out if Applicant's defense was misidentification. She testified that she had no basis to move to suppress the DNA evidence or challenge the chain of custody. She asserted that she had no reason to believe that there was not a proper chain of custody. Counsel testified that she went to look at the evidence herself and it was sealed and secured. She testified that she did not timely object when Officer Chapman testified at trial that Applicant was in jail on unrelated charges, although counsel did object after another question had been asked and answered.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (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, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Applicant's testimony was not credible while also finding that counsel's testimony was credible. This Court finds that 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 pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. 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. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below

an objective standard of reasonableness.

This Court finds that counsel was not ineffective for failing to move to suppress the DNA evidence or failing to call her DNA expert as a witness at trial. Counsel testified that she would have challenged the DNA evidence and called the expert witness at trial if Applicant's defense was misidentification. However, counsel asserted that Applicant changed his story on the eve of trial and told her that he and the victim were lovers and that it was consensual sex. She asserted that the DNA defense was not relevant under this new theory and she had no basis to move to suppress the DNA evidence. This Court finds that counsel's strategy was reasonable. In addition, counsel argued that the presence of Applicant's DNA on the bed sheet corroborated Applicant's theory, particularly in light of the fact that the victim testified that Applicant did not ejaculate on the day in question. Counsel used the DNA evidence to Applicant's advantage and argued that the victim's testimony was not credible.

This Court finds that counsel was adequately prepared for trial. Counsel retained a DNA expert, interviewed witnesses, discussed the case at length with Applicant, and reviewed the DNA evidence with Applicant. She was preparing for trial with a defense of misidentification until the day before trial when Applicant informed her of his new theory. This Court finds that counsel adequately presented Applicant's new defense at trial.

✶ This Court finds that counsel was not ineffective for failing to challenge the chain of custody. Applicant has presented no indication that there was an improper chain of custody. Counsel testified that she looked at the evidence and it was sealed and secured so she had no basis to challenge the chain of custody. Applicant has failed to show that the outcome of the trial would have been different if counsel had challenged the chain of custody.

This Court finds that counsel was not ineffective for failing to timely object to Officer

Chapman's testimony regarding Applicant's unrelated charges. Counsel objected after another question was asked and answered. In addition, Officer Chapman did not specify what the unrelated charge was. The trial judge then gave a curative instruction for the jury to disregard any reference to Applicant's unrelated charges, which cured any alleged error. This Court finds that counsel's failure to timely object to Officer Chapman's testimony did not affect the outcome of the trial.

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 in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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 waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

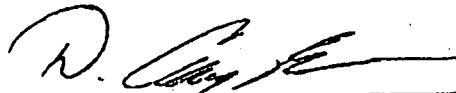
established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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 6th day of October, 2011.



The Honorable D. Craig Brown
Presiding Judge
14th Judicial Circuit

Flower, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATEvs. Nathaniel Johnson, Jr.

AKA:

Race: BSex: MAge: 40DOB: 1/16/64

SSN: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 06-38-07-1640AW#: J-330912Date of Offense: 2/7/06S.C. Code #: 16-3-910CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: KidnappingIn violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lower Act)☐ §17-25-46The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____, plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Since Feb 13, 2006☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$_____ plus 20% fee: \$_____

Payment Terms:

☐ set by SCOPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2896 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BU) Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100	
\$100	
\$12	
\$500	
\$28	
\$100	
\$50	
\$40/ea	
3.75	
128.75	

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$_____ beginning

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.Court Reporter: [Signature]

Clerk of Court Deputy Clerk

PRESIDING JUDGE

Judge Code: [Signature]Sentence Date: March 19, 2006

SCCA/217 (9/2006)

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330913

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: SEP 21 2006

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-07-01641

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr

Indictment for
CRIMINAL SEXUAL CONDUCT
1ST DEGREESC Code: 16-3-652
CDR Code: 0160
Class FEL/A(V)After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

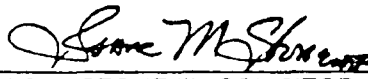
INDICTMENT 2006-GS-07-01641

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

CRIMINAL SEXUAL CONDUCT 1ST DEGREE

That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, engage in sexual battery, to wit: vaginal intercourse and/or digital penetration upon and with the body of [REDACTED] without her consent. Such sexual battery was accomplished by the use of force. All in violation of SC Code of Laws § 16-3-652.

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


ISAAC M. STONE III, SOLICITOR

WITNESSES

Chapman / BCSO

ARREST WARRANT NUMBER

J-330912

ACTION OF GRAND JURY

True Bill
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2006-GS-07-01640

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE
vs.

Nathaniel Johnson, Jr.

Indictment for
KIDNAPPINGSC Code: 16-3-910
CDR Code: 0095
Class FEL/A(V)After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

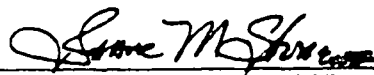
INDICTMENT 2006-GS-07-01640

At a Court of General Sessions, convened on September 21, 2006, the Grand Jurors of Beaufort County present upon their oath:

KIDNAPPING

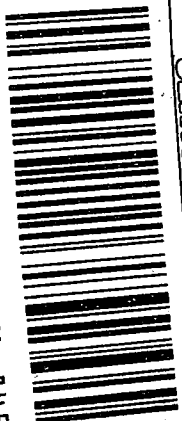
That Nathaniel Johnson, Jr. did in Beaufort County on or about February 7, 2006, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, [REDACTED] by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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


ISAAC M. STONE III, SOLICITOR

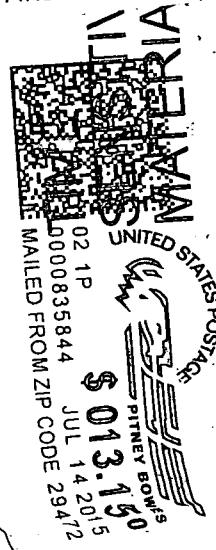
Mr. Nathaniel Jones
LCI Stand-B #50
P.O. Box 225 SCD# 211574
Ridgeville, SC 29472

CERTIFIED MAIL



7014 1820 0001 7606 8458

FIRST



The Honorable
Daniel E. Shearouse
Clerk of Supreme Court of SC
P.O. Box 11330
Columbia, SC 29211