

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2008-11546

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THE STATE,

S.C. Supreme Court

Petitioner,

vs.

DANIEL J. JENKINS,

Respondent.

APPENDIX

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APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL J. JENKINS,

APPELLANT

RECORD ON APPEAL

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APP'X 1

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1 BY MR. SIMPSON:

2 Q Heather, how old are you?

3 A 34.

4 Q How old were you in April of 2006?

5 A 31.

6 THE COURT: Ma'am, could you speak directly
7 into the microphone for me, thank you. Can you
8 please repeat your last answer?

9 THE WITNESS: 31.

10 THE COURT: Thank you. You may proceed.

11 Q (By Mr. Simpson) Where do you currently live?

12 A Myrtle Beach, South Carolina.

13 Q Did you used to live here in Charleston?

14 A Yes.

15 Q How long did you live in Charleston?

16 A I have been in the Charleston area since '91.

17 I lived downtown Charleston.

18 Q And where did you live in April of 2006?

19 A [REDACTED].

20 Q Where is that, just in reference to like
21 landmarks, is that near the Citadel?

22 A Right -- right behind Hampton Park.

23 Q Heather, I'm going to show you what has been
24 already been admitted into evidence as State's
25 Exhibit 1. I'm trying to position this where both

1 you and the jury can see it.

2 Can you recognize that and tell me what that
3 is?

4 THE COURT: Actually we need to put it up
5 there so that I can have a full view of the jury. It
6 will be easier also for her to see it.

7 Ma'am, you may get up if you need to make
8 reference to the map. Please speak clearly for us.

9 THE WITNESS: Okay.

10 Q (By Mr. Simpson) Is your residence on that
11 map, Heather?

12 A It is, yes.

13 Q And that's -- can you just point to that again
14 and hold it for the members of the jury.

15 A [REDACTED] is right here.

16 Q And did anyone live there with you?

17 A No.

18 Q You can sit back down.

19 A No, not at that time.

20 Q And how long did you live there approximately?

21 A Six years.

22 Q Where did you work at that time?

23 A Rising High Bakery, also downtown Charleston.

24 Q About how many days on average did you work a
25 week?

1 A Five.

2 Q How would you typically get back and forth to
3 work?

4 A Bicycle or CARTA.

5 Q When you say CARTA, do you mean the bus?

6 A Correct.

7 Q If you could, I hate to get you to hop up
8 again, could you indicate to the jury on that map
9 where you would generally catch the bus?

10 A Right here (indicating.)

11 Q A little off the map there?

12 A I'm sorry?

13 Q It's a little off the map you're saying?

14 A Right. The bus stop, there's one here all
15 along Hampton Park there are stops.

16 Q Okay.

17 A So I could pick up -- there are three stops on
18 that street I would use.

19 Q Heather, before April 5, 2006 had you seen
20 this man sitting at the defense table?

21 A Yes.

22 Q Would you please describe to the jury the
23 circumstances that you had seen him before April 5,
24 2006?

25 A Sure. The grocery store was in walking

1 distance. You can see on the map.

2 Q Is that Jabbers?

3 A Jabbers.

4 Q That's the large building on the map?

5 A Right, even too close for me to ride a bike.
6 I would walk there any given day. And most of the
7 time there were people around the store, the front of
8 the store.

9 Not too much inside, but just people that
10 lived around there I guess hanging out there.

11 Q And had you ever spoken to the defendant
12 before? Had the defendant spoken to you?

13 A Sure, I'd say hello.

14 Q Did you know the defendant's name, by that I
15 mean Daniel Jenkins?

16 A No, I did not.

17 Q What name did you know the defendant as?

18 A They called him Black. And I don't know if he
19 told me himself or I don't know if he introduced me
20 as that. But I was comfortable calling him that. If
21 I saw him, hey, Black. I'm not sure if that's how he
22 introduced himself or if I just heard it from a
23 neighbor.

24 Q And would you say you knew him really well?

25 A No.

1 Q would you say you were friends?

2 A No.

3 Q He was just someone you would see from time to
4 time and exchange pleasantries?

5 A Right.

6 Q Heather, at this time we're going to talk
7 about April 5, 2006. I may interrupt you from time
8 to time if I feel I need more details from you. But
9 let's start about that day.

10 Did you work that day?

11 A I worked that day, probably went in my usual
12 time was 8 o'clock.

13 Q Okay.

14 A To between 3:00 and 4:00.

15 Q And what did you do that day when you got off
16 work?

17 A I went home and had a couple of beers with a
18 friend. They left. And I was still in my work
19 clothes. I just fell asleep in my work clothes. I
20 had ordered a pizza and so I was just waiting on that
21 when I fell asleep. And I think that was around 8
22 o'clock.

23 Q Okay. Now when you said, I had a couple of
24 beers, can you give us an idea of maybe how many?
25 From -- you said you got off from 3:00 or 4:00 to

1 8:00?

2 A It was probably four o'clock to eight o'clock,
3 not even a six-pack or somewhere around that.

4 Q Okay. Now you said you remember stopping
5 drinking around 8:00 p.m.?

6 A Yes.

7 Q And you fell asleep on your couch?

8 A Right.

9 Q And what woke you up from falling asleep?

10 A A knock on the door.

11 Q Did you answer it?

12 A Uh-hum. I did.

13 Q And who was it?

14 A It was the person that I had seen on the
15 street.

16 Q Was it the person you knew as Black?

17 A Yes.

18 Q Is that person in the courtroom today?

19 A Yes.

20 MR. KING: Objection, Your Honor.

21 THE COURT: Please approach.

22 (Whereupon, a discussion was held at the bench
23 off the record.)

24 THE COURT: Ladies and gentlemen, you are to
25 disregard the last question and answer. You are to

1 give it absolutely no consideration in your
2 deliberation.

3 You may proceed.

4 Q (By Mr. Simpson) The person who was at your
5 door, what did he say when you opened the door?

6 A Started with, hey, what's going on, that type
7 of thing. What do you say we go get a beer.

8 Q I'm sorry to interrupt you. But when you
9 opened the door, did he enter the residence?

10 A Just about a foot away. There was a foot
11 between us.

12 Q Okay. But did he step into your home?

13 A Not at that moment, no.

14 Q How did you respond when he said, Let's go and
15 get a beer?

16 A I said, no, you know, I'm trying to cut back.
17 I just, no. Pretty much.

18 Q And did he ask you something when you said no?

19 A He said, can you give me some money and I'll
20 go get it. And I said, no, I don't have any. I may
21 have said I even had to write a check for a pizza. I
22 really don't have any cash on me.

23 Q Now had you ever gone to get a beer with this
24 man before?

25 A No.

1 Q Now at what point during this conversation did
2 he enter your house?

3 A No more than a 10 to 20 second conversation
4 about going to go get a beer. And, no, not going to
5 go get a beer. And kind of gave me the impression,
6 you know, I got your back, you know, if you want to
7 walk don't the street and to make me feel safer.

8 Q He said that to you?

9 A He did say that. And as I continued to say
10 no, I stepped back into my living room, in no way
11 pushing him out, but, a little uncomfortable about
12 him coming in.

13 I didn't push him out. And he stepped in
14 somewhat aggressively. And at that point I sat down
15 on my couch and --

16 Q I don't mean to interrupt. How far would you
17 say your living room and the couch, how far are we
18 talking about from the front door?

19 A This podium is closer to me. To this wall,
20 about.

21 Q So if this would be your front door the sofa
22 would be right in here?

23 A Maybe not quite that far.

24 Q And you said your feeling at this time when he
25 entered the house was uncomfortable; is that correct?

1 A That's correct.

2 Q And how did he proceed once he was in your
3 house?

4 A There was no chitchat anymore. Went straight
5 to --

6 Q I know it's difficult. Straight to?

7 A Went straight to -- he just openly said, let
8 me see your pussy. If you don't, I'll kill you.
9 And I said, no. And more of that kind of talk. And
10 I felt I was going to be okay because pretty athletic
11 and I felt I could do this.

12 And I held on to, you know, where my button
13 was as tight as I could. And it didn't, it just
14 didn't work. So I told him, I said, I want to be
15 your friend. Please don't do this. I don't want you
16 to get in trouble. If you do this you will get in a
17 lot of trouble. My boyfriend is coming and he's big
18 and he's going to see through the window.

19 Q So, Heather, when you said you thought you
20 would be okay and you tried, what was the defendant
21 doing that you were trying to stop?

22 A Well, just I had a couple of things on my
23 coffee table and one just happened to be a solid
24 glass candle holder, like you said, that he used as
25 an ashtray. And then that's what he used on my head.

1 And --

2 Q Did you try to resist him when he --

3 A Right. Right, I used my legs. I used my legs
4 and I pulled them up to my waist and tried to push,
5 push with my feet while my hands were on the top of
6 my pants. And I was holding those really tight.

7 Q And at this point -- and I don't mean to
8 backtrack, I know it's difficult -- when he said
9 those words to you, I want to see your pussy, and
10 threatened you, he physically touched you at this
11 point?

12 A Yes.

13 Q And this is on --

14 A He just made his way closer, but he was
15 touching me with his bare hands not with the candle
16 holder.

17 Q Was he on top of you?

18 A I was -- still had my legs, both my feet on
19 the floor when he first approached me.

20 And then I guess I don't know exactly -- I
21 don't know if he pulled me or that part happened
22 really fast between my legs being on the floor and
23 then he was on top of me and continued to use the
24 candle holder on my head.

25 Q Was he hitting you with the candle holder?

1 A He was hitting.

2 Q Where --

3 A I could hear his voice but I could also just
4 hear the sounds of the --

5 Q Sort of the candle holder --

6 A -- candle holder on my head.

7 Q Where was he hitting you with the candle
8 holder?

9 A Mostly all over this part of my head here, and
10 a lot through here. I think that's what made my nose
11 bleed.

12 Q In the face and in the head area?

13 A Uh-hum, the upper head.

14 Q Including up here?

15 A Forehead and ears and mouth.

16 Q At any point did you try to call the police?

17 A I did. I reached for it. I think he threw it
18 on the floor.

19 Q When you say it, what are you referring to?

20 A The telephone. Sorry. It wasn't a cell
21 phone, it was a house phone. So it was pretty big
22 and it was right in sight. I looked right at it and
23 tried to grab it.

24 Q And at that point he took it?

25 A He took it. I didn't see where he threw it

1 but after that I didn't see it.

2 Q Heather, did he get your clothing off?

3 A He got the lower part of my clothing off.

4 Q And how did that happen?

5 A He ripped it off.

6 Q He --

7 A The pants were like, I believe like a bottom
8 and drawstring. There was no zipper that -- I
9 haven't seen them since that night, but I'm pretty
10 sure they were like that. So they just sort of
11 pulled right off and I happened to be wearing like a
12 thong and he just popped that.

13 Q Popped it?

14 A With his hands like off.

15 Q Ripped?

16 A Yeah, ripped.

17 Q And you said a little earlier about different
18 things you said to try to get him to stop what he was
19 doing. Can you repeat those for the jury? The
20 things about your boyfriend?

21 A Please, please don't do this. My boyfriend is
22 on his way. He should be here any second. I didn't
23 have a boyfriend at that time, I just thought that
24 that would really help.

25 And I don't know if maybe it did help because

1 then he said, you're going to die, you are going to
2 die. And I didn't, so.

3 Q Heather, once he had removed the lower portion
4 of your clothing, did he force himself inside of you?

5 A Yes.

6 Q Did he say anything as he was doing that?

7 A Trying not to remember.

8 Q We all understand this is something he said
9 not something you would say.

10 A He made remarks about what is -- why is your
11 pussy so tight, what is wrong.

12 Q Heather, did he finish the sexual act that he
13 was performing?

14 A I did not know if he did. But he got up.

15 Q Did he say anything to you after he got up?

16 A He just kept saying, now you know don't tell
17 anyone or I will kill you, and just don't say
18 anything, as he got up. And I was still saying, no,
19 it's okay.

20 Q When he got up did --

21 A For a second I was just thinking, did this
22 really happen. And then I looked in my shirt I had
23 blood on it so I put on a sweatshirt.

24 Q Did he leave after he got up?

25 A He did leave.

1 Q What did you do after he left?

2 A That's when I put on a sweatshirt and shut my
3 two dogs up in my bedroom and locked them in there.
4 And had looked for the phone for maybe three minutes.

5 Q Did you find the phone?

6 A No, I didn't find the phone.

7 Q You described earlier a portable phone?

8 A Right.

9 Q It's not wires going into the wall?

10 A No, it was a portable phone.

11 Q And when you couldn't locate the phone, what
12 did you do?

13 A That's when I put on, you know, I put on my
14 sweatshirt and I went outside. And I kind of ran
15 down. I was almost to the end of, not to the end of
16 Huger Street but to Rutledge.

17 I tried to stop two to three cars, both -- one
18 was a girl probably about my age in a car by herself.
19 And I looked at her and said, help me, and she looked
20 scared to death and just pushed on the gas and sped
21 off. A second car, they didn't stop either.

22 So I thought, well, if I could just get to
23 Jabbers maybe they're still open. Because that was
24 the kind of store that didn't always close like right
25 at 10:00. So I was thinking maybe someone was still

1 there.

2 So that's where I was headed.

3 Q Was there anything on your face as you were
4 running down the street?

5 A There was blood all over it.

6 Q And do you know what part of your body was
7 bleeding at that point?

8 A No. I could feel it in my mouth but I did not
9 know if I had any -- I did not look at myself in the
10 mirror.

11 Q You say you ran towards Jabbers. Did you get
12 to Jabbers?

13 A Well, I looked and they were closed. I got to
14 that parking lot area. I got to where -- to my left.

15 Q And what happened when you got over in the
16 area of Jabbers?

17 A A female came from the right area, just came
18 walking up to me.

19 Q Did you know her?

20 A No.

21 Q Was it a complete stranger?

22 A It was a stranger.

23 Q What did she say to you?

24 A She said, oh, Lordy, what happened to you,
25 girl?

1 Q Did you tell her what had happened?

2 A Before I could get my words out someone else
3 came up.

4 Q And who was that person?

5 A That was Black. Black came up.

6 Q Was that the same person who had just
7 assaulted you in your apartment?

8 A Yes.

9 Q This might seem like a silly question, were
10 you afraid when you saw this person again?

11 A Very afraid.

12 Q And --

13 A I was kind of like a deer in headlights.
14 Again, I have never -- it just seems so surreal. I
15 really felt like, I was, is this really him? And he
16 asked me what happened.

17 Q He asked you what had happened?

18 A Right.

19 Q And what did he do?

20 A He said -- I just started crying. He didn't
21 say anything. He just, what happened to you. And
22 then I was confused on how to answer it so I didn't.
23 I just said I need to use a phone.

24 Q Did he take you somewhere?

25 A He did. He kind of took me by the arm and

1 kind of carried me, not carried me but guided me
2 across the street. And he said, I'll give you your
3 phone if you wash your face off.

4 Q And where were you going to wash your face
5 off?

6 A There was like a spigot, a faucet at the end
7 of some driveway, somebody's driveway.

8 Q And was that -- where was that, still in the
9 area of Jabbers?

10 A Right in front of Jabbers. Right in front,
11 across the street.

12 Q On Rutledge Street?

13 A On Rutledge.

14 Q I hate to have to ask you to step up again.
15 Can you point out on the map to the jury?

16 A Jabbers is right here, and right here is
17 Rutledge. And probably right here, one of these
18 three houses. Not the corner one but a couple down.

19 Q You can sit back down, Heather, thank you.
20 Did you wash your face off in that spigot?

21 A Uh-hum, he helped me. He helped me wash it
22 off. I leaned over and he held my head down and I
23 put the water on it.

24 Q And did he give you your phone back as
25 promised?

1 A He did.

2 Q And what did you do then?

3 A I ran. I think it took me two leaps and I was
4 home. I ran so fast. And then I made it home.

5 Q And what did you do when you got home?

6 A I went inside and instead of staying in there
7 I actually went on the side of my house, it was a
8 tarp covering some things on the side of the house,
9 and I got under the tarp.

10 The reason I did that I was thinking he would
11 return to the house so I hid under there and that's
12 when I called 911.

13 Q Heather, I have just handed you something that
14 has been marked for identification purposes as
15 State's Exhibit 2. Do you recognize that?

16 A Yes.

17 Q First of all, what is that that I just handed
18 to you?

19 A A cassette tape.

20 Q And did you and I listen to that tape prior to
21 your testimony here today?

22 A Yes.

23 Q And is that tape a recorded phone call made by
24 you to 911?

25 A Yes.

1 Q And how do you know that that tape is the tape
2 of your 911 phone call?

3 A I signed it.

4 Q Did I ask you to initial that if it was
5 your --

6 A After I listened to it. I just, you know,
7 saying that it was me on the tape.

8 MR. SIMPSON: Your Honor, at this point I'd
9 like to move State's Exhibit 2 into evidence.

10 THE COURT: Any objection?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Please approach.

13 (Whereupon, a discussion was held at the bench
14 off the record.)

15 THE COURT: Marked for ID only.

16 You may proceed.

17 Q (By Mr. Simpson) Heather after you called
18 911, did the police arrive?

19 A They did.

20 Q And do you recall them taking some photographs
21 of you that night after they arrived?

22 A Yes.

23 MR. SIMPSON: Your Honor, may I approach?

24 THE COURT: You may.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: Mr. Forman, ladies and gentlemen,
3 I have a matter of law I need to take up with the
4 attorneys, it should be fairly brief.

5 During the break please do not discuss the
6 case in any manner whatsoever. Please leave your
7 notepads in your seats. If anyone wants to go
8 downstairs for a smoke break and or to get some air,
9 please let the bailiffs know. You all can take them
10 down for that purpose. Please do not go beyond 10
11 minutes or so with the actual being downstairs, not
12 altogether.

13 If you will go with the bailiffs for me,
14 please.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Okay, you may proceed.

17 IN-CAMERA EXAMINATION

18 BY MR. SIMPSON:

19 Q Heather, going back to the assault, you
20 instantly recognized the person that came into your
21 house as the person you know as Black?

22 A Right.

23 Q And did you have a good opportunity to view
24 him as he entered your house?

25 A Yes.

1 THE COURT: It's close. The Court can take
2 judicial notice where Jabbers is located and where
3 Huger Street is located. Have been a resident of
4 Charleston all my life I had to walk those streets as
5 a child when it was Rodenberg's before it was
6 Jabbers. I'm well familiar of where it's located.
7 It's very, very close proximity. Okay.

8 Are we ready to proceed from the State?

9 MR. SIMPSON: Yes, Your Honor.

10 THE COURT: From the defense?

11 MR. KING: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 Ma'am, retake the stand. I remind you that
14 you are still under oath.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Thank you, ladies and gentlemen,
17 we appreciate your patience.

18 You may proceed with the witness.

19 MR. SIMPSON: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. SIMPSON:

23 Q Heather, when we left we were discussing when
24 the police arrived on the scene that night. Do you
25 remember them taking any pictures of you that

1 evening?

2 A Yes. Of me?

3 Q Yes.

4 A Yes.

5 Q And what did they do when they arrived at the
6 scene; do you recall?

7 A They took pictures of the sofa, and
8 surrounding things I think.

9 Q Did they ask you questions about what happened
10 that evening?

11 A Yes.

12 Q After the police arrived, did you -- did they
13 let you know that they had had a suspect in custody?

14 A Yes.

15 Q And about how long was this from when they
16 arrived to when they had a suspect?

17 A Very -- it was shortly after, within -- I was
18 notified that they had someone less than 30 minutes.

19 Q And did they take you to view this person?

20 A Yes.

21 Q And where did they take you to view this
22 person?

23 A To the Jabbers parking lot.

24 Q Can you describe to the jury a little bit
25 about when you pulled up into the Jabbers parking

1 lot, what happened?

2 A We turned into the parking lot. The probably
3 high beams, bright lights on the police car that I
4 was in the backseat of, and pointed them on him. And
5 I was in the backseat and was asked to look.

6 Q Did you have a good view of the person, could
7 you see him?

8 A I could see him.

9 Q And what did you tell the police when they
10 asked you?

11 A I just said, that's him.

12 Q And was that the person that had assaulted you
13 earlier?

14 A Yes.

15 Q And is that person present in the courtroom
16 today?

17 A Yes.

18 Q Can you point that person out to the jury?

19 A He is right there.

20 MR. SIMPSON: Let the record reflect the
21 witness has identified the defendant.

22 THE COURT: Let the record so indicate.

23 MR. KING: Your Honor, I'll place an objection
24 on the record.

25 THE COURT: Your objection has already been

1 noted and ruled upon and preserved.

2 You may proceed.

3 Q (By Mr. Simpson) Heather, do you remember
4 after identifying the suspect, do you remember where
5 the police took you?

6 A Yes.

7 Q Where was that?

8 A Rivers Avenue. It's, I believe, Officer Cone
9 said it's the only place that handles rape victims.
10 So that's why we had to go all the way over there.

11 Q Was there an examination done on you at that
12 location?

13 A Yes.

14 Q Going to a couple of days after this assault,
15 do you remember being visited again by a female
16 detective?

17 A Yes.

18 Q And did she also take some photographs of you?

19 A She did.

20 Q And did she at that time take a written
21 statement from you?

22 A Yes.

23 MR. SIMPSON: Court's indulgence.

24 THE COURT: Uh-hum.

25 MR. SIMPSON: State has no further questions

1 of this witness.

2 THE COURT: Any cross-examination of the
3 witness?

4 MR. KING: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q Ms. Mayer, you knew Mr. Jenkins, correct?

9 A By sight I knew him.

10 Q You knew him by the name Black?

11 A Right.

12 Q And you saw him about once a week?

13 A Not every week.

14 Q You saw him around 10 times?

15 A In my life. But, that could have been two in
16 one week. I saw him -- I would have to know how many
17 times I went to Jabbers because that's the place that
18 I saw him. And I went to the store very randomly.
19 So, I am just thinking once a week.

20 I know at least I went to the store once a
21 week. Sometimes I went three times, sometimes I did
22 not go at all. But almost every time I went I would
23 see him around that area.

24 Q So you would see him occasionally?

25 A Right. And we would say -- we were friendly,

1 hey, how's it going.

2 Q He would speak to you?

3 A Yes.

4 Q You spoke to him?

5 A Yeah. He would say, hey, how's it going. I
6 would say, good. A common passing chitchat. But he
7 knew that I lived on that street. Not by me telling
8 him but because a lot of times he was close to Huger
9 Street. And Jabbers, you know, the side of it is on
10 there so I would turn.

11 And I didn't think anything of saying, hey. I
12 think I had given him a quarter if I had it, spare
13 change when I come out of the store.

14 Q And he knew your name?

15 A Not right away. Over the time, over the years
16 that I lived there. I don't think he knew my name
17 until maybe a neighbor had told him.

18 So it wouldn't have been a surprise to me if
19 he had said, hello, Health. But I wouldn't have
20 thought that was strange. I knew what his name was,
21 what his nickname was. But it would just have been a
22 normal thing for him to say, hey, Heather, how are
23 you doing. I way say, hey, Black, I'm good. That
24 kind of thing.

25 Q would you say he was flirting with you?

1 A No, I wouldn't. If it was flirting then that
2 was but I'm not accusing him of flirting.

3 Q Now this particular night you had six beers to
4 drink, right, between 4:00 and 8:00?

5 A At the most. And in my memory.

6 Q And you have --

7 A I say that because I purchased the six-pack
8 and nothing more. So if I had six then that's the
9 most I could have had. So I'm just being honest, it
10 could have been less.

11 Q Do you remember meeting with Ms. Lebeof when
12 you were examined?

13 A The name, I'm not sure I remember the name.

14 Q Do you remember being interviewed when you
15 went to be examined that you spoke about on direct
16 examination at the hospital?

17 A Yes.

18 Q And you spoke with a lady there?

19 A Right.

20 Q You didn't tell her you had six beers?

21 A I don't know what I told her.

22 Q You've also taken prescription medication,
23 right?

24 A Correct.

25 Q For depression?

1 A Mild depression, eating disorder.

2 Q You've taken Prozac?

3 A I have.

4 Q But you weren't taking any medication that
5 night?

6 A Not that I'm aware of. I -- like I said, I
7 have been to the doctor off and on, and when I feel
8 better I would tell them that I don't think I need
9 it, I'm doing good, and he would tell he how to wean
10 myself off.

11 So, that's how, I'm not aware right now taking
12 it daily or not taking it at all. If the question
13 has been asked two years ago, I would have been able
14 to tell you.

15 Q So you could have been taking it, maybe you
16 weren't taking it?

17 A Correct.

18 Q And you said you had mild depression; is that
19 how it's classified?

20 A That's -- I am just saying it the way the
21 doctors say it.

22 Q But you had to be taken to the hospital twice
23 in the past for trying to kill yourself, right?

24 MR. SIMPSON: Objection, Your Honor.

25 THE COURT: Basis.

1 MR. SIMPSON: Relevance.

2 THE COURT: Please approach.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: You may proceed.

6 Ma'am, do you need the question repeated or do
7 you understand the question.

8 THE WITNESS: I understand the question.

9 THE COURT: Please answer the question.

10 A If I was picked up and taken to the hospital
11 for trying to kill myself, then it's because I was
12 upset.

13 Q But that happened, right?

14 A No one has ever picked me up and found me with
15 gun against my head or my wrist bleeding or a lot of
16 pills. Verbally I probably could have said, I want
17 to kill myself.

18 Q But you have been taken into custody to
19 protect yourself, right?

20 A Not from killing myself but, yeah, to protect
21 myself from doing harm to myself. But not
22 necessarily killing myself.

23 Q So you had to be taken into custody --

24 A I didn't have to be, no, I did not.

25 Q You were?

1 A Correct. I was never forced.

2 Q In 2002, 2004 and 2005, three times, right?

3 A You seem to be more aware of it than I am. I
4 don't remember those dates. I don't recall the
5 dates.

6 Q Is there something affecting your memory back
7 then that you don't remember?

8 MR. SIMPSON: Objection, Your Honor.

9 A About eight years ago?

10 THE COURT: Basis.

11 MR. SIMPSON: Asked and answered.

12 THE COURT: I'm going to give him a little
13 latitude.

14 THE WITNESS: I'm sorry.

15 Q (By Mr. King) Is there something?

16 A Yes, there is something that would affect my
17 memory.

18 Q you were drinking a lot of alcohol back then?

19 A No, I'm saying it was a long time ago and
20 that's why I don't remember exactly.

21 Q So on this night.

22 A Yes.

23 Q You have been testifying about.

24 A Yes, sir.

25 Q You were expecting someone?

1 A Not expecting someone, expecting delivery a
2 pizza delivery. I have -- I wasn't expecting a
3 particular person.

4 Q And a person who was black knocked on your
5 door?

6 A Yes.

7 Q He asked you to go out and get a beer, right?

8 A Not go out and get a beer, walk to the store
9 and get a beer is what he was staying. Let's go get
10 a beer, which that's what it would mean.

11 Q But outside of your home, he asked you to go
12 outside of your home to go get at beer, right?

13 A Right.

14 Q And you said no?

15 A Right, yes.

16 Q You invited him in?

17 A No, not invited. I just stepped back, so I
18 guess that's enough of an invite for him. I did not
19 push him out the door.

20 Q Do you remember meeting with Officer Cone the
21 night that you called the police?

22 A Yes.

23 Q And Officer Antonio, you met with some police
24 officers and talked to them?

25 A Antonio was I think afterwards a couple days.

1 Q You did not tell both of those that -- both of
2 those officers that you invited him in, that you
3 offered for him to come in?

4 A probably the same way I did today. I did not
5 tell him he couldn't come in. But I didn't say, come
6 in, come in, please sit down.

7 I just kind of -- I was -- I didn't feel any
8 need for him not to step inside. He kind of forced
9 his way in.

10 He asked me -- the reason I know that is
11 because he said, can you please put your dogs away.

12 Q Ms. Mayer --

13 A So it wasn't like a normal entry. The dogs
14 were right there at his feet. And the door next to
15 my door was like right next to the front door. And
16 he came in. And I still, I am nice person, and I
17 thought he just -- the conversation was very quick.
18 was, hey, let's get a beer or give me some money so
19 that I can go get it.

20 I said I don't have any. And then he said,
21 put your dogs up, and I did. I was, no, they're
22 friendly they won't bother you. But he insisted on
23 putting them away. And I put them away. And that's
24 when I sat on my couch.

25 Q So you let him in?

1 A So I did, so I let him. I would not say I
2 invited him but I did let him in.

3 Q You are saying you didn't tell Officer Cone
4 and Officer Antonio that you invited him in or
5 offered for him to come in?

6 A I don't remember the word whether it was
7 invited or offered. I'm sorry, I don't remember.

8 Q You sat on the couch?

9 A Uh-hum.

10 Q He sat on the couch?

11 A Yep.

12 Q He smoked a cigarette?

13 A Uh-hum.

14 Q Used the ashtray?

15 A Uh-hum.

16 Q And this ashtray is the glass object?

17 A Right. It really, it's not an ashtray.

18 Q It's a candle holder?

19 A It's a candle holder.

20 Q And this is what you said he hit you in the
21 face with?

22 A Right.

23 Q It's heavy?

24 A Uh-hum.

25 Q Solid glass?

1 A well, there is -- there were two of them. I
2 still have one of them but there were two. So, I
3 don't know if he was using one and ashing in the
4 other which I assume. But that is what he used.

5 Q He smoked a cigarette in your house?

6 A Because there were like cigarette stuff like
7 all on me and the sofa.

8 So I'm not sure if it was if he was smoking
9 during it or the ashes were falling from where he had
10 ashed on to me but there was cigarette stuff on me.

11 Q But you sat on the couch long enough for him
12 to smoke a cigarette?

13 A Right. He could have been smoking when he
14 walked in for all I know.

15 Q So this is 10 o'clock at night?

16 A Yeah, around 10 o'clock. And, yeah, he could
17 have definitely. We talked for two minutes, and you
18 know, it's like that was it.

19 Q So 10 o'clock at night, a guy you barely know
20 knocks on the door and you let him come in?

21 A Uh-hum.

22 Q Sit on the couch?

23 A Uh-hum.

24 Q He smokes a cigarette?

25 A (Affirmative head shake.)

1 Q You all talk?

2 A Uh-hum.

3 Q And then you say he raped you?

4 A Yes.

5 Q He hit you in the face with the glass -- we'll
6 call it ashtray, I guess, candle holder?

7 A Okay.

8 Q How many times?

9 A A lot of times. More than -- more than --

10 Q Five times?

11 A More than five.

12 Q More than five. With the glass object?

13 A I mean if I really wanted to -- just give me a
14 second, I want to think how much. About five times.
15 But then there was more during, you know, him just
16 like hitting and shouting things. Hitting my head
17 and shouting things during the rape.

18 Q He hit you on the left side of your mouth?

19 A I don't know what side it was.

20 Q He hit you in your mouth?

21 A I have scars on both sides of my mouth inside
22 from where my teeth hit. I don't know about on the
23 outside. I just inside.

24 Q You had no broken teeth?

25 A No. I mean my teeth hit my -- inside of my

1 cheek.

2 Q You had no broken facial bones?

3 A No.

4 Q He hit you in the --

5 A I have scars.

6 Q In the eye as well?

7 A Mostly the head.

8 Q You had no broken skull or anything like that?

9 A No. The only lacerations were all inside,
10 like inside my nose, corners of my lips were ripped,
11 and most of the blood came from inside of my mouth
12 and from the inside of my nose.

13 Q And --

14 A But at the time I did not know where the blood
15 was coming from. I thought it was coming from the
16 top of my head because that's what I felt the most.

17 Q You have neighbors?

18 A I do.

19 Q You screamed?

20 A Screamed. I more tried to scream, I know he
21 used his hand to cover my mouth, but a lot of it was
22 please, just please stop, please, you don't want to
23 get in trouble.

24 Q You told him that your boyfriend was coming
25 home?

1 A I did.

2 Q You had a boyfriend?

3 A No, I did not.

4 Q Todd Baker Jones?

5 A He was not a boyfriend.

6 Q Were you seeing him at the time?

7 A Sure.

8 Q He was abusive?

9 A Yes.

10 MR. SIMPSON: Objection, Your Honor,
11 relevance.

12 THE COURT: Basis.

13 MR. SIMPSON: Relevance.

14 THE COURT: Please approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 THE COURT: You may proceed.

18 Q (By Mr. King) As I was asking, you said he is
19 not your boyfriend? And you were saying --

20 A And --

21 THE COURT: Let her answer the question.
22 Ma'am you may answer yes or no and you may then
23 explain your answer.

24 Ask the question.

25 Q (By Mr. King) At the time you were seeing a

1 man named Todd Baker Jones?

2 A No. The more I think about it, I don't think
3 I was even speaking with him at all. I believe.

4 Q When did you meet him?

5 A I have no idea, but I knew --

6 Q Did you meet him before this?

7 A I had met him before, yes.

8 Q And you said just a minute ago that you were
9 seeing him at the time this happened, right?

10 A I did.

11 Q He was abusive?

12 A He was.

13 Q He has hit you in your face, right?

14 A Yes.

15 Q He has dragged you around by your hair, right?

16 A Yes.

17 Q You've called --

18 MR. SIMPSON: Your Honor, objection, may we
19 approach?

20 THE COURT: Please approach.

21 (Whereupon, a discussion was held at the bench
22 off the record.)

23 THE COURT: Redirect. You may proceed.

24 Q (By Mr. King) Todd Baker Jones, had he shoved
25 his hand inside of your mouth before, around that

1 time?

2 A I don't think I was seeing him at all around
3 that time.

4 Q Had he -- he has threaten to kill you, right?

5 A Yes.

6 Q He has kicked in your door in the middle of
7 the night, right?

8 A Yes.

9 Q And he was convicted of an assault on you,
10 right?

11 A All after this incident.

12 Q After. You've had to hide in the closet from
13 him before, right?

14 A Yes.

15 Q Now you said after this rape took place you
16 went outside and you were screaming?

17 A (Affirmative head shake.) Yes.

18 Not right outside my door. I went to -- I
19 knocked on two neighbor's doors and no one came out.
20 I knocked on -- I don't even know which house, I
21 think it was the one -- the house next to me has two
22 doors, one leads to the downstairs apartment and the
23 one on the right up.

24 So I honestly don't know which door it was.
25 But I could have knocked on both. No one came to the

1 door and that's when I ran down and was waving and
2 screaming at two cars going by.

3 Q Right. And there were people around?

4 A Because all the houses were really dark. And
5 for some reason I was embarrassed because I didn't
6 want my neighbors to see me all bloody. And I guess
7 because I knew them I think they would be scared.
8 You could tell with the lights out that they were
9 obviously probably asleep.

10 So I figured a car would be the next best
11 thing that I could get to. So I tried to flag down
12 two cars, two or three cars and they kept going.

13 Q Then you ran to Jabbers?

14 A That was -- yes. I did not go all the way to
15 the front door because you can look and tell when
16 they're closed. There is no cars and the lights,
17 there are less lights. So I ran and looked and they
18 were closed.

19 And then ended up right there at the
20 intersection still looking around for something, a
21 business that might be open, or just there is not any
22 pay-phones. I didn't have any money so if there was
23 I couldn't use it. I was just looking for anybody
24 that could help me.

25 Q And you found somebody, right, you found a

1 lady?

2 A She found me, yes, she did. But she was a
3 little taken back and she said, you know, oh, Lordy,
4 what happened. And as soon as he came over she
5 walked away. Because he said, I will help you.

6 Q So a lady came up to you?

7 A Uh-hum.

8 Q And she asked you what was wrong?

9 A Yeah, she -- go head.

10 Q She asked what's wrong, yes?

11 A She said what happened to you.

12 Q She asked what happened to you?

13 A Uh-hum.

14 Q And you didn't tell her to call the police?
15 You didn't scream to her?

16 A No because he was standing right there. And
17 she looked like someone that had come sort of like
18 out of the bushes. And to tell you the truth, I
19 don't think she looked like she could help me or
20 wanted to help me but she wanted to know what
21 happened. She didn't look like she wanted to help
22 me.

23 Q So you said Mr. Jenkins is there?

24 A And then he approached, I just did stair
25 straight ahead and thought, this is not really

1 happening. He is not really standing there. But he
2 was. He was.

3 Q And you went with him?

4 A He said, if you walk with me -- I was like, I
5 just need a phone, I just need a phone. That's all I
6 said over and over, I just need a phone. And he
7 said, if you walk with me and wash your face off I
8 will give you your phone. And I did. I went with
9 him.

10 And he helped me wash my face off and he gave
11 me my phone back and I ran really fast like I was
12 floating, I could not believe that I had my phone.
13 And I assumed it wouldn't work but I thought he maybe
14 had taken the battery or something but it didn't. I
15 got home and it worked.

16 MR. KING: That's all the questions I have.

17 THE COURT: Any redirect of the witness?

18 MR. SIMPSON: Briefly, Your Honor.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q Heather, defense brought up an individual
23 named Todd Baker Jones?

24 A Yes.

25 Q This is someone who, would it be accurate to

1 say is an ex-boyfriend of yours?

2 A Yes.

3 Q Did you see Todd Baker Jones on April 5th,
4 2006?

5 A No.

6 Q Did you see him that week?

7 A No.

8 Q You testified on cross that you characterized
9 your relationship as not a boyfriend, correct?

10 A Correct.

11 Q At this time?

12 A Correct.

13 Q You said but you knew him and were seeing him
14 occasionally?

15 A I did see him occasionally.

16 Q But not on the day of this incident?

17 A No.

18 Q Not on the week of this incident?

19 A No.

20 Q You mentioned earlier, too, you had some
21 trouble with depression, correct?

22 A Correct.

23 Q And at certain times in your life have been on
24 Prozac?

25 A Prozac, that was the most recent and the most

1 consistent. I had samples, I never took anything for
2 any lengthy period of time. I had seen some previous
3 doctors who gave me samples of other anti-depressants
4 in the same Prozac family.

5 Now I don't know the exact names because it
6 has been 10 years. But Prozac was the first one that
7 I was actually prescribed.

8 Q And you are not on medication today, correct?

9 A No, I'm not.

10 Q And that has been at the direction of a doctor
11 that you are not on medication, correct?

12 A Correct.

13 Q And when on these drugs, do they cause you to
14 hallucinate?

15 A No.

16 Q Do they cause you to make up wild stories?

17 A No.

18 Q Do this just solve your issues with as you
19 described mild depression?

20 A Right.

21 MR. SIMPSON: I have no further questions,
22 Your Honor.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MR. SIMPSON: None from the State, Your Honor.

1 THE COURT: From the defense?

2 MR. KING: No, Your Honor.

3 THE COURT: Ma'am, you are excused, you may
4 step down.

5 Mr. Foreman, ladies and gentlemen, we are
6 going to take advantage of this break in testimony to
7 take your evening recess. During the break please
8 abide by the Court's instruction and have no
9 discussion about this case with anyone, including
10 your fellow jury members.

11 Please don't have any contact with anyone in
12 or about the courthouse when returning in the
13 morning. Please don't allow yourself to be exposed
14 to any media coverage regarding this case. And
15 please don't do any independent research of any kind
16 on the Internet.

17 If you'll leave your notepads in your seats,
18 we'll resume this trial at 9:30 in the morning. I'm
19 selecting another jury at 9:00. If we run a little
20 over please take my apologies up front. It should
21 only take 30 minutes for us to select that panel.

22 I anticipate that we will begin approximately
23 9:30. We appreciate your patience and we will see
24 you in the morning. Please leave your notepads in
25 your seats.

1 (Whereupon, the jurors exit the courtroom.).

2 THE COURT: Is there anything from the State
3 before we recess for the evening?

4 MR. SIMPSON: Nothing, Your Honor.

5 THE COURT: Anything from the defense?

6 MR. KING: No, Your Honor.

7 THE COURT: Okay. You all have a good
8 evening. I'll see you at 9:30 in the morning.

9 (Whereupon, the proceedings in the matter
10 before the Court were adjourned for the evening.)

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1 Q And this happened, this incident happened in
2 April of '06, correct?

3 A Yes.

4 MR. SIMPSON: No further questions.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. SIMPSON: None from the State, Your Honor.

8 THE COURT: From the defense?

9 MR. KING: No, Your Honor.

10 THE COURT: Ma'am, you are excused.
11 You may call your next witness.

12 MR. NEELEY: State calls officer Jake Grill.

13 MR. CHARLES JACOB GRILL,

14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on his oath as follows.

17 THE COURT: You may proceed.

18 MR. NEELEY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. NEELEY:

21 Q Officer Grill, will you tell us what your
22 occupation is?

23 A I'm currently a narcotics investigator for the
24 City of Charleston Police Department.

25 Q How long have you been a narcotics

1 investigator?

2 A Over year and a half.

3 Q Were you in another department before then?

4 A Yes, sir, I was assigned to the Team One area
5 of Charleston, assigned to the patrol division.

6 Q What area is Team One?

7 A It's pretty much the north end of the
8 peninsula of Charleston.

9 Q Will you tell the jury about your previous law
10 enforcement experience?

11 A When I was on patrol?

12 Q Yes.

13 A Just taking calls, I responded to any calls
14 that you know assistance might be needed, 911 calls
15 to just simple questions.

16 Q And were you working in that capacity in April
17 5th, 2006?

18 A Yes, sir, I was.

19 Q Did you have an opportunity to work on a case
20 involving Daniel Jenkins?

21 A Yes, sir, I did.

22 Q How did you get involved in that case?

23 A Well, we were -- a 911 call came in for a
24 criminal sexual conduct that had just occurred. I
25 had responded to backup another officer that was on

1 the scene, Officer Cone.

2 Q Did you meet with the victim in this case?

3 A Yes, sir, I did. We arrived on the scene a
4 little after Officer Cone and just kind of met with
5 the victim, Ms. Mayer, and she gave us a brief
6 description of what happened. And obviously you
7 could see the blood on her face. She was roughed up
8 pretty good.

9 And she gave us further information on the
10 suspect. And from these --

11 Q So she gave you a lead in the case?

12 A Yes, sir, she did. She identified the
13 suspect. She said -- she gave us the street name of
14 Black.

15 Q What did you do with that information?

16 A From that information myself and Officer
17 Nabinette, we were familiar with this individual,
18 just through experience --

19 MR. KING: Objection.

20 Q (By Mr. Neeley) I'm sorry, just tell me what
21 you -- when you took that information did you go
22 anywhere with it?

23 A Yes, sir, we went looking for the suspect.

24 Q Did you --

25 MR. KING: May we approach?

1 THE COURT: Yes.

2 (Whereupon, a discussion was held at the bench
3 off the record.)

4 THE COURT: Ladies and gentlemen, you are to
5 disregard the last question and the last answer. You
6 are to give it absolutely no consideration in your
7 deliberations. You are to completely disregard and
8 disabuse it from your mind. You may proceed.

9 MR. NEELEY: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 Q (By Mr. Neeley) Did you go to a location
12 based on the information you received from the
13 victim?

14 A Again, like I was saying, myself and
15 Nabinette, we went to 3 Middleton Place I do believe
16 which is in the area.

17 MR. NEELEY: May I approach the witness?

18 THE COURT: You may.

19 Q (By Mr. Neeley) I'm going to show you a map
20 which has been labeled State's Exhibit 1. You may be
21 able to show the jury.

22 A Yes, sir.

23 Q I think this is the right way. You can stand
24 up if you need to. You were talking about some
25 locations, will you show us that on the map?

1 A Yes, sir. It's actually not on the map, it's
2 kind of over here it would be.

3 Q Just so that we are clear, will you point out
4 where the Jabbers Store would have been?

5 A This building right here.

6 Q Okay.

7 A And from there we spoke to -- Officer
8 Nabinette, he knew the defendant.

9 Q Will you just tell me --

10 A We went from there to 628 Rutledge Avenue
11 which was, I believe, one of these two buildings
12 right here.

13 Q And am I correct in assuming that's across the
14 street?

15 A Yes, sir. That is the parking lot, this is
16 Jabbers right here, the building right here is 628,
17 one of these two.

18 Q Okay. You can have a seat. When you got
19 there, what did you find?

20 A We knew that the defendant frequents this
21 area. And 628 Rutledge Avenue is an abandoned
22 building, just dilapidated and.

23 Q Was anyone inside when you got there?

24 A Yes, sir. The defendant was found upstairs in
25 a bedroom laying on the floor. He appeared to be

1 sleeping, however he was completely naked.

2 completely unclothed.

3 Q what did you do once you saw him in there?

4 A First we woke him up, allowed him to get
5 dressed, and then escorted him outside to the parking
6 lot of the Jabbers.

7 Q was he inside the car at that point or had you
8 taken him out?

9 A I don't think he was in the vehicle.

10 Q well when you got to that parking lot, what
11 happened next?

12 A We notified Officer Cone that we had a person
13 detained. And then she brought the victim over to do
14 a positive identification.

15 Q And who did you stay with?

16 A I stayed with the suspect, the defendant.

17 Q From your knowledge was there a positive
18 identification?

19 A Yes, sir, there was.

20 Q what did you do after that?

21 A After that we then placed the defendant into
22 custody and escorted him, transported him to the
23 headquarters, police headquarters, then conducted the
24 booking procedure.

25 MR. NEELEY: Judge, that's all I have.

1 THE COURT: Any questions for the witness?

2 MR. KING: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. KING:

5 Q Officer Grill, so you were given this
6 information about the suspect, Black?

7 A Yes.

8 Q All right. And you said Officer Nabinette was
9 familiar with where he hung out, he hung around the
10 area?

11 A We both were..

12 Q So he was found pretty quickly?

13 A Yes, sir.

14 Q And he was found pretty close by?

15 A Yes, sir.

16 Q Where he was expected to be?

17 A Yes, sir.

18 Q He hadn't ran and left town, right?

19 A No, sir.

20 Q He was right there and he was asleep?

21 A Yes, sir.

22 Q Was he sleeping on a mattress?

23 A I believe he had just a blanket, or it might
24 have been the carpet on the floor.

25 MR. KING: That's all the questions I have.

1 THE COURT: Any redirect?

2 MR. NEELEY: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. NEELEY: None from the State.

6 THE COURT: From the defense?

7 MR. KING: No, Your Honor.

8 THE COURT: Sir, you are excused.

9 You may call your next witness.

10 MR. NEELEY: State calls Renee Charles.

11 MR. RENEE CHARLES,

12 after having first been duly sworn to state the
13 truth, the whole truth and nothing but the truth,
14 testified on her oath as follows:

15 THE COURT: You may proceed.

16 MR. NEELEY: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. NEELEY:

19 Q Officer Charles?

20 A Yes, sir.

21 Q I'm right in saying that?

22 A Charles, Renee, that's fine.

23 Q Renee, let me ask what is your current
24 occupation?

25 A I work at the police department. I'm a crime

1 scene technician.

2 Q How long have you been there?

3 A Eleven years.

4 Q When you say you work in the crime scene
5 department, what does that mean?

6 A That means I respond to crime scene calls and
7 process the scenes collecting evidence, photographs.

8 Q So you respond to calls?

9 A Yes, sir.

10 Q Did you respond to a call on April 5th, 2006?

11 A Yes, sir, I did.

12 Q Do you know what type of call that was?

13 A On April 5th, 2006 I responded to [REDACTED]
14 [REDACTED] in reference to an aggravated assault that
15 took place at that location.

16 Q Just so that I am not getting ahead of myself,
17 you said you did respond to this particular incident?

18 A That's correct.

19 Q Went to the location. Did you take any
20 pictures?

21 A Yes, sir, I did. I took photographs.

22 Q What else did you do while you were there?

23 A I also processed the interior of the residence
24 for latent fingerprints and so on.

25 Q I'm going to show you some photographs and ask

1 if you can identify them. They are pre-marked
2 State's Exhibits, for identification, 5, 6, 7, 8, 9,
3 10, 11, 12, 13, 14, 15 and 16 and ask if you can
4 identify these?

5 A Yes, sir.

6 Q I actually want to talk about all but the last
7 three. Did you take these photographs?

8 A Yes, I did.

9 Q And where did you take these?

10 A That's the victim's residence, [REDACTED]
11 Street, that's at the location where I responded to.

12 Q Would you have taken these the night of the
13 incident?

14 A Yes, sir, that's right.

15 Q Are these the conditions of the photographs
16 when you took them?

17 A Yes, they are.

18 MR. NEELEY: Judge, we move to enter these
19 into evidence.

20 THE COURT: Did you show them to opposing
21 counsel?

22 MR. NEELEY: Yes, Your Honor.

23 THE COURT: Any objection?

24 MR. KING: Yes, Your Honor.

25 THE COURT: Please approach.

1 (Whereupon, a discussion was held at the bench
2 off the record.)

3 THE COURT: Overruled. Photos are marked and
4 admitted.

5 (Whereupon, State's Exhibit Nos. 5, 6, 7, 8,
6 9, 10, 11, 12, 13, 14, 15 and 16 are admitted into
7 evidence.)

8 Q (By Mr. Neeley) Mr. Charles, I'm going to
9 show you some photographs and ask you to identify
10 them for the jury. This is State's Exhibit 5. Can
11 you tell the jury what it is?

12 A That's the victim's underwear that was found
13 on the floor.

14 Q And is that where you found it?

15 A That's correct, sir.

16 Q This is State's Exhibit Number 6. What is
17 this a photograph of?

18 A That's the green ashtray that was also on the
19 floor. And then that was also used during the
20 altercation.

21 Q Let me ask you any indication as to what the
22 white stuff that would be in this area?

23 A They appear to be cigarette ash --

24 Q Like ashes?

25 A Yeah, ashes from the cigarette ash.

1 Q And just so that we are clear this part, I'm
2 pointing to the left side of the photograph, what is
3 this?

4 A Can you show me more, I can't see.

5 Q There may be a better photograph later, if not
6 we will come back to that.

7 A Yes, sir.

8 Q This is State's Exhibit No. 13. Once again if
9 you can identify what is in this photograph?

10 A This photograph showing the ashtray and that's
11 cigarettes and also some residue on the floor.

12 Q I'm going to show you State's Exhibit 12. If
13 you could tell the jury what that is?

14 A That's the sofa, and that's the living room
15 table, small table and that's pretty much.

16 Q Any idea what these things near the pillow may
17 actually be?

18 A I did a photograph of the strains that
19 appeared to be like blood, bloodstains.

20 Q I'm going to go back to State's 6 again, now
21 that we have looked at State's 12, and ask if you are
22 able to identify what this is on this side of the
23 photograph?

24 A That's part of the sofa. I can barely see
25 that.

1 Q And it appears this is an ashtray close to the
2 sofa?

3 MR. KING: Objection, leading, Your Honor.

4 THE COURT: Sustained, leading.

5 MR. NEELY: Thank you, Your Honor.

6 Q (By Mr. Neeley) How far would you say the
7 ashtray is from the sofa?

8 A It was pretty close. It wasn't that far I
9 would say a few.

10 Q Let me ask, Officer Charles, did you also take
11 some photographs of the victim in this case?

12 A Repeat for me, please.

13 Q Did you take some photographs of the victim in
14 this case?

15 A Yes, sir, I did.

16 Q I'm going to show you what has been marked as
17 State's Exhibit No. 11. Can you identify this?

18 A I photographed the victim's hands. That's the
19 victim's hands, palm of the hands.

20 Q And what is State's Exhibit No. 10?

21 A That's the victim's back of her hands also.

22 That's the victim's face, injuries to her nose
23 and lips.

24 Q And just for the record that's State's Exhibit
25 No. 7. Were you able to determine what was the

1 discoloration of her shirt?

2 A This appeared to be blood from her mouth and
3 her nose.

4 Q I'm going to show you State's Exhibit No. 8.

5 A That shows injuries from her upper lips, upper
6 lips.

7 Q And State's Exhibit No. 9?

8 A That's showing the injuries from lower lips of
9 the victim's mouth.

10 MR. NEELEY: And that's all the photographs I'm
11 going to show you at this time.

12 (Whereupon, State's Exhibit Nos. 3 and 4 are
13 marked for identification.)

14 Q (By Mr. Neeley) Officer Charles, did you have
15 a chance to take any physical evidence in this
16 particular case?

17 A Yes, sir, I did. I collected the green
18 ashtray, and also I did collect the victim's
19 underwear.

20 MR. NEELEY: May I approach the witness,
21 Judge?

22 THE COURT: You may.

23 Q (By Mr. Neeley) I'm going to show you what
24 has been marked for identification State's Exhibits 3
25 and 4 and ask if you can identify these. You may

1 have to open them to do that.

2 THE COURT: Bear with us, ladies and
3 gentlemen.

4 Q (By Mr. Neeley) Let me ask what while we're
5 here waiting on the gloves, did you have an
6 opportunity to lift any type of prints in this case?

7 A Yes, sir. I processed the green ashtray for
8 latent fingerprints, and I did recover three
9 fingerprint cards.

10 Q Let me ask, when you say you processed the
11 ashtray for prints, what does that mean?

12 A That means I used the black powder and
13 fingerprint latents to lift any latents on the object
14 and for fingerprints.

15 Q And you were able to pull some up?

16 A Yes, sir, I did lift three fingerprints. I
17 collected three cards.

18 Q Do you have those with you?

19 A Yes, sir, I do.

20 Q And are these the cards that you actually used
21 that night?

22 A Yes, sir, that's correct.

23 Q And just for the record, I assume they're in
24 the condition that they were when you lifted them?

25 A Yes, sir, they are.

1 Q Okay. what did you do with these after you
2 lifted those prints?

3 A I -- they were collected and they were sealed
4 and turned over to our latent examiner for
5 processing.

6 Q And when you sealed it, what is that process?

7 A The sealing process is using the sealing
8 machine and initialize and use the envelope with my
9 name and all the other information.

10 Q And then you gave them to who?

11 A I gave them to our latent examiner for further
12 processing.

13 Q Okay. Let's go back to the ashtray or the
14 item 35. If you could look at those?

15 A Yes, sir. Yes, sir, that's the --

16 Q Are you able to identify those?

17 A Yes, that's the underwear that was collected.

18 Q Did you collect those that night?

19 A Yes, that night I collected both items. It is
20 the same item that was collected that night.

21 MR. NEELEY: Judge, State would move State's 3
22 and 4 to be admitted into evidence.

23 THE COURT: Any objection?

24 MR. KING: Your Honor, may I see it?

25 THE COURT: Sure.

1 MR. KING: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit Nos. 3 and 4 are
5 admitted into evidence.)

6 Q (By Mr. Neeley) I want to show you just for
7 clarification the photographs we looked at earlier,
8 State's Exhibit No. 5. And it was your testimony
9 earlier, if I'm correct, that these were the
10 underwear that you found?

11 A Yes, that's correct.

12 Q Was this the location that you found them in?

13 A At that time they were on the floor, that's
14 the exact location where they were collected.

15 Q Do they appear to be ripped?

16 A Yes, sir, they appear to be ripped.

17 Q And I'm going to show you State's Exhibit
18 Number 6. Just for clarification, is this where the
19 ashtray was found when you took the photograph?

20 A That's correct, yes.

21 MR. NEELEY: Just one moment, Judge.

22 THE COURT: Uh-hum.

23 MR. NEELEY: That's all I have, Judge.

24 THE COURT: Any questions for the witness?

25 MR. KING: Court's indulgence one moment.

1 THE COURT: Uh-hum.

2 MR. KING: I have no questions for this
3 witness, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused from the State?

6 MR. NEELEY: None, Your Honor.

7 THE COURT: From the defense?

8 MR. KING: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you, Judge.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 we are going to take advantage of this break in
13 testimony to give you a short morning recess. We
14 will break until 11:15 which is a little shy of 10
15 minutes. Probably more like 11:20 give you a full 10
16 minutes.

17 During this break please do not discuss the
18 case among yourselves. Please leave your notepads in
19 the seats. If you need anything, please let the
20 bailiffs know.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: We will be at ease until 11:20.

23 (Whereupon, a recess was taken.)

24 THE COURT: Is the State ready to proceed?

25 MR. SIMPSON: Yes, Your Honor.

1 THE COURT: Is the defense ready to proceed?

2 MR. KING: Yes, Your Honor

3 THE COURT: please bring in the panel.

4 (Whereupon, the jurors enter the courtroom.)

5 THE COURT: Ladies and gentlemen, I hope you
6 enjoyed your break. We will now resume the trial.

7 You may call your next witness.

8 MR. NEELEY: State calls Kalisha Gill.

9 MS. KALISHA GILL,

10 after having first been duly sworn to state the
11 truth, the whole truth and nothing but the truth,
12 testified on her oath as follows:

13 THE COURT: You may proceed.

14 MR. NEELEY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. NEELEY:

17 Q Ms. Gill, what is your occupation?

18 A I'm a latent fingerprint examiner for the
19 Charleston Police Department.

20 Q And what does that mean?

21 A I analyze and compare latent fingerprints that
22 are taken from a crime scene to a known individual
23 for identification as well as elimination. I operate
24 the automated fingerprint identification system known
25 as AFIS. And I verify other latent examiners'

1 findings.

2 Q Let me ask, how long have you done that?

3 A It will be seven years next month.

4 Q What type of education do you have in order to
5 do that?

6 A I graduated from the University of Arizona
7 with a bachelor's of science degree in May of 2000.
8 And after that I enrolled in a course through the
9 United States Department of Justice which dealt with
10 fingerprint classification and pattern recognition.

11 Once I got hired at the police department they
12 sent me to a basic fingerprint course through the
13 South Carolina Criminal Justice Academy. I've also
14 been to ridgology science workshop, demystifying palm
15 print symposium, basic crime scene techniques for
16 investigators, forensic fingerprints identification
17 and testimony courses.

18 And my most recent accomplishment is becoming
19 a certified latent print examiner as well as a
20 certified crime scene investigator through the
21 International Association for Identification.

22 Q Okay. Let me ask on how many occasions have
23 you had to actually identify persons by comparing
24 their latent prints with ink prints?

25 A I would say probably more than 10,000

1 including my training.

2 Q Have you ever had occasion to be qualified as
3 an expert concerning fingerprint analysis?

4 A Yes, I have.

5 Q How many occasions?

6 A Roughly 15 times.

7 MR. NEELEY: Your Honor, at this time we offer
8 Ms. Gill as an expert in latent print identification.

9 THE COURT: Any objections or questions?

10 MR. KING: No, Your Honor.

11 THE COURT: So admitted.

12 MR. NEELEY: Thank you, Your Honor.

13 Q (By Mr. Neeley) Ms. Gill, will you tell the
14 Court what an ink fingerprint is?

15 A If you look at the tips of your fingers, you
16 can see ridges or raised ridges which are called
17 friction ridges. When a thin layer of ink is applied
18 to these areas and pressed on a standard fingerprint
19 card it leaves behind a visible impression which is
20 called a known as an ink impression.

21 Q What is a latent fingerprint?

22 A Latent means hidden or something that can't be
23 seen with the naked eye. So a latent fingerprint is
24 an impression of the friction ridges that can be left
25 behind when an object is touched. The impression is

1 invisible and it's left in the form of perspiration
2 or dirt or contaminants that are left on the fingers.

3 And through the use of chemicals or
4 powders with the crime scene investigators the
5 impression becomes visible for comparison purposes.

6 Q Will you tell the jury how you make that
7 identification based on those two prints?

8 A Identifications are done using the AB
9 methodology, which AB stands for analysis,
10 comparison, evaluation and verification. The
11 comparison process is we use three levels of detail.
12 The first level being pattern type. When -- there
13 are three types of pattern for fingerprints, you have
14 loops, arches and whirls.

15 And you always start with the latent
16 fingerprint and ink fingerprint side by side with
17 magnifiers and pointers and additional light if you
18 need it. And the comparison process you look at the
19 latent fingerprint and see if you can find a pattern
20 type of that latent. If it is visible then you go to
21 the ink impression and find that same pattern type.

22 If they agree, then you move on to the second
23 level of detail which deals with points or minutia,
24 points being friction ridges that end just called
25 ending ridges, or bifurcations which are friction

1 ridges that split off, one friction ridge splits off
2 and forms two.

3 You start with the latent fingerprint and you
4 find a target group which is a cluster of points.
5 And you look for that same group of points in the ink
6 fingerprint in the same relative position. From that
7 point on it's a continuous process of going back and
8 forth between the latent fingerprint and the ink
9 fingerprint and counting the ridges to find more
10 points.

11 At the same time as using the second level of
12 detail, you also use the third level of detail which
13 is more specific and deals with the shapes and sizes
14 of the ridges, the distance between the ridges which
15 is called the furrows, and location of the whirls or
16 ridges when the ridges that aren't fully formed.

17 And once you feel there is enough of the
18 information agreeing between the latent fingerprint
19 and the ink fingerprint with no unexplainable
20 differences, then you can call it an identification.

21 Q Tell me this, and this can help me, can two
22 people have the same fingerprint?

23 A No.

24 Q Why not?

25 A Why don't people have the same fingerprints?

1 Q Yeah.

2 A Because each fingerprint is unique to each
3 individual, as well as each finger on that
4 individual.

5 Q Okay.

6 (Whereupon, State's Exhibit No. 17 is marked
7 for identification.)

8 Q (By Mr. Neeley) I'm going to show you what
9 has been marked State's Exhibit 17 for
10 identification. Are you able to identify those?

11 A I recognize these.

12 Q You've seen them before?

13 A Yes.

14 Q And tell me where did you see those?

15 A In my office in West Ashley.

16 Q Will you tell me what it actually is?

17 A This is an envelope containing three latent
18 fingerprint cards that were submitted by our crime
19 scene officer Renee Charles.

20 Q Were you able to receive enough detail of
21 value to make a comparison with those?

22 A Two of them three fingerprints, yes.

23 Q Were you asked to compare them with someone?

24 A Yes.

25 Q Who were you asked to compare them with?

1 A A Daniel Jerome Jenkins.

2 Q Did you do that?

3 A Yes, sir.

4 Q And would you tell the jury what the result of
5 that comparison was?

6 A The latent lifts number one and number two
7 were both identified to the number one finger, which
8 is the right thumb finger, of the ink card bearing
9 the name Daniel Jerome Jenkins.

10 MR. NEELEY: Judge, that's all we have for Ms.
11 Gill.

12 THE COURT: Any questions for the witness?

13 MR. KING: Yes, Your Honor. May I approach to
14 see Exhibit 17?

15 THE COURT: You may.

16 CROSS-EXAMINATION

17 BY MR. KING:

18 Q Ms. Gill, you said there were three prints
19 there?

20 A Yes, sir.

21 Q Three latents?

22 A Yes.

23 Q The one that wasn't tested, was that someone
24 else or?

25 A No, they were all compared to Daniel Jenkins,

1 however the third latent did not have enough detail
2 to be identified to anybody.

3 Q So you can't say whether it was him or whether
4 it was somebody else?

5 A Right.

6 Q You are a scientist, right?

7 A Yes.

8 Q So you are not involved in any other
9 investigation of the case?

10 A No.

11 Q You are just presented with some latent
12 fingerprints and fingerprint cards and asked if they
13 match?

14 A Yes, sir.

15 Q And you can't determine when the fingerprints
16 got there, can you?

17 A No.

18 Q And all this shows you is that Mr. Jenkins --
19 do you know where the latent fingerprints came from?

20 A Yes.

21 Q They came from a glass ashtray?

22 A They were -- it says round green crystal
23 ashtray.

24 Q So, this just tells you that Daniel Jenkins
25 touched the ashtray, right?

1 A Yes.

2 Q With his right thumb?

3 A That's correct.

4 Q And there are two of the same thumb, two
5 prints on the ashtray. Two separate?

6 A I'm not sure if they were two separate prints
7 or two lifts of the same print.

8 Q You can't determine whether or not Mr. Jenkins
9 hit someone with that ashtray; isn't that right?

10 A No, I don't know.

11 Q You cannot determine whether he was smoking
12 cigarettes and happened to touch the ashtray, right?

13 A I don't know.

14 Q You cannot give us that information?

15 A No, I cannot.

16 MR. KING: That's all the questions I have.

17 THE COURT: Any redirect of the witness?

18 MR. NEELEY: Just a moment, Judge.

19 REDIRECT EXAMINATION

20 BY MR. NEELEY:

21 Q Ms. Gill, will you tell me whether or not
22 prints always contain enough detail to do a
23 comparison?

24 A No, not always.

25 Q Is that unusual?

1 A Not unusual at all, no.

2 Q Can a print fade or disappear over time?

3 A Yes, they can.

4 Q What would make that happen?

5 A The main reason would be environmental factors
6 such as sunlight for -- fingerprints, latent prints
7 are usually made up of 99 percent water so in direct
8 sunlight or in circumstances where they could
9 evaporate, fingerprints would fade. If something is
10 cleaned or wiped off they could remove the
11 fingerprints on it.

12 Q So can you touch something and not leave a
13 print?

14 A Yes, depending on the surface.

15 Q But in this particular case you found a match?

16 A Correct.

17 MR. NEELEY: That's all the questions we have,
18 Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MR. NEELEY: None, Your Honor.

22 THE COURT: From the defense?

23 MR. KING: No, Your Honor.

24 THE COURT: You are excused.

25 You may call your next witness.

1 MR. SIMPSON: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 I have a brief matter of law I need to take up with
7 the attorneys. It should take probably about 15
8 minutes. During the break please do not discuss the
9 case. We appreciate your patience. If you need
10 anything please let the bailiffs know. If you would
11 like to go downstairs and walk around, you certainly
12 may do so.

13 Please leave your notepads in your seats.
14 Please do not discuss the case in any manner.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Call your witness.

17 MR. SIMPSON: State calls Jenny Antonio.

18 MS. JENNIE ANTONIO,
19 after having first been duly sworn to state the
20 truth, the whole truth and nothing but the truth,
21 testified on her oath as follows:

22 THE COURT: Is it Jennifer or Jennie?

23 THE WITNESS: Jennie, J-E-N-N-I-E.

24 THE COURT: Thank you. You may proceed.

25 IN-CAMERA DIRECT EXAMINATION

1 BY MR. SIMPSON:

2 Q Detective Antonio, what is your occupation?

3 A I'm a police officer with the City of
4 Charleston Police Department.

5 Q What is your rank?

6 A I'm a master police officer. I'm currently
7 assigned to the detective office.

8 Q Were you working in that capacity back in
9 April of 2006?

10 A Yes, sir.

11 Q And did you respond to the scene for which we
12 are in trial here today?

13 A Yes, sir, that's correct.

14 Q Were you one of the first officers on the
15 scene?

16 A I was the detective working the nightshift
17 that night. Supervisor advised me what had
18 transpired, that they had responded for a sexual
19 assault. And procedurally we respond to the crime
20 scene where the victim, victim was still at the crime
21 scene. So, yes, sir.

22 Q Did you speak with the victim?

23 A I did, yes, sir.

24 Q Did you get her story of what had occurred
25 that night?

1 A Yes, sir, I did.

2 Q Did you later learn that she had a sexual
3 assault kit performed on her later that evening?

4 A Yes, that's correct.

5 Q And you stated you were working the
6 nightshift, correct?

7 A Yes, sir.

8 Q Did you later learn also the suspect had been
9 taken into custody, identified and arrested?

10 A Yes, sir. I was present when the
11 identification was made, standing outside Officer
12 Cone's patrol car.

13 Q And how did you proceed after arrest of the
14 suspect and knowing that a sexual assault kit had
15 been performed on the victim, how did you then
16 proceed?

17 A What happened she was transported at the time
18 immediately for that kit to be completed due to the
19 nature of her injuries. So at that time I went ahead
20 and secured a search warrant to gain the defendant's
21 DNA for future comparisons.

22 Q And was that -- did you approach a magistrate
23 with that search warrant?

24 A That's correct, Judge Homes.

25 MR. SIMPSON: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 (Whereupon, State's Exhibit No. 18 is marked
4 for identification.)

5 Q (By Mr. Simpson) Officer, I'm handing you
6 what has been marked for ID purposes as State's 18.
7 Do you recognize that?

8 A Yes, sir. It's a search warrant that I
9 secured the night of April the 6th, 2006.

10 Q And did you set out probable cause in that
11 search warrant?

12 A Yes, I do.

13 Q Can you read that section for the record?

14 A Yes, sir. On probable cause states: On
15 4/5/06 at approximately 22:30 hours while at [REDACTED]
16 [REDACTED], Charleston, South Carolina, 29403, the
17 subject, Daniel Jerome Jenkins, parenthesis, black
18 male, date of birth 6/17/60, did enter the victim's
19 residence and threatened to kill her if she did not
20 comply with his demand to perform oral sex on her.
21 The victim attempted to fight the subject, however he
22 overpowered her by striking her in and about her face
23 using a glass candle holder.

24 The subject then penetrated the victim's
25 vagina with his tongue and penis. The DNA samples of

1 blood, head hair and pubic hair will be retrieved
2 from the suspect by a trained medical personnel in a
3 medical facility. The collection of these samples
4 will be conducted in a noninvasive manner.

5 Q Detective, in a case where sexual assault is
6 alleged and the victim reports quickly as in this
7 case and a rape kit is done, is it relevant to
8 collect DNA samples from the suspect?

9 A It is, sir. It is used to compare, eliminate
10 or identify possibly if there were any questions in a
11 case like that this.

12 Q As you indicated previously you also did lay
13 out in the search warrant that how these items were
14 to be obtained?

15 A Yes, sir.

16 Q And was that by a medical professional?

17 A Trained medical personnel in a medical
18 facility. And it would be conducted in a noninvasive
19 manner.

20 Q And again once presented to the magistrate the
21 magistrate signed that search warrant?

22 A Yes, sir. She read it first and then she
23 signed it.

24 Q Did you execute that search warrant?

25 A No, sir, I did not.

1 Q Why was that?

2 A I was working nightshift and I believe, I
3 can't remember, I think in '06 we were working 4:00
4 to midnight, so I would have gotten off at midnight.
5 Also, there is not a jail nurse or also Ms. Faye
6 Lebeof were not available to execute the search
7 warrant at that time. I asked my fellow detectives
8 to please execute it at their earliest convenience on
9 the following day.

10 Q Okay.

11 MR. SIMPSON: I have no first questions, Your
12 Honor.

13 THE COURT: Any questions for the witness?

14 MR. KING: Yes, Your Honor.

15 IN-CAMERA CROSS-EXAMINATION

16 BY MR. KING:

17 Q Detective Antonio, this is the affidavit that
18 you just read out loud is what the magistrate saw,
19 there is no oral testimony or anything, it was just
20 based on this affidavit?

21 A No, sir, I just presented her with the search
22 warrant, she read it and it was signed it.

23 Q Okay. So the first sentence, on April 5th,
24 2006 at approximately 22:30 hours while at [REDACTED]
25 [REDACTED] Charleston, South Carolina, 29403 the subject,

1 Daniel Jerome Jenkins, did enter the victim's
2 residence and threatened to kill her if she did not
3 comply with his demand to perform oral sex.

4 You did not witness that, right? You weren't
5 personally there to witness those events obviously?

6 A Correct.

7 Q You responded later. So the information you
8 are putting in here is hearsay from Ms. Mayer?

9 A That was provided to me from her statements,
10 yes, sir.

11 Q You read her statement or interviewed her
12 personally?

13 A I did both. I interviewed her on scene, but
14 due to the fact of her injuries with her face and her
15 mouth and her nose, I took an actual written
16 statement the following day.

17 Q But you talked to her personally?

18 A Correct, yes, sir.

19 Q Next sentence I guess goes on the victim
20 attempted to fight the subject, however he
21 overpowered her by striking her in and about the face
22 using a glass candle holder. Again that's
23 information you got from Ms. Mayer?

24 A Correct. That was provided to me from the
25 victim. Yes, sir.

1 Q And there is nothing in the affidavit about
2 where you got the information, right? It doesn't say
3 in here that you spoke to the victim and she told you
4 this?

5 A No, sir.

6 Q And it doesn't give any information about Ms.
7 Mayer's credibility, right? Anything for the
8 magistrate to evaluate her credibility. For example,
9 you knew that Ms. Mayer was emotionally upset when
10 you responded, right?

11 A She was hysterical, yes, sir.

12 Q She was hysterical?

13 A Bleeding from the face.

14 Q But that's not included in the affidavit, her
15 demeanor, right?

16 A No, sir.

17 Q She had injuries on her face that you saw, as
18 you said she was bleeding from her face?

19 A Yes, sir.

20 Q And that's not in the affidavit, right, that
21 you observed injuries to her face?

22 A No, sir.

23 Q It does not say anywhere in the affidavit that
24 there were photos of the injuries available, right?

25 And there were photos?

1 A Photos of what?

2 Q Of Ms. Mayer's injuries?

3 A Correct. No, there is no mention of any
4 photos.

5 Q And the magistrate didn't see any photos?

6 A Nor did she ask for any photos.

7 Q Or any photos of the scene which would have
8 shown her. You were in here earlier and you saw the
9 photos admitted into evidence of the couch?

10 A Correct.

11 Q The ashtray, those are not mentioned in the
12 affidavit, right?

13 A Correct.

14 Q Nor were they seen by the magistrate?

15 A No, sir.

16 Q And you were also you were aware from your
17 investigation that there was some physical evidence
18 collected at the scene. There was a pair of ripped
19 panties?

20 A Correct.

21 Q That's not in the affidavit?

22 A No, sir.

23 Q And there was photos of what appeared to be
24 blood on the couch, right?

25 A Correct.

1 Q But that's not in the affidavit, right?

2 A Right.

3 Q And you knew that Ms. Mayer had identified
4 Daniel Jenkins as the person who raped her, right?

5 A Yes, sir.

6 Q But that's not in the affidavit either?

7 A No, sir. It was based on what she had told
8 me, and based upon her identification, that's why
9 this is written this way.

10 Q Right. But it does not say in the affidavit
11 that Ms. Mayer identified Daniel Jenkins as the
12 suspect who assaulted her?

13 A No, sir. That's written in a manner that
14 states he was already identified, correct, from her.

15 Q A conclusion. It was written in a
16 conclusionary way?

17 A Correct, from the victim's statements and her
18 identification of Mr. Jenkins.

19 Q And you knew that there was a medical exam
20 that was performed on Ms. Mayer?

21 A She was taken to have a medical exam
22 performed, correct.

23 Q And were you aware at that time --

24 A No, I wasn't aware of the findings of that
25 exam at the time this was written. It takes

1 approximately three to four hours for that exam to be
2 completed. This was done prior to.

3 MR. KING: That's all the questions I have of
4 the witness.

5 THE COURT: Any redirect of the witness?

6 MR. SIMPSON: No redirect, Your Honor.

7 THE COURT: Does the State have any further
8 witnesses to call on this issue?

9 MR. SIMPSON: Not on the issue of the search
10 warrant, Your Honor.

11 THE COURT: Defense have any witnesses it
12 wishes to call?

13 MR. KING: No, ma'am.

14 THE COURT: Okay. Any argument?

15 MR. SIMPSON: Yes, Your Honor. As outlined in
16 State versus Baccus, 357 S.C. 41, 2006, example case
17 because that case incorporates statutory law and the
18 requirements of Mervin versus California, U.S.
19 Supreme Court case resulting in a search warrant for
20 bodily fluids.

21 In that case as outlined that can be done by a
22 search warrant or court order and merely lays out
23 three requirements. One is probable cause to believe
24 the suspect has committed a crime as outlined in the
25 search warrant. I think based on the search warrant

1 itself and the testimony that has been offered to the
2 Court, the exhibits and the testimony you just heard
3 certainly probable cause is established.

4 Point two, clear indication that the relevant
5 evidence will be found. I think that's also outlined
6 before the magistrate and the facts given search,
7 warrant this is a sexual assault, reported recently
8 obviously, the presumption can be made from that
9 search warrant that relevant evidence could be found.

10 Third requirement that the method be used to
11 secure those items be safe and reliable. That's
12 outlined in the search warrant signed by the
13 magistrate.

14 This is not an incident where we have a CI
15 based search warrant. This is Ms. Antonio testified
16 she was speaking with the victim who had been beaten,
17 assaulted and based that search warrant on that
18 testimony. I think it's a reliable basis for that.
19 certainly the requirements of State v Baccus have
20 been met and the search warrant should be upheld,
21 Your Honor.

22 We stress again as to defense counsel's
23 questioning obviously it's not required that you
24 prove a case in a search warrant, you merely have to
25 assert probable cause. The fact that she at that

1 point in the investigation didn't outline all the
2 later findings, photographs, things of that nature,
3 that is simply not required when applying for a
4 search warrant.

5 What is required for a search is probable
6 cause. I believe relevant evidence can be found, the
7 fact that items had been retrieved through a safe
8 method, all three are outlined in plenty of detail in
9 the detective's search warrant.

10 THE COURT: Mr. King.

11 MR. KING: Thank you, Your Honor. I'm also
12 relying on State versus Baccus as one of my cases.
13 Just to point out it does say that obtaining Mr.
14 Jenkins' blood is a search and the Fourth Amendment
15 applies and probable cause must exist.

16 And that's really what I am focusing on.
17 State versus Baccus lists three requirements.

18 THE COURT: What kind Supreme Court case or
19 Court of Appeals case?

20 MR. KING: That is a Supreme Court, Your
21 Honor.

22 THE COURT: What is the citation?

23 MR. SIMPSON: 367 S.C. 41

24 THE COURT: Thank you.

25 MR. KING: Three requirements, Your Honor.

1 Number one, there has to be probable cause to believe
2 the suspect has committed a crime, that's really
3 where my argument focuses in on.

4 I'm also relying on State versus Smith, which
5 is a pretty short case, Your Honor. If you need that
6 citation, State verse Smith, 301 S.C. 371. And State
7 versus Smith they lay out the probable cause that the
8 magistrate had before him or her. And in that case
9 the probable cause was that on May 12th at
10 approximately 11:45 p.m. criminal, Jerome Smith, went
11 into the Master Inn located at 1468 Savannah Highway
12 and then he robbed the manager at knife point.

13 And the Court ruled that the affidavit was
14 defective on its face, the affidavit must contain
15 sufficient underlying facts and information on which
16 a magistrate can make a probable cause determination.
17 Mere conclusion, any statements which gives the
18 magistrate no basis to make a judgment are
19 insufficient.

20 In this case, State versus Smith, the
21 affidavit sets forth no facts as to why the police
22 believe Smith robbed the Master Inn. I think this is
23 the exact same thing in the affidavit in this case,
24 Your Honor.

25 In this case, Your Honor, first sentence is:

1 On April 5th, 2006 -- I'll skipped over -- 22:30
2 hours [REDACTED] the subject does enter the
3 victim's residence, threatens to kill her if she does
4 not comply with his demand to perform oral sex on
5 her. That's a conclusion. It wasn't witnessed by
6 the officer, it's hearsay from Ms. Mayer. But it
7 does not explain how they know that.

8 Next sentence: Victim attempted to fight the
9 subject however he overpowered her by striking her in
10 and about the face using a glass candle holder.
11 Again it's a conclusion, doesn't explain how the
12 police know that or what evidence they have.

13 The suspect then penetrated the victim's
14 vagina with his tongue and penis. That's the same
15 thing, these are just conclusions. And the questions
16 I'm asking the officer are facts that the magistrate
17 could have known to make an independent determination
18 of probable cause.

19 The point is that the police officer is not
20 supposed to make the decision about probable cause,
21 it's supposed to be presented to the magistrate so
22 the magistrate can make an independent determination.
23 And in this case it doesn't give where the
24 information came from. Doesn't say the victim was
25 interviewed and said this.

1 And State versus Robinson, 335 S.C. 620, I
2 know this applies more to a confidential informant,
3 but there has to be some information to consider the
4 veracity of the person submitting the information.
5 That could have been supplied by, responded to the
6 scene and the victim was hysterical, the victim was
7 bleeding from the face, those -- that information
8 would have supplied some facts for the magistrate to
9 determine that she had been actually assaulted and
10 that she had been hit.

11 So it doesn't include anything about Ms.
12 Mayer's credibility or who supplied the information.
13 Doesn't supply the demeanor of Ms. Mayer when the
14 police arrived. The appearance of her, her physical
15 appearance, photos or photos of the scene, there were
16 photographs of her injuries have been admitted into
17 evidence.

18 There was physical evidence collected at the
19 scene, blood, ripped pants, that's not included in
20 the affidavit, it's not even included in the
21 affidavit that Ms. Mayer identified Daniel Jenkins as
22 to the person who did it. So the magistrate wouldn't
23 have any idea how they know that Daniel Jenkins is
24 the right person. Because all it would have to say
25 is that Ms. Mayer after being shown Daniel Jenkins

1 identified him as the suspect who assaulted her.

2 I'm telling she wasn't aware of the result of
3 the medical exam but that could have been included as
4 well. Results of the medical exam revealed there was
5 semen present and that there were vaginal abrasions.
6 So all these facts needed to be in the search warrant
7 so that the magistrate can make an independent
8 determination.

9 I'm submitting that what was presented to the
10 magistrate were conclusions in the same way that they
11 were presented to the magistrate in State versus
12 Smith.

13 And a slightly weaker argument, Your Honor,
14 there has to be clear indication of relevant material
15 evidence will be found. And there is no indication
16 in the search warrant that relevant evidence would
17 have been found. Again that would have been the fact
18 that there was a medical exam performed, and semen
19 was found in the victim, and that's not included in
20 the probable cause as well.

21 But the main argument, Your Honor, is that
22 there is no probable cause that Mr. Jenkins committed
23 the crime in this affidavit that was presented to the
24 magistrate.

25 THE COURT: The motion to suppress is denied.

1 There is more than substantial evidence in the record
2 to support a finding of probable cause. Probable
3 cause is a reasonable and articulable suspicion that
4 criminal activity. Clearly the affidavit meets those
5 elements and meets that standard.

6 It meets the element that probable cause to
7 believe the crime has been committed and probable
8 cause to believe it was committed by a particular
9 suspect.

10 The fact that the officer interviewed the
11 victim at the scene and she identified the defendant
12 is sufficient, and coupled with her independent
13 observations of the victim at the scene, and the fact
14 that he had been identified is more than sufficient
15 probable cause for the warrant to have been issued.

16 Frankly, the items that you indicate need to
17 be in the warrant, I mean in the affidavit, are not
18 necessary for there to be a finding of probable
19 cause. And the facts in the case that you have cited
20 are not similar to this case. It's really quite
21 different in the elements of the crime that were
22 charged and the facts as they were set out in that
23 particular affidavit.

24 The next element State must meet is to show
25 clear indication that material evidence relevant to

1 the question of the suspect's guilt can be found.
2 Clearly DNA or genetic material is material evidence
3 and material evidence relevant to the question of the
4 suspect's guilt on the crime of criminal sexual
5 conduct in the first degree.

6 The method used to secure this evidence is
7 safe and reliable. I don't think there is anybody
8 really contesting that, so that issue is moot. And
9 finally the Court must determine whether the
10 character of the request is appropriate balancing the
11 seriousness of the crime, the importance of the
12 evidence, and the importance of the investigation,
13 and the availability of alternative, less intrusive
14 means of obtaining the evidence against concern for
15 potential -- this is actually I'm looking at the
16 elements required for the Court to order a blood
17 sample being they're really quite similar with the
18 exception of this last element that is required when
19 the Court is making that decision.

20 In this case the Court would find for purposes
21 of this record that the affidavit submitted by the
22 officer in support of issuance of a warrant set forth
23 particular facts and circumstances underlying the
24 existence of probable cause and did in fact establish
25 probable cause.

1 In addition, the Court would find the
2 affidavit was supported by oath or affirmation.
3 There has been no issue regarding that before the
4 Court.

5 It appears the focus of the defendant's
6 argument, lack of probable cause, the Court has
7 already found that probable cause did exist for
8 issuing the warrant to take samples from the
9 defendant. The Court would find also that the other
10 requirements regarding such intrusion have been met.
11 And I think I have already addressed those regarding
12 probable cause, that material evidence be collected
13 with the method safe and reliable, and that the
14 character of the request was appropriate considering
15 the seriousness of the crime.

16 And also it's clear that when you take -- the
17 taking of his fluids in this case would be material
18 in that he was accused of a crime of criminal sexual
19 conduct in the first degree.

20 It is my understanding, however, that the
21 defendant, and his defense is consent, that he really
22 is not denying being there and having sex with the
23 victim in this case. Is that right, Mr. King?

24 MR. KING: That may end up being my defense,
25 Your Honor. Obviously I haven't made that argument

1 yet. I did not argue it in opening.

2 THE COURT: That was my understanding.

3 MR. KING: If the DNA comes in that looks like
4 where I am going, Your Honor.

5 THE COURT: I think clearly the requirements
6 of the case law have been met. The case you all had
7 cited, which is the Baccus case, while it speaks in
8 terms of probable cause particularly of an affidavit,
9 it really factually is not very similar to this case.
10 There are other cases that are far more similar, that
11 being State verse Register, and there are a few
12 others for the sake of time I'm not -- really set
13 forth the same elements that the court must consider
14 in determining.

15 But, however, Baccus is relevant on the issue
16 of the establishment of probable cause. And that's
17 the crux and gravamen of the defendant's argument.
18 The court has found that there is sufficient probable
19 cause for the issuance of the warrant, therefore the
20 motion is denied.

21 Anything further for the record before we
22 proceed with this witness from the State?

23 MR. SIMPSON: Nothing from the State, Your
24 Honor.

25 THE COURT: Anything from the defense?

1 MR. KING: Your Honor, just briefly, make sure
2 I made my record. Obviously I was objecting to the
3 search warrant, ultimately objecting to the admission
4 of the DNA evidence.

5 THE COURT: I think you covered it. The
6 gravamen of your argument was probable cause.

7 MR. KING: Right, Your Honor. In addition to
8 the case I cited I'll also cite 17-13-140, South
9 Carolina code which is the statute on search warrant
10 which states probable cause is required. And the
11 constitutional argument of Fourth Amendment.

12 THE COURT: I think you covered them.

13 MR. KING: Article Six of the South Carolina
14 Constitution.

15 THE COURT: I think you covered it.

16 MR. KING: Again --

17 THE COURT: I'm not eliciting additional
18 argument. The Court has ruled. I think you covered
19 it more than amply, your record is preserved.

20 MR. SIMPSON: Your Honor, may we approach as
21 to scheduling?

22 THE COURT: Who's your next witness?

23 MR. SIMPSON: Ms. Antonio.

24 THE COURT: What time is her exam?

25 MR. SIMPSON: Four o'clock. She needs to be

1 out by 3:30.

2 THE COURT: Please bring in the panel.

3 (Whereupon, the jurors enter the courtroom.)

4 THE COURT: Ladies and gentlemen, we
5 appreciate your patience. We will now have the
6 State's next witness.

7 MR. SIMPSON: State calls Jennie Antonio.

8 MS. JENNIE ANTONIO,
9 after having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on her oath as follows:

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. SIMPSON:

15 Q Ms. Antonio, who's your employer?

16 A City of Charleston Police Department.

17 Q And how long have you done that job?

18 A I have been there for 10 years.

19 Q What is your current rank?

20 A Master police officer.

21 Q Were you working in that capacity on April
22 5th, 2006?

23 A Yes, sir, I was. I was assigned -- I have
24 been assigned to detective's office for the last
25 eight years.

1 Q And how did you become involved in the present
2 case?

3 A I was working nightshift that evening. And
4 the patrol supervisor advised me on the radio that a
5 sexual assault had just occurred. I responded to the
6 incident location where the victim happened to still
7 be at [REDACTED].

8 Q Would you have been the lead detective on the
9 scene?

10 A Yes, sir.

11 Q When you arrived on scene, did you speak with
12 the victim, Heather Mayer?

13 A Yes, sir, I did.

14 Q Can you just describe the victim's demeanor
15 when you arrived?

16 A She was hysterical. She had a bloody nose,
17 her mouth was bleeding, blood all over her hands.
18 Inside her lips were bloody, she was shaking, crying.

19 Q And shortly after arriving did you learn that
20 a suspect was in custody?

21 A Yes, sir.

22 Q Did you accompany the victim to the location?

23 A I did, yes, sir. I was standing outside of
24 Officer Cone's vehicle when the victim made the
25 identification.

1 Q Could you see the victim when she made the
2 identification?

3 A Yes, sir, she was crouching down in the back
4 of the patrol car. She was very, very scared of the
5 defendant.

6 Q Did you take a written statement that night
7 from the victim?

8 A No, sir. She was too hysterical. I wanted
9 her to be transported to the medical facility as soon
10 as possible so that we could address any injuries
11 that she sustained. So I took it the following day.

12 Q The individual who the victim identified as
13 the man who assaulted her, is that individual in the
14 courtroom here today?

15 A Yes, sir, he is the defendant.

16 Q You mentioned before during April 2006, what
17 shift were you working again?

18 A It would have been the evening shift. I think
19 our time frames we were working 4:00 p.m. to
20 midnight.

21 Q And do you remember about what time you would
22 have responded to this scene?

23 A It would have been sometime after 11:00.

24 Q So you, after making sure that the victim was
25 transported to the medical center, how did you

1 proceed on this case?

2 A Since the victim identified the defendant as
3 the perpetrator, he was detained. And at that time I
4 went ahead and met with Magistrate Judge Homes to
5 secure a search warrant for the defendant's DNA to
6 compare it in the case as it came about.

7 Q And when you say defendant's DNA, what sort of
8 substances are you talking about?

9 A Typically back in 2006 we would request for a
10 head hair sample, a pubic hair sample, blood, and
11 sometimes saliva.

12 Q And does the law require you to obtain a
13 search warrant before that happens?

14 A Search warrant or court order.

15 Q About what time, if you remember, did you get
16 this magistrate to sign this search warrant?

17 A I know it was close to the end of my shift, so
18 I'm not -- I don't know exactly the time.

19 Q Did you execute that search warrant
20 personally?

21 A No, sir. Due to the hour it was there was not
22 a nursing staff available at the jail to execute the
23 search warrant. So I contacted my fellow detectives
24 that were working day shift to see if they could
25 execute it for me.

1 Q Detective, did you visit the victim after the
2 date of the incident?

3 A Yes, that's correct. I believe it was --
4 well, I know it was following day, I believe it was
5 approximately 5:00 p.m.

6 Q Did you take any further photographs of her?

7 A Yes, sir, I did. I had crime scene officer
8 Renee Charles respond to take more photographs of her
9 injuries as they had kind of appeared, the bruising.

10 MR. SIMPSON: Permission to approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 Q (By Mr. Simpson) Detective, I hand you what
14 has been pre-marked as State's 14, 15, and 16. Do
15 you recognize those photographs?

16 A Yes, sir, I do.

17 Q Are those the things you just referenced?

18 A Yes, sir, they are.

19 Q And are they the same shape as they were when
20 the photographs were taken?

21 A Yes, sir.

22 Q Can you describe that photograph to the jury?

23 A Typically we will have the crime scene
24 technician take just a picture of the victim's face
25 so that you can see it as normal, nothing pointed

1 out. She has a contusion under her left eye,
2 contusions, you can see the discoloration on both her
3 top and bottom lip on the left-hand side.

4 MR. SIMPSON: Your Honor, I'd like to move
5 State's 14, 15 and 16 into evidence.

6 THE COURT: Did you show them to defense?

7 MR. KING: Yes. I have no objection.

8 THE COURT: Marked and admitted without
9 objection.

10 (Whereupon, State's Exhibit Nos. 14, 15 and 16
11 are admitted into evidence.)

12 A This photograph, often if someone is struck in
13 the mouth their teeth will actually cause lacerations
14 from the object, the force of the lips hitting their
15 teeth. So she had a large contusion that went all
16 the way up underneath her upper lip. And then as you
17 can see her lip where that was actually opened.

18 And this photograph is very similar, it just
19 shows the damage to the bottom lip on the interior
20 side.

21 MR. SIMPSON: I have no further questions for
22 you.

23 THE COURT: Any questions for the witness?

24 MR. KING: Briefly, Your Honor.

25 THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. KING:

Q Detective Antonio, you said you met with Ms. Mayer and you interviewed her, right?

A I responded to the incident location, yes, sir. We did an interview verbal there. At the time the defendant had been located, we transported her over. And due to her physical condition I didn't see that it was the right time to take a written statement.

Q I understand, but you talked to her?

A Yes, I did.

Q And she talked to you?

A Yes, sir, she did.

Q And she told you that she -- that Black knocked on the door, right?

A Correct.

Q And that she offered for him to come in, right?

A Correct.

Q She did not say he forced his way in?

A No, sir.

Q And she told you she had been hit in the face with the glass ashtray. Are you familiar with the object I am talking about?

1 A Yes, sir. I believe the terminology she had
2 used it was a glass candle holder. It guess it has
3 been used as an ashtray.

4 MR. KING: If I may approach the witness?

5 THE COURT: You may.

6 Q (By Mr. King) You are familiar with the
7 candle holder she told you about?

8 A Yes, sir.

9 Q Did she say she had been hit in the face
10 several times with that?

11 A Correct.

12 Q And you met with her this was when? After you
13 responded on the first night?

14 A The night of the incident, and then the
15 afternoon directly following the incident.

16 Q So this is the afternoon of the next day?

17 A Correct.

18 Q And those are the injuries she had at that
19 time?

20 A That's what was seen here is what had already
21 appeared, I don't know, 12 to 15 hours.

22 Q From being hit in the face with that heavy
23 glass object?

24 A Correct. Yes, sir.

25 MR. KING: That's all the questions I have.

1 THE COURT: Any redirect of the witness?

2 MR. SIMPSON: Court's indulgence.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q Detective, we mentioned earlier that you had
7 taken Heather Mayer's statement?

8 A Yes, sir.

9 Q Fair to say that what she told you about the
10 crime is what would --

11 MR. KING: Objection, Your Honor.

12 THE COURT: Basis.

13 MR. KING: Him bolstering.

14 THE COURT: Please approach.

15 (Whereupon, a discussion was held at the bench
16 off the record.)

17 MR. SIMPSON: No further questions, Your
18 Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MR. SIMPSON: None, Your Honor.

22 THE COURT: From the defense?

23 MR. KING: No, Your Honor.

24 THE COURT: Thank you, you are excused.

25 You may call your next witness.

1 MR. SIMPSON: I have no further questions,
2 Your Honor.

3 THE COURT: Any questions for the witness?

4 MR. KING: No, Your Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. SIMPSON: No, Your Honor.

8 THE COURT: From the defense?

9 MR. KING: No, Your Honor.

10 THE COURT: Sir, you are excused.

11 You may call your next witness.

12 MR. SIMPSON: State calls Faye Lebeof.

13 MS. FAYE LEBEOF,

14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on her oath as follows:

17 THE COURT: You may proceed.

18 MR. SIMPSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q Ms. Lebeof, what line of work are you in?

22 A I'm a certified nurse midwife at the Medical
23 University.

24 Q Are you currently employed by the Medical
25 University?

1 A Yes, I am.

2 Q What is your educational background?

3 A I have an associates degree in nursing that I
4 received in 1975 from the University of Vermont. I
5 have a certificate in nursing midwifery that I
6 received in 1987 from the Medical University of South
7 Carolina.

8 I have a master's in nursing that I received
9 from the Medical University of South Carolina in
10 1992.

11 Q And since your formal education have you had
12 an opportunity to take part in any seminars or
13 further training in your area of medical practice?

14 A Yes, I do.

15 Q Do you remember any of those specifics?

16 A I do yearly conferences that our department
17 puts on. I also have taken a course in sexual
18 assault nurse examiner.

19 Q What would you say your area of specialty
20 currently is in the medical profession?

21 A My area of specialty is women's health.

22 Q How long have you been practicing in this area
23 of medicine?

24 A I have been employed as a certified nurse
25 midwife for 21 years.

1 Q Do your current and past duties sometimes
2 include you performing sexual assault examinations on
3 a female victim, suspected victims of sexual assault?

4 A Yes, they do.

5 Q If you had to approximate, how many such exams
6 have you done over the course of your career?

7 A I have done approximately 1,000 sexual assault
8 examinations.

9 Q Does your formal education also qualify you in
10 the area of basic diagnoses?

11 A Yes, it does.

12 Q Have you ever been qualified as an expert in
13 the court before?

14 A Yes, I have.

15 Q Approximately how many times?

16 A Approximately 10.

17 Q In what area?

18 A Sexual assault.

19 MR. SIMPSON: Your Honor, at this point the
20 State would move to qualify the witness as an expert
21 in female health, general medical practice
22 specifically related to sexual assault.

23 THE COURT: Any questions or objections?

24 MR. KING: No, Your Honor.

25 THE COURT: So admitted.

1 Q (By Mr. Simpson) Ms. Lebeof, do you recall
2 becoming involved with an alleged sexual assault from
3 a victim named Heather Mayer back in April of 2006?

4 A Yes, I do.

5 Q Under what circumstances did you become
6 involved in the case?

7 A She presented to our clinic with the -- that
8 she had been sexually assaulted.

9 Q Can you explain to the jury the standard
10 procedure that you would go through when performing a
11 sexual assault examination?

12 A When a woman presents to the clinic for a
13 sexual assault examination, we do a history with them
14 about the sexual assault, what happened, where it
15 happened, to gain some insight into what to check for
16 evidence.

17 There is a protocol set out by SLED up in
18 Columbia that we follow which tells us what evidence
19 we need to collect, from the top of the head to the
20 bottom of the toes. We need to do vaginal
21 examinations, photography of the injuries, and we
22 also give them medication.

23 Q Does that generally involve an interview
24 process as well?

25 A The first thing we do is an interview, yes,

1 sir.

2 Q Did the victim in this case indicate to you
3 that she had consumed alcohol that day?

4 A May I refer to my --

5 Q certainly.

6 A She had said that she had ingested some
7 alcohol on the 5th of April.

8 Q Did she appear to you to be intoxicated?

9 A Not at the time, no.

10 Q What was her demeanor like when you spoke to
11 her?

12 A She was very upset and she was crying.

13 Q Now would the first stage of doing a sexual
14 assault exam include basic obvious injuries to the
15 body, not necessarily involving the genital area?

16 A Yes, it would.

17 Q Would you note those in your report?

18 A Yes, I do.

19 Q What injuries did you note in this report?

20 A Her face was quite bruised when I saw it. She
21 had her left eye was quite swollen, it had bruising
22 above the eyelid, below the eyelid. Her lips were
23 swollen. There was bruising in her lip. Lacerated
24 on the inside of the lip, what we call the gutter
25 down at the bottom of her teeth.

1 There was blood on her face. There was blood
2 on her legs. She had bruising on her arms which were
3 anywhere from five centimeters, which would be about
4 this big (indicating), to one that was ten
5 centimeters, which would have been that big
6 (indicating), on both of her shoulders.

7 Q Did you also conduct a pelvic examination in
8 this case?

9 A Yes, I did.

10 Q What were your observations regarding the
11 pelvic examination?

12 A She had some abrasions in the area just before
13 you go into the vagina which were similar to taking
14 off the top layer of skin. She also had redness on
15 the hymen which is the opening that goes into the
16 vagina from about 3 o'clock to 9 o'clock.

17 And a small laceration just a little bit
18 further down from the opening the vagina.

19 THE COURT: I'm sorry, I did not hear the last
20 answer.

21 A A small laceration just below the opening of
22 the vagina in the perineum.

23 Q Ms. Lebeof, were these injuries consistent
24 through your experience and expertise with a sexual
25 assault?

1 A They were consistent with Ms. Mayer's history.

2 Q Did the vaginal examination also reveal to you
3 bodily fluids?

4 A Yes, it did.

5 Q And when you say Ms. Mayer's history, what are
6 you referring to?

7 A Her history of her being sexually assaulted.

8 Q The story she told you about what had happened
9 to her previously?

10 A Yes, sir.

11 Q What type of bodily fluids did you observe?

12 A To do the genital exam we have to put a
13 plastic what is called a speculum -- kind of looks
14 like duck bills -- inside the vagina and we open it
15 up so that you can look and see if there is any
16 internal trauma and also any body secretions.

17 There was a lot of clear fluids in her vagina
18 which I took some Q-tip swabs to send to the lab up
19 in SLED. But I also took a swab that I looked at
20 underneath the microscope.

21 Q When you say Q-tip swab, you are not referring
22 to just when you pull out a normal Q-tip from a box,
23 are you?

24 A No, sir.

25 Q Explain that to the jury?

1 A SLED up in Columbia sends a box that is
2 sealed. When I get it I unseal the box myself and I
3 date and time when I unseal it. When I open it up
4 they have small envelopes in there, and in each
5 envelope that they need secretions or evidence
6 collected they have a sealed Q-tips which there are
7 two in each envelope.

8 The envelopes are labeled with the victim's
9 name, labeled with the date and time, and I also sign
10 that I am the one that collected the evidence. And
11 it will be sealed after I have everything dry.

12 Q Was that procedure followed in the present
13 case?

14 A Yes, it was.

15 Q Is evidence typically then just handed over to
16 the officers or is it stored at your office?

17 A It's usually stored at my office.

18 Q Until what point?

19 A Until the evidence collection guys come and
20 meet up with you.

21 Q Is it the officers typically from the crime
22 scene unit?

23 A Yes, sir.

24 Q According to your report, about what day and
25 time did this examination take place of Heather

1 Mayer?

2 A It happened on April 6th about 10 minutes to
3 1:00 in the morning.

4 Q Ms. Lebeof, your involvement in this case did
5 not end with Heather Mayer, did it?

6 A No, it did not.

7 Q Were you also involved in taking DNA samples
8 from the defendant in this case?

9 A Yes, I did.

10 Q And where would that have taken place?

11 A I don't have the paperwork. I think it took
12 place there at our same clinic.

13 Q Would it be unusual for officers of CPD to
14 bring an inmate from the jail to your clinic to
15 perform this procedure?

16 A At that time, no, it was not.

17 Q When you take DNA samples, how are they taken?

18 A Again SLED has a sample kit that is set up for
19 what they call the suspect testing. And there are
20 sealed envelopes in there. And what it includes for
21 the suspect is a tube of blood, it includes mouth
22 swabs, it includes head hair, it also includes pubic
23 hair combings and pulling.

24 Q And when you take samples of things like that
25 blood, do you follow the proper medical procedures in

1 doing so?

2 A Yes, I do.

3 Q Did you do so in this case?

4 A Yes, I did.

5 Q As with the victim's rape kit and the
6 defendant's samples are those typically stored at
7 your office?

8 A Yes, they are.

9 Q Until what point?

10 A Until the crime scene personnel came and
11 picked them up.

12 MR. SIMPSON: No further questions, Your
13 Honor.

14 THE COURT: Any questions for the witness?

15 MR. KING: Yes, Your Honor.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q You are not a medical doctor you are a nurse,
20 right?

21 A Right.

22 Q And you work with -- main part of your job is
23 to work in sexual assault cases or sexual assault
24 allegations?

25 A No the main part of my job is a certified

1 nurse midwife. Sexual assault nursing cases are a
2 part-time job that I do.

3 Q And you said you've been qualified to testify
4 about 10 times as an expert witness?

5 A I think it's about 10 time, yes, sir.

6 Q Have those been for the prosecution or for the
7 defense?

8 A Prosecution.

9 Q All for the prosecution?

10 A Yes.

11 Q Do you lecture or give any kind of classes or
12 anything, teach?

13 A I did. I haven't in a few years.

14 Q Did that teaching involving prosecutors?

15 A They have attended a course, but they usually
16 come and talk to the course when I would teach the
17 course.

18 Q But fair to say that generally in these types
19 of cases you work with the prosecution?

20 A Yes, sir.

21 Q Have you ever testified for the defense in a
22 case?

23 A No, sir.

24 Q Now you testified about some things you found
25 when you did the pelvic examination, right?

1 A Yes, sir.

2 Q And from your experience, is it possible for
3 there to be a sexual assault and there be no signs;
4 is that right?

5 A That's true, yes, sir.

6 Q And it's also possible that there could be
7 consensual sex and there can also be signs, there can
8 also be abrasions, right?

9 A Yes, sir, there could be.

10 Q And there are some things that can -- I mean
11 let me give you a list of things and see if you agree
12 that may contribute to I guess we'll call them
13 abrasions. If a person who has sex has had little or
14 no sexual experience, is that something that can
15 contribute to more likely to have injury or
16 abrasions?

17 A It could, yes.

18 Q And I'm talking about consensual sex?

19 A It's could, sir, yes.

20 Q And if someone has never had children before,
21 that's one of the things as well?

22 A Right.

23 Q If someone has had multiple sex events, I
24 guess had sex more than once during a short time
25 period, can that lead to increased chance of injury

1 or abrasions?

2 A There is a possibility, yes.

3 Q If someone has had more than one sex partner
4 in a short period of time, is that possible?

5 A It could be possible, yes, sir.

6 Q And in this case you interviewed Ms. Mayer,
7 right?

8 A Yes, sir.

9 Q And she told you that she had sex with someone
10 else three days before?

11 A She told me she had had sexual activity on the
12 2nd of April.

13 Q And the incident that you were performing work
14 on took place on the 5th, right?

15 A Yes.

16 Q So it had been three days before?

17 A Three days.

18 Q And it's also possible during consensual sex
19 to have abrasions or injury if there is an anatomical
20 mismatch?

21 A There is a possibility.

22 Q If the man is large and the woman is small,
23 that that could contribute to it as well?

24 A Yes, sir.

25 Q And it's also possible during consensual sex

1 if it's rough sex, right?

2 A Yes.

3 Q There could be more likely to be injury or
4 abrasions?

5 A Yes, sir.

6 Q If you are having sex with someone who's not
7 your typical sex partner, could that also contribute
8 to abrasions during consensual sex?

9 A Yes, sir, it could.

10 Q And the reason is maybe it's clumsier if it's
11 not someone that you are familiar having sex with, is
12 that kind of the explanation for that?

13 A It could be clumsier, it could be that there
14 is no lubrication.

15 Q And if someone is using drugs or alcohol, that
16 could contribute to having abrasions, right?

17 A Possibility. But usually with drugs and
18 alcohol the person is much more relaxed and they
19 shouldn't be -- there should not usually be as much
20 trauma.

21 Q What about the man using alcohol?

22 A Since men are not my specialty, but it would
23 be the possibility that he either could or could not
24 maintain or keep an erection would be dependant on
25 that.

1 Q Would that make him more likely if he does not
2 have a full erection that there could be abrasions?

3 A If he is really trying to force himself into
4 the woman's vagina, yes.

5 Q And Ms. Mayer told you she had had six beers
6 that night, right?

7 A Yes, sir, she did.

8 Q Let's talk about what you found in your
9 examination, pelvic examination.

10 You said there were -- there was redness on
11 the hymen?

12 A Yes, sir.

13 Q Now it is possible for that to happen during
14 normal sexual intercourse, consensual sex, right?

15 A Yes, sir.

16 Q And there was an abrasion at the posterior
17 fourchette?

18 A Yes.

19 Q Am I saying that right?

20 A You did, yes, sir.

21 Q Can you explain a little bit about that, the
22 posterior fourchette?

23 A The posterior fourchette is just before the
24 entrance into the vagina. It's like a little well
25 where it typically if there is going to be trauma

1 that's the place that most people will look to see if
2 there is trauma in that area.

3 Q And that skin can tear easily, right? It's
4 like the skin inside your mouth; is that a good
5 analogy?

6 A Yeah.

7 Q So it can be torn just by pulling the skin
8 apart a little bit, right?

9 A Yes, sir.

10 Q So having that injury could happen during
11 consensual sexual intercourse?

12 A Yes it could, uh-hum.

13 Q And the third thing you found was there was an
14 abrasion on the perineum?

15 A Uh-hum.

16 Q Can you explain that a little bit?

17 A It could have been from -- an abrasion is like
18 rubbing your knee or skin across a rug and taking off
19 that top layer. It could have easily been from him
20 not quite aiming right.

21 Q During normal sex, consensual sex that could
22 happen?

23 A Yes, it could.

24 Q A fingernail, this is outside the vagina,
25 right?

1 A Right. A fingernail would leave more of a
2 scratch or a cut, I would think, than an abrasion
3 because you are going to go a little bit deeper on
4 the layer of skin.

5 Q So this abrasion on the perineum could happen
6 during consensual intercourse?

7 A Yes, sir.

8 Q So, everything that you found in your pelvic
9 examination could be consistent with consensual
10 intercourse, right?

11 A Yes, sir.

12 Q And you also did examination of her other
13 injuries to her head, right?

14 A Yes, I did.

15 Q And there was a diagram, part of your
16 protocol, where you drew. And you found there were
17 -- the injuries you found were, as far as above the
18 neck, where on her eye?

19 A Uh-hum

20 Q And on her lip?

21 A Yes, sir.

22 Q No injuries on the top of her head or around
23 her head?

24 A Not that I noted, no, sir.

25 Q And you examined her, right?

1 A Yes, sir.

2 Q And if there had been injuries you would have
3 noted them?

4 A Yes, I would have.

5 Q So she had no injuries on the top of her head,
6 only on her eye and on her lip?

7 A That I noted, yes, sir.

8 MR. KING: That's all the questions I have.

9 THE COURT: Any redirect of the witness?

10 MR. SIMPSON: Yes, Your Honor.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q Ms. Lebeof, Mr. King pointed out that you do
15 often testify for the prosecution, right?

16 A Yes, sir.

17 Q Is that because your job involves collecting
18 evidence from sexual assaults?

19 A Yes, it does.

20 Q Has the fact that you often testify for the
21 prosecution ever influenced how you testify in any
22 way?

23 A No, sir, it does not.

24 Q You testify as a professional?

25 A Yes, I do.

1 Q Honest?

2 A Honestly, yes, sir.

3 Q Mr. King also pointed out the injuries you
4 observed during this pelvic exam could be consistent
5 with consensual sex, correct?

6 A That is true, yes, sir.

7 Q But that would tend to be consistent with
8 rough sex?

9 A It could be consistent with rough sex.

10 Q Ms. Lebeof, would these type of injuries and
11 your observations of the injuries, does the body heal
12 over time?

13 A Yes, it does.

14 Q would three days prior, consensual sex three
15 days prior tend to shows these type of injuries still
16 remaining on the way you observed them that evening?

17 A The type of injuries in the vaginal area could
18 have easily been healed within three days by the time
19 I saw her.

20 MR. SIMPSON: No further questions, Your
21 Honor.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MR. SIMPSON: None, Your Honor.

25 THE COURT: From the defense?

1 THE COURT: Any questions for the witness?

2 MR. KING: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused from the State?

5 MR. SIMPSON: No, Your Honor.

6 THE COURT: From the defense?

7 MR. KING: No, Your Honor.

8 THE COURT: Ma'am, you are excused.

9 You may call your next witness.

10 MR. SIMPSON: State calls Adrienne Riley.

11 MS. ADRIENNE RILEY,

12 after having first been duly sworn to state the
13 truth, the whole truth and nothing but the truth,
14 testified on her oath as follows:

15 THE COURT: You may proceed.

16 MR. SIMPSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q Ms. Riley, where are you employed?

20 A With the South Carolina Law Enforcement
21 Division, more commonly known as SLED.

22 Q In what capacity are you employed at SLED?

23 A As a forensic DNA analyst.

24 Q What would some of your duties be as a
25 forensic DNA analyst?

1 A My primary duty is the analysis of biological
2 evidence that may have been left behind at a crime
3 scene, and comparison and interpretation to known
4 standards that are received from the victim and/or
5 subject in a case.

6 Q And what educational background do you have
7 that prepared you for your position?

8 A I have a bachelor's of science degree in
9 biology from the University of South Carolina. I
10 also have post-graduate courses in the field of
11 genetics, statistics and bio -- molecular biology.

12 Q And since your formal schooling have you had
13 an opportunity to take part in any seminars or
14 further training?

15 A Yes, we are required to attend a seminar at
16 least once a year. And I also have received training
17 as well as a DNA advisory board auditor.

18 Q How many years have you been performing
19 forensic DNA analysis?

20 A I have been with SLED for 11 years, and I have
21 been performing analysis for almost 10.

22 Q If you had to guess over that time period
23 approximately how many individual DNA comparisons
24 have you made?

25 A Well into the thousands.

1 Q Have you ever given testimony in a court of
2 law regarding forensic DNA analysis?

3 A Yes, sir, I have.

4 Q About how many times would you approximate?

5 A About 40 times.

6 Q So you were qualified as an expert in forensic
7 DNA analysis in each of those occurrences?

8 A Yes, sir.

9 MR. SIMPSON: Your Honor, at this time I'd
10 like offer this witness as an expert in forensic DNA
11 analysis.

12 THE COURT: Any objections or questions?

13 MR. KING: No, Your Honor.

14 THE COURT: So admitted without objection.
15 You may proceed.

16 Q (By Mr. Simpson) Ms. Riley, what is DNA?

17 A DNA stands for Deoxyribonucleic Acid. What it
18 is is a genetic material that is found in all the
19 nucleated cells of our body. And nucleated means
20 cells with a nucleolus like red blood cells and white
21 blood cells.

22 And it is genetic material we receive from
23 each of our parents that make us who we are. No two
24 people have the same DNA with the exception of
25 identical twins. A lot of our DNA however is the

1 same, and that's the DNA code for us to have two
2 arms, two legs and two eyes.

3 You look around the courtroom and everyone
4 looks different. Everyone's DNA is different and
5 unique to the individual.

6 Q And how is DNA used for forensic purposes?

7 A We take that uniqueness and when a stain or
8 biological evidence is left behind in a crime scene,
9 such as blood, semen, saliva, we will do a DNA
10 comparison or develop a DNA profile from that stain.

11 We will also develop a DNA profile from a
12 known standard, which is blood or a swab from the
13 inside of your cheek that is received from the
14 subject and victim, and we make a comparison to the
15 evidence that is left behind.

16 Q And what type of DNA analysis do you perform
17 at SLED?

18 A Currently we perform DNA analysis known as
19 PCR. And what PCR is is called polymerase chain
20 reaction. That's where we can have a small amount of
21 DNA and we can amplify it or multiply it to where we
22 can develop a DNA profile from it.

23 And if you think of it just like a Xerox
24 copier, we have one piece of paper and we make a
25 million copies of it. It doesn't change that paper

1 at all, but we're now able to make a profile from
2 that, and that's what PCR is.

3 Q And you mentioned a little bit before, but
4 what specific types of parts of the human body can
5 give you a DNA profile?

6 A You can get it from blood, from semen, from
7 hair, from bones, saliva. And DNA that's from
8 different parts of the body it doesn't make a
9 difference. The DNA that's in your hair is the same
10 DNA that's in your blood and the same DNA that's in
11 your saliva.

12 Q Ms. Riley, did you have an opportunity to
13 examine and analyze evidence from this particular
14 case?

15 A Yes, sir, I did.

16 Q What type of evidence was submitted to you?

17 A I received a sexual assault evidence
18 collection kit from Heather Paige Mayer. As well as
19 a suspect evidence collection kit from Daniel
20 Jenkins.

21 Q And what form was this evidence submitted to
22 you?

23 A Swabs and tubes of blood.

24 Q And what were the results of that analysis?

25 A When I first receive the kit, what I'm going

1 to do is inventory it to see what types of swabs and
2 hair samples and blood that we have.

3 In this case I received vaginal swabs, oral
4 swabs, rectal swabs, miscellaneous body fluid swabs
5 as well -- and those were the ones I performed the
6 analysis on. We also had fingernail scrapings and
7 debris.

8 And in this case I analyzed vaginal swabs,
9 rectal swabs, miscellaneous body fluid. I also
10 received cuttings from T-shirts, two cuttings from a
11 T-shirt and cuttings from jeans, as well as the blood
12 standards from both Heather Mayer and Daniel Jenkins.

13 There was semen present on the vaginal swabs,
14 the rectal swabs and semen indicated on the
15 miscellaneous body fluid swab. I was able to develop
16 a profile from the semen on the vaginal swabs, which
17 is known as our item 1.6. I'm going to read directly
18 from my report the results of what that analysis was.

19 The DNA profile developed from the semen on
20 item 1.2 matches the DNA profile of Daniel Jenkins.
21 The probability of randomly selecting an unrelated
22 individual matching the semen on this item is
23 approximately 1 in 8.6 quintillion.

24 MR. KING: Your Honor, I renew my objection
25 based on the search warrant.

1 THE COURT: Overruled.

2 Q (By Mr. Simpson) Ms. Riley, I'm not a math
3 wiz, but quintillion, that's a pretty large number,
4 correct?

5 A Yes. That's a 1 followed by 18 zeroes.

6 Q And that probability statistic is based on the
7 probability that the DNA found on the vaginal swab
8 may not match the defendant?

9 A What it is is the probability that if you were
10 to look at 8.6 quintillion people, you should only
11 expect to see that DNA profile one time.

12 Q And that number again is 1 with how many
13 zeroes following it?

14 A 18.

15 MR. SIMPSON: I have no further question, Your
16 Honor.

17 THE COURT: Any questions for the witness?

18 MR. KING: Yes, Your Honor.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MR. KING:

22 Q Ms. Riley, I will be brief. You just did a
23 scientific test, right?

24 A That's correct.

25 Q Of evidence that was given to you?

1 A Yes.

2 Q You didn't investigate any other aspect of the
3 case?

4 A No, sir.

5 Q Basically your conclusion is that the fluids
6 that you were given match Daniel Jenkins' blood?

7 A The evidence swabs that had semen on it
8 matched Daniel Jenkins, yes, sir.

9 Q And the DNA results, none of your tests can
10 determine whether or not the semen was there from
11 consensual sex or nonconsensual sex, right?

12 A That's correct.

13 Q So it is possible that the semen that you had
14 tested could have been deposited there from
15 consensual sex?

16 A That's correct.

17 MR. KING: That's all the questions I have.

18 THE COURT: Any redirect of the witness?

19 MR. SIMPSON: None, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MR. SIMPSON: None from the State.

23 THE COURT: From the defense?

24 MR. KING: No, Your Honor.

25 THE COURT: You are excused. Thank you.

1 State may proceed.

2 MR. SIMPSON: Your Honor, at this time the
3 State rests.

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 the State has rested their case. There are some
6 matters of law I need to take up with the attorneys.
7 It should be fairly brief, however I need to let you
8 know that I anticipate I have to take the report of
9 the grand jury and they let me know that they would
10 be ready about an hour from when we started.

11 So I'm not certain -- we will see. The report
12 of the grand jury does take five minutes, and I need
13 to select the holdovers which takes -- actually the
14 whole process takes about five or six minutes. So if
15 you are out a little longer than we anticipate,
16 please know that I am taking care of that.

17 It's sort of a fluid concept. I don't know if
18 they will be ready or not. And if not we may have to
19 take a break after we resume, but we'll have to play
20 it by ear.

21 During the break please do not discuss the
22 case and please leave your notepads in your seats.
23 Please go with your caretakers.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Are there any motions?

1 ALTERNATE JUROR: It has been.

2 THE COURT: Thank you, sir, you are excused.

3 We will be at east. The record should reflect
4 that the jury has begun its deliberations at 11:00
5 a.m.

6 Please make sure you leave cell phone numbers
7 and be in a place where I can reach you in the event
8 we need you for a question or otherwise.

9 (Whereupon, a recess was taken.)

10 THE COURT: The jury has reached a verdict.
11 Is there anything before we bring the jury in from
12 the State?

13 MR. SIMPSON: Your Honor, the victim in this
14 case is on the way. We just ask --

15 THE COURT: I'm so very sorry. It's her
16 choice to leave the courthouse. I already had the
17 jury waiting for everyone to reassemble, I'm not
18 inclined to have them wait any longer.

19 Is there anything from the defense?

20 MR. KING: No, Your Honor.

21 THE COURT: Please bring in the panel.

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Thank you. Mr. Foreman, is it
24 correct that the jury has reached a verdict?

25 A JUROR: Yes.

1 THE COURT: Please give the verdict form to
2 the bailiff for me, please.

3 Sir, if you would stand for publication of the
4 verdict.

5 Madam Clerk, you may proceed.

6 THE CLERK: State of South Carolina, County of
7 Charleston versus Daniel Jerome Jenkins, defendant.
8 In the court of general sessions of the Ninth
9 Judicial Circuit indictment 2006-GS-10-9254. As to
10 indictment number 2006-GS-10-9254, we the jury by
11 unanimous consent find the defendant guilty of
12 criminal sexual conduct first degree. Signed Roger
13 Trudeau, 12/10/2008.

14 Mr. Foreman, ladies and gentlemen, if this is
15 your verdict please raise your right hand.

16 Thank you.

17 THE COURT: The verdict stands.

18 Is there any request to poll the jury from the
19 state?

20 MR. SIMPSON: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. KING: Yes, Your Honor.

23 THE COURT: Madam Clerk. Ladies and
24 gentlemen, please give the Clerk your attention.

25 You may proceed when you are ready.

1 first floor to the civil side of the clerk's office
2 on the first floor one of those windows a lady or
3 gentleman at the window will be happy to give you a
4 work excuse. However, if you don't need one today we
5 will mail those out on Friday along with your check.

6 You are welcome to stay for sentencing if you
7 would like. If you want to, please let the bailiffs
8 know and you can remain seated and they will bring
9 you back into the courtroom. You can remain seated
10 in the jury box if you like or we can place you in
11 the gallery of the courtroom. Just let the bailiffs
12 know.

13 Mr. Forman, if you would remain as you exit so
14 that the clerk can show you how to sign and fill out
15 the actual indictment. You are all excused with the
16 Court's profound thanks.

17 In a moment we are going to hear post trial
18 motions and sentencing. Please prepare the
19 sentencing sheet.

20 (Whereupon, a recess was taken.)

21 THE COURT: Are there any post trial motions?

22 MR. SIMPSON: None from the State, Your Honor.

23 THE COURT: Any from defense?

24 MR. KING: Yes. I would like to renew my
25 previous motions and move for a new trial;

1 identification motion, search warrant motion
2 specifically.

3 THE COURT: Anything from the State in
4 response?

5 MR. SIMPSON: Nothing, Your Honor. Our
6 assertion about the previous ruling stands.

7 THE COURT: The motions are noted for the
8 record and they are denied based on the Court's
9 previous ruling. With regards to a motion for a new
10 trial, it's well founded that the grant or refusal of
11 a new trial is within the discretion of the Court and
12 will not be disturbed on appeal absent a clear abuse
13 of discretion. And we know abuse of discretion is a
14 lack of evidentiary support or error of law.

15 However, if there is -- where there is
16 competent evidence to sustain the jury's verdict the
17 Judge may not substitute his or her judgment for that
18 of the jury. That's Based on State versus Trent, 316
19 S.C. 57, 447 S.E.2d. 177, 1993 Supreme Court
20 decision; as well as State versus Smith, 316 S.C. 53,
21 1993; and State versus Holmes, 320 S.C. 259, 1995.

22 This was a credibility case. Either the jury
23 believed the version of events as advanced by the
24 State or those advanced by the defense which was
25 there was evidence of consent. Case law is very

1 clear that where there is competent evidence to
2 sustain a jury's verdict, which I will find for the
3 record there is competent evidence to sustain the
4 jury's verdict, there is no basis for the Court to
5 substitute its judgement for granting a new trial.

6 The Court would find the motion for new trial
7 is denied.

8 Is there anything further before we proceed
9 with sentencing from the State?

10 MR. SIMPSON: No, Your Honor.

11 THE COURT: From the defense?

12 MR. KING: No, Your Honor.

13 THE COURT: Do we have a sentencing sheet?

14 MR. SIMPSON: If I may approach with the
15 sentencing sheet.

16 THE COURT: Anything further from the State as
17 regards to sentencing?

18 MR. SIMPSON: Yes, Your Honor, briefly. Under
19 accounting of the defendant's prior record in July
20 1978 criminal sexual conduct first degree which the
21 defendant first --

22 THE COURT: I'm sorry, repeat that. 1978
23 there was a CSC?

24 MR. SIMPSON: CSC first, Your Honor, which
25 the defendant received a sentence of 24 years.

1 THE COURT: Okay.

2 MR. SIMPSON: In October of 1993 a
3 car-jacking, also categorized as a most serious
4 offense, Your Honor, which the defendant received a
5 sentence of nine years. November of 1998 failure to
6 register, first offense, 90 days.

7 2001 strong arm robbery as well as assault and
8 battery of a high and aggravated nature which the
9 defendant was given a 10-year sentence. 2005 an
10 additional failure to register as a sex offender,
11 Your Honor.

12 THE COURT: That would have been a second or
13 treated as a first?

14 MR. SIMPSON: It was treated as a first, Your
15 Honor. I have here copies of our notice of intention
16 to seek life without parole under 17-25-45.

17 These copies also show proof of service on
18 both the defendant and the defense counsel, Your
19 Honor.

20 THE COURT: If you make that part of the
21 record. You may approach.

22 MR. SIMPSON: Thank you.

23 THE COURT: Is there anything further from the
24 State regarding sentencing?

25 MR. SIMPSON: No, Your Honor.

1 THE COURT: Mr. King, is there anything you'd
2 like to present to the court as regards sentencing?

3 MR. KING: No, Your Honor.

4 THE COURT: Okay. Sir, is there anything that
5 -- you do not contest that this would be the second
6 most serious offense, correct?

7 MR. KING: I have seen what was served by the
8 solicitor.

9 THE COURT: Mr. Jenkins, is there anything
10 that you would like state for the record on your own
11 behalf?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Sir, the court is left without any
14 discretion as regards to your sentencing. You are
15 sentenced to life without the possibility of parole.
16 You will get credit for any time that you've served.

17 Thank you very much. Thank you all very much.
18 Gentlemen, it was a pleasure to try this case with
19 you. I hope you all have a good holiday.

20 (Whereupon, the proceedings in this matter
21 before the court were adjourned.)

22 * * * * *

23

24

25

141

SAW 2006-04-01958

WITNESSES

FF OSBURN AND/OR
ATT CASEY

D, GRILL

CA#: 0606855

ARREST WARRANT NUMBER

K121479

April 5, 2006

ACTION OF GRAND JURY

SEP 11 2006

VERDICT

oreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-10-121

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE

v.

DANIEL JEROME JENKINS

Indictment for

CRIMINAL SEXUAL CONDUCT
FIRST DEGREE

ARMSTRONG, J. P. & S. C. CLERK OF COURT
JULIE J. ARMSTRONG
CLERK OF COURT
BY *Julie J. Armstrong*

BY *Julie J. Armstrong*
JULIE J. ARMSTRONG
CLERK OF COURT

2008 DEC 19 PM 4:17

FILED

APP'X 143

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT
 FIRST DEGREE

At a Court of General Sessions, convened on September 11, 2006, the Grand Jurors of Charleston County present upon their oath:

That in Charleston County on or about April 5, 2006, with the use of aggravated force, Daniel Jerome Jenkins did commit a sexual battery upon Heather Page Mayer against her will and without her consent. This being in violation of Section 16-3-652 of the South Carolina Code of Laws (1976) as amended.

FILED

2008 DEC 19 PM 4:17

JULIE J. ARMSTRONG
 CLERK OF COURT

BY _____

ATTEST A TRUE COPY
 JIM J. J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
Shaiah Clyde
 DEPUTY CLERK

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Scarlett Wilson

SCARLETT WILSON
 CHIEF DEPUTY SOLICITOR

0050
 APP'X 144

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.DANIEL JEROME JENKINS

AKA: _____

Race: R Sex: M Age: 48

DOB: _____

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

143

INDICTMENT/CASE#: 2006GS109254A/W#: K121479Date of Offense: 4/5/2006S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Criminal Sexual Conduct - 1st Degreein violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Simpson, Benjamin ChadDefendantAttorney for Defendant68630
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-133

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Face

Clerk of Court/ Deputy Clerk

Court Reporter: Ann Meyer

_____ 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: ADJUTANT A JUDGE CLERKJULIE J. ARMSTRONG (SEAL)

CLERK, C.P., D.S. & F.D.

DEPUTY CLERK

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE AL JeffersonJudge Code: 2 1 1 1 1 8Sentence Date: 12/10/08APPX 145

SCCA217 (07/2008)

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

Date 4-6-06Officer Det. J. Antonio

APPX 146

0012

STATE OF SOUTH CAROLINA

COUNTY OF

Charleston

AFFIDAVIT

Personally appeared before me, one Det. J. Antonio
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Blood sample, head hair sample, and pubic hair sample

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Daniel Jerome Jenkins, Black, Male, dob 6-17-60, ~~6'01/170 lbs, Black hair, Brown eyes~~

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 4-5-06 at approx 2230 hrs while at ~~██████████~~ Charleston, SC 29403, the subject Daniel Jerome Jenkins (BM, dob 6-17-60) did enter the victim's residence and threatened to kill her if she did not comply with his demands to perform oral sex on her. The victim attempted to fight the subject however he overpowered her by striking her in and about her face using a glass candle holder. The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair, and pubic hair will be retrieved from the subject by a trained medical personnel in a medical facility. This collection of these sample will be conducted in a noninvasive manner.

Sworn to and Subscribed before me,

this

6

day of

April

, 19

2006

(L.S.)

Signature of Judge

[Signature]

Affiant

Address

180 Lockwood Blvd.Charleston, SC 29403

Phone

(843) 720-2487

APPX 147

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 11, 1978TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF CharlestonIt appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure
under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHEDNaniel Jerome Jenkins, Black, Male, dob 6-17-60, [REDACTED],
6'01 / 170 lbs, Black hair, Brown eyesNow, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize
such property if found:

DESCRIPTION OF PROPERTY

Blood sample, head hair sample, and pubic hair sample to be used for
DNA comparison and analysis.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person
in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy
shall be attached to a prominent place on such premises.Chas
April 6

S.C.

1986

[Signature]

Signature of Judge

(L.S.)

11:00 PM

APP'X 148

RETURN

I received the attached Search Warrant 4-7-2006, 19 , and have executed it as follows:
 On 4-7-06 2006 at 1410 hrs o'clock P M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Daniel Jenkins
 Name of person searched or "at the place of search" with
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Blood sample, head hair sample, pubic hair sample

This inventory was made in the presence of Det. Lisa Altino, Det. D. Osborne,
 AND MWSC SANE nurse Faye LeBonet

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this April
 day of 7, 192006
[Signature] (L.S.)
 Signature of Judge

[Signature]
 (Signature of Officer Executing Warrant)

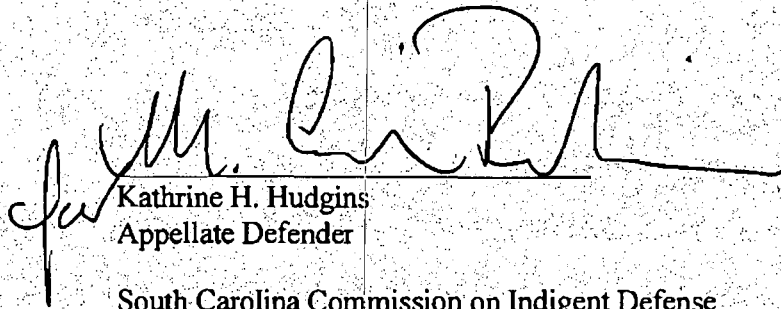
0015

APP'X 149

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 11th, 2010



Kathrine H. Hudgins
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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ATTORNEYS FOR APPELLANT

APP'X 151

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1 than the individual recollections of other jurors.
2 The other jurors' recollections should be considered
3 just as reliable as notes taken by any other juror.

4 Mr. Foreman, it will be your added duty to
5 make the Court aware of any questions that the jury
6 has during deliberation, and to fill out the verdict.
7 But I will give you further instructions regarding
8 that at the conclusion of the trial.

9 In order to preserve everyone's rights I will
10 take an opportunity to see if any of the attorney's
11 have any exception to what the Court has said by way
12 of opening instructions.

13 Any exceptions from the State?

14 MR. SIMPSON: None, Your Honor.

15 THE COURT: From the defense?

16 MR. KING: No, Your Honor.

17 THE COURT: Thank you very much, you may
18 proceed.

19 MR. SIMPSON: Thank you, Your Honor, may it
20 please the court.

21 THE COURT: Yes.

22 MR. SIMPSON: Good afternoon, ladies and
23 gentlemen. My name is Chad Simpson, along with Chris
24 Neeley I have the special honor in this case to
25 represent the State of South Carolina against Daniel

1 Jenkins, the defendant seated here, who is charged
2 with criminal sexual conduct in the first degree.

3 That is the charge. I will have more of an
4 opportunity later to talk about the elements of that
5 offense. It's a charge that we commonly refer to as
6 rape.

7 And because of the nature of that charge,
8 there is going to be some difficult things for you to
9 do during this trial. You are going to have to hear
10 the story of the young woman that I believe is going
11 to be very difficult for you to hear. We are going
12 to have to discuss some things that are going to be
13 difficult for you to think about.

14 One thing that I believe that is not going to
15 be difficult for any of you at the conclusion of this
16 trial is to find the defendant guilty as charged.

17 Heather Mayer is a young woman, 31 years old,
18 that lived at [REDACTED]. For those of
19 familiar with the downtown area Huger Street is over
20 near the Citadel, close to Hampton Park, just off
21 Rutledge near what used to be, although it's closed
22 now, the Jabbers Grocery Store which is a bit of a
23 Landmark in Charleston.

24 And she had lived there for about five years
25 when this incident took place. And that's important

1 because we all know when you have lived somewhere for
2 an extended period of time you get to know not only
3 your neighbors, but also the characters from the
4 neighborhood as well.

5 She would get rides to work, sometimes drive
6 to work, but also sometimes ride the bus. To do that
7 she would walk down to Rutledge Avenue which was a
8 place people walk and congregate on the street out
9 there.

10 It was through that that she got to know the
11 defendant. I use that word know very, very lightly.
12 They were not friends, they were not even
13 acquaintances, but she did recognize the defendant
14 and know who he was because from time to time they
15 would speak and exchange some words. You'll hear
16 about those from her testimony.

17 words like, how are you doing. Little
18 flirtations from time to time, let's go get a beer,
19 to which Heather would be very polite with him, no,
20 no thanks, good to see you, and keep walking.

21 she even learned the defendant's name. And
22 when I say name I don't mean his actual name Daniel
23 Jenkins, I mean the nickname that he was referred to
24 on the streets and that nickname is Black. So the
25 defendant wasn't a big part of her life, wasn't a

1 friend, but she recognized him, she knew who he was.

2 On April 5, 2006, Heather Mayer went about her
3 day. She went to work, she worked at that time
4 you'll hear at a bakery. She got off work late in
5 the afternoon, she did what myself and many of you
6 might do when you get off work she had a couple beers
7 to relax. She went home early in the evening, she'll
8 tell you around 8 o'clock. And after a long day at
9 work, having a couple of drinks, she laid down on the
10 couch and fell asleep.

11 Later on she was awoken by a knock at her
12 door. Wasn't uncommon for friends to stop by, so she
13 went and opened the door. And as she opened that
14 door, the defendant, someone she recognized stepped
15 in to her foyer as she opens the door.

16 Heather will tell you that this made her
17 uncomfortable, but it didn't necessarily make her
18 afraid at this point because again she recognized the
19 defendant, assumed that he was just there to ask her
20 for beer money which in fact he did. He said, let's
21 go get a beer. She said no. He said, well why don't
22 you give me some money so that I can get a beer. She
23 said no.

24 And at that point, ladies and gentlemen, he
25 forced himself upon her. And you'll hear, the story

1 from here on out you will hear the things that he
2 said to her as he was doing just that. And I'll
3 leave it to Heather to tell you that.

4 Heather reacted how anyone would in that
5 situation. Initially she reached for her phone, it
6 was a white portable phone, she tried to call 911.
7 The defendant quickly grabbed that phone away from
8 her hand. Second thing she did is obviously try to
9 resist physically, resisted the defendant.

10 At that time the defendant grabbed a green
11 candle holder off of the coffee table, it was being
12 used as an ashtray, and began beating her on top of
13 the head with the ashtray. She tried trickery, which
14 woman are often taught to try in such a situation.
15 She said, you know, you better quit my boyfriend is
16 going to be home any minute. She did not have a
17 boyfriend at that time, but at that time she was
18 trying anything she could to get the defendant off of
19 her.

20 But all of those attempts were unsuccessful,
21 and the defendant ripped off her underwear, threw it
22 on the floor and forced himself inside her and
23 ejaculated.

24 After completing that act the defendant then
25 left. You will hear that he threatened her, if you

1 tell anyone about this I will tell kill you, and left
2 the residence. And as if that story wasn't sad
3 enough up to this point, here it gets even more
4 tragic and more horrific in the night of this young
5 girl.

6 Heather reacted instantaneously after he left,
7 the way many of us would, I need to call the police,
8 I'm going to call the police; she was frantic, she
9 was hysterical. Looking about her apartment to call
10 the police, but as you recall she could not find her
11 phone, the phone is missing. The last time she had
12 seen it the defendant had ripped it from her.

13 Not being able to find her phone she threw on
14 the clothes that she grabbed that just happened to be
15 in her immediate area and fled the house and ran down
16 Huger Street for help. At this point she had been
17 beaten in the face with an ashtray, she had blood,
18 visible injuries on her face, she was dressed sort of
19 miss-matched. And as she ran down Huger Street, she
20 tried to flag down the cars as they passed but no one
21 stopped.

22 She made it all the way down Huger to
23 Rutledge, at this time it was the Jabbers parking
24 lot, and finally found someone who tried to offer
25 help and it was a lady she didn't know, a lady who

1 appeared to perhaps be homeless who came up to her
2 and said, oh my God, what happened to you, what
3 happened to you?

4 Before she could frantically explain to this
5 woman what had happened to her, she had to go through
6 almost an additional assault because someone else
7 came up. Someone else came up who saw her talking to
8 a stranger, and that person was the defendant.

9 And the defendant came up, pretended not to
10 know what happened to her, said, oh, what happened to
11 you? Grabbed her arm. She'll tell you he grabbed it
12 not in a way that anyone could tell, but grabbed it
13 from behind and held it quite firmly and pulled her
14 over to a house across the street on Rutledge.

15 At that point he went to a faucet, splashed
16 water on her face. She will tell you she was
17 obviously hysterical, could hardly speak, but I need
18 a phone, I just need a phone, I just need a phone.
19 And the defendant said, oh, here, I have a phone and
20 had her phone. She grabbed the phone from him,
21 immediately ran back to her house and called 911.

22 Ladies and gentlemen, that's the story.
23 That's the story that you'll hear from the witness
24 stand here from the person that experienced it,
25 Heather Mayor. And that's one type of evidence that

1 is called testimonial evidence.

2 And time and again in this courtroom cases are
3 decided on nothing but testimonial evidence. It's up
4 to you, and often in those cases, to decide who you
5 believe and if you believe what you hear from the
6 stand.

7 In this case the testimonial evidence that you
8 will hear will be enough, I'm confident of that.
9 When you hear Heather tell her story about that
10 night, that will be enough for you, you will believe
11 her, that will be enough to find the defendant
12 guilty.

13 Enough, but that's not all you're going to get
14 in the case. There is a second type of evidence as
15 well and we call that physical evidence. What
16 physical evidence does is make a jury's job easier.
17 Because rather than sit here and decide who you
18 believe and who you don't believe from the stand, you
19 get to look at physical evidence and ask yourself,
20 does this physical evidence match with the testimony
21 you heard and is the answer to that question of who's
22 telling the truth on the stand.

23 Ladies and gentlemen, at the conclusion of
24 this trial when you've heard the testimonial evidence
25 and matched it with the physical evidence, there will

1 be a lot of difficult things you will hear in this
2 trial, but it will not be difficult to find the
3 defendant guilty as charged. I thank you very much.

4 THE COURT: Mr. King, you may proceed.

5 MR. KING: Thank you, Your Honor.

6 I introduced myself before, I'm Jason King
7 from the public defender's office representing Danny
8 Jenkins, along with Mr. Reese Stidham in my office.

9 I guess through a chain of events you found
10 yourself sitting in this seat here. And through a
11 chain of events Mr. Jenkins has found himself sitting
12 in a seat over there.

13 And that's not a seat that you want to be
14 sitting in. It is a big deal sitting in that seat.
15 But when you are sitting in that seat, fingers
16 pointing at you, you have been accused of a crime,
17 and this is a particular serious crime he has been
18 accused of.

19 And in a case like this, or a charge like
20 this, it's particularly important that you listen to
21 the Judge on the law, and that you follow the law.
22 And one of the things the law requires is the
23 presumption of innocence. You are going to hear us
24 throw out some legal terms during the trial, but I
25 want you to listen to them carefully because they

1 have real meaning.

2 Sometimes you may have heard things, the
3 phrase the presumption of innocence a lot. So much
4 that you don't think about it so much anymore. Same
5 way as beyond a reasonable doubt. You hear that
6 phrase a lot, you have to think about what it really
7 means.

8 Presumption of innocence, I think of it like
9 if someone had accused a friend, a family member,
10 someone I knew of committing a crime and the initial
11 resistance you feel is that I don't believe that
12 until you prove that to me. There is resistance to
13 believe someone has committed a crime. And that's
14 what the presumption of innocence is. And you are
15 required to do that under the law.

16 Like I said, it's easy to see someone sitting
17 in that chair, hear the charge read, and think that's
18 the end of it. It's far from the end of it. At this
19 stage he is presumed innocent.

20 Evidence must be presented and you make your
21 decision on that based on evidence. There is another
22 thing, emotion can play a role in this as well. And
23 you cannot let emotions play any role in this case.
24 You cannot make any decision based on emotion or fear
25 or anything like that. You've got to use your reason

1 and the evidence.

2 And like I said, in a case or charge like this
3 it's particularly important that you not make a
4 decision based on emotions or make a decision ahead
5 of time. You have a duty to do. And the law
6 requires to you follow certain rules and the Judge
7 will instruct you on those.

8 And Mr. Jenkins, I and Mr. Jenkins, are asking
9 you to follow those rules and to presume innocence.
10 And the State must prove him guilty beyond a
11 reasonable doubt. So, you should not have any
12 preconceived ideas at this point. And that's all I'm
13 asking you. Thank you.

14 THE COURT: You may proceed.

15 MR. SIMPSON: Your Honor, State calls Heather
16 Mayor.

17 THE COURT: If the witness would come forward
18 to be sworn.

19 MS. HEATHER MAYER,
20 after having first been duly sworn to state the
21 truth, the whole truth and nothing but the truth,
22 testified on her oath as follows:

23 THE COURT: You may proceed.

24 MR. SIMPSON: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 MR. KING: No, Your Honor.

2 THE COURT: Have you all made sure everything
3 is in order? Is the evidence and everything in
4 order, Anne?

5 THE COURT REPORTER: It is.

6 THE COURT: State ready to proceed?

7 MR. SIMPSON: Yes, Your Honor.

8 THE COURT: Defense ready to proceed?

9 MR. KING: Yes, Your Honor.

10 THE COURT: Please bring in the jury.

11 (Whereupon, the jurors enter the courtroom.)

12 THE COURT: Ladies and gentlemen, I hope that
13 you all had a restful evening. As I indicated on
14 yesterday when we broke, we have now reached the
15 stage of the trial where the State -- where each
16 party -- where we have completed the presentation of
17 evidence. And we have now reached the stage of the
18 trial where we will hear closing arguments.

19 You will hear from the State followed by the
20 defense after which you will hear the Court's
21 instructions on the law. I would ask that you give
22 the attorneys your undivided attention.

23 Mr. Simpson, you may proceed.

24 MR. SIMPSON: Thank you, Your Honor. Ladies
25 and gentlemen of the jury, I'd like to start by

1 saying thank you for your time and attention over the
2 last couple of days. I understand this is probably
3 not how you would prefer to spend your week, but your
4 service is invaluable and we appreciate it. As well
5 as I'm sure Mr. King does.

6 Ladies and gentlemen, the defendant is on
7 trial for the crime of criminal sexual conduct in the
8 first degree. As you will hear from the Judge in her
9 instructions, the criminal charge has things we
10 commonly refer to as elements, the things that the
11 State is required to prove to find the defendant
12 guilty.

13 To prove the crime of CSC in the first degree,
14 the State must prove, one, that a sexual battery
15 occurred. Sexual battery is defined, a rather long
16 definition that you will hear later, but it includes
17 of course sexual intercourse. It also refers to any
18 penetration whatsoever of the sexual organ however
19 slight.

20 We submit to you that that has most certainly
21 been proven in this case through the evidence we will
22 be reviewing later.

23 The second element that the State must prove
24 for criminal sexual conduct in the first degree is
25 that that sexual battery was accomplished by the use

1 of aggravated force. And again we will be reviewing
2 the evidence slowly with you, but with regard to the
3 purpose of now I will say that the ripping off of the
4 young woman's underwear, repeated beating about the
5 head and the face with the glass ashtray, and the
6 forceful penetration of her sexual organ is certainly
7 aggravated force.

8 As I told you in the beginning of this trial
9 is that your job involves two types of evidence;
10 testimonial evidence, what you hear on the stand, and
11 the physical evidence presented to you. And your job
12 becomes much easier when the testimonial evidence, as
13 I stated in my opening, fits with the physical
14 evidence. And I submit to you in this trial that it
15 certainly does.

16 But first let's talk about the testimonial
17 evidence. You heard from Heather Mayer on the stand.
18 The young woman who endured a complete nightmare on
19 the night of April 5th, 2006. There were times,
20 ladies and gentlemen, when her testimony was
21 emotional. There were times when it was a bit slow,
22 scared, disjointed. And as to that fact, ladies and
23 gentlemen, I say to you of course it was. Of course
24 it was. If it was anything else you would be asking
25 why.

1 Heather Mayer endured pure hell on that
2 evening. And our justice system, I firmly believe in
3 it and I believe it's the best in the world, now
4 requires her to walk within feet of the man that
5 caused that hell, to stand on this stand in front of
6 12 strangers in this courtroom and talk about the
7 absolute lowest point of her life; including personal
8 details like what this man said to you, sexual exams
9 later on. I submit to you that of course there were
10 times when that testimony was emotional. Of course
11 there were times when the testimony was slow.

12 But, ladies and gentlemen, you still heard her
13 testimony. And you still heard her story of April
14 5th, 2006. And it is the same story she gave to the
15 police in the frantic moments directly following the
16 assault. It's the same story she gave to Faye Lebeof
17 during the medical exam. It's the same story she has
18 given all the times since. And it's the exact same
19 story that you heard on the stand.

20 And when hearing that story from the stand, it
21 is part of your job to determine what you believe,
22 what you believe to be the truth. And when
23 determining that, one of the things you use is your
24 common sense. And one of the common sense things
25 that you ask yourself is motive. Does this person

1 have a reason to lie? And I submit to you, ladies
2 and gentlemen, that one of the sad realities of our
3 system, although it's necessary, is that the victim
4 of a crime has to go through years before we get to
5 this point of reliving and reliving the worst moment
6 of their life.

7 why on earth would someone do that? What
8 possible motive would Heather Mayer have to go
9 through all of this if it was a made up story? She
10 has no motive whatsoever to lie to you.

11 Not only does she not have a motive, more
12 importantly we know she is telling the truth because
13 of the physical evidence. As I repeated several
14 times what we do is we look at the physical evidence,
15 does it match up to her testimonial evidence, and
16 that establishes the truth of her testimony.

17 I'd like a few minutes to go through that
18 testimony and go through the physical evidence in
19 this case.

20 On April 5th, 2006 Heather Mayer was asleep on
21 her couch. She heard a knock at the door, went out
22 to answer the door, and there was the defendant. The
23 person she recognized, not a person she knew, not a
24 friend, not a person she hung out with, but a person
25 she recognized through a few encounters down the

1 street from the store.

2 There were some questions by the defense that
3 she invited him in, I submit to you that Heather
4 Mayer was very direct with you on the stand on this
5 point. She said, look, I'm not going to tell you
6 that I slammed the door on his face, that I pushed
7 him away. I opened the door, he came in, I felt
8 uncomfortable but I didn't tell him to leave, I
9 didn't shove him out.

10 I submit to you, ladies and gentlemen, if this
11 story that she was telling was made up, do you think
12 that would be her version of the facts? That this is
13 just some crazy concoction in her head? No, she'd
14 say he forced his way at the door. She'd say he
15 broke in through a window. But, no, she's being
16 direct and being honest with you. She said, look, he
17 came in the house. We had chatted before, so he came
18 in. I didn't invite him in but I did not force him
19 out.

20 As he entered the room, they began a
21 conversation. And this conversation went just how
22 their encounters would on the street. You know,
23 let's go get a beer. No, I don't want to go get a
24 beer. why don't you give me the money and I'll go
25 get us some beer? No, I don't have any.

1 Quite quickly when that more subtle approach,
2 I suppose, didn't work, things began to get physical.
3 You heard from Heather Mayer that the defendant
4 leaned over to her and said, and I apologize for the
5 language but it needs to be said, show me your pussy.
6 Show me your pussy or I'll kill you. Intentions made
7 known right then. Threats of harm right from the
8 get-go and at this point things did get physical.

9 You heard that Heather Mayer reached for the
10 phone. The defendant swatted the phone away from
11 her. You heard that as she physically resisted,
12 pushing her legs together, kicking with her legs to
13 get away, that physical resistance was met with
14 physical force, aggravated force, an element of CSC
15 first.

16 And at this point you might ask yourself,
17 well, if it happened as Heather Mayer said it
18 happened and the defendant grabbed an ashtray and hit
19 her across the head, common sense would say, well,
20 shouldn't there be ashes and cigarette butts around
21 where this happened? And that's where we pause for
22 State's Exhibit 6, the sofa in Heather Mayer's living
23 room.

24 The ashtray is right next to the couch after
25 being used for these purposes. And as you see around

1 the top of the sofa cigarette ash and cigarette
2 butts. The physical evidence matching the
3 testimonial evidence.

4 You might ask yourself also, if the defendant
5 did use this ashtray to hit the victim on the head,
6 wouldn't there be fingerprints? wouldn't the
7 defendant's fingerprints be on this ashtray? You
8 heard the testimony from Officer Renee Charles and
9 Kalisha Gill from the Charleston Police Department
10 that two lifts matching the defendant were lifted
11 from that ashtray. The physical evidence matching
12 the testimonial evidence.

13 You would also think, using your common sense,
14 that after beating her about the head and the face
15 with the ashtray it would have been located in close
16 proximity to the couch. Obviously on top of the
17 couch, it would have been right next to it. Again
18 State's Exhibit, where the ashtray was found, right
19 next to the couch. Physical evidence matching the
20 testimonial evidence.

21 Someone was beaten to this degree on the sofa
22 you would expect to find, you might naturally ask
23 were there any bloodstains on the sofa if this in
24 fact happened as Heather Mayer said it did?. State's
25 Exhibit 12, stains on the sofa identified by crime

1 scene as bloodstains. Once again the physical
2 evidence matching the testimonial evidence.

3 Probably most disturbing if beat about the
4 head and face with the green ashtray, you would
5 naturally expect injuries to occur. State's 7, 8 and
6 9, these will be back with you in the jury room,
7 photographs taken from that evening of the victim
8 showing the injuries to her upper lip, lower lip and
9 additional picture of the injuries to her face.
10 Physical evidence matching the testimonial evidence.

11 After Heather Mayer resisted physically and
12 the defendant responded by beating her about the head
13 and face with the ashtray, she switched gears, as you
14 heard, when she said, my boyfriend will be here any
15 minute. He's big, he'll hurt you. I'm your friend.
16 You're going to get in trouble. These are the
17 tactics that women are taught to use during a sexual
18 assault.

19 There was no boyfriend. We heard a reference
20 on the stand that Heather -- I'm not quite sure, I
21 think she may have been seeing some individual at the
22 time, but that's not who she was referring to. There
23 was no boyfriend. Those are desperate pleas to get
24 her assaulter off of her. But they didn't work.

25 The defendant, you heard, ripped off her

1 pants. She described them as being sort of
2 drawstring pants, pulled off her pants and ripped off
3 her underwear. Natural question would be, if that
4 happened as you heard, wouldn't there be ripped
5 underwear? State's Exhibit 5, Heather Mayer's
6 underwear ripped in half as it was ripped off her
7 body by the defendant.

8 The actual underwear will also be back with
9 you in the jury room. The physical evidence again
10 matching the testimonial evidence that you heard.

11 You would expect someone who underwent this
12 type of assault to have injuries of the pelvic
13 region. And you heard from Faye Lebeof who performed
14 that pelvic exam that those injuries were present;
15 tears, abrasions.

16 You heard about one injury where Heather,
17 described by Ms. Lebeof, that apparently -- I hate to
18 use these graphic terms -- but apparently someone
19 had, quote, missed and hit the outer area of her
20 vagina with such force as to cause an abrasion. The
21 physical evidence that you heard from Faye Lebeof
22 matched the testimonial evidence that you heard from
23 Heather Mayer.

24 The defense on cross on this point presented
25 the fact that Heather had had consensual sex, which

1 of course is not a crime, a few days before. But you
2 also heard from Ms. Lebeof that those types of
3 injuries heal, and would have attempted to heal over
4 the time period between.

5 And, ladies and gentlemen, on the issue of the
6 injuries observed by Ms. Lebeof, again we are here to
7 use common sense, common sense. Did this sort of
8 severe injuries happen from rough sex allegedly
9 occurring three days before, or did they occur from a
10 violent sexual assault which all of the other
11 evidence supports? The physical evidence matches
12 the testimonial evidence.

13 And finally probably the most conclusive
14 evidence of the entire trial, you heard from Adrienne
15 Riley from SLED that the semen found in Heather Mayer
16 matched the semen of the defendant, Daniel Jerome
17 Jenkins. I believe she gave the number of the
18 chances of that semen not being his as 1 in
19 quintillion. It's a number I've never heard before,
20 but she described is as 1 with 18 zeros. Physical
21 evidence which matches the testimonial evidence you
22 heard on the stand.

23 Following the assault, as if the assault
24 wasn't bad enough, Heather Mayer fled her residence
25 because she didn't have a phone, the defendant had

1 taken it. Heather Mayer fled from her home down
2 Huger Street to the Jabbers parking lot where she was
3 again confronted by the defendant.

4 Almost as if a second assault occurs at that
5 point. Moments after being sexual assaulted by the
6 defendant, she is forced to confront him again. And
7 you've heard that story and you can visualize it.
8 She is frantic, she is hysterical, she is looking for
9 help. She said she just was repeating, God, please
10 give me a phone, I need a phone, please give me a
11 phone.

12 You can visualize it in your head. Now we are
13 in public. Now we already heard that another female
14 was present asking her what happened. So the
15 defendant plays nice at this time. You know, grabs
16 her arm, just shut up, I'll give you a phone. Let me
17 wash your face, I will give you your phone. Doing
18 whatever he can to get her off the street, to get her
19 back in private.

20 Heather Mayer pointed out to you that this
21 occurred in front of the houses adjacent to the
22 Jabbers parking lot on Rutledge Avenue. That this
23 was the last point that she saw the defendant, Daniel
24 Jerome Jenkins. Right here.

25 When she got her phone back she said she ran

1 back to her house at [REDACTED], called 911.
2 Ladies and gentlemen, the 911 tape will be going back
3 with you in the deliberation room. And I invite you
4 to listen to it, more than once if you need to. If
5 you're like me, you are not going to understand a lot
6 of what said on that tape. But you will hear a
7 hysterical, frantic, emotional person behaving in a
8 manner consistent with being raped just a short time
9 before.

10 Heather testified on the stand that when she
11 got back she was so afraid, the defendant obviously
12 knowing where she lived, that she -- and this is very
13 sad -- didn't go back in her apartment, went around
14 to the side of the apartment, crawled up, got under a
15 tarp, crawled up and got under a tarp at her own
16 house to call 911.

17 Now you heard from the arriving officer that
18 once 911 was called they arrived on the scene, she
19 was inside. But you will hear on this tape, and one
20 of the few moments you can understand, the 911
21 operator said where you are, and her saying I'm
22 outside. I'm outside. The physical evidence
23 matching the testimonial evidence you heard.

24 And the police arrived, they developed a
25 suspect, and that suspect was located. Where was

1 that suspect located? In an abandoned house right
2 next to where the victim said she last saw the
3 defendant on Rutledge Avenue. Physical evidence
4 matching the testimonial evidence.

5 And once Heather had her phone back and went
6 back to the house the defendant, having nowhere to
7 go, did what? Went into an abandoned house, got
8 completely naked in an abandoned house. And why is
9 that? Doing as much as he can do to get rid of any
10 physical evidence of this. And he was found in that
11 house asleep. And I submit to you, I doubt he was
12 asleep. But according to the police when they
13 arrived he appeared to be asleep naked in the house.

14 Officer Grills said he threw on some clothes
15 around there. I seriously doubt they were the ones
16 he had on before. I would imagine he did something
17 with those. But there he was, trying to do all he
18 could in a short amount of time to rid the case of
19 any physical evidence on him.

20 Ladies and gentlemen, again the elements we
21 have to prove are that a sexual battery that
22 occurred, accomplished by aggravated force. I don't
23 think there is any doubt that in this case the
24 evidence overwhelming proves a sexual battery and
25 overwhelming proves it was accomplished with

1 aggravated force.

2 But those aren't the only options that you
3 will have in the jury room. Your decisions are not
4 going to be as simple as guilty or not guilty because
5 the defendant is entitled to give you, the jury, the
6 option to other crimes that may occur.

7 Now this decision isn't going to be pick two,
8 it's going to be either criminal sexual conduct in
9 the first degree, which has been proven to you each
10 element in that beyond a reasonable doubt. But you
11 will have other options under that.

12 The second will be criminal sexual conduct in
13 the third degree. Ladies and gentlemen, to find him
14 guilty of criminal sexual conduct in the third degree
15 you would have to determine that, yes, a sexual
16 battery occurred, but no, it wasn't accomplished with
17 aggravated force. It was a sexual battery but no
18 aggravated force.

19 Ladies and gentlemen, that makes no sense
20 considering the evidence. You'll have the pictures
21 of the photographs, you've heard about the
22 fingerprints, you've heard about the DNA. Of course
23 aggravated force was used. Criminal sexual conduct
24 third degree is not an appropriate verdict in this
25 case. The appropriate verdict is guilty of criminal

1 sexual conduct in the first degree.

2 You will have another option as well, it's
3 called ABHAN. It's an abbreviation for assault and
4 battery of a high and aggravated nature. In order to
5 find ABHAN you would have to conclude that, yes, he
6 did beat Heather Mayer with the ashtray. Yes, there
7 was clearly an aggravated assault in this case, but
8 no sexual battery occurred.

9 Ladies and gentlemen, you have heard the
10 evidence about the DNA. You've heard the evidence
11 about the pelvic exam. You've heard the testimony.
12 Of course there was a sexual battery in this case.
13 The only reasonable, appropriate verdict for you to
14 render considering the evidence and the testimony
15 you've heard is guilty of criminal sexual conduct in
16 the first degree.

17 I'd like to briefly address the defense's
18 case. I've had the pleasure of working with Mr. King
19 for over two years now. He is not only a great
20 lawyer, he is a fine person and great human being.
21 But he is before you today, ladies and gentlemen,
22 with a job to do. I'm not asking you to blame him
23 for that job, but recognize it. Recognize it.

24 Because his job under the constitution is to
25 stand before you and do anything he can to serve his

1 client's interest in this case. And what are his
2 client's interest? Obviously it's not guilty.

3 And he has got a tough job in this case.
4 Because when confronted with all of the evidence
5 which matches all of the testimony, he has to come up
6 with some way, some theory to serve that client. And
7 he accomplishes this in several ways.

8 One, get your attention somewhere else. When
9 I say somewhere else I mean the classic way since
10 time began to attack a case like this is to attack
11 the victim. Shift the blame to the one person who
12 has no blame, who should never had to live through
13 this. And what's the big revelation on that point?
14 That Heather Mayer's life has not been perfect, nor
15 has mine, nor I imagine any of yours.

16 She has had some mental issues in her life as
17 the defense pointed out. What are those, ladies and
18 gentlemen? Depression, extreme sadness. Not
19 schizophrenia, not bipolar disorder, not any sort of
20 condition that would cause her to make up stories,
21 cause her to be dishonest, cause her anything to that
22 degree but depression.

23 Heather Mayer's life has not been perfect.
24 What bearing does it have on this case? None. But
25 it does serve a purpose, it serves a purpose to

1 distract you to pay attention to her rather than pay
2 attention to what the defendant did on April 5th
3 which is why we are here today.

4 He also has to present some theory of the case
5 to consider his client's interest. Ladies and
6 gentlemen, I anticipate that theory to be, wow,
7 shocking considering the evidence, the only thing
8 left, consent. She wanted it. She agreed to it.
9 Consent.

10 Now Mr. King said something to you in his
11 opening statement that I agree with wholeheartedly
12 and I want to repeat right now. He said, don't rely
13 on your emotion in this case, rely on the evidence.
14 And, ladies and gentlemen, on this point I invite you
15 do not rely on your emotion, rely on the evidence
16 because this trial is about evidence.

17 Consent? The ripped underwear. The photo of
18 the ripped underwear. Consent? Really? Pictures of
19 her injuries. Consent? The 911 call, listen to it.
20 Ask yourself, is this the voice of a woman who has
21 just consented to sexual intercourse. Consent is
22 nothing but the desperate plea from a desperate man
23 trying to avoid responsibility for his actions.

24 This case isn't about a emotion, ladies and
25 gentlemen, it's about evidence. Criminal sexual

1 conduct in the first degree requires the State to
2 prove sexual battery with aggravated force. We have
3 proven those elements beyond a reasonable doubt to
4 you.

5 On April 5th, 2006, Heather Mayer endured a
6 living nightmare. She endured hell. She had to
7 endure that again as she tried to seek help and see
8 the defendant and ran into the defendant. She had to
9 endure that again and again through medical exams,
10 through interviews from several officers, through
11 interviews with myself, each time reliving the hell
12 of that night. She had to relive it again as she
13 stood on this stand in front of a full courtroom and
14 12 strangers, and here still two years out still
15 reliving that event.

16 And the sad truth, ladies and gentlemen,
17 she'll probably have to live with that event for the
18 rest of her life. But it can end today as much as we
19 can make it. And it can end for her in one manner,
20 with the guilty verdict of the only inescapable truth
21 to this case, criminal sexual conduct in the first
22 degree.

23 Thank you for your attention.

24 THE COURT: Mr. King.

25 MR. KING: The law in ancient times, and still

1 today, was that you don't bear false witness against
2 anybody. One of the 10 Commandments. Of the 10
3 that's one. Of all the things that it could have
4 been that's one of them.

5 The reason is is because that happens. It's
6 why there was a Commandment, that's why we have jury
7 trials. Because people do take the stand and they
8 don't tell the truth.

9 You know, the world is more interesting, crazy
10 than we could make up. Things happen in the world
11 that are much stranger than what happens on
12 television, than we see. And we know that from
13 personal experience. People do steal. People commit
14 adultery. And people lie. It's a fact.

15 Now, Heather Mayer took the stand and
16 testified. And really the whole case kind of boils
17 down to her credibility. We don't know her. We saw
18 her for maybe an hour or two on Monday afternoon.
19 And that's what we know. What we saw from that
20 stand.

21 Every detail in this case is important. I'm
22 not trying to distract you from that. But I'm asking
23 you to look at all the details, look at everything.
24 What do we know about her? Well, you know, I know
25 everybody has problems. I'm not here to beat

1 somebody up because they have problems. But it's
2 something we should know, it's something we should
3 consider.

4 I'm not saying it's because someone has
5 problems that they're a liar, they would make
6 something like this up. But, if somebody was going
7 to take the stand and make something like this up, I
8 believe they would have some problems.

9 2002, 2004, 2005 she said that she had to be
10 taken in to protect her from harming herself. And I
11 think that is something that is important to know
12 when you are evaluating what she said on that stand.

13 The solicitor said she didn't have a reason to
14 lie. I think she does. She is dating a man named
15 Todd Baker Jones that I brought out and got
16 information from her so that you could hear. And
17 this is a man that she is seeing at the time. He's
18 abusive. She has had to hide in the closet from him.
19 She told you that. He has hit her, hit her in the
20 face. He has dragged her by her hair. He shoved his
21 hand inside her mouth. He kicked in her door in the
22 middle of the night. She told you all that.

23 But the prosecution, we need to know
24 everything to evaluate her and what she is saying.
25 So I think it's important to know all of these facts.

1 so she may have a reason to lie. Was she going to
2 tell him if she had consensual sex with Mr. Jenkins?
3 Is she going to tell him, the guy who beats her?

4 And I think she misrepresented the problems
5 that she had, and I think that's important for her
6 credibility too. She said she had mild depression,
7 and that's not really true. I think that's important
8 to know that she -- that's one thing she has
9 misrepresented to you the jury. Until I -- she
10 realized that I knew more about her than she thought.
11 When I asked her the questions she provided that
12 information.

13 I think that another thing she misrepresented
14 is I think she knows Mr. Jenkins better than she
15 says. She says she passed him every now and again on
16 the street. Knew him by a street name. He would
17 speak to her occasionally.

18 But, so this person knocks on her door at 10
19 o'clock at night, and she let's him in. I don't know
20 if I would let someone in that I barely knew at 10
21 o'clock at night. This is a single woman living
22 alone. She let's him in at 10 o'clock at night.

23 And she invited him in. She -- I believe she
24 is trying to change what she said on the stand. She
25 is trying to make it sound more like he came right

1 in, but she told Detective Antonio and she told
2 Officer Cone that she invited him in. She had that
3 night drank, she said, six beers. And I believe she
4 talked about she was expecting a pizza. So she had
5 drank six beers, she had fallen asleep or passed out
6 about 8 o'clock waiting on the pizza.

7 She gets a knock on the door, and here's
8 someone that she barely knows, she invites them in,
9 they sit on the couch.

10 And referring to State's Exhibit No. 6, he
11 smokes a cigarette. You can look at the picture and
12 see, you got to look at all the details in the
13 picture too. He smokes a cigarette. She said that,
14 he used the ashtray. Touched the ashtray. Maybe he
15 smoked two cigarettes. There is a cigarette butt
16 right here, and there is one still actually in the
17 ashtray. Maybe two cigarettes that were smoked.

18 And she is not being forthright about that.
19 And all these details are important. She said she
20 was raped and she was hit five times, that's what I
21 was trying to get her to say a number, five times
22 with a heavy glass candle holder.

23 You are going to have this back in the jury
24 room. But I want you to feel this when you go back
25 there. I want you to feel the size and the weight of

1 this object. This is big and it's heavy. And she
2 claims -- and this is where, if you think about it,
3 is it true, does the physical evidence match the
4 testimony? I'm saying that it doesn't. Because if
5 she were hit five times in the head and face with
6 that object, then there would have been more damage.

7 You can look at the photos. I will refer to
8 State's No. 14. Now I think this one is important
9 because the other photos there is blood. And it
10 always looks worse when you see blood. This picture
11 is not that far from that night. I think it was
12 maybe a day and a half, you may remember the
13 testimony, but it wasn't that long afterwards.

14 And you see this one there is no blood. So I
15 think you get a clearer picture because like I said
16 it's just instinctive when you see blood it looks
17 worse. But we see this not too long afterwards and
18 she has a bruise under her eye and a bruise here on
19 her inner lip and a cut lip.

20 And there is no way she could have just these
21 injuries by being beat in the face five times with
22 that heavy object. Just pick it up and feel it.
23 Obviously according to her testimony he wasn't
24 tapping her with it. If he is hitting her with that,
25 she would have looked a lot worse than that.

1 The nurse, Faye Lebeof, she did exam her and
2 she didn't find any other injuries on her head or the
3 top of her head or anything else. And also remember
4 she is fair skinned as well. So, you know, when you
5 bruise it's certainly going to show up pretty
6 clearly. So, think about whether the physical
7 evidence matches the testimony.

8 She had no concussion, no evidence of that. I
9 don't think there is any evidence really about her
10 being really treated for any facial injuries or head
11 injuries. Faye went through the trouble of getting
12 DNA. They had a crime scene, but she is being beat
13 with this glass object and there is none of her DNA
14 on that, no blood or any kind of body fluids or DNA
15 on that glass candle holder. Seems like there should
16 be if she is being repeatedly hit and bleeding and
17 hit in the mouth, saliva.

18 And she told us that he used the ashtray. So
19 of course his fingerprints would be on that. There's
20 an easy explanation for that that she gave us. He
21 used the ashtray. And if he is holding the ashtray
22 -- you know, some of this we've got to use our common
23 sense when we are trying to figure out what happened
24 -- but, you know, he did not pick it up with his
25 thumb. Or he did not pick it up like that. It would

1 have been held in his palm, and there is not a palm
2 print, it's a thumbprint. It seems more consistent
3 with smoking a cigarette, that it would be touched
4 with the thumb as opposed to being cupped in the hand
5 and using it to hit someone. So, another example of
6 where the physical evidence may not match the
7 testimony.

8 And she said she's outside and she is looking
9 for help and she finds someone. She finds a woman
10 who comes up to her and asked her what's wrong. But
11 she goes with Mr. Jenkins, the guy she says raped
12 her. She leaves with him. She was running around,
13 she says, trying to find somebody because she's just
14 been raped and she finds someone but she doesn't
15 scream to them to call the police or help or
16 anything, she leaves. She says she leaves with Mr.
17 Jenkins.

18 There is no other witness who saw any of this
19 that has testified. So it really all boils down to
20 her. You know, the police just tell you what they
21 saw when they got there. And fingerprint experts
22 will tell you that his fingerprints were there, but
23 can't tell you what was done with the glass object.

24 The DNA, all they can do is tell you that they
25 had sex. That's all that tells you. It does not say

1 whether it was consensual or not consensual.

2 Faye Lebeof was an expert that testified for
3 the prosecution. I actually started off saying, well
4 you testify for the prosecution, you know, I was
5 going to argue that she's biased. Turns out she is
6 not, she is pretty fair. She said these injuries are
7 consistent with the version that Ms. Mayer gave.

8 And I stood up and asked her, well, gave her
9 some samples of how consensual sex can cause these
10 same manifestations, physical manifestations and she
11 said yes. She said, in her pelvic exam it was
12 consistent with consensual sex, so that doesn't tell
13 us anything. And she didn't say no, no, no, I have
14 just a little experience examining, she said I have
15 done thousands of sexual assault cases.

16 And she didn't say, you know, it's my opinion
17 that these were caused by forced sexual intercourse,
18 that's not what she said. She said it was consistent
19 with what she said. She said, but it's also
20 consistent with just consensual sex. So she doesn't
21 give us anymore information than we know. That's the
22 State's expert and she's an expert in sexual assault.

23 Mr. Jenkins, if he is supposed to have raped
24 her he didn't run. He is down the street where he is
25 usually found, where he is expected to be. They

1 found him quickly, within 30 minutes, they knew where
2 he was and they went and found him. So he is not
3 running, not hiding.

4 And, you know, if you are staying in an
5 abandoned house he doesn't have a closet full of
6 clothes to go change into. The clothes are there,
7 and there is not a drop of her blood on his clothes.
8 Because they had the clothes.

9 They didn't say there was closet full of other
10 clothes there, this was an abandoned house, that he
11 could have changed into. So he is wearing the same
12 clothes, or the same clothes that are in the room.
13 Again if he is beating her repeatedly, and she is
14 testifying about all the blood, and there is not a
15 drop of blood on him or his clothes. Physical
16 evidence doesn't match the testimony.

17 This is a big decision for the 12 of you.
18 This is the duty that we as citizens do. And it's
19 important. It's not just you sitting at home giving
20 your opinion, this is something where you are sitting
21 in a role that's defined by the law. The Judge is
22 going to give you the law on that. I told you a
23 little bit about it in my opening about the
24 presumption of innocence and reasonable doubt.

25 So this is a big decision for you. Probably

1 the biggest decision of Mr. Jenkins life. And I told
2 you about the presumption of innocence. So the law
3 requires you to have a resistance to believe he is
4 guilty. You have to do that. This is not about your
5 personal beliefs or your emotions, fears, this is
6 about what the evidence is.

7 And the law tells you you have a resistance to
8 believe that someone committed a crime unless you
9 believe after all of the evidence, beyond a
10 reasonable doubt -- and that phrase is important too,
11 we hear it a lot but it's really important. It's a
12 high burden. It's the highest burden we have in our
13 court system.

14 Civil cases, when you are suing over money,
15 it's called the preponderance of the evidence. It's
16 really which one is more likely. If you believe the
17 person suing 51 percent more than the other person
18 than you award that person the money. Well, this is
19 a lot more than that. This is a higher burden than
20 that. This is beyond a reasonable doubt.

21 And it doesn't have to be the same doubt, all
22 12 of you wouldn't have to have the same doubt. Just
23 individually each one of you has a vote, each one of
24 your votes is equal. And you just have to think
25 about looking at the evidence, is it reasonable that

1 she is not telling the truth based on some things
2 that have come out?

3 Look at every detail, because every detail is
4 important. Because we had such a short time with
5 her, we didn't spend a week living with her and
6 seeing what kind of person she is, you just saw an
7 hour or two of her on the stand testifying.

8 So every detail is important. So is it
9 reasonable that she is not telling the truth? And if
10 she is not telling the truth then you cannot find the
11 guilt because you just cannot trust her. If you
12 can't be sure, if you are not firmly convinced, than
13 he is not guilty.

14 THE COURT: Ladies and gentlemen, stand up for
15 me and move around a little bit, stretch a little,
16 you all have been sitting. Does anyone need to use
17 the restroom?

18 We are going to take a short break to give you
19 an opportunity to go to the restroom. During the
20 break do not discuss the case and please leave your
21 notepads in your seats. As soon as you have
22 completed that process, knock on the door and let the
23 bailiffs know and we will resume instructions.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: We will be at ease for about 10

CERTIFICATE OF COUNSEL

Counsel for Respondent certifies that this Supplemental Record on Appeal contains all material requested by the Court of Appeals pursuant to Rule 212(a), SCACR, and not any other material and that this Supplemental Record on Appeals complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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December 2, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

Appellant.

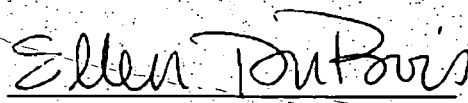
PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within the Supplemental Record on Appeal on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esq.
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I further certify that all parties required by Rule to be served have been served.

This 2nd day of December, 2011.


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APP'X 195

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANIEL J. JENKINS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the judge err in refusing to suppress the results of DNA testing when the samples tested from appellant were obtained pursuant to a search warrant lacking sufficient information for a probable cause determination?

STATEMENT OF THE CASE

In September 2006, the Charleston County Grand Jury indicted Jenkins for criminal sexual conduct first degree, indictment #2006-GS-10-9254. On December 8, 2008, Jenkins proceeded to jury trial before the Honorable Deadra L. Jefferson. The jury returned a verdict of guilty and, pursuant to S.C. Code §17-25-45, Judge Jefferson sentenced Jenkins to life imprisonment. A timely notice of intent to appeal was filed on December 10, 2008. This appeal follows.

ARGUMENT

The judge erred in refusing to suppress the results of DNA testing when the samples tested from appellant were obtained pursuant to a search warrant lacking sufficient information for a probable cause determination.

On April 6, 2006, Detective Antonio with the City of Charleston Police Department asked a magistrate to issue a search warrant for the collection of blood, head hair and pubic hair from Jenkins. The affidavit for probable cause, as read into the record, states:

On 4/5/06 at approximately 22:30 hours while at [REDACTED], Charleston, South Carolina, 29403, the subject, Daniel Jerome Jenkins, parenthesis, black male, date of birth 6/17/60, did enter the victim's residence and threatened to kill her if she did not comply with his demand to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about her face using a glass candle holder.

The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair and pubic hair will be retrieved from the suspect by a trained medical personnel in a medical facility. The collection of these samples will be conducted in a non-invasive matter.

(R. p. 78, lines 14 – p. 79, lines 1-4). The affidavit was not supplemented by oral testimony from the officer. (R. p. 80, lines 17-22). The magistrate signed the search warrant. Samples were collected and analyzed. The samples linked Jenkins to the incident. (R. p. 130, lines 3-23).

Jenkins moved to suppress the DNA evidence collected. Jenkins argued, relying on State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990), that the information contained in the affidavit was merely conclusory and failed to provide the magistrate with sufficient information to determine if probable cause existed for the issuance of the search warrant. (R. p. 87, lines 11 – p. 88 – 91). Jenkins also argued that the affidavit failed to allege there

was a clear indication that material evidence would be found as a result of the execution of the search warrant. (R. p. 91, lines 13-20). Jenkins renewed his objection when the forensic analyst testified in regard to DNA testing. (R. p. 130, lines 24-25). The judge denied the motion to suppress. (R. p. 91, line 25 – p. 92 – 95). The judge erred.

“The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. An order issued pursuant to §17-13-140 that allows the government to procure evidence from a person's body constitutes a search and seizure under the Fourth Amendment.” State v. Baccus, 367 S.C. 41, 53, 625 S.E.2d 216, 222 (2006) citing Schmerber v. California, 384 U.S. 757, 767 – 70, 86 S.Ct. 1826, 1834-35, 16 L.Ed.2d 908 (1966); State v. Register, 308 S.C. 534, 419 S.E.2d 771 (1992). In the present case, the State sought to procure DNA evidence from Jenkins by seeking a search warrant. “Under both the United States and South Carolina constitutions, search warrants may not be issued except ‘upon probable cause supported by Oath or affirmation.’” Baccus, 367 S.C. at 54, 625 S.E.2d at 223 citing U.S. Const. amend IV, S.C. Const., art. I, § 10. In determining if probable cause exists for issuance of a search warrant to obtain DNA evidence the court should consider three elements: 1.) probable cause to believe the suspect has committed the crime; 2.) a clear indication that relevant material evidence will be found; and 3.) the method used to secure it is safe and reliable. See Baccus.

An affidavit in support of a search warrant must contain sufficient facts and information upon which a magistrate may make a determination of probable cause. State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981). “Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient.

‘[H]is action cannot be a mere ratification of the bare conclusions of others.’” State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) quoting Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed.2d 527, 549 (1983).

The affidavit presented to the magistrate does not contain sufficient information in order for the magistrate to make a probable cause determination. The affidavit fails to provide information about why law enforcement believed that Jenkins committed the acts alleged. The affidavit fails to explain where the officer seeking the search warrant obtained the information contained in the affidavit. The affidavit is based on mere conclusions and is lacking probable cause to establish that Jenkins committed the acts alleged.

Additionally, the affidavit fails to establish that material evidence will be found as a result of the search warrant. There is no indication in the affidavit that law enforcement collected any evidence from the victim to which to compare to the DNA samples sought from Jenkins. The affidavit omits information about the rape kit. While the affidavit alleges penetration, it does not allege ejaculation. There is no allegation in the affidavit that law enforcement collected any evidence from under the victim’s fingernails where she may have scratched her assailant. There is no allegation that law enforcement collected any blood from the scene that may have been from the assailant.

In State v. Smith, 301 S.C. 371, 392 S.E.2d 182 (1990), the South Carolina Supreme Court found that the affidavit in support of a search warrant of a motel room was defective on its face. The affidavit in the Smith case stated:

That on May 12th at approximately 11:45 p.m. Reginald Jerome Smith went into the Master Inn located at 1468 Savannah Hwy., Charleston, S.C. and he then robbed the manager at knife point. Smith has been staying at The Host of America Room 216 since Jan. 1, 1988 and there is

every reason to believe the weapon and clothes used in the robbery will be located in the room. This information was confirmed in person by Sgt. Sherman on 05/13/88.

Smith 392 S.E.2d at 183. The Court wrote, "Here the affidavit sets forth no facts as to *why* police believed Smith robbed the Master Host Inn. Although the record reveals that police relied upon information from an informant, there is no indication that this fact was made known to the magistrate, or that the magistrate made any determination of the informant's reliability." Smith 392 S.E.2d at 183.

The challenged affidavit in the present case is defective on its face in the same way the affidavit in the Smith case was defective on its face. The affidavit fails to set forth facts as to why the police believed that Jenkins committed the assault. Both affidavits contain mere conclusions insufficient for a determination of probable cause. The additional defect with the present affidavit is its failure to allege a clear indication that relevant material evidence will be found as a result of the execution of the search warrant. The record establishes that the present affidavit was not supplemented through oral testimony. The affidavit in support of the search warrant lacked sufficient information for a probable cause determination, rendering the search warrant defective. The DNA results should have been suppressed as a result of the defective search warrant.

CONCLUSION

Based on the above argument, the sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

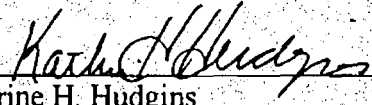
ATTORNEY FOR APPELLANT.

This 30th day of March, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 30, 2010


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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

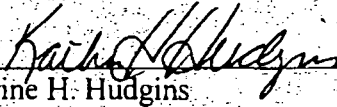
V.

DANIEL J. JENKINS,

APPELLANT

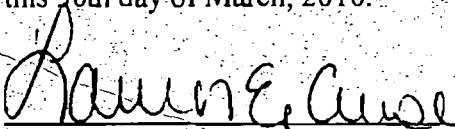
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 30th day of March, 2010.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 30th day of March, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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APP'X 208

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly denied Appellant's motion to suppress the DNA evidence obtained pursuant to an allegedly defective search warrant.

II.

Regardless of any alleged defect with the search warrant, any error in the admission of the DNA evidence was harmless in light of the overwhelming evidence of Appellant's guilt, the inevitability of the discovery of the evidence, and the potential availability of the evidence from other sources.

STATEMENT OF THE CASE

Appellant Daniel J. Jenkins was arrested after a woman was sexually assaulted in Charleston. In September of 2006, the Charleston County grand jury indicted Appellant for criminal sexual conduct in the first degree. A jury trial was held in the Charleston County court of general sessions on December 8, 2008, with the Honorable Deadra L. Jefferson, circuit court judge, presiding. On December 10, 2008, Appellant was convicted as charged. Appellant received a mandatory life sentence without the possibility of parole under S.C. Code Ann. § 17-25-45. Appellant subsequently filed a timely notice of appeal.

STATEMENT OF FACTS

On April 5, 2006, Victim, who lived alone in downtown Charleston, went to work at a local bakery. (R. p. 162; p. 165). After work, Victim came home and had several beers with a friend. (R. p. 165). After her friend left, Victim ordered a pizza and fell asleep on her couch around 8:00 p.m., still wearing her work clothing. (R. p. 165). She awoke to the sound of Appellant Daniel J. Jenkins knocking on her door. (R. p. 6).

Having sometimes seen him on the street, Victim recognized Appellant, the man at the door, and knew him by the nickname "Black." (R. p. 6). Victim typically rode her bike or took the bus to work, and she regularly observed Appellant at a nearby grocery store. (Tr. pp. 57-58). Although Victim did not know Appellant and they were not friends, she occasionally spoke to him and exchanged pleasantries. (R. p. 5).

After opening the door, Appellant asked Victim if she wanted to go get a beer, but she declined. (R. p. 7). Appellant then asked for money so he could go get a beer, and Victim again declined. (R. p. 7). Roughly ten to twenty seconds into the conversation, Appellant entered Victim's home in an aggressive manner, making Victim uncomfortable. (R. p. 8). She continued speaking with Appellant, but Victim backed away into the living room and sat down onto her couch. (R. p. 8).

Shortly after entering Victim's home, Appellant began making sexual demands and threatened to kill Victim. (R. p. 9). Victim pleaded with Appellant not to do anything, warned him of potential consequences, and did everything she could to dissuade him from taking any action. (R. p. 9). Undeterred, Appellant approached Victim on the couch and touched her. (R. p. 10). Then, Appellant grabbed a glass candle holder from Victim's coffee table and began repeatedly striking her in the head. (R. p. 9). Victim

tried to resist by pushing and kicking Appellant with her legs while tightly holding onto her pants. (R. p. 10). She grabbed for her portable phone in an attempt to call for help, but Appellant took the phone from her. (R. p. 11). Appellant continued striking Victim in the face, nose, forehead, ears, and mouth. (R. p. 11).

Eventually, Appellant ripped Victim's pants and underwear off. (R. p. 12). Victim repeatedly begged him to stop and warned Appellant her boyfriend was on the way in an effort to frighten him into stopping. (R. p. 12). Appellant responded by telling her she was going to die. (R. p. 13). Appellant then forced himself inside of Victim while continuing to make sexual remarks. (R. p. 13). Victim was not sure if Appellant finished the sexual act, but he eventually stopped and got off of her. (R. p. 13). Before leaving, Appellant threatened to kill her if she told anyone about the assault. (R. p. 13).

Injured and frightened, Victim put on a sweatshirt to cover her blood-soaked clothes and unsuccessfully looked for her phone. (R. p. 14). She ran into the street looking for help, but several passing cars would not stop. (Tr. p. 68). Victim then ran towards the nearby grocery store. (R. pp. 14-15). Perhaps seeing the blood all over Victim's face, a woman approached her to find out what was happening. (R. pp. 15-16).

Before Victim could respond, Appellant walked up and inquired about what had happened. (R. p. 16). Terrified, Victim began to cry and asked to use a phone. (R. p. 16). Appellant grabbed her arm, led her across the street, and offered to let her use a phone if she would wash the blood off of her face. (R. p. 17). Appellant then helped her wash and handed her a phone. (R. pp. 17-18). Victim took the phone, ran to her house, and rushed inside. (R. p. 18). Fearing Appellant's return, she ran outside, hid under a tarp on the side of her home, and called 911. (R. p. 18).

Law enforcement officers arrived, investigated the scene, and questioned Victim about the attack. (R. p. 22). After receiving a description of the suspect, officers quickly located Appellant in a building near the grocery store. (R. p. 51). Appellant was found in the upstairs area of an abandoned building, appeared to be sleeping, and was completely naked. (R. pp. 51-52). Less than thirty minutes after beginning the investigation, officers detained Appellant and took Victim to identify him. (R. p. 22). Victim was driven to the parking lot of the nearby grocery store and observed Appellant in custody. (R. p. 23). Victim positively identified Appellant at the scene as her attacker, and she reaffirmed her identification at trial in the courtroom. (R. p. 24; p. 52; pp. 98-99). Victim was then taken for a forensic medical examination. (R. p. 24).

Meanwhile, officers collected evidence from Victim's home, including Victim's ripped underwear and the glass candle holder. (R. pp. 168-169). The recovered evidence yielded several fingerprints. (R. p. 61). After analyzing the prints with sufficient detail for testing, the prints were conclusively linked to Appellant. (R. pp. 71-72).

Shortly after the attack, Nurse Faye Lebeof, an expert in sexual assaults, interviewed and examined Victim. (R. p. 106; pp. 108-109). Victim's face, eyes, and mouth were bruised and injured. (R. p. 110). Additionally, Victim suffered from abrasions and lacerations in her vagina and redness in her hymen. (R. p. 111). Also, fluids were recovered from inside of Victim's vagina. (R. p. 112). Victim's injuries were consistent with sexual assault. (R. p. 112).

After responding to the incident, Detective Jennie Antonio of the City of Charleston Police Department spoke with the victim and prepared a search warrant for the

recovery of Appellant's DNA. (R. pp. 76-77). The probable cause section of the warrant stated:

On 4/5/06 at approximately 22:30 hours while at [a specific Charleston address], the subject, Daniel Jerome Jenkins, parenthesis, black male, date of birth 6/17/60, did enter the victim's residence and threatened to kill her if she did not comply with his demand to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about the face using a glass candle holder.

The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair and pubic hair will be retrieved from the suspect by a trained medical personnel in a medical facility. The collection of these samples will be conducted in a noninvasive manner.

(R. pp. 78-79). Detective Antonio presented the warrant to a magistrate, who then read and signed the warrant without taking any supporting oral testimony. (R. pp. 79-80).

Subsequently, DNA samples were taken from Appellant. (R. p. 114).

A forensic DNA analyst from SLED analyzed the forensic evidence collected from both Victim and Appellant. (R. p. 125; p. 129). The scientist analyzed vaginal swabs, rectal swabs, miscellaneous bodily fluids, clothing samples, and Victim and Appellant's blood samples. (R. p. 130). Testing revealed the semen discovered on the various swabs conclusively matched Appellant. (R. p. 130).

At trial, Appellant objected to the admission of the DNA evidence based on asserted defects in the search warrant. (R. pp. 85-91). The trial court denied the objection and allowed the admission of the DNA evidence. (R. pp. 91-96). After hearing the testimony and evidence, including the DNA evidence, the jury convicted Appellant of criminal sexual conduct in the first degree. Appellant received a mandatory life sentence without the possibility of parole under S.C. Code Ann. § 17-25-45.

ARGUMENT

I.

The trial judge properly denied Appellant's motion to suppress the DNA evidence obtained pursuant to an allegedly defective search warrant.

Appellant contends the trial judge erred in refusing to suppress DNA evidence obtained pursuant to an allegedly defective search warrant. Appellant argues the warrant was defective because it lacked sufficient information for a probable cause determination and it failed to clearly indicate relevant material evidence would be found. The search warrant contained sufficient information for a finding of probable cause and complied with the statutory requirements of S.C. Code Ann. § 17-13-140. Appellant's conviction should be affirmed.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a decision to issue a search warrant, the reviewing court should decide whether the magistrate had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the magistrate, the court should base its determination on the totality of circumstances. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). The magistrate's probable cause determination should be afforded great deference on appeal. State v. Rutledge, 373 S.C. 312, 316, 644 S.E.2d 789, 791 (Ct. App. 2007). The appellate court is limited to considering only the information brought to the magistrate's attention. State v. Martin, 347 S.C. 522, 527, 556 S.E.2d 706, 709 (Ct. App. 2001).

The Fourth Amendment protects against unreasonable searches and seizures involving intrusions into the human body for the purpose of the collection of evidence unless a search warrant is obtained or other exigent circumstances exist. Schmerber v. California, 384 U.S. 757, 769-770 (1966). If the evidence sought is genetic material, such as blood, and its intended use is to match existing evidence, a search warrant must be obtained. Gantt v. State, 354 S.C. 183, 187, 580 S.E.2d 133, 135 (2003).

A search warrant may only be issued upon a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). Under S.C. Code Ann. § 17-13-140, a magistrate shall only issue a search warrant if satisfied “the grounds for the application exist or that there is probable cause to believe that they exist.”

In deciding whether to issue a search warrant, the magistrate must “make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983). Under South Carolina law, when considering whether a warrant for the acquisition of non-testimonial identification evidence should be issued, the court should consider: (1) whether probable cause exists to believe the suspect has committed the crime; (2) whether there is a clear indication relevant evidence will be found; and (3) whether the method to secure the evidence is safe and reliable. In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992). Additionally, the court should take into consideration the seriousness of the crime and the importance of the evidence to the investigation. Id.

In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), our Supreme Court explained probable cause as it relates to the issuance of a search warrant:

In order to justify the issuance of a search warrant, probable cause must be shown, but the term 'probable cause' does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citing State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971)).

A search warrant affidavit must contain sufficient underlying facts upon which a magistrate can base a probable cause determination. State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990). "Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." Id.

However, consideration should be given to the fact search warrant affidavits are typically prepared by non-lawyers in the haste of criminal investigations, and they must be viewed in a common sense and realistic fashion. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995). "Searches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause." Id. "Suppression is appropriate in only a few situations, including when an affidavit is 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (quoting United States v. Leon, 468 U.S. 897, 923 (1984)).

In the case sub judice, the warrant sufficiently established grounds supporting a finding of probable cause. The warrant clearly and concisely stated the essential facts of the incident. The magistrate could infer the information presented was provided by Victim as she was the only possible source of the facts based on the nature of the offense. The warrant specifically listed the threats and demands made by Appellant to Victim and recounted Appellant's attack and sexual assault of Victim. Victim is essentially the only individual who could have been aware of the attack and heard the threats based on the nature of sexual assaults and the facts alleged in this case, and the magistrate recognized this in finding probable cause based on the totality of the circumstances.

The warrant in this case was clearly not " 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.' " Weston, 329 S.C. at 293 (quoting Leon, 468 U.S. at 923). The logical and common sense interpretation of the warrant in this case along with the deference that must be given to the magistrate's decision overcomes any asserted deficiency. See Keith, 356 S.C. at 225, 588 S.E.2d at 148 ("We find a common sense and logical interpretation of the affidavit accompanying the search warrant in this case and the deference, which must be accorded the magistrate, overcomes any asserted deficiency."). Recognizing warrants are typically prepared by non-lawyers, the magistrate properly viewed the warrant in a realistic and common sense manner without applying an overly rigid analysis and found probable cause based on the totality of the circumstances, including the highly serious nature of the violent sexual assault and the importance of DNA evidence in linking an attacker to the crime.

Warrants are not required to be perfect. The search warrant in this case meets a realistic standard of probable cause. Sufficient facts were presented for a prudent

magistrate to believe the offense had been committed and the evidence sought would be recovered based on the totality of the circumstances. Furthermore, the warrant sufficiently identified the relevant evidence sought and the non-invasive manner to be used in its recovery. The trial judge properly afforded great deference to the magistrate's determinations. The warrant was not so defective as to warrant the suppression of the DNA evidence. See also State v. Mollison, 319 S.C. 41, 47, 459 S.E.2d 88, 92 (Ct. App. 1995) (finding where an appellant failed to argue prejudice suffered due to a defective warrant and the record lacked discernable prejudice, the defective warrant did not require suppression of seized evidence). The trial judge's denial of Appellant's suppression motion should be affirmed.

II.

Regardless of any alleged defect with the search warrant, any error in the admission of the DNA evidence was harmless in light of the overwhelming evidence of Appellant's guilt, the inevitability of the discovery of the evidence, and the potential availability of the evidence from other sources.

Although Appellant asserts the DNA evidence should have been suppressed based on an allegedly defective search warrant, Appellant's guilt was conclusively proven by competent evidence other than the DNA evidence. Any error in the trial judge's denial of the suppression motion was harmless in light of the overwhelming evidence of Appellant's guilt, the inevitability of the discovery of the evidence, and the potential availability of the evidence from other sources. Appellant's conviction should be affirmed.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978).

The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by

competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). When overwhelming evidence of guilt has been established, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988); see State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) (“Given the abundant evidence of Tench’s guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt.”); State v. Allen, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977) (“In any event, however, the overwhelming proof of guilt rendered harmless the admission of the evidence in question.”); State v. Woods, 376 S.C. 125, 129, 654 S.E.2d 867, 869 (Ct. App. 2007) (affirming Woods’ conviction despite the erroneous admission of evidence recovered with a defective warrant because overwhelming evidence established his guilt); State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003) (finding harmless error based on overwhelming evidence of guilt).

In the case sub judice, even without the DNA evidence conclusively linking Appellant to the crime, Appellant’s guilt was overwhelming established beyond a reasonable doubt by other incriminating evidence. Victim knew Appellant prior to the incident and was able to definitively identify Appellant to officers before his capture, shortly after his detention near the scene of the crime, and again in the courtroom. Victim positively identified Appellant multiple times without hesitation. Victim testified Appellant was the attacker, and her testimony was supported by the evidence collected during the investigation, including the photographs and testimony regarding her physical injuries and the ripped underwear found in her home. A forensic medical exam

performed on Victim revealed injuries and physical evidence consistent with sexual assault. Furthermore, Appellant's fingerprints were collected from evidence gathered from inside of Appellant's home. While the DNA evidence further assisted in establishing Appellant's guilt, it was by no means the only evidence produced against him. The cumulative effect of the other evidence presented at trial leaves no doubt of Appellant's guilt. Based on the other evidence overwhelmingly establishing Appellant's guilt, any alleged error in the admission of the DNA evidence would have had no effect on the verdict in the case.

Additionally, based on the nature of DNA evidence in general, the evidence would have been inevitably discovered or obtained from another source even if the original search warrant was found to be defective. See Nix v. Williams, 467 U.S. 431, 446-447 (1984) ("Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial. . . . Suppression, in these circumstances, would do nothing whatever to promote the integrity of the trial process, but would inflict a wholly unacceptable burden on the administration of criminal justice."); State v. McCord, 349 S.C. 477, 485, n. 2, 562 S.E.2d 689, 693 (Ct. App. 2002) ("Assuming the blood sample was obtained in violation of the Fourth Amendment, such violation would not require exclusion of the DNA test results because they inevitably would have been discovered by lawful means."). Physical evidence recovered from a defendant's body, which is intended to be used for identification purposes, cannot be altered, changed, or hidden. Appellant's DNA is the same now as it was at the time his blood was collected pursuant to an allegedly defective warrant. Furthermore, there is no question probable cause existed to collect this type of evidence from Appellant,

regardless of any alleged defects in the probable cause portion of the search warrant.

Based on the inevitability of the discovery of genetic evidence coupled with its importance in a criminal trial, the interests of justice would not be served by its suppression.

Additionally, Appellant's DNA was most likely readily available from other sources outside of the issuance of a search warrant. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). During sentencing, Appellant's prior conviction for criminal sexual conduct in the first degree was revealed, along with his required sex offender registration. (R. pp. 138-139). Based on his prior conviction for a sex crime and his registration as a sex offender, Appellant's DNA was most likely already available and on record with law enforcement prior to the issuance of the search warrant.

Furthermore, under South Carolina law, Appellant could have been required to provide a DNA sample based on his arrest for a felony offense punishable by a sentence of five years or greater. See S.C. Code Ann. § 23-3-620(A) ("An arrested person who is released from custody before providing a DNA sample must provide a DNA sample at a location specified by the law enforcement agency with jurisdiction over the offense on or before the first court appearance."). While this legislation has not yet been implemented, it is legally effective and will be executed when funds are available in South Carolina. Therefore, Appellant's DNA was most likely available even without the allegedly defective search warrant.

Regardless of any asserted defects in the search warrant, Appellant's guilt was conclusively established. Overwhelming evidence was presented linking Appellant to the

crime. The evidence offered at trial apart from the DNA evidence left no doubts about Appellant's guilt and affords no rational conclusion other than a guilty verdict. Any error in the admission of the DNA evidence recovered pursuant to the allegedly defective search warrant was harmless. See Baccus, 367 S.C. at 56, 625 S.E.2d at 224 (finding any error resulting from a defective search warrant was harmless). Furthermore, Appellant's DNA would have been inevitably discovered and was most likely readily available to law enforcement through other sources. Based on the harmlessness of any error, Appellant's conviction should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 17, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

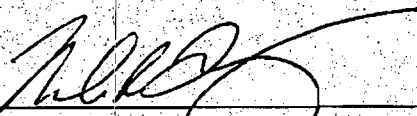
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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 17th day of March, 2010.


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Daniel J. Jenkins,

Appellant.

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

Opinion No. 4958
Heard December 6, 2011 – Filed March 28, 2012

REMANDED

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Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Attorney General Mark R. Farthing, all of Columbia;
and Solicitor Scarlett Anne Wilson, of Charleston, for
Respondent.

FEW, C.J.: Daniel Jenkins appeals his conviction for criminal sexual conduct in the first degree. Jenkins argues the trial court erred in denying his motion to suppress DNA test results because the affidavit offered in support of the search warrant for samples of his DNA did not meet the constitutional and statutory requirements for issuance of the warrant. We agree. We remand the case to the trial court for a factual determination of whether the inevitable discovery doctrine precludes application of the exclusionary rule in this case.

I. Facts and Procedural History

The victim testified that on the evening of April 5, 2006, she came home from work, drank several beers, ordered a pizza, and fell asleep on her couch. She awoke approximately two hours later to a knock at the door. The victim recognized the man at her door as "Black," a man she sometimes saw at a neighborhood grocery store called Jabbers. Black frequently hung around outside Jabbers, and she occasionally said hello to him.

According to the victim, she answered the door, and Black asked if she wanted to get a beer with him. After the victim declined, Black asked her to put away her two dogs. She put away the dogs, and Black entered her house. The two of them sat on the victim's couch while Black smoked a cigarette, using a glass candle holder as an ashtray. Black then demanded she show him her genitals or else he would kill her. A struggle ensued in which Black hit the victim in the head and face multiple times with the candle holder, removed her pants and underwear, and raped her. Black told the victim "don't tell anyone or I will kill you," and left.

The victim explained that because she could not find her cordless phone, she ran down the street looking for help. Near Jabbers, the victim encountered a woman who asked her what happened. At that moment, Black approached the victim, took her by the arm, and guided her to a hose so she could wash blood off of her face. Black then handed the victim her cordless phone. She ran home and called 911.

When the police arrived at the victim's house, she described the incident and gave them the name "Black." Within thirty minutes, police

located Jenkins in an abandoned building across the street from Jabbers. The police brought the victim to the store parking lot, where she identified Jenkins as the man who raped her. After the victim identified Jenkins, she underwent a rape examination. The nurse who performed the examination observed a large amount of fluid in the victim's vagina, and she took evidence swabs of the victim's vagina and other parts of her body.

The next day, the police sought a search warrant for samples of Jenkins' blood and hair. A detective who responded to the victim's 911 call prepared the affidavit in support of the warrant. In the affidavit, the detective wrote only the following:

On 4-5-06 at approx. 2230hrs while at [victim's address], the subject Daniel Jerome Jenkins (BM, dob 6-17-60) did enter the victim's residence and threatened to kill her if she did not comply with his demands to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about her face using a glass candle holder. The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair, and pubic hair will be retrieved from the subject by a trained medical personnel in a medical facility. This collection of these sample [sic] will be conducted in a noninvasive manner.

The detective did not supplement the affidavit with oral testimony. The magistrate read the affidavit and signed the warrant. The police executed the warrant, obtaining blood and hair samples from Jenkins.

SLED analyzed Jenkins' samples and the swabs taken from the victim. A SLED forensic DNA analyst found semen on several swabs, including the vaginal swab. The analyst developed a DNA profile from the vaginal swab and compared it to a DNA profile developed from Jenkins' samples. The

profiles matched, with a one-in-8.6 quintillion¹ chance the semen came from an unrelated person.

At trial, the victim testified in the detail set out above that Jenkins raped her. Later in the trial, the State called the DNA analyst to testify to the results of the DNA comparison. After the trial court found the warrant was valid and denied Jenkins' motion to suppress, the witness testified to the results of the comparison and its degree of certainty.

The jury found Jenkins guilty. Because he had prior convictions for criminal sexual conduct in the first degree and carjacking, both "most serious offense[s]" under section 17-25-45(C)(1) of the South Carolina Code (Supp. 2011), the trial court imposed a mandatory sentence of life in prison with no possibility of parole. See S.C. Code Ann. § 17-25-45(A)(1)(a) (Supp. 2011).

II. The Validity of the Search Warrant

A search warrant allowing the government to obtain evidence from a suspect's body is a search and seizure under the Fourth Amendment and, therefore, must comply with constitutional and statutory requirements. State v. Baccus, 367 S.C. 41, 53, 625 S.E.2d 216, 222 (2006). To secure a warrant for the acquisition of such evidence, the State must establish the following elements: (1) probable cause to believe the suspect committed the crime; (2) a clear indication that relevant evidence will be found; and (3) the method used to secure it is safe and reliable. 367 S.C. at 53-54, 625 S.E.2d at 223 (quoting In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992) (per curiam)); see also S.C. Code Ann. § 17-13-140 (2003). The magistrate must also consider the seriousness of the crime and the importance of the evidence to the investigation, weighing "the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures." Baccus, 367 S.C. at 54, 625 S.E.2d at 223 (quoting Snyder, 308 S.C. at 195, 417 S.E.2d at 574).

¹ The number representing one quintillion is a one followed by eighteen zeros. Webster's New World College Dictionary 1178 (4th ed. 2008).

We find the affidavit, which was the only information presented to the magistrate in support of the warrant application, does not meet the requirements of Baccus. See State v. Arnold, 319 S.C. 256, 259, 460 S.E.2d 403, 405 (Ct. App. 1995) (per curiam) (stating a court reviewing the validity of a warrant may consider only information presented to the magistrate who issued the warrant). In particular, we find the affidavit does not demonstrate that the police had probable cause to believe that Jenkins raped the victim or that Jenkins' DNA was relevant to the investigation. Therefore, we hold the trial court erred in finding the warrant was valid.

A. Probable Cause that Jenkins Committed the Crime

A probable cause determination requires a magistrate to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before her, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that . . . evidence of a crime will be found in a particular place." State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495-96 (2009) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). On review, our duty is to ensure that the magistrate had a substantial basis for concluding probable cause existed. 387 S.C. at 212, 692 S.E.2d at 495; see also State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) (stating a reviewing court should give great deference to a magistrate's determination of probable cause). Considering the totality of the circumstances, we find the affidavit in this case did not provide the magistrate a substantial basis for concluding there was probable cause that Jenkins committed the crime.

First, the affidavit must set forth facts as to why the police believe the suspect whose DNA is sought is the person who committed the crime. See State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (finding an affidavit defective because it "sets forth no facts as to why police believed Smith" committed the robbery). Applying that requirement in Baccus, our supreme court found the affidavit defective and therefore found there was an insufficient basis for a finding of probable cause. 367 S.C. at 52, 625 S.E.2d at 222. The court stated: "This affidavit fails to set forth any facts as to why police believed Appellant committed the crime. The language in the affidavit

lacks [specificity] and contains conclusory statements. Given the totality of the circumstances, we conclude the issuing magistrate did not have a substantial basis to find probable cause." Id. Similarly, the affidavit in this case lacks specificity and contains nothing more than conclusory statements. "The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter." 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154, 165 (1978)). The affidavit in this case fails to meet the requirement of showing why the police believed Jenkins committed the crime.

Second, the affidavit does not set forth the source of the facts alleged in it. In Smith, the defendant sought to suppress a knife seized from his hotel room that was allegedly used in a robbery. 301 S.C. at 372, 392 S.E.2d at 183. The affidavit supporting the search warrant stated that the defendant committed the robbery, he had been staying in the hotel room, "and there is every reason to believe the weapon and clothes used in the robbery will be located in the room." Id. The affidavit also stated "[t]his information was confirmed in person by Sgt. Sherman" Id. Our supreme court found the affidavit "defective on its face," in part because "[a]lthough the record reveals that police relied upon information from an informant, there is no indication that this fact was made known to the magistrate" 301 S.C. at 373, 392 S.E.2d at 183. Similarly, the affidavit in this case is defective because it contains no indication as to where the detective obtained the information.

Nevertheless, the State argues that because this case involves a sex crime, the magistrate could reasonably have inferred the victim was the source of the information. We disagree. The law does not allow the State to justify a bodily intrusion on the possibility that a magistrate made a correct inference as to the source of the information in the affidavit. Rather, "[m]ere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." Smith, 301 S.C. at 373, 392 S.E.2d at 183. Moreover, the complete absence of a source for any of the information makes a variety of scenarios possible. For example, the detective could have pieced together the information from other officers, the victim's neighbors, or even an anonymous tip. This is precisely what the law forbids a magistrate from doing. The magistrate's "action cannot be a mere

ratification of the bare conclusions of others." Id. (quoting Gates, 462 U.S. at 239).

Third, the affidavit does not contain even a conclusory assertion that the information or its source is reliable. See Gates, 462 U.S. at 238 (stating the circumstances a magistrate must consider include the "veracity" of the persons supplying the information on which the warrant is based). "Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime" State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 169 (1990) (citation and quotation marks omitted).

Viewing these deficiencies together and considering the totality of the circumstances, we find the police did not provide the magistrate a substantial basis on which to find probable cause to believe Jenkins committed this crime.

B. Clear Indication that Jenkins' Samples Are Relevant

The information presented to a magistrate to obtain a warrant for bodily intrusion must contain "a clear indication that relevant evidence will be found." Baccus, 367 S.C. at 53-54, 625 S.E.2d at 223. The trial court stated: "Clearly DNA or genetic material is . . . evidence relevant to the question of the suspect's guilt on the crime of criminal sexual conduct in the first degree." However, this statement is true only if the police have DNA from the victim or the crime scene to which they can compare the suspect's DNA. Accordingly, to show that a suspect's DNA is relevant under the second element of Baccus, the State must show there is other DNA evidence in the case to which it can be compared, or in some other manner clearly indicate the relevance of the DNA sought.

The affidavit in this case does not contain any indication as to whether the police had other DNA evidence to which Jenkins' DNA profile could be

compared.² Cf. State v. Chisholm, 395 S.C. 259, 266-68, 717 S.E.2d 614, 617-18 (Ct. App. 2011) (affirming an order requiring defendant to provide a DNA sample where the State presented evidence to the magistrate that the victim's clothing contained the DNA of an unidentified male); State v. Sanders, 388 S.C. 292, 298, 696 S.E.2d 592, 595 (Ct. App. 2009) (finding the second Baccus element met because the State showed it could compare defendant's blood sample to blood found on a victim's shirt); State v. Simmons, 384 S.C. 145, 176, 682 S.E.2d 19, 35-36 (Ct. App. 2009) (affirming an order requiring defendant to provide a palm print because it could be compared to a palm print lifted from the car he was accused of stealing). Thus, the affidavit failed to clearly indicate the relevance of Jenkins' DNA.

III. Whether the Trial Court's Error Was Harmless

The State argues any error in admitting the DNA comparison results was harmless in light of other evidence of Jenkins' guilt. "To deem an error harmless, this court must determine 'beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.'" State v. Fonseca, 383 S.C. 640, 650, 681 S.E.2d 1, 6 (Ct. App. 2009) (quoting Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993)), aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011); see also Baccus, 367 S.C. at 55, 625 S.E.2d at 223 ("When guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result."). In Baccus, the supreme court found the trial court's error in admitting the DNA to be harmless. 367 S.C. at 56, 625 S.E.2d at 224. As the court indicated, however, the other evidence in the case conclusively proved the defendant guilty.

The State presented the testimony of [the victim's friend] who overheard Appellant tell the victim he was going to kill her and who overheard a

² The detective who prepared the affidavit admitted that when she prepared it, she did not know the results of the victim's rape examination.

pop and clicking sound. Additionally, the State presented evidence that Appellant's fingerprints matched fingerprints on the window sill of the broken window in the victim's bedroom. Also, [a DNA analyst] testified the blood sample collected from Appellant on the night of his arrest matched the blood found on the swabs and cuttings from the door, blind, and sheet in the victim's house. Therefore, the blood evidence drawn pursuant to the court order which should have been excluded was cumulative.

367 S.C. at 55, 625 S.E.2d at 223-24.

In Baccus, the DNA match to the defendant would have been in evidence regardless of the trial court's ruling on the motion to suppress. The admissible DNA evidence, combined with the friend's testimony she heard a gunshot immediately after she heard the defendant tell the victim he was going to kill her, "conclusively" proved the defendant guilty and left no rational conclusion but that he was guilty of murder. 367 S.C. at 55-56, 625 S.E.2d at 224. Without the DNA in this case, on the other hand, the State would have been forced to rely heavily on the credibility of the victim. Jenkins' fingerprint in the victim's home proved he was there, the presence of fluids in her body proved someone had sex with her, and the facial injuries proved someone violently assaulted her. However, removing the DNA leaves only the victim's credibility to prove two key facts necessary for a conviction: that Jenkins was the person who had sex with her,³ and that the

³ The State suggests that Jenkins argued the sex was consensual and thus conceded he had sex with the victim. We disagree. Jenkins' counsel cross-examined witnesses to elicit evidence that many of the victim's injuries were consistent with consensual sex, argued this evidence to the jury, argued that "all [the DNA] can do is tell you they had sex," and further argued several points supporting an inference the sex was consensual. We do not believe this rises to a concession. Rather, counsel is entitled to argue to the jury that the State has failed to prove an essential element of the crime—the sex was not consensual—without conceding the occurrence of sex.

sex was not consensual. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 95 (2011) (stating "[b]ecause the [victim]'s credibility was the most critical determination of this case, we find the admission of the written reports was not harmless"), reh'g denied, (Oct. 19, 2011); 394 S.C. at 482, 716 S.E.2d at 96 (Kittredge, J., concurring) (stating "it may be a rare occurrence for the State to prove harmless error . . . in these circumstances").⁴ We cannot find beyond a reasonable doubt that the DNA comparison results in this case, which the DNA analyst testified had a one-in-8.6 quintillion likelihood of error, did not contribute to or affect the verdict.⁵

IV. Inevitable Discovery of Jenkins' DNA

As an additional sustaining ground, the State argues that even if the search was illegal because of the defective affidavit, the DNA evidence was admissible under the inevitable discovery doctrine. The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence that the same evidence seized unlawfully would have been discovered inevitably by lawful means. See State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010), cert. granted, (Dec. 15, 2011); see also Nix v. Williams, 467 U.S. 431, 447 (1984) (holding evidence may be admitted despite a violation of the Fourth Amendment "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of

⁴ Our finding that the error was not harmless is based on our analysis of the facts of this individual case, not based on any categorical rule. See Jennings, 394 S.C. at 482, 716 S.E.2d at 95-96 (Kittredge, J., concurring), and 394 S.C. at 483, 716 S.E.2d at 96 (Toal, C.J., dissenting) (collectively overruling Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), to the extent Jolly imposes a categorical or per se rule regarding harmless error).

⁵ We acknowledge the DNA evidence does not bear directly on the question of whether the sex was consensual. However, the DNA corroborated the victim's testimony that it was Jenkins who had sex with her. Because the DNA bolstered her credibility on this important point, we cannot say the DNA did not contribute to her credibility as to whether the sex was consensual.

any overreaching by the police"). When the doctrine applies, the evidence will not be suppressed despite the fact it was obtained pursuant to an illegal search. Brown, 389 S.C. at 483, 698 S.E.2d at 816.

The State first argues that because probable cause did in fact exist, the inevitable discovery doctrine applies. We disagree. While the police could have presented evidence to the magistrate sufficient to establish probable cause, that does not satisfy the requirement that the State prove it would inevitably have discovered Jenkins' DNA. As the Fourth Circuit has stated: "The inevitable discovery doctrine cannot rescue evidence obtained via an unlawful search simply because probable cause existed to obtain a warrant when the government presents no evidence that the police would have obtained a warrant. Any other rule would emasculate the Fourth Amendment." United States v. Allen, 159 F.3d 832, 842 (4th Cir. 1998).⁶

The State also argues that discovery of Jenkins' DNA was inevitable because the State DNA Identification Record Database Act required that Jenkins' DNA be tested for inclusion in the State DNA database. See S.C. Code Ann. § 23-3-610 (2007) (establishing State DNA database); § 23-3-620(A) (Supp. 2011) (providing a person arrested for a felony must provide a DNA sample); § 23-3-620(B) (Supp. 2011) (providing a prisoner may not be released until he provides a DNA sample); § 23-3-640 (2007) (requiring all DNA samples taken pursuant to the Act be submitted to SLED for testing and secure storage); § 23-3-650(A) (Supp. 2011) (permitting SLED to make samples available to local law enforcement and solicitor's offices "in furtherance of an official investigation of a criminal offense"). The State contends on appeal that Jenkins was tested pursuant to the Act because of his prior conviction and imprisonment for criminal sexual conduct, and his DNA profile is included in the State DNA database. However, because the trial

⁶ Allen involved a situation where the police never sought a warrant in the first place. See 159 F.3d at 834-37. The difference between that situation and this case, where the police obtained a defective warrant, is immaterial as to the inevitable discovery doctrine. In both situations, allowing the doctrine to excuse the requirement of a valid warrant simply because the State can later establish that probable cause existed would render the Fourth Amendment meaningless.

court ruled the search was legal, the State never had an opportunity to present evidence to prove its contention.

The purpose of the exclusionary rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." State v. Sachs, 264 S.C. 541, 560-61, 216 S.E.2d 501, 511 (1975) (quoting Elkins v. United States, 364 U.S. 206, 217 (1960)). However, the exclusionary rule was not designed to apply to every violation of the Fourth Amendment. See Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Suppression is appropriate in only a few situations . . ."); State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987) ("Exclusion of evidence is not the only means available to insure that warrants are properly issued." (citing Sachs, 264 S.C. at 556, 216 S.E.2d at 509)). In Sachs, our supreme court observed "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where deterrence is clearly subserved." 264 S.C. at 566, 216 S.E.2d at 514. When the State has met its burden of proving it inevitably would have discovered the evidence, the "deterrence" purpose of the exclusionary rule is not "clearly subserved," id., and "there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings." State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix, 467 U.S. at 447). Therefore, the inevitable discovery doctrine represents an important policy determination that the "harsh medicine" of excluding probative evidence should be avoided when doing so does not advance the objectives of the exclusionary rule by deterring violation of constitutional rights. See James v. Illinois, 493 U.S. 307, 312 (1990) (noting the basis of exceptions to the exclusionary rule includes "the likelihood that admissibility of such evidence would encourage police misconduct").

In this particular case, we find it appropriate to remand to the trial court for an evidentiary hearing as to whether the inevitable discovery doctrine applies. The issue is presented to us on appeal from the trial court's denial of Jenkins' suppression motion on the basis that the search was legal. Therefore, the State did not need to present evidence in support of the inevitable discovery doctrine to proceed with the trial. While it would have been possible for the State to make a record on this issue, doing so would have been impractical. As our supreme court has explained: "It would be

inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments It also could violate the principle that a court usually should refrain from deciding unnecessary questions." 1'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). Given the important policy considerations behind the exclusionary rule and the inevitable discovery doctrine, we believe the determination of whether the illegally seized evidence of Jenkins' DNA must be suppressed should not be made by this court on a blank record. Rather, the determination should be made first by the trial court after an evidentiary hearing.⁷ If the trial court determines on remand that the inevitable discovery doctrine applies, the conviction must be affirmed. If the trial court determines the doctrine does not apply, the illegally seized evidence must be suppressed, and Jenkins must receive a new trial.

V. Conclusion

We find the trial court erred in finding the search warrant for samples of Jenkins' DNA was valid. The case is **REMANDED** for an evidentiary hearing on the applicability of the inevitable discovery doctrine and a determination of whether the illegally seized evidence should have been suppressed.

THOMAS and KONDUROS, JJ., concur.

⁷ The appellate courts of South Carolina have addressed the inevitable discovery doctrine in only three published decisions. In two of the cases, the factual record before the appellate court was sufficient to enable the court to determine whether the State met its burden of proof. Compare Spears, 393 S.C. at 481, 713 S.E.2d at 332 (reviewing the trial court's ruling that the State met its burden of proving inevitable discovery), and State v. McCord, 349 S.C. 477, 485 n.2, 562 S.E.2d 689, 693 n.2 (Ct. App. 2002) (noting the police would have inevitably discovered defendant's blood because they had a search warrant for a sample of it), with Brown, 389 S.C. at 483-84, 698 S.E.2d at 817 (noting standard procedures would allow for inventory search and thus discovery of the drugs, but finding the State did not present evidence it would have followed such a procedure).

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On March 28, 2012, this Court issued a published opinion in which it remanded Appellant Daniel J. Jenkins' first-degree criminal sexual conduct case to the trial court to allow the trial judge to make a factual determination as to whether the inevitable discovery doctrine precludes application of the exclusionary rule to Appellant's case. State v. Jenkins, Op. No. 4958 (S.C. Ct. App. filed Mar. 28, 2012). Pursuant to Rule 221(a), SCACR, Respondent ("the State") respectfully petitions for rehearing on the following points the State believes were misapprehended or overlooked by this Court.

**The State's Inevitable Discovery Argument and the Applicability
of the Inevitable Discovery Doctrine**

Initially, the State believes this Court misapprehended the State's argument on the inevitability of the discovery of the D.N.A. evidence. Furthermore, in this Court's inevitable discovery analysis, the State believes this Court misapprehended the significance of the

unchanging nature of D.N.A. evidence and availability of the Appellant's D.N.A. sample from a source independent of the sample obtained through the use of the defective warrant. For these reasons, the State respectfully asks this Court to reconsider its decision, strike the portion of its opinion incorrectly summarizing the State's argument in support of inevitable discovery, rehear the matter, and affirm Jenkins' conviction after finding the D.N.A. evidence would have inevitably been discovered regardless of any error with the search warrant affidavit.

In cases involving violations of a defendant's Fourth Amendment rights, the inevitable discovery doctrine has been adopted as one of several exceptions to the exclusionary rule. Nix v. Williams, 467 U.S. 431, 444 (1984). If the prosecution can establish by a preponderance of the evidence that information or evidence would have inevitably been discovered by lawful means, then the discovered evidence, even if obtained by unlawful means, is admissible and the exclusionary rule does not apply. Id. "Exclusion of physical evidence that would inevitably have been discovered adds nothing to either the integrity or fairness of a criminal trial." Id. at 446.

In the portion of its opinion addressing the inevitability of the discovery of the D.N.A. evidence, this Court stated: "The State first argues that because probable cause did in fact exist, the inevitable discovery doctrine applies." However, the State respectfully contends the Court misunderstood the State's argument in regards to inevitable discovery, particularly in light of the fact the State specifically argued to the Court during oral argument: "We are **not** submitting the fact that you have probable cause is automatically enough to say that any time there's a defect in a warrant, there's inevitable discovery." (Oral Argument Recording) (emphasis added). Instead, the State's argument on the inevitability of the discovery of the evidence centers on a combination of several key factors, including the facts that: (1) prior to seeking a warrant, the

officers unquestionably had probable cause to obtain one; (2) law enforcement officers actively sought a search warrant for Appellant's D.N.A. sample prior to any illegal search; and (3) based on the unique characteristics of D.N.A., Appellant's D.N.A. remained readily available and unchanging and could have been obtained at any time after the improper search.

In the case at bar, officers had probable cause to procure a search warrant to obtain a sample of Appellant's D.N.A. after the victim identified Appellant as the person who sexually assaulted her and bodily fluids available for comparison were recovered from the victim's body during a sexual assault examination. Thereafter, an officer actively attempted to procure a search warrant for Appellant's D.N.A. and was able to obtain one even though it later turned out to be defective based on the officer's failure to include all available information in the warrant affidavit. Critically, the fact that law enforcement officers had probable cause to obtain a warrant and were actively seeking a warrant affirmatively established the officers would have inevitably obtained a search warrant had the defective warrant not been issued and absent the illegal search that followed. See United States v. Allen, 159 F.3d 832 (4th Cir. 1998) ("The [inevitable discovery] doctrine may even apply where the subsequent search that inevitably would have uncovered the disputed evidence required a warrant and the police had probable cause to obtain this warrant prior to the unlawful search but failed to do so, *if the government produces evidence that the police would have obtained the necessary warrant absent the illegal search*. Such evidence might include proof that, based on independent evidence available at the time of the illegal search, the police obtained and executed a valid warrant subsequent to that unlawful search, **or took steps to obtain a warrant prior to the unlawful search.**" (italics in original, emphasis added, and citations omitted)).

Most significantly, in United States v. Allen, the Fourth Circuit Court of Appeals rejected the application of the inevitable discovery doctrine because the record affirmatively showed the officers in that case were not seeking and would not have obtained a warrant absent the illegal search. See Id. at 843 (“Thus, not only does the government’s case lack concrete evidence that the officers would have obtained a warrant, the testimony of the record affirmatively supports the conclusion that they would *not* have done so.”). However, the situation in Appellant’s is far different from the circumstance of Allen’s case. Notably, unlike the officers in Allen, an officer involved in Appellant’s case unquestionably did seek a warrant before the improper search, which clearly demonstrated the officer’s intent to obtain a warrant for Appellant’s D.N.A. sample. Thus, absent the issuance of the defective warrant and the ensuing illegal search, the officer’s actions demonstrated law enforcement personnel were already taking steps to obtain a warrant for and would have inevitably obtained a warrant for a sample of Appellant’s D.N.A. had the defective warrant not been issued and the illegal search not occurred.

Furthermore, supporting the fact that the officers had the means to obtain a warrant and were taking the steps to do so prior to the issuance of the defective search warrant, the nature of the evidence sought and obtained in Appellant’s case distinguishes it from other cases where evidence is illegally obtained through the execution of a defective warrant. In Appellant’s case, the evidence obtained was genetic evidence that cannot be changed, concealed, or altered no matter how much time elapsed. Instead, unlike something such as an individual’s blood alcohol concentration, an individual’s D.N.A. remains static and perpetually available. Therefore, based on the unique characteristics of genetic evidence, the officers could have obtained it at any time after the search was undertaken based on the defective warrant regardless of any defects with that warrant.

Unlike physical evidence recovered from the scene of a crime, which cannot simply be put back into its place and then rediscovered in another search if the initial search warrant used to uncover it is later declared to be defective, D.N.A. evidence remains the same before, during, and after an illegal search. Accordingly, in Appellant's case, Appellant's D.N.A. remained available after the illegal search took place and currently remains available should the State need to obtain another sample prior to a new trial if one were to become necessary. See Nix, 467 U.S. at 444 ("If the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means . . . then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense."). Therefore, application of the exclusionary rule to Appellant's case does not further the rule's deterrence rationale and serves no practical effect based on the specific circumstances of his case and the fact that the D.N.A. evidence used in his case would have inevitably been discovered and, if necessary, will inevitably be discovered regardless of the outcome of his appeal or any further proceedings on remand. See, e.g., Fitzpatrick v. State, 900 So. 2d 495, 514 (Fla. 2005) ("In this case, the police had initiated an investigation of Fitzpatrick prior to requesting a blood sample. The record reveals that the police considered Fitzpatrick a suspect prior to requesting a blood sample from him based on evidence that Fitzpatrick was the last person to be seen with Romines alive leaving Howard's house at approximately midnight – three hours before she was found. Based on this evidence, requesting a blood sample from Fitzpatrick or obtaining it through a warrant would have been a normal investigative measure that would have occurred regardless of any police impropriety. Therefore, even if Fitzpatrick's consent to the taking of his blood was involuntary, the error is harmless because the police had probable cause for a warrant requiring a blood sample, and the blood

sample would have been inevitably obtained.”); In re Welfare of J.W.K., 583 N.W.2d 752, 757 (Minn. 1998) (applying the inevitable discovery doctrine to preclude the suppression of evidence under the exclusionary rule after determining the defendant’s blood sample would have inevitably been obtained for comparison purposes regardless of any illegal police conduct because “the DNA profile present in one’s blood stays the same from day to day”).

Furthermore, not only would Appellant’s D.N.A. sample inevitably been discovered under the circumstances based on the nature of D.N.A. evidence and the steps already undertaken by law enforcement, Appellant’s D.N.A. sample was already available to law enforcement through other means independent of a search warrant or court order. Prior to sexually assaulting the victim, Jenkins was previously convicted of assault and battery of a high and aggravated nature in 2001, and he received a ten-year sentence for that conviction. (R. p. 139). At the time of Appellant’s 2001 conviction, Appellant was required to provide a D.N.A. sample for inclusion in the State D.N.A. database upon his intake to prison. See S.C. Code Ann. § 23-3-620(A)(1)(b) (Supp. 2000) (requiring defendants convicted of assault and battery of a high and aggravated nature on or after July 1, 2000, to provide “a sample from which DNA may be obtained for inclusion in the State DNA Database”); S.C. Code Ann. § 23-3-620(G) (Supp. 2000) (“A person required to provide a sample pursuant to this section may be required to provide another sample if the original sample is lost, damaged, contaminated, or usable for examination.”); see also S.C. Code Ann. § 23-3-700 (Supp. 2000) (requiring law enforcement to be collecting the required samples for the D.N.A. database no later than July 30, 2000). Accordingly, pursuant to the statutory requirements in place at the time of Appellant’s 2001 conviction, Appellant’s D.N.A. sample was already included in the South Carolina D.N.A. database prior to his arrest for sexually assaulting the victim.

Because Appellant's D.N.A. sample was already a part of the D.N.A. database prior to his arrest for sexually assaulting the victim, the law enforcement officers investigating Appellant's case would have inevitably discovered that Appellant's D.N.A. sample matched the sample collected from the victim's body even if the officers had not discovered the match through the sample obtained pursuant to the defective warrant. See, e.g., Haynes v. State, 354 Ark. 514, 527, 127 S.W.3d 456, 463-464 (Ark. 2003) ("Here, the State met its burden to show Haynes's DNA evidence would inevitably have been discovered. The State was required, by statute, to obtain a DNA sample from Haynes before he was released from prison following his conviction and sentence for residential burglary, and there was testimony by Kermit Channell that, even in 1997, blood samples had been taken from *all* prisoners. The evidence of Haynes's DNA match would have been discovered upon Haynes's release from prison following his residential burglary conviction; therefore, the Crime Lab would have obtained its 'hit' on Haynes's DNA at that time, which was well before Haynes was brought to trial on the rape charge on May 9, 2003. Once again, the State eventually would have come legally into possession of his DNA sample, and Haynes, who has not rebutted the presumption discussed above, has not demonstrated how he was prejudiced by the trial court's denial of his suppression motion." (italics in original)); State v. Notti, 316 Mont. 345, 352, 71 P.3d 1233, 1239 (Mont. 2003) ("Section 44-6-102(2), MCA, provides that: '[t]he DNA identification index must include: (a) DNA records for an individual convicted of a felony offense'. Thus, Notti's DNA profile would have been placed on the State's DNA Identification Index and submitted to CODIS, which would have inevitably led to the discovery of a match by either a CODIS computer check or when another Crime Lab employee compared profiles in the 'forensic unknown' database the State's DNA Identification Index."). Therefore, a remand is unnecessary in Appellant's case for

further findings regarding inevitable discovery because the evidence and testimony appearing in the record coupled with the statutory requirements in effect at the time of Appellant's earlier conviction conclusively established Appellant's D.N.A. sample would have inevitably been discovered absent the improper search based on the defective warrant.¹ For the foregoing reasons, the State respectfully asks this Court to reconsider its decision, strike the portion of its opinion regarding State's argument in support of inevitable discovery, rehear the matter, and affirm Jenkins' conviction after finding the D.N.A. evidence would have inevitably been discovered regardless of any error with the search warrant affidavit.

Harmlessness of Any Error

Additionally, the State believes this Court misapprehended the significance of the other evidence presented during trial in concluding the admission of the D.N.A. test results was not harmless. Even without those test results, the State submits the other evidence presented during trial conclusively established Appellant's guilt and rendered any error in the admission of the D.N.A. test results entirely harmless. Because any error in the admission of the D.N.A. test results was harmless, remand to the trial court for further factual findings is unnecessary. Accordingly, the State asks this court to reconsider its decision, rehear the matter, and affirm Jenkins' conviction after finding any error was harmless in light of the other overwhelming evidence of guilt properly admitted during trial.

¹ Although the State submits the statutory requirements conclusively establish Appellant's D.N.A. sample was available through the South Carolina D.N.A. database due to his 2001 conviction, a S.L.E.D. report from the D.N.A. database, which was referenced during oral argument, confirms Appellant's D.N.A. sample was included in the database on April 16, 2001, even if the testimony and statutory requirements left some doubt remaining on the issue. (Exhibit "A" – S.L.E.D. Report). Should this Court choose to do so, the Court can take judicial notice of the existence of the D.N.A. database report confirming the presence of Appellant's D.N.A. sample in the database. See Rule 201(f), SCRE ("Judicial notice may be taken at any time of the proceeding."); see also *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Cl. App. 2011) ("[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable.").

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Thus, when overwhelming evidence of guilt has been presented, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

In the case sub judice, other overwhelming evidence of Appellant's guilt was presented in addition to the D.N.A. analysis results when the significance of the evidence presented is considered in relation to the case as a whole. Initially, the victim identified Appellant as her attacker to law enforcement before Appellant was apprehended, during a show-up shortly after the crime occurred, and during trial without any hesitation whatsoever. (R. p. 23; p. 49; p. 52; p. 99). Thus, the testimony presented to the jury established the victim consistently and unwaveringly identified Appellant as the person who sexually assaulted her from the moment the

crime occurred all the way to trial. Corroborating the victim's testimony, photographs documenting the victim's injuries to her head and body were presented to the jury, and law enforcement personnel testified the victim was "roughed up," hysterical, shaking, crying, and bleeding after the crime. (R. p. 49; p. 98). Furthermore, the testimony established officers recovered the victim's ripped underwear from her home shortly after the crime, and bloodstains were discovered on the victim's sofa. (R. p. 58; p. 63). Additionally, the nurse who examined the victim after the crime testified that the victim's face was swollen, bloody, and bruised, the victim's mouth was cut, the victim's body was bruised, there was semen in the victim's body, and the victim's injuries were consistent with a sexual assault. (R. pp. 110-112; p. 130). Furthermore, in addition to the victim's testimony linking Appellant to the crime, Appellant was linked to the crime through the discovery of his fingerprints inside of the victim's home. (R. p. 71). Collectively, this evidence overwhelming established Appellant's guilt for the crime even without the jury's considerations of the D.N.A. test results.

In reaching a conclusion to the contrary, this Court determined: "[R]emoving the DNA leaves only the victim's credibility to prove two key facts necessary for a conviction: that Jenkins was the person who had sex with her, and that the sex was not consensual." (footnote omitted). However, the evidence presented during trial conclusively established the victim engaged in sexual intercourse with someone and was sexually assaulted based on her numerous injuries coupled with the discovery of semen inside of her body, and Appellant was identified as the perpetrator of the sexual assault through the victim's testimony along with the discovery of Appellant's fingerprints in the victim's home. Notably, the key issue in the case was the victim's credibility, and the D.N.A. test results had no bearing whatsoever on whether the victim's statements that the sex was not consensual were credible. Accordingly, since the case hinged on

the victim's credibility and the D.N.A. test results did not impact that credibility, any error in the admission of the test results was harmless in light of the other overwhelming evidence of Appellant's guilt.

Furthermore, the State submits this Court overlooked the substantial differences between Appellant's case and the case of State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), which this Court relied upon in concluding the error in the admission of the test results was not harmless. In Jennings, hearsay evidence was admitted that improperly bolstered the juvenile victims' claims of sexual abuse. Id. at 480, 716 S.E.2d at 93. After determining the evidence was improperly admitted, the Supreme Court found the evidence could not be harmless because no physical evidence of any kind was presented during trial and because the only evidence of Jennings' guilt was the victims' testimony coupled with the improperly-admitted bolstering evidence. Significantly, unlike Jennings' case, physical evidence was presented in Appellant's case conclusively establishing the victim was sexually assaulted. The officers and medical personnel who interacted with the victim after the crime observed visible injuries to the victim's face and body, and semen was discovered inside of the victim's body. Furthermore, Appellant was linked to the crime through the victim's testimony and, critically, through the discovery of his fingerprints in the victim's home. Therefore, unlike Jennings, Appellant's case did not involve a situation where the improperly-admitted evidence bolstered the only otherwise-unsupported testimony establishing guilt. Instead, the victim's testimony in Appellant's case was corroborated by significant physical evidence linking Appellant to the crime and verifying the details of the victim's testimony. Based on this key distinction from the situation in Jennings, the admission of the D.N.A. test results in Appellant's case was harmless. For this reason, the State believes this Court erred in relying on Jennings in finding the error in

Appellant's could not be considered harmless. For the foregoing reasons, the State asks this Court to reconsider its decision, rehear the matter, and affirm Appellant's conviction after finding any error in the admission of the D.N.A. test results was harmless.

Conclusion

Based on the foregoing reasons coupled with the arguments raised in the Final Brief of Respondent and during oral argument, Respondent respectfully requests that the panel reconsider this matter, vacate the portion of its opinion regarding the State's argument regarding inevitable discovery, and affirm Appellant's conviction and sentence after finding any error in the admission of the D.N.A. analysis results was harmless and the D.N.A. evidence would have inevitably been discovered regardless of any error.

Respectfully submitted,

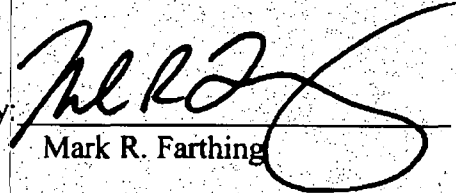
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MARK R. FARTHING
Assistant Attorney General

By:


Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

April 12, 2012

EXHIBIT "A"

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT



Convicted Offender Information

March 30, 2012

CDR Code: 0013

**ASSAULT/BATTERY OF HIGH AND AGGRAVATED
NATURE**

FBI #: 528863T3

SID #: SC00200980

Last Name: Jenkins

Agency #: 274033

First Name: Daniel

Middle Name: Jerome

Date of Birth: 03/17/1957

SSN: [REDACTED]

Race: Black/African American

Sex: Male

Submitting Agency: SCDC

South Carolina Department of Corrections

Date Drawn: 04/13/2001

Phone Number:

Profile in CODIS: Yes

Date Received: 04/16/2001

APP'X 258

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable Deadra L Jefferson, Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL J. JENKINS,

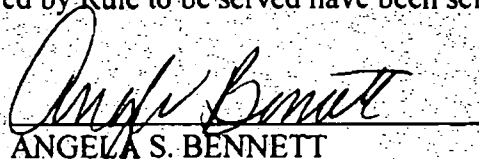
Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Respondent's Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 12th day of April, 2012.


ANGELA S. BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RECEIVED

APR 12 2012

SC Court of Appeals

APP'X 259

RECEIVED

JUN 21 2012

The South Carolina Court of Appeals

ATTORNEY GENERAL
OFFICE

The State, Respondent,

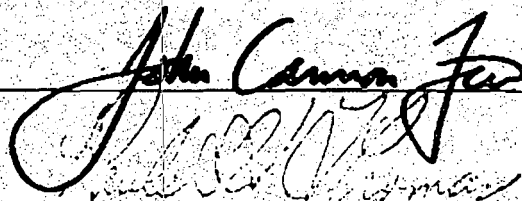
v.

Daniel J. Jenkins, Appellant.

Appellate Case No. 2008-111546

ORDER GRANTING PETITION FOR REHEARING

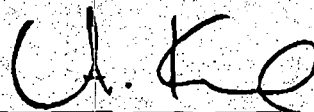
After careful consideration of the State's petition for rehearing, we grant the petition, withdraw opinion No. 4958, filed March 28, 2012, and substitute the attached opinion. The only change to the original opinion is the addition of a new footnote, which appears in the attached opinion as footnote 7. We dispense with oral argument and further briefing.



C.J.



J.



J.

Columbia, South Carolina

cc: Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Senior Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Mark R. Farthing
Solicitor Scarlett Anne Wilson
Appellate Defender Kathrine H. Hudgins

FILED

APP 260

RECEIVED

JUN 21 2012

ATTORNEY GENERAL
OFFICE

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Daniel J. Jenkins,

Appellant.

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

Opinion No. 4958
Heard December 6, 2011 – Filed March 28, 2012
Withdrawn, Substituted, and Refiled June 20, 2012

REMANDED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan M. Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Attorney General Mark R. Farthing, all of Columbia;
and Solicitor Scarlett Anne Wilson, of Charleston, for
Respondent.

FEW, C.J.: Daniel Jenkins appeals his conviction for criminal sexual conduct in the first degree. Jenkins argues the trial court erred in denying his motion to suppress DNA test results because the affidavit offered in support of the search warrant for samples of his DNA did not meet the constitutional and statutory requirements for issuance of the warrant. We agree. We remand the case to the trial court for a factual determination of whether the inevitable discovery doctrine precludes application of the exclusionary rule in this case.

I. Facts and Procedural History

The victim testified that on the evening of April 5, 2006, she came home from work, drank several beers, ordered a pizza, and fell asleep on her couch. She awoke approximately two hours later to a knock at the door. The victim recognized the man at her door as "Black," a man she sometimes saw at a neighborhood grocery store called Jabbers. Black frequently hung around outside Jabbers, and she occasionally said hello to him.

According to the victim, she answered the door, and Black asked if she wanted to get a beer with him. After the victim declined, Black asked her to put away her two dogs. She put away the dogs, and Black entered her house. The two of them sat on the victim's couch while Black smoked a cigarette, using a glass candle holder as an ashtray. Black then demanded she show him her genitals or else he would kill her. A struggle ensued in which Black hit the victim in the head and face multiple times with the candle holder, removed her pants and underwear, and raped her. Black told the victim "don't tell anyone or I will kill you," and left.

The victim explained that because she could not find her cordless phone, she ran down the street looking for help. Near Jabbers, the victim encountered a woman who asked her what happened. At that moment, Black approached the victim, took her by the arm, and guided her to a hose so she could wash blood off of her face. Black then handed the victim her cordless phone. She ran home and called 911.

When the police arrived at the victim's house, she described the incident and gave them the name "Black." Within thirty minutes, police located Jenkins in an abandoned building across the street from Jabbers. The police brought the victim to the store parking lot, where she identified Jenkins as the man who raped her. After the victim identified Jenkins, she underwent a rape examination. The nurse who performed the examination observed a large amount of fluid in the victim's vagina, and she took evidence swabs of the victim's vagina and other parts of her body.

The next day, the police sought a search warrant for samples of Jenkins' blood and hair. A detective who responded to the victim's 911 call prepared the affidavit in support of the warrant. In the affidavit, the detective wrote only the following:

On 4-5-06 at approx. 2230hrs while at [victim's address], the subject Daniel Jerome Jenkins (BM, dob 6-17-60) did enter the victim's residence and threatened to kill her if she did not comply with his demands to perform oral sex on her. The victim attempted to fight the subject, however he overpowered her by striking her in and about her face using a glass candle holder. The subject then penetrated the victim's vagina with his tongue and penis. The DNA samples of blood, head hair, and pubic hair will be retrieved from the subject by a trained medical personnel in a medical facility. This collection of these sample [sic] will be conducted in a noninvasive manner.

The detective did not supplement the affidavit with oral testimony. The magistrate read the affidavit and signed the warrant. The police executed the warrant, obtaining blood and hair samples from Jenkins.

SLED analyzed Jenkins' samples and the swabs taken from the victim. A SLED forensic DNA analyst found semen on several swabs, including the vaginal swab. The analyst developed a DNA profile from the vaginal swab and compared it to a DNA profile developed from Jenkins' samples. The

profiles matched, with a one-in-8.6 quintillion¹ chance the semen came from an unrelated person.

At trial, the victim testified in the detail set out above that Jenkins raped her. Later in the trial, the State called the DNA analyst to testify to the results of the DNA comparison. After the trial court found the warrant was valid and denied Jenkins' motion to suppress, the witness testified to the results of the comparison and its degree of certainty.

The jury found Jenkins guilty. Because he had prior convictions for criminal sexual conduct in the first degree and carjacking, both "most serious offense[s]" under section 17-25-45(C)(1) of the South Carolina Code (Supp. 2011), the trial court imposed a mandatory sentence of life in prison with no possibility of parole. See S.C. Code Ann. § 17-25-45(A)(1)(a) (Supp. 2011).

II. The Validity of the Search Warrant

A search warrant allowing the government to obtain evidence from a suspect's body is a search and seizure under the Fourth Amendment and, therefore, must comply with constitutional and statutory requirements. State v. Baccus, 367 S.C. 41, 53, 625 S.E.2d 216, 222 (2006). To secure a warrant for the acquisition of such evidence, the State must establish the following elements: (1) probable cause to believe the suspect committed the crime; (2) a clear indication that relevant evidence will be found; and (3) the method used to secure it is safe and reliable. 367 S.C. at 53-54, 625 S.E.2d at 223 (quoting In re Snyder, 308 S.C. 192, 195, 417 S.E.2d 572, 574 (1992) (per curiam)); see also S.C. Code Ann. § 17-13-140 (2003). The magistrate must also consider the seriousness of the crime and the importance of the evidence to the investigation, weighing "'the necessity for acquiring involuntary nontestimonial identification evidence against constitutional safeguards prohibiting unreasonable bodily intrusions, searches, and seizures.'" Baccus, 367 S.C. at 54, 625 S.E.2d at 223 (quoting Snyder, 308 S.C. at 195, 417 S.E.2d at 574).

¹ The number representing one quintillion is a one followed by eighteen zeros. Webster's New World College Dictionary 1178 (4th ed. 2008).

We find the affidavit, which was the only information presented to the magistrate in support of the warrant application, does not meet the requirements of Baccus. See State v. Arnold, 319 S.C. 256, 259, 460 S.E.2d 403, 405 (Ct. App. 1995) (per curiam) (stating a court reviewing the validity of a warrant may consider only information presented to the magistrate who issued the warrant). In particular, we find the affidavit does not demonstrate that the police had probable cause to believe that Jenkins raped the victim or that Jenkins' DNA was relevant to the investigation. Therefore, we hold the trial court erred in finding the warrant was valid.

A. Probable Cause that Jenkins Committed the Crime

A probable cause determination requires a magistrate to "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before her, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that . . . evidence of a crime will be found in a particular place." State v. Herring, 387 S.C. 201, 212, 692 S.E.2d 490, 495-96 (2009) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). On review, our duty is to ensure that the magistrate had a substantial basis for concluding probable cause existed. 387 S.C. at 212, 692 S.E.2d at 495; see also State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) (stating a reviewing court should give great deference to a magistrate's determination of probable cause). Considering the totality of the circumstances, we find the affidavit in this case did not provide the magistrate a substantial basis for concluding there was probable cause that Jenkins committed the crime.

First, the affidavit must set forth facts as to why the police believe the suspect whose DNA is sought is the person who committed the crime. See State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990) (finding an affidavit defective because it "sets forth no facts as to why police believed Smith" committed the robbery). Applying that requirement in Baccus, our supreme court found the affidavit defective and therefore found there was an insufficient basis for a finding of probable cause. 367 S.C. at 52, 625 S.E.2d at 222. The court stated: "This affidavit fails to set forth any facts as to why police believed Appellant committed the crime. The language in the affidavit

lacks [specificity] and contains conclusory statements. Given the totality of the circumstances, we conclude the issuing magistrate did not have a substantial basis to find probable cause." Id. Similarly, the affidavit in this case lacks specificity and contains nothing more than conclusory statements. "The affidavit must set forth particular facts and circumstances underlying the existence of probable cause to allow the magistrate to make an independent evaluation of the matter." 367 S.C. at 50-51, 625 S.E.2d at 221 (citing Franks v. Delaware, 438 U.S. 154, 165 (1978)). The affidavit in this case fails to meet the requirement of showing why the police believed Jenkins committed the crime.

Second, the affidavit does not set forth the source of the facts alleged in it. In Smith, the defendant sought to suppress a knife seized from his hotel room that was allegedly used in a robbery. 301 S.C. at 372, 392 S.E.2d at 183. The affidavit supporting the search warrant stated that the defendant committed the robbery, he had been staying in the hotel room, "and there is every reason to believe the weapon and clothes used in the robbery will be located in the room." Id. The affidavit also stated "[t]his information was confirmed in person by Sgt. Sherman" Id. Our supreme court found the affidavit "defective on its face," in part because "[a]lthough the record reveals that police relied upon information from an informant, there is no indication that this fact was made known to the magistrate" 301 S.C. at 373, 392 S.E.2d at 183. Similarly, the affidavit in this case is defective because it contains no indication as to where the detective obtained the information.

Nevertheless, the State argues that because this case involves a sex crime, the magistrate could reasonably have inferred the victim was the source of the information. We disagree. The law does not allow the State to justify a bodily intrusion on the possibility that a magistrate made a correct inference as to the source of the information in the affidavit. Rather, "[m]ere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient." Smith, 301 S.C. at 373, 392 S.E.2d at 183. Moreover, the complete absence of a source for any of the information makes a variety of scenarios possible. For example, the detective could have pieced together the information from other officers, the victim's neighbors, or even an anonymous tip. This is precisely what the law forbids a magistrate from doing. The magistrate's "action cannot be a mere

ratification of the bare conclusions of others.'" Id. (quoting Gates, 462 U.S. at 239).

Third, the affidavit does not contain even a conclusory assertion that the information or its source is reliable. See Gates, 462 U.S. at 238 (stating the circumstances a magistrate must consider include the "veracity" of the persons supplying the information on which the warrant is based). "Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached magistrate, as the Constitution requires, but instead, by a police officer engaged in the often competitive enterprise of ferreting out crime . . ." State v. Johnson, 302 S.C. 243, 248, 395 S.E.2d 167, 169 (1990) (citation and quotation marks omitted).

Viewing these deficiencies together and considering the totality of the circumstances, we find the police did not provide the magistrate a substantial basis on which to find probable cause to believe Jenkins committed this crime.

B. Clear Indication that Jenkins' Samples Are Relevant

The information presented to a magistrate to obtain a warrant for bodily intrusion must contain "a clear indication that relevant evidence will be found." Baccus, 367 S.C. at 53-54, 625 S.E.2d at 223. The trial court stated: "Clearly DNA or genetic material is . . . evidence relevant to the question of the suspect's guilt on the crime of criminal sexual conduct in the first degree." However, this statement is true only if the police have DNA from the victim or the crime scene to which they can compare the suspect's DNA. Accordingly, to show that a suspect's DNA is relevant under the second element of Baccus, the State must show there is other DNA evidence in the case to which it can be compared, or in some other manner clearly indicate the relevance of the DNA sought.

The affidavit in this case does not contain any indication as to whether the police had other DNA evidence to which Jenkins' DNA profile could be

compared.² Cf. State v. Chisholm, 395 S.C. 259, 266-68, 717 S.E.2d 614, 617-18 (Ct. App. 2011) (affirming an order requiring defendant to provide a DNA sample where the State presented evidence to the magistrate that the victim's clothing contained the DNA of an unidentified male); State v. Sanders, 388 S.C. 292, 298, 696 S.E.2d 592, 595 (Ct. App. 2009) (finding the second Baccus element met because the State showed it could compare defendant's blood sample to blood found on a victim's shirt); State v. Simmons, 384 S.C. 145, 176, 682 S.E.2d 19, 35-36 (Ct. App. 2009) (affirming an order requiring defendant to provide a palm print because it could be compared to a palm print lifted from the car he was accused of stealing). Thus, the affidavit failed to clearly indicate the relevance of Jenkins' DNA.

III. Whether the Trial Court's Error Was Harmless

The State argues any error in admitting the DNA comparison results was harmless in light of other evidence of Jenkins' guilt. "To deem an error harmless, this court must determine 'beyond a reasonable doubt the error complained of did not contribute to the verdict obtained.'" State v. Fonseca, 383 S.C. 640, 650, 681 S.E.2d 1, 6 (Ct. App. 2009) (quoting Taylor v. State, 312 S.C. 179, 181, 439 S.E.2d 820, 821 (1993)), aff'd, 393 S.C. 229, 711 S.E.2d 906 (2011); see also Baccus, 367 S.C. at 55, 625 S.E.2d at 223 ("When guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, this Court will not set aside a conviction for insubstantial errors not affecting the result."). In Baccus, the supreme court found the trial court's error in admitting the DNA to be harmless. 367 S.C. at 56, 625 S.E.2d at 224. As the court indicated, however, the other evidence in the case conclusively proved the defendant guilty.

The State presented the testimony of [the victim's friend] who overheard Appellant tell the victim he was going to kill her and who overheard a

² The detective who prepared the affidavit admitted that when she prepared it, she did not know the results of the victim's rape examination.

pop and clicking sound. Additionally, the State presented evidence that Appellant's fingerprints matched fingerprints on the window sill of the broken window in the victim's bedroom. Also, [a DNA analyst] testified the blood sample collected from Appellant on the night of his arrest matched the blood found on the swabs and cuttings from the door, blind, and sheet in the victim's house. Therefore, the blood evidence drawn pursuant to the court order which should have been excluded was cumulative.

367 S.C. at 55, 625 S.E.2d at 223-24.

In Baccus, the DNA match to the defendant would have been in evidence regardless of the trial court's ruling on the motion to suppress. The admissible DNA evidence, combined with the friend's testimony she heard a gunshot immediately after she heard the defendant tell the victim he was going to kill her, "conclusively" proved the defendant guilty and left no rational conclusion but that he was guilty of murder. 367 S.C. at 55-56, 625 S.E.2d at 224. Without the DNA in this case, on the other hand, the State would have been forced to rely heavily on the credibility of the victim. Jenkins' fingerprint in the victim's home proved he was there, the presence of fluids in her body proved someone had sex with her, and the facial injuries proved someone violently assaulted her. However, removing the DNA leaves only the victim's credibility to prove two key facts necessary for a conviction: that Jenkins was the person who had sex with her,³ and that the

³ The State suggests that Jenkins argued the sex was consensual and thus conceded he had sex with the victim. We disagree. Jenkins' counsel cross-examined witnesses to elicit evidence that many of the victim's injuries were consistent with consensual sex, argued this evidence to the jury, argued that "all [the DNA] can do is tell you they had sex," and further argued several points supporting an inference the sex was consensual. We do not believe this rises to a concession. Rather, counsel is entitled to argue to the jury that the State has failed to prove an essential element of the crime—the sex was not consensual—without conceding the occurrence of sex.

sex was not consensual. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 95 (2011) (stating "[b]ecause the [victim]'s credibility was the most critical determination of this case, we find the admission of the written reports was not harmless"), reh'g denied, (Oct. 19, 2011); 394 S.C. at 482, 716 S.E.2d at 96 (Kittredge, J., concurring) (stating "it may be a rare occurrence for the State to prove harmless error . . . in these circumstances").⁴ We cannot find beyond a reasonable doubt that the DNA comparison results in this case, which the DNA analyst testified had a one-in-8.6 quintillion likelihood of error, did not contribute to or affect the verdict.⁵

IV. Inevitable Discovery of Jenkins' DNA

As an additional sustaining ground, the State argues that even if the search was illegal because of the defective affidavit, the DNA evidence was admissible under the inevitable discovery doctrine. The inevitable discovery doctrine is an exception to the exclusionary rule which requires the State to establish by a preponderance of the evidence that the same evidence seized unlawfully would have been discovered inevitably by lawful means. See State v. Brown, 389 S.C. 473, 483, 698 S.E.2d 811, 816 (Ct. App. 2010), cert. granted, (Dec. 15, 2011); see also Nix v. Williams, 467 U.S. 431, 447 (1984) (holding evidence may be admitted despite a violation of the Fourth Amendment "if the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of

⁴ Our finding that the error was not harmless is based on our analysis of the facts of this individual case, not based on any categorical rule. See Jennings, 394 S.C. at 482, 716 S.E.2d at 95-96 (Kittredge, J., concurring), and 394 S.C. at 483, 716 S.E.2d at 96 (Toal, C.J., dissenting) (collectively overruling Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), to the extent Jolly imposes a categorical or per se rule regarding harmless error).

⁵ We acknowledge the DNA evidence does not bear directly on the question of whether the sex was consensual. However, the DNA corroborated the victim's testimony that it was Jenkins who had sex with her. Because the DNA bolstered her credibility on this important point, we cannot say the DNA did not contribute to her credibility as to whether the sex was consensual.

any overreaching by the police"). When the doctrine applies, the evidence will not be suppressed despite the fact it was obtained pursuant to an illegal search. Brown, 389 S.C. at 483, 698 S.E.2d at 816.

The State first argues that because probable cause did in fact exist, the inevitable discovery doctrine applies. We disagree. While the police could have presented evidence to the magistrate sufficient to establish probable cause, that does not satisfy the requirement that the State prove it would inevitably have discovered Jenkins' DNA. As the Fourth Circuit has stated: "The inevitable discovery doctrine cannot rescue evidence obtained via an unlawful search simply because probable cause existed to obtain a warrant when the government presents no evidence that the police would have obtained a warrant. Any other rule would emasculate the Fourth Amendment." United States v. Allen, 159 F.3d 832, 842 (4th Cir. 1998).⁶

The State also argues that discovery of Jenkins' DNA was inevitable because the State DNA Identification Record Database Act required that Jenkins' DNA be tested for inclusion in the State DNA database. See S.C. Code Ann. § 23-3-610 (2007) (establishing State DNA database); § 23-3-620(A) (Supp. 2011) (providing a person arrested for a felony must provide a DNA sample); § 23-3-620(B) (Supp. 2011) (providing a prisoner may not be released until he provides a DNA sample); § 23-3-640 (2007) (requiring all DNA samples taken pursuant to the Act be submitted to SLED for testing and secure storage); § 23-3-650(A) (Supp. 2011) (permitting SLED to make samples available to local law enforcement and solicitor's offices "in furtherance of an official investigation of a criminal offense"). The State contends on appeal that Jenkins was tested pursuant to the Act because of his prior conviction and imprisonment for criminal sexual conduct, and his DNA profile is included in the State DNA database. However, because the trial

⁶ Allen involved a situation where the police never sought a warrant in the first place. See 159 F.3d at 834-37. The difference between that situation and this case, where the police obtained a defective warrant, is immaterial as to the inevitable discovery doctrine. In both situations, allowing the doctrine to excuse the requirement of a valid warrant simply because the State can later establish that probable cause existed would render the Fourth Amendment meaningless.

court ruled the search was legal, the State never had an opportunity to present evidence to prove its contention.⁷

The purpose of the exclusionary rule "is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." State v. Sachs, 264 S.C. 541, 560-61, 216 S.E.2d 501, 511 (1975) (quoting Elkins v. United States, 364 U.S. 206, 217 (1960)). However, the exclusionary rule was not designed to apply to every violation of the Fourth Amendment. See Weston, 329 S.C. at 293, 494 S.E.2d at 804 ("Suppression is appropriate in only a few situations . . ."); State v. McKnight, 291 S.C. 110, 113, 352 S.E.2d 471, 473 (1987) ("Exclusion of evidence is not the only means available to insure that warrants are properly issued." (citing Sachs, 264 S.C. at 556, 216 S.E.2d at 509)). In Sachs, our supreme court observed "[t]he exclusionary rule is harsh medicine," and "[e]xclusion should be applied only where deterrence is clearly subserved." 264 S.C. at 566, 216 S.E.2d at 514. When the State has met its burden of proving it inevitably would have discovered the evidence, the "deterrence" purpose of the exclusionary rule is not "clearly subserved," id., and "there is no rational basis to keep that evidence from the jury in order

⁷ The State's petition for rehearing includes an uncertified copy of a printout from SLED indicating the State DNA database contains Jenkins' DNA profile. The printout has not been authenticated under Rule 901(a), SCRE, is not part of the record on appeal, and contains no indication a DNA expert could actually use the profile. The State's contention that the printout proves its inevitable discovery claim misses the point of the inevitable discovery doctrine. The issue as to inevitable discovery is not whether a state agency separate from the prosecutor has Jenkins' profile in its database. Rather, the doctrine places on the State the burden of proving that the law enforcement agencies investigating or the solicitor's office prosecuting Jenkins inevitably would have obtained Jenkins' genetic profile from this database and that the lawfully-obtained profile could be compared to the profile developed from the semen found in the victim. Standing alone, the printout establishes only that the solicitor's office or investigating agency might have obtained the profile from the State DNA database. The inevitable discovery doctrine requires the State to establish it inevitably would have obtained it and could have used it.

to ensure the fairness of the trial proceedings." State v. Spears, 393 S.C. 466, 482, 713 S.E.2d 324, 332 (Ct. App. 2011) (quoting Nix, 467 U.S. at 447). Therefore, the inevitable discovery doctrine represents an important policy determination that the "harsh medicine" of excluding probative evidence should be avoided when doing so does not advance the objectives of the exclusionary rule by deterring violation of constitutional rights. See James v. Illinois, 493 U.S. 307, 312 (1990) (noting the basis of exceptions to the exclusionary rule includes "the likelihood that admissibility of such evidence would encourage police misconduct").

In this particular case, we find it appropriate to remand to the trial court for an evidentiary hearing as to whether the inevitable discovery doctrine applies. The issue is presented to us on appeal from the trial court's denial of Jenkins' suppression motion on the basis that the search was legal. Therefore, the State did not need to present evidence in support of the inevitable discovery doctrine to proceed with the trial. While it would have been possible for the State to make a record on this issue, doing so would have been impractical. As our supreme court has explained: "It would be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments It also could violate the principle that a court usually should refrain from deciding unnecessary questions." l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). Given the important policy considerations behind the exclusionary rule and the inevitable discovery doctrine, we believe the determination of whether the illegally seized evidence of Jenkins' DNA must be suppressed should not be made by this court on a blank record. Rather, the determination should be made first by the trial court after an evidentiary hearing.⁸ If the trial court determines on remand that the inevitable discovery

⁸ The appellate courts of South Carolina have addressed the inevitable discovery doctrine in only three published decisions. In two of the cases, the factual record before the appellate court was sufficient to enable the court to determine whether the State met its burden of proof. Compare Spears, 393 S.C. at 481, 713 S.E.2d at 332 (reviewing the trial court's ruling that the State met its burden of proving inevitable discovery), and State v. McCord, 349 S.C. 477, 485 n.2, 562 S.E.2d 689, 693 n.2 (Ct. App. 2002) (noting the police would have inevitably discovered defendant's blood because they had a

doctrine applies, the conviction must be affirmed. If the trial court determines the doctrine does not apply, the illegally seized evidence must be suppressed, and Jenkins must receive a new trial.

V. Conclusion

We find the trial court erred in finding the search warrant for samples of Jenkins' DNA was valid. The case is **REMANDED** for an evidentiary hearing on the applicability of the inevitable discovery doctrine and a determination of whether the illegally seized evidence should have been suppressed.

THOMAS and KONDUROS, JJ., concur.

search warrant for a sample of it), with Brown, 389 S.C. at 483-84, 698 S.E.2d at 817 (noting standard procedures would allow for inventory search and thus discovery of the drugs, but finding the State did not present evidence it would have followed such a procedure).