

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes III, Circuit Court Judge

RECEIVED

OCT 29 2015

S.C. Supreme Court

MARK ALLEN ELLIOT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000949

A P P E N D I X

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1 And then he had traveled away from
2 that area. And -- And the next incident that happened
3 was when he came into contact with the law enforcement.

4 Did he ever -- uh -- indicate to
5 you that she was in the car when the car was pulled over?

6 A. He -- I apologize. He did.

7 But the initial story I got was
8 that she was with him the whole time; and that when he
9 left his vehicle from the driver's side, she left his
10 vehicle from the passenger side and ran in a different
11 direction.

12 I apologize.

13 Q. And what did you do while you out on the scene in
14 order to find BE the victim in this case?

15 A. Well, when you seen the tape, you'll see that after
16 that initial questioning, I -- I leave again.

17 At that point I had sent some
18 officers to some areas.

19 One would be the -- the swing
20 bridge in -- in the Cherry Grove area.

21 The -- uh -- bridge operator's
22 phone was not working. So our dispatcher couldn't
23 contact him by phone.

24 So I wanted to make contact with
25 him and see if he had seen a young lady; and if not, to

1 advise him to -- to make contact with us in some form or
2 fashion if he did see her.

3 Uh -- We also went -- I don't know
4 if I -- north by -- by general direction. I don't know
5 if it's truly north; but north towards Sea -- Seacoast
6 Medical Center to check with them to make sure they
7 hadn't seen her and give her the description also.

8 Uh -- I'd also got on my public
9 address system in my vehicle and called out her name to
10 see if maybe she was in the wooded areas in the general
11 area; and see if I could get her to come out.

12 I also advised all our officers
13 still working in the city to be on the lookout for her;
14 and Horry County Police do the same.

15 Q. Okay. So the initial crimes was right there in
16 that area?

17 A. Yes ma'am.

18 MS. LIVESAY:

19 Your Honor, can I approach this
20 witness?

21 THE COURT:

22 Yes ma'am.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Lieutenant, you recognize what I'm showing you now?

25 A. Yes ma'am. That appears to be a -- basically a GIF

1 type map of -- uh -- the City of North Myrtle Beach.

2 Q. Okay. And where you found that defendant, is it
3 located on this map?

4 A. The -- The spot where the defendant was found is
5 located; yes ma'am.

6 Q. Now, is this the vicinity that you were --

7 THE COURT:

8 Ms. Livesay, you need to turn to
9 where you --

10 MS. LIVESAY:

11 I'm sorry. I --

12 THE COURT:

13 -- where your --

14 MS. LIVESAY:

15 -- was going to ask him to step
16 down.

17 THE COURT:

18 That would --

19 MS. LIVESAY:

20 Is that okay?

21 THE COURT:

22 That would be better.

23 MS. LIVESAY:

24 Thank you.

25 THE COURT:

1 Uh -- The jury can't see what
2 you're referring to there.

3 (WHEREUPON: The witness steps
4 down in front of the jury rail.)

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. Okay. Go ahead.

7 A. If -- If I may -- may point out -- uh --

8 THE COURT:

9 Counsel, you can move around at
10 your leisure.

11 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

12 Q. Where Ms. Knowles is at, so she can see.

13 A. The -- The red dot here is -- is where the young
14 lady, Ms. BE was finally located.

15 Uh -- The gas station here on --
16 on South Carolina 9, is where I was at with Mr. Elliott.

17 Uh --

18 Q. Now what vicinity on this map -- immediate vicinity
19 -- were you looking for her at?

20 A. Uh -- As you can see, this is Sea Mountain Highway,
21 and this is the section I was speaking of where South
22 Carolina 9 and Sea Mountain Highway merge.

23 Uh -- Up north of here just a ways
24 of course, is -- is Seacoast Medical Center.

25 Uh -- This would be -- uh -- the

1 swing bridge where the bridge keeper was at.

2 Uh -- All through the, we were --
3 we were looking.

4 Uh -- I had county officers and
5 one of my officers looking in this area; and of course
6 inside the city limits of North Myrtle Beach here; and
7 basically centered in the northern area of the city,
8 officers were -- were looking for her also.

9 Q. Okay. Now, what is this area called down here?

10 A. Uh -- This section, basically from Sea Mountain
11 Highway as it runs down north of that section -- I know
12 it's hard to see on here -- is what's known as Cherry
13 Grove or Cherry Grove beach.

14 Uh -- And this area back towards
15 the end, you probably heard the term "The Point" -- is
16 what we refer to as The Point just because it's a point
17 there at the end of the -- the boulevard.

18 Q. Okay. And the map's hard to look at. Is there --
19 uh -- The Point, is there any way -- is this -- is this
20 the Ocean Boulevard here?

21 A. Yes ma'am. The -- The last yellow line closest to
22 this dark part would be the Atlantic Ocean at Ocean
23 Boulevard.

24 And here, you can see it ended --
25 that's just Ocean Boulevard right there where it dead

1 ends.

2 Q. Okay. So you can't go any further --

3 A. No ma'am.

4 Q. -- down that way?

5 A. The ocean actually comes in there and turns into a
6 marsh in behind there.

7 Q. Okay. So once you get down here, the only way out
8 is to actually come back out this way?

9 A. You -- You have to turn around and come back out;
10 yes ma'am.

11 Q. Okay. Now, your people were looking for her in
12 this area.

13 Is that right?

14 A. Yes ma'am; all up in the original area where the
15 stop was -- you know -- clearly down to the bridges of --
16 uh -- of the waterway was the main focus.

17 Q. 'Cause this is kind of the immediate vicinity from
18 the beach; isn't it?

19 A. Yes ma'am. We were still working under the -- the
20 information of she was here --

21 Q. And jumped out of the car?

22 A. -- and she ran on foot at this point in time.

23 Q. Okay. And you got that information from who?

24 A. From -- From, basically, Mr. Elliott.

25 Q. Okay. Now about how much distance are we talking

1 about from this BP to this area down here -- this Cherry
2 Grove area at The Point?

3 A. I -- I have not measured that. I --

4 Q. Are we talking one mile?

5 A. Oh, no ma'am. Uh -- This is probably from this
6 point to Sea Mountain Highway is probably closer to two
7 miles.

8 Q. Okay. Looking at this scale down here, would that
9 help you?

10 A. Yes ma'am, I think it would. Okay, that might be 2
11 miles there, so say 5 to 6 miles depending on the
12 curvatures of the road.

13 Q. Okay. Now -- uh -- when -- How long were you out
14 there with the defendant before you found out she was
15 found?

16 A. Probably 30 minutes.

17 Q. Okay. So -- uh --

18 A. That's me, personally, had been there 30 minutes.

19 Q. Okay. And that's when he was telling you that she
20 had jumped out of the car?

21 A. Yes ma'am.

22 Q. Okay. So if that were true, she would have done --
23 she would have had to make it all away from here down
24 here -- here -- over here?

25 A. Yes ma'am.

1 Q. Is that right? In about 30 minutes?

2 A. Uh -- Probably from the time she would've exited the
3 vehicle that was true, about 40 minutes; because I wasn't
4 directly at -- at this moment that they had left the
5 vehicle.

6 There was probably about 10
7 minutes in between that point and my actually getting to
8 the vicinity.

9 Q. Okay. And y'all had officers all along in here
10 looking for her?

11 A. Yes ma'am.

12 Q. Did any of those ever find her?

13 A. No ma'am.

14 Q. Okay. The officer that found her, was he even
15 looking at this vicinity?

16 A. No ma'am, he was not.

17 Q. Okay. And where -- where was she found,
18 ultimately?

19 A. Uh -- Well this -- and I don't know if you're
20 familiar -- it pretty much ends at 60th Avenue North is
21 the last cross street that comes to the boulevard.

22 She was at about 57th Avenue
23 North, about three blocks south of that point, if you
24 will.

25 MS. LIVESAY:

1 Okay. Thank you Lieutenant.

2 (Gestures for the witness to return to the stand.)

3 WHEREUPON: The witness went back
4 and again took the witness stand.)

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. Now, the road that the defendant was on when he was
7 pulled, where does that road lead to?

8 A. When -- When the -- the stop was actuated?

9 Q. Yes.

10 A. It would have been US Highway 17 in the City of
11 North Myrtle Beach.

12 And of course they -- they went
13 over, again, what we call the -- the big bridge.

14 And if you're familiar with the
15 area, you can stay on US Highway 17 which would take you
16 along -- more along the coast going into North Carolina,
17 or you can stay on South Carolina 9, which takes you more
18 inland going up towards Conway.

19 Uh -- They of course merged left
20 and went up Highway 9 and ended up at that gas station.

21 And Highway 9 continues on towards
22 Loris and out towards, I guess, Marion County would be
23 where you are heading.

24 Q. So there is no doubt that road leads outside of
25 North Myrtle Beach?

1 A. Yes ma'am. There's -- There's no way that you could
2 stay on road and ever get your way back into North Myrtle
3 Beach without making a complete U-turn and coming back
4 the same route.

5 Q. Okay. And Ocean Boulevard in that area that she
6 was found in, if you had kept walking, would have just
7 been a dead end?

8 A. Yes ma'am. That's -- That's -- From Sea Mountain
9 Highway north of -- of that road is only three roads
10 starting out, down to two, and then down to one.

11 And those three, two, and one,
12 roads are -- are landlocked, kind of like a peninsula
13 between the Atlantic Ocean, the inlet, and the marshland.

14 So once you turn left to go north
15 on Sea Mountain Highway you're in a very small area that
16 you're stuck in and would have to make a U-turn to come
17 back out.

18 Q. Now are you familiar with -- uh -- where Hill --
19 South Hillside is in North Myrtle Beach?

20 A. Yes ma'am.

21 Q. Okay. And could you point that out on this map?

22 A. Yes ma'am.

23 Q. Thank you.

24 WHEREUPON: The witness returns to
25 a point in front of the jury rail to illustrate for the

1 jury.

2 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

3 Q. Where is that on this map?

4 A. Yeah. I know again, it's kind of hard to tell; but
5 it will be 1, 2, 3, 4, 5 streets up from -- from the
6 Boulevard; and it runs basically -- it runs basically the
7 length of what we call Crescent Beach.

8 Q. So that's off of the Boulevard.

9 A. Yes ma'am, about 5 blocks off the Boulevard.

10 Q. Okay. Now are you familiar with about how far
11 we're talking from this area and Hillside Drive to that
12 area near 57th?

13 About how far are we talking?

14 A. Probably about five -- five or six miles.

15 Q. Okay.

16 A. Again, depending on a straight line or curvature of
17 the road.

18 Q. Okay. So we're talking at least probably five or
19 six miles from the starting point to this point down
20 here?

21 A. Yes ma'am.

22 Q. Okay. Now, as far as these roads in here go, these
23 are all roads that are still considered in North Myrtle
24 Beach?

25 Is that correct?

1 A. Yes -- Yes ma'am.

2 Q. Okay. And once we cross over a long in here
3 (indicating) we've actually left what we consider Myrtle
4 Beach and gone into the Cherry Grove type area?

5 Is that right?

6 A. Well -- Well, basically if you use the Waterway as a
7 dividing line to the Atlantic Ocean, everything you see
8 on this map -- all of this is in the City of North Myrtle
9 Beach.

10 Q. Okay.

11 A. And of course years ago this city was separate from
12 the beach and we still called those names: Cherry Grove,
13 Ocean Drive, Crescent Beach, Atlantic Beach, and Wendy
14 Hill.

15 Q. Okay.

16 A. And -- And we still refer to those names because
17 years ago that was -- those were city names; but now it's
18 really all North Myrtle Beach.

19 MS. LIVESAY:

20 Thank you, Lieutenant.

21 WHEREUPON: The witness again
22 resumes the witness stand.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Now Uh -- you said earlier that you sent out
25 officers at different points in order to help locate her?

1 A. Yes ma'am.

2 Q. Did you do anything else while you were on the scene
3 in order to try to find BE that night?

4 A. Just -- Just the search for her by Horry County and
5 our agency -- uh -- going to the businesses that were
6 open to check with them to see if they had seen her; and
7 then, to give the description in case they did come in
8 contact with her.

9 Q. When you're out there, did you ever try to locate --
10 uh -- a way to access her or anything of that nature?

11 A. No --

12 Q. At that point, did you have a phone number or
13 anything to help access her?

14 A. Uh -- We -- We didn't -- uh -- initially. But we
15 were -- we did have officers with the two young lads that
16 were with BE

17 Uh -- We found out that she did
18 have a cell phone. So we were going to attempt to make
19 contact by cell phone.

20 We obtained that number from -- I
21 don't know which of the two -- or both -- the two young
22 lads that were -- were there at the scene.

23 That number was transferred from
24 those officers to the Sergeant that was working that
25 night that was at the scene with me.

1 Uh -- He was going to call that
2 number. And when he called that number, a phone rang in
3 -- in the vehicle -- the suspect vehicle that was at the
4 scene.

5 Uh -- Again, as you would have
6 seen on the -- the tape, the suspect vehicle from when it
7 was parked, the driver's side door was left open.

8 And -- you know -- And vehicles on
9 the driver's doors and passenger doors, there's a little
10 compartment is there so you can store things in.

11 That's where the ringing was --
12 was coming from.

13 A county officer brought that to
14 my attention.

15 Uh -- We answered the phone to
16 find that Sergeant Senter -- a Sergeant that was on my
17 shift that night -- was at the other end of the phone.

18 He was calling that number in
19 hopes of contacting BE

20 But we found that the phone was in
21 the vehicle.

22 Q. Okay. So at that point you had her cell phone?

23 A. Yes ma'am.

24 Q. Okay. And you had gained her cell phone from the
25 defendant's vehicle?

1 A. Yes ma'am.

2 Q. Okay. And what area of the vehicle exactly did you
3 get it from?

4 A. The driver's side door. The storage compartment in
5 the driver's side door.

6 Q. Okay. When you talked to him, did he ever say that
7 she was driving the car?

8 A. No ma'am, he did not.

9 Q. Did he ever tell you who was driving the car?

10 A. He did, ma'am. He said that he was the driver of
11 the vehicle.

12 Q. And he ever tell you who -- if there was anybody
13 else in the car with him and her?

14 A. Uh -- Initially, through the majority of the
15 conversation or interview, he said that the young lady --
16 and he named her as BE -- was in -- in the
17 passenger seat.

18 He said of course at the beginning
19 that as he stopped and exited the vehicle and ran from
20 the driver's side, she exited from the passenger side.

21 Q. Okay. Uh -- Did you talk to him further about
22 where to locate her?

23 A. I -- I did. That was -- of course was -- was my
24 main concern. So that was the main focus of -- of -- uh
25 -- the majority of my questions was, where was BE

1 at?

2 Uh -- Through the majority of the
3 interview -- uh -- and I believe you -- you saw that --
4 he continued to say that as he exited and ran on foot,
5 she did the same.

6 Uh -- Of course later on through
7 the investigation, BE was able to make contact with
8 a citizen and used that citizen's phone to call her
9 friends, who in turn called us and advised us of the
10 location of BE

11 Of course at that point everything
12 shifted.

13 Uh -- We found that she was way
14 outside of our containment zone and the areas we were
15 searching.

16 Uh -- An officer was sent to -- to
17 make contact with her. And I went back and spoke with
18 Mr. Elliott again; advised him that we had good news;
19 that we had found BE but we hadn't made contact
20 with her yet; but we had -- we had located her.

21 Uh --

22 Q. Lieutenant, while you were out there, did he ever
23 indicate to you that another officer had seen her run --

24 A. He --

25 Q. -- from the car?

1 A. He -- He did. In the initial conversation, he said
2 that -- and he of course didn't know any of our -- our
3 names -- so he didn't identify the officer by name.

4 He just said:

5 One of the officers that was --
6 that had arrested him, I believe, or -- or words to that
7 effect, which were the officers that had made the arrest
8 over in the area of the restaurant know as Billy the
9 Kid's.

10 He said that one of those officers
11 said he saw somebody in the car.

12 Q. Okay. So he was coherent enough to hear what they
13 were saying?

14 A. Yes ma'am.

15 Q. Okay. And relay that to you?

16 A. Yes ma'am.

17 Q. And tell you, in fact, which officer had said:

18 I think she ran from the car as
19 well?

20 A. Yes ma'am.

21 Q. So at what point did he change his story from she
22 ran from the car.

23 A. Uh -- I came back to the vehicle and spoke to Mr.
24 Elliot again.

25 I told him that we had located the

1 whereabouts of BE

2 I then told him that an officer
3 would be dispatched to locate her, and that we would
4 obtain information from her as to what had transpired
5 that morning.

6 I told him that if he needed to
7 change anything about the story, this would be the time
8 to do it -- you know -- kind of good faith -- you know --
9 explanation of how she ended up where she was at, which
10 would be all but impossible to get to in the time frame
11 from where we were at, for her to travel that distance
12 avoiding evidently all the police that were looking for
13 here in the area, and getting to way down there at the
14 point.

15 And at that time, he told me that
16 he had not had BE in the vehicle with him at the
17 time of the traffic stop; that it was a male subject that
18 was with him at the time of the traffic stop.

19 And when he exited the vehicle and
20 ran on foot, it was a male that exited from the passenger
21 side door and ran on foot in the opposite direction.

22 Of course, I asked him why he
23 didn't give me this information in the beginning.

24 And he said that he was afraid
25 that I would not believe him.

1 Uh --

2 Q. So in the beginning, he said:

3 Yes, she ran from the car.

4 A. Yes ma'am. The -- The majority of -- of the
5 interview, he stayed with the original story of:

6 It was him and the white female,
7 which he identified as BE in the vehicle. And
8 when they were stopped, he and BE fled on foot from
9 the vehicle in different directions.

10 Q. Did you indicate to him what your primary concern
11 was?

12 A. Yes ma'am. I -- I told him that my main concern was
13 the safety and well-being of BE that I just wanted
14 to make sure she wasn't injured or dead somewhere, and we
15 needed to find her.

16 And he --

17 Q. And was he able to tell you where he picked her up?

18 A. Uh -- He couldn't give an exact location. He just
19 said:

20 In the area.

21 I -- I believe he said, near a
22 motel.

23 Q. Okay.

24 A. He -- He said he wasn't very familiar with the area
25 of North Myrtle Beach and couldn't give street names or

1 numbers. He just continued to say "a motel."

2 Q. Now as he's telling you this, are you inquiring as
3 to where he last saw her?

4 A. Yes. Uh -- And again, through -- through most of
5 the -- the interview, he contends that -- that BE
6 was with him up until the BP Gas Station where they fled
7 on foot.

8 Uh -- After we found BE he
9 then said that it was a male subject that was with him.

10 He said that BE had him take
11 her to an area in -- in like the Cherry Grove area and
12 drop her off at a motel where there were college kids.

13 He said his -- her -- his
14 intention -- or her intention -- was to buy drugs there.

15 He said this is where he came in
16 contact with the male subject and picked him up to give
17 him a ride home.

18 He said that he was not familiar
19 with the male subject other than that he lived on the
20 same street as he did; but didn't know a name, or could
21 not give a description of him.

22 Q. Okay. But he could never give you a street or
23 anything like that where he'd dropped her off?

24 A. No ma'am.

25 Q. Okay. Now -- uh --

1 A. A -- Again, he used the term "motel."

2 Q. -- was he able -- Did he ever indicate to you about
3 what time it was that he ran across her?

4 A. I don't believe he did.

5 Q. Okay. Did he ever comment about seeing her out on
6 the street?

7 A. Just in -- in the initial interview of the fact that
8 she was with the two male subjects and the three
9 initially approached him to ask for drugs.

10 Q. Now, did he bring up the fact that -- anything about
11 drugs to you?

12 A. Uh -- He continuously spoke of drugs in -- in --

13 Q. What did you tell him?

14 A. I -- I -- I told him that -- you know -- I -- I was
15 -- He -- Every question I asked went to that topic.

16 And I told him:

17 I wasn't worried about drugs; to
18 not be worried about drugs. I didn't care if he had
19 drugs in the vehicle or him, that was not my purpose.

20 The -- The drugs were not a
21 concern of mine. I wasn't looking to make an arrest for
22 drugs. I was -- I wanted to find BE and make sure
23 she was healthy and okay.

24 That the drugs to me were a non-
25 issue. I just wanted to know about BE and where

1 she could be located at.

2 Q. Did you address with him the fact that her phone was
3 found on his side of the car?

4 A. Yes ma'am; I did.

5 Q. And what did he say?

6 A. Well, I -- I first asked him again who was driving
7 the vehicle. And he said he was?

8 And then I told him that the phone
9 was found in the vehicle?

10 And he said:

11 She must have left it there when
12 she ran.

13 I said:

14 Well, how would the phone have
15 come to be in the driver's side door compartment?

16 And he didn't really have an
17 answer for that.

18 Q. Now, when did first officer indicate that maybe she
19 ran from the car?

20 A. I --

21 Q. Or maybe he saw her run from the car?

22 A. I got the information actually from Mr. Elliott. No
23 officer ever gave me that information.

24 Uh --

25 Q. Let me ask you this:

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1 When -- When he was in the car
2 talking to you, he indicated to you that he had already
3 heard that from an officer?

4 Is that right?

5 A. That's correct. I -- I had the -- uh --

6 Q. So, it was before he had gotten in the car?

7 A. Yes ma'am. It -- It -- It -- Which if he had heard
8 that, it had come from the arrest site by the restaurant
9 known as Billy the Kid's.

10 And he relayed that information to
11 me at the gas station while I was interviewing him.

12 Q. Okay. So --

13 A. I --

14 Q. -- when he was down on the ground, and the officer
15 saying:

16 Yeah, I think I saw the girl run.

17 He was coherent enough to pick
18 that up?

19 A. Yes ma'am.

20 Q. And tell you about it?

21 A. Yes ma'am.

22 Q. And, in fact, tell you which officer had said it?

23 A. Yes ma'am; that he couldn't tell me by name because
24 he was not familiar with names; but he could point --

25 Q. And then he told you that she ran from the car?

1 A. Yes ma'am.

2 Q. Okay. How -- How long was it before he changed his
3 story?

4 A. Probably between 20 and 30 minutes.

5 Q. Okay. And that was after you said:

6 We found her and she's too far for
7 her to run from the car?

8 A. Yes ma'am.

9 Q. And then he said:

10 Well, I dropped her off awhile
11 back?

12 A. Yes ma'am.

13 Q. But he never gave you a location where he dropped
14 her off; did he?

15 A. No ma'am, other than "motel."

16 MS. LIVESAY:

17 No further questions for this
18 officer, Your Honor.

19 THE COURT:

20 Counsel? Ms. Knowles?

21 CROSS-EXAMINATION BY MS. KNOWLES:

22 Q. Good morning Lieutenant Baldasarre.

23 A. Good morning, ma'am.

24 Q. You said that -- uh -- you were provided the details
25 of Mr. Elliott's apprehension?

1 Can you explain to the jury -- uh
2 -- what they were?

3 A. You mean the events that led up to -- to his arrest?

4 Q. Yes sir.

5 A. Uh -- I was not present for the arrest. Uh -- The
6 officers at the scene did give me a brief description of
7 what had transpired.

8 Uh -- As -- As I told earlier --
9 you know -- the vehicle pursuit ended, and a foot pursuit
10 ensued after that.

11 Uh -- I believe the pursuit
12 involved two Horry County officers and one City of North
13 Myrtle Beach police officer.

14 Uh -- They pursued him on foot to
15 the area of the parking lot of what's known as Billy the
16 Kid's restaurant.

17 Uh -- One of the Horry County
18 police officers -- and I could not give you the name of
19 which one of the two it was -- deployed his Taser -- the
20 X26 Taser -- and activated that Taser; and caught Mr.
21 Elliott -- I don't know the exact location where the
22 probe engaged his body -- with -- with the Taser.

23 And that's when they took him into
24 custody.

25 Q. So you did not know the names of these two county

1 officers?

2 A. The -- One of the officers is PFC Jernigan.

3 Q. Uh-huh.

4 A. And I don't know the name of the other officer; but

5 I don't know which one of the two was the one -- I

6 believe it was Mr. Jernigan that deployed his Taser.

7 Q. Okay. And so Mr. Elliott was, according to the

8 video, which you have seen; correct?

9 A. Yes ma'am.

10 Q. Was face down, in cuffs, and had just been Tased

11 when his Miranda rights were read to him; correct?

12 A. Yes ma'am.

13 Q. And tell the jury how a Taser -- What's the purpose

14 of a Taser? What is the purpose?

15 A. A -- A Taser is designed to interrupt your body's

16 communication.

17 What it does is:

18 It uses the electrical volts that

19 travel through the current to cut off communication from

20 your brain to your muscles.

21 So basically, while the current is

22 -- is there -- the pulses, your body can't communicate.

23 So you -- you lose the ability to

24 run, walk, use your arms, pick -- pick up objects, swing,

25 fight at people, use weapons, until the current is ended.

1 And what it is, is:

2 It's a monofilament cable attached
3 to probes. The probes carry the current.

4 And when the probes interact with
5 your -- your body, it sends out pulses for 5 seconds.

6 And these pulses carry 400 volts
7 per pulse or/and .0021 amps of electricity.

8 Uh -- I guess to give you kind of
9 a -- uh -- a comparison if you will:

10 I'm sure you know it's getting to
11 be that time of year in winter time; and I'm sure we're
12 all going to walk across that carpet floor and touch a
13 doorknob and you feel that -- that shock.

14 That shock actually at the low end
15 is usually about 35,000 volts of electricity.

16 And the Taser uses pulses that
17 enter your body at 400 phones.

18 So it -- it's a safe -- a safer
19 device. But the neat thing about it is, it does cause
20 you to not be able to fight or combat somebody during
21 that -- that electrical impulse.

22 Q. So in other words, it's fair to say that it's used
23 to incapacitate an individual?

24 A. Yes ma'am. During that five-second interval, you
25 are incapacitated.

1 Q. Uh -- Let me ask you this.

2 Did you, at any point before you
3 questioned him -- uh -- explain to him what he was even
4 suspected of -- of doing?

5 A. Uh -- If -- If I may? Uh -- And -- And I'm sure
6 you saw this in the video.

7 I initially made contact with Mr.
8 Elliott. And Officer Causey -- who I don't know if you
9 have spoken to you (sic) or not -- if you are familiar
10 with him -- he was the -- the North Myrtle Beach officer
11 that was involved in the pursuit -- in the foot pursuit
12 and the -- the taking into custody of Mr. Elliott.

13 He's the gentleman that, on the
14 tape, read the Miranda warnings to Mr. Elliott off of the
15 card.

16 Uh -- I spoke to him before I
17 spoke with Mr. Elliott, and explained to me, like he
18 said, everything that transpired throughout the pursuit,
19 the foot pursuit, the taking into custody, and the
20 advising of Miranda.

21 Uh -- I then went to the rear of
22 the vehicle, opened the door, and made my first contact
23 with Mr. Elliott.

24 Uh -- I did ask Mr. Elliott if he
25 -- what he had been doing that evening. And that's when

1 he told me about his travels.

2 I then asked him if he understood
3 what he was given as Miranda? And he told me he did
4 understand the advisements that were given to him by
5 Officer Causey.

6 I then ask him if he was willing
7 to speak we speak to us? And he said that he was; that
8 he wanted to cooperate.

9 I then told him of the alleged
10 crime that brought us to our interaction with each other;
11 that BE friends were alleging that she had been
12 kidnapped by him.

13 Q. So you did tell him, in fact, he was a suspect in
14 the kidnapping --

15 A. Yes ma'am.

16 Q. -- before you engaged in any type of questioning?

17 A. Yes ma'am.

18 Q. Okay. Uh -- You said that you viewed the video.
19 And we've discussed that.

20 Uh -- And on that video, I know
21 that I saw several occasions where someone -- I'm
22 assuming it was an officer -- says something about a girl
23 being in the passenger side of the vehicle.

24 Did -- Did you recall seeing that?

25

1 A. Yes ma'am. Mr. Elliott made several --

2 Q. Not Mr. Elliott. Not Mr. Elliott. It's an
3 officer. it's not Mr. Elliott's voice.

4 A. Uh -- I spoke of it in conversation with Mr.
5 Elliott.

6 Q. But was there not any mention -- uh -- from other
7 officers that told you what had transpired before you
8 arrived, of a girl leaving the vehicle?

9 A. Yes ma'am. Like -- Like I said -- uh -- the
10 officers -- On the scene, there were two county officers
11 and one North Myrtle Beach police officer.

12 One of the county officer said
13 that he so saw somebody in the vehicle.

14 Q. Thank you very much. And when you spoke with Mr.
15 Elliott, did he not in fact tell you that he had been
16 drinking earlier that night?

17 A. He said that he had been drinking in the area of
18 Loris and Tabor City.

19 Q. And let's go back to when you arrived on the scene.

20 The suspect vehicle was there.

21 And tell me again about the
22 driver's side door and the passenger side door?

23 Were they opened or closed when
24 you arrived?

25 A. I -- I cannot speak for the passenger side door. I

1 apologize. But the driver's side door was open.

2 Q. And did you view the video of the stop itself? Let
3 me ask you that.

4 A. Uh --

5 Q. Of the vehicle -- the stop taking place. Did you
6 view that?

7 A. Yes ma'am.

8 Q. When he get's -- When my client's getting out of the
9 car?

10 A. No ma'am. I'm sorry. That was the Horry County
11 video.

12 Q. Was it? You didn't view that?

13 A. And I did not view that tape. I apologize, ma'am.

14 Q. Okay. Did any of the officers on scene search the
15 area at all for weapons, since he was also apparently
16 suspected of an armed robbery as well?

17 A. Yes ma'am; they did.

18 Q. They searched the area for weapons?

19 A. Yes ma'am.

20 Q. Okay. Uh -- Tell me about that search.

21 A. Uh -- I know -- and again, I -- I don't know his
22 name. It was the other Horry County police officer; not
23 Mr. Jernigan but the other officer --

24 Q. It was the other officer?

25 A. -- searched the vehicle.

1 Q. It wasn't Officer Jernigan?

2 A. It -- It may have been. I know the other officer
3 was the one that told me about it.

4 So I'm say -- I'm going on the --
5 the fact that, since he was the one that told me of the
6 search, he completed the search.

7 But Officer Jernigan may have.

8 Q. Of the surrounding area?

9 A. Of the vehicle and the area around the vehicle.

10 Q. Okay. And wasn't -- uh -- In your conversations
11 with Mr. Elliott, I believe that you indicated in your
12 testimony earlier that:

13 He had pointed out to you the
14 officer that made some mention of a female being in the
15 vehicle and fleeing at the time that he did?

16 A. Yes ma'am.

17 Q. Who did he point to?

18 A. He -- He pointed to -- There -- There was three
19 officers there.

20 It was the same three officers,
21 Officer Scott Causey --

22 Q. Uh-huh.

23 A. -- Officer Jernigan, and the second Horry County
24 police officer.

25 Q. That we don't know the name of?

1 A. That -- I -- I apologize; but I do not know the
2 man's name.

3 Q. Okay. And he pointed to that person?

4 A. He pointed to that group; the three officers that
5 were standing there.

6 Q. But --

7 A. They were in a tight group. And -- you know --
8 like I said, he did not know the name -- the names of
9 those officers.

10 He said:

11 That officer there.

12 But --

13 Q. And you just didn't ask him any other specifics?

14 A. Right.

15 Q. Uh -- Were you made aware that my client spoke to a
16 couple of other officers before speaking to you?

17 A. No ma'am.

18 Q. You were not made aware of that?

19 A. (Nods in the negative.)

20 Q. Okay. But in your conversations, there was no
21 mention of drugs being involved in any of this?

22 A. Numerous times; yes ma'am.

23 MS. KNOWLES:

24 Okay. The Court's indulgence,

25 Your Honor, for a moment.

1 CROSS-EXAMINATION BY MS. KNOWLES:

2 Q. I have just a couple of more questions for you,
3 Lieutenant.

4 A. Okay.

5 Q. Whenever you were -- uh -- interrogating my client
6 and you said that the victim had been found and that you
7 had already spoken to the other alleged victims of the
8 robbery?

9 A. The two male subjects?

10 Q. Yes.

11 A. Okay.

12 Q. Uh -- You -- You make some mention -- or actually,
13 my client says:

14 Well if they're in the area, bring
15 them over here.

16 Is that not what happened?

17 A. (No response.)

18 Q. Did he not say:

19 Bring them over here?

20 A. (No response.)

21 Q. Sort of implying that --

22 A. I -- I don't know that he said:

23 Bring them over there.

24 I know he told me to call them.

25 Q. To call them?

1 A. And I told him that I had no need to call them
2 because there was a police officer standing next to them
3 at the moment; and that they were the ones that were
4 advising that he -- meaning Mr. Elliott -- had kidnapped
5 BE

6 Q. How was there a positive ID made at that point?

7 A. There was no positive ID.

8 Q. So how did they know who Mr. Elliott was?

9 A. They did not.

10 Q. And you said -- let's go back to the car door -- and
11 this is the last question that I have.

12 Who told you that the car door was
13 open?

14 If you weren't on-scene whenever
15 he fled to see that, and you didn't see the video, who --
16 who told you that the car door was open, and that the
17 phone had been found?

18 A. I -- I didn't say that ma'am. I say that:

19 When I arrived on the scene, the
20 car door was open.

21 Q. And there was a phone found?

22 A. Yes ma'am.

23 Q. Okay. Who told you that -- that there was a phone
24 found?

25 Because it wasn't you that found

1 it; right?

2 A. No ma'am. The phone started ringing. I picked the
3 phone up and answered it. And Sergeant Senter was at the
4 other end --

5 Q. So you found the phone?

6 A. Yes ma'am.

7 MS. KNOWLES:

8 No further questions, Your Honor.

9 MS. LIVESAY:

10 Maybe a couple, real brief, Your
11 Honor.

12 THE COURT:

13 All right.

14 RECROSS-EXAMINATION BY MS. LIVESAY:

15 Q. Uh -- Ms. Knowles asked you about an officer saying
16 that she fled from the car when he did?

17 A. Yes ma'am.

18 Q. Okay. Didn't he later tell you that she didn't
19 flee from the car when he did?

20 A. I'm -- I'm sorry. Say that question again.

21 Q. I'm sorry. Was it the defendant, that at a later
22 time when you were talking to him, that actually admitted
23 to you:

24 She didn't run when I ran. I had
25 already dropped her off.

1 A. That is correct. He -- He changed it to it was a
2 male subject that had run from the vehicle; not a female
3 subject.

4 Q. Did you run the tape back? Was there a tape on
5 that car?

6 A. Uh -- I had Horry County Police Department run their
7 tapes back.

8 Ours were, of course, still --
9 still actively involved in the incident. And to stop
10 that tape to look at it would not be appropriate.

11 And the Horry County officers
12 reviewed their tapes and said that no one had exited from
13 the passenger side of the vehicle and ran.

14 Q. Okay. So once y'all ran the tape back, y'all never
15 saw a girl run out of the car?

16 A. No ma'am, we did not.

17 Q. And in fact, the defendant later told you that is
18 when she ran from the car?

19 A. That is correct.

20 Q. Okay. Now, Ms. Knowles asked you about if you
21 searched the area?

22 A. Yes ma'am.

23 Q. You did search the area?

24 A. Yes ma'am.

25 Q. You searched the area around his car, and around the

1 defendant?

2 A. Yes ma'am.

3 Q. Did you find anything?

4 A. I did not -- I -- Well, I don't know if other
5 officers found anything. I didn't.

6 Q. Did anybody bring it to your attention that they
7 found anything?

8 A. No ma'am.

9 Q. Okay. Were you the Lieutenant?

10 A. Yes ma'am.

11 Q. Okay. So you were the highest guy out there at
12 that time?

13 Is that right?

14 A. At the moment; yes ma'am.

15 Q. Okay. And nobody brought it to your attention that
16 anything was found?

17 A. No ma'am.

18 Q. So -- Weapons or drugs?

19 A. No ma'am.

20 Q. Okay. So when y'all searched that area, nothing
21 like that was found?

22 A. No ma'am. We didn't find anything that I'm aware
23 of like that.

24 Q. Okay. Now, she asked you about a phone?

25 A. Yes --

1 Q. A phone was found?

2 A. Yes ma'am, a cellular phone.

3 Q. Okay. Did you figure out who the phone belonged
4 to?

5 A. Yes ma'am. It belonged to the victim.

6 Q. Okay. So it wasn't just any phone; it was the
7 victim's phone?

8 A. That's correct. Yes ma'am.

9 Q. Okay. Now, when you said you ran the tape back,
10 did you ever see a male jump out of that car?

11 A. I -- I didn't view it. The senior Horry County
12 officer on the scene at the time did. And he advised me
13 that they did not.

14 Q. Okay. So actually, the -- uh -- county car -- or
15 the county video -- had their tape on that vehicle the
16 whole time.

17 Is it right?

18 A. Yes ma'am. They were what would be known as the
19 lead vehicle and the police vehicle right behind the
20 suspect vehicle.

21 And there was actually a county
22 vehicle, a county vehicle, and then our city vehicle.

23 Q. Okay. And nobody brought it to your attention
24 that they saw a man or a woman jump out of that car; did
25 they?

1 A. No ma'am, they did not.

2 Q. Okay. In fact, it was brought to attention they
3 did not --

4 MS. KNOWLES:

5 Your Honor, Objection; leading.

6 THE COURT:

7 Yes, it is --

8 MS. LIVESAY:

9 Your Honor, I'm following up on
10 her question --

11 THE COURT:

12 I know; but it's leading.

13 MS. LIVESAY:

14 -- as to whether or not somebody
15 jumped into the car.

16 THE COURT:

17 Just -- Just re -- rephrase the
18 question. It's leading.

19 MS. LIVESAY:

20 I will, Your Honor. I'm sorry.

21 THE COURT:

22 And she's object to that.

23 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Uh -- Did anybody ever jump out of that car that
25 night except for the defendant, to your knowledge?

1 A. To my knowledge, no one ever exited from the
2 passenger side of that vehicle.

3 Q. Okay. Neither a man, nor a woman?

4 A. Male nor female.

5 MS. LIVESAY:

6 No further questions, Your Honor.

7 THE COURT:

8 All right.

9 MS. KNOWLES:

10 I just have one more question.

11 RECROSS-EXAMINATION BY MS. KNOWLES:

12 Q. Lieutenant, you said that you were the highest guy
13 out there?

14 Uh -- And being the highest guy
15 out there, you didn't know the names of the officers on
16 scene?

17 A. No ma'am. I could give you the names of almost
18 everybody out there. But we don't work with Horry County
19 Police Department.

20 There is, I don't know, hundreds
21 of officers. And I wish I could remember that name.

22 And it's -- Unfortunately, it's
23 hard enough for me to remember the hundred names of my
24 officers that work with the city.

25 It gets kind of complicated after

1 that.

2 Q. Who is responsible for the evidence log, and the --
3 and the scene log, and all of the activities reporting --

4 MS. LIVESAY:

5 Your Honor, I'll have to object.
6 I'm pretty sure that's outside the -- uh -- the scope of
7 my redirect.

8 MS. KNOWLES:

9 I'm trying to find the name of
10 this unknown officer.

11 THE COURT:

12 Well, you already -- uh --
13 addressed that in your -- in your cross; didn't you?
14 Didn't you ask him; and he said he
15 didn't know.

16 MS. KNOWLES:

17 I'm actually referring to her
18 reference of him being the highest guy out there and the
19 fact that -- Once that he --

20 THE COURT:

21 Well, let's just -- Let me ask
22 you:

23 Do you have any record -- any way
24 of knowing who that officer may have been?

25 WITNESS:

TESTIMONY OF MICHAEL BALDASARRE

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1 I -- I'm -- I can check, Your
2 Honor. It would be in the record. It's just I don't
3 have his name stored in my memory.

4 I could look into the reports --

5 THE COURT:

6 Well, if --

7 WITNESS:

8 -- and just get the name.

9 THE COURT:

10 -- after your testimony you should
11 happen to be able to find that; please let Ms. Knowles
12 know.

13 MS. KNOWLES:

14 Thank you, Your Honor.

15 No further questions.

16 MS. LIVESAY:

17 No further questions for this
18 witness, Your Honor.

19 THE COURT:

20 Okay. You may step down,
21 Officer.

22 WITNESS:

23 Thank you, Your Honor.

24 MS. LIVESAY:

25 Your Honor, at this time the State

1 wishes to call BE [REDACTED] to the stand.

2 THE COURT:

3 Are you going to need Officer

4 Baldasarre?

5 Are -- Are you going to need him?

6 MS. LIVESAY:

7 Yes sir; he's excused for my

8 purposes.

9 THE COURT:

10 All right, Mr. Hazzard and Ms.

11 Knowles, do you need him -- uh -- other than I think he -

12 - he'll check and see if he can find out who that other

13 officer was.

14 But do you need him for anything

15 else?

16 MS. KNOWLES:

17 No sir.

18 THE COURT:

19 All right.

20 You may be excused. You're

21 released from your subpoena.

22 WITNESS:

23 Thank you, Your Honor.

24 THE COURT:

TESTIMONY OF BE [REDACTED]

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1 All right.

2 WHEREUPON: BE [REDACTED] WAS

3 DULY SWORN BY THE CLERK IN OPEN COURT:

4 CLERK:

5 Thank you. Please be seated.

6 THE COURT:

7 Uh --

8 MS. LIVESAY:

9 Want to take a little short break?

10 THE COURT:

11 -- This witness will probably --

12 probably -- uh -- take some time, won't -- won't she?

13 MS. LIVESAY:

14 Yes sir.

15 THE COURT:

16 All right, Mr. Hazzard, so that we
17 don't have a -- a break in the -- uh -- in her testimony,
18 let's go ahead and take -- uh -- a quick break; let
19 everybody refresh themselves.

20 And then, we'll come back in and
21 start this witness; all right.

22 MR. HAZZARD:

23 Yes sir.

24 (WHEREUPON: The jury empanelled
25 in the case withdrew from the courtroom at 10:30 AM,

1 November 17, 2010; and was no longer present during the
2 following proceedings.)

3 THE COURT:

4 All right.

5 (WHEREUPON: The court was
6 declared in recess at 10:30 AM, November 17, 2010.)

7 (WHEREUPON: The court was called
8 to order by the Bailiff at 10:45 AM, November 17, 2010;
9 and all pertinent parties, along with their counsel, were
10 back and present in the courtroom.)

11 DEPUTY:

12 Order in The Court. All rise.

13 THE COURT:

14 All right.

15 Thank you. Please be seated.

16 All right; we ready?

17 MS. LIVESAY:

18 (Nods in the affirmative.)

19 THE COURT:

20 All right, Mr. Nobles, if you
21 would --

22 DEPUTY:

23 Yes sir.

24 THE COURT:

25 -- let's get the jury.

1 MS. LIVESAY:

2 You want her back on the stand at
3 this time, Your Honor?

4 THE COURT:

5 Yes. Put Ms. [REDACTED] back on
6 the stand.

7 WHEREUPON: BE [REDACTED]

8 HAVING BEEN SWORN EARLIER RESUMED THE WITNESS STAND AND
9 TESTIFIED UNDER OATH AS FOLLOWS:

10 (WHEREUPON: The jury empanelled
11 in the case was escorted back into the courtroom at 10:47
12 AM, November 17, 2010; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 All right.

16 I believe this witness has been
17 sworn. Is that correct?

18 MS. LIVESAY:

19 Yes sir. Thank Your Honor.

20 THE COURT:

21 And the jury's back in the jury
22 box.

23 All right.

24 You may begin your examination.

25 MS. LIVESAY:

1 Thank Your Honor.

2 DIRECT EXAMINATION BY MS. LIVESAY:

3 Q. BE if you don't mind -- uh -- say your name
4 and spell your last name.

5 A. BE [REDACTED].

6 Q. Okay. And how old are you?

7 A. 16.

8 Q. Okay. And where are you from?

9 A. Kannapolis, North Carolina.

10 Q. And where do you currently live?

11 A. Kannapolis, North Carolina.

12 Q. And who lives in the house with you?

13 A. My father, his girlfriend, and her two children.

14 Q. Okay. And have you always lived in Kannapolis?

15 A. With the exception of about a year; yes.

16 Q. And are you currently in school in Kannapolis?

17 A. I am currently enrolled in Penn Foster online high
18 school.

19 Q. Okay. And have you always been online high school?

20 A. No, I have not.

21 Q. Okay. When did you start doing online high
22 school?

23 A. This school year.

24 Q. Okay. And what kind of grades are you making?

25 A. I've maintained a B average, I believe.

1 Q. Okay. And before you were doing online schooling,
2 were you going to just a normal high school?

3 A. Yes ma'am.

4 Q. Okay. And what kind of grades were you making
5 then?

6 A. Uh -- A's and B's, with the occasional C.

7 Q. Okay. So it wasn't until this year that you
8 started doing the online school at home?

9 A. Yes ma'am.

10 Q. Okay. And are you doing any extra curricular
11 activities as far as sports or clubs?

12 A. No ma'am.

13 Q. Now, are you familiar with North Myrtle Beach?

14 A. Not particularly. I've been there maybe three or
15 four times.

16 I'm not very familiar with it at
17 all.

18 Q. Okay. Have you been here about three or four times
19 in your entire life?

20 A. Yes.

21 Q. Now, were you down here on or around June the 29th,
22 of 2009?

23 A. Yes ma'am, I was.

24 Q. Okay. And how old were you the?

25 A. 14.

1 Q. Okay. And tell me who you came down here with?

2 A. I came down here with my friend Blythe, and her
3 mother Penny, and her stepfather Kit.

4 Q. Okay. And when did y'all get down here?

5 A. I believe it was the 26th.

6 Q. Okay. And where we y'all staying?

7 A. We were staying at their beach house on Hillside
8 Drive.

9 Q. Okay. And who was staying in that beach house?

10 A. It was me, Blythe, her mother, and her stepfather.

11 MS. LIVESAY:

12 Okay.

13 May I approach the witness, Your
14 Honor?

15 THE COURT:

16 Yes.

17 MS. LIVESAY:

18 Uh -- I'm showing her State's
19 Exhibit Number 5, 6, and 7.

20 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

21 Q. Uh -- BE do you recognize what I'm showing
22 you now?

23 A. Yes ma'am. T

24 Q. What is it?

25 A. That is the beach house that I was staying at.

1 Q. Okay. And this is the beach house you were staying
2 at on June the 29th --

3 A. Yes ma'am.

4 Q. -- of 2009?

5 A. Uh-huh.

6 Q. Okay. And is this an exact photograph of that
7 beach house?

8 A. Yes ma'am.

9 Q. Okay. Do you recognize what I'm showing you now
10 marked as State's Exhibit Number 6?

11 A. It looks like the road on Hillside, I believe.

12 Q. Okay. And is this is a substantial and accurate
13 depiction of that road?

14 A. Yes ma'am.

15 Q. And do you recognize what I'm showing you now marked
16 as State's Exhibit Number 7?

17 A. I believe so.

18 Q. Okay.

19 A. It looks like a another view of the street.

20 Q. Okay. And this is a substantial and accurate
21 picture of that street?

22 A. Yes ma'am.

23 MS. LIVESAY:

24 Your Honor, at this time, the
25 State wishes to admit 5, 6, and 7, into evidence and

1 publish it to the jury?

2 MR. HAZZARD:

3 No objection, Your Honor.

4 THE COURT:

5 Without objection, it's admitted.

6 MS. LIVESAY:

7 Thank Your Honor.

8 WHEREUPON: 3 PHOTOS EARLIER

9 MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS NUMBERS
10 5, 6, AND 7, WERE ENTERED INTO EVIDENCE WITHOUT
11 OBJECTION.

12 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

13 Q. So tell the jury what this is again.

14 A. That is the beach house that I was staying at.

15 Q. Tell the jury what that area looked like around that
16 beach house?

17 A. Uh -- It -- The houses are very close together. Uh
18 -- There is mainly -- It's a residential area.

19 There -- I don't believe there is
20 too many children. It's mostly older couples, I
21 believe.

22 And it's a pretty quiet
23 neighborhood.

24 Q. So you don't remember it being a lot of -- uh --
25 traffic in that street?

1 A. Oh, no. Barely any.

2 Q. Okay. Now tell the jury what this is -- this is a
3 picture of -- that's marked State's Exhibit --

4 A. I believe that's the view of Hillside.

5 Q. So this is just the road that house is on?

6 A. Uh-huh.

7 Q. And tell the jury what this is, State's Exhibit --
8 uh -- State's Evidence Number 7?

9 A. I believe that would be another view of the road.

10 Q. This is that same road that that house is on?

11 A. I believe so, yes.

12 Q. Do you remember there being any motels or high-rises
13 on this street?

14 A. Not on that street. If you go down a couple of
15 streets, then yes, there is hotels.

16 Q. Okay. But there was none on that street?

17 A. No.

18 Q. Do you remember whether or not it was a high traffic
19 area?

20 A. No, barely any traffic at all; maybe the occasional
21 golf cart or bike rider.

22 Q. Now at that time, did you have a driver's license?

23 A. No.

24 Q. Okay. Did Blythe have a driver's license?

25 A. No.

1 Q. Did you have a vehicle?

2 A. No.

3 Q. Okay. Uh -- Were you familiar with that area you
4 were staying in?

5 A. I had only stayed there one other time. And I went
6 everywhere with her parents. So, no, I was not familiar
7 with that area.

8 Q. Okay. Uh -- Now about how many times had you
9 stayed at that beach house?

10 A. One other time.

11 Q. Okay. And how long ago was that from this time?

12 A. It was a year prior to that night. We stayed there
13 a year before the same time.

14 Q. Okay. So you had only been at that beach house
15 about twice in your entire life?

16 A. Yes.

17 Q. Okay. Who did you ride down with?

18 A. Blythe, her mother, and her stepfather.

19 Q. Okay. And what was the -- uh -- the inside of the
20 house? How was that set up? Was there anybody else
21 staying in that beach house other than y'all?

22 A. No.

23 Q. Okay. Now when you came down here with Blythe and
24 her parents, did you know anybody else down here?

25 A. No.

1 Q. Okay. Now, did anybody from Kannapolis come down
2 to -- to hang out with you and Blythe?

3 A. Yes, my boyfriend at the time, Matthew, and Ryan.

4 Q. And when did they come?

5 A. I believe it was around six or seven the evening of
6 July 29th.

7 Q. Okay. And how did they get down here?

8 A. They drove Matt's car down here.

9 Q. And how long have you known them?

10 A. Uh -- I known both of them about two years now.

11 Q. And how did they know how to get down here?

12 A. They called me and asked for directions, I believe,
13 to get the specific area that we were in.

14 But other than that, I believe
15 that they -- you know -- got the directions from the
16 Internet or something like that.

17 I'm not too sure about that one.

18 Q. Okay. And to your knowledge, were they very
19 familiar with this area?

20 A. No.

21 Q. Okay. About how many times had they been down here
22 to your knowledge?

23 A. I didn't know if either of them had been there at
24 all.

25 I only -- I had known them for a

1 short period of time then.

2 And we never discussed -- you know
3 -- vacationing or anything like that.

4 Q. And they drove a car down here?

5 A. Yes.

6 Q. Who's car did they drive?

7 A. Matt's.

8 Q. Okay. And did anybody else come down here with
9 them?

10 A. No.

11 Q. Now once they got down there, did you meet up with
12 him?

13 A. After -- A couple of hours after they got here, yes,
14 I did.

15 Q. Now did they have anywhere to stay down here to your
16 knowledge?

17 A. No, they did not.

18 Q. Now where did you first meet up with them?

19 A. At -- uh -- the beach. Her parents were going to a
20 bar. And I believe they parked right across the street
21 from where the bar was at. And we just walked over there
22 and met them.

23 Q. Okay. Now, did her parents know they were here?

24 A. No, they did not.

25 Q. Why not?

1 A. Because at that time my parents didn't approve of my
2 relationship with Matthew. So I had to sneak around to
3 see the -- you know -- to see him.

4 And we didn't want her parents to
5 know. Because we figured that if they did, then they
6 would tell my parents and I would get in trouble.

7 Q. Okay. So y'all met up with them just at the beach?

8 A. Uh-huh.

9 Q. Okay. Now -- uh -- did you -- What were you
10 wearing that night?

11 A. I believe I was wearing a -- like a little sundress;
12 spaghetti strap. It was flat, I believe, and it had like
13 a little bow here (indicating).

14 And that was -- I was wearing that
15 while we were at the beach. but later on, I changed that
16 night when we got back.

17 Q. Okay. So you were dressed up at that point to kind
18 of go out on the beach.

19 A. Uh-huh.

20 Q. Okay. Or to go out -- Did y'all go out and eat?

21 A. No.

22 Q. Okay. So y'all were just kind of going out and
23 enjoying whatever was going on at the --

24 A. Yeah, we were just walking around. I believe we got
25 a smoothie and some ice cream or something; but as -- you

1 know -- to sit down and eat dinner; no, we did not do
2 that.

3 Q. Okay. Now -- uh -- about what time did y'all leave
4 that area?

5 A. I believe it was around 11:30.

6 Q. Okay. Now who all was at that area that you were
7 at?

8 A. Uh -- It was Blythe, and her mother, and her
9 stepfather.

10 Matthew and Ryan walked us back to
11 the bar, because we had to go and check in with her
12 parents a little after 11:00.

13 And we stayed at the bar with her
14 parents for a few minutes while they -- you know --
15 finished up talking to the people that they were speaking
16 with.

17 And then we left. And it was just
18 me, Blythe, her mother, and her stepfather, when we left.

19 Q. Okay. So y'all all left together?

20 A. Uh-huh.

21 Q. Where did y'all go back to?

22 A. We went back to their beach house.

23 Q. Okay. Now, did Matt and Ryan come back to the
24 beach house?

25 A. Yes, they did.

1 Q. Now, how did they know how to get to that beach
2 house?

3 A. Matthew called me and asked me how to get there;
4 which I had to ask Blythe because I wasn't sure about it.

5 Q. Okay. So Blythe gave Matt directions.

6 A. She told me where to go and I told him.

7 Q. Okay. And were they able to make it to the beach
8 house?

9 A. Yes.

10 Q. Now did they drive his car to the beach house?

11 A. Yes.

12 Q. Now was his car somewhere near that beach house when
13 he got there?

14 A. I believe it was parked on the street next to the
15 beach house.

16 Q. Okay. So it was close enough he could get to it?

17 A. Yes.

18 Q. Okay. Now when -- Did you come back out and meet
19 him again?

20 A. Yes.

21 Q. Okay. So you go back to the house with Blythe and
22 her parents?

23 A. Uh-huh.

24 Q. Okay. And during that time you're giving them
25 directions on how to get to the house?

1 A. Uh-huh.

2 Q. Okay. Now when you get in the house, what's going
3 on at that time?

4 A. Uh -- We were just changing; winding down for the
5 night.

6 I believe we ate.

7 And that's when Matthew called and
8 said that he was there. And we went outside.

9 Me and Blythe went outside to hang
10 out with Matt and Ryan right there at the patio area
11 where the outside shower is, right front of the door.

12 Q. Okay. Now had Blythe's parents -- were they up at
13 that time?

14 A. No, they were in the bed.

15 Q. Okay. Had they locked down the house?

16 A. They -- They knew we were going to be up longer.
17 They figured we were -- you know -- probably going to
18 stay up all night.

19 But they were pretty well passed
20 out at that point. So they weren't really aware of
21 anything that was going on.

22 Q. Okay. And then you and Blythe came back out of the
23 house?

24 A. Yes.

25 Q. Okay. Now, what were you wearing when you came

1 back out of the house?

2 A. I believe I was wearing a navy blue Homestead
3 Baptist tee shirt -- uh -- blue sophie-shorts.

4 I'm not too sure of the color of
5 my socks.

6 And that's all I was wearing.

7 Q. Okay. So you had changed out of your dress?

8 A. Yes, I was wearing my pajamas then.

9 Q. Okay. Would you recognizes that stuff if I showed
10 it to you now?

11 A. Yes.

12 MS. LIVESAY:

13 The Court's indulgence, Your
14 Honor?

15 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

16 Q. BE do you recognize what I'm showing you?

17 A. Yes ma'am; I do.

18 Q. And what is this?

19 A. That is my navy blue Homestead Baptist tee shirt I
20 was wearing that night.

21 Q. Okay. And is this the exact same tee shirt?

22 A. Yes ma'am.

23 MS. LIVESAY:

24 Your Honor, at this time the State
25 wishes to put the tee shirt into evidence and show it to

1 the jury.

2 THE COURT:

3 All right, Mr. -- uh -- Hazzard
4 and Ms. Knowles?

5 MR. HAZZARD:

6 May we approach, Your Honor?

7 THE COURT:

8 Yes.

9 (WHEREUPON: Counsel for each party
10 conferred off the record very briefly with The Court at
11 the bench.)

12 MR. HAZZARD:

13 Without objection, Your Honor.

14 MS. LIVESAY:

15 Thank Your Honor.

16 Can they -- uh -- Can I publish it
17 to the jury at this time, Your Honor.

18 THE COURT:

19 Yes.

20 MR. HAZZARD:

21 Is it marked?

22 THE COURT:

23 Let her mark it. Or let the -- uh
24 -- uh -- court reporter mark it.

25 WHEREUPON: THE TEE SHIRT WAS

1 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT 8 AND WAS
2 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

3 COURT REPORTER:

4 Your Honor, that's State's Exhibit
5 8.

6 MS. LIVESAY:

7 Uh -- I'm just now moving it into
8 evidence, Your Honor.

9 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

10 Q. Is this the tee shirt you were wearing?

11 A. Yes ma'am.

12 Q. When you changed out of that dress and you changed
13 into this tee shirt, were you planning on going out
14 anywhere that night?

15 A. No. I was just -- My intentions were to just stand
16 in the patio and just talk.

17 Q. Okay. Ma'am, I need you to look over here. Do you
18 recognize what I'm showing you?

19 A. Yes ma'am; I do.

20 Q. And what are these?

21 A. Those are my blue sophie shorts that I was wearing
22 that night.

23 Q. Okay. And are these the exact same shorts?

24 A. Yes ma'am.

25 Q. And were these the one's you were wearing that

1 night?

2 A. Yes ma'am.

3 MS. LIVESAY:

4 Your Honor, at this time, the
5 State ask to move this into evidence, State's Number 9.

6 THE COURT:

7 Mr. Hazzard?

8 MR. HAZZARD:

9 No objection.

10 MS. LIVESAY:

11 Publish it to the jury?

12 THE COURT:

13 Without objection.

14 WHEREUPON: THE SOPHIE SHORTS
15 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT
16 NUMBER 9 WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION.

17 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

18 Q. So when you had these shorts and that shirt on, were
19 you getting ready for bed?

20 A. Yes ma'am.

21 Q. Okay. Do you recognize what I'm showing you?

22 A. Yes ma'am.

23 Q. What am I showing you?

24 A. Those are the socks I was wearing that night.

25 MS. LIVESAY:

1 Okay.

2 Your Honor, State's, I believe,

3 Number 9?

4 COURT REPORTER:

5 10. State's 10.

6 WHEREUPON: THE SOCKS WERE MARKED

7 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 10.

8 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

9 Q. So these were the socks you were wearing that night?

10 A. Yes ma'am.

11 Q. So is this all you were wearing? Any shoes?

12 A. No ma'am.

13 Q. Okay. So when you walked outside to talk to Matt
14 and Ryan, you wearing those shorts, that tee shirt, and
15 just some socks?

16 A. Yes ma'am.

17 Q. So at that point, with no shoes on, you were not
18 planning on going anywhere?

19 A. No ma'am.

20 Q. And when y'all were standing out there, where were
21 you standing?

22 A. Initially, we were right at the door where the
23 concrete area is, right in front of the outside shower.

24 Q. Let me say if I can -- Can you show me on this
25 picture, BE

1 A. Yes ma'am.

2 Q. If you don't mind, show the jury where y'all were
3 standing?

4 A. We were standing right here (indicating) on that
5 little concrete area right there beside the door.

6 Q. Okay. And who all was standing out there?

7 A. Me, Matthew, Ryan, and Blythe.

8 Q. Okay. And what happened next? About what time was
9 it?

10 A. I believe it was around 1:00 when they got there.

11 Q. Okay.

12 A. And at -- We were probably staying out there for
13 around an hour before Matthew and Ryan left.

14 Q. Okay. Now during that time when all of y'all were
15 standing out there, did you see a lot of traffic in the
16 area?

17 A. No --

18 Q. You see a lot of --

19 A. -- none at all.

20 Q. -- a lot of people walking around?

21 A. No.

22 Q. Okay. Now, you said that Matt and Ryan left?

23 A. Yes.

24 Q. Where did they go?

25 A. I'm not sure. Me and Matthew got into a little

1 argument. And him and Ryan left.

2 They were gone for maybe 5 to 10
3 minutes.

4 And I'm not sure where they went.
5 I didn't ask.

6 But at that point they came back.

7 And I had went inside with Blythe
8 to go get a drink or go get some food or something.

9 I'm not really sure why I went
10 inside.

11 But I came back out when Matt
12 called me and told me that he was coming back.

13 Q. Okay. Now -- So you went back outside to meet him?

14 A. Yes.

15 Q. Okay. Was Blythe out there with you then?

16 A. I'm not very sure. She may have been behind me
17 following me out of the door; but I just went straight to
18 Matt because we had been arguing and -- you know -- we
19 were kind of wanting -- you know -- in the make-up phase.

20 We just wanted to hug and kiss
21 each other or whatever. So --

22 Q. Okay. Now, when y'all were all out there under
23 that -- uh -- on that cement area, were y'all out there
24 drinking?

25 A. No.

- 1 Q. Were you out there doing any drugs?
- 2 A. No.
- 3 Q. Were you trying to get alcohol that night?
- 4 A. No.
- 5 Q. Were you trying to get any kind of drugs?
- 6 A. No.
- 7 Q. Now, did just the four of you hang out that night?
- 8 A. Yes.
- 9 Q. Out there?
- 10 A. Yes.
- 11 Q. Okay. Now, did anybody ever come back?
- 12 A. Uh -- Could you rephrase that? I'm not sure exactly
- 13 what you mean.
- 14 Q. That's okay. Did y'all ever make contact with
- 15 anybody else --
- 16 A. No.
- 17 Q. -- out there that night?
- 18 A. No. Well, aside from Mr. Elliott, no.
- 19 Q. Okay. Now at any point, did Blythe go inside?
- 20 A. She went inside sometime while I was in the driveway
- 21 speaking with Matt. I'm not sure exactly when.
- 22 I wasn't paying attention to what
- 23 her and Ryan were doing.
- 24 Q. Okay. Now -- Now did Ryan ever go inside?
- 25 A. I don't believe so.

1 Q. Okay. Now did the guys ever get a place to stay to
2 your knowledge while they were there?

3 A. No.

4 Q. Okay. Tell me about what happened next?

5 A. We -- I believe it was definitely after Blythe went
6 inside, Ryan came and stood around -- There is a small it
7 looks like concrete blocks, I believe, separating -- uh
8 -- the driveway of the beach house from the driveway of
9 the next house beside of that.

10 And there's a tee right there.

11 And I believe Ryan was standing
12 right there minding his own business.

13 And me and Matthew were further
14 over to the -- if you're looking directly at the beach
15 house -- the front of it -- to the left.

16 Q. Could you show the jury on this picture?

17 A. Yes.

18 Q. Where were y'all standing?

19 A. I believe me and Matthew were standing right around
20 here (indicating) and Ryan was over here (indicating).

21 Q. Okay. Now what happened when you were standing out
22 there?

23 A. Uh -- I had my back turned to the road. I was
24 holding onto Matthew.

25 And -- uh -- Ryan and Matthew said

1 that they had noticed a red car that had drove around a
2 couple times around the block.

3 And I didn't -- It seemed
4 suspicious; but I didn't think anything of it at the
5 time.

6 And the -- I believe the third
7 time the car came around, he stopped, and asked where he
8 was.

9 And I believe -- I'm not sure if
10 it was myself or Matthew that told him he was on
11 Hillside.

12 And I think he proceeded to ask
13 for directions somewhere.

14 I wasn't exactly paying attention
15 to what Matthew was saying.

16 And then, he pulled up a little
17 bit, like he was going to just drive off; stopped, and
18 got out of the car.

19 And it looked like he was holding
20 somebody behind his right arm, kind of trying to hold it
21 -- you know -- to the back so we couldn't see it.

22 At the time I believed it was a
23 handgun.

24 That's -- you know -- the only
25 assumption that I could make.

1 And he told us all to get on the
2 ground and empty our pockets.

3 I didn't have any pockets. So I
4 just laid myself on the ground.

5 And I believe Matthew didn't have
6 anything on him, or -- I'm not sure. But he didn't empty
7 his pockets out.

8 And Ryan had some change, and laid
9 it on the ground.

10 Q. Did y'all get on the ground?

11 A. Yes.

12 Q. How do you get on the ground? Face-down, or you
13 just sat down?

14 A. Yes. We -- Facedown, we were laying out on the
15 ground.

16 Q. Okay. Had you ever seen that car before?

17 A. No.

18 Q. Had you ever seen the man that stepped out of that
19 car before?

20 A. No.

21 Q. Did Matthew or Ryan appear to know anything about
22 what that person was?

23 A. No.

24 Q. Okay. So he gets out of the car and all three of
25 you are face down?

1 A. Uh-huh.

2 Q. At this point, did anybody scream?

3 A. No.

4 Q. Did you scream?

5 A. No, I did not.

6 Q. Why not?

7 A. I -- At that point, I was just shocked and scared.

8 I didn't -- I believed that he had a weapon. And I

9 didn't know what it was.

10 And I wasn't -- you know -- going
11 to put my life in danger more than it already was -- you
12 know -- to scream, and make a whole bunch of noise, and
13 -- you know -- create a lot of racket so -- to upset him.

14 So I wasn't thinking about -- you
15 know -- screaming or doing anything. Because I figured
16 nobody would hear me anyway.

17 It was the middle of the night.
18 People were probably asleep. And I figured -- you know
19 -- they had maybe -- I know Blythe's parents had been
20 drinking. So I figured they were pretty much out.

21 And I wasn't really thinking about
22 too much at that point just -- you know -- getting passed
23 that situation right that I was in.

24 Q. Okay. What happened next after y'all all got on
25 the ground?

1 A. Uh -- When he asked us to empty our pockets, I put
2 my phone on the ground.

3 Uh -- Ryan emptied the change out.

4 And the Matthew proceeded to tell
5 him that he knew of a hotel where some college kids were
6 staying at and they had a lot of money.

7 He then asked me if I had any
8 money in the house that I was staying at.

9 And I said: No.

10 And after -- you know -- After --
11 I believe him and Matthew went back and forth about the
12 college kids in the hotel for a minute maybe.

13 And then he told Matthew and Ryan
14 to stand up, and to walk the other way, and to not look
15 back.

16 Then he told me to stand up.

17 And he kind of patted me down to
18 see if I had anything on me. And he told me to get the
19 car.

20 So I got in the passenger side of
21 the car.

22 I don't remember if he opened the
23 door for me or if I opened it myself.

24 But I got in the car. And we rode
25 around.

1 He made a lot of turns.

2 I wasn't familiar with the area.

3 I don't know where we were at.

4 Uh -- He was -- He kept asking me
5 if I knew where we were; if I knew how to get around; and
6 I believe he might've asked me about that hotel where the
7 kids were staying at that Matthew had mentioned.

8 Uh --

9 Q. Tell me about that. What did Matthew and Ryan tell
10 him about that hotel?

11 A. I don't believe Ryan spoke directly to him. I'm not
12 sure.

13 But I know Matthew told them that
14 -- After he had asked us to empty our pockets, he asked
15 -- or he told him that he knew of a place where some
16 college kids were staying at that had a load of money.

17 Q. Did you know where these college kids were at?

18 A. No. I just believed that -- you know -- Matthew was
19 just making it up to get him to leave.

20 Q. Uh -- Did you know anybody else down here -- any
21 college kids down here?

22 A. No.

23 Q. So you got in the car -- or you ended up in the car?

24 A. Uh-huh.

25 Q. And he's driving around asking if you know where

1 you're at?

2 A. Uh-huh.

3 Q. What -- What's happening now?

4 A. He was kind of trying to make -- you know -- small
5 talk.

6 He was asking me my name.

7 Where I was from?

8 If I was down here on vacation?

9 Who I was staying with?

10 He asked me about Matthew and

11 Ryan; who they were?

12 He asked me if one of them was my
13 boyfriend?

14 And then -- you know --

15 Q. Let me ask you this:

16 When you got in the car with him,
17 did you think he was under the influence of any drugs or
18 alcohol?

19 A. The -- I'm not sure if -- you know -- him, himself,
20 or it was the car; but it reeked of alcohol.

21 Q. Okay. And so he's driving around and talking to
22 you. Did you know where y'all were at when y'all were
23 driving around?

24 A. I had no idea.

25 Q. What did the car look like?

1 A. It was -- The inside of it looked like it had like
2 red velvet seating.

3 The -- It looked -- you know -- a
4 pretty older car.

5 The radio in the dashboard was
6 just not -- It didn't look too modern to me.

7 Q. Okay. And the man that was in the car, what did he
8 look like?

9 A. I believe he was wearing a white doo-rag, a -- uh --
10 white tank top.

11 I'm -- I'm not sure as to the
12 shorts. I believe they were maybe gray.

13 It -- In the dark, they looked
14 like a dark color.

15 But in the light, it looked kind
16 of -- it looked like a lighter color.

17 Q. Was there anybody else in the car with y'all?

18 A. Not to my knowledge; no.

19 Q. Okay. When he got out of the car, was there
20 anybody else around except you, the two guys, and the
21 defendant?

22 A. No.

23 Q. Okay. Did he ever stop and pick anybody up?

24 A. No, not while I was in the car. No, he did not. Q.

25 Q. Okay. So -- uh -- what happens next? You're in

1 the car with him. He's talking to you.

2 You -- Do you have any idea where
3 he's taking you?

4 A. No.

5 Q. Okay. Did you talk to him?

6 A. I -- Not aside from asking them to take me back to
7 where he picked me up from and answering his questions --
8 you know -- just giving him short answers.

9 I wasn't really in the mood to
10 make conversation.

11 Q. Did you have your phone with you?

12 A. Yes I did.

13 Q. When you had the phone with you, did you try to call
14 the police?

15 A. No, I did not.

16 Q. Why not?

17 A. I didn't see if -- you know -- where that would get
18 anywhere.

19 It -- I was worried about my
20 safety.

21 And at that point I wasn't really
22 thinking about -- you know -- calling the police.

23 I didn't figure it would do me any
24 good. And I didn't want to upset him in any way.

25 So I just didn't call anyone

1 except for when my phone rang.

2 Q. Okay. Tell the jury about when your phone rang?

3 A. Matthew had called me a couple times, I believe,
4 already.

5 The maybe third time he called, he
6 -- Mr. Elliott told me to answer the phone and tell
7 Matthew that:

8 I was on my way.

9 I was out of the car.

10 And I was walking back.

11 And I was safe.

12 Matthew, I'm guessing, didn't
13 believe me any kept asking me questions:

14 If I was all right?

15 Where I was at?

16 And I hung up on him, because he
17 seemed like he was getting pretty agitated.

18 So I believe -- you know -- a
19 short bit later Blythe called me. And I did not answer
20 the phone.

21 I then turned my phone off.

22 And he asked me to hand him my
23 phone.

24 I'm not sure where he put it at.

25 I didn't pay any attention. I just handed it to him and

1 -- you know -- looked straight ahead.

2 Q. Okay. So you -- Did he ever tell you what -- what
3 to say when you were on the phone?

4 A. He -- Whenever Matthew called me, he told me to
5 answer and tell him that I was safe and I was on my way
6 back to the beach house then.

7 Q. Okay. And did he ever let you use the phone after
8 that?

9 A. No.

10 Q. Okay. What happened next? When he was in the car
11 did have a gun or a knife on you?

12 A. No, he did not. I believe he had a weapon. But it
13 was not -- you know -- from what I could see, it wasn't
14 pointed towards me.

15 It wasn't -- you know -- anywhere
16 around me where I could immediately see it.

17 Q. So what happened once y'all were driving around in
18 the car after he takes your phone?

19 A. He was -- you know -- he continued to ask me the
20 questions -- just the same thing.

21 And he started getting a little
22 more personal with those questions; asking me about me
23 and Matthew; if we were dating; after I told him -- you
24 know -- who they were.

25 And he asked me how my parents

1 felt about our relationship together; if they approved or
2 not?

3 And then, he asked me how he
4 thought my -- I believe -- I'm not sure if either he said
5 my father specifically or my parents in general; how they
6 would react if they found out that I had been with a
7 black man?

8 And I -- I believe my answer was:

9 It wouldn't be consensual; so I
10 don't believe that question needs to be -- even needs to
11 be asked.

12 Q. And what else did he say? Or did he say anything
13 else?

14 A. After that, he stopped somewhere. I don't know if
15 he just stopped in the middle of the road -- if he pulled
16 over somewhere. I'm not exactly sure.

17 He turned to me and asked me to
18 kiss him.

19 And I said -- you know:

20 If I do, will you let me leave?

21 And he said: Yes.

22 And at that point I was just
23 sitting there. And he leaned in and kissed me; and then
24 went back to driving; and we pulled off and started
25 driving again.

1 Q. So at that point did you ask him to get out of the
2 car?

3 A. I had asked him numerous times if he would let me go
4 back; if he would just drop me off and let me go back
5 home; which was -- I was referring to the beach house
6 that I was staying at.

7 Q. And what was he saying?

8 A. He said that he would take me home; that he wasn't
9 going to hurt me.

10 And he kept telling me not -- I
11 was not exactly full-on crying, but I was whimpering a
12 bit.

13 And he told me not to cry because
14 he wasn't going to hurt me (begins to weep slightly) and
15 that -- you know -- to calm down.

16 And I believe he even told me to
17 shut up a couple of times.

18 Q. Okay. Now, when you were in the car with him, did
19 he ever put his hands on you?

20 A. He asked me -- I'm not -- It was -- I'm not sure at
21 what point in time he --

22 Q. I'm not -- Don't -- Did -- Did he put his hands on
23 you?

24 A. Yes, he did.

25 Q. Where did he put his hands on you?

1 A. In my crotch region down my pants.

2 Q. Okay. And at that point, did you have your clothes
3 on?

4 A. He had told me to remove my shorts before that. And
5 -- But -- uh -- I still had my underwear on.

6 Q. Okay. And did he touch you?

7 A. Yes he did.

8 Q. Did he penetrate you?

9 A. I don't believe so at that point; no.

10 Q. Okay. Did you say anything to him?

11 A. No, I did not.

12 Q. Okay. Was he threatening you at that point?

13 A. No. He just kept telling me that he wasn't going
14 to hurt me; that he was going to take me back; and that
15 -- not to be upset because I was going to be all right.

16 Q. Did you believe that?

17 A. No.

18 Q. Okay. At that point when that was going on did you
19 know where you were?

20 A. No, I did not.

21 Q. Did you have your phone at that point?

22 A. No, I did not.

23 Q. Okay. What happened next?

24 A. We drove around a bit more. And he continued to
25 ask me if I knew I was at.

1 Uh -- I noticed that I believe we
2 might have went over a bridge or something. I know I
3 saw water.

4 And he was making a lot of turns,
5 so I guess he wanted to get me -- you know -- as lost as
6 possible.

7 I guess -- I'm not sure he didn't
8 believe me when I told him that I didn't know where I was
9 at.

10 And -- uh -- eventually he
11 stopped.

12 And I believe we went left into
13 what I believe was a boat ramp.

14 There was a small parking lot. Uh
15 -- There was a couple of lights.

16 Uh -- The area itself was very
17 well lit.

18 There was -- you know -- condos
19 around. There wasn't really hotels. It was just a
20 bunch of condos.

21 And he then told me to get out of
22 the car.

23 And I asked him if I could put my
24 pants back on; and he said: Yes.

25 And I started to walk around the

1 back of the car. And he told me to go back over there.

2 And at that point, he walked
3 around the back of the car. He opened the door and told
4 me to bend over and put my hands in the seat.

5 Uh -- He then penetrated me anally
6 first, then vaginally. And I do not believe he was
7 erect. And I do not believe he ejaculated.

8 Q. What made you think that?

9 A. Uh -- The whole incident lasted at most maybe two
10 minutes.

11 And then he abruptly stopped and
12 said:

13 I can't do this to you baby.
14 And told me to put my clothes back
15 on.

16 Then I asked if I could leave; and
17 he said: Yes.

18 He told me to walk the -- up the
19 opposite way, which was going right out of the parking
20 lot, and not to look back.

21 And --

22 Q. During -- During that time, were you saying anything
23 to him?

24 A. No.

25 Q. Okay. Before that time were you saying anything to

1 him?

2 A. Uh -- Aside from:

3 Can you take me home?

4 Can I leave?

5 Can I put my pants back on?

6 And just answering the questions

7 that he was asking me.

8 Q. Was he showing you any sign he was going to let you
9 out of that car?

10 A. Not while we were in it; no. And I didn't believe
11 that he was going to let me leave -- after the fact --
12 until he told me to leave

13 Q. Okay. Did you recognize the area y'all were
14 stopped at?

15 A. Not at all.

16 Q. Did he appear to recognize the area?

17 A. Uh -- I'm not -- He would stop at certain points and
18 back up and turn.

19 I'm not sure if he maybe just
20 missed a turn or if he knew.

21 I wasn't really paying attention
22 to where we were going in -- at all.

23 So I can't say as to whether he
24 was or was not familiar with the area.

25 Q. Now I'd like to ask you a couple more questions

1 about what happened at the boat ramp.

2 A. Uh-huh.

3 Q. You said that he told you to stay there when you
4 were trying to walk away from the car; is that right?

5 A. Yes.

6 Q. At that point, you had your clothes on?

7 A. Yes.

8 Q. And he told you to do what next?

9 A. He told me -- When -- After he told to walk back
10 around to the passenger side of the car, he told me to
11 bend over.

12 That was after he opened the door.

13 Q. During this time, did it ever occur to you, or did
14 you ever think about trying to scream or run?

15 A. No, I did not.

16 Q. Okay. So did you comply with what he asked you to
17 do?

18 A. Yes, I did.

19 Q. Okay. Now were any of your clothes removed?

20 A. I believe he asked me to pull down my pants and my
21 underwear when I got back over to the passenger side of
22 the car.

23 Q. And did you do that?

24 A. Yes, I did.

25 Q. Okay. Did you take off any other of your clothes?

1 A. No, I did not.

2 Q. At any point during all of this, did you have an
3 shoes on?

4 A. No, I did not.

5 Q. So when you got in that car, you didn't have shoes
6 on?

7 A. No.

8 Q. When you got out, you didn't have shoes on?

9 A. No.

10 Q. Okay. At that point, did you have any idea where
11 your phone was?

12 A. I didn't see where he put it. I had no idea at
13 all.

14 I wasn't paying attention to what
15 he did with it.

16 I -- I don't want to say "I
17 assume," but I -- I just don't know at all. I have
18 absolutely no idea what he had done with it.

19 Q. Okay. But you knew at that point you didn't have
20 your phone?

21 A. Yes; I did not have my phone.

22 Q. Okay. Now he -- he -- Did you take your own pants
23 off and underwear at that point when you were standing by
24 the car?

25 A. Yes.

1 Q. Okay. And did you bend over into the car?

2 A. Yes.

3 Q. Okay. So the door was open?

4 A. Yes.

5 Q. Okay. Now did he say anything to you before he
6 assaulted you at that point?

7 A. Aside from telling me to remove my pants and
8 underwear and to bend over; no -- and what he said
9 afterwards; no.

10 Q. And did he penetrate you?

11 A. Yes, he did.

12 Q. Where did he penetrate you first?

13 A. Anally first.

14 Q. Okay. And how long did that last; or do you
15 recall?

16 A. I do not recall how long that specific event lasted.

17 Q. Okay. When that was happening, was he touching you
18 anywhere else?

19 A. I don't believe so. I was kind of -- I was crying
20 and trying to block that out -- what was going on and --
21 you know --

22 Q. Okay. Did he ever say anything to you about
23 crying; or did he ever say anything?

24 A. Not during that time; no. Whenever we were in the
25 car, he had told me not to cry --

1 Q. And --

2 A. -- that I was going to be all right and he wasn't
3 going to hurt me.

4 Q. Okay. Now after he penetrated you anally, did he
5 penetrate you anywhere else?

6 A. Yes.

7 Q. Where?

8 A. Vaginally.

9 Q. Okay. And during that time, did he say anything to
10 you?

11 A. No.

12 Q. Did he touch you anywhere else?

13 A. I don't believe so.

14 Q. At that time, did you see a gun or weapon that he
15 was showing to you?

16 A. No, I did not.

17 Q. Now you told this jury -- To your knowledge, was he
18 able to ejaculate?

19 A. No; not to my knowledge.

20 Q. Okay. And tell the jury as much detail as you can
21 about what you felt when this was going on?

22 A. I wasn't -- I was kind of blocking all of it out.
23 So I knew I had an idea; but I didn't -- It wasn't -- My
24 entire body -- I kind of just lost feeling in general.

25 And I was trying to -- (begins to

1 weep again) -- not to think about what was happening
2 anyway.

3 (WHEREUPON: The Bailiff hands the
4 witness Kleenex.)

5 WITNESS:

6 Thank you.

7 I don't want to say it wasn't
8 painful. But it didn't feel like -- you know -- much was
9 happening.

10 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

11 Q. But did he penetrate you?

12 A. Yes, he did.

13 Q. All right. And then what did he say right after
14 this happened?

15 A. He stopped and said:

16 I can't do this to you baby.

17 And told me to -- I asked -- I
18 believe I -- I may have asked -- or he told me to put my
19 pants back on.

20 And then he told me to walk off.

21 Q. Okay. At that point, did he ever give you your
22 phone back?

23 A. No, he did not.

24 Q. Did he allow you to put your pants on?

25 A. Yes.

1 Q. Did he say anything else to you?

2 A. Aside from -- you know -- walk off the other way;
3 no, he did not.

4 Q. At that point how were you acting?

5 A. I was -- uh -- I don't want to say excited. I was
6 extremely happy that I was able to get away.

7 I was scared -- uh -- nervous;
8 anxious to speak to anyone so I could get help to find --
9 you know -- my way back to where I was supposed to be; or
10 have someone come get me.

11 Q. Okay. Did you recognize the area you were in?

12 A. Not at all.

13 Q. Did you know how to get back to your house from that
14 area?

15 A. No.

16 Q. Was he following you at any point? Or did you just
17 get to walk off?

18 A. After I walked off, he got back in the car and he
19 pulled up behind me.

20 I guess I walked maybe a couple of
21 blocks while he was following behind me.

22 He pulled up next to me and told
23 me to run the -- to the right, and not to turn around and
24 look back at him.

25 Q. Uh-huh.

1 A. And I believe I asked if I could have my phone back.

2 And he said: Yes; and then told me
3 to run and then just drove off without giving me my phone
4 back.

5 Q. Okay. So did you take off running?

6 A. Yes, I did; in the right direction.

7 Q. Okay. And which direction was he going; do you
8 remember?

9 A. I believe he went straight.

10 Q. Now, did you ever see his car again that night?

11 A. No. After that; no, I did not.

12 Q. Okay. Were you ever able to get any way to a
13 phone, or to anybody?

14 A. Uh -- After I walked around for quite a while; I was
15 knocking on -- you know -- the doors of people's condos.

16 No one answered.

17 And I was -- I wasn't exactly
18 walking around. I was more like sprinting around the
19 area.

20 And I eventually -- I believe the
21 runner ran up behind me.

22 And as he was going across the
23 street, I asked him if he had a phone that I could use?

24 And I told him that I had been
25 kidnapped and that I didn't have a phone; and I needed to

1 get to one to call my boyfriend.

2 And he said that he had a phone
3 back at his condo; that he hadn't brought it with him.

4 So we went back to his condo,
5 where he told me to sit outside on the steps while he
6 went inside and got his cell phone.

7 And I called Matthew; and -- long
8 enough for him to hear my voice, and to know that I was
9 okay.

10 (Begins to weep again.)

11 And -- uh -- a police officer got
12 on the phone and asked me where I was at.

13 And I had no idea.

14 So I just handed the phone to the
15 man that let me use it.

16 And he told them where I was at
17 told him where I was at.

18 And -- uh -- maybe -- I'm not sure
19 exactly how long it was until they got there and picked
20 me up and took me to the hospital.

21 Q. Okay. Now, did you know this guy that was running
22 behind you?

23 A. No, I did not.

24 Q. Had you ever seen him before?

25 A. No.

1 Q. Okay. When you called -- When you got the phone,
2 why didn't you call the police first?

3 A. Because I didn't want to have to go through
4 everything else that I knew I would have to.

5 I didn't want to have to -- you
6 know -- explain to anybody else would had happened.

7 And I didn't -- It was very early
8 in the morning. I hadn't slept. I just wanted to --
9 you know -- find some comfort with somebody that I knew
10 and that I cared about.

11 And I didn't want to have to deal
12 with anything else that night.

13 So that's why I called Matthew
14 first.

15 That was my first instinct; to
16 just call him, and to have him come and pick me up.

17 Q. Okay. Now, were you able finally to make contact
18 with the police?

19 A. Yes.

20 Q. And you said the guy that was -- uh -- running; you
21 told him what happened.

22 A. I told him -- I don't believe I should shared the
23 details.

24 I -- I told him that I was
25 kidnapped, and that I'd been dropped out, and I had no

1 idea where I was at.

2 Q. What you told that guy, is that the same thing
3 you're telling us here?

4 A. Yes.

5 Q. Okay. Did a police officer ever make it to you
6 that night?

7 A. Yes.

8 Q. Did you get in the car with that police officer?

9 A. Yes, I did.

10 Q. Okay. Now did you talk to the police officer about
11 what happened that night?

12 A. Yes, I did.

13 Q. Okay. Did you convey to him what had happened to
14 you that night?

15 A. Yes.

16 Q. Okay. What you told him, is that same thing that
17 you're telling us today?

18 A. Yes, it is.

19 Q. Now when he picked you up, did you know where you
20 were once y'all started driving and you were in the car
21 with the officer?

22 A. No. Every -- Everything was extremely unfamiliar
23 to me.

24 Q. Okay. Did the officer ask you any questions as to
25 whether or not you were familiar with the area?

1 A. I don't believe so.

2 Q. Okay. Did you notify or tell the officer that you
3 didn't know where you were?

4 A. I believe I told him that I was down on vacation
5 with a friend. I'm not exactly sure. It's been quite a
6 while. So I couldn't tell you exactly what I said to
7 him.

8 Q. Okay. Where did the officers take you?

9 A. He took me to the hospital. I'm not sure what
10 hospital it was. But he took me straight to the
11 hospital.

12 Q. Okay. When you at the hospital, did you ever come
13 in contact with another officer?

14 A. I can't say for sure. I was half asleep. I was --
15 you know -- in the hospital bed half asleep.

16 I know -- uh -- I believe -- uh --
17 a woman named Krista, I believe she was an advocate; and
18 she was in the hospital room with me -- you know --
19 talking to me; because I couldn't have any Uh -- My
20 father wasn't down to the beach yet.

21 And according to what I've heard,
22 the police wouldn't let Matthew leave to come to the
23 hospital to see me.

24 Q. Okay. Now did you talk to an officer the next day?

25 A. Yes, I did.

1 Q. Okay. Where did you talk to him at?

2 A. At the police station. I'm not sure exactly what
3 the name of it is or where it's at.

4 Q. Okay. Now was that the afternoon of when this
5 happened?

6 A. Yes it was.

7 Q. So all this happened early morning between --
8 sometime between 1:00 and probably five o'clock in the
9 morning?

10 A. Yes.

11 Q. Okay. And then you talked to that officer at the
12 police station that afternoon?

13 A. Yes.

14 Q. Okay. Now did you tell him what had happened?

15 A. Yes, I did.

16 Q. Okay. What you told him that afternoon, is that
17 the same thing that you're telling us today?

18 A. Yes it is.

19 Q. Okay. Now, the defendant in this case, have you
20 ever met him before?

21 A. No I have not.

22 Q. Okay. To your knowledge, had anybody down there,
23 Matt or Ryan, met him before?

24 A. No.

25 Q. Okay. Have you ever seen him since?

1 A. Oh, since the incident?

2 Q. Yes. I mean, has there ever been any contact
3 between you and him after that day?

4 A. No, aside from --

5 Q. Okay. Except with this; okay. Now, when you
6 talked to the officer that afternoon, did you tell him
7 exactly what you told us today?

8 A. Yes, I did.

9 Q. Okay. When were you raped that morning? Do you
10 know?

11 A. Uh -- I just remember looking at the clock while I
12 was in the car with him and it being around 3:30.

13 I -- I didn't have my phone at
14 that point. I didn't -- I wasn't thinking about --
15 Everything seem like -- It seemed like a lifetime.

16 But I couldn't tell you what time
17 exactly it was.

18 Q. Did you see anybody else around or out that night?

19 A. No; aside from the runner, no, I did not.

20 Q. Okay. Was it still dark outside when you got out
21 of that car?

22 A. Yes.

23 Q. Did you even see any traffic on the roadway at that
24 night?

25 A. No.

1 Q. BE -- uh -- when that officer picked you up,
2 where did he take you?

3 A. Straight to the hospital.

4 Q. Okay. And while you were in the car with the
5 defendant, did he ever strike you, or --

6 A. No, he did not.

7 Q. -- hit you, or anything like that?

8 A. No.

9 Q. Did you -- Did he ever pull a knife or a weapon on
10 you?

11 A. No.

12 Q. The entire time you were around him, did he ever
13 intimidate you with a weapon, or hit you, or strike you
14 in any kind of way?

15 A. No, he did not.

16 Q. Okay. When you got to the hospital, what did they
17 do?

18 A. Uh -- I walked in. It's -- I'm guessing someone
19 had already called.

20 And I was in the hospital bed for
21 a pretty good while until someone came in there and
22 performed a rape kit.

23 Q. And where did you go right after you left the
24 hospital?

25 A. Blythe's mother, Penny, came and picked me up. And

1 we went straight back to the beach house.

2 Q. And what time did your family finally make it down
3 there?

4 A. I can't be sure as to when. I'm -- I don't believe
5 I even got out of the hospital until around maybe 10
6 o'clock that morning.

7 But I cannot be sure at all.

8 I was not looking at the clock.

9 I wasn't paying attention to the
10 time.

11 Q. Okay. And do you remember about how long it was
12 between you when you left the hospital and when you
13 talked to Detective Abercrombie?

14 A. Uh -- I had to drive back to the beach house. I
15 then sat and talked with Matthew for a little while.

16 My parents showed up.

17 I packed my things.

18 And then, we went to the police
19 station. And it could've been an hour or so.

20 But I -- Like I said, I cannot be
21 sure.

22 MS. LIVESAY:

23 Okay. No further questions, Your
24 Honor.

25 THE COURT:

1 THE COURT:

2 Counsel?

3 MR. HAZZARD:

4 Thank Your Honor.

5 CROSS-EXAMINATION BY MR. HAZZARD:

6 Q. Ma'am -- uh -- the prosecutor asked you whether or
7 not everything you've said here today is what you said
8 that night and the following morning; is that correct?

9 A. Yes sir.

10 Q. All right. Now this whole thing about Matthew
11 telling Mark something about some college kids with a lot
12 of money; you never told Detective Abercrombie that?

13 And you never told Officer Wells about that; did you?

14 A. I -- I'm guessing that if you say that I didn't,
15 then if you have that statement in front of you, then,
16 no; I guess I did not.

17 Q. Okay. So we know that's a little bit different.

18 And you never told Detective
19 Abercrombie or Officer Wells that when you were on the
20 phone with Matthew, that Mark asked you to tell him
21 anything; did you?

22 A. I have just recently watched the videotape from me
23 talking to Detective Abercrombie --

24 Q. Hmm.

25 A. -- and yes, I did mention that he told me to tell

1 Matthew that I was safe and I was out of the car and
2 walking back to the beach house.

3 So yes, I did mention that.

4 Q. Okay. So they just forgot to put in the report,
5 then?

6 A. Uh -- Yes.

7 Q. Okay. Fair enough. Now, the prosecution was good
8 enough to provide me with your telephone records. And
9 they indicate that after you got -- or say that you got
10 in the car with Mark -- uh -- by force, that there is a
11 call from Matthew to you at 3:34 AM and 43 seconds; and
12 that this call was for a minute and a half.

13 Now exactly what are you talking
14 to someone on the phone about for a minute and a half
15 when you are in an abduction situation, ma'am?

16 A. He told me to answer the phone and tell Matthew that
17 I was on my way back; that I had exited the car and I was
18 walking back to the beach house and that I was safe.

19 Uh -- I maybe repeated it a couple
20 of times. And Matthew was panicking. He continued ask
21 me questions:

22 If I was all right.

23 Where I was at?

24 And I didn't know.

25 Q. Hmm.

1 A. And he was just rambling on. So eventually I hung
2 up the phone on him.

3 Q. Uh-huh. Okay. That sounds more like the 25
4 second conversation that was the first one before that;
5 or, was it not?

6 A. I may have answered -- He kept calling, so I may
7 have pushed "talk" on the phone, and then hit "end."

8 I know I spoke to him once.

9 Q. Uh-huh. Okay. All right. Now you indicated
10 that you were standing out there with Matthew, Ryan, and
11 Blythe; correct?

12 A. Yes.

13 Q. And Blythe was kind of like your co-conspirator in
14 this whole thing, because she knew that Matthew and Ryan
15 were coming down. And she helped keep that information
16 from her parents; correct?

17 A. Yes, she did keep the information from her parents;
18 yes.

19 Q. Okay. And on the date in question, both you and
20 Blythe were 14; is that correct?

21 A. Yes. Uh -- Blythe -- I know -- Her birthday was, I
22 believe, the day that we came down to the beach.

23 So I believe she was 15.

24 Q. Okay. So you were 14 at the time? She was 15?

25 A. Yes.

1 Q. And Matthew and Ryan were both at least 17; correct?

2 A. Yes, they were both 17.

3 Q. Okay. Now you told the jury that when Mark drove
4 by, that there was some kind of conversation.

5 Well first, let's talk about the
6 area.

7 Uh -- There's no question that
8 there is lighting in the area, because you can see a
9 light pole in one of those pictures the State has put in
10 evidence; correct?

11 A. Yes, it is -- There's a couple of streetlights. But
12 it is still very dark outside --

13 Q. With a couple --

14 A. -- regardless -- regardless of the streetlights.

15 Q. With a couple of streetlights, it's still dark
16 outside?

17 A. Yes, it is. It's very lightly lit. It's not a
18 well lit area I wouldn't say.

19 Q. Okay. Well, these aren't personal streetlights
20 we're talking bout? We're talking about heavy-duty
21 streetlights that the power company provides?

22 Is that correct?

23 A. Yes, but as to if they were on that night or if they
24 had went out, I couldn't tell you.

25 But I know from experience from

1 being there that it was not a very well lit area.

2 Q. Uh-huh. Okay. So now the power company didn't do
3 their job and the lights went out?

4 A. I'm not saying that. I'm just -- I'm saying that I
5 -- I know that it's not an extremely well lit area.

6 I don't know the power of the
7 lights, if all of them were even on.

8 But I know that it was still
9 rather dark to me.

10 Q. Okay. Now, you -- you say Mr. Elliott got out of
11 the car and that he had what appeared to you to be a
12 weapon?

13 Is that correct?

14 A. Yes.

15 Q. Okay. And that he somehow was holding what you
16 thought was a gun; but that somehow he was holding it
17 behind his right hand and hiding it with his forearms?

18 A. Yes.

19 Q. Okay. Uh -- And then, once he did that, he what;
20 very quietly and solicitously said:

21 The three of you need to come over
22 here and lay down in the street?

23 A. He did not yell. But he did not whisper. It was
24 a normal tone.

25 Uh -- He seemed a bit agitated, I

1 would say.

2 But it was -- you know -- a normal
3 speaking voice for a conversation with someone.

4 He didn't yell.

5 Q. Uh-huh.

6 A. And he told us to lay down on the ground and empty
7 our pockets.

8 Q. Uh-huh. Okay. And so you then put down the one
9 thing you had, which was your cell phone; correct?

10 A. Yes.

11 Q. But yet when he abducted you, he let you pick up
12 that one thing that would give you communication to the
13 outside world?

14 Is that your testimony?

15 A. I picked it up when I stood up.

16 Q. Uh-huh.

17 A. And I don't know if he noticed it. I didn't make
18 light of the fact that that was the only thing I had on
19 me.

20 Q. Uh-huh.

21 A. So if he knew that I had it with me or not when I
22 got into the car, I can't say.

23 Q. Okay. But at some point, once you got in the car,
24 obviously he knew that you had it on you, because you
25 were talking Matthew; right?

1 A. Because it was ringing and he told me to answer it;
2 yes.

3 Q. Yeah. And at any point, did he say:

4 Look here, throw that out the
5 window.

6 A. No, he did not tell me to throw it out of the
7 window. He asked me to give it to him.

8 Q. He asked you to give it to him?

9 A. (Nods in the affirmative.)

10 Q. Okay. All right. So, now let's go back to the
11 abduction, as you call it.

12 Uh -- So you're on the ground and
13 -- The three of you are on the ground -- laid out on the
14 ground?

15 A. Yes.

16 Q. And then what happened?

17 A. Then he asked us to empty our pockets.

18 Q. Okay.

19 A. I did not have pockets.

20 Q. Uh-huh.

21 A. I laid my phone cell phone on the ground next to me.

22 Q. Uh-huh.

23 A. Matthew didn't empty his pockets. He was -- you
24 know -- kind of sitting up, trying to talk to him --

25 Q. Hmm.

1 A. -- telling him that he knows a place where college
2 kids were staying at; that they had money.

3 Q. Uh-huh.

4 A. Ryan emptied out some change --

5 Q. Uh-huh.

6 A. -- on the ground, and said that's all that he had.

7 Q. Hmm.

8 A. And he proceeded to ask me if there was any money in
9 the house --

10 Q. Hmm.

11 A. -- that I was staying at? And I said: No.

12 Q. Uh-huh. Okay. So now, your testimony is:

13 He was going to roll up in the
14 house and talk to the Carawans?

15 A. I can't tell you what he was going to do. Uh -- I
16 don't know what his plans were at that point.

17 Q. Hmm.

18 A. I know -- All I know is he asked me if there was
19 money in the house?

20 Q. So your testimony then is, this man was looking for
21 money?

22 A. I -- I'm guessing so, because he asked us to empty
23 our pockets and then asked me if there was money in the
24 house.

25 So, I'm guessing yes, that's what

1 he was after -- was money.

2 Q. And you didn't have any money?

3 A. No, I did not.

4 Q. Didn't know anybody who had any money?

5 A. I knew that -- uh -- I didn't have money on me.

6 Q. Yes, ma'am?

7 A. I did have money in the house. But I told him no,
8 for fear of him running in the house and endangering the
9 lives of the three people that were in there --

10 Q. Yeah.

11 A. -- that had no knowledge of what was going on.

12 Q. Okay. So based on your testimony then, to his
13 knowledge -- this person who's looking for money -- who
14 says they're all about finding money -- they're talking
15 to one person who definitely, to his knowledge, has no
16 money. And that's you; right?

17 A. Yes.

18 Q. Okay. And to his knowledge, you don't know where
19 any money is?

20 A. Yes.

21 Q. Right?

22 A. (Nods in the affirmative.)

23 Q. Now, according to you, Matthew has told him:

24 Dude, there's this place where
25 these college kids are. You know, I can probably take

1 you there. And you can get all the money you want.

2 Right?

3 A. Yes.

4 Q. They got a lot of money; okay. But this person
5 that you say wanted money, he isn't interested in that;
6 according to you?

7 A. I'm -- I'm not exactly sure what you mean.

8 Q. Well, your testimony has been that:

9 Rather than Mark passing by and
10 y'all asking him about drugs when he asked y'all about
11 directions; that he starts his conversation, get's you --
12 puts you down on the ground. And what he wants is money.

13 He wants so much money, according
14 to you, that he's asking:

15 Is there money in the house?

16 Do the people in the house have
17 money?

18 Correct?

19 A. I did not ask for drugs. No one asked for drugs.

20 We didn't speak to him at all
21 until he stopped and asked us where he was; and then
22 proceeded to ask for directions.

23 So, no; there was no exchange of
24 any type of talk about drugs at all --

25 Q. Hmm.

1 A. -- between any of us.

2 Q. Yes, ma'am. Yes ma'am. You indicated that you
3 and Matthew had a little argument about something.

4 Isn't that correct?

5 A. Yes.

6 Q. Okay. And that Matthew and Ryan took off?

7 Is that correct?

8 A. Yes.

9 Q. They took off?

10 A. (Nods in the affirmative.)

11 Q. Okay. Now your testimony, and I believe Ryan's
12 testimony, is that:

13 They even knew less about the area
14 than you did.

15 Correct?

16 A. Yes.

17 Q. You know, they had just driven down that afternoon?

18 A. Yes.

19 Q. Had to get directions to get there?

20 A. (Nods in the affirmative.)

21 Q. But, when y'all have this argument, they take off;
22 and they go right where?

23 Right to a hotel and motel.

24 Is that correct?

25 A. Uh -- According to what Ryan said yesterday, yes.

1 I did not ask where he went.

2 So according to what Ryan said
3 yesterday, yes.

4 If he says that they went to a
5 hotel parking lot, then I'm assuming that they did.

6 Q. Yes, ma'am. Now, let's get back to the money
7 issue.

8 You're down on the ground.

9 And you -- Well, you don't have
10 any pockets. All you've got is your cell phone, which
11 he allows you to keep.

12 A. (Nods in the affirmative.)

13 Q. Your testimony is that whatever money there is, he
14 doesn't take; correct?

15 A. It's only loose change.

16 Q. Okay.

17 A. So, no, I don't believe he took it.

18 Q. Okay. And did he ever search Ryan's pockets or
19 Matthew's pockets looking to see if they were holding out
20 on him?

21 A. No, he did not.

22 Q. All right. And at some point then, I guess, he
23 tells the three of you to get up?

24 A. He tells Matthew and Ryan to stand up.

25 Q. Okay. So at this point, you're still on the

1 ground?

2 A. Yes, I am.

3 Q. Okay. And then what did he tell Matthew and Ryan
4 to do at that point?

5 A. To walk the other way and not to turn around and
6 look back.

7 Q. To walk the other way?

8 A. Yes.

9 Q. Okay. Where were you and him and Matthew and Ryan
10 at that point?

11 The four of you in relationship to
12 each other, where were you, according to your story?

13 A. I was not looking at Matthew and Ryan. I was still
14 on the ground.

15 Q. Uh-huh.

16 A. I'm assuming they walked the other way like he told
17 them to.

18 Q. Hmm.

19 A. I was facing the back of the car. He was standing
20 on what would be the left side of the car near the tail
21 light over there.

22 And I was still on the ground, I
23 believe, closer to the right side of the car.

24 Q. Was the car headed north or south ma'am?

25 A. Uh --

1 Q. Well, let me ask you this way -- a simple way.

2 Based on this house here -- That's
3 -- That's the house you were staying with them for -- I'm
4 looking at State's Exhibit Number 5.

5 A. Yes.

6 Q. Okay. That's the house?

7 A. Yes.

8 Q. All right. Was Mark's car door close -- face --
9 closest to the house or away from the house, ma'am?

10 A. Closest to the house.

11 Q. Okay. So the car's heading south?

12 A. I'm guessing -- I'm not good at the direction. If
13 that's what you say, then, yes.

14 Q. Okay. And you're saying that he tells them to walk
15 away. He's standing closer to the house. You're on the
16 other side of the car in the street?

17 A. Yes, I was behind the car on the right side of it
18 laying down in the street, yes.

19 Q. Okay. And so he left you laying in the street as
20 he walked around to the other side of the car closer to
21 the house?

22 A. He had never actually walked over to my side of the
23 car at that point. He had not. He had stayed on the
24 left side where he had been the entire time at that
25 point.

1 Up until then, when he told them
2 to walk away, he had not moved from that spot.

3 Q. So your testimony then is:

4 He pulls up; opens his car door.

5 When he gets there, the three of
6 you are in the yard; correct?

7 A. We were at the very end of the driveway.

8 Q. Or at least the two of you were you and Matthew;
9 right?

10 A. Yes.

11 Q. And Ryan was farther back closer to the house;
12 right?

13 A. I'm assuming so. I wasn't paying attention to what
14 he was doing.

15 Q. Okay. So you just know he wasn't up there near the
16 street with you?

17 A. He was further back at least. I know he was not
18 right -- you know -- right beside us.

19 So we had to have been behind us
20 somewhere.

21 Q. Fair enough. So now at this point, then, when Mark
22 pulls up, based on your story, y'all are basically in the
23 same spot as far as with relation to the yard?

24 A. (No response.)

25 Q. His -- His car door -- His -- His driver's door is

1 right here. The yard's here. The house is there.

2 You and Matthew are standing here
3 where you are?

4 So y'all are pretty close at that
5 point; right?

6 A. Uh -- When he stopped --

7 Q. Uh-huh.

8 A. -- uh -- and first asked us for directions, yes, he
9 was closer.

10 But after that, he pulled up quite
11 a few feet and stopped and got out of the car.

12 So his car was closer to the house
13 next to them --

14 Q. Uh-huh.

15 A. -- instead of the driveway of the house that I was
16 staying at.

17 Q. So he was past the driveway and practically in front
18 of the house that's south of 1907 South Hillside Drive?

19 A. It's -- The driveway, from what I remember, is a
20 very wide driveway.

21 Q. Hmm.

22 A. So, he was probably somewhere in there. I --
23 Again, it was dark and I wasn't exactly paying attention
24 to where he was placing his car at when he was getting
25 out of it.

1 Q. Okay. But still, him getting out of the car, that
2 places him basically stepping into the driveway or
3 stepping into the yard; correct?

4 A. Uh -- I'm -- Sure. I'm not sure --

5 Q. Now ma'am, I ain't asking you to agree with me just
6 because I want to hear it.

7 I want you to testify to the
8 truth.

9 That's what we're trying to get to
10 here is the truth.

11 A. I understand that.

12 Q. So do you recall or do you not recall?

13 A. I do not recall exactly. No, I don't.

14 Q. Okay. Fair enough. So now, after he gets them up
15 and walking away -- Well, let me get this right now.

16 He gets out of his car door, which
17 is closer to the house.

18 So he's basically stepping into
19 the yard.

20 You and Matthew are basically in
21 the yard; correct?

22 A. Yes.

23 Q. So then, is it your testimony that he tells you
24 basically to go around the car and get in the street?

25 A. Yes, he told us to lay on the ground. So -- I

1 don't believe he specifically said:

2 Get in the middle of the street
3 and lay on the ground.

4 But that's where we ended up, was
5 behind the car, in the street, laying down.

6 Q. So instead of just getting whatever you had right
7 there when you're basically beside him, or having you lay
8 down right there were you are, your testimony, then, is:

9 Somehow, with his mystery weapon,
10 he marches you out to the street?

11 But no; he didn't march you;
12 right? Because he never left his side of the car; right?

13

14 A. Right.

15 Q. Okay. So, now the three of you are in the middle
16 of the street, according to you and your story.

17 And you then can say that he tells
18 them to get up and -- and hit the road; correct?

19 A. Yes.

20 Q. Did they have a way -- Which -- Which direction did
21 they head?

22 Well, let me ask you this:

23 Uh -- You say you're not good with
24 directions.

25 Did they walk away towards where

1 the front of the car was, or walk past the front of his
2 car, according to your story.

3 Or, did they walk away past the
4 back of his car --

5 A. They --

6 Q. -- according to your story?

7 A. They walked away from the back; opposite from the
8 way that he drove off with me in the car.

9 They went the opposite way.

10 Q. Okay. So they went headed a little bit north;
11 correct?

12 A. If you're saying that the other way is south, then,
13 yes, that would've been north.

14 Q. Okay. Imagine you are standing there facing the
15 house like that photograph.

16 Are you with me?

17 A. Yes.

18 Q. Okay. They went to the left; is that correct?

19 A. Yes.

20 Q. All right. Fair enough. Now -- So Mark is still,
21 according to your story, he's still over on the driver's
22 side near the back of his car.

23 And you are, according to you, on
24 the ground over near the passenger side out in the
25 street.

1 And at this point, Matthew and
2 Ryan are walking away from the back of Mark's car.

3 Is that correct?

4 A. Yes.

5 Q. Okay. And based on your story, what does -- what
6 does Mark do then?

7 I'm -- I'm -- What does he do
8 then?

9 A. He asked me to stand up.

10 Q. Okay.

11 A. And he patted me down.

12 Q. Okay. Now, where were you standing when he patted
13 you down?

14 A. The same place I was laying at. I just stood
15 directly up there. And he patted me down, I guess to
16 see if I had anything on me.

17 Q. Okay. Let's back up. So at some point -- and I'm
18 going to apologize to you in advance, because I'm trying
19 to get every step of what occurred.

20 A. Uh-huh.

21 Q. And I realize that you want to tell us what you
22 think is important.

23 And what you think is important
24 may not be as important as what I do.

25 A. I understand that.

1 Q. So I may ask you to stop and come back; okay.

2 A. Okay.

3 Q. I appreciate that, ma'am.

4 So, where we left off is:

5 Mark's over by the driver's side

6 -- uh -- tail light of his car basically; correct?

7 A. Yes.

8 Q. And, from over there, he then orders you to stand
9 up?

10 A. Yes.

11 Q. Okay. Doe he ever move from that spot?

12 A. He walks over --

13 Q. He walks over?

14 A. -- to where I am --

15 Q. Uh-huh.

16 A. -- and pats me down.

17 Q. Okay. And which direction were you facing when
18 this allegedly occurred?

19 A. I believe I was kind of facing towards the house --
20 the front of the house.

21 Maybe like, if the house was right
22 here, I was standing like this.

23 Q. Okay.

24 A. So, basically, looking at the trees beside of the
25 house, in between the two driveways.

1 Q. Okay. And which direction, according to you, is
2 Mark facing?

3 A. Facing towards me.

4 Q. Okay.

5 A. Started patting me down.

6 Q. Okay. So now based on where Mark is facing, am I
7 correct in stating that Matthew and Ryan, according to
8 you, are now at his back?

9 A. They walked that way. He came towards me.

10 Q. Uh-huh.

11 A. So, no. Uh -- They would be -- If they were lines
12 in the road, they would be perpendicular to each other,
13 maybe.

14 Q. Okay.

15 A. I believe.

16 Q. Okay. But he's not facing them. He doesn't have
17 them in eyesight; correct?

18 A. If he looks out of peripheral -- out of his
19 peripheral vision, yes, I believe he could see them.

20 Q. Okay. And what does he do with the mystery weapon
21 while he's patting you down?

22 A. I didn't look. I could not tell you what he did.

23 Q. Well, was he use -- According to you -- your story
24 -- was he using two hands or one?

25 A. I believe two.

1 Q. All right. So -- But you have no idea where the
2 mystery weapon went?

3 A. No, I do not.

4 Q. All right. All right. Fair enough.

5 Now, let's jump forward just a
6 little bit.

7 Uh -- Well, first of all, I want
8 to ask you one thing.

9 You told Officer Wells, and you
10 told Detective Abercrombie, and really everyone that you
11 have told regarding -- regarding your truth, is that:

12 You were walking around after your
13 release for about an hour?

14 A. It seemed to have been that long.

15 Q. Hmm.

16 A. I'm not saying for sure that it was that long,
17 because I did not have a clock.

18 Q. Uh-huh.

19 A. I did not have my cell phone. I did not have a
20 watch.

21 Q. Hmm.

22 A. I did not look at a clock.

23 Q. Hmm.

24 A. After such a -- uh -- shocking and traumatizing
25 event, then anything -- the shortest amount of time --

1 could seem like it lasted for hours and hours.

2 So, yes; it did seem like an
3 extremely long time that I was walking around where no
4 one else was, looking simply for a phone to call someone.

5 So, yes; everything seemed like it
6 took --

7 Q. Hmm.

8 A. -- an extremely long time. I could not tell you how
9 long exactly though.

10 Q. Yes ma'am.

11 A. But I believed it to be about an hour.

12 Q. Okay. Now this -- this -- uh -- Samaritan -- uh --
13 Mr. O'Bryant -- uh -- he's from Asheboro, North Carolina;
14 right?

15 A. I don't where he's from. I don't know him. I've
16 met him one time.

17 Q. Okay. Okay. No problem.

18 Uh -- You didn't -- I take it
19 then, your testimony is:

20 You didn't look at his phone
21 regarding the time that was on his phone; correct?

22 A. No, I didn't. I immediately dialed the number that
23 I was calling.

24 Q. Dialed Matthew's number?

25 A. Yes, I did.

1 Q. Yes. Okay. So let's back up just a little bit
2 more.

3 You said that Mark took you, and
4 that you ended up at some kind of boat ramp; correct?

5 A. Yes.

6 Q. And you did testify that this boat ramp actually is
7 -- has a nice parking lot, and is very well lit.

8 And we can agree on that one;
9 right?

10 A. The --

11 Q. The boat ramp was very well lit.

12 A. -- parking lot itself was lit.

13 Q. Okay.

14 A. Not well lit. The area on the road was extremely
15 well lit.

16 Q. Uh-huh.

17 A. So, yes; though I'm not sure if the parking lot had
18 lights in it.

19 Q. Okay.

20 A. But the light -- If not, then the light from the
21 streets and the condos, the extremely large buildings
22 around, did emit -- uh -- a decent amount of light into
23 the parking lot.

24 Q. So we're talking about streetlights.

25 We're talking about ambient

1 lighting from the extremely large hotels around it;
2 right?

3 A. Condos.

4 Q. Okay. Condos. So you're saying there weren't any
5 hotels nearby?

6 A. That -- Not that I came across, no; because I was
7 specifically looking for hotels, because I figured they
8 would be open and people would be in them.

9 Q. Well, you told Mr. O'Bryant -- Mr. O'Bryant asked
10 you about hotels. And you claimed that you had knocked
11 on the hotel doors, but nobody would answer; right?

12 A. I may have called it hotels at that time; because I
13 didn't know exactly what it was.

14 Q. Hmm.

15 A. I wasn't familiar with the area.

16 Q. Uh-huh.

17 A. I just knew that -- uh -- it -- they appeared to be
18 hotels at the time.

19 Q. Uh-huh.

20 A. But I have -- you know -- found out after that they
21 weren't actually hotels, they were condominiums.

22 Q. Uh-huh.

23 A. So, I'm not --

24 Q. That's what --

25 A. I didn't --

1 Q. -- you found out afterwards?

2 A. Yes. I didn't know that the next day, or when I
3 submitted my written statement.

4 Q. Okay. So you're telling this jury that:

5 There is a portion of North Myrtle
6 Beach that doesn't have any hotels at all?

7 A. I'm not sure if there are hotels. I didn't walk
8 around the entire area.

9 I couldn't tell you exactly where
10 I went; exactly what doors I knocked on --

11 Q. Hmm.

12 A. -- but to my knowledge, to what I saw and
13 experienced, there were either -- the hotels either
14 weren't open --

15 Q. Hmm.

16 A. -- or there just weren't any.

17 Q. Hmm. Got you. Okay. Now, let's go back to the
18 boat ramp and the parking lot area.

19 The area you told Detective
20 Abercrombie about -- or maybe it's his assumption --
21 maybe that's -- He knows the area better than me.

22 Maybe that's the only boat ramp in
23 that area -- is on 53rd Avenue North.

24 Are you familiar with that fact?

25 A. Uh -- I'm not familiar with exactly where it's at.

1 But I hear that it's not the only boat -- uh -- From my
2 knowledge, there's an -- a large amount of boat ramps in
3 that general area.

4 Q. Okay. So now we're searching for a different boat
5 ramp?

6 Is that your testimony?

7 A. I'm not saying it's different. I'm saying, I don't
8 know what the exact one, because there are so many in
9 that area.

10 Q. Okay. Let's keep it simple.

11 Regardless of what boat ramp it
12 is, you've testified that it's well lit with direct
13 lighting and ambient lighting from the big buildings
14 nearby; correct?

15 A. Uh -- I'm -- I don't know what "ambient" means. So
16 I don't want to agree to something that I don't know.

17 Q. I apologize, ma'am.

18 A. But if you would explain that to me, please.

19 Q. Yes ma'am. I apologize.

20 Ambient lighting is basically
21 reflective lighting like -- uh -- say:

22 If you go down to the beach at
23 night -- uh -- if you're in a -- a -- a area with hotels,
24 the beach itself appears to be pretty well lit because of
25 the light that's being given off --

1 A. Yes.

2 Q. -- from the hotels?

3 A. Then, yes; there was --

4 Q. Okay.

5 A. -- as you said "ambient" lighting --

6 Q. Yes ma'am.

7 A. -- in the parking lot.

8 Q. Okay. And they are actually other condos nearby;
9 correct?

10 A. Yes.

11 Q. Okay. Uh -- And it's your testimony -- or what
12 you're telling the jury is that:

13 June 29th -- The morning of
14 Monday, June 29th, 2009, that there wasn't a single
15 person who would open their door when you knocked on it?

16 A. If -- I can say that:

17 If it were I, I would not answer
18 my phone for -- or my door for anyone that knocked on it
19 at such an early hours.

20 It seems odd for anyone to come
21 and knock on a door that time of the morning.

22 And I didn't knock on an extreme
23 amount -- I knocked on maybe a handful or so.

24 Q. But --

25 A. And the ones that I --

1 Q. I'm sorry -- I'm sorry to interrupt you ma'am.

2 Can you quantify "handful?"

3 MS. LIVESAY:

4 Your Honor, can she answer the
5 question before Mr. Hazzard cuts her off?

6 THE COURT:

7 I'm going to let you answer fully.

8 You said a handful. You can go on from there.

9 MR. HAZZARD:

10 Sure.

11 WITNESS:

12 I couldn't tell you exactly how
13 many; maybe a handful.

14 But I know that the ones I did
15 knock on, nobody answered. And I didn't see anyone
16 walking around.

17 MR. HAZZARD:

18 Hmm.

19 WITNESS:

20 I didn't, except for the runner, I
21 didn't see any cars.

22 MR. HAZZARD:

23 Uh-huh.

24 WITNESS:

25 It looked -- you know -- for lack

1 of a better term, "dead" at that point in time.

2 MR. HAZZARD:

3 Uh-huh.

4 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

5 Q. So the end of June, beginning of July, we're coming
6 up on the 4th of July weekend at the beach, and it's dead
7 up there, is your testimony?

8 Nobody answers any doors.

9 No hotels will answer the door
10 when you knock on it?

11 A. No.

12 Q. All right. All right. Fair enough.

13 Now, you indicated that -- uh --
14 the police took you to the hospital for a rape kit;
15 correct?

16 A. Yes.

17 Q. Okay. And what does that process entail, from
18 what you recall?

19 A. Uh -- It seemed somewhat like a gynecological exam,
20 I'm guessing.

21 I -- I didn't -- It wasn't my
22 intentions on remembering exactly everything that was
23 going on.

24 There was a sheet over my leg.

25 I couldn't see.

1 The doctor was explaining it to
2 me, but I don't remember.

3 It wasn't really high on my list
4 of priorities of -- you know -- to know what a doctor was
5 doing to me; because I know that that's what was supposed
6 to happen.

7 So I didn't really pay attention
8 to what he was saying or exactly what went on.

9 Q. Okay. Do you recall them indicating that they were
10 going to take -- uh -- anal swabs and rectal swabs for
11 DNA evidence?

12 A. Yes, I do recall that.

13 Q. Okay. Do you recall them indicating they were
14 going to attempt to obtain -- uh -- cuttings of pubic
15 hair?

16 A. Yes, I do recall that.

17 Q. Okay. To your knowledge, were they able to
18 successfully complete these functions?

19 A. Uh -- Do you mean in the hospital?

20 Q. Yes ma'am.

21 A. Actually, yes.

22 Q. Yes. Yes.

23 A. Uh -- Yes. They --

24 Q. So your testimony --

25 A. -- completed that, yes.

1 Q. Okay. I'm sorry for cutting you off.

2 Your testimony is:

3 They did the anal swab.

4 They did the rectal swab for DNA;
5 and that they were able to obtain pubic hair cuttings
6 from you.

7 A. From what I remember, they got the swabs. Uh -- I
8 don't want to get too personal.

9 I -- you know -- I shave, so I
10 didn't have any pubic hairs for them to get.

11 So I'm guessing they didn't get
12 that.

13 Q. All right.

14 A. But I know they got the swabs. I do remember that.

15 Q. Okay. And you were how old at this time, ma'am?

16 A. 14.

17 Q. All right. Thank you, ma'am.

18 Now you indicated this -- There's
19 been a lot of talk about -- What's the nature of your --
20 Are you -- you and Matthew still in a relationship?

21 Or what's your status with him
22 now?

23 A. No, we are not together.

24 Q. Okay. All right. Okay. And I believe you told
25 Ms. Livesay that your father had -- that all this secrecy

1 was necessary because your father had prohibited him, or
2 forbidden him, from being around you.

3 Is that correct?

4 A. Yes.

5 Q. Okay. And still, you went against his express --
6 expressed wishes; correct?

7 A. As any 14-year-old would do in that sit -- Most --
8 The most -- of the ones that I know -- most teenagers,
9 it's -- we have a natural reaction to rebel against our
10 parents.

11 And at the time, I really -- I
12 didn't agree with his decision --

13 Q. Hmm.

14 A. -- or my mothers --

15 Q. Uh-huh.

16 A. -- for me not see Matthew. I wanted to see him.
17 And I found a way to do so.

18 Q. Uh-huh. All righty. And you enlisted your friend
19 Blythe in this conspiracy?

20 A. Uh -- If you want to call it conspiracy. It's --
21 Sure. I -- uh -- It was --

22 Q. I mean, she had to help you keep your secret; right?

23 A. Yes.

24 Q. Because you didn't want the Carawans to find out?

25 A. Correct.

1 Q. Okay. Because obviously that would have put them
2 in an awkward situation?

3 I assume they are friends with
4 your parents?

5 A. They weren't exactly -- They knew -- They exchanged
6 words because I was her friend, so, yes. They --

7 Q. Okay.

8 A. They spoke.

9 Q. Okay. So they basically aren't really friends.
10 But you and Blythe are friends. And so as a result, they
11 have a knowledge of each other?

12 A. Yes.

13 Q. Okay. All right. Fair enough. Fair enough.

14 So you didn't want the Carawans to
15 know that you were there -- or that he was there?

16 A. No, I did not.

17 Q. Okay. Now, let's get back for a second to this
18 frisking.

19 We've established, we don't know
20 where the mystery weapon went; correct?

21 A. Correct.

22 Q. Okay. And how is it that you ended up in the car?

23 A. He had told me to get in the car.

24 Q. He told you to get in the car?

25 A. Yes.

1 Q. Didn't grab you by the arm, or pull you, or shove
2 you, or anything like that?

3 A. No.

4 Q. Okay. Because at the hospital, obviously, you told
5 them that you had absolutely no bruises, or abrasions, or
6 injuries, or scratches, caused by Mark Elliot; correct?

7 A. Correct.

8 Q. Okay. So based on -- according to you -- your
9 story -- based on your -- his instruction -- you got in
10 the car?

11 A. Yes.

12 Q. Okay. And where did he then go to?

13 A. He got in the driver's side of the car.

14 Q. Okay. So at this point, he's -- he's frisking you.
15 And I think, if I remember correctly, you're standing
16 where the car is in between the two of you and the house;
17 right?

18 You're more in the roadway?

19 You're more on the passenger side
20 of the car?

21 A. Yes.

22 Q. Okay. And he then tells you to get in the car?
23 And then he walks around behind the car, and over, and
24 gets in the driver's side?

25 A. He didn't have to walk around the car. He was

1 already on the -- it -- a little bit -- He was not on the
2 front side of the passenger side. He was more towards
3 the back in the middle where I was standing at.

4 Q. Hmm.

5 A. So, yes, he did have to walk around; but not all the
6 way around the car.

7 Q. Okay. Well, let's make sure we're clear on this.
8 When this frisking is taking place, I thought you said it
9 was more the -- the passenger side of the car out in the
10 street?

11 Was it more towards the rear of
12 the car?

13 A. Yes, the rear of the car. Like I said, I was -- I
14 told you that I -- When he told me to stand up, I stood
15 up in the exact same spot that I was laying in; which I
16 said was towards the rear right of the car.

17 Q. Okay. So we're back over here by the -- the
18 passenger-side taillight, then?

19 A. Yes.

20 Q. Basically?

21 A. Yes.

22 Q. Okay. And then, he then comes over to the
23 passenger-side taillight area where you are, according to
24 your truth, correct?

25 A. Yes.

1 Q. And then you say that he frisked you in some
2 fashion?

3 A. Yes.

4 Q. Okay. And then, where is he standing when he then
5 tells you to go get in the car?

6 He was still standing right there?

7 A. I wasn't paying attention to him. He told me to get
8 in the car. So I walked and got in the car.

9 I wasn't -- you know -- paying
10 attention what he was doing. I was just following the
11 orders that I was given.

12 Q. All right. So you got in the car. Then he walks
13 around, and he gets in the car?

14 A. Yes.

15 Q. All right. Okay. Now, this car -- this 1991
16 Camry -- we ain't talking about a car with electric
17 windows.

18 We're not talking about a car with
19 electric door-locks, are we, ma'am?

20 A. I'm guessing not. I wasn't paying attention as to
21 what was electric and what was not.

22 Q. Well, once he got in the car -- You're sitting in
23 the car. And then, once he walks around and assumes his
24 position in the driver's seat -- you know -- you didn't
25 hear any door locks come down, or anything like that, did

1 you?

2 A. I can't say for sure. It's been a while. And I
3 wasn't paying attention to the sound of the car.

4 Q. Yes ma'am. So now your testimony has been that:

5 Y'all drove around and meandered
6 around.

7 And there's nobody else out there;
8 correct?

9 A. There may have been maybe one car that passed us the
10 entire time.

11 I don't even know if it was that.

12 Q. Uh-huh.

13 A. But, to my knowledge, I didn't see any people
14 walking --

15 Q. Hmm. Hmm.

16 A. -- any people riding a bike -- or any cars.

17 Q. Uh-huh.

18 A. But again, I wasn't paying attention to what was
19 going on the outside of the car. Because I was more
20 worried about what's about to happen to me on the inside.

21 Q. Yes ma'am. I got you. Now, from what you recall
22 going on outside the car, y'all weren't driving down any
23 deserted roads, or dirt roads, or uninhabited areas; were
24 you?

25 A. From what I remember, I don't believe we went down

1 any dirt roads; no.

2 Q. Okay. So everywhere he's driving around is paved
3 roads of the municipality -- municipality of North Myrtle
4 Beach?

5 A. I believe so.

6 Q. Okay. And your truth is that:

7 He's basically aimlessly going up,
8 and making turns, and weaving around throughout the
9 municipality with a woman in the car -- or a young lady
10 in the car -- that most likely, since this -- you know --
11 thief here -- this -- this -- this attempted armed
12 robber, supposedly, has kidnapped.

13 That at some point, somebody's
14 going to be out looking for; right?

15 A. I'm -- If they were looking for me at that point, I
16 don't know.

17 Q. Hmm.

18 A. Uh -- But I do know there weren't other people
19 around. It wasn't --

20 Q. Uh-huh.

21 A. -- obvious to someone walking on the side of the
22 road, or driving up, that I was in any type of distress,
23 or I had just been kidnapped --

24 Q. Hmm.

25 A. -- because I wasn't screaming --

1 Q. Hmm.

2 A. -- and yelling --

3 Q. Hmm.

4 A. -- and hollering.

5 Q. Uh-huh.

6 A. And he was acting -- you know -- To any -- If I was
7 parked at a stoplight beside of that car --

8 Q. Hmm.

9 A. -- that I was in, I would have just assumed that
10 they were having a conversation --

11 Q. Hmm.

12 A. -- and that the woman was upset about something.

13 Q. Hmm.

14 A. I wouldn't know what.

15 Q. Uh-huh.

16 A. But there was anyone out there to look and see if I
17 was worried.

18 So they were -- you know -- No one
19 could have made an observation as to what was going on in
20 the car; because there was no one out there.

21 Q. But of all the combinations of people that you could
22 tell the police to look for that would be distinctive,
23 you don't think an older black man and a young white girl
24 at 3:30 in the morning wouldn't stand out if you're doing
25 something wrong?

1 MS. LIVESAY:

2 Your Honor, I'm going to have to
3 ask object to the inappropriateness of the question.

4 And I certainly don't see how this
5 witness is going to be able to testify as to what
6 somebody else would think.

7 MR. HAZZARD:

8 That's --

9 THE COURT:

10 I think he's just asking her for
11 her opinion?

12 MR. HAZZARD:

13 Yes sir.

14 WITNESS:

15 In my opinion --

16 MR. HAZZARD:

17 Uh-huh.

18 WITNESS:

19 -- from -- uh -- my experience, I
20 know where I live, it's not uncommon to see a -- an older
21 black male riding around with a younger looking white
22 female.

23 But that's just where I live.

24 MR. HAZZARD:

25 Yes ma'am.

1 WITNESS:

2 So, it's not uncommon in this day
3 and age to see a white female and a black male riding
4 around in a car together.

5 MR. HAZZARD:

6 Yes, ma'am.

7 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. But if the police are told to look for them? That's
9 -- That's kind of an easy distinction to make; wouldn't
10 you say?

11 A. I guess so. But -- uh -- according to what I heard
12 earlier, they weren't looking in the area that I was
13 found in.

14 So there wasn't any cops out there
15 to look for me.

16 Q. Uh-huh.

17 A. Anyway, they were looking in a different area --

18 Q. Hmm.

19 A. -- from where I was at.

20 Q. Okay.

21 A. I don't know.

22 Q. That's right. Because, based on your truth, he took
23 you some 70-something blocks from where you were up to the
24 north end of -- of -- of the Cherry Grove area; correct?

25 A. Yeah. I was extremely far from anywhere that I

1 knew --

2 Q. Uh-huh.

3 A. -- any familiarity with anything.

4 Q. Hmm.

5 A. So, yes; I was -- uh -- rather far away from my
6 original place out from the beach out there.

7 Q. Hmm.

8 A. I was pretty far away.

9 Q. Okay. And when you came upon Mr. O'Bryant, the guy
10 that -- that -- uh -- was out jogging at four o'clock in
11 the morning -- uh -- you indicated to him that you needed
12 to use a phone; correct?

13 A. Yes.

14 Q. And he said:

15 Well, I don't have a phone on me,
16 but I've got one back where I'm staying; right?

17 A. Yes.

18 Q. Okay. And you had no problem with walking with him
19 back to where he was staying?

20 A. At that point he was the only person that I had seen
21 at all when I was walking around.

22 So I wasn't -- uh -- Of course I
23 was nervous.

24 Q. Hmm.

25 A. And -- uh -- I believe the word's "apprehensive" --

1 uh -- about what I was going to do.

2 I was -- you know -- worried.

3 But I was happy to get any type of
4 help whatsoever.

5 So, yes; I was willing to take any
6 help at that point.

7 And I did -- uh -- against -- I
8 was upset, scared, worried.

9 I wouldn't have made that decision
10 if I were in the same state of mind that I am right now.

11 But at the time, I was extremely
12 shook up. And I was willing to do what I had to do to
13 get help for myself.

14 Q. Hmm.

15 A. So, yes; that does include flagging down a stranger
16 on the side of the road to ask for help.

17 So, yes; that's -- that's what I
18 did.

19 Q. Okay. And I believe you told Assistant Solicitor
20 Livesay that, in your story:

21 When Mark takes your phone from
22 you, that you didn't pay attention to where it went?

23 Is that correct?

24 A. Correct.

25 Q. Okay. The one thing that connects you possibly to

1 the outside world and can save you from this horrific
2 abduction, and you don't pay attention to where it goes?

3 A. No. I wasn't exactly -- uh -- I wasn't too worried
4 about my phone at that point.

5 I was more worried about my
6 safety.

7 Q. Hmm.

8 A. So -- uh -- an object seemed extremely -- uh -- It
9 didn't -- It seemed pointless for me to pay attention to
10 a mere object when I was worrying about my life.

11 Q. Hmm.

12 A. So, no; I did not pay attention to where he placed
13 my phone.

14 Q. You never told the police this story about asking
15 for the phone back in this supposed conversation between
16 you and Mark after you got out of the car; did you?

17 A. I did tell him what he said to me after I got out of
18 the car.

19 I mentioned it a couple times when
20 I was speaking to Detective Abercrombie.

21 I know that for a fact.

22 Q. Hmm.

23 A. As -- If I -- you know -- told him that I asked for
24 my phone back when he drove up, I can't say for sure.

25 But I know for a fact that I did

1 tell him what he said to me after I got out of the car --

2 Q. Hmm.

3 A. -- and he told me to leave.

4 Q. Hmm. I believe you told the prosecutor that you
5 wanted to see Matthew, but the police -- the police would
6 not let him leave from where he was?

7 Is that correct, ma'am?

8 A. That's what I was told.

9 MR. HAZZARD:

10 Okay. The Court's indulgence

11 Your Honor?

12 All right, ma'am.

13 Uh -- No further questions.

14 REDIRECT EXAMINATION BY MS. LIVESAY:

15 Q. BE Mr. Hazzard asked you about:

16 Uh -- Have you ever told the
17 police before about this hotel with these college kids.

18 Now, as to the details that you
19 told this jury about the way you were raped, did you tell
20 Detective Abercrombie those details?

21 A. About -- uh -- the -- About what you saying about
22 the college kids?

23 Q. About the penetration --

24 A. Oh?

25 Q. -- and where you were penetrated?

1 A. Yes, I did.

2 Q. And is that the same thing you told this jury?

3 A. Yes, it is.

4 Q. Okay. About where it happened and when it
5 happened; you tell Detective Abercrombie that?

6 A. Yes, I did.

7 Q. Okay. And is that the same thing you told this
8 jury?

9 A. Yes, it is.

10 Q. Okay. About him telling you to get down on the
11 ground and telling those two boys to walk away?

12 A. Yes.

13 Q. Did you tell Detective Abercrombie that?

14 A. Yes, I did.

15 Q. Is that the same thing you told this jury?

16 A. Yes, it is.

17 MS. LIVESAY:

18 No further questions, Your Honor.

19 MR. HAZZARD:

20 Very briefly, Your Honor.

21 RECROSS-EXAMINATION BY MR. HAZZARD:

22 Q. And you spoke with Officer Wells and Detective
23 Abercrombie after you had -- after you spoke with Matthew
24 on the telephone; correct ma'am?

25 A. Uh -- If Officer Wells is the officer that picked me

1 up; then, yes, I did speak to him.

2 I don't know who I spoke to on the
3 phone.

4 And I don't know the name of the
5 officer that picked me up.

6 All I know is:

7 I did speak to Detective
8 Abercrombie later on that day.

9 Q. Okay. And any police presence you might have
10 spoken to, you spoke with them after you spoke with
11 Matthew on the phone; correct?

12 A. He was standing right beside of the police officer.
13 He got --

14 Q. Ma'am, are you deaf?

15 A. I'm sorry.

16 Q. (Laughs.)

17 A. According to what I was told, and I --

18 Q. No; I'm not asking about what you were told.

19 My question very simply is "yes"
20 or "no."

21 Did --

22 MS. LIVESAY:

23 And actually that question is
24 outside of my redirect, Your Honor.

25 THE COURT:

1 Well, I'm going to let him ask it.
2 But I think she's answered it. And I think that's
3 already in the evidence.

4 But go ahead Mr. Hazzard.

5 MR. HAZZARD:

6 No, if The Court feels it's --

7 THE COURT:

8 You're -- You're asking her if she
9 knew whether Matthew was standing by a police officer?

10 MR. HAZZARD:

11 My questions was:

12 If every police officer she spoke
13 to, she spoke to after she spoke with Matthew?

14 Yes or no?

15 WITNESS:

16 Yes.

17 MR. HAZZARD:

18 Thank you, ma'am.

19 THE COURT:

20 All right.

21 MS. LIVESAY:

22 No further questions, Your Honor.

23 THE COURT:

24 All right. Thank you very much.

25 Uh -- You may step down.

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1 Following my instructions, they
2 have some lunch for you. And we'll let you in and get
3 it.

4 Is that right, Mr. Roth?

5 BAILIFF:

6 Uh -- It's not here just -- The
7 food was not here just a minute ago, Your Honor.

8 THE COURT:

9 Well, Mr. Roth, are you
10 responsible for that?

11 BAILIFF:

12 Uh -- I am now.

13 (Laughter erupts in the
14 courtroom.)

15 THE COURT:

16 Mr. Roth, take your jury back in
17 the juryroom.

18 (WHEREUPON: The jury empanelled
19 in the case withdrew from the courtroom at 12:28 PM,
20 November 17, 2010; and was no longer present during the
21 following proceedings.)

22 THE COURT:

23 We're at ease. Don't get far.

24 (WHEREUPON: The court was
25 declared in recess at 12:28 PM, November 17, 2010.)

1 (WHEREUPON: The court was called
2 to order by the Bailiff at 1:20 PM, November 17, 2010;
3 and all pertinent parties, along with their counsel, were
4 back and present in the courtroom.)

5 BAILIFF:

6 All rise, please.

7 THE COURT:

8 All right.

9 Thank you. Please be seated.

10 Raymond, you can get our jury.

11 (WHEREUPON: The jury empanelled
12 in the case was escorted back into the courtroom at 1:22
13 PM, November 17, 2010; and was in fact present during the
14 following proceedings.)

15 MR. HAZZARD:

16 Your Honor, may we approach?

17 THE COURT:

18 Yes.

19 (WHEREUPON: Counsel for each party
20 conferred off the record with The Court at the bench at
21 1:22 PM.)

22 THE COURT:

23 Mr. Roth, take them back out.

24 (WHEREUPON: The jury empanelled
25 in the case withdrew from the courtroom at 1:24 PM,

1 November 17, 2010; and was no longer present during the
2 following proceedings.)

3 THE COURT:

4 All right.

5 Let me hear from you.

6 MS. LIVESAY:

7 Your Honor, if I may?

8 Uh -- Mr. Hazzard's objection's
9 going to be on Page Number 11 to the hearsay.

10 Uh -- Lance O'Bryant; I asked him
11 her demeanor; the circumstances when he came across her
12 -- uh -- all of those questions.

13 And then, I asked him -- uh -- if
14 he asked her any questions, and if he gained any
15 information?

16 He said that:

17 Uh -- After she asked for the cell
18 phone, she said that she had been kidnapped.

19 She said that she had -- that
20 somebody had stopped and asked her and her friends
21 directions.

22 She smelled alcohol and thought
23 the person had been drinking.

24 She thought the person had a gun.

25 And the person told her friends to

1 get on the ground, and for her to get in the car.

2 And then, they drove around for
3 awhile.

4 He took her cell phone.

5 And then, he let her out.

6 She said she had been walking
7 around for about an hour and could not find anybody open
8 with a phone.

9 Is that the objection that we're
10 going to argue about?

11 MR. HAZZARD:

12 Correct.

13 MS. LIVESAY:

14 Okay.

15 THE COURT:

16 All right.

17 MR. HAZZARD:

18 Basically, any hearsay.

19 MS. LIVESAY:

20 That way we can -- uh -- read it
21 right off that transcript.

22 THE COURT:

23 All right.

24 MS. LIVESAY:

25 Your Honor, I believe after -- uh

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1 -- Ms. [REDACTED] has testified, it's no doubt that -- uh
2 -- Mr. Hazzard has questioned her credibility; and as
3 well as implied that this story was not told right way;
4 and that she somehow has fabricated this story,
5 especially the aspect of her having to get in the car and
6 the robbery.

7 I think this should be allowed
8 under both prior consistent statement, as well as the
9 fact that looking at the totality of the circumstances it
10 was a excited utterance, Your Honor.

11 THE COURT:

12 Well, also -- uh -- Mr. -- uh --
13 Hazzard, didn't you not insinuate in your cross
14 examination of her that she fabricated this story after
15 talking with Matthew; that is, after she had gone to --
16 uh -- the witness's home.

17 Uh -- You -- uh -- indicated that
18 that statement was never told to a police officer until
19 she had -- uh -- uh -- had a chance to speak to Matthew.

20 Well, this statement, in my view,
21 would be prior to any opportunity she had to fabricate by
22 talking to Matthew, and would be a -- admissible as a
23 prior consistent statement; would it not?

24 MR. HAZZARD:

25 Actually, her testimony is that

1 she had at least two prior conversations with Matthew
2 before making this alleged statement to Mr. O'Bryant.

3 THE COURT:

4 But the one you were talking about
5 was when she used his phone; was it not?

6 MR. HAZZARD:

7 No; my question simply was:

8 You did not tell this story to the
9 police until after you had spoken with Matthew?

10 THE COURT:

11 Right. But you were talking at
12 that same time about the -- uh -- the conversations that
13 occurred from -- uh -- the witness's telephone.

14 MR. HAZZARD:

15 No; I'm just talking about any
16 conversation, Your Honor.

17 THE COURT:

18 Well, I -- I think that that would
19 certainly be the effect it would have on the jury.

20 I find that it was, under the
21 circumstances, an excited -- uh -- utterance.

22 Uh -- Even if it were not an
23 excited utter -- utterance, it is a prior consistent
24 statement -- uh -- that is -- uh -- admissible -- uh --
25 as a statement made before any opportunity to have made

1 any -- uh -- or fabricated -- uh -- her story.

2 And certainly -- uh -- your cross
3 examination -- uh -- challenged the veracity of her story
4 and -- uh -- suggested to the jury a fabrication.

5 So I'm going to admit it.

6 I'll hear you further, though, if
7 you have other grounds?

8 MR. HAZZARD:

9 No, Your Honor. Our position is
10 that it is not a situation that falls under any exception
11 to the hearsay rule.

12 Whether it's excited utterance, or
13 whether it's a prior consistent statement to -- uh --
14 rebut -- you know -- because my question specifically
15 was:

16 You did not -- You did not speak
17 to any police officer until after you had spoken to
18 Matthew on the phone?

19 Her testimony was that she spoke
20 Matthew there for at least three times; twice when she
21 was in the presence of Mr. Elliott, and once afterwards.

22
23 With regards to excited utterance,
24 our position is that:

25 Uh -- She indicates that she had

1 been -- uh -- away from the -- the scene of the alleged
2 event for at least an hour.

3 Uh -- Mr. O'Bryant says that he
4 did not --

5 THE COURT:

6 I don't know if that was an hour.
7 I don't remember that testimony.

8 I remember you saying that
9 earlier. But I don't remember that testimony.

10 And even if it did -- you know --
11 what we have is a -- a -- uh -- an alleged sexual
12 battery, and a -- an abduction.

13 She has testified that she was
14 upset -- uh -- agitated.

15 Uh -- Her testimony is replete
16 with that sort of thing; scared.

17 Uh -- I certainly think that it
18 was a situation where she was under the stress of
19 excitement caused by the event or the condition. And it
20 would be an excited utterance.

21 I also believe that this would be
22 admissible as a prior consistent statement where she has
23 been -- where her -- uh -- credibility has been
24 challenged, or -- uh -- the possibility of -- of
25 fabrication has been raised.

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1 I mean, isn't that your position,
2 that she fabricated this -- this -- uh -- her description
3 of the event?

4 MR. HAZZARD:

5 Yes sir; after speaking with
6 MH which would be prior to her statement to
7 Mr. O'Bryant.

8 THE COURT:

9 Well, any -- uh -- any statement
10 that she may have -- uh -- any other opportunities she
11 may have had to speak to Matthew, she was in the presence
12 of your client.

13 And of course your client can put
14 up testimony concerning that -- any -- any -- uh --
15 collusion between those two; and not be subject to cross-
16 examination on any other matter.

17 And he could do it outside the
18 presence of the jury, if that's the case.

19 MS. LIVESAY:

20 Your Honor, she didn't even get
21 the phone and talk to Matthew until after she told this
22 to Lance O'Bryant.

23 It's already been implicated that
24 Mr. Hazzard's trying to say that she came up with this
25 story with her boyfriend. And she called her boyfriend

1 first.

2 She didn't talk to her boyfriend.

3 And there wasn't even a phone in sight.

4 She's walking back with Mr.

5 O'Bryant and this is what she's telling him.

6 And he even says:

7 I didn't ask her any questions. I
8 was very hesitant at the time. I was uncertain what was
9 going on.

10 And I was walking on the sidewalk.
11 She's walking in the street. And she starts telling me
12 about what happened.

13 Under "consistent statement," as
14 well as under Jeffcoat, it says:

15 In particular in these cases
16 whenever there's an allegation that there's fabrication,
17 everything prior to that fabrication as to details should
18 come in as to that victim's testimony as a prior
19 consistent statement.

20 THE COURT:

21 And I agree with you. I believe
22 that it is admissible.

23 MR. HAZZARD:

24 Note my objection for the record.

25 THE COURT:

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1 Yes sir.

2 MR. HAZZARD:

3 Thank you, Your Honor.

4 THE COURT:

5 Okay. Now let's bring them back
6 in.

7 MS. LIVESAY:

8 Let's go ahead and get that case
9 geared up, so when they come in we can have it --

10 THE COURT:

11 It's my understanding that this
12 information was taken by consent of the parties?

13 MS. LIVESAY:

14 I'm sorry, Your Honor.

15 THE COURT:

16 That both parties have consented
17 to the use of this deposition; is that correct?

18 MR. HAZZARD:

19 Yes, sir.

20 Uh -- The attorney for the
21 hospital has asked whether it's okay if Ms. Douglas sit
22 in the courtroom.

23 But we do have a sequestration
24 order.

25 Does The Court have a problem with

1 the chain witnesses in the courtroom?

2 THE COURT:

3 I don't know. What do you say --

4 MS. LIVESAY:

5 No sir.

6 THE COURT:

7 She has no problem with it.

8 MR. HAZZARD:

9 Okay. I believe she's here too.

10 And you can have a seat on the back row.

11 MS. LIVESAY:

12 Give us one -- one second to get

13 this going, so when they come in, it can be going.

14 THE COURT:

15 Okay.

16 COURT REPORTER:

17 We need to mark that first, so

18 that I can note here that we played State's Exhibit

19 whatever.

20 MS. LIVESAY:

21 Okay. Yeah, we can mark it. I

22 thought it was already marked.

23 COURT REPORTER:

24 No, you just gave it to me for

25 safekeeping.

1 WHEREUPON: THE DVD OF THE VIDEO
2 DEPOSITION OF LANCE O'BRYANT WAS MARKED BY THE COURT
3 REPORTER AS STATE'S EXHIBIT NUMBER 11, AND WAS APPARENTLY
4 ENTERED INTO EVIDENCE WITHOUT OBJECTION, MR. HAZZARD
5 HAVING ANSWERED THE COURT EARLIER THAT BOTH PARTIES HAD
6 IN FACT CONSENTED TO THE VIDEO DEPOSITION.

7 (WHEREUPON: The jury empanelled
8 in the case was escorted back into the courtroom at 1:34
9 PM, November 17, 2010; and was in fact present during the
10 following proceedings.)

11 THE COURT:

12 All right.

13 Ladies and gentlemen of the jury,
14 we are about to see -- uh -- or -- or view a video
15 deposition of a witness that was taken pursuant to the
16 consent of the parties.

17 That is normally not done in
18 criminal matters; but in this case, the parties have
19 consented to do it because of the anticipated absence of
20 this witness from the country at the time of this trial.

21 Uh -- I am going to allow it.

22 You will -- uh -- note that this
23 witness was placed under oath at the deposition; and that
24 the testimony should be viewed by you under the same test
25 -- credibility that you would apply if the witness were

1 here in the courtroom; and you would accept his testimony
2 on the same conditions that you would accept the
3 testimony of a witness were he here in this courtroom.

4 (WHEREUPON: State's Exhibit
5 Number 11, the video deposition of Lance O'Bryant, was
6 played in open court beginning at 1:35 PM and ending at
7 1:50 PM, November 17, 2010.)

8 THE COURT:

9 All right. Are we ready to
10 proceed.

11 MS. LIVESAY:

12 Can you take that up? (Referring
13 to the drop down screen in the courtroom.)

14 Your Honor -- Your Honor, at this
15 time, the State's ready to call its next witness if The
16 Court is ready?

17 THE COURT:

18 I am ready.

19 MS. LIVESAY:

20 Thank you, Your Honor. At this
21 time, the State calls Sean Downey to the stand.

22 WHEREUPON: SEAN DOWNEY WAS DULY
23 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

24 CLERK:

25 Thank you. Please be seated.

TESTIMONY OF SEAN DOWNEY

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1 Please state your full name; and
2 spell your last name.

3 WITNESS:

4 Sean Robert Downey; spelling of
5 the last name; D-o-w-n-e-y.

6 DIRECT EXAMINATION BY MS. LIVESAY:

7 Q. Officer Downey, where do you currently work?

8 A. North Myrtle Beach Department of Public Safety.

9 Q. And how long have you worked there?

10 A. I've worked there since -- uh -- December of 97.

11 Q. And what is your -- uh -- current position at North
12 Myrtle Beach?

13 A. I've recently been assigned as a watch commander for
14 -- uh -- C-Shift --

15 Q. Okay. And what --

16 A. -- temporarily.

17 Q. What responsibilities do you have?

18 A. Uh -- To supervising all the -- uh -- members of the
19 shift; to ensure that their paperwork is done right; and
20 -- you know -- any scenes are handled correctly; any
21 evaluations -- performance evaluations are handled.

22 Q. Okay. And what kind of training have you
23 undergone?

24 A. I received basic treatment training from the South
25 Carolina Criminal Justice Academy.

1 Uh -- I had traffic investigation,
2 DUI detection. Uh -- We receive yearly -- uh -- legal
3 updates; CDV training, along with any kind of advanced
4 training that comes up throughout the year.

5 Q. Okay. And were you working -- uh -- on or around
6 June the 29th of 2009?

7 A. I was.

8 Q. And what were your responsibilities at that time?

9 A. That night I was working the south end. Uh -- I was
10 actually on another shift at that time.

11 I was on the south end --
12 supervisor -- a Sergeant -- Road Sergeant -- at that
13 evening.

14 Q. Okay. So what -- What were you basing basically
15 doing? Patrolling?

16 A. Yes ma'am.

17 Q. And were you in --

18 A. Answering calls; patrolling. And -- uh --

19 Q. Okay. Were you in a uniform?

20 A. Yes, I was.

21 Q. Okay. Were you in a marked car?

22 A. Yes, I was.

23 Q. Okay. Now, do you remember -- uh -- what the
24 traffic was like that morning?

25 A. It was -- uh -- fairly light. There wasn't a lot

1 moving about.

2 Uh -- As the morning progressed,
3 it became even lighter -- the traffic.

4 Q. Did you -- uh -- come across BE [REDACTED] that
5 morning?

6 A. I did.

7 Q. And about what time was that?

8 A. That was right -- approximately 5 o'clock in the
9 morning.

10 Q. How did you know where Ms. [REDACTED] was?

11 A. We had received a phone call -- uh -- that --
12 relayed through one of our officers that was still on
13 scene of the incident location that she had given her
14 location in Cherry Grove.

15 Q. And did you know where that location was?

16 A. Yes, I did.

17 Q. Where were you at that time?

18 A. I believe I was out on the highway, oh, somewhere
19 between -- uh -- Main Street and -- uh -- the north city
20 limits.

21 Q. And did you actually finally locate Ms. [REDACTED]

22 A. I did.

23 Q. And what area was she located in?

24 A. She was located in front of a condo unit at 5709
25 North Ocean Boulevard.

1 MS. LIVESAY:

2 Can I approach the witness, Your
3 Honor?

4 THE COURT:

5 Yes.

6 MS. LIVESAY:

7 Can I ask him to step down?

8 THE COURT:

9 Cert -- (coughs) --

10 MS. LIVESAY:

11 Thank you, Your Honor.

12 THE COURT:

13 Excuse me -- Certainly.

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. Now about where were you when you were -- uh --
16 notified of her location?

17 A. I would say approximately on the highway -- Highway
18 17, somewhere the north side of Main Street.

19 Q. But somewhere in here? (Pointing to map board.)

20 A. Yes, ma'am.

21 Q. And where was she located?

22 A. At 57th Avenue North -- between 57th and 58th Avenue
23 North Ocean Boulevard -- the -- uh -- Cherry Grove
24 section.

25 Q. And can you tell the jury what route you took to get

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1 to Ms. [REDACTED] from where you were from?

2 A. I took the highway north to the Cherry Grove exit --
3 uh -- eastbound Sea Mountain Highway to Duffy Street.

4 And Duffy Street leads back around
5 onto Lake Avenue.

6 53rd Avenue, I turned -- uh --
7 right. Got on Ocean Boulevard and headed north to her
8 location.

9 Q. And was it dark out at that time?

10 A. It was.

11 Q. Okay. And when you were on your way to locate the
12 victim in this case, how would you describe traffic?

13 A. Very light.

14 Q. Okay. Did you pass any cars on your way to the
15 victim?

16 A. If I did, it was sparse -- you know -- just a few
17 cars here and there.

18 Q. Did you pass anybody walking around on the street?

19 A. I don't recall.

20 Q. Okay. Now what route -- Where did you take Ms.

21 [REDACTED]

22 A. After speaking with her for a period of time, I
23 turned north, and then turned -- uh -- west on 58th
24 Avenue down to Lake Avenue -- Lake Drive; and then,
25 southbound to 53rd; again, southbound on Lake Drive, back

1 -- basically retraced how I had gotten there on Duffy
2 Street to Sea Mountain Highway.

3 Took Sea Mountain Highway. Merged
4 off of Highway 17 across the bridge and then towards
5 Loris to the Sea Coast Medical Center.

6 Q. So was it still dark at that point?

7 A. It was.

8 Q. Okay. And how would you describe the traffic from
9 the time you left -- uh -- Cherry Grove to the time you
10 got to that hospital?

11 A. Uh -- Reviewing the tape -- the tape rolled the
12 whole time -- I didn't pass another vehicle until we
13 actually got onto Sea Mountain Highway, somewhere around
14 the Century 21 Thomas Office.

15 And then of course when we hit the
16 highway, there was 4 or 5 cars on the highway that we
17 passed before we got to the hospital.

18 Q. Okay. And is Sea Mountain Highway a major highway?

19 A. It's South Carolina 9; yes ma'am.

20 Q. Okay. Now -- So you took her from this location to
21 Sea Mountain Highway?

22 A. To Sea Mountain Highway.

23 Q. Okay. So you didn't pass one vehicle from here all
24 the way to Sea Mountain Highway?

25 A. The only vehicle, if you will, I passed, was on 58th

1 Avenue.

2 There was a -- uh -- golf cart --
3 somebody driving a golf cart towards the ocean; and that
4 was it.

5 Q. Okay. And not another vehicle until you got to
6 that main artery?

7 A. Until we got onto South Carolina 9.

8 Q. Thank you, officer. (And the witness resumes the
9 witness stand.) Now, when you reached the victim in this
10 case, was there anybody else out there with her?

11 A. Yes, there was.

12 Q. And who was that?

13 A. I don't recall his name. He was -- He was dressed
14 in jogging clothes, and a white male.

15 Q. Okay. And once you located her, what did you do?

16 A. I pulled up right in front of her and got out of the
17 car.

18 I asked her if she was okay.

19 She said: Yes.

20 I asked her if she needed
21 anything.

22 She said: No.

23 I asked her if she would sit in
24 the car.

25 She agreed. And I moved her and

1 put her in the front seat of my patrol car.

2 Q. Do you remember what she was wearing?

3 A. She had on just a tee shirt and some -- uh -- gym
4 shorts and no shoes --

5 Q. Okay.

6 A. -- and had her hair in a ponytail.

7 Q. Okay. Did it strike you as odd that she didn't
8 have any shoes on?

9 A. It was a bit odd; yes.

10 Q. Okay. And did she indicate to you whether or not
11 she was familiar with the area?

12 A. When I asked her how -- you know -- I asked her how
13 she got there, she said -- uh -- she was just walking and
14 she came across a jogger and asked him for phone. And
15 they had to go back to the -- uh -- unit and -- uh -- use
16 the phone to -- to contact her folks --

17 Q. Now did you --

18 A. -- or the people she was saying with.

19 Q. Once you got her in the car and you took her to the
20 hospital, did you talk to her?

21 A. I did. I asked her what had happened that evening?

22 Q. Did you smell any alcohol on her?

23 A. No, I didn't.

24 Q. Any drugs on her?

25 A. No.

1 Q. Did she appear to you in any form or fashion to be
2 impaired?

3 A. No ma'am.

4 Q. Okay. Now, was she able to relay to you what
5 happened?

6 A. Yes, she did.

7 Q. Okay. Now from -- We've heard from some other
8 officers testify.

9 Did your car have a camera in it?

10 A. It did.

11 Q. Okay. And when did that camera pop on?

12 A. Uh -- It -- It -- It -- The way it works is:

13 If you turn it on through your --
14 uh -- microphone that's on your person, it -- it has
15 already recorded the minute prior.

16 So when I first saw her, is when I
17 activated with my camera; but it had already recorded the
18 minute prior to my actually getting out of the car and --
19 and walking up to speak to her.

20 Q. Okay. And did it record the entire --

21 A. It did.

22 Q. -- time she was in the vehicle?

23 A. It did.

24 Q. Okay. And did you have a conversation with her
25 while she was in the vehicle?

1 A. I did.

2 Q. Okay. Was she able to relay to you what had
3 happened that night?

4 A. She did.

5 Q. Okay. And what did she tell you?

6 A. She said that -- uh -- basically -- you know -- you
7 know -- there was several times I asked her questions of
8 -- Her and two male friends were in front of a -- a house
9 she was staying at on 19th and Hillside, when a car
10 pulled up and the gentleman in the car started speaking
11 to them.

12 She couldn't hear what they were
13 -- she was -- or the guy was saying.

14 So they moved closer to it. And
15 he asked where he was.

16 And they explained to him that he
17 was at 19th South and Hillside. I think she referred to
18 it as Hillcrest.

19 Uh -- At that time, he pulled up
20 just a little bit. Got out of a car. And told them all
21 to get on the ground and -- uh -- empty their pockets;
22 and which they did.

23 And one -- one -- As she
24 explained, one of the males had given just -- they just
25 had some change -- put it on the ground.

1 And she put her cell phone on the
2 ground; which was all she had.

3 Uh -- At one point, he told the
4 boys -- the two males -- to walk the opposite direction.

5 Told her to get in the car.

6 And he left with her in the car.

7 And they began driving through the
8 city -- uh -- taking turns -- you know -- aimlessly,
9 taking different turns and what not.

10 And he kept asking her where she
11 was at, and did she know where she was at.

12 And she would tell him: No.

13 And he would tell her:

14 You're lying; according to what
15 she was telling me.

16 That she -- He was -- She was
17 lying. That she did know where she was at.

18 She didn't know where she was at.

19 And she kept telling him.

20 And at some point, her phone rang
21 and -- uh -- she answered it.

22 And I believe that was her
23 boyfriend.

24 He told her to tell him that he --
25 she was walking, and she would be home soon; she was

1 fine.

2 She hung up that.

3 Uh -- He --

4 She relayed that he was hysterical
5 on the other end of the phone.

6 So she hung up the phone and an --
7 another call came in, I believe from a friend she was
8 saying with.

9 She then turned the phone off.

10 And they continued to drive
11 throughout the city, and -- uh -- ended up at a boat
12 landing, where -- uh -- he took her from the car and --
13 uh -- sexually assaulted her.

14 She said throughout -- that
15 sometime during the sexual assault, he -- uh -- he said
16 he couldn't do this to her anymore.

17 Told her not to cry. It was going
18 to be okay.

19 And -- uh -- put her back in the
20 car and went a short distance.

21 Told her to get out of the car and
22 go the opposite direction. And he drove off.

23 Q. How did she appear to you when she told you what had
24 happened?

25 A. Uh -- Initial contact -- you know -- her voice was

1 cracking. Her arms were crossed. She was upset
2 obviously.

3 Uh -- She never did cry; but she
4 was on the verge of crying several times.

5 But she -- you know -- she kept it
6 together pretty well, you know.

7 But she was -- she was -- she was
8 visibly upset when she talked about certain aspects of
9 everything.

10 Q. Now, do you come in contact with victims of crimes
11 normally in your job?

12 A. Yes.

13 Q. And is there one particular way you expect them to
14 react?

15 A. You get all kinds of different reactions from
16 different situations.

17 Q. Tell the jury the array of emotions you see?

18 A. You could -- You could go to a traffic accident --
19 to a fender-bender and people are just falling to pieces;
20 hyperventilating -- you know -- it's the end of the
21 world.

22 And then -- you know -- you could
23 go to a violent crime and people are just cool, calm and
24 collected, just telling just what -- you know -- what
25 went on and how it transpired.

1 It runs the gamut.

2 Q. Okay. Now when you were in the presence of Ms.

3 [REDACTED] did she appear to understand all of the
4 questions you were asking her?

5 A. Yes, ma'am.

6 Q. Was she responsive?

7 A. Yes.

8 Q. Now when you -- Before you had ever come across Ms.

9 [REDACTED] there's been testimony that there was a BOLO
10 out --

11 A. Uh-huh.

12 Q. -- for a red vehicle. Are you familiar with that?

13 A. Yes, I am. At the -- At the time they called --
14 the original incident took place -- I was on another call
15 with another officer down in the Barefoot Resort section
16 working a domestic violence situation.

17 So -- uh -- once we were able to
18 clear that call and get it handled and got on the road --
19 you know -- we -- we asked for whatever information we
20 needed.

21 And -- And --

22 Q. Now you tell me that this entire -- from the time
23 you start towards Ms. [REDACTED] to the time she's at the
24 hospital, that's all video recorded.

25 Is that correct?

1 A. Not the time that I started towards her; but -- uh
2 -- a minute prior to actually coming in contact with her
3 is where the recording starts, and then, to the hospital.

4 It's not turned off.

5 Q. Do you recall whether or not you saw a red Toyota in
6 that area when you came across her?

7 A. Uh -- No ma'am.

8 Q. Okay. Did you see a red Toyota when you came
9 across her?

10 A. No.

11 Q. Okay. Do you recall seeing one ever in that area
12 that night?

13 A. In the Cherry Grove area; no ma'am.

14 Q. Okay. And just to point out to the jury right here
15 real quick from where you're sitting.

16 Point out the Cherry Grove area
17 where you were at.

18 A. This basically encompasses the Cherry Grove area
19 (indicating).

20 Q. Okay. This area right here?

21 A. Yes. You could probably incorporate some portions
22 of Springland in here, but that's the Ocean Drive-Cherry
23 Grove area in -- the Grove-Tidewater area.

24 Q. Okay. And during that time, you never saw a
25 burgundy Toyota Camry?

1 A. No ma'am.

2 Q. Have you watched that video that was in your car
3 running?

4 A. Yes, I have.

5 Q. Okay. And is your testimony consistent with
6 everything on that video?

7 A. Yes, it is.

8 MS. LIVESAY:

9 No further questions of this
10 officer.

11 THE COURT:

12 Mr. Hazzard and Ms. Knowles?

13 MR. HAZZARD:

14 Thank Your Honor.

15 CROSS-EXAMINATION BY MR. HAZZARD:

16 Q. Good afternoon Officer Downey. How are you, sir?

17 A. Fine, sir. How are you?

18 Q. I'm doing good. Thank you for asking.

19 Uh -- Just a couple of brief
20 questions.

21 Did you prepare an incident report
22 regarding your inter-action --

23 A. No sir.

24 Q. -- with -- No incident report?

25 A. No sir.

1 Q. Okay. Do you recall whether you ever asked her
2 whether this event had anything to do with a drug
3 transaction or anything of that nature, sir?

4 A. No sir.

5 Q. Okay. You never asked her that?

6 A. No sir.

7 Q. Okay. And I believe you indicated that you came in
8 contact with Ms. [REDACTED] around 5:00 AM; correct?

9 A. Yes sir.

10 Q. Okay. And that would've been after you received
11 notification that another officer had previously spoken
12 to her; correct?

13 A. Yes, sir. The -- The phone call -- I don't know if
14 he actually spoke to her directly; but he was on scene of
15 the original incident location; and relayed the
16 information to the office of where she could be found.

17 Q. Relayed that he had been told where she was?

18 A. Yes sir.

19 Q. Okay. And you were talking about Sea Mountain
20 Highway.

21 Where -- Where is that?

22 A. If you -- uh -- If you're familiar with Seacoast --
23 or if you come out of Loris and Little River where that
24 all filters into -- uh -- into the North Myrtle Beach
25 area --

1 Q. Yes sir.

2 A. -- the Cherry Grove exit is Sea Mountain Highway.
3 That's South Carolina 9. That runs all the way to the
4 ocean.

5 And it runs back up towards
6 Highway 9 through Nixon's Crossroads and -- uh -- North
7 Myrtle Beach High School.

8 Q. Okay. Where does it -- You say it runs all the to
9 the ocean?

10 A. Yes sir.

11 Q. And is that by the Cherry Grove pier?

12 A. No sir. The Cherry Grove pier is about 35th Avenue
13 North.

14 Q. Okay.

15 A. So you would -- uh -- That's -- uh -- roughly, I
16 think 22nd -- 21st Avenue North is -- If you would
17 consider that an avenue, that would be kind of where --
18 uh -- Sea Mountain Highway would be.

19 Q. Okay. And so that actually dead ends at the
20 oceanfront?

21 A. Yes, sir. There's an intersection at Ocean
22 Boulevard that runs north and south from there.

23 Q. Is this considered to be -- I'm not really familiar
24 with that area. Is it considered to be kind of the main
25 street for Cherry Grove; or not?

1 A. It would be the main highway that brings you into
2 Cherry Grove; yes sir.

3 Q. Okay. And so, if I were coming from, say around
4 53rd to 57th North --

5 A. Yes sir.

6 Q. -- and I wanted to leave the area by the most direct
7 route to head towards Loris, or to head towards the North
8 Carolina line, would that be the route I would take, sir?

9 A. Yes, sir. That would be the shortest route.

10 Q. Okay. Are there signs on it indicating that if you
11 get on this highway, it will take you to Loris, or
12 Dillon, or Tabor City, or North Carolina?

13 A. There's no signs down in the Cherry Grove area that
14 would indicate that.

15 Q. Uh-huh.

16 A. Uh -- I believe the first signs would be actually
17 out on Highway 17 --

18 Q. Uh-huh.

19 A. -- that would kind of give you those kind of
20 directions.

21 Q. Okay. But you can turn there and it'll -- it --
22 actually kind of a straight shot; isn't it?

23 A. Basically, yes sir.

24 Q. Okay. So someone would not need to leave 53rd to
25 57th, drive all the way down to around Ocean Boulevard or

1 to -- to -- uh -- Ocean Drive -- Main Street, North
2 Myrtle Beach --

3 A. Yes sir.

4 Q. -- they wouldn't have to drive to Second Avenue
5 North, then turn around and head south again; correct?

6 A. If they knew where they were going; no sir.

7 MR. HAZZARD:

8 Okay. All right.

9 Thank you. No further questions.

10 MS. LIVESAY:

11 A few questions, Your Honor.

12 May I?

13 REDIRECT EXAMINATION BY MS. LIVESAY:

14 Q. Now, Mr. Hazzard was asking you about Second Avenue.
15 Where is that at?

16 A. Second Avenue -- Well, there's actually Second
17 Avenue South and Second Avenue North on either side of
18 the Main Street.

19 Q. Okay. Now are there a lot of signs here telling
20 you how to get to Loris, Dillon, and Tabor City?

21 A. No ma'am.

22 Q. Okay. Uh -- Where do you start hitting the first
23 signs?

24 A. Uh -- The first signs would be on the north end of
25 the city --

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1 Q. Okay.

2 A. -- here on Highway -- There -- There may be some
3 signs up here at Main Street Connector now that that's
4 open.

5 Q. Okay. But -- uh -- how about -- uh -- First --
6 Second Avenue is right around here?

7 A. That's all Ocean Boulevard. It's a residential
8 area.

9 Q. Okay. So -- But where is -- where is Second
10 Avenue?

11 A. Right here (indicating).

12 Q. Okay.

13 A. That's leading all the way up to the highway.

14 Q. Okay. So -- But there are no signs along in here --

15 A. No, there --

16 Q. -- of how to get to Loris, Dillon, Tabor City?

17 A. No ma'am.

18 Q. Okay. So you would have to be at least familiar
19 enough with the area to be able to get from here around
20 here, up here, to see the signs?

21 A. Yes, ma'am.

22 Q. Okay. Now Mr. Hazzard asked you about -- uh -- if
23 there was any mention of drugs?

24 A. Yes, ma'am.

25 Q. Okay. Was there any mention of drugs?

1 A. Not in my conversation; no ma'am.

2 Q. Okay. Uh -- Did you speak with Lance O'Bryant, the
3 jogger?

4 A. No ma'am.

5 Q. Okay. You just spoke to BE [REDACTED]

6 A. Yes ma'am.

7 Q. Okay. So there was never any mention of any of
8 drugs?

9 A. No ma'am.

10 MS. LIVESAY:

11 Okay.

12 No further questions, Your Honor.

13 MR. HAZZARD:

14 One very briefly, Your Honor.

15 RECROSS-EXAMINATION BY MR. HAZZARD:

16 Q. You brought up a good point, sir. Uh -- Do -- When
17 you first said "at the Main Street Connector."

18 A. Yes sir.

19 Q. Okay. Now that now will take you from -- uh --
20 Ocean Drive -- or Main Street in North Myrtle -- that'll
21 take you out to Highway 31, now; correct?

22 A. Yes sir.

23 Q. But in June of '09, that wasn't open; was it?

24 A. It had not been completed.

25 MR. HAZZARD:

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1 All right. Thank you.
2 No further questions.
3 THE COURT:
4 All right. You may step down.
5 MS. LIVESAY:
6 No further questions, Your Honor.
7 THE COURT:
8 Any -- uh -- need to keep this
9 officer here today?
10 Is he needed further --
11 MS. LIVESAY:
12 Your Honor --
13 THE COURT:
14 -- from the State?
15 MS. LIVESAY:
16 May -- This would be a good
17 breaking point.
18 This is not out last -- uh --
19 witness. But if we're --
20 THE COURT:
21 Do you need this witness?
22 MS. LIVESAY:
23 No sir.
24 THE COURT:
25 Do you need him, Mr. Hazzard?

1 MR. HAZZARD:

2 No sir, I don't, Your Honor.

3 THE COURT:

4 You're excused from your subpoena.

5 WITNESS:

6 Thank you, sir.

7 THE COURT:

8 Thank you.

9 Who's your next witness?

10 MS. LIVESAY:

11 Uh -- It's going to be Detective

12 Abercrombie.

13 THE COURT:

14 All right. Call him.

15 MS. LIVESAY:

16 Would you like to start his

17 testimony now, Your Honor?

18 THE COURT:

19 Yes, I -- I would. Let's start

20 it.

21 MS. LIVESAY:

22 Okay.

23 I'd like at this time to call

24 Detective Abercrombie to the stand.

25 WHEREUPON: DETECTIVE VANCE

TESTIMONY OF DETECTIVE VANCE ABERCROMBIE

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1 ABERCROMBIE WAS DULY SWORN AND TESTIFIED UNDER OATH AS
2 FOLLOWS:

3 CLERK:

4 Please state your full name; and
5 spell your last name.

6 WITNESS:

7 Vance Abercrombie; that's A-b-e-r-
8 c-r-o-m-b-i-e.

9 DIRECT EXAMINATION BY MS. LIVESAY:

10 Q. Detective, where do you currently work?

11 A. North Myrtle Beach Department of Public Safety.

12 Q. And how long have you worked there?

13 A. Approximately 16 years.

14 Q. And what is your current position at North Myrtle
15 Beach?

16 A. I'm a detective.

17 Q. And what kind of training have you undergone since
18 you've been with that Police Department?

19 A. Uh -- Of course going through the South Carolina
20 Criminal Justice Academy.

21 Uh -- Also going back to the -- uh
22 -- South Carolina Criminal Justice Academy for
23 Investigation School.

24 Also going to crime scene schools
25 such as Sirchie, which is in Raleigh.

1 Q. So were you a detective in June -- on or around June
2 29th in 2009?

3 A. Yes, I was.

4 Q. And exactly what are your responsibilities as a
5 detective?

6 A. That particular week I was the on-call-detective.
7 And what that means is that pretty much anything that
8 happens after regular business hours, if there is such a
9 thing in law-enforcement -- uh -- that requires some
10 special attention, the on-call-detective would be
11 identified, such as -- uh -- burglaries -- uh -- you know
12 -- any -- any type of crime like that that requires
13 processing.

14 Q. Okay. And were you on-call on or around June 29th
15 of 2009?

16 A. Yes, I was.

17 Q. Okay. And were you called out?

18 A. Yes, I was.

19 Q. And are you familiar with this incident?

20 A. Yes, I am.

21 Q. Okay. And how did you become involved in the
22 incident that we're here today for?

23 A. At approximately 10 after 4:00 in the morning,
24 somewhere around in there, I received a call from
25 dispatch stating that there had been an abduction and a

1 kidnapping; and that the -- uh -- road officers were in
2 active -- uh -- uh -- looking for this individual; and
3 that -- uh -- I had probably better get -- get my clothes
4 on and head to -- towards the scene.

5 Once I got dressed, I -- uh -- got
6 into my vehicle -- uh -- which is an unmarked -- uh --
7 vehicle with a radio in it.

8 I got into my vehicle and started
9 heading towards the city, not really knowing exactly what
10 I had -- just a brief description from dispatch as far as
11 what was going on.

12 And it was about that time that I
13 realized, when I was listening to the radio, that -- uh
14 -- North Myrtle Beach officers were in pursuit -- uh --
15 of a vehicle that matched the description that was given
16 out -- uh -- from the -- uh -- kidnapping or abduction.

17 So rather than proceed to the
18 address they told me to go proceed, which would've been
19 1906 -- or 1907 -- uh -- Hillside, I went instead and
20 proceeded to where the chase had ended.

21 Uh -- I got to the chase.

22 As a matter of fact -- uh --
23 reviewing the -- uh -- video of -- uh -- I believe it was
24 Scott Causey -- Officer Scott Causey -- I get there right
25 about the time that he's reading Miranda rights to the

1 defendant Mark Elliott.

2 Q. Okay. And what did you do upon arriving on the
3 scene?

4 A. Basically just asking what we've got.

5 Uh -- If you can imagine that type
6 of situation with that many officers involved, it gets
7 kind of hectic.

8 Uh -- Not everybody's on the same
9 page.

10 There might be an officer that's
11 -- uh -- back -- uh -- over towards where the -- uh --
12 gas station is that might've seen something different.

13 There was -- you know -- the
14 officers involved in the actual arrest.

15 Uh -- I did briefly speak to
16 Officer Causey. And he gave me a rundown -- a very
17 short rundown -- of basically what they had.

18 That -- uh -- a BOLO had been put
19 out of a -- uh -- I believe is said late '80s -- uh --
20 maroon Toyota; that a -- uh -- they were -- they were
21 looking for a black male who abducted a white female from
22 the 1906 -- or 1907 -- South Hillside address; and that
23 at some point during -- uh -- this Horry County Officer
24 had spotted the vehicle that they had believed was the
25 vehicle involved -- matched the description.

1 And when they try to stop him, he
2 ran. And the chase ended there.

3 Uh -- There was a little bit of
4 confusion there.

5 I asked him where the vehicle that
6 the -- uh -- defendant was driving? And he pointed out
7 that it was back over towards where the gas station is.

8 And I don't really remember right
9 now what the gas station's name is.

10 So I went back over toward where
11 the vehicle was because, to be honest with you, I'm not
12 sure if the -- uh -- victim is still there; if the victim
13 is hurt.

14 I mean, all I had was the -- the
15 kidnapping and the subsequent -- uh -- uh -- car chase.

16 So I get back over to where the
17 vehicle is.

18 And I'm not exactly 100 percent
19 sure, but I believe by the time I get over there -- uh --
20 Lieutenant Baldasarre was already on the scene.

21 So I made contact with him.

22 Uh -- There was a little bit of
23 confusion as far as how many people ran from the vehicle;
24 if it was just the defendant or not.

25 So it's still unclear rather --

1 where the victim, Ms. BE was at.

2 All we knew at that time was that
3 -- uh -- the defendant ran from the vehicle.

4 So considering the fact that -- uh
5 -- we had sort of an emergency situation here -- uh -- I
6 believe at that point in time -- uh -- I began to look in
7 the vehicle.

8 Uh -- As a matter of fact, I even
9 opened up the trunk to make sure, God forbid, that her
10 body was in the trunk.

11 Uh -- Once we cleared that and
12 realized that -- uh -- uh -- BE was not there, we -
13 - uh -- started collecting notes as far as talking to
14 each other as far as -- uh -- what could've happened.

15 Uh -- I believe somewhere in that
16 timeframe is when -- uh -- we -- I was notified that the
17 -- BE cell phone was found in the -- uh -- door
18 pocket of the -- uh -- driver's side door.

19 Uh -- And it was somewhere around
20 in the there in which -- uh -- the phone was called, so
21 we knew that we had the right phone.

22 We knew -- We knew we had the
23 right vehicle.

24 We knew we had the right suspect.

25 And we also knew that -- uh --

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1 BE had indeed been inside the -- uh -- the vehicle.

2 Uh -- At -- I believe I -- I was
3 aware that Scott -- uh -- Officer Causey had been talking
4 to the defendant.

5 Uh -- I had also -- was aware that
6 -- uh -- Lieutenant Baldassarre had been talking to the --
7 uh -- defendant in the car.

8 And I believe that I remember
9 seeing -- uh -- Sergeant Senter -- uh -- lean over and
10 talk to the defendant in the car, asking where BE
11 was; getting the story from him.

12 My opinion at the time was:

13 It wouldn't have done any good to
14 have another face -- you know -- stick their head in the
15 vehicle and basically ask the same questions that they
16 had been asking.

17 Because my priorities were the
18 same as the other officers' priority; and that was:

19 Where was BE

20 So I just mostly just sat back and
21 just listened to what they had to say.

22 They -- They would come in.

23 They would talk to him.

24 They would come back and let me
25 know what the situation was.

1 Uh --

2 Q. Were you able to gain any information from that
3 scene to figure out where the victim was?

4 A. Uh -- I -- I knew that at one point there was a
5 little confusing (sic) as far as someone else running
6 from the vehicle.

7 And -- And that somewhere along
8 through this talking to -- uh -- the defendant talking to
9 the other officers -- uh -- at some point in there -- uh
10 -- someone had looked at the video.

11 And we were able to definitively
12 be able to tell no one else exited that vehicle except
13 for BE

14 Q. So you didn't gain any information --

15 A. I mean, excuse me, except for the defendant. Uh --

16 Q. So you didn't gain any information that would lead
17 you to find where that victim was?

18 A. No. No.

19 Q. Was it ever brought to your attention where the
20 victim was?

21 A. Eventually, after we were there for -- uh -- 20
22 minutes maybe -- I'm not really sure -- uh -- we got a
23 call.

24 I heard over -- and I was probably
25 standing next to -- uh -- Lieutenant Baldassarre.

1 But we got a call stating that --
2 uh -- she had been found wandering around the Cherry
3 Grove area; and that we were sending an officer -- uh --
4 Sergeant Downey, as it turns out, to her location to talk
5 to her and find out what the situation was.

6 Q. Okay. Now are you familiar with -- uh -- the
7 incident where the police were call from on Hillside
8 Drive?

9 Are you familiar with that area?

10 A. With that location?

11 Q. Yes.

12 A. Yes, I am.

13 Q. Okay. Are you familiar with the location -- uh --
14 where the defendant pulled in at that BP?

15 A. Yes, I am.

16 Q. Are you familiar with the location of where that
17 victim was found?

18 A. Yes, I am.

19 Q. Okay. Would this map assist you in your testimony
20 in explaining those --

21 A. Yes.

22 Q. -- sites to the jury?

23 A. Yes, ma'am.

24 MS. LIVESAY:

25 Your Honor, at this time, can I

1 ask the detective to step down?

2 THE COURT:

3 Certainly.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. All right. Detective Abercrombie, tell us where
6 the -- the location is that the police were called from?

7 A. Uh -- The initial incident location at -- uh --
8 Hillside Drive -- 1907 South Hillside Drive was down in
9 this area here.

10 Q. Okay. And where was the victim picked up from?

11 A. The victim was picked up -- At that time, all I knew
12 is that she was picked up somewhere in the north end of
13 Cherry Grove.

14 I wasn't -- wasn't sure exactly.

15 Uh -- I believe, if I'm not
16 mistaken, they said somewhere near a boat ramp, which
17 would have put it somewhere around 53rd Avenue

18 But that -- that's all I knew at
19 the time.

20 Q. Okay. And how much distance are we talking from
21 Hillside until North Myrtle Beach at that location?

22 A. Uh -- Approximately 6 miles.

23 Q. Now where -- Explain to the jury -- or show to the
24 jury where the defendant was when you come across him?

25 A. The defendant was actually -- uh -- still -- uh --

1 in cuffs -- handcuffs -- up here in the parking lot of
2 Billy the Kid Restaurant -- which you can't really tell
3 on this map, but -- uh -- this is the BP Station.

4 It would have been behind it,
5 maybe a hundred yards or so.

6 Q. Okay. Now about how long -- or how many miles are
7 we talking from this location in Cherry Grove to this BP
8 Service Station?

9 A. It's a little bit less than from Hillside, so I'm
10 going to -- uh -- say approximately 5 miles.

11 Q. Okay. Thank you, Detective. (And the witness
12 resumes the witness stand.)

13 So, if we are talking about
14 getting in a car and going from North Ocean Boulevard,
15 where the victim was located, and that BP, it's not a
16 very long time?

17 A. From the boat ramp -- 53rd Avenue?

18 Q. Right.

19 A. No, it's not a very long time.

20 Q. If you were in your car, and you drove from that
21 location in Cherry Grove to that BP, how long do you
22 expect it would take you?

23 A. That time of night?

24 Q. (Nods in the affirmative.)

25 A. Uh -- With that time of night, and with that kind of

1 traffic conditions, five minutes maybe.

2 Q. Okay. Now after you left the scene, as the
3 detective, what did you do next?

4 A. I stayed there until I was advised that Sergeant
5 Downey was in route to Sea Coast Medical Center.

6 Uh -- Someone -- uh -- I am going
7 to assume it was -- uh -- Lieu -- uh -- Lieutenant
8 Baldasarre -- had notified that the victim had complained
9 of being sexually assaulted; so they were going to take
10 her directly there.

11 Q. Okay. And then what did you do?

12 A. I went to Sea Coast Medical Center to -- uh -- talk
13 to the victim.

14 A. And did you talk to the victim?

15 A. Yes, I did. Uh -- It was -- you know -- a hit and
16 miss here.

17 Because -- you know -- our primary
18 concern is a victim's physical and mental well-being.

19 Uh -- You want to -- kind of have
20 to handle it with kid gloves.

21 Uh -- You have to be able to get
22 the necessary information that you need at that time
23 without bombarding her with an awful lot of questions,
24 when she's already in a very stressful situation.

25 So you have to instead of play it

1 by ear.

2 And in situations like this
3 everyone's a little bit different.

4 Everyone reacts to -- uh --
5 situations differently.

6 So you kind of have to play it by
7 ear.

8 Uh -- When I talked to -- uh --
9 the victim, she was very responsive, and -- and did not
10 mind talking to me.

11 Which incidentally is one of the
12 first things that I do as a male officer, when I have to
13 deal with a victim of a sexual assault, sometimes they
14 are reluctant to talk to -- uh -- a mail officer.

15 So one of the first things I do is
16 -- you know -- ask her if -- Do you mind talking to me?
17 Do you feel comfortable talking to me? Because I might
18 have to ask you some very personal questions.

19 And at that point -- uh --
20 Brittney said that she didn't mind talking to me.

21 Q. Did you ever do a formal interview?

22 A. Later on. I didn't want to bombard her with an
23 awful lot of questions at that time.

24 She -- The -- The nurses and the
25 doctors needed to do their thing.

1 And of course, I'm not going to be
2 present during that exam.

3 So I just wanted to get the basics
4 down, just to make sure that everything that we were
5 hearing, and everything that we've -- uh -- we've heard
6 so far, as to what -- uh -- BE has been telling us.

7 Q. And did you do a formal interview at the police
8 station?

9 A. I did. I told her -- I stayed -- I stayed at the
10 hospital for quite a while -- uh -- even though I wasn't
11 with -- uh -- uh -- the victim.

12 Because later on, I believe some
13 of some the -- uh -- the chaperones -- I believe is the
14 right way to call them -- uh -- showed up, which
15 presented a different set of problems.

16 Because since -- uh -- BE
17 was 14 years old and her parents were there, I'm kind of
18 limited in what I can or should tell them.

19 Uh -- A lot of the things that
20 need to be discussed, need to be discussed with her
21 parents.

22 And I believe I talked to the
23 chaperone.

24 And I believe they -- at that
25 time, they told me that BE parents were already

1 in route down here.

2 So I -- I wanted to -- You kind of
3 have to handle that kind of situation with kid gloves as
4 far as -- you know -- what -- what to tell other
5 individuals, unless they're immediate family.

6 Q. Now did you come in contact -- How -- How much time
7 passed from when you saw her at the hospital and when you
8 had a formal interview with her at the police station?

9 A. The -- uh -- The medical exam takes quite a while.

10 Uh -- And -- uh -- I wanted to
11 stick around and talk to her afterwards, and make
12 arrangements for her to go home -- gather yourself.

13 At that point in time, it was okay
14 for her to take a shower -- uh -- get some new clothes
15 on; if she could, possibly take -- uh -- a -- a nap; try
16 and get refreshed, and try and recover, before she comes
17 up.

18 So I let that be her decision and
19 the chaperone's decision as far as when they were going
20 to come back.

21 I told them -- you know -- I would
22 be there whenever they needed me, and to call me when
23 they felt comfortable -- when BE felt comfortable
24 coming back to the PD and sitting down and discussing a
25 more formal -- uh -- uh -- or to interviewing her a

1 little bit more formal.

2 And if I'm not mistaken, by the
3 time that they got there to the hospital -- uh -- it was
4 probably around lunchtime, 11:00 -- 12:00 o'clock, maybe
5 somewhere around there.

6 Q. Okay. And -- uh -- did you interview her?

7 A. Yes, I did.

8 Q. And was she able to tell you what had happened that
9 night?

10 A. Yes, she was.

11 Q. Okay. And what did she tell you?

12 A. She told me that -- uh -- while standing out in
13 front of the -- uh -- house that -- uh -- she was staying
14 at, along with some family -- friends -- uh -- her -- uh
15 -- her boyfriend, another male -- uh -- subject were
16 standing out, and by the roadway in front of the house --
17 that general area, when an individual -- a black male
18 individual drove up in a -- uh -- a maroon, older model
19 looking, Toyota.

20 Uh -- She had told me that -- uh
21 -- this vehicle had driven by a couple of times and then
22 had stopped under the guise of asking for directions.

23 Uh -- And that at this point, that
24 her, along with her boyfriend and the other male subject,
25 approached the vehicle.

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1 Somewhere in about this time, the
2 individual -- the defendant got out of the vehicle and
3 ordered them down on the ground.

4 She stated that he asked them if
5 they had any money; if -- uh -- they had any valuable on
6 them -- something to that effect.

7 Uh -- Had them down on the ground.

8 I believe most of them had said:

9 No.

10 I believe one of the individual --
11 one of the male individuals -- I don't know which one --
12 mentioned that he had some change in his pocket, and
13 pulled the change out and -- and laid it out.

14 Uh -- Somewhere in -- in this time
15 frame, the -- uh -- defendant ordered the other two males
16 to get up and walk away.

17 Uh -- It was at this point in
18 which the victim told me that she was ordered into the
19 vehicle -- uh -- and they drove away.

20 Q. Did she tell you what happened next?

21 A. She stated that --

22 Q. I'm sorry. Before I ask you that, was she able to
23 describe the vehicle?

24 A. Yes. Uh -- She described the vehicle. And it
25 matched the description that the defendant was driving

1 that evening.

2 She said it was a -- uh -- older,
3 red car.

4 Uh -- See also described the
5 interior.

6 When I asked her what the interior
7 looked like, she said it was -- uh -- not kept up the
8 best in the world and it was an older looking interior.

9 She thought that it had -- uh --
10 cloth seat covers -- to that effect -- or cloth seats.

11 But -- uh -- that it wasn't a --
12 it wasn't a new car. It was an old -- old -- older model
13 car.

14 Q. Did she ever tell you what happened next, after she
15 was in the vehicle?

16 A. She stated that they drove around. Uh -- She wasn't
17 exactly sure for how long; but that she (sic) drove
18 around -- uh -- for a period of time.

19 She stated that the defendant
20 asked her repeatedly:

21 Do you know where you're at?

22 Uh -- She also told me that -- uh
23 -- they made -- they went -- going down several different
24 blocks.

25 It was at that point that I asked

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1 -- uh -- the victim did she know where she was at. And
2 she stated:

3 No. We drove around like this for
4 a long time.

5 Uh -- At some point -- uh -- the
6 victim told me that the defendant -- uh -- asked her to
7 kiss her (sic).

8 And -- uh -- I asked her if she
9 did. And she said she -- she did because she -- uh --
10 had asked him that -- you know:

11 If I -- If I kiss you, will you
12 let me go?

13 And -- uh -- I believe she told me
14 that the defendant told her:

15 Yeah.

16 So she went ahead and kissed him.

17 Uh -- But he never let her go
18 after that.

19 They continued to drive around.

20 She wasn't sure where.

21 And she wasn't exactly for sure
22 how long.

23 Uh -- She said that they came to
24 what she described as a boat ramp.

25 And the defendant asked BE

1 to exit the vehicle.

2 It was at this point that -- uh --
3 after they exited the vehicle over on her side -- on the
4 passenger side of the vehicle -- the -- uh -- she stated
5 that the defendant got out; got behind her on the outside
6 of the vehicle; and -- uh -- told her to pull her pants
7 down and her underwear down.

8 It was at this time that she told
9 me that she was sexually assaulted, both anally and
10 vaginally.

11 But she told me that she wasn't
12 quite sure if he penetrated.

13 Uh -- I asked her if -- uh -- if
14 he was hard?

15 She stated:

16 I don't think so.

17 That:

18 Uh -- It -- It appears as though
19 it only took a minute or two, she felt.

20 And that:

21 He appeared as though he started
22 regretting what he had done; and at that point, told her
23 that she can pull her -- uh -- shorts up, and that she
24 could leave.

25 Uh -- She then stated that she

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1 walked away, and that the defendant was still in the
2 area.

3 She stated that he drove by her at
4 least once, that I can remember right now -- uh -- and
5 then, at one point, drive -- drove by and told her to
6 walk the other way.

7 And that was the last time she
8 had seen the defendant and the vehicle.

9 After that, she told me that she
10 walked around again.

11 She wasn't too familiar with the
12 area.

13 She didn't know where she was
14 exactly.

15 But she -- she walked around
16 trying to find somebody to flag down to help her -- uh --
17 because she didn't have her telephone.

18 And that was when she came upon
19 the jogger. Uh -- He was jogging down the road.

20 Q. Let me ask you some questions about -- uh --
21 location using the map.

22 You're familiar with the Cherry
23 Grove area?

24 A. Yes, I am.

25 Q. Point out to this jury -- uh -- where the boat ramps

1 in the Cherry Grove area are located?

2 A. Well, that particular evening when she told me that
3 she was at -- at a boat ramp, I immediately thought of
4 53rd Avenue Boat Ramp, which is the main boat ramp.

5 It's a commercial boat ramp that
6 -- where everybody goes to go fishing.

7 It's where the public can go.
8 It's a public boat ramp.

9 Uh -- The -- uh -- And that is
10 right here at 53rd Avenue North.

11 That's the area -- When she
12 mentioned that she was near a boat ramp, that's the
13 impression that I got, is that this -- uh -- boat ramp
14 right here --

15 Q. Is there another boat ramp in that area.

16 A. There -- There are. There's some -- uh -- private
17 little slips that's -- that's not open for the public.

18 Uh -- And there's various ones
19 here and there.

20 There's not as many as there used
21 to be because of -- uh -- uh -- building over the past --
22 uh -- 20 years.

23 You know, things in Cherry Grove
24 aren't what they used to be.

25 But there's still a few little

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1 boat ramps here and there, but I think they're private
2 boat ramps.

3 Q. Now -- uh -- just because they're private, does that
4 mean you can't drive your vehicle up in them?

5 A. No; you can still drive your vehicle in them. B

6 Q. Okay. So, they're private, but the public could
7 access them if they wanted to? There's no gate or
8 anything?

9 A. That's correct.

10 Q. Okay. And are there some boat ramps along in this
11 area that are private boat ramps.

12 A. There is. There's a couple of them through here.
13 There's one that -- uh -- uh -- if I'm not mistaken --
14 and I'm -- To be honest with you, I'm not too familiar
15 with it.

16 If you traveling north -- If
17 you're traveling north on -- uh -- the Boulevard, it
18 would on your left-hand side.

19 And it's right over in here
20 somewhere.

21 Q. Okay. But there are some boat ramps along in this
22 area?

23 A. That's correct.

24 Q. Okay. Now are you familiar with Lance O'Bryant's
25 statement?

1 A. Yes, I am.

2 Q. Okay. And are you familiar with the fact he said
3 he was running from his condo here, south?

4 A. Yes, I am.

5 Q. Okay. Now -- uh -- And he came up behind her? Is
6 that correct?

7 A. Uh -- I believe so, yes.

8 Q. Okay. So if you were leaving one of these boat
9 ramps, and you got out here, and you took a left, where
10 would you end up?

11 A. Uh -- If you took at left, you'd end up here in the
12 point.

13 Q. Okay. And is there anywhere to go from that point?

14 A. Nothing there.

15 Q. Okay. So the only choice you have is to go down
16 this street here from those boat ramps?

17 A. Is to head southbound on -- uh -- Ocean Boulevard.

18 Q. Okay. Thank you detective. (And the witness
19 resumes the witness stand.)

20 Now you said there was some -- uh
21 -- little private boat ramps in that area?

22 A. There is a few. I'm -- To be honest with you, I'm
23 not that familiar with them, since they are mostly on a
24 private basis; or you have to be a member of a condo to
25 -- uh -- to have access to them.

1 Q. Uh -- Somebody that wasn't from around here, would
2 you expect them to know where those boat ramps were?

3 A. No, I wouldn't.

4 Q. Okay. Somebody that's been in North Myrtle Beach
5 twice in their entire life, would you expect them to know
6 that there's a boat ramp right there at the end of that
7 point?

8 A. No, I would not.

9 Q. Okay. She was staying at Hillside, right here?

10 A. That's correct.

11 Q. Okay. Would you expect somebody that stays in this
12 vicinity to know that there is a boat ramp down here all
13 the way at the end of almost North Myrtle Beach?

14 A. Not if they were visitors, I wouldn't expect them
15 to; no.

16 Q. Okay. Now, and how long have you been in this
17 area?

18 A. I've been with the Department for about -- uh -- 16
19 years.

20 I've lived in the area since -- uh
21 -- 1986.

22 Q. Okay. And you would say you're not even familiar
23 with all of those little boat ramps along in there?

24 A. They're kind of tucked away. No. I'm -- Even I'm
25 not familiar with everything.

1 And there's little boat ramps
2 behind people's homes -- uh -- that have access to the
3 Intercoastal Waterway.

4 Uh -- I am not familiar with all
5 those either.

6 Q. Okay. And are there any stores, or anything, in
7 that area --

8 A. No.

9 Q. -- at the end?

10 A. No, there's not.

11 Q. Okay. Uh -- What kind of area would you describe
12 it as?

13 A. Residential and -- Yeah, I would describe it as
14 residential.

15 Q. Okay. So if you didn't have a house in that area,
16 you really wouldn't have a reason to be down there?

17 A. Everything on that end just dead ends at -- at a
18 point.

19 So unless -- uh -- you were
20 staying or living there, you wouldn't go -- necessarily
21 go down a dirt road -- I mean -- uh -- a dead-end, which
22 is essentially what the Boulevard is.

23 Once you get past a certain point,
24 it dead ends.

25 Q. Now you said -- uh -- you took -- you interviewed

1 BE

2 A. Yes, I did.

3 Q. And she was able to tell you this information?

4 A. That's correct.

5 Q. Okay. Now did you interview the two other guys
6 that were standing out there with BE

7 A. Yes, I did.

8 Q. Okay. And were what they told you consistent with
9 what she told you?

10 A. That's correct.

11 Q. Okay. Who else did you interview?

12 A. Uh -- Just -- uh -- BE and the two based on
13 your story, and -- uh -- the defendant.

14 Q. Now, what else did you do as part of your
15 investigation in this case?

16 A. Well, the first thing to do is to interview
17 everybody involved.

18 Uh -- That would have been the two
19 boys -- uh -- and BE and of course the defendant.

20 And, after that, the vehicle was
21 towed to our impound lot.

22 I knew eventually that I was going
23 to have to issue a search warrant for the vehicle.

24 Q. Okay. So eventually you searched the defendant's
25 car?

1 A. I did. When the vehicle was originally searched at
2 the scene, when we were looking for -- God forbid -- the
3 body of -- of -- of BE in the trunk and all -- uh
4 -- Of course we notified -- We noticed the cell phone
5 present there.

6 Uh -- As I -- Well, looking
7 through the vehicle, I also noticed a -- uh -- crow --
8 crowbar that was sitting on the -- uh -- uh -- front
9 passenger seat.

10 Q. Okay. And that was her cell phone?

11 A. That's correct. It was her cell phone.

12 Q. Okay. Did you ever confirm later on with the
13 victim that that indeed was her cell phone?

14 A. Yes, I did.

15 Q. And was she able to confirm that indeed was the cell
16 phone?

17 A. Yes.

18 Q. Okay. And was that the same cell phone you got out
19 of his front pocket?

20 A. That's correct.

21 Q. Okay. Now, you searched the vehicle. Is that
22 correct?

23 A. Yes, I did.

24 Q. Okay. Did you take any items out of the vehicle?

25 A. I took a -- the cell phone that belonged to

1 BE

2 I took a crowbar -- or seized a
3 crowbar that was found in the front passenger seat.

4 And I seized a pair of underwear
5 that was in the backseat.

6 Q. Okay. Now -- uh -- what kind of underwear were
7 they?

8 A. Men's -- uh -- underwear, if I remember --

9 Q. Sir?

10 A. Men's underwear.

11 Q. Okay. And they were found where?

12 A. In the backseat.

13 Q. Okay. Of the red, burgundy car?

14 A. Of the red -- uh -- Toyota.

15 MS. LIVESAY:

16 Okay.

17 May I approach the witness, Your
18 Honor?

19 THE COURT:

20 (Nods in the affirmative.)

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. You recognize what I'm showing you now?

23 A. Yes, I do.

24 Q. And what is it?

25 A. It's a crowbar that was found in the -- uh --

1 defendant's vehicle.

2 Q. Okay. And is this the exact crowbar?

3 A. Yes, it is.

4 MS. LIVESAY:

5 Okay.

6 Can I have this marked as State's
7 next number, please.

8 WHEREUPON: THE CROWBAR WAS MARKED
9 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 12 (FOR
10 IDENTIFICATION ONLY).

11 COURT REPORTER:

12 Your Honor, this will be State's
13 Exhibit 12.

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. Now where did you find this?

16 A. It was -- uh -- in the front passenger seat.

17 Q. Front passenger seat?

18 A. (Nods in the affirmative.)

19 Q. What -- uh -- What made you search the defendant's
20 vehicle?

21 A. To seize items that I saw in plain view?

22 THE COURT:

23 Are you going to ask to have that
24 admitted Ms. -- uh -- Livesay.

25 MS. LIVESAY:

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1 And exactly what were --

2 THE COURT:

3 Ms. Livesay, you want to have that
4 admitted?

5 MS. LIVESAY:

6 Yes, sir.

7 THE COURT:

8 Any objection?

9 MR. HAZZARD:

10 Subject to the objections
11 previously raised, Your Honor.

12 THE COURT:

13 All right.

14 You may publish it now.

15 MS. LIVESAY:

16 Thank Your Honor.

17 WHEREUPON: THE CROWBAR, EARLIER

18 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 12

19 WAS ENTERED INTO EVIDENCE SUBJECT TO WHAT MR. HAZZARD

20 CALLED PREVIOUSLY RAISED OBJECTIONS (?).

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Now, what exactly were you looking for in the car?

23 A. Well, I did notice, when the vehicle was at the --

24 uh -- BP Station -- excuse me -- that -- uh -- BE

25 phone was there.

1 So I wanted to -- to lawfully
2 seize that.

3 I also noticed that crowbar there.

4 Uh -- After that, I wanted to make
5 sure that we didn't have any other -- uh -- uh -- items
6 from the vehicle that would -- uh -- pertain to this
7 particular incident.

8 Q. Okay. And where was that crowbar located again?

9 A. Up on the front passenger seat -- uh -- tucked down
10 somewhere around in here about the middle section of the
11 vehicle.

12 Q. Okay. And you seized that crowbar. Is that
13 correct?

14 A. That's correct.

15 Q. Did you find anything else in that car like a
16 weapon?

17 A. No; just that right there.

18 Q. Other than this crowbar?

19 A. That's correct.

20 Q. Okay. And did you do a full search of the vehicle?

21 A. Yes, I did.

22 Q. Okay. Did you find any drugs in the vehicle?

23 A. No, I did not.

24 Q. Did you do anything that would believe you -- or
25 lead you to believe that there were drugs in the vehicle

1 at the time?

2 A. No, I did not.

3 Q. Did you anything to do with drugs in the vehicle?

4 A. No, I did not.

5 Q. Okay. You said you found what else in that car
6 that you seized?

7 A. Uh -- A pair of men's underwear.

8 Q. Do you recognize what I'm showing you?

9 A. Yes, I do.

10 Q. And what is it?

11 A. It's a pair of men's underwear.

12 Q. And are these the underwear that came out of that
13 car? O

14 A. That's correct.

15 Q. And where were these underwear located?

16 A. Located -- uh -- in the back -- uh -- behind the
17 passenger seat on the floorboard.

18 Q. Okay. Were there any other clothes you found in
19 the car?

20 A. There was some folded clothes like they had been
21 washed and were just folded in the trunk.

22 But that was it as far as inside
23 the vehicle itself.

24 MS. LIVESAY:

25 Your Honor, at this time, can the

1 State admit into evidence this underwear?

2 THE COURT:

3 What's the relevance?

4 MR. HAZZARD:

5 Uh -- Your Honor, I don't really
6 see the relevance. I fail to see the relevance.

7 THE COURT:

8 What's the relevancy, Ms. -- uh --

9 MS. LIVESAY:

10 Uh -- It's a sexual assault, Your
11 Honor.

12 The relevance is he had to take
13 off his underwear to assault her.

14 THE COURT:

15 Okay.

16 MR. HAZZARD:

17 If the State has established that
18 he was wearing unaware, then that's -- I mean, I don't
19 see how they're going to tie that together.

20 But --

21 THE COURT:

22 Go ahead.

23 MS. LIVESAY:

24 It's --

25 THE COURT:

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1 It's admitted. Okay.

2 WHEREUPON: A PAIR OF MEN'S
3 UNDERWEAR WAS MARKED BY THE COURT REPORTER AS STATE'S
4 EXHIBIT 13, AND WAS ENTERED INTO EVIDENCE APPARENTLY OVER
5 OBJECTION(?).

6 COURT REPORTER:

7 Your Honor, this will be State's
8 Exhibit 13.

9 THE COURT:

10 All right.

11 MS. LIVESAY:

12 Thank Your Honor. Can I publish
13 it to the jury?

14 THE COURT:

15 Yes.

16 MS. LIVESAY:

17 Thank Your Honor.

18 THE COURT:

19 Ms. Livesay, bag it --

20 MS. LIVESAY:

21 I will.

22 THE COURT:

23 -- if you're going to publish it
24 to the jury.

25 MS. LIVESAY:

1 Thank you.

2 I'm going to put them back in
3 there, Your Honor.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Did you find any other clothes in that car?

6 A. No, I did not.

7 Q. Okay. Uh -- What was the description of the
8 defendant as far as what he was wearing --

9 A. He was --

10 Q. -- that was given out on that BOLO?

11 A. That was given out on the BOLO?

12 Q. Uh-huh.

13 A. Uh -- The description was a -- uh -- black male
14 approximately 6 feet -- 6 foot-two -- I think is what the
15 BOLO said -- weighing approximately 200 or 220 pounds,
16 wearing a white muscle-type tee shirt.

17 And I believe the BOLO mentioned
18 that he had dark shorts on and white tennis shoes.

19 Q. Okay. Did you come in contact with him that night?

20 A. Yes, I did.

21 Q. What was he wearing?

22 A. He was wearing a -- uh -- white muscle tee shirt and
23 -- uh -- silvery-looking -- uh -- shorts.

24 Q. Okay. And did you take a clothes into evidence
25 that he was wearing that night?

1 A. Yes, I did.

2 Q. And what did that consist of?

3 A. It consisted of just the white tee shirt -- the
4 muscle type tee shirt -- and the -- uh -- shorts.

5 He -- He was not wearing any
6 underwear.

7 Q. Okay. Now was he wearing shoes when you found him?

8 A. Yes, he was.

9 Q. And when you interviewed him, what was he wearing?

10 A. When I interviewed him, he was wearing -- uh --
11 tennis shoes -- white tennis shoes.

12 Q. Okay. When you saw him that night, he was wearing
13 tennis shoes?

14 A. That's correct.

15 Q. Okay. Now when you search car, did you find
16 anything in there -- any items to confirm that indeed
17 that was his vehicle?

18 A. Uh -- Yes, the registration. Of course the tag was
19 run anyway; but the registration.

20 Q. Okay.

21 A. And -- uh -- I believe during the -- uh -- interview
22 -- uh -- the defendant mentioned that he left his cell
23 phone -- described his cell phone -- and that was in the
24 vehicle as well.

25 Q. Okay. And where was his cell phone found?

1 A. It was found in the -- uh -- center console -- the
2 area between the front seat.

3 Q. Okay. Did -- uh -- Did you -- So you interviewed
4 him?

5 A. That's correct.

6 Q. Okay. Are you familiar with Miranda warnings?

7 A. I am.

8 Q. And did you read him his Miranda warnings?

9 A. Yes, I did.

10 Q. Okay. Did he acknowledge to you that he understood
11 them?

12 A. Yes, he did.

13 Q. Okay. Did you advise him in any sort of written
14 form about his Miranda warnings?

15 A. Yes, I did. We have a standard Miranda Form that
16 we read to individuals.

17 MS. LIVESAY:

18 All right. Mark this here as a
19 Court's (sic) exhibit.

20 WHEREUPON: THE MIRANDA FORM WAS
21 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 14
22 (FOR IDENTIFICATION ONLY).

23 MS. LIVESAY:

24 Thank you. Thank you.

25 At this time, I'm showing the

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1 detective Court's (sic) Exhibit Number 6.

2 MR. HAZZARD:

3 Without objection.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Do you recognize what I'm showing you?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is the standard Miranda Form that we use when
9 we interview -- uh -- individuals -- uh -- in the -- uh
10 -- interview room -- uh -- that we read to them before we
11 discuss anything with them.

12 Q. Okay. And did you read that form to him?

13 A. Yes, I did.

14 Q. Is there anything up there to indicate that you read
15 that form to him?

16 A. The defendant -- uh -- signs on the -- uh -- form
17 itself that he --

18 Q. Detective, it's not in evidence. Just, if you could
19 just --

20 A. Okay.

21 Q. Okay.

22 A. The defendant signs -- uh -- on the form that he
23 understands his Miranda.

24 Q. Okay. And is his signature up there?

25 A. It is.

1 Q. Is your signature up there?

2 A. Yes, it is.

3 MS. LIVESAY:

4 At this time, can the State place
5 Court's Exhibit Number 6 into State's evidence and
6 publish it?

7 THE COURT:

8 Mr. Hazzard?

9 MR. HAZZARD:

10 Without objection.

11 THE COURT:

12 Without objection.

13 WHEREUPON: THE MIRANDA FORM,
14 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT
15 NUMBER 14 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

16 COURT REPORTER:

17 Your Honor, this will be State's
18 Exhibit Number 14.

19 THE COURT:

20 Very well.

21 MS. LIVESAY:

22 Thank you.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Now what time did you interview the defendant in
25 this case?

1 A. It was late in the afternoon 2:00 o'clock to 3:00
2 o'clock, somewhere around in the early afternoon.

3 Q. And did you -- uh -- search the vehicle before or
4 after?

5 A. After our interview.

6 Q. Okay. So, did you do anything else with the
7 vehicle other than search the vehicle, as far as crime
8 scene type -- trying to collect evidence.

9 A. No. Uh -- Well, I processed the outside for latent
10 prints.

11 Q. Okay. And did you find any prints that matched the
12 victim?

13 A. Uh -- No. We found some that matched the defendant.

14 Q. Okay. Now, was there anything else in that car
15 that links the victim to that vehicle?

16 A. Uh -- I can't think of anything else offhand besides
17 what I've already discussed.

18 Q. Okay. Now tell me again:

19 What time did you interview the
20 defendant?

21 A. It was 2:00 -- 3:00 o'clock in the afternoon;
22 somewhere around there.

23 Q. And during that time, you had already read him
24 Miranda?

25 A. During the interview, yes.

1 The first thing I did was to read
2 him Miranda.

3 Q. Okay. And were you recording the interview?

4 A. Yes, I was.

5 Q. Okay. Now was the entire interview recorded from
6 Miranda until the time that --

7 A. The entire interview between the time that we walked
8 in till the time that we left.

9 MS. LIVESAY:

10 Can I have this marked?

11 WHEREUPON: THE DVD OF THE
12 INTERVIEW WITH DEFENDANT MARK ELLIOT, EARLIER MARKED BY
13 THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 5, WAS NOW
14 MARKED AS STATE'S EXHIBIT NUMBER 15 FOR IDENTIFICATION
15 ONLY.

16 MS. LIVESAY:

17 Thank you.

18 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. I'm showing you Court's (sic) Exhibit Number 5. Do
20 you recognize what I'm showing you?

21 A. Yes, I do..

22 Q. And what is that?

23 A. It's a DVD of the recording of the interview with
24 the Defendant Mark Elliott.

25 Q. Okay. And is this -- Have you reviewed this

1 interview?

2 A. Yes, I have.

3 Q. And is this a accurate recording of that interview?

4 A. Yes, it is.

5 MS. LIVESAY:

6 Okay.

7 Your Honor, at this time the State
8 wishes to place into evidence Court's (sic) Number 5, and
9 publish it at a later time.

10 THE COURT:

11 All right. Any objection?

12 MR. HAZZARD:

13 Without objection, Your Honor.

14 Or I should say subject to the
15 previous motion regarding Jackson V. Denno.

16 THE COURT:

17 Okay.

18 COURT REPORTER:

19 Your Honor, this will be State's
20 Exhibit 15.

21 WHEREUPON: THE DVD OF THE
22 INTERVIEW WITH DEFENDANT MARK ELLIOT, EARLIER MARKED BY
23 THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 5, AND THEN
24 REMARKED AS STATE'S EXHIBIT NUMBER 15 WAS ENTERED INTO
25 EVIDENCE SUBJECT TO PREVIOUS OBJECTION RAISED IN THE

1 EARLIER JACKSON V. DENNO HEARING.

2 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

3 Q. Now, when you interviewed the defendant, did you
4 interview him about the incident involving the victim?

5 A. Yes, I did.

6 Q. Okay. And did he indicate to you if he knew what
7 you were talking about?

8 Q. Yes, he did.

9 Q. Did he indicate he knew who that girl was?

10 A. Yes, he did.

11 Q. Okay. Did he indicate that he knew that she was in
12 the car?

13 A. Yes, he did.

14 Q. Okay. Did he indicate that she was in the car?

15 A. Yes, it did.

16 Q. Okay. Did he indicate that anybody else was in the
17 car?

18 A. Uh -- No, he did not.

19 Q. Okay. So there's no doubt she was in that vehicle?

20 A. That's correct.

21 Q. Okay. Now when you interviewed BE was that
22 consistent with what she told you?

23 A. Yes, it was.

24 Q. Okay. Now in an effort to try to identify who the
25 suspect was, did you show her a lineup?

1 A. Yes, I did.

2 Q. Okay. Was she able to pick him out?

3 A. No. She was not able to pick him out.

4 Q. Okay.

5 A. You know, that's not necessarily unusual. Uh --

6 Considering how many crimes that we work; who many -- uh

7 -- witnesses that we have, it's not unusual --

8 MR. HAZZARD:

9 Objection; non-responsive.

10 MS. LIVESAY:

11 Your Honor, he's answering --

12 THE COURT:

13 I think it is. I'm going to let

14 him answer.

15 MR. HAZZARD:

16 Okay.

17 WITNESS:

18 It's not unusual for people not to
19 be able to pick somebody off a lineup.

20 As a matter of fact, it's unusual
21 for someone to be able to pick somebody up out of a
22 lineup.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Okay. And you didn't find her prints on the car?

25 A. No.

1 Q. She wasn't able to pick him up out of the lineup?

2 A. That's correct.

3 Q. So really, the only for sure confirmation you had
4 that there was no doubt was that that defendant told you
5 she was in the car?

6 A. That's correct.

7 Q. Okay. Now, was she able to describe him?

8 A. Yes, she did. Uh -- When I interviewed -- she --
9 her back at the -- uh -- uh -- police department in the
10 interview room, she gave a further description of him
11 with a more accurate description of him.

12 And she had made mention of some
13 tattoos that matched tattoos that were on the defendant.

14 Q. Okay. Did you see the defendant close up?

15 A. Yes, I did.

16 Q. Okay. Did he have tattoos on him?

17 A. That's correct.

18 Q. Was she able to tell you where those tattoos were
19 located?

20 A. She said that they were on his arm.

21 Q. Okay. Did he have a tattoo on his arm?

22 A. Yes, he did.

23 Q. But she was able to give you that much detail?

24 A. That's correct.

25 Q. But couldn't pick him out of a lineup?

1 A. That's correct.

2 Q. Now was she able to give you details about the
3 sexual assault itself?

4 A. Yes, she did. Uh -- She explained to me that -- uh
5 -- he, once he got her out of the car -- uh -- at some
6 point in time -- uh -- forced her to pull her panties
7 down or shorts down, where -- uh -- she stated that he
8 sexually assaulted her while she was -- uh -- behind --
9 uh -- she would've been in front of him pointed away.

10 In other words, he was behind her.

11 Q. Did you ask her any further questions to go into any
12 more detail of the specifics about that sexual assault?

13 A. No, I didn't want to get overly detailed about it.
14 She's 14 years old at the time, and been through
15 something pretty traumatic.

16 So I got -- uh -- really enough
17 that I needed for the -- the situation that I had and the
18 case that I had.

19 Q. Was she able to give you any details as to the
20 sexual assault as to any sort of pain or discomfort that
21 it may have caused her?

22 A. No. She didn't mention any pain or discomfort.

23 The only thing she did mention is
24 the fact that she -- she felt like he -- he wasn't
25 completely erect; that -- uh -- that he was having

1 difficulty with that; and the fact that -- uh -- he had
2 just given up and told her he couldn't do this anymore.

3 Q. Okay. Now during your interview with the
4 defendant, was what he told you about when he picked her
5 up, and who was out there with her, consistent with what
6 she told you?

7 A. Except for the timing, pretty much; yes, it was
8 consistent.

9 Q. Okay. Did he tell you there were two other boys
10 out there standing?

11 A. Yes, he did.

12 Q. Okay. Now did he tell you that she -- what her
13 name was -- what that other boy's name was?

14 A. I believe he did mention her name, BE
15 specifically.

16 Uh -- And I believe he did mention
17 Matthew, which was one of the other boys that was out
18 there as well.

19 Q. Now, did you ever talk to him about the idea that
20 somebody else -- or that she had jumped out of the car
21 when he jumped on the car?

22 A. When I talked to him?

23 Q. Yes, in your interview, did you address that?

24 A. No, I didn't address that.

25 Q. Okay. Did you address where he dropped her off at?

1 A. Yes.

2 Q. Okay. Where did he tell you that he had dropped
3 her off?

4 A. Well, it -- it kind of changed here and there -- uh
5 -- descriptions, directions, this and that.

6 But eventually, he stated that he
7 had dropped her off at a motel.

8 And I think he had described it as
9 -- uh -- having pink writing on it, or something of that
10 nature, that was two blocks away from the Hillside Drive
11 address.

12 Q. Okay. And was he able to give you a name of the
13 motel?

14 A. No, he was not.

15 Q. Okay. So he told you it was just a couple of
16 blocks away?

17 A. That's correct.

18 Q. Okay. Did you ever ask him about her boy fin --
19 boyfriend having his car down here?

20 A. Ask --

21 Q. The defendant? Did he know that her boyfriend had a
22 vehicle down there?

23 A. I don't recall if I asked him that specifically or
24 not.

25 Q. Okay. But he tells you that he only dropped her

1 off a couple of blocks from where he picked her up at
2 Hillside?

3 A. That's correct.

4 Q. Okay. Now, did he say anything about her not
5 having any shoes on?

6 A. No, he did not.

7 Q. Did you ask him about her not having any shoes on?

8 A. Uh -- I don't call me asking if she had any shoes on
9 or not.

10 Q. Okay. Did -- uh -- he tell you, or indicate to
11 you, why he picked her up, or where she was looking to
12 go?

13 A. He stated that -- uh -- she asked him if she could
14 have a ride two blocks away because she knew -- uh --
15 some -- something to the effect that there was some
16 college students staying at a motel a couple of blocks
17 away.

18 Q. Okay. Did he ever tell you why he was in that
19 area?

20 A. He told me that he was -- uh -- coming from Conway.
21 Uh -- Told me he had lived in -- uh -- that he lived
22 Tabor City. He had driven over to Conway and decided
23 that he would drive to North Myrtle Beach -- uh -- on
24 the way home.

25 MS. LIVESAY:

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1 Okay.

2 Your Honor, at this time, the
3 State wishes to publish the interview of Detective
4 Abercrombie and the defendant.

5 THE COURT:

6 We'll continue on tomorrow.

7 Now Detective Abercrombie, you are
8 under oath. Please do not discuss your further testimony
9 with the -- with counsel until tomorrow.

10 Mr. Hazzard, we will do our --
11 your cross tomorrow after the tape.

12 Ladies and gentlemen of the jury,
13 we have to break at this time.

14 I'm sorry; but we have to.

15 Mr. Roth, take your jury out and
16 get them on the way.

17 And order the donuts for tomorrow;
18 or the biscuits, or whatever.

19 (WHEREUPON: The jury empanelled
20 in the case withdrew from the courtroom at 3:01 PM,
21 November 17, 2010; and was no longer present during the
22 following proceedings.)

23 THE COURT:

24 Raymond, it'll be at 9:30 in the
25 morning, if you can tell them.

23 We're at ease until tomorrow

1 morning.

2 I want attorneys here at 9:00.

3 MR. HAZZARD:

4 Yes sir.

5 THE COURT:

6 Okay.

7 (WHEREUPON: The court was
8 declared in recess at 3:02 PM, November 17, 2010.)

9 (WHEREUPON: The court was called
10 to order by the Bailiff at 9:33 AM, November 18, 2010;
11 but all pertinent parties, along with their counsel, were
12 not yet back and present in the courtroom.)

13 DEPUTY:

14 Order in the court. All Rise.

15 THE COURT:

16 Thank you all. Thank you.

17 Please be seated.

18 Are we ready to go?

19 Where is Ms. Livesay?

20 DEPUTY:

21 She left two seconds ago, Your

22 Honor.

23 We're going to get her right now.

24 THE COURT:

25 All right.

1 MR. HAZZARD:

2 We apologize, Your Honor.

3 We would've had Mr. Elliott out
4 here --

5 THE COURT:

6 All right.

7 MR. HAZZARD:

8 -- but I was under the impression
9 there was another matter that some other attorneys were
10 going to address very quickly before we got started.

11 (WHEREUPON: Ms. Livesay and then,
12 the Defendant Mark Elliott, entered the courtroom by 9:34
13 AM, November 18, 2010; so that all pertinent parties,
14 along with their counsel, were now back and present in
15 the courtroom.)

16 THE COURT:

17 All right. Are we ready?

18 MS. LIVESAY:

19 Yes sir.

20 THE COURT:

21 Okay.

22 MR. HAZZARD:

23 The Defense is ready.

24 THE COURT:

25 Let's bring in the jury.

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 9:36
3 AM, November 18, 2010; and was in fact present during the
4 following proceedings. Also, Detective Abercrombie
5 resumed his position on the witness stand for further
6 examination by counsel.)

7 THE COURT:

8 All right.

9 I note that we have all the jurors
10 in the jury box as well as the -- uh -- the alternates.

11 I hope that Mr. -- uh -- Roth has
12 something for you this morning.

13 Did he?

14 FOREPERSON:

15 (Nods in the affirmative.)

16 THE COURT:

17 Good. Good. Then we're ready to
18 go.

19 Okay. Ms. Livesay, you may
20 continue your examination of this witness.

21 MS. LIVESAY:

22 Thank Your Honor.

23 At this time, the State is going
24 to publish the -- uh -- interview of the defendant.

25 THE COURT:

1 All right.

2 And The Court will take note that
3 -- uh -- the witness is still under oath.

4 WHEREUPON: Ms. Livesay began to
5 publish State's Exhibit Number 15 for the jury, beginning
6 at 9:37 AM, November 18, 2010; but stopped the video (at
7 the 3:17:56 point on the tape counter) at 10:44 AM,
8 November 18, 2010; and the proceedings continued as
9 follows:

10 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

11 Q. Okay. Detective Abercrombie, what's on the rest of
12 that video; just the phone call.

13 A. Just a phone call. He's talking to -- uh -- a
14 relative or -- uh --

15 Q. So is that the end of the discussion as far as the
16 understanding we're here for today?

17 A. That's the last time that we discussed anything as
18 far as the case is concerned.

19 MR. HAZZARD:

20 Your Honor, actually following the
21 phone call there is a discussion regarding -- uh -- the
22 search warrant and his request for him asking Mark
23 whether or not Mark will agree to allow him to search the
24 vehicle.

25 And I would ask that that part be

1 published the jury at this time.

2 MS. LIVESAY:

3 Your Honor, it's just --

4 THE COURT:

5 I'm going to let you do it.

6 MS. LIVESAY:

7 Thank you.

8 THE COURT:

9 I mean, you cross examine him if
10 you want to -- uh -- put any more up, then I'll let you
11 do so.

12 So let's just leave it right
13 there.

14 MS. LIVESAY:

15 I'm just going to minimize it and
16 put this down like that.

17 THE COURT:

18 Okay.

19 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

20 Q. Uh -- Now Detective Abercrombie, you interviewed the
21 victim before you interviewed the defendant?

22 A. That's correct.

23 Q. Okay. And at that point, has she already told you
24 that he had penetrated her?

25 A. That's correct. She stated that -- uh -- uh -- in

1 her words, she wasn't quite sure if he was completely
2 hard or not; but that -- uh -- that he had penetrated
3 her.

4 Q. Okay. Now, you searched the vehicle. Is that
5 right?

6 A. That's correct.

7 Q. Did you ever find an opened container in the car?

8 A. No, I did not.

9 Q. Okay. Did you ever find anything else in the car
10 like an opened container of alcohol, or drugs?

11 A. No, I did not

12 Q. Okay. Now in that interview, you asked Mr. Elliott
13 about that you found her near a boat ramp; is that right?

14 A. That's correct.

15 Q. Okay. Did he ever acknowledge that he didn't know
16 anything about a boat ramp?

17 A. No, he wouldn't acknowledge knowing anything about
18 anything as far as where he was at or what he had done.

19 Q. Okay. Now -- And he told you that there was drugs
20 involved, or she was going to buy drugs; is that right?

21 A. The story had switched. I think -- uh -- the --
22 Initially, it was that they had flagged him down to get
23 for him if he had any drugs (sic).

24 And then, when that didn't
25 succeed, he was -- uh -- take her to a motel a couple of

1 blocks away (sic).

2 Uh -- When I asked him if that was
3 to buy drugs, I believe he stated that he wasn't sure
4 what she wanted to go there for.

5 Q. Okay. Now you -- you took into -- her clothes into
6 evidence; didn't you?

7 A. That's correct.

8 Q. Okay. Were there any pockets in her shorts?

9 A. Uh -- No, I don't believe so.

10 Q. Okay. And did you ever take any shoes from her
11 that she was wearing?

12 A. She wasn't wearing shoes.

13 Q. Okay. So she certainly wasn't dressed like she was
14 -- appeared to be going anywhere; did she?

15 A. That's correct.

16 Q. Now when he first talked to you, did he tell you
17 anything about her kissing him?

18 A. No. That did not come out until -- uh -- I brought
19 up -- uh -- you know -- the possibility of DNA.

20 It wasn't until then that he
21 stated that -- uh -- she kissed him.

22 Q. Okay. So before then, did he ever claim he had
23 known her before that night?

24 A. No.

25 Q. Okay.

1 A. He -- He had not known her before that night.

2 Q. Okay. Did he tell you when he had first met her?

3 A. At the time that he drove by -- uh -- and asked for
4 directions and was flagged down.

5 Q. Okay. And how far did he take her?

6 A. He stated: a couple of blocks away. Uh --

7 Q. Okay. Did he ever mention he had talked to her
8 since then?

9 A. No.

10 Q. Okay. Now did he ever tell you how her phone got
11 into his side pocket?

12 A. He stated that she left the phone in the vehicle
13 when she got out; and discovered (sic) I guess later on,
14 and stuck it over there in the side pocket of the
15 passenger side of the -- uh -- door -- or excuse me --
16 driver's side door.

17 Q. Well he knew where he had dropped her off? Is that
18 what he told you?

19 A. He stated: Yes. Uh-huh. That it was a couple of
20 blocks away from their location.

21 Q. Okay. And he never said anything about trying to
22 take that phone back to where she was?

23 A. No.

24 Q. How about taking the phone back to where those two
25 guys were?

1 A. No.

2 MS. LIVESAY:

3 No further questions for this
4 witness, Your Honor.

5 THE COURT:

6 All right, Mr. Hazzard.

7 MR. HAZZARD:

8 At this time, Your Honor, we'd
9 move to go ahead and play the rest of that exhibit for
10 the jury.

11 THE COURT:

12 Do you want the telephone call as
13 well?

14 MR. HAZZARD:

15 If -- It doesn't matter to me,
16 really. Uh --

17 THE COURT:

18 Well, let's see if --

19 MR. HAZZARD:

20 -- The part I'm interested in is
21 after the telephone; but I'm not --

22 THE COURT:

23 All right. Well, then, can we --
24 Is there a way that we can go forward then?

25 COURT REPORTER:

1 Your Honor, I have to have a way
2 to put it in the record exactly what we're doing here.

3 THE COURT:

4 All right.

5 MR. HAZZARD:

6 Well, we --

7 THE COURT:

8 What we're doing is:

9 We're going to skip over that
10 portion of the tape where the defendant was merely
11 contacting a -- a -- a -- a family member or a friend to
12 let him know where he was.

13 Is that a fair statement, Mr. --
14 uh -- Hazzard of what was transpiring there?

15 MR. HAZZARD:

16 Where we stopped --

17 THE COURT:

18 And we're going forward to --
19 we'll note it in just a moment -- where his interchange
20 with -- or exchange with the police officer -- or the
21 investigator -- takes back up.

22 Is that correct?

23 MR. HAZZARD:

24 Yes sir.

25 THE COURT:

1 Is that a fair statement of -- of
2 what we're doing, Mr. Hazzard -- or what you require?

3 MR. HAZZARD:

4 I would just as soon play the
5 whole thing.

6 I know that The Court -- uh --
7 wants to -- uh --

8 THE COURT:

9 Well, we're going --

10 MR. HAZZARD:

11 -- be efficient with our time.

12 THE COURT:

13 We'll do -- do it all, if that's
14 what you require.

15 MR. HAZZARD:

16 Then, that's what we request --

17 THE COURT:

18 Just start it back up at --

19 MR. HAZZARD:

20 Just start it back up.

21 THE COURT:

22 -- where it last ended and we're
23 going straight through.

24 MR. HAZZARD:

25 Okay.

1 THE COURT:

2 Okay.

3 MS. LIVESAY:

4 It might take a minute to find out
5 where we're at.

6 THE COURT:

7 I mean, we --

8 MR. HAZZARD:

9 It's probably another 9 minutes,
10 Your Honor --

11 THE COURT:

12 Okay.

13 MR. HAZZARD:

14 -- for the whole thing.

15 THE COURT:

16 Okay.

17 I thought it was -- we could just
18 start right where it was.

19 MS. LIVESAY:

20 It's started back --

21 THE COURT:

22 Okay.

23 MS. LIVESAY:

24 -- whenever it -- whenever we
25 stopped it.

1 THE COURT:

2 WHEREUPON: Ms. Livesay, at 10:41
3 AM, November 18, 2010, continued playing State's Exhibit
4 Number 15 where she had stopped it and continued playing
5 it until the end of the video, at 10:51 AM, November 18,
6 2010.

7 THE COURT:

8 All right.

9 Was that the end of it, Mr.
10 Hazzard, as far as you know?

11 MR. HAZZARD:

12 As far as I know, Your Honor,
13 that's the end of it.

14 THE COURT:

15 All right.

16 You may cross examine.

17 MR. HAZZARD:

18 Okay.

19 CROSS-EXAMINATION BY MR. HAZZARD:

20 Q. Detective Abercrombie -- uh -- based on your
21 knowledge and investigation of this case -- First of all,
22 let's clear something up.

23 When he says:

24 Get a hold of Tony at the
25 Detention Center, he is referring to his brother who

1 works at the Detention Center; correct?

2 A. I have no idea.

3 Q. Okay. So you don't know about that, then. All
4 right.

5 And Ms. Livesay asked you about
6 whether or not Mark ever attempt -- or told you he ever
7 attempted to return Ms. [REDACTED] phone; correct?

8 A. That's correct.

9 Q. You never asked him any questions about whether or
10 not he went back to Hillside Drive, or went back to where
11 he dropped her off; did you?

12 A. I didn't ask him specifically if he went back. But
13 I did ask him what he did after he left there.

14 And according to -- uh -- the
15 defendant -- uh -- he stated that he was on his way home
16 -- uh -- eventually -- that he was on his way home.

17 Q. Okay. Sir, you prepared an affidavit for a search
18 warrant on or about July 1st of 2009; correct?

19 A. That's correct.

20 Q. Because you wanted to search Mark's car?

21 A. That's correct.

22 Q. Okay. And an affidavit is a written document under
23 an oath, and it is sworn to be true; correct?

24 A. That's correct.

25 Q. Okay. Now, yesterday, you testified that you

1 searched Mark's car looking for Ms. [REDACTED] the -- that
2 morning at around 4:35 AM, or whatever; correct?

3 A. I'm sorry?

4 Q. You testified yesterday that you searched Mark's car
5 looking for Ms. [REDACTED] -- uh -- at the place where
6 Mark was stopped --

7 A. At --

8 Q. -- at the BP Station?

9 A. At the place of the arrest, or the gas station; yes,
10 that's correct.

11 Q. Yes. Okay. And you viewed the car camera video a
12 couple of days ago in this trial showing Mark getting out
13 of the car; closing the car door behind him; right?

14 A. Uh -- I believe the dash cam from the county officer
15 -- uh -- he exited -- the defendant exits the vehicle and
16 leaves.

17 And I think a short time later
18 another officer, who I think is a county officer, came by
19 and closed the vehicle door.

20 Q. That's what you recall.

21 A. That's what I recall; yes sir.

22 Q. Okay. But of course that is in evidence for the
23 jury to review and see whether or not he gets out of the
24 car and shuts the car door behind him; correct?

25 A. Yes, sir.

1 Q. Okay. Now, your sworn affidavit for the search
2 warrant says:

3 The subject stopped his vehicle.
4 Exited out the driver's side door. In the process
5 leaving it open, running away from the scene.

6 And so your testimony is:

7 You believe that he left the car
8 door open?

9 A. That was my assumption when I typed up the search
10 warrant affidavit.

11 Q. Your assumption?

12 A. Yes sir.

13 Q. What was that assumption based on, sir?

14 A. Because when I came around to the vehicle after the
15 defendant -- uh -- was arrested, I went from the side of
16 Billy the Kid's parking lot where he was arrested to the
17 site where the -- uh -- vehicle -- his vehicle came to a
18 rest.

19 And if I'm not mistaken, when I
20 got there, the car door was open.

21 Q. Uh-huh. So you put assumptions in your sworn
22 affidavit?

23 A. No sir. Uh -- I'm just saying that at that time my
24 feelings were that the car door was open.

25 Q. Well, what it says here is that:

1 He stopped the car. He got out of
2 it. And he ran. And he left the car door open.

3 And you swore to that as a fact;
4 correct?

5 A. That's correct.

6 Q. Okay. And that wasn't fact that you knew; and in
7 fact, it isn't a fact at all; is it?

8 A. I do not know.

9 Q. You don't know? So, the affidavit doesn't say:
10 I think this is what happened.

11 A. That's correct.

12 Q. This says:

13 Sworn factual testimony, this is
14 what I know. I'm presenting it to a judge for their
15 consideration?

16 A. That's correct.

17 Q. Okay. When Ms. Livesay asked you -- let's see --
18 whether you interviewed Mr. Bradley and Mr. Howard, and
19 whether their statements were substantially the same as
20 Ms. [REDACTED] correct?

21 A. Correct.

22 Q. Okay. And Mr. Howard, however, is the one that
23 asked you: Did he need an attorney?

24 Didn't he?

25 A. I believe I recall something like that.

1 Q. Yeah. And don't you find it kind of strange that
2 someone who is supposedly a victim of an armed robbery
3 would be asking you if they need to hire an attorney to
4 defend them?

5 A. No -- uh -- you know -- considering the fact that he
6 was 17 years old and doesn't understand the criminal
7 process.

8 Q. Uh-huh.

9 A. Uh -- A lot of people think that to prosecute
10 somebody, they need to get an attorney.

11 They don't realize that the State
12 in the form of a district attorney's office -- or in this
13 case, the solicitor's office -- is the attorney for them.

14 Q. Okay. So you were making the assumption that Mr.
15 Howard had no knowledge of the criminal process at the
16 time you spoke with him?

17 A. That's -- That's correct. And it's -- it's not
18 unusual when -- you know -- especially when you're
19 dealing with -- uh -- somebody who has no experience, or
20 -- uh -- someone who is young and who understands what
21 happens from the time that somebody is arrested all the
22 way through up to -- to trial.

23 They just don't understand.

24 Q. And again, though, that is your assumption; correct?

25 A. Yes sir.

1 Q. That he didn't know the process?

2 A. Yes sir.

3 Q. Okay. And Mr. Howard never told you anything about
4 telling Mark -- uh -- about some college kids having
5 money that Mark could go rob; did he?

6 A. That's correct.

7 Q. Okay. And in fact when you spoke with Ms.

8 [REDACTED] later on in the day on June 29th of '09, she
9 never mentioned that story either; did she?

10 A. That's correct.

11 Q. Okay. Now, after you obtained your search warrant
12 with this affidavit, you didn't find any weapons; did
13 you?

14 A. No, I did not.

15 Q. No guns. No knives. No razors. Nothing of that
16 nature; correct?

17 A. That's correct.

18 Q. And Ms. [REDACTED] cell phone, as I think has been
19 clearly established, was in the driver's side door
20 pocket; correct?

21 A. Yes sir.

22 Q. And the one thing you did take out the car as far as
23 -- was this -- this short tire jack; right?

24 A. That's correct.

25 Q. Now yesterday, I believe you testified that it was

1 found wedged between the seats in the middle console; is
2 that correct?

3 A. It was laying over towards that area of the seat;
4 yes sir?

5 Q. Okay. So it was lying in the seat, or wedged
6 between the seat; or --

7 A. I -- I don't recall exactly. It was right there on
8 the passenger seat. It was in plain view.

9 Q. Uh-huh. Okay. Because your affidavit for the
10 search warrant, again, says that:

11 The tire iron was lying on the
12 passenger floor board?

13 A. Okay. Well then, I was mistaken.

14 Q. Okay. So now, you're saying it was lying on the
15 floorboard?

16 A. Yes, sir.

17 Q. Okay. Well, the prosecution has been good enough
18 to provide me with some photographs here -- or copies of
19 photographs.

20 Let's take a look at these right
21 quick.

22 The Court's indulgence, Your
23 Honor?

24 Okay.

25 MS. LIVESAY:

1 Your Honor, can I see which
2 pictures he's showing.

3 MS. LIVESAY:

4 I apologize.

5 WHEREUPON: Mr. Hazzard and Ms.
6 Livesay have an inaudible conversation about the
7 pictures.

8 THE COURT:

9 Mr. Hazzard, while you are
10 preparing those photographs, the Bailiff tells me that
11 one of our jurors needs a break.

12 MR. HAZZARD:

13 Yes sir.

14 THE COURT:

15 And we've been at it for over an
16 hour.

17 MS. LIVESAY:

18 Yes sir.

19 THE COURT:

20 And I'd rather that they have
21 their full attention on your cross examination. So we're
22 going to let them take a break.

23 I don't want anyone distracted;
24 okay.

25 MR. HAZZARD:

1 Yes sir. Thank you very much,
2 Your Honor.

3 (WHEREUPON: The jury empanelled
4 in the case withdrew from the courtroom at 11:09 AM,
5 November 18, 2010; and was no longer present during the
6 following proceedings.)

7 THE COURT:

8 All right.

9 We're going to take a few moments.

10 (WHEREUPON: The court was
11 declared in recess at 11:09 AM, November 18, 2010.)

12 (WHEREUPON: The court was called
13 to order by the Bailiff at 11:22 AM, November 18, 2010;
14 and all pertinent parties, along with their counsel, were
15 back and present in the courtroom.)

16 BAILIFF:

17 Order in The Court. All rise.

18 THE COURT:

19 Thank you. Thank you. Please be
20 seated.

21 All right; bring the jury, Mr.
22 Roth.

23 (WHEREUPON: The jury empanelled
24 in the case was escorted back into the courtroom at 11:25
25 AM, November 18, 2010; and was in fact present during the

1 following proceedings.)

2 WHEREUPON: 8 PHOTOS WERE MARKED
3 BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS NUMBERS 3
4 THROUGH 10 FOR IDENTIFICATION.

5 COURT REPORTER:

6 Your Honor, these series of
7 photographs will be marked Defendant's Exhibits 3 through
8 10.

9 THE COURT:

10 Very well.

11 MS. LIVESAY:

12 Thank you, sir.

13 MS. LIVESAY:

14 Can I go ahead and get a look at
15 them, Your Honor?

16 MR. HAZZARD:

17 The Court's indulgence?

18 (WHEREUPON: Mr. Hazzard and Ms.
19 Livesay again have an inaudible conversation about the
20 pictures.)

21 MS. LIVESAY:

22 All right, Your Honor.

23 THE COURT:

24 Let me ask you, then:

25 Do you have any objections to

1 these?

2 MS. LIVESAY:

3 No sir.

4 THE COURT:

5 All right.

6 They're all admitted without
7 objection. You intend to admit them, Mr. Hazzard.

8 MR. HAZZARD:

9 Yes, sir, Your Honor.

10 THE COURT:

11 All right. Go ahead.

12 MR. HAZZARD:

13 All right. Thank you, Your
14 Honor.

15 WHEREUPON: THE 8 PHOTOS EARLIER
16 MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS
17 NUMBERS 3 THROUGH 10 WERE NOW ENTERED INTO EVIDENCE
18 WITHOUT OBJECTION.

19 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

20 Q. All right. Now, we we're talking about the tire
21 jack.

22 A. Yes sir.

23 Q. The little tire jack. Uh -- And I believe you
24 testified yesterday that it was wedged in between the --
25 uh -- seats in the center console --

1 A. Yes --

2 Q. Is that correct?

3 A. Yes sir.

4 Q. And now you say today that it was actually found on
5 the seat?

6 Is that correct?

7 A. Well, yes sir. This was a year and a half ago,
8 almost.

9 I don't remember exactly where, in
10 relationship, this crowbar was.

11 I know it was found on the
12 passenger seat area.

13 Uh -- The search warrant -- and if
14 you have the search warrant, if I could take a look at it
15 -- would tell you specifically where I found it at the
16 time.

17 Uh -- I -- I don't recall a year
18 and a half from now to be honest you where exactly I -- I
19 found it at that -- at that time to recall it a year and
20 a half later.

21 So I don't remember.

22 Q. Yes sir. Well, let me hand you Defense Exhibits
23 Number 3 and 4, which I believe are in evidence without
24 objection, and ask if that refreshes your recollection?

25 It appears to me in those

1 pictures, one of them shows the -- uh -- tire jack wedged
2 in between the seat and the console?

3 Is that correct?

4 A. Uh -- The photograph here that you have marked
5 Exhibit 3 --

6 Q. Yes sir.

7 A. -- is a shot of the -- uh -- center console showing
8 -- uh -- where the -- uh -- defendant's telephone is?

9 Q. Yes, sir.

10 A. Okay. And then Defense Exhibit Number 4 shows the
11 -- uh -- uh -- tire iron laying on the passenger seat --
12 front passenger seat.

13 Q. Okay. And who takes these photographs?

14 A. I took the photographs.

15 Q. You took the photographs.

16 A. (Nods in the affirmative.)

17 Q. Okay. And the photographs are supposed to -- Are
18 the photographs supposed to accurately reflect what you
19 see when you come upon the car?

20 A. No. Sometimes, because of lighting or because of
21 the fact that -- uh -- I use a -- an older digital
22 camera. It's not the best in the world.

23 And -- uh -- So in order to get a
24 shot with it being lit up -- you know -- I'll -- I'll
25 take the shots while it's in the vehicle that way.

1 Q. So what you're testifying to, then, is:

2 It is not unusual for you to
3 actually move evidence around, and then take a photograph
4 of it?

5 A. In -- In this particular case, no; because the fact
6 that I couldn't get the lighting where it was using my
7 digital camera.

8 And so -- uh -- I had to take the
9 -- uh -- photographs such as this right here where the
10 sun was shining --

11 Q. What are you referring to when you say "this right
12 here," sir?

13 A. Uh -- Defense Exhibit Number 4 --

14 Q. Okay.

15 A. -- where the tire iron is on the front seat.

16 Q. Uh-huh. Okay. So let's get back to yesterday.
17 Your testimony was that it was found wedged between the
18 seat and the console; correct?

19 A. Correct.

20 Q. As would be represented in Defense Exhibit Number 3.
21 And then, today, you testified that you believed it was
22 found on the seat; correct?

23 A. The photograph marked Defense Exhibit Number 3 -- uh
24 -- doesn't show a crowbar.

25 Q. You don't believe it does, sir?

1 A. No sir.

2 Q. Okay. That's fine.

3 A. This -- This is just a shot of the center console.

4 MR. HAZZARD:

5 The Court's indulgence, Your
6 Honor.

7 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. So it's your testimony, sir, that this item I am
9 pointing to is not considered to be the tire jack in
10 question?

11 A. No sir. I believe that's part of the seat belt.

12 Q. You believe that's part of the seat belt?

13 A. Yes sir. This is part of the seat right here --

14 Q. Uh-huh.

15 A. -- and over here.

16 Q. Hmm.

17 A. That's not a representation of the crowbar.

18 Q. Okay. And the jury will be able to look at that
19 and make their determination.

20 Now, in your affidavit, however,
21 you stated in Paragraph 3 of that affidavit:

22 Also in plain view was a tire iron
23 lying on the passenger floorboard.

24 Is that correct sir?

25 A. Yes sir.

1 Q. Okay. So now we've had sworn testimony that it was
2 in between the seat and the console?

3 Is that correct?

4 A. I believe that's what I said yesterday.

5 Q. And we have sworn testimony today that it was on the
6 car seat?

7 Is that correct, sir?

8 A. No sir. Uh -- Like I said, I -- I don't remember
9 exactly where this crowbar was a year and half later.

10 The affidavit was typed and
11 written at the time that the incident took place. So
12 that's where it was located at.

13 Uh -- As I said before --

14 Q. So then -- I'm sorry. Go ahead.

15 A. As I said before -- uh -- I had an older digital
16 camera. And it doesn't pick up items -- you know --
17 specifically in shadows or where it's dark.

18 So in order to take a photograph,
19 it was placed here.

20 Q. Without a doubt, though, your affidavit, which is a
21 sworn document, is inconsistent with your testimony
22 yesterday and today, which is also under oath?

23 Is that correct, sir?

24 A. That's correct. Like I said, I don't remember
25 where it was a year and a half ago.

1 If I -- If I said that it was
2 there yesterday, I was mistaken.

3 I don't remember. And I guess
4 that's probably what I should have said:

5 I don't remember.

6 Q. Uh-huh. All right. Thank you, sir. Now based
7 on the allegations made by Ms. [REDACTED] and Mr. Howard,
8 and Mr. Bradley, you swore out 3 warrants for attempted
9 -- attempted armed robbery against Mark on June the 29th,
10 of 2009; correct.

11 MS. LIVESAY:

12 Your Honor, if I may?

13 I do not see how those pending
14 charges are relevant in this trial here?

15 THE COURT:

16 I'm going to let him proceed.

17 WITNESS:

18 I'm sorry. Could you repeat that?

19 MR. HAZZARD:

20 Yes sir.

21 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

22 Q. Based on what Ms. [REDACTED] Mr. Bradley, and Mr.
23 Howard told you --

24 A. Uh-huh.

25 Q. -- you swore out 3 warrants on June 9th -- June

1 29th, 2009, against Mark Elliott for 3 counts of
2 attempted armed robbery; correct?

3 A. I believe so.

4 Q. Okay. And here we are today for the trial of his
5 case for what occurred on June 29th, of 2009 --

6 A. That's correct.

7 Q. -- and we're not going forward on those charges,
8 sir; are we?

9 A. That's correct.

10 Q. Okay. Now you filed warrants against Mark for
11 kidnapping, and criminal sexual conduct, and resisting
12 arrest, on that same day -- on June 29th of '09 --

13 A. I --

14 Q. -- and that was less than 12 hours after Mark was
15 detained; right?

16 A. I didn't sign any warrants for resisting arrest.

17 Q. You didn't?

18 A. I don't believe so. I believe the county charged
19 him for resisting arrest.

20 MR. HAZZARD:

21 Let's see. The Court's
22 indulgence, Your Honor?

23 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

24 Q. Yeah. Who is John Jemp (? phonetic)? Do you know?

25 A. No sir.

1 Q. Okay. You don't know who John Jemp (? phonetic)
2 is. Okay.

3 So your charges, then, were
4 kidnapping, criminal sexual conduct, and three counts of
5 attempted armed robbery; correct?

6 A. Yes sir.

7 Q. Okay. Now -- And these warrants were sworn out
8 less than 12 hours after Mark Elliott was detained;
9 correct?

10 A. I suppose so. I don't know the exact time.

11 Q. Well, I mean, let's go through it. I want -- don't
12 want you to guess.

13 A. Okay.

14 Q. I mean, we -- We don't need to be guessing anymore;
15 okay.

16 A. If -- I would have written the warrants shortly
17 after -- uh -- the interviews were completed. I guess
18 that was on the 29th.

19 Q. Okay. Ms. [REDACTED] goes to the hospital the
20 morning of the 29th.

21 Mark is detained around 4:15 --
22 4:30 AM -- the morning of the 29th; correct?

23 A. Yes sir.

24 Q. And then we just saw the video of you talking to
25 Mark. And that was -- was two -- sometime between two

1 and three o'clock, or thereabouts, in the afternoon of
2 the 29th; correct?

3 A. Yes sir.

4 Q. Okay. So you're talking to him around 10 or 11
5 hours after he was initially detained; right?

6 A. Yes sir.

7 Q. And your warrants state that they were done on the
8 29th; and that they were signed by magistrate on the
9 29th.

10 Is that a fair statement, sir?

11 A. Yes sir.

12 Q. Okay. So that same day?

13 A. Yes sir.

14 Q. Okay. Okay. Now, you spent a lot of time on that
15 video talking to Mark about this -- this rape kit;
16 correct?

17 A. Yes sir.

18 Q. Okay. And about how you would have the DNA
19 evidence, and it would tell you everything you needed to
20 know basically; correct?

21 A. Yes sir.

22 Q. Okay. And when you signed these warrants, and sent
23 them to the magistrate, and got the magistrate to sign
24 the warrants, saying that:

25 He had kidnapped someone.

1 That:

2 He had raped someone.

3 That:

4 He had attempted to rob three
5 people.

6 You didn't have the DNA results,
7 or the rape kit results; did you?

8 A. That's correct.

9 Q. Okay. And in fact, you didn't send -- Well, who's
10 responsible in North Myrtle Beach for sending something
11 off to SLED for -- uh -- for -- uh -- evaluation,
12 processing, and analysis, sir?

13 A. Uh -- That would be the evidence custodian; usually
14 drive -- travel to Columbia in person.

15 Q. Hmm. And do they automatically take things, once
16 you give it to them; or do they wait for some instruction
17 to take something?

18 A. It's generally not immediate, depending on the case.

19 Q. Okay. Can you give us any idea, then, what would
20 trigger the evidence custodian to take something in his
21 or her custody and control to the South Carolina Law
22 Enforcement Division in Colombia for analysis?

23 A. Well, DNA analysis is expensive. And SLED is -- uh
24 -- very busy, as you can imagine; and has to run, not
25 only our evidence, but evidence from every agency in the

1 state.

2 So it's time prohibitive to send
3 everything there.

4 If everything you collected, you
5 sent there the minute where you got it -- uh -- there
6 would be an awful lot that would not be needed later on.

7 Uh -- Not every particular case is
8 necessary to have evidence processed -- uh -- for one
9 reason or another.

10 It could be the fact that -- uh --
11 defendant pleads guilty.

12 Uh -- If something looks as though
13 it's going to go to trial, then you would process the
14 evidence at that time, simply because of the fact that --
15 uh -- there's such an overwhelming amount of material
16 that's sent to SLED, they asked us to cut stuff down and
17 only send what's necessary.

18 Q. And wouldn't it be necessary in a case like this,
19 where a man tells you:

20 No sir; I didn't touch her.

21 There's no reason for my DNA to be
22 around her, or on her, or near her private parts.

23 Wouldn't that be an incident --
24 instance where you've got two different statements that
25 are diametrically opposed?

1 Wouldn't that be a good time to
2 send it to SLED, sir?

3 A. Well, it depends on the case. Every incidence is a
4 little bit different.

5 You know, not all cases come to
6 trial.

7 Q. Hmm.

8 A. Some cases -- uh -- the defendant pleas beforehand,
9 and it's not necessary.

10 Q. And some cases are dismissed; correct?

11 A. That's correct.

12 Q. Okay. And in this case though, the kit wasn't sent
13 -- sent to SLED for processing and analysis until
14 September 17th of this year?

15 And that's about 14 or 15 months
16 after this man was charged; correct?

17 A. I don't know when the kit was sent.

18 Q. Okay. Now, sir, how long have you been a police
19 officer?

20 A. Uh -- Approximately 16 years.

21 Q. Okay. And of that time, how long have you been a
22 detective, sir?

23 A. Uh -- Approximately 9 years.

24 Q. Okay. And in that time, how many criminal sexual
25 conduct investigations have you been a part of?

1 A. Oh, I couldn't tell you. I -- I don't know. You
2 know, there's numerous ones.

3 Q. Okay. Would you say -- and I don't want you to
4 guess -- but if you can kind of ballpark it, would you
5 just say -- would it be fair to say more than 10?

6 A. Probably so; yes sir.

7 Q. Okay. And you, I take it, have received some form
8 of basic training, or seminars, with regard to DNA
9 evidence; correct?

10 A. Yes, sir.

11 Q. Okay. And based on this knowledge -- you know --
12 we just saw the video -- You told Mark that it didn't
13 take much contact to find enough DNA evidence to test
14 after sexual involvement between two people; correct?

15 A. It -- It -- In most instances, that's correct.

16 A. Yes sir. And you were in the courtroom yesterday
17 when Ms. [REDACTED] testified that -- testified that Mark
18 penetrated her anally, and penetrated her vaginally;
19 correct?

20 A. That's correct.

21 Q. She didn't say he tried to penetrate her?

22 A. (No response.)

23 Q. Right?

24 A. That's correct.

25 Q. Okay. Now, when you spoke with Ms. [REDACTED] on

1 the 29 -- uh -- of that afternoon, she didn't tell you
2 anything about Mr. Howard and Mr. Bradley leaving 1907
3 Hillside Drive and heading over to a hotel or motel or
4 condo for a little while and then coming back; did she,
5 sir?

6 A. Uh -- I don't recall that; no sir.

7 Q. Okay. And when you spoke with -- Well, let me back
8 up.

9 Basically, you spoke with -- or
10 did your formal interview with all three of the alleged
11 victims and with Mark Elliott on the same day; correct?

12 A. That's correct.

13 Q. You know, later on in the afternoon of the 29th?

14 A. That's correct.

15 Q. All the action took place early that morning?

16 A. That's correct.

17 Q. Okay. And -- you know -- you've received training
18 in witness and suspect interrogation; right?

19 A. Yes sir.

20 Q. Okay. And one of the techniques of police officers
21 and detectives commonly used is:

22 They will ask questions just to
23 gauge the witness or suspect's response; correct?

24 A. Sometimes.

25 Q. Sometimes. Yes sir. Yes sir. And in this case,

1 by the time you were doing you formal interview with Ms.
2 [REDACTED] Mr. Howard, and Mr. Bradley, you've already
3 spent a little time with Mark Elliott earlier that
4 morning; correct?

5 A. Uh -- I first talked to Mr. Elliott, I believe
6 sometime around two when that interview was there.

7 Q. Okay. So then, it's your testimony that you didn't
8 speak to Mark until after you had spoken with Ms.

9 [REDACTED] Mr. Bradley, and Mr. Howard?

10 Is that correct?

11 A. Yes sir.

12 Q. Okay.

13 A. I might've gone down to the jail and asked him if he
14 was still willing to come upstairs and talk to me.

15 But as far as any formal setting
16 of sitting down and talking --

17 Q. Uh-huh.

18 A. -- uh -- I don't believe I talked to him until the
19 time that we interviewed him at the interview room.

20 Q. Okay. And prior to that, any -- did you speak with
21 any of the various and sundry officers who were on the
22 scene when Mark was detained at the BP Station?

23 A. Yes, sir.

24 Q. Okay. Because you were there that night?

25 A. Yes sir.

1 Q. And you're in one of the videos that the jury has
2 that they can look at?

3 A. That's correct.

4 Q. While Mark's laying on the ground, you pulled up,
5 talked to somebody for a minute or two, and then you go
6 away, presumably back to the car; correct?

7 A. That's correct.

8 Q. Okay. So in talking to them, did any of them ever
9 tell you anything about -- uh -- Mark's assertion that
10 this was all about a drug deal?

11 A. I believe it was mentioned sometime during all that
12 that -- uh -- he had mentioned that to -- uh -- uh -- one
13 of the officers; yes sir.

14 Q. Okay. So then when you talked with Ms. [REDACTED]
15 Mr. Howard, and Mr. Bradley, you are were aware of Mark's
16 assertion, at least to some bare-bones extent; correct?

17 A. Uh -- I hadn't -- just from what he mentioned at the
18 scene; yes sir.

19 Q. Yes sir. And yet you never asked any one of the
20 three of them -- even if just to see what their reaction
21 would be -- never asked any one of the three of them
22 about this being a drug deal; did you, sir?

23 A. I don't recall if I did prior to me taking him into
24 the interview and was sitting down talking to him or not?

25 I don't recall that.

1 Q. Okay. But there's definitely -- You don't believe,
2 or don't recall having done it outside the presence of
3 the cameras?

4 And there's no question there's no
5 video evidence of it; is there?

6 A. Uh -- I never asked him as far as the video in the
7 interview room.

8 Q. All right. And in fact, as you testified
9 yesterday, you handled them with kid gloves, so to speak;
10 correct?

11 A. I'm not sure I understand.

12 Q. Well, I mean, that's what you testified to
13 yesterday; correct?

14 You said that certain witnesses
15 had to be handled very carefully -- uh -- based on the
16 situation; that you --

17 A. You're talking --

18 Q. -- had to handle them with kid gloves?

19 A. You're talk about rape -- rape victims?

20 Q. Uh-huh.

21 A. Yes, sir. You know, I mean, you're not going to --
22 You have to talk to them and it's a traumatic experience.

23 You're not going to -- You have to
24 lead up it and talk to them. It -- It's difficult for
25 them -- some of them -- to talk about certain things.

1 Q. Uh-huh. Uh-huh. And I understand. You're in a --
2 You're in a difficult position as a man in a CSC case?

3 I understand that; right?

4 A. Sometimes; yes sir.

5 Q. Does North Myrtle Beach have any -- uh -- female
6 detectives?

7 A. Uh -- We used to. She's gone back out on the road.

8 Q. Okay. So, basically then, there is no choice in a
9 CSC case but for a male detective to speak to the vic --
10 the alleged victim; right?

11 A. No. If -- If it warranted it, we would get a female
12 police officer -- uh -- also, in this particular case --
13 uh -- the victim's advocate for the City of North Myrtle
14 Beach, who is a female.

15 Uh -- She was notified as well by
16 the -- just in case -- uh -- the victim felt more
17 comfortable talking to her.

18 Q. Understood. But there -- But you did interview all
19 three of them; correct?

20 A. That's correct.

21 Q. Yeah. And that -- those interviews were videotaped;
22 right?

23 A. That's correct.

24 Q. Okay. And there's no question that in none of the
25 interviews did you ever question any of them in -- in a

1 fashion that would cause them to believe that you doubted
2 their stories; did you, sir?

3 A. No sir. Uh -- The -- Of course, any time you talk
4 to somebody, you want to make sure that -- uh -- you
5 don't get the same story from everybody.

6 You want to try and get them
7 separated.

8 In this particular case here -- uh
9 -- the -- the two boys -- that would have been almost
10 impossible because of the timeframe between the time I
11 got a chance to talk to them and the timeframe that the
12 incident took place.

13 Uh -- You know, they were around
14 each other.

15 So that --

16 Q. Yes.

17 A. -- would've been impossible to do.

18 Q. No question.

19 A. Uh -- On BE side though, she wasn't around
20 them at all.

21 And that's where I felt as though
22 getting her side of the story and it matching up with the
23 rest of them was important.

24 Q. Hmm. That was important to you?

25 A. Yes sir.

1 Q. Okay. Now, when you interviewed Mark, he even
2 asked you if you were simply taking their statements at
3 face value?

4 But you denied that when you
5 talked to him; right?

6 You told him that you would rely
7 more on the rape kit evidence; right?

8 A. I don't recall exactly how I worded it. Uh -- I did
9 tell him several times that I had gone into this
10 interview with an open mind; that -- uh -- I wasn't here
11 to accuse him, but I was here to get his side of the
12 story.

13 Q. Okay. And you testified yesterday that a pair of
14 men's underwear was found in the backseat of Mark's car.

15 And I remember the prosecutor
16 saying it had to come from us, that there wasn't any
17 relevance it.

18 Do you remember when the
19 prosecutor said:

20 Oh, it had to come in, because
21 those were the drawers that Mark took off after he
22 committed this heinous crime; right?

23 Do you remember that?

24 A. Uh -- I remember the underwear being placed into
25 evidence -- uh -- I believe based on the search warrant.

1 Q. Hmm. And you testified, I believe, that the --
2 that the -- the significance of that underwear was that
3 that was the only clothing in the passenger compartment
4 of the vehicle; correct?

5 A. I don't recall.

6 Q. You don't recall?

7 A. Right. But I -- I believe it was.

8 Q. You believe it was? All right, sir. Let me show
9 you Defense Exhibit Number 5, and Defense Exhibit Number
10 6; Defense Exhibit Number 7; and ask you if you can
11 identify those 3 pictures, sir?

12 A. Defense Exhibit Number 6 --

13 Q. Yes sir.

14 A. -- is a pair of underwear.

15 And Defense Exhibit Number 7 and 5
16 is a hat.

17 And I'm not sure what the other --
18 other item is -- a baseball; but I'm not sure what the
19 other item is.

20 Q. Okay. Now, with regard to 7, and 6, and 5, no
21 question all of these items were found inside the
22 vehicle; correct?

23 A. Yes, sir.

24 Q. Okay. All right. So then there are definitely
25 other items of clothing inside the vehicle, not just one

1 pair of underwear?

2 A. Well, the reason why -- uh -- I took the underwear
3 and seized it, is because the defendant -- uh -- wasn't
4 wearing any underwear at the time.

5 Q. Uh-huh.

6 A. Uh -- As far as the baseball cap is concerned, I
7 didn't really have any reason to seize that.

8 It didn't seem important.

9 And I don't think it still is
10 important.

11 Q. I understand that, sir. My question is:

12 Your testimony under oath
13 yesterday was that:

14 There was no other items of
15 clothing in the passenger part -- compartment of the
16 vehicle but that pair of underwear?

17 A. Uh --

18 Q. I mean, do you deny saying that under oath
19 yesterday?

20 A. Uh -- I don't recall. Uh -- I remember saying that
21 there's -- uh -- but I don't recall there being any other
22 items of clothing except for the underwear.

23 Q. Hmm.

24 A. I also mentioned that there was clothes in the trunk
25 which were folded that looked like they had never been

1 worn.

2 Q. Yes sir. Now you indicated that the pair of
3 underwear in the -- in the passenger compartment of the
4 car was very important to you, and so you seized it
5 pursuant to the search warrant; correct?

6 A. Yes sir.

7 Q. Okay. And it was so important, when was it sent
8 off to SLED, sir?

9 A. Uh -- It wasn't.

10 Q. It wasn't?

11 A. That's correct.

12 Q. Why not?

13 A. I didn't think it was important at the time to have
14 sent it off to SLED.

15 Q. Okay. Your testimony is:

16 You had figured that was the pair
17 of underwear he was wearing when he committed a sexual
18 assault.

19 But you didn't think it was
20 important to send it to SLED for testing and analysis to
21 see maybe if some hairs, some fibers, some DNA fluid from
22 Ms. [REDACTED] might be found on them?

23 That would not be significant to
24 you, sir?

25 A. Not if he took them off prior to all that.

1 Q. Hmm. Okay. Actually what it is, is those
2 underwear were taken from the trunk of the car?

3 Isn't that correct, sir?

4 A. Uh -- No sir.

5 Q. No? They weren't? Okay? Just like the tire iron
6 wasn't moved two or three places and photographed; right?

7 A. No sir.

8 Q. No sir? Okay. So we have this underwear that's
9 in evidence that's never been tested and has no
10 significance to you now; correct?

11 But it's in evidence?

12 A. That's correct.

13 Q. All right. Now when you interviewed Ms. [REDACTED]
14 on the afternoon of June 29th of '09, she told you that
15 Mark had forced her to lean up against the passenger side
16 door of the car, and that he had sex with her from behind
17 outside the car; correct, sir?

18 A. I believe so.

19 Q. Okay. Uh -- I've got a copy of the report. Would
20 it help refresh your recollection as to what you exactly
21 wrote?

22 A. Yes, sir.

23 Q. All right. It's on Page 3, sir.

24 A. That's correct.

25 Q. Okay. So specifically, what you indicate in your

1 report that Ms. [REDACTED] told you is that:

2 At some point, BE stated
3 that Elliott drove her to the boat ramp and told her to
4 get out of the vehicle.

5 Elliott told her to pull off her
6 panties and shorts off, and while she was leaning against
7 the passenger car door, he sexually assaulted her.

8 That was what she told you at that
9 time; correct?

10 A. Yes, sir.

11 Q. Okay. And as a result of her telling you that, you
12 had -- uh -- Detective Lieutenant Don Repec -- uh -- dust
13 the passenger side of the car for fingerprints; correct?

14 A. Yes, sir.

15 Q. Okay. Because the thought process you had was
16 that:

17 Okay, she's being forced to lean
18 up against the car, and he's behind her, and they're both
19 leaned all up against car like this (indicating); right?

20 A. Yes, sir.

21 Q. Okay. And the results of this test were that:

22 They were negative for BE
23 [REDACTED] prints; right?

24 A. That's correct.

25 Q. So then she comes into court. You were in court

1 when she testified yesterday; right?

2 A. Yes sir.

3 Q. So then the story changed to:

4 The passenger car door is open,
5 and my hands are on the seat; right?

6 A. That's correct.

7 Q. All right. Now, you saw the tape just now -- or
8 the video just now, where Mr. Elliott asked if he could
9 be present when you searched his car?

10 A. That's correct.

11 Q. Okay. And you denied that request?

12 Why would you deny that request,
13 sir?

14 A. Well, it's just -- just not done to -- you know --
15 to have to search a vehicle -- car -- with -- you know --
16 someone standing there?

17 Q. Why not? You got something to hide?

18 A. No sir.

19 Q. Then why can't he be present when you search his
20 car?

21 A. It's just not policy. It's not done, to go and take
22 a defendant out there to the car while you search it.

23 Q. Hmm. Okay. Because he asked you. And basically
24 the last thing that you see on that video is him saying:

25 Y'all aren't going to plant

1 anything in there; are you?

2 A. Yes, sir.

3 Q. And you say -- You laughed. You said:

4 No, we don't have that.

5 Right?

6 A. That's correct.

7 Q. Okay. Now you were present with Ms. [REDACTED] the
8 morning of June 29th at the Seacoast Medical Center;
9 correct?

10 A. Yes sir.

11 Q. Okay. And in fact, you signed some of the hospital
12 paperwork; right?

13 A. Yes sir.

14 Q. Okay. Now, did you obtain the results of a rape
15 kit performed on Ms. [REDACTED] that morning from a nurse
16 at Sea Coast that same morning prior to leaving the
17 hospital?

18 I mean, that's kind of a weird way
19 -- way to word it.

20 A. Yeah. I'm --

21 Q. If you want me to rephrase it, I will.

22 A. Yeah. I mean, I'm not sure --

23 Q. Okay; let's back up.

24 You're with -- You're with Ms.

25 [REDACTED] that morning at the hospital?

1 A. Yes sir.

2 Q. Okay. To your knowledge, a rape kit was performed
3 by a doctor with a nurse in attendance; correct?

4 A. Yes sir.

5 Q. Did you at some point receive from a nurse of Sea
6 Coast a -- a rape kit?

7 A. Yes, sir.

8 Q. Okay. And it was listed as BE [REDACTED]
9 rape kit; right?

10 A. Yes sir.

11 Q. Okay. And it was that morning? It wasn't like
12 days later?

13 A. That's correct.

14 Q. Okay. And that's what that weird question was all
15 about.

16 Okay. Now, how was it packaged?
17 How do they package these rape
18 kits, sir?

19 A. It's in a box.

20 Q. A box?

21 A. Yes sir. It's a white box.

22 Q. Okay. Are they sealed?

23 A. Yes sir.

24 Q. Okay. And this one in particular, it was sealed?

25 A. Yes sir.

1 Q. Okay. Have you had the opportunity -- uh -- or
2 been in a situation where you had to deal with a -- a
3 rape kit in the past?

4 A. Yes sir.

5 Q. Okay. Was this one sealed appropriately as you
6 would expect a rape kit to be sealed?

7 A. Yes sir.

8 Q. Did it appear that it had been altered, tempered
9 with, or messed with in any way before it got to you?

10 A. No sir.

11 Q. Okay. And once it was given over to you, and
12 placed in your care, custody, and control, sir, what did
13 you do with it? His place in the refrigerator at the
14 lab. I'm sorry?

15 A. It's placed in a refrigerator in the lab.

16 Q. I'm sorry. Could you repeat that?

17 A. It's placed in a refrigerator in the lab.

18 Q. Okay. In what lab?

19 A. In the Detective's Lab.

20 Q. I didn't know y'all had a lab?

21 A. Yes sir.

22 Q. It's at the North Myrtle Beach Police Department or
23 Department of Public Safety?

24 A. Yes sir.

25 Q. Okay. All right. So you actually placed it in

1 the refrigerator in the lab?

2 A. That's correct.

3 Q. Okay. And did you, at some point, retrieve it from
4 that refrigerator?

5 A. Uh -- Eventually, when it was handed over to a
6 records custodian to be sent to -- uh -- Colombia.

7 Q. Okay. Now when you retrieved it from the
8 refrigerator, was it in substantially the same condition
9 as it had been when you placed it in the refrigerator?

10 A. Uh -- Yes, sir.

11 Q. Did it appear to have been altered or tampered with
12 in any way, sir?

13 A. No sir.

14 Q. Okay. Uh -- Is it packaged in such a way that
15 alteration or tampering would be somewhat readily
16 apparent?

17 A. Yes sir.

18 Q. Okay. And when you retrieved it from the
19 detective's refrigerator and turned it over to the
20 record's custodian, or -- or property and evidence
21 custodian for the North Myrtle Beach Department of Public
22 Safety, it was in substantially the same condition as
23 when it was entrusted to you?

24 Is that correct?

25 A. Yes sir.

1 MR. HAZZARD:

2 Okay.

3 The Court's indulgence, Your
4 Honor?

5 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

6 Q. As the lead investigative officer on this case, were
7 you provided with the test results when they came back
8 from SLED, sir?

9 A. Yes sir.

10 Q. Okay. Now, at Sea Coast on that morning, were the
11 specimens taken and the rape kit prepared at your
12 request?

13 A. Yes, sir.

14 Q. Okay. Not my request? Not Mark's request? Your
15 request?

16 A. Yes sir.

17 Q. Okay. You were present here -- it might have been
18 in this very courtroom -- on October 19th of this year
19 when the prosecutor obtained a court order asking Mark to
20 provide some DNA -- a DNA sample; correct?

21 A. Yes, sir.

22 Q. Okay. And in fact, you took the samples from Mark,
23 personally; correct?

24 A. That's correct.

25 Q. Okay. If you would -- And you did it by using a

1 buccal swab?

2 A. Correct.

3 Q. If you would, please explain to the jury how buccal
4 swabs work as far as obtaining DNA.

5 A. Uh -- It's very low-tech and very simple. It's --
6 uh -- basically a sterile Q-tip that's -- uh -- applied
7 to the inside of the mouth to get -- uh -- cells from the
8 Q-tip onto the -- uh -- excuse me -- from the inside of
9 the mouth onto the Q-tip.

10 Q. Okay. And what did you do after you used the Q-tip
11 on the inside of each of Mark's cheeks?

12 A. Uh -- Placed them in a container to be sent to SLED.

13 Q. Okay. And is this a -- uh -- standard industry
14 recognized and used container; or just whatever cardboard
15 box you had --

16 A. No sir.

17 Q. -- laying around in the lab?

18 A. Uh -- It's specifically designed for that.

19 Q. Okay. So you used an appropriate container;
20 correct?

21 A. Yes sir.

22 Q. Okay. Is there a mechanism or method by which you
23 seal that container?

24 A. Yes sir.

25 Q. Okay. And did you follow that procedure and seal

1 the container?

2 A. Yes sir.

3 Q. Once you sealed the container with Mark's DNA
4 samples inside by way of the use of buccal swabs, what
5 did you do with that container, sir?

6 A. It's -- uh -- Forms have to be signed. And then,
7 it's sent to -- uh -- SLED.

8 Q. Okay. Now when you say: "It's sent to SLED," is it
9 sent by mail, or is turned over to the evidence
10 custodian; or how is that sent?

11 A. The evidence custodian.

12 Q. Okay. So it went from you to the evidence
13 custodian for the City of North Myrtle Beach Department
14 of Public Safety?

15 Is that correct?

16 A. Correct.

17 Q. Okay. While it was in your care, custody, and
18 control, did you alter or tamper with, or in any way
19 change the -- uh -- DNA sample obtained from Mark
20 Elliott?

21 A. No sir.

22 Q. Okay. When you turned it over to the evidence
23 custodian, was it in substantially the same condition as
24 when you received it, sir?

25 A. Yes sir.

1 Q. Okay. And was the package sealed when you turned
2 it over to the evidence custodian, sir?

3 A. That's correct.

4 Q. Okay. Up to that point, did you have anything --
5 any other further involvement with the buccal swabs, sir?

6 A. No sir.

7 Q. All right. Now, sir, yesterday there was some talk
8 about these different private boat ramps up in North
9 Myrtle Beach or in the Cherry Grove area.

10 Do you recall that?

11 A. Yes sir.

12 Q. Okay. And your testimony, I believe, was that:

13 There were -- I don't know --
14 several private boat ramps; correct?

15 A. Yes sir.

16 Q. Okay. Are all of these private boat ramps well lit
17 near large hotels and condominium complexes with paved
18 parking lots as Mr. car described the one that she
19 allegedly was at during her testimony?

20 A. No sir.

21 Q. Okay. And in fact the one that best fits that
22 description is one on 53rd; correct?

23 A. Yes sir.

24 Q. Okay. And with regard to the one on 53rd, there's
25 no question that -- uh -- Well, let's look at it this

1 way:

2 First of all, to get to the boat
3 ramp, you have to drive through, I guess, what is a
4 neighborhood; right?

5 A. (Nods in the affirmative.)

6 Q. Is there house on both sides?

7 A. Yes sir.

8 Q. Okay. And Ms. [REDACTED] mentioned something about
9 -- uh -- water; that she -- she passed over water or
10 something of that nature; or knew she was on a bridge
11 because she saw water, right?

12 A. I don't recall.

13 Q. Okay. If that were indeed what she said, in order
14 to get the boat ramp at 53rd, you do have to drive over a
15 short bridge; right?

16 A. Uh -- Yes sir.

17 Q. And in fact, people -- which I don't understand --
18 people actually stand there and fish off of the bridge;
19 right?

20 A. Yes sir.

21 Q. Okay. Uh -- So when you get to the boat ramp
22 itself, there is no question that immediately adjacent to
23 the boat ramp -- like no more than 50 yards away -- is
24 just a big house that has to be worth at least three
25 quarters of a million dollars, sir?

1 A. Yes sir.

2 Q. Because in fact, that's the first house in the
3 little neighborhood that's kind L-shaped; right?

4 A. Yes sir.

5 Q. Okay. All of them big, nice, houses?

6 A. Yes sir.

7 Q. Okay. Some for rent. Some -- uh -- residential --
8 people year round; correct?

9 A. Yes sir. Can I further describe the area?

10 Q. Sure, go ahead.

11 A. Uh -- Also there to the left, as you're facing the
12 water -- excuse me -- is a -- uh -- off to the side, is a
13 big, gravel, dirt, lot.

14 There's nothing around it.

15 It's completely surrounded by
16 trees and bushes and things like that.

17 Q. I'll disagree with you on that. Do you have any
18 pictures here the jury can see that shows this secluded,
19 hidden area, you're talking about?

20 A. Uh -- No sir; unless you can see it on the -- uh --
21 photograph.

22 Q. Which photograph, sir?

23 A. The -- uh -- The board. I don't know if it's still
24 down there or not.

25 Q. Yes sir. Here it is right here.

1 A. I don't -- I don't even know if you can see it on
2 here.

3 Q. Well, there's a boat ramp right there.

4 A. It's this little area right here, sir.

5 Q. So you think it's that area right there?

6 A. This area right here is just a big gravel lot.

7 Q. Uh-huh.

8 A. And as you pointed out, all the houses are right
9 over here, and over in here as well.

10 Q. Uh-huh. All right. Thank you sir.

11 So you say it's that little area
12 right there is the boat ramp.

13 A. I'm just saying that that's an area there next to
14 the -- you know -- that's at the boat ramp as well.

15 Q. All right. Okay. And was there any testimony
16 from Ms. [REDACTED] either on June 29th of '09, or
17 yesterday, regarding being taken on any gravel area?

18 A. I don't recall.

19 Q. And was there any testimony about being hidden
20 behind some trees?

21 A. No sir.

22 Q. Okay. Now, how long have you -- Do you live in
23 North Myrtle Beach, sir?

24 A. No sir.

25 Q. Where do you live?

1 A. I live in the Longs' area.

2 Q. Okay. But how long have you worked in North Myrtle
3 Beach, sir?

4 A. Uh -- For the city?

5 Q. Period?

6 A. Uh -- I moved up here in '86.

7 Q. Uh-huh. So you have worked in the North Myrtle
8 Beach area for approximately 24 years; correct?

9 A. Yes sir.

10 Q. And at that time, it would have been about 22 and a
11 half -- 23 years; right?

12 A. Yes sir.

13 Q. Okay. Help me out here. You -- You are definitely
14 more familiar with the area than I am.

15 Is there only one way in and one
16 way out from that boat ramp?

17 In other words, do you have to
18 cross back over 53rd in order to get back to Ocean
19 Boulevard?

20 A. Yes sir.

21 Q. Okay. Because once you come across that bridge,
22 there is -- that's the only way back?

23 A. Yes sir.

24 Q. There's that neighborhood back there; but there is
25 no egress -- no way to get out from that neighborhood;

1 right?

2 A. That's correct.

3 Q. All right. Now sir, is it -- For North Myrtle
4 Beach, is it police protocol to maintain an activity log
5 showing all officers who report to an incident scene?

6 A. No sir.

7 Q. No sir?

8 A. It depends. If you are talking about a crime scene
9 that's confined -- say like a burglary, or -- not even
10 then.

11 Uh -- If we're talking about a
12 murder at a house in which it's important to log on who
13 goes in and who goes out; yes, there is a crime scene --

14 Q. But otherwise --

15 A. -- log.

16 Q. -- you can just have all kind of general milling
17 around. There's no way to determine who was there; who
18 said what; who did what?

19 A. That's correct.

20 Q. Okay. So as a result of that, there is no record
21 of the unknown Horry County Police Department officer who
22 claims he saw a girl in the car and -- and did all of
23 these other things; correct?

24 A. Uh -- I would imagine -- I'm just guessing, but I
25 would imagine that there should be a radio log of who

1 signed out there -- uh -- for Horry County.

2 Q. Uh-huh. And on the afternoon of June 29th of 2009,
3 when you spoke with Ms. [REDACTED] you actually showed a
4 -- showed her a photo lineup containing six pictures;
5 correct?

6 A. Yes sir.

7 Q. Okay. And when you showed her that lineup and
8 those few pictures, one of those pictures was Mark
9 Elliott's picture; right?

10 A. That's correct.

11 Q. Okay. And at that time, not only was it a matter
12 of her saying -- uh -- she didn't know, she actually
13 picked another picture; didn't she, sir?

14 A. I don't recall.

15 Q. You don't recall that?

16 A. That's correct.

17 Q. All right. But it would be on the video of her
18 testimony; correct?

19 A. I showed her the lineup at that time, yes sir.

20 Q. Uh-huh. Okay. Because you indicated to her:

21 If you're not sure, let's just say
22 you're not sure, as opposed to picking someone other than
23 Mark Elliott; correct?

24 A. Yes. I explained to her that -- you know -- don't
25 guess.

1 Q. Now, when you interviewed Mark, based on your
2 training and experience, you told him:

3 Any time you have a sexual
4 encounter, evidence is left behind; correct?

5 A. Yes sir.

6 Q. All right. And what evidence did Mark Elliot leave
7 behind, sir?

8 A. I do not know.

9 Q. You do not know, sir? 15 -- 16 months later, we're
10 here for trial --

11 A. That's correct.

12 Q. -- and you do not know?

13 A. That's correct.

14 Q. All right. Does your report of investigation --

15 MR. HAZZARD:

16 The Court's indulgence, Your
17 Honor?

18 Okay.

19 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

20 Q. When you spoke with Mr. Howard, you were speaking
21 with him as a part of your job as an employee for the
22 City of North Myrtle Beach; correct?

23 A. Yes sir.

24 Q. And you took information from him for that purpose;
25 correct?

1 A. Yes sir.

2 Q. In furtherance of your official capacity; right?

3 A. Yes sir.

4 Q. And you then did a document that's called an
5 Investigative Case Report as part of your employment;
6 correct?

7 A. Yes sir.

8 Q. And in furtherance of your job capacity; right?

9 A. Yes sir.

10 Q. If you would, please view the document and tell me
11 the telephone number that you have listed for Mr. Howard?

12 MS. LIVESAY:

13 Your Honor, anything that Mr.
14 Howard wrote on that statement is going to be hearsay.

15 MR. HAZZARD:

16 Your Honor, it as an official
17 document of the City of North Myrtle Beach.

18 MS. LIVESAY:

19 It's not an official document;
20 it's a voluntary statement that that witness wrote out
21 for the investigator.

22 Anything --

23 MR. HAZZARD:

24 It is a document that --

25 MS. LIVESAY:

1 -- on there is hearsay.

2 MS. LIVESAY:

3 It is a document that -- It is a
4 document --

5 THE COURT:

6 What is it?

7 MS. LIVESAY:

8 It's a phone number. It's a
9 phone number. It's his phone number.

10 It's the phone number he gave.

11 That's all I'm asking?

12 THE COURT:

13 Well, just ask him that.

14 Did he --

15 MR. HAZZARD:

16 Okay.

17 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

18 Q. Did he tell you his phone number was -- let's see --
19 704-224-8623?

20 A. Yes sir.

21 MR. HAZZARD:

22 All right. Thank you, sir.

23 The Court's indulgence, Your

24 Honor?

25 Move to publish Defense Exhibits

1 7, 5, 6, 3, and 4, to the jury at this time, Your Honor.

2 THE COURT:

3 You may publish.

4 MR. HAZZARD:

5 Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

7 Q. One of the last things you told Mark when you
8 interviewed him was this, sir:

9 You told him that if his DNA were
10 found in or around Ms. [REDACTED] vagina or rectum, then
11 her story must be true.

12 Isn't that correct?

13 A. Yes sir.

14 MR. HAZZARD:

15 All right. Thank you. No
16 further questions.

17 MS. LIVESAY:

18 Just a few, Your Honor.

19 REDIRECT EXAMINATION BY MS. LIVESAY:

20 Q. Detective Abercrombie, do you work a lot of criminal
21 sexual conduct cases?

22 A. A few.

23 Q. Okay. Is it unusual for them not to have physical
24 evidence?

25 A. I'm sorry?

1 Q. Is it is unusual for them not to contain any
2 physical evidence?

3 A. It -- It happens.

4 Q. Okay. Now in this case, how did BE describe
5 to you the rape as far as the defendant's concerned?

6 MR. HAZZARD:

7 Objection; asked and answered?

8 MS. LIVESAY:

9 Your Honor, this goes to exactly
10 to what he was cross --

11 THE COURT:

12 I'll -- I'll let her ask it.

13 MS. LIVESAY:

14 -- cross-examining him about as
15 far as the physical evidence.

16 WITNESS:

17 Uh -- She described him as -- uh
18 -- there's no easy way to say this -- but he wasn't hard.

19 Uh -- She felt as though he wasn't
20 hard.

21 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Okay. But he was able to penetrate?

23 A. That's correct.

24 Q. Okay. Now if he was not hard, would you expect to
25 see physical evidence from him?

1 A. Not a lot.

2 Q. Okay. Now Mr. -- uh -- Hazzard asked you did you
3 ask the victim about drugs or anything to do with drugs?

4 You remember that?

5 A. Yes.

6 Q. Okay. Did the victims ever give you a inconsistent
7 statement this entire time?

8 A. No, they did not.

9 Q. Okay. Where was the inconsistent statement coming
10 from?

11 A. It was coming from the defendant.

12 Q. Okay. Did you find any evidence that corroborated
13 what the victims were telling you?

14 A. Yes, I did.

15 Q. And what evidence was that?

16 A. Well, the two statements that the two boys gave was
17 pretty consistent with the statement that -- uh -- uh --
18 BE [REDACTED] gave as well.

19 Q. Okay. Now did you -- did you hear the 911 call
20 that was made?

21 A. Yes, I did.

22 Q. Okay. Was that statement consistent with what
23 everybody else said?

24 A. That's correct.

25 Q. Okay. Now, was there any evidence in the vehicle

1 that corroborated that victim's statement?

2 A. Uh -- Her telephone.

3 Q. Okay. Now, they told you -- or he asked you about
4 the search of the car and where the crowbar was found?

5 Why did you seize the crowbar;
6 because -- What -- What reason did you seize it for?

7 A. It could have at night and in the heat of -- uh --
8 the incident taking place -- being confused for a weapon.

9 Q. Okay. So you didn't feel like it was just ironic
10 that they told you they saw something that looked like a
11 handgun, when you pull him over 45 minutes from that, and
12 there's a crowbar in the car?

13 A. That's correct.

14 Q. Okay. Now Mr. Hazzard asked you about -- uh -- the
15 underwear?

16 Did you take anything out of the
17 trunk of that vehicle?

18 A. No, I did not.

19 Q. Okay. Was there anybody else present while you
20 were searching the vehicle?

21 A. That's correct.

22 Q. Okay. Did that person ever take anything out of
23 the trunk of that vehicle?

24 A. No, they did not.

25 Q. Okay. Did you ever move anything around that was

1 in that vehicle, other than to seize it, or take a
2 picture of it?

3 A. That's correct. That's all I did.

4 Q. Okay. Now you took statements from everybody
5 involved?

6 Is it right?

7 A. That's correct.

8 Q. Okay. And did you ever find any evidence to
9 corroborate Mr. -- the defendant's story about any drugs?

10 A. No, I did not.

11 Q. Okay. Did you find any evidence anywhere that
12 corroborated his story?

13 A. No, I did not.

14 Q. Okay. Did you have any reason to believe this case
15 was anything about drugs?

16 A. No, I did not.

17 Q. Okay. Do you work drug cases?

18 A. Very seldom.

19 Q. Okay. Did this look like a drug case when you
20 started investigating it?

21 A. No, it did not.

22 Q. Okay. To your knowledge, did the victims have any
23 drugs on them?

24 A. No, they did not.

25 Q. Okay. Now when the defendant was searched, did he

1 have any drugs on him?

2 A. No, he did not.

3 Q. Okay. Now, did you see the video where -- uh -- he
4 fled from the car -- the Horry County video?

5 Were you present for that?

6 A. Yes, I was.

7 Q. Okay. Were you present when he was down on the
8 ground?

9 A. Yes, I was.

10 Q. Okay. Were you present when he was talking about:

11 She ran at the same time I ran?

12 Were you present for that?

13 A. Yes, I was.

14 Q. Okay. Was that one of the first statements he
15 made?

16 A. Yes, I was.

17 Q. Okay. Did he make any statements at that point
18 about any drugs?

19 A. Shortly afterwards, somewhere in that time frame, he
20 started mentioning that.

21 Q. Okay. So it wasn't until he was put in the
22 vehicle?

23 Is that right?

24 A. That's correct.

25 Q. Okay. So the first statement he said with --

1 regarding that girl and her running from the car?

2 A. That's correct.

3 Q. Okay. Now -- uh -- Mr. Hazzard asked you earlier
4 about:

5 Did the victim -- Is this the
6 first time the victim's ever said -- uh -- that she --
7 the door was open and she was placed down in the car?

8 Is that right?

9 A. That's correct.

10 Q. Okay. Did you interview her?

11 A. That's correct.

12 Q. Okay. Does this look familiar to you?

13 A. Yes, it does.

14 Q. And if you viewed this interview?

15 A. Uh -- Not recently; but, yes, I have viewed the
16 interview.

17 Q. Okay. Well, in this interview, didn't she say that
18 that was opened up?

19 A. I don't recall.

20 Q. Okay. Do you recognize it?

21 A. Yes, I do.

22 Q. Okay. Is this indeed the interview of the victim?

23 A. Yes, it is.

24 MS. LIVESAY:

25 Your Honor, at that time, the

1 State wishes to place the victim's interview into
2 evidence.

3 MR. HAZZARD:

4 Without objection.

5 THE COURT:

6 All right.

7 We're going to -- uh -- break, and
8 let his jury go to lunch.

9 I would ask you to be back at
10 1:30.

11 (WHEREUPON: The jury empanelled
12 in the case withdrew from the courtroom at 12:17 PM,
13 November 18, 2010; and was no longer present during the
14 following proceedings.)

15 WHEREUPON: THE DVD OF BE
16 [REDACTED] INTERVIEW WAS MARKED BY THE COURT REPORTER AS
17 STATE'S EXHIBIT NUMBER 16, AND WAS APPARENTLY ENTERED
18 INTO EVIDENCE WITHOUT OBJECTION.

19 COURT REPORTER:

20 Your Honor, this will be State's
21 Exhibit 16.

22 THE COURT:

23 All right. And how long was
24 this?

25 MS. LIVESAY:

1 Your Honor, I'm not publishing it.
2 I'm just putting it into evidence.

3 If they request to watch it, they
4 can. But I'm not publishing it at this point.

5 It's a consistent prior statement
6 that --

7 THE COURT:

8 Whoa, wait a minute.

9 You're putting it into evidence,
10 but you're not publishing it to the jury. And you're
11 letting them make the choice of whether they want to see
12 it?

13 No ma'am. We're not doing that.

14 We're going to publish it, or it's
15 not going to be an exhibit.

16 We're not going to have something
17 for this jury to come back and forth and decide whether
18 or not they want to look at it.

19 Now, we're going to do it one way
20 or the other.

21 We're going to publish it.

22 I'm going to see it.

23 Or:

24 We're going to -- You can Mark it
25 for identification if you want.

1 But -- you know -- we're not going
2 to have evidence that the jury hasn't reviewed during the
3 trial available to them during the deliberations.

4 We're just not going to do that.

5 Now, What do you want to do?

6 MS. LIVESAY:

7 I don't want to publish it, Your
8 Honor, because I don't want to have to let them listen to
9 the entire thing just to get out the fact that her
10 statement is the same on that as it is the statement that
11 she gave in this courtroom.

12 THE COURT:

13 Just ask him if it's the same.

14 MS. LIVESAY:

15 Okay.

16 THE COURT:

17 He says he -- he -- he's familiar
18 with it.

19 All you got to do is ask him; or
20 you can publish it.

21 MS. LIVESAY:

22 I -- I'm not going to publish it,
23 Your Honor, if I get an answer.

24 THE COURT:

25 Okay; very well then.

1 All right.

2 We'll be back in an hour and 15
3 minutes, and -- uh -- that should wrap up the State's
4 case, I believe; okay.

5 Thank you.

6 MR. HAZZARD:

7 Thank Your Honor.

8 (WHEREUPON: The court was
9 declared in recess at 12:20 PM, November 18, 2010.)

10 (WHEREUPON: The court was called
11 to order by the Bailiff at 1:44 PM, November 18, 2010;
12 and all pertinent parties, along with their counsel, were
13 back and present in the courtroom, except for Ms.
14 Knowles.)

15 DEPUTY:

16

17 All rise please.

18 THE COURT:

19 Thank you very much. Please be
20 seated.

21 Mr. Nobles, I'd like for you to
22 clear the courtroom except for the attorneys.

23 DEPUTY:

24 Except for who, sir?

25 THE COURT:

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1 The attorneys, the victims, and
2 the defendant.

3 DEPUTY:

4 All right.

5 Everyone leave the courtroom
6 except the attorneys, the victim, and the defendant.

7 THE COURT:

8 Yeah, and the courtroom staff; and
9 attorneys, of course.

10 (WHEREUPON: At 1:45 PM, November
11 18, 2010, Deputy Nobles cleared the courtroom of all
12 nonpartipants and court staff per The Court's
13 instructions.)

14 THE COURT:

15 All right. Where is Ms. Knowles?

16 MR. HAZZARD:

17 She stepped -- She had stepped
18 outside to speak with the investigator.

19 THE COURT:

20 All right.

21 Uh -- Ms. -- uh -- Livesay, I
22 think you have something you want to bring to The Court's
23 attention.

24 MS. LIVESAY:

25 Yes -- Yes, Your Honor. It was --

1 uh -- brought to my attention by another attorney in the
2 office that -- uh -- there is a particular juror that has
3 been making contact with someone who's been sitting
4 inside the courtroom throughout the trial during the
5 testimony.

6 Uh -- It's been brought to my
7 tension that the person that she's been having contact
8 with has had privy to all of the information that both
9 the jury's seen and the jury has not seen, as well as
10 conversations that I've had with other attorneys in the
11 office and my victim.

12 Uh -- My Victim Advocate has made
13 me aware of the fact that she -- the girl that she's been
14 having contact with was present outside the courtroom for
15 a conversation that she and the victim had.

16 And there's an indication that
17 there may be some communication between them about the
18 information that that young lady may --

19 THE COURT:

20 All right.

21 MS. LIVESAY:

22 -- have known or learned.

23 THE COURT:

24 I understand this from Mr.
25 Livesay.

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1 Step down, if you would (to the
2 witness Detective Abercrombie).

3 And let's bring Ms. Livesay up --
4 I mean, Lively -- excuse me.

5 MS. LIVESAY:

6 Yes sir.

7 THE COURT:

8 And let's have Ms. Lively put on
9 the record what she observed or knows.

10 WHEREUPON: CANDICE A. LIVELY

11 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

12 CLERK:

13 Thank you.

14 THE COURT:

15 All right, Ms. Lively, if you
16 would -- uh -- uh -- tell The Court -- uh -- what you
17 observed, or what information has come into your -- uh --
18 your possession about this matter.

19 WITNESS:

20 Yes, sir.

21 Uh -- I've been in the courtroom
22 probably a minimum of three times during the trial.

23 And that those three times I've
24 been in here, I've noticed that there is an individual
25 sitting in the very back corner of the -- uh -- State's

1 side of the gallery who is actually in contact with one
2 of the jurors who is sitting in the back corner of the
3 jury box, the young lady with a sweatshirt on, black
4 hair, and a tight ponytail.

5 During the times I've been up here,
6 I've noticed that this juror has looked back at the woman
7 sitting in the back of the courtroom.

8 Uh -- I've noticed that that
9 person sitting in the back of the courtroom has -- uh --
10 made contact -- eye contact with her.

11 There's been smiling.

12 There's been shrugging.

13 And there's been some -- uh --
14 eyebrows, and things like that.

15 So it just concerned me at first.

16 So -- uh -- I came back in today
17 and actually sat down next to the woman in the back of
18 the gallery on the State's side.

19 At that time I noticed again, this
20 juror is leaning over the banister. She is looking back
21 at the woman that I was sitting next to.

22 Uh -- She would smile at times.

23 Uh -- She would put her hand up on
24 her face like this and look over.

25 She would -- uh -- And also the

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1 person sitting in the back of the gallery would -- uh --
2 was making eye contact towards her. And I could see her
3 crossing her legs and turning her head.

4 At one point in time, I saw her
5 put her phone down; and appeared to make some type of
6 hand gesture to the juror.

7 I did not look directly at her,
8 because at the time I didn't want to be obvious about
9 what I was seeing.

10 So I can't tell The Court exactly
11 whether she held up -- she was holding fingers out, or
12 she was trying to signal to her but I noticed that the
13 jury did not acknowledge her.

14 But I noticed that the juror did
15 acknowledge her, and then turn back around again.

16 Uh -- My main concern is that:

17 After that occurred and the jury
18 was taking out -- taken out of the room, I then made an
19 attempt to get in contact with the Victim Advocate, Amy
20 Ayers, because the victim began to -- uh -- get irate and
21 verbal in the courtroom after the jury left.

22 I was concerned that some jurors
23 may come out in the hallway and hear her.

24 I yelled at Amy and told her to
25 get in control of the victim, at which time she ran out,

1 took the victim with her into the women's bathroom.

2 The woman who was sitting in the
3 back of the courtroom had already left by that time.

4 So I can't tell you anything else
5 about what happened in the restroom.

6 But when I did talk to Ms. Ayers
7 about it afterwards, that's when she told me that she had
8 taken the victim into the restroom, and that this girl,
9 after talking to the victim, flushed the toilet and
10 walked out; and had heard entire conversation.

11 But Ms. Ayers can tell you that.

12 But that pretty much is what I
13 personally observed; and then what I discussed with Ms.
14 Ayers after the fact.

15 THE COURT:

16 All right.

17 Uh -- Anything further you want to
18 ask her -- uh -- Ms. Livesay?

19 MS. LIVESAY:

20 Uh -- Obviously the -- uh -- State
21 wishes to use an alternate and have this juror removed
22 just --

23 THE COURT:

24 Well, I'm going to interview the
25 juror. I'm asking you if you have any questions that

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1 you ask --

2 MS. LIVESAY:

3 No sir.

4 THE COURT:

5 Do you have any questions you want
6 to ask Ms. Lively, Mr. Hazzard?

7 MR. HAZZARD:

8 As to this particular issue; no,
9 Your Honor.

10 THE COURT:

11 Okay.

12 Now, Ms. Lively, what I understand
13 is that:

14 Uh -- You have personally observed
15 some sort of eye contact, nonverbal exchange, between a
16 juror and this courtroom observer; okay.

17 WITNESS:

18 Yes sir.

19 THE COURT:

20 Have you any more information
21 concerning any other contract that they may have -- any
22 relationship they may have; anything like that?

23 WITNESS:

24 Uh -- Ms. Ayers would have to tell
25 you that.

1 I -- All I know is, from what she
2 told me; and that is that she saw them coming back from
3 lunch together.

4 THE COURT:

5 Okay.

6 WITNESS:

7 So we do know there's --

8 THE COURT:

9 So they appeared to have been at
10 lunch together and things of that nature.

11 WITNESS:

12 Yes sir.

13 THE COURT:

14 All right.

15 Step down. Thank you.

16 WITNESS:

17 Thank you.

18 THE COURT:

19 Uh -- And thank you for bringing
20 that to The Court's attention.

21 Uh -- Where is Mr. Roth?

22 DEPUTY:

23 With the jury. He's with the jury
24 back there.

25 THE COURT:

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1 Okay.

2 I would like for Mr. Roth to bring
3 the juror in; okay.

4 DEPUTY:

5 All of them?

6 THE COURT:

7 No. The one that -- He's aware of
8 which juror we're talking about.

9 MR. HAZZARD:

10 Your Honor, should we place on the
11 record, the juror number in question.

12 THE COURT:

13 Well, I'm going to find that out
14 right now.

15 I don't even know the juror's
16 name.

17 I don't have any idea. I know which juror they're
18 talking about; but I don't know her name.

19 (WHEREUPON: At 1:52 PM, November
20 18, 2010, the Bailiff brought Juror 52, Ashley L. Cain,
21 before The Court and the following proceedings took
22 place. Ms. Knowles also now entered the courtroom.)

23 THE COURT:

24 Yes ma'am. Come around, if you
25 would. Uh -- And your name is?

1 JUROR CAIN:
2 Ashley.
3 THE COURT:
4 Ashley --
5 JUROR CAIN:
6 Cain.
7 THE COURT:
8 King? All right. And Ms. King,
9 you're juror ---
10 JUROR CAIN:
11 Cain.
12 THE COURT:
13 Cain. Uh -- Ms. Cain, you're
14 Juror Number 11?
15 Is that correct?
16 JUROR CAIN:
17 I didn't know I had that --
18 THE COURT:
19 Oh, excuse me -- excuse me; 52, I
20 think.
21 Uh -- You were 11 of the jury
22 list.
23 Uh -- Ms. Cain, it's come to my
24 attention that there is someone here in the courtroom
25 that you apparently have some relationship with because

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1 you keep looking back, or there seems to be some
2 nonverbal communication.

3 Is -- Is that someone you know?

4 JUROR CAIN:

5 She's just my friend.

6 THE COURT:

7 Your friend. Does she give you
8 your ride to work and all -- I mean, to -- uh -- to jury
9 duty?

10 JUROR CAIN:

11 Uh-huh.

12 THE COURT:

13 And -- uh -- I believe you go to
14 lunch with her?

15 JUROR CAIN:

16 (Nods in the affirmative.)

17 THE COURT:

18 Uh -- Have -- Is that "yes?"

19 JUROR CAIN:

20 Yes, sir.

21 THE COURT:

22 Have -- Have you and she discussed
23 this case in any particular at all?

24 Has she told you anything about
25 what she thinks about the case, or what she may have

1 heard about the case; or have you discussed in any form
2 or fashion with her?

3 JUROR CAIN:

4 No sir. I have not said anything
5 to her about it.

6 THE COURT:

7 Has she said anything to you --

8 JUROR CAIN:

9 Uh-uh.

10 THE COURT:

11 -- particularly about things that
12 might not have occurred here --

13 JUROR CAIN:

14 Uh-uh.

15 THE COURT:

16 -- uh -- in your presence?

17 JUROR CAIN:

18 No sir.

19 THE COURT:

20 She has not?

21 JUROR CAIN:

22 (Nods in the negative.)

23 THE COURT:

24 Okay.

25 Uh -- You want to ask her any

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1 questions, Mr. Hazzard?

2 MR. HAZZARD:

3 No, Your Honor.

4 THE COURT:

5 Ms. Lively -- Livesay?

6 MS. LIVESAY:

7 I just wanted the question asked
8 whether or not she's been having communications with her
9 during the testimony, Your Honor.

10 THE COURT:

11 Have -- Have you had any
12 communications with her? I mean, I know if --

13 JUROR CAIN:

14 No sir.

15 THE COURT:

16 Okay.

17 And you have not discussed this
18 case in any form or fashion with her?

19 JUROR CAIN:

20 No sir.

21 THE COURT:

22 Okay. Thank you, ma'am.

23 (WHEREUPON: At 1:55 PM, November
24 18, 2010, Juror Ashley Cain is escorted out of the
25 courtroom.)

1 THE COURT:

2 Now this witness tells me that
3 this is her friend; and that it's her ride here; and that
4 goes to lunch with her; but she's had no discussions
5 about the case with her.

6 Now, that still gives me some
7 concern.

8 It gives me concern that her
9 friend is the courtroom on a daily basis; that she has
10 been privy to -- uh -- matters which should not be made
11 known to the jury; things that we discussed.

12 And I believe Ms. Livesay, you
13 said that she has been in a position to overhear
14 conversations that you've had as well; is that correct?

15 MS. LIVESAY:

16 (Nods in the affirmative.)

17 THE COURT:

18 Uh -- She says she's not discussed
19 this case.

20 I cautioned them at the beginning
21 of the trial not to discuss the case.

22 We have nothing to suggest that
23 she -- that she has -- uh -- gone against my
24 instructions.

25 However, I'm still somewhat

1 concerned -- uh -- about this.

2 Tell me what your -- uh -- You've
3 -- You've told me, Ms. Livesay, that you want her taken
4 off the jury.

5 Tell me about -- uh -- Mr. --
6 about it, Mr. Hazzard?

7 MR. HAZZARD:

8 Your Honor -- uh -- The Court's
9 legal analysis is absolutely correct as far as I know.

10 There has been no showing of any
11 wrongdoing on the part of the juror.

12 I do share The Court's same
13 concerns, however, especially in light of the fact that:

14 If information is being -- uh --
15 transmitted between the two regarding matters that are
16 taken up outside the presence of the jury, it is
17 obviously of vital interest and concern to us as the
18 Defense, since some of that discussion was regarding --
19 uh -- Mr. Elliott's prior record for a similar act.

20 So obviously, that gives me a
21 great deal of pause and concern.

22 My co-counsel has been discussing
23 the matter while The Court has -- has been placing it on
24 the record with Mr. Elliott.

25 And I will place on record that --

1 uh -- I am asking them to discuss it; and asking Mr.
2 Elliott to make that decision as to whether he wants us
3 to move to -- uh -- have this particular juror replaced?

4 And -- uh -- Did you want to say
5 something?

6 Please stand up, sir.

7 Your Honor, after conferring with
8 co-counsel, it is my understanding that she has spoken --
9 uh -- at length with Mr. Elliott regarding this.

10 I would actually ask for a very
11 brief five-minute recess so that we can go back in the
12 lock up and discuss it.

13 THE COURT:

14 I think you should.

15 MS. LIVESAY:

16 Okay.

17 THE COURT:

18 Okay.

19 MS. LIVESAY:

20 Thank Your Honor.

21 THE COURT:

22 All right. We'll be at ease for
23 a moment.

24 (WHEREUPON: The courtroom
25 remained in place but at ease from 1:57 PM until 2:08 PM,

1 November 18, 2010; at which time the following
2 proceedings took place.)

3 THE COURT:

4 All right, Mr. Hazzard.

5 MR. HAZZARD:

6 Your Honor -- uh -- Ms. Knowles
7 and I have had the opportunity to speak in depth
8 regarding this situation -- uh -- with Mr. Elliott.

9 Uh -- I have advised him, and Ms.
10 Knowles has advised him, that we believe out of an
11 abundance of caution that we would join in the State's
12 motion to replace Juror Number 52 with the first
13 alternate juror number four.

14 Uh -- We have explained to him
15 that -- uh -- based on the law that applies, The Court
16 may or may not find that it is appropriate; but that we
17 would -- would join in that motion.

18 And -- uh -- Mr. Elliott has
19 informed us that he agrees with that decision.

20 I would ask The Court to speak
21 with him briefly to confirm that for the record.

22 THE COURT:

23 All right.

24 Mr. Elliott, my purpose is, is to
25 protect your rights to a jury trial, and all your other

1 rights.

2 I am very concerned, since there
3 is an issue concerning your prior record and other things
4 that should not be made known to the jury.

5 And this person seems to have a
6 close relationship with this courtroom observer who has
7 overheard all sorts of things.

8 She seems to be riding to -- to
9 jury duty with her, and going to lunch with.

10 I've got some real problems with
11 it, I'll tell you.

12 Uh -- But my understanding is, is
13 that you agree with your attorney it would -- it would --
14 the safest thing we can do is remove this juror and have
15 one of the alternate serve?

16 DEFENDANT:

17 Okay.

18 THE COURT:

19 Do you agree with that?

20 DEFENDANT:

21 Yes, Your Honor.

22 THE COURT:

23 All right. That's what I am
24 going to do. I am going to remove that juror.

25 Now my understanding is that the

REPLACEMENT OF JUROR #52 WITH ALTERNATE

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1 alternate in a matter involving a criminal case -- uh --
2 must be drawn by lot; okay.

3 MR. HAZZARD:

4

5 Yes, sir.

6 THE COURT:

7 Uh -- Civil is just the order that
8 they were drawn.

9 So, I'm going to have my clerk --

10 What are the numbers of the two alternates -- uh -- Ms.

11 Hall?

12 MR. HAZZARD:

13 I believe it's Number 4, and

14 Number 215, Your Honor.

15 LAW CLERK:

16 Number 215 and 4.

17 THE COURT:

18 215 and 4.

19 And if you would, just make two
20 pieces of paper here for me with those numbers on them.

21 Any objection to having Deputy

22 Brown back there draw?

23 MR. HAZZARD:

24 None from the Defense.

25 MS. LIVESAY:

1 None from the State, Your Honor.

2 THE COURT:

3 Okay.

4 LAW CLERK:

5 4 and 215.

6 THE COURT:

7 Uh-huh.

8 (WHEREUPON: The Law Clerk,

9 following The Court's' instructions, places the two

10 pieces of paper in a container and shakes them around.)

11 THE COURT:

12 All right.

13 Uh -- Deputy Brown, if you would,

14 draw one lot from there.

15 (WHEREUPON: Deputy Brown drew a

16 lot as directed by The Court at 2:12 PM, November 18,

17 2010.)

18 THE COURT:

19 Thank you, very much.

20 DEPUTY:

21 You're welcome.

22 THE COURT:

23 That number is Number 4.

24 Would you like to see it?

25 MR. HAZZARD:

1 Uh -- No, Your Honor. We simply
2 ask that it be made a Court's Exhibit.

3 THE COURT:

4 Okay.

5 Now would you -- uh -- bring Ms.
6 Cain back in.

7 WHEREUPON: THE DRAWN LOT WAS
8 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 7.
9 COURT REPORTER:

10 Your Honor, this will be Court's
11 Exhibit 7.

12 THE COURT:

13 All right.

14 Have her bring her things with
15 her.

16 DEPUTY:

17 Sir?

18 THE COURT:

19 Have her bring her things with
20 her, if she has any things.

21 (WHEREUPON: Juror Ashley Cain was
22 again escorted into the courtroom at 2:13 PM, November
23 18, 2010; and the following proceedings took place.)

24 THE COURT:

25 Ms. Cain, out of an abundance of

1 caution, and at the request of both the State and the
2 Defense, I am going to excuse you.

3 And you are excused from further
4 service on this jury.

5 JUROR CAIN:

6 Okay.

7 THE COURT:

8 You may leave; okay.

9 (WHEREUPON: The dismissed juror
10 left the courtroom at 2:14 PM, November 18, 2010.)

11 THE COURT:

12 All right.

13 Mr. Abercrombie, if you would,
14 return to the witness stand.

15 I think Ms. Livesay has one or two
16 questions left for you; right?

17 MS. LIVESAY:

18 Yes, sir.

19 THE COURT:

20 Okay.

21 And number four was Mr. Alley.

22 DEPUTY HEMINGWAY:

23 Is it okay to bring everybody else
24 back in?

25 THE COURT:

1 Yes.

2 (WHEREUPON: The jury empanelled
3 in the case was escorted back into the courtroom at 2:15
4 PM, November 18, 2010; and was in fact present during the
5 following proceedings.)

6 THE COURT:

7 Mr. Alley, if you would, move over
8 to one of -- to the seat by you.

9 You will be -- uh -- replacing --
10 uh -- one of our jurors, and now you're on the jury.

11 And Ms. Lynn, you are the only
12 remaining alternate; okay.

13 Thank you.

14 Ms. Livesay, if you would?

15 MS. LIVESAY:

16 Just a couple of questions, Your
17 Honor.

18 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. Uh -- In this investigation, did you fully
20 investigate everything you could possibly investigate?

21 A. With the time I had, yes ma'am.

22 Q. Okay. And about how long did it take you to
23 complete the investigation?

24 A. As far as paper work is concerned, it takes days to
25 complete all the paperwork involved.

1 Q. Okay. And are you familiar with these type of
2 cases?

3 A. They come around often; but it's not your everyday
4 type of case that we run into; at least not in North
5 Myrtle Beach.

6 Q. Okay. And do you always have physical evidence in
7 these type of cases?

8 A. Not always.

9 MS. LIVESAY:

10 No further questions, Your Honor.

11 THE COURT:

12 All right, Mr. Hazzard?

13 MR. HAZZARD:

14 Nothing further from the Defense,
15 Your Honor.

16 THE COURT:

17 Thank you.

18 All right, sit -- uh -- if you
19 would, step down, Detective Abercrombie.

20 MS. LIVESAY:

21 Your Honor, at this time the State
22 rests its case.

23 THE COURT:

24 All right.

25 Ladies and gentlemen of the jury,

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1 of the State has rested its case; that is the State has
2 completed the process of putting up the evidence that you
3 will consider in this trial.

4 I must now take up a matter -- uh
5 -- uh -- of law -- uh -- between the parties.

6 Uh -- I'm going to ask you to
7 return to your courtroom -- I mean, to your juryroom.

8 I know we've had you in and out
9 today, but we are trying to -- uh -- to move this along
10 as expeditiously as possible.

11 But if you would, go to your
12 juryroom, and I'll have you back in, in a few moments.

13 (WHEREUPON: The jury empanelled
14 in the case withdrew from the courtroom at 2:18 PM,
15 November 18, 2010; and was no longer present during the
16 following proceedings.)

17 THE COURT:

18 All right, Mr. Hazzard?

19 MR. HAZZARD:

20 Thank Your Honor. A couple --

21 THE COURT:

22 Or Ms. Knowles?

23 MR. HAZZARD:

24 A couple of matters on behalf of
25 the Defense.

1 Uh -- First of all, before
2 Detective Abercrombie stepped down off the stand and
3 before we broke for lunch -- uh -- the State attempted to
4 put in a videotape of the -- of Ms. [REDACTED] interview
5 by Detective Abercrombie -- uh -- but then indicated she
6 did not wish to publish it.

7 The Court indicated at that time
8 that it would not be allowed in.

9 I know that that -- uh -- piece of
10 evidence was marked, and initially admitted.

11 And I don't --

12 THE COURT:

13 No. It -- It -- It's not going in
14 because any evidence that's placed in this record that I
15 have not had a chance to review could not be considered
16 by me on motions.

17 Uh -- And it's just not
18 appropriate that any evidence come in that's not viewed,
19 particularly a videotape or something like that -- uh --
20 not viewed by this jury during this trial.

21 And I gave everybody the option:

22 Put it in.

23 Leave it out.

24 But we're going to have to watch
25 it; okay.

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1 It's not in.

2 All right.

3 MR. HAZZARD:

4 Yes sir. I simply wanted to make
5 sure the record reflected that that was not in evidence.

6 THE COURT:

7 Okay.

8 MR. HAZZARD:

9 Okay.

10 Uh -- At this time, Your Honor,
11 the Defense -- uh -- makes motions for a directed verdict
12 -- uh -- on all counts.

13 And we'll start with the
14 kidnapping count.

15 With regard to the charge of
16 kidnapping, the Defense makes a motion for a directed
17 verdict on the grounds that:

18 The evidence submitted to this
19 point -- uh -- even taking the light most favorable to
20 the State, is not sufficient -- uh -- to send it to the
21 jury for their consideration, Your Honor.

22 THE COURT:

23 You want to do them one at the
24 time?

25 Okay, go ahead.

1 MR. HAZZARD:

2 Well, I mean, if you want --

3 THE COURT:

4 Ms. -- uh -- Ms. -- uh -- Livesay

5 --

6 MS. LIVESAY:

7 We can do one at a time.

8 THE COURT:

9 All right. We'll do them one at
10 the time.

11 MS. LIVESAY:

12 Okay.

13 THE COURT:

14 That'll --

15 MS. LIVESAY:

16 Your Honor, as to the kidnapping,
17 I believe there was sufficient evidence.

18 The first testimony was from Ryan
19 Bradley, who testified he was an eyewitness; that:

20 Uh -- The defendant told him to
21 get down. Then he turned around and looks back; sees the
22 defendant patting down BE and then putting her in
23 the car.

24 Then we played the 911 tape, which
25 again reiterated the fact that the defendant took

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1 BE without her permission.

2 Later, the victim testified that
3 she was not allowed to get out of the car.

4 And in fact, at one point, she --
5 uh -- kissed the defendant in an effort to try to let him
6 -- get -- get him to let her out of the car.

7 He would not let her out of the
8 car, Your Honor.

9 Uh -- The State believes that the
10 elements of kidnapping were met through the eyewitness
11 testimony as well as the 911 tape and the victim's
12 testimony.

13 THE COURT:

14 Of course, in a directed verdict
15 situation, I must look at the evidence in the light most
16 favorable to the nonmoving party, which would be the
17 State in this instance.

18 My question is not whether or not
19 -- is not -- does not concern the weight of the evidence,
20 but the existence of evidence.

21 And I think that there is ample
22 evidence from the victim and the eyewitness -- uh --
23 certainly to -- uh -- to -- uh -- send this matter on to
24 the jury; okay.

25 Mr. Hazzard?

1 MR. HAZZARD:

2 Thank you.

3 Your Honor, with regard to the
4 balance of the charges -- uh -- the Defense will
5 recognize -- uh -- The Court's explanation of its -- uh
6 -- consideration, so that it doesn't have to be repeated
7 over and over again.

8 THE COURT:

9 All right.

10 MR. HAZZARD:

11 Uh -- With regard to the charge of
12 criminal sexual conduct first-degree and criminal sexual
13 conduct second-degree with a minor, I'll do those two
14 together, Your Honor.

15 The Defense -- uh -- request a
16 directed verdict on those two counts.

17 Uh -- Our position is that:

18 Uh -- The evidence submitted to
19 the jury for their consideration thus far, even if taken
20 in the light most favorable to the State, is not
21 sufficient -- uh -- for the jury to consider a verdict of
22 guilty.

23 MS. LIVESAY:

24 Your Honor -- uh -- the victim
25 very plainly testified that she was penetrated, both

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1 anally and -- uh -- vaginally.

2 That is enough.

3 She testified to her age at the
4 time being 14 years of age.

5 That would be sufficient to meet
6 the CSC second with a minor.

7 Uh -- She also testified that
8 during the time of the CSC, she was not allowed to leave.

9 She was afraid.

10 At one point, she thought he had a
11 weapon, which incorporates the aggravating circumstance
12 of kidnapping.

13 Uh -- This exact story was told
14 time and time again, as she was relaying it to each
15 officer, and the jogger after that.

16 THE COURT:

17 And again, Mr. -- uh -- Hazzard,
18 for the same reasons, I would respectfully -- uh -- deny
19 your motion.

20 I've applied the same test.

21 And there is evidence for the
22 charge.

23 Again, I -- I'm not concerned with
24 the weight of that evidence; merely the fact that the
25 evidence is there.

1 And I would respectively deny your
2 motion.

3 Now, as to the -- uh -- resisting
4 arrest?

5 MR. HAZZARD:

6 With regard to the resisting
7 arrest, Your Honor, we are -- we make a motion for a
8 directed verdict on that count.

9 Our position is that:

10 It is squarely on all fours with
11 the case of State versus Brannon.

12 Uh -- That is by our Supreme
13 Court, 388 South Carolina 498, decided August of 2010,
14 Your Honor.

15 Uh -- And the Brannon case, an
16 individual was --

17 THE COURT:

18

19 I'm familiar with Brannon.

20 MR. HAZZARD:

21 Okay.

22 Our position is that:

23 This fact situation is squarely on
24 all fours with that one; that:

25 All of the State's witnesses have

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1 testified that Mr. Elliott was not under arrest; that
2 they were simply attempting to make a detention -- an
3 investigative detention.

4 Uh -- And -- And we would submit
5 that:

6 Uh -- By law -- by prevailing --
7 uh -- case law, that count of the indictment should be
8 dismissed.

9 THE COURT:

10 All right.

11 Let me hear from you on that, Ms.

12 Livesay?

13 MS. LIVESAY:

14 Thank Your Honor.

15 In looking at the rule on -- uh --
16 Brannon, which is the case Mr. Hazzard just noted, the
17 rule says:

18 Intention -- That one must look at
19 the intentions of the parties, referring to the
20 subjective intentions of the law enforcement officer, as
21 well as the suspect.

22 Uh -- There is no objective test.

23 I do believe that -- uh -- the
24 officer read -- wrote him for failure to stop.

25 He would not stop for a blue

1 light.

2 At that point, the defendant had
3 committed a crime.

4 He gets out of the car;
5 immediately takes off on foot.

6 Obviously at that point, he knows
7 that they are seeking his arrest.

8 Uh -- I think that that is well
9 within the videotape when it shows him taking off.

10 He's obviously fleeing from the
11 possibility of being arrested.

12 Uh -- Several officers chase him
13 -- or -- uh -- chase after him.

14 Uh -- At this point, obviously the
15 officer's telling him to:

16 Put your hands up.

17 Uh -- To -- He's asking him
18 several commands in order to place him under arrest.

19 I think when you listen to the
20 testimony of the officer, and you listen to the video,
21 when the defendant first gets in the car and he's in
22 custody, the first thing he asks Officer Causey was:

23 Why did you arrest me? For
24 resisting arrest?

25 He was obviously under the

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1 impression that they were seeking to arrest him.

2 Uh -- I think the officer, maybe
3 initially, was looking just to stop him and investigate
4 him under the BOLO.

5 But once he did not stop for that
6 blue light, and once he got out of that vehicle and
7 started running, obviously at that point, they were
8 seeking to arrest him and place him into custody, Your
9 Honor.

10 I think when you look at the
11 subjective intentions, which is what this case asks in
12 order to find whether or not there is resistance, I think
13 the intentions of the defendant is obviously to flee from
14 being arrested.

15 So he obviously thought he was
16 being sought for arrest.

17 And I think that officer, once he
18 did not stop for the blue light and he got out of his car
19 and took off running, I think it was then that officer's
20 intention to place him under arrest.

21 So I think under the rules of
22 Brannon, and under the statute of resisting arrest, I do
23 believe that this defendant was under the subjective
24 intention that he reasonably thought they were seeking to
25 arrest him.

1 And once he thought that, he did
2 take off and flee.

3 He never complied with any
4 commands until he was Tased.

5 So I think the essence of
6 resisting arrest, and under this rule, are met under
7 these facts, Your Honor.

8 THE COURT:

9 I find that Brannon is -- uh -- is
10 somewhat troublesome.

11 It would appear to me from your --
12 your -- uh -- your argument, Ms. Livesay, that -- uh --
13 it's logical and that it made sense.

14 However, The Court of Appeals, to
15 which the Brannon case was first appealed, very clearly
16 adopted a seizure type analysis; seizure as that term
17 applies to the Fourth Amendment.

18 And on Cert to the Supreme Court,
19 the Supreme Court says:

20 No, that is not the -- uh -- the
21 analysis that should be made.

22 And in doing so, and disagreeing
23 with The -- uh -- with The Court of appeals -- uh -- they
24 -- while disagreeing, they still agreed as to the result.

25 The Supreme Court -- uh -- stated

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1 that:

2 The seizure analysis was incorrect
3 because the concepts of arrest and seizure are different.

4 The Court noted that they are
5 related because an arrest is the highest form of a -- a
6 seizure under the Fourth Amendment.

7 But all seizures are -- do not
8 result in arrests.

9 In determining whether an arrest
10 has occurred, under the Brannon, the focus is on the
11 intent of the police officers -- uh -- and -- and the
12 suspect.

13 In contrast, a seizure occurs when
14 the circumstances would make a reasonable person believe
15 that he was not free to leave.

16 So that -- that's the difference.

17 If we have a seizure, it is
18 nothing more than a subjective -- or objective -- uh --
19 rule where you would look at the circumstances of the
20 facts of the case to determine whether a reasonable
21 person would think that he is not free to leave.

22 But in an arrest, as it applies to
23 the resisting arrest statute, we look at the intent --
24 not only of the officer -- but the defendant as well.

25 And that was some of the -- the

1 problems -- or problems that are created by the Brannon
2 analysis.

3 In Brannon -- or under a Brannon
4 analysis, the fact that the officer intended to seize the
5 defendant, as that term is used in the Fourth Amendment,
6 is not dispositive of the case.

7 I must determine -- uh -- if an
8 arrest was being made at the time of the defendant's
9 flight as that term is defined, not under the Fourth
10 Amendment, but under the common law.

11 Brannon sites State versus
12 Williams as The Court's pronouncement, our jurisprudence
13 -- uh -- of the specific elements to determine when an
14 arrest has occurred.

15 Under Williams, where the police
16 officer does not manually touch the subject -- that seems
17 to be a -- a -- a cornerstone of this determination --
18 where the police officer has not manually touched the
19 subject, an arrest requires an intent on the part of the
20 officer to arrest the subject and -- and this is the
21 troublesome part to me -- an intent on the part of the
22 suspect to submit to the arrest under the belief that
23 submission was necessary.

24 And this is an ongoing process.

25 It's not something that happens

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1 immediately, or -- uh -- it's -- it's sort of ongoing.

2 And my initial inquiry must be:

3 Whether the arresting process was
4 actually under way when the defendant fled.

5 Now the Brannon Court rejected the
6 State's argument that The Court should evaluate the
7 officer's intent under an objective standard to determine
8 if the officer had probable cause to arrest when the --
9 when Brannon fled, and in this case, when the defendant
10 Fred -- uh -- fled.

11 That would, prior to Brannon, have
12 been my opinion that that was the primary concern of The
13 Court whether there was probable cause?

14 That would be an objective
15 standard.

16 But The Court adopted, instead, a
17 subjective test of the officer's intent and the
18 defendant's intent as suggested by the William's Court.

19 In the present case, the officers
20 all testified that the defendant was stopped because of a
21 BOLO.

22 They wanted to question him.

23 And even if we concede that they
24 had probable cause to arrest him, their purpose was to
25 question him concerning the kidnapping of the victim at

1 the time he fled.

2 Likewise, and most significantly,
3 there has been no evidence presented to demonstrate that
4 Mr. Elliott -- and this is directly from the Brannon case
5 -- the decision in the Brannon case -- there is no
6 evidence to demonstrate that Mr. Elliott intended, or
7 ever submitted to the police officers.

8 And to the contrary, as -- as in
9 the Brannon case, he immediately fled.

10 As soon as he saw the police
11 officers stop the car, he immediately fled.

12 Now there was a strong dissent by
13 Chief Just -- Justice Toal.

14 She based it upon the fact that --
15 or primarily from the fact that it just makes no sense;
16 that in order to commit -- uh -- a resisting arrest
17 offense, you first have to have intended to submit to the
18 arrest.

19 That was -- uh -- the basis of the
20 Chief Justice's dissent.

21 Uh -- It certainly seems to make
22 sense.

23 But nevertheless, the majority
24 opinion is the law of the case.

25 As I said earlier, in relying on a

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1 motion for directed verdict, I must concern myself with
2 the existence of the evidence and not its weight.

3 In viewing the evidence as to that
4 charge, and all reasonable inferences that may be drawn
5 from it, and looking at it in the light most favorable to
6 the State, I find that:

7 The State has failed to offer
8 proof that the arrest process was ongoing at the time of
9 the -- that the defendant fled under the Brannon case.

10 And what I'm going to do is:

11 Grant your motion for a directed
12 verdict as to the -- uh -- resisting arrest; okay.

13 MR. HAZZARD:

14 Thank Your Honor.

15 THE COURT:

16 All right.

17 Now, let's go on.

18 MR. HAZZARD:

19 Uh -- Failure to stop for blue
20 light, Your Honor:

21 Uh -- In reviewing that particular
22 statue -- uh -- and the basis of the charge itself, the
23 Defense makes a motion for a directed verdict.

24 That motion for a directed verdict
25 is based on the assertion that:

1 The evidence produced and
2 submitted by the State, even taken in the light most
3 favorable to the State, is insufficient to allow it to be
4 sent to the jury for an ultimate determination of guilt
5 or innocence.

6 We therefore make a motion for a
7 directed verdict on the charge of failure to stop for a
8 blue light, Your Honor.

9 THE COURT:

10 And I would disagree.

11 And -- uh -- I believe that there
12 is certainly ample evidence that would support a blue
13 light charge; okay.

14 All right.

15 Let's -- uh -- bring the jury back
16 in.

17 Are you prepared to go forward,
18 Mr. Hazzard?

19 You have your witnesses?

20 MR. HAZZARD:

21 Yes sir, I do.

22 That's my understanding that
23 they're all present.

24 THE COURT:

25 Very good.

VOLUME III

Volume II STATE V MARK A. ELLIOTT

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 2:36
3 PM, November 18, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 All right, Mr. Hazzard?

7 MR. HAZZARD:

8 Thank Your Honor.

9 At this time, the Defense would
10 call -- uh -- Susan Davis to the stand -- Susan Douglas,
11 I'm sorry, Your Honor.

12 WHEREUPON: SUSAN DOUGLAS WAS DULY
13 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Okay, scoot up and speaking into
17 the microphone.

18 WITNESS:

19 Okay.

20 CLERK:

21 If you will state your full name;
22 and spell your last name?

23 WITNESS:

24 Susan M. Douglas; D-o-u-g-l-a-s.

25 DIRECT EXAMINATION BY MR. HAZZARD:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Q. Good afternoon Ms. Douglas. Thank you so much for
2 being with us here today.

3 A. Yes.

4 Q. Uh -- Would you please tell us how you are employed
5 at the current time?

6 A. I'm an RN at Sea Coast Emergency Center.

7 Q. Okay. And that means a Registered Nurse ma'am?

8 A. Yes, sir.

9 Q. Okay. And were you employed in that capacity back
10 on June 29th, of 2009, ma'am?

11 A. Yes sir.

12 Q. Okay. And on that date, did you have occasion to
13 be present when a Ms. BE [REDACTED] was brought to
14 the hospital?

15 A. I was not there when she was brought in. Uh -- But
16 I was probably -- uh -- between five and six or five and
17 seven.

18 I go on duty at 20 till 7:00.

19 Q. Uh-huh.

20 A. And -- uh -- I completed -- uh -- her time there.
21 Uh --

22 Q. Were you present -- uh -- when a rape kit procedure
23 was done on Ms. [REDACTED] that morning?

24 A. Yes, sir. I did that kit.

25 Q. Okay. And when you say you "did that kit," please

1 tell the jury what all that entails?

2 A. Okay. Uh -- The hospital has rape kits there that
3 are fully sealed.

4 Uh -- We speak to the -- uh --
5 alleged victim and explain to them what is going to
6 happen.

7 Uh -- And in their presence, and
8 me, I -- we open the kit.

9 And then, we do -- uh -- samples.

10 I do a oral -- mouth oral exam --
11 uh -- with samples; and all other -- other than the
12 vaginal and the anal swabs, which are done by the
13 physician.

14 Q. Okay. And were you present when the physician --
15 uh -- collected the vaginal and anal swabs?

16 A. Yes sir.

17 Q. Okay. And he did that your presence?

18 A. Yes sir.

19 Q. Okay. And once he did the vaginal and anal swabs,
20 what did he do with them, ma'am?

21 A. He gave them to me. I take them and package them
22 right there -- uh -- in the room there, then place in
23 that -- uh -- kit --

24 Q. Uh-huh.

25 A. -- sealed -- uh -- before they're placed in the kit.

1 Uh -- Then, when we complete all
2 exams from head to toe -- uh -- and visual with a wood
3 lamp, we seal that -- uh -- kit.

4 And it's kept in my presence until
5 I turn it over to the -- uh -- North Myrtle Beach Police,
6 or whoever it might be.

7 That particular one went to North
8 Myrtle Beach.

9 Q. Okay. Now you mentioned a wood lamp. What is a
10 wood lamp; and what is it used for, ma'am?

11 A. Uh -- The wood lamp is used to indicate any kinds of
12 any semen, or anything that's on the outside?

13 Q. Okay. Now, did you conduct the wood lamp -- wood
14 lamp in this case --

15 A. No.

16 Q. -- or did the doctor conduct the wood lamp exam?

17 A. No.

18 Q. Okay.

19 A. The doctor did it.

20 Q. And did you make the notes regarding that; or did he
21 make the notes regarding that?

22 A. He made the notes regarding that. Uh-huh.

23 Q. Okay. Now once the -- uh -- rape kit was completed
24 --

25 A. Uh-huh.

1 Q. -- what did you, if any -- what did you do with it?

2 A. What did I do with it?

3 Q. Yes ma'am.

4 A. Well, it's sealed -- I seal it up. I have to put my
5 name on it -- uh -- at the time I give it to the -- uh --
6 police officer.

7 And he signs it. And then he
8 takes it to wherever.

9 I don't know where it goes from
10 there.

11 Q. Okay. So your testimony is then, that:

12 You got it. You sealed it. Uh --
13 Signed it and gave it to a representative of the North
14 Myrtle Beach Police Department?

15 A. Yes sir.

16 Q. Okay. Did you have any contact or dealings with
17 the rape kit after you gave it to the detective?

18 A. No sir. Uh-uh.

19 Q. Okay. When you gave it to the detective, was the
20 kit in the same condition as when you first packaged it?

21 A. Yes sir.

22 Q. Did you alter it; tamper with it in any way?

23 A. No sir. Uh-uh.

24 Q. Not while it was in your care, custody, and control?

25 A. No.

1 Q. All right.

2 A. Uh-uh.

3 MR. HAZZARD:

4 Thank you. I have no further
5 questions for this witness, Your Honor.

6 THE COURT:

7 Ms. Livesay?

8 MS. LIVESAY:

9 Thank Your Honor. Just a few
10 questions.

11 CROSS-EXAMINATION BY MS. LIVESAY:

12 Q. Uh -- Ms. Douglas, as a nurse, do you have to -- uh
13 -- find out -- Triage -- is that the kind of nurse --

14 A. Yes.

15 Q. Explain to the jury exactly what a Triage Nurse is.

16 A. Well, a -- a Triage Nurse is the first one that sees
17 the -- uh -- patient.

18 And they get their --

19 Q. Okay. And so --

20 A. -- story. I mean, if this is a rape case, we -- uh
21 -- investigate what happened to them during the event and
22 the crime.

23 Q. And do you have to -- uh -- figure out what happened
24 to them in order to find what kind of procedure to
25 perform on them, or how to treat that patient?

1 A. No. Actually -- uh -- the kit itself -- uh --
2 identifies what needs to be done.

3 Now we do speak with them to see
4 what has happened -- uh -- what type of -- uh -- sex as
5 far as any other -- uh -- investigation that we have to
6 do -- as far as swabs.

7 Q. Okay.

8 A. Uh -- And that's fully explained to them exactly
9 what a rape kit means -- uh -- and what will be involved
10 in it as far as -- uh -- their participation -- what we
11 have to do to them.

12 We have to take all their clothes
13 totally separate. And it's -- uh -- that it's a head to
14 toe, full examination.

15 Uh -- And it's not always pleasant
16 for them, especially after their experience.

17 Q. And do you have to get information from them to even
18 figure out whether or not a rape kit needs to be done?

19 A. Yes ma'am.

20 Q. Okay. And did you get that information from
21 BE [REDACTED]

22 A. Yes ma'am.

23 Q. Okay. So she was able to convey to you that she
24 had been sexually assaulted?

25 A. Yes ma'am.

1 Q. Now when she's in the -- uh -- medical room --

2 A. Uh-huh.

3 Q. -- I'm assuming you're asking her some questions
4 just to figure out whether or not she needs to be treated
5 for any other kind of physical problems?

6 A. Yes ma'am.

7 Q. Okay. Do you put that in the medical records?

8 A. Yes. Uh-huh.

9 Q. Okay. So you put that on the kit; or in the form
10 that's used for the kit -- what she tells you?

11 A. Yes. There is -- uh -- a paper there that -- uh --
12 it's basically her statement that we write down.

13 And it does go in the kit; yes.

14 MS. LIVESAY:

15 Okay.

16 Your Honor, can I approach this
17 witness?

18 THE COURT:

19 Yes.

20 (WHEREUPON: Ms. Livesay shows
21 some documents to Mr. Hazzard and Ms. Knowles.)

22 MR. HAZZARD:

23 The Court's indulgence, Your
24 Honor?

25 MS. LIVESAY:

1 Your Honor, can we -- uh -- have a
2 motion outside the jury?

3 THE COURT:

4 Yes, ma'am.

5 Take the jury out, Mr. Roth.

6 (WHEREUPON: The jury empanelled
7 in the case withdrew from the courtroom at 2:43 PM,
8 November 18, 2010; and was no longer present during the
9 following proceedings.)

10 MS. LIVESAY:

11 Your Honor, I'm going to ask -- or
12 I'm going to ask Ms. Douglas as regarding to what
13 BE [REDACTED] told her in the hospital as to what
14 had happened that night.

15 And I'm trying to obviously get it
16 in through the medical records and diagnoses exception,
17 which is says that:

18 Anything in the medical records --

19 THE COURT:

20 803(4)?

21 MS. LIVESAY:

22 (No response.)

23 THE COURT:

24 803(4)?

25 MS. LIVESAY:

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1 Yes, Your Honor. It's allowed to
2 come in.

3 Now Mr. Hazzard's under the
4 impression that that would open up the door for testimony
5 about the fact that BE told the nurse that she had
6 sex with her boyfriend earlier that night.

7 Uh -- Obviously the rape shield
8 keeps that out.

9 There is no rule that allows that
10 to come in.

11 And Mr. Hazzard's already
12 extracted information regarding the rape kit from Ms.
13 [REDACTED] when he asked her whether or not pubic hair was
14 collected on -- on the rape kit -- or for rape kit
15 purposes, Your Honor.

16 MR. HAZZARD:

17 And Your Honor, obviously our
18 position is:

19 She is not allowed to ask this
20 witness -- uh -- about part of what a person told her but
21 not allow the entirety of the discussion between the
22 parties.

23 MS. LIVESAY:

24 Sure I can. The rule allows for
25 that testimony to come in.

1 THE COURT:

2 The -- The rule, Mr. Hazzard, 803,
3 Subsection 4, says:

4 Statements made for the purpose of
5 medical diagnosis or treatment, and describing medical
6 history, or past and present symptoms, pain or sensation,
7 or the inception or -- or general character of its cause
8 or external source thereof insofar as reasonably
9 pertinent to the diagnosis or treatment; provided that --
10 however, that the admission of statements made after
11 commitment -- commencement of the litigation is left in
12 The Court's discretion.

13 Now, 803 says that:

14 That is not excluded by the
15 hearsay rule, even though the declarant is available as a
16 witness.

17 MR. HAZZARD:

18 And what she says as far as having
19 sex with her boyfriend; about her bruising on either her
20 shoulder or collar bone that came from having sex with he
21 boyfriend, all of that has to do with treatment and
22 diagnosis, Your Honor.

23 I mean, if she wants --

24 MS. LIVESAY:

25 That's kept out by the rape

1 shield.

2 THE COURT:

3 Well, why -- Why do you want to
4 put in -- I mean, y'all are leaving me in the dark here.

5 MR. HAZZARD:

6 What she's asking her about is
7 something the victim's already testified to; something
8 that Detective Abercrombie's already testified to --

9 MS. LIVESAY:

10 It's her statement that night that
11 she told the nurse when the nurse asked her what had
12 happened, which is procedure in the rape kit.

13 The victim said:

14 I was out around 3:15, sitting
15 outside, and that's when it does in the fact that a
16 gentleman drives up, tells my friends to get down on the
17 ground.

18 It's about a 1, 2, 3, 4 -- 5
19 sentence summary of what she told this nurse what had
20 happened that night.

21 MR. HAZZARD:

22 That has already been testified
23 to, Your Honor.

24 THE COURT:

25 I understand it. And I'm going to

1 let her testify to that; okay.

2 MS. LIVESAY:

3 Thank Your Honor.

4 MR. HAZZARD:

5 And as a result, then, do I get to
6 ask Nurse Davis (sic) regarding the other statements made
7 for the purpose of diagnosis and treatment?

8 THE COURT:

9 That is entirely different.

10 That's -- That has nothing to do
11 with hearsay. That has to do with the rape shield
12 statute.

13 MS. KNOWLES:

14 But Your Honor, it goes to the
15 medical history, and --

16 MS. LIVESAY:

17 Your Honor, there --

18 THE COURT:

19 It -- It -- It's not admissible,
20 even if it came directly from the mouth of the defendant
21 -- I mean, the victim.

22 What we're talking about is
23 whether or not statements made to her, or to the witness
24 by the victim, are hearsay.

25 Rule 803 clearly says that:

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1 It is admissible because it is not
2 excluded by the hearsay rule because of the obvious
3 reliability of statements made for the purpose of medical
4 diagnosis or treatment.

5 It comes out of the hearsay rule.

6 What you're attempting to do, is
7 get the matters that I agree are not protected by the
8 hearsay rule.

9 She could testify to it normally.

10 But we have a rape shield statute
11 that also comes into play and does not allow that
12 testimony.

13 MR. HAZZARD:

14 Well, what The Court is indicating
15 that it is going to allow the State to do is publish part
16 of a document, thus prohibiting the jury from having the
17 full benefit of the entire --

18 MS. LIVESAY:

19 Here's the thing, Your Honor --

20 MR. HAZZARD:

21 -- statement made that -- excuse
22 me.

23 THE COURT:

24 She's not going to publish the
25 document; are you?

1 MS. LIVESAY:

2 No; I may --

3 MR. HAZZARD:

4 She's going to ask here about it?

5 THE COURT:

6 She's going to ask her what she
7 told her about this event.

8 MR. HAZZARD:

9 So -- And then the Defense does
10 not have the benefit of the entirety of that
11 conversation?

12 THE COURT:

13 You can cause examine her about
14 what she testifies here; about the event; but the rape
15 shield statute, Mr. Hazzard, will not let you go into it
16 except under -- or any other sexual activity other than
17 under very, very, limited circumstances.

18 MR. HAZZARD:

19 And I would -- On behalf of the
20 Defendant, I would submit allowing the State to put in
21 this obviously cumulative testimony, and having it being
22 a non-complete statement as to the -- the alleged
23 victim's actual statement for the purposes of diagnosis
24 and treatment is misleading to the jury and improper.

25 THE COURT:

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1 Well, I'm not going to let it in.
2 I think it's protected by the rape shield.

3 MS. LIVESAY:

4 Thank you, Your Honor.

5 MR. HAZZARD:

6 All right. Note the objection
7 for the record, Your Honor.

8 THE COURT:

9 All right, sir.

10 Now, you're not going to put that
11 in, are you Ms. Livesay?

12 MS. LIVESAY:

13 No ma'am -- No sir.

14 THE COURT:

15 All right. Bring them --

16 MS. LIVESAY:

17 I'm just going to ask her about
18 that summary.

19 (WHEREUPON: The jury empanelled
20 in the case was escorted back into the courtroom at 2:51
21 PM, November 18, 2010; and was in fact present during the
22 following proceedings.)

23 CROSS-EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Uh -- Ms. Douglas, are you familiar with the
25 document I'm showing you now?

1 A. Yes ma'am.

2 Q. And what is it?

3 A. Uh -- That's the -- one of the forms of the rape kit
4 during that -- that was done for --

5 Q. Okay. And this is part of the protocol you used?

6 A. Yes.

7 Q. Okay. And is part of the protocol you used taking
8 a summary of what happened that evening in order to know
9 how to treat that victim?

10 A. Yes ma'am.

11 Q. And was that summary taken in this case?

12 A. Yes.

13 Q. And could you tell the jury what that summary was.

14 A. You mean, right here?

15 Q. Do you need -- Yes ma'am.

16 A. Uh -- She just stated -- uh -- when the event
17 happened, which was around 3:30 -- uh -- 3:15.

18 She and -- uh -- two boys were
19 sitting outside of the house on the -- where they were
20 staying.

21 Uh -- And someone -- uh -- drove
22 by -- uh -- a guy in a car.

23 And he got out telling them to all
24 lay down on the ground face down -- uh -- and then
25 encouraged them to take everything out of their pockets

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1 -- uh -- and told her to get in the car.

2 And -- uh -- he drove off with
3 her.

4 Q. Okay.

5 A. So --

6 Q. Okay. And when did you -- uh -- get this
7 information from BE [REDACTED]

8 A. I got that information right at the beginning of the
9 -- uh -- rape kit -- uh -- procedure.

10 Uh -- That was right after the
11 rape kit's opened up. And that's the first thing that
12 we do.

13 Q. Okay. Was there anybody -- uh -- back there with
14 her during this time?

15 A. No.

16 Q. So --

17 A. It was just she and I.

18 Q. Okay. Uh -- To your knowledge, did she have a
19 phone or access to anybody else?

20 A. No.

21 Q. Okay.

22 A. I do not remember a phone. Uh-uh.

23 Q. Okay. Was there a guardian, or anybody else out
24 there -- back there with her?

25 A. No; not at that time.

1 MS. LIVESAY:

2 No further questions, Your Honor.

3 THE COURT:

4 Anything further?

5 MR. HAZZARD:

6 Nothing further from -- for -- uh
7 -- Ms. Douglas, Your Honor; and asked that she be excused
8 from her subpoena at this time.

9 THE COURT:

10 Very well.

11 Uh -- Well, any -- uh -- need for

12 Ms. Douglas?

13 MS. LIVESAY:

14 Not if the Defense doesn't.

15 THE COURT:

16 All right.

17 Ms. Douglas, you're released from
18 your subpoena.

19 WITNESS:

20 Thank you.

21 MR. HAZZARD:

22 Your Honor, the Defense would call
23 BE [REDACTED] to the stand.

24 THE COURT:

25 Okay.

TESTIMONY OF BE [REDACTED]

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1 WHEREUPON: BE [REDACTED]
2 WAS AGAIN DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:
3 CLERK:

4 Thank you. Please be seated.
5 Okay. If you will State your
6 full name, and spell your last name?

7 WITNESS:

8 BE [REDACTED] [REDACTED]
[REDACTED]

10 DIRECT EXAMINATION BY MR. HAZZARD:

11 Q. Okay. Ms. [REDACTED] thank you for coming back and
12 taking the stand.

13 Uh -- I wanted to clarify a few
14 things -- uh -- regarding the phone records based on what
15 -- uh -- Detective Abercrombie has said -- uh -- and your
16 other statements that have been testified to here today.

17 Clarify for me, if you will -- uh
18 -- what time did Mr. Howard and Mr. Bradley get to the
19 house at Hillside Drive that evening?

20 A. I believe around 1:00 AM?

21 Q. Okay. Around 1:00 AM. And did they -- When did
22 they leave the house, ma'am?

23 A. Around I believe 2:30?

24 Q. Around 2:30?

25 A. I believe so.

1 Q. And how long were they gone at that time?

2 A. Around 10 minutes, I would say.

3 Q. Okay. So they were gone about 10 minutes and then
4 -- then they came back?

5 A. Yes.

6 Q. So they would've been back sometime around 2:30 --
7 2:45?

8 I mean, they -- If they got there
9 at 1:00 AM, left at 2:30, gone for 10 minutes, would have
10 been back around 2:40 or 2:45?

11 Is that fair to say?

12 A. Yes.

13 Q. Okay. And were they at the house there at Hillside
14 from that point until you indicate that you were
15 abducted?

16 A. Yes.

17 Q. Okay. In looking at your phone records that the
18 State has provided to me, though, I -- I note -- and I'll
19 be more than happy to show them to you, if you wish.

20 A. That's fine.

21 Q. Okay.

22 A. Sure.

23 Q. I note that they show a series of texts between you
24 and Mr. Howard from 1:27 AM to 1:33 AM; okay.

25 And that is when you say that he

1 was with you?

2 So can you explain why you would
3 be texting him if he was with you at that time, ma'am?

4 A. We -- If we had something that we wanted to discuss,
5 privately, we would have texted each other.

6 Because Ryan was outside with us.

7 And it's not unusual for myself to
8 sit directly beside someone and still send them text
9 messages back and forth --

10 Q. Hmm.

11 A. -- for the purpose of keeping my conversations to
12 myself.

13 Q. Yes, ma'am. Uh -- And then you have phone calls:

14 from 2:12 to 2:15 to Mr. Howard;

15 from 2:20 to 2:22 to Mr. Howard;

16 a 25-second phone call at 2:24 to

17 Mr. Howard;

18 Uh -- A 2-minute phone call from

19 2:36 to 2:38;

20 a 50-second phone call at 2:41 AM;

21 and then,

22 a 13-minute phone call from 3:04

23 AM to 3:17 AM?

24 Do you also talk to people on the
25 phone when they are in your presence, ma'am?

1 A. It wasn't unusual for us, in the relationship that
2 we were in, to be around each other and be in different
3 areas and still not speak directly to one another but to
4 call each other if we didn't feel the need to be right
5 next to each other.

6 Q. I thought your testimony was that all of y'all were
7 standing in that area right there by the house in the
8 driveway.

9 A. At that point when -- right before I was taken, yes,
10 we were.

11 Q. Uh-huh.

12 A. It's been almost a year and half now.

13 Q. Hmm.

14 A. I cannot tell you exactly why I would have called
15 him or texted him, because it has been an extremely long
16 time.

17 Q. Uh-huh.

18 A. And I spoke to him on the phone and through text
19 messages all day, every day, almost.

20 So as to the nature of each call
21 or text message, I can't tell you.

22 Q. Hmm.

23 A. So you have my phone records.

24 Q. Uh-huh.

25 A. And I can't tell you exactly what the conversation

1 was about; why I chose to speak to him on the phone
2 instead of talking to him directly when he was with me.

3 Q. Hmm. Okay. And I guess what concerns me is that
4 all the testimony -- all the testimony has been that his
5 phone was in his car.

6 So if he was --

7 MS. LIVESAY:

8 Your Honor, is there a question.

9 MR. HAZZARD:

10 So --

11 MS. LIVESAY:

12 I do believe at this point --

13 THE COURT:

14 He hasn't finished the question.

15 Let him -- Let him ask the
16 question.

17 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

18 Q. So, if he was with you at 3:04, then this phone call
19 -- this 13-minute phone call from 3:04 to 3:17 -- and
20 even assuming that he had left sometime around 2:00 or
21 2:30 and he had the phone with him, but then he came back
22 and left it in the car; and he's with you between 3:04
23 and 3:17, how is he -- how are you talking to him on the
24 phone?

25 A. I don't believe I personally said that he didn't

1 have his phone with him.

2 Q. Uh-huh.

3 A. I believe that it was Ryan that said that he didn't.

4 Q. Yes, ma'am; the person who was in the car with him;
5 yes ma'am.

6 Q. So, I -- If I was on the phone with him, I'm
7 assuming he didn't leave it in the car.

8 But my main concern wasn't -- you
9 know -- with where he was or was not keeping his phone.

10 Q. Hmm.

11 A. So like I said, it's been quite a while.

12 Q. Hmm.

13 A. And many details from -- you know -- the unimportant
14 ones like where his phone was at before the incident --

15 Q. Hmm.

16 A. -- have not stuck in my mind.

17 Q. Thank you ma'am. Did -- Are you aware of whose
18 phone numbers is area code 704-663-9952?

19 A. I believe that is Blythe's phone number, the girl
20 that I was staying with it at the beach.

21 MR. HAZZARD:

22 Okay. And -- Okay. All right.

23 Thank you, ma'am. No further
24 questions.

25 MS. LIVESAY:

1 Just a couple of questions, Your
2 Honor.

3 CROSS-EXAMINATION BY MS. LIVESAY:

4 Q. Uh -- While you were in the car with the defendant,
5 did anybody call you?

6 A. Yes.

7 Q. Who called you?

8 A. Matthew and Blythe.

9 Q. Okay. Did you pick up the phone?

10 A. I picked up -- I believe Matthew had already called
11 me a couple of times.

12 And then, finally I picked up,
13 because he had told me to answer the phone and tell
14 Matthew that I had left the car; that I was walking back;
15 and I was safe.

16 And Blythe called me shortly after
17 that, because I hung up on Matthew because he was
18 somewhat hysterical asking me questions.

19 And I didn't want to agitate him.

20 And I just wanted to get off the
21 phone.

22 Q. Okay.

23 A. And I believe Blythe called me after that. And I
24 did not answer.

25 And after that, I turned my phone

1 off.

2 Q. Okay. And did you make any phone calls out from
3 that phone?

4 A. No, I did not.

5 Q. Okay. So all of the conversations that Mr. Hazzard
6 was asking about is all stuff before you were even in the
7 car with that defendant?

8 A. Yes.

9 Q. Okay. Now before you got in the car with that
10 defendant, did you ever come in contact with him?

11 A. No.

12 Q. Did you know his phone number?

13 A. No.

14 Q. To your knowledge, did he ever know your phone
15 number?

16 A. No.

17 Q. Okay. And to your knowledge, were there anything
18 on the phone records showing any outgoing calls during
19 that time from your phone?

20 A. Not to my knowledge.

21 Q. Okay. So there were no outgoing calls from that
22 time you were picked up until you were getting your phone
23 back?

24 Is that right?

25 A. Correct.

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1 MS. LIVESAY:

2 Okay. No further questions, Your
3 Honor.

4 MR. HAZZARD:

5 Nothing further, Your Honor.

6 THE COURT:

7 You may step down.

8 Mr. Hazzard?

9 MR. HAZZARD:

10 Defense calls Renee Best, North
11 Myrtle Beach Police Department, to the stand.

12 WHEREUPON: RENEE WALTERS BEST WAS
13 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Please state your full name and
17 spell your last name?

18 WITNESS:

19 Renee Walters Best; B-e-s-t.

20 DIRECT EXAMINATION BY MR. HAZZARD:

21 Q. Good afternoon, ma'am. How are you?

22 A. Fine.

23 Q. Okay. Uh -- How are you employed, ma'am?

24 A. I'm employed with the City of North Myrtle Beach
25 Department of Public Safety as their evidence custodian

1 slash communications detention supervisor.

2 Q. Okay. And what is your -- uh -- actual -- Y'all --
3 Y'all have rankings; correct?

4 A. I am just -- uh -- I'm a civilian employee. And
5 I'm a supervisor.

6 Q. Okay. All right. And how long have you been
7 employed with the North Myrtle Beach Department of Public
8 Safety?

9 A. 26 years.

10 Q. And of that time, how long have you been in charge
11 of evidence custody?

12 A. Since 2000.

13 Q. Okay. So as of June of 2009 and up to the present
14 time, that would be 9 to 10 years; correct?

15 A. That's correct.

16 Q. Okay. Now did you at some point receive a rape kit
17 regarding this case -- regarding Ms. BE [REDACTED] -
18 - from -- uh -- Detective Vance Abercrombie?

19 A. I did.

20 Q. Okay. Do you recall when that was?

21 A. Uh -- No sir. I do not right off. I do have the
22 paperwork in hand. But I don't remember the exact date.

23 Q. Okay. Uh -- If the prosecutor wants to ask you,
24 she can.

25 A. Okay.

1 Q. Uh -- When you received this from Detective
2 Abercrombie -- uh -- let me -- let me back up, ma'am.

3 Do you have experience with
4 dealing with rape kits, ma'am?

5 A. Yes sir.

6 Q. Okay. And so you are familiar with how they look?

7 A. Yes sir.

8 Q. Okay. And you're familiar with the sealing -- uh --
9 procedure for them; correct?

10 A. Yes sir. They're all sealed. I don't -- I'm not
11 familiar with what's inside of them, because they're
12 sealed --

13 Q. Uh-huh.

14 A. -- and they stay sealed until the get to SLED. And
15 then, I couldn't tell you what happens to them then.

16 Q. Okay. So with regard to the rape kit for Ms.

17 [REDACTED] is it your testimony that you received it at
18 some point from Detective Abercrombie?

19 A. It is.

20 Q. And when you received it from Detective Abercrombie,
21 did it appear to be -- uh -- sealed?

22 A. It was sealed; yes sir.

23 Q. Did it appear to have been tampered with or altered
24 in any way that you could tell from the outside?

25 A. No; I couldn't tell that it had been altered at all.

1 Q. Okay. And when you received it, what did you do
2 with it, ma'am?

3 A. Uh -- Completed the paperwork, and a couple of days
4 after, transported it to SLED.

5 Q. Okay. So a couple of days after you received this
6 from Detective Abercrombie, you then transported it to
7 SLED?

8 A. Yes, sir.

9 Q. Okay. All right. If you would, please review
10 your paperwork and give me an indication of when you took
11 it to SLED, ma'am

12 A. It was taken to SLED on 9/17 of 2010.

13 Q. Okay. And it's your testimony that you would have
14 received it from Detective Abercrombie less than a week
15 prior to that?

16 A. On 9/8 2010.

17 Q. On September 8th of --

18 A. Yes sir.

19 Q. -- 2010, you received it from him to submit it to
20 SLED?

21 A. That's correct.

22 Q. Okay. And when you received it from him, what did
23 you do with it?

24 A. I logged it in and put it in the evidence room until
25 the time I transported it to SLED.

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- 1 Q. Okay. And how is the evidence room secured, ma'am?
- 2 A. With -- uh -- double locks.
- 3 Q. Okay. And who has access to that evidence room?
- 4 A. Myself.
- 5 Q. Okay. No one else?
- 6 A. No sir.
- 7 Q. Okay. And did you subsequently take it to -- take
- 8 the BEST kit or the evidence kit -- the rape kit in this
- 9 case -- to SLED for evaluation?
- 10 A. I did.
- 11 Q. Okay. And when you took it up there, was it in the
- 12 same condition as when you received it?
- 13 A. The box was; yes -- yes sir.
- 14 Q. Okay. So from what you know, the sealed box, it
- 15 was still sealed; correct.
- 16 A. That's correct.
- 17 Q. Okay. Did you alter it, or tamper with it in any
- 18 way when it was in your care, custody, or control, ma'am?
- 19 A. No sir; I did not.
- 20 Q. Okay. And when did you turn it over to SLED,
- 21 ma'am?
- 22 A. On 9/17.
- 23 Q. Okay. All right. Do you have a indication as to
- 24 who you turned it over to at SLED, ma'am?
- 25 A. Nikki Perry.

1 MS. LIVESAY:

2 Nikki Perry? All right.

3 Thank you very much. And no
4 further questions.

5 Oh, no I'm sorry. I do. I
6 actually do.

7 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. At some point, did you receive -- uh -- from
9 Detective Abercrombie -- uh -- some buccal swabs that
10 were taken from Mark Elliott?

11 A. Hold on just a second, please.

12 Q. Yes ma'am.

13 A. Yes sir. I did.

14 Q. Okay. And when you -- Are you familiar with the
15 pack -- normal -- uh -- industry standard packaging for
16 buccal swabs?

17 A. To be honest with you, no I'm not.

18 Q. Hmm.

19 A. I know it was in a box, and it was sealed, and --
20 you know -- it wasn't opened until I got to SLED.

21 And again, I don't know what
22 happened to it after it got to SLED.

23 Q. But when you received it, it was in a sealed box?

24 A. Correct.

25 Q. Okay. And you received it from Detective

1 Abercrombie?

2 A. That's correct.

3 Q. And did you -- uh -- subsequent to receiving it,
4 take it up to SLED?

5 A. That's correct.

6 Q. Okay. And while it was in your possession, did you
7 alter it or tamper with it in any way?

8 A. No sir.

9 Q. When you delivered it to SLED, was it in the same
10 condition as when you received it?

11 A. It was.

12 MR. HAZZARD:

13 All right. Thank you, ma'am. No
14 further questions.

15 MS. LIVESAY:

16 A few questions, Your Honor.

17 CROSS-EXAMINATION BY MS. LIVESAY:

18 Q. Ms. Best, did you take in all the evidence that was
19 involved in this case?

20 A. Everything that was turned into me; yes, I did.

21 Q. Okay. Now were any drugs ever turned in to you?

22 A. Not that I'm aware of.

23 Q. Okay. Are those the records in front of you?

24 A. These are the records from the rape kit and the
25 buccal swabs.

1 Q. Okay. Uh -- Do you have records that show
2 everything you took into evidence?

3 A. Yes. I have then in my bag, if you would like for
4 me to get them out.

5 Q. Uh -- It's up to you if you need to or not. Do you
6 recollect if you took any drugs in.

7 A. I don't I did to be honest with you. But I can
8 look, I mean, if you'd like.

9 Q. Maybe just look just to make sure --

10 MR. HAZZARD:

11 Your Honor, the Defense will
12 stipulate that -- uh -- Ms. Best did not receive any
13 drugs on this case.

14 WITNESS:

15 Not that I'm aware of.

16 THE COURT:

17 Okay.

18 MS. LIVESAY:

19 Thank Your Honor.

20 CROSS-EXAMINATION BY MS. LIVESAY CONTINUED:

21 Q. Did you take everything -- uh -- involving this case
22 to SLED that was to be taken to SLED?

23 A. Everything -- Yes ma'am, I did.

24 Q. Okay. Did they send anything back with you and
25 wouldn't take it?

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1 A. Uh -- No ma'am. Uh -- Clothing.

2 Q. Okay.

3 A. They would not take the clothing. I submit -- tried
4 to submit that, and they did not take the clothing.

5 Q. Okay. And they just sent it back with you?

6 A. That's correct.

7 MS. LIVESAY:

8 Okay. No further questions, Your
9 Honor.

10 THE COURT:

11 You may step down.

12 WITNESS:

13 Thank you.

14 THE COURT:

15 Mr. Hazzard?

16 Defense would call Nikki Perry to
17 the stand.

18 Oh, Your Honor, they -- Ms. Best
19 can be --

20 THE COURT:

21 Any objection?

22 MS. LIVESAY:

23 Nothing from the State, Your
24 Honor.

25 THE COURT:

1 Let's take a little quick break
2 before we get into Ms. Perry's testimony.

3 Mr. Roth, take the jury to the
4 juryroom.

5 They've been in and out, but I
6 haven't.

7 (Laughter erupts in the
8 courtroom.)

9 (WHEREUPON: The jury empanelled
10 in the case withdrew from the courtroom at 3:09 PM,
11 November 18, 2010; and was no longer present during the
12 following proceedings.)

13 WHEREUPON: During the break, The
14 Court received the report from the Grand Jury of Horry
15 County unrelated to this case.

16 (WHEREUPON: The Court resumed
17 attention to this case at 3:24 PM, November 18, 2010; and
18 all pertinent parties, along with their counsel, were
19 back and present in the courtroom.)

20 THE COURT:

21 Okay, Mr. Nobles, if you would,
22 bring the jury in.

23 (WHEREUPON: The jury empanelled
24 in the case was escorted back into the courtroom at 3:25
25 PM, November 18, 2010; and was in fact present during the

1 following proceedings.)

2 THE COURT:

3 And let the record reflect that we
4 have all our jurors and our alternate back in the
5 courtroom.

6 Mr. Hazzard, call your next
7 witness.

8 MR. HAZZARD:

9 The Defense calls Nikki Perry of
10 SLED.

11 WHEREUPON: NIKKI PERRY WAS DULY
12 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Thank you. Please be seated.

15 Okay. If you would state your
16 full name; and spell your last name.

17 WITNESS:

18 Nikki Perry; P-e-r-r-y.

19 DIRECT EXAMINATION BY MR. HAZZARD:

20 Q. Thank you Ms. Perry. Uh -- How are you employed?

21 A. I'm currently employed with the South Carolina Law
22 enforcement Division, commonly known as SLED.

23 Q. And how long have you held that position, ma'am?

24 A. I've been employed with SLED since June of 2006.

25 Q. Okay. Let me direct your attention -- uh -- to a

1 rape protocol kit -- uh -- performed relating to this
2 case -- uh -- on a subject named Ms. BE [REDACTED]

3 Are you familiar with that kit?

4 A. Uh -- I am familiar with -- uh -- our Lab Number
5 L10-10426.

6 Q. Okay. And who did you receive the kit from, ma'am?

7 A. On September 17th, 2010, I received what is
8 described as CSC Kit from BE [REDACTED]
9 from Renée Best of the North American beach Department of
10 Public Safety.

11 Q. Okay. Now let's back up. Exactly what you do at
12 SLED? What is your job capacity?

13 A. Excuse me. I am a Forensic Technician in the
14 Evidence Control Department at the Forensic Lab.

15 Q. And what does a Forensic Technician do?

16 A. In my department, what we do is:

17 We log in, package, and properly
18 seal evidence that's submitted to the lab for forensic
19 analysis.

20 Q. Okay. And do your records indicate -- uh -- what
21 you did with regard to the rape kit that you received on
22 Ms. BE [REDACTED]

23 A. Correct. Uh -- In evidence control, we are supplied
24 -- uh -- by the officer that presents us with the
25 evidence, a SLED Login Sheet.

1 Uh -- Basically that details all
2 their case information. It also details the items of
3 evidence that they will be submitting to the lab.

4 I log in that information into our
5 computer.

6 And at that time, a Unit Lab
7 Number is generated for that case as well as an Item
8 Number for each item of evidence that is submitted.

9 Q. Okay. Now when you received this package, was it
10 sealed, or unsealed?

11 A. Uh -- When CSC Kits are presented to us, they're --
12 they are sealed when they come in.

13 We break the seal -- uh -- in
14 evidence control.

15 And we will take out -- uh -- what
16 is inside of the sealed box.

17 We will place those items in a
18 heat-sealed pouch.

19 We'll -- uh -- heat-seal the
20 pouch.

21 We'll have the officer, in our
22 presence, initial and date the seals; and sign and date
23 the front of the bag.

24 Q. And was that what was done in this case, ma'am?

25 A. Uh -- Do you have it to present to me so that I may

1 see it?

2 Q. I believe that the is just court reporter has them
3 -- items. Okay. I'm handing you 3 bags -- actually 4
4 bags that say on their face:

5 SLED Lab Number L10-10427; Number
6 3, L10-10426; Number 1, L10-10426 C, Number A; and
7 L10-10426, Number 4.

8 I'm going to hand you these items
9 in the SLED bags, and ask if you can identify them or
10 recognize them, ma'am?

11 A. Uh -- I can identify -- uh -- This package says L10-
12 10426, Item Number one.

13 I received this item from Renee
14 Best of the North Myrtle Beach Police Department.

15 Q. And does -- I'm sorry. Go ahead, ma'am.

16 A. Uh -- It's -- May I refer to my -- where I posted
17 it.

18 Q. Yes ma'am, please.

19 A. Okay. And Item Number 2 -- let's see -- I do not
20 have -- let's see -- Item Number 3, I received from
21 Renée Best of the North Myrtle Beach Department of Public
22 Safety.

23 And Item Number 4, I received from
24 Renee Best of the North Myrtle Beach Police Department.

25 Q. Okay. So, you received Items 1, 3, and 4, from

1 Renée Best of the North Myrtle Beach Police Department?

2 Is that correct?

3 A. I did. And Item Number 2 -- uh -- was inside of
4 the CSC Kit, and I separate that and send it to a
5 different department.

6 Q. Okay. So, in essence, technically, you also
7 received Item Number 2 as well, then?

8 A. I did --

9 Q. Okay.

10 A. -- also receive Item Number 2.

11 Q. All right. Okay. Now these items you're
12 referring -- let's -- When you receive a -- a rape kit,
13 what is in the rape kit, commonly?

14 A. Uh -- I don't exactly know what is packaged inside
15 the envelop in my department.

16 I do not inventory what is inside
17 of the sealed --

18 Q. Uh-huh.

19 A. -- packages. But I receive a box that is sealed.
20 Excuse me. When I open that box, there are individual --
21 uh -- envelopes inside those boxes that are sealed --

22 Q. Uh-huh.

23 A. -- uh -- that contain contents that go to different
24 departments -- uh -- the DNA Department, as well as the
25 Toxicology Department on some cases.

1 Q. Uh-huh.

2 A. Uh -- So I will take those individual sealed
3 envelopes that are inside the sealed box, put those in a
4 heat-sealed pouch.

5 And then, I will route those into
6 our evidence room -- uh -- into the proper intake storage
7 for pick up.

8 Q. Okay. So your testimony, though, is that:

9 With regard to the item that is in
10 a South Carolina Law Enforcement Division Evidence Sealed
11 Envelope and has a sticker that says: L10-10426, Number
12 1; that you are familiar with that and you did receive
13 this; correct?

14 A. I did receive that; yes sir.

15 Q. Okay. And did you package it in this fashion, or
16 would someone else have packaged it in this fashion?

17 A. I did. I would have placed the contents from the
18 CSC Kit inside of this package.

19 Q. Uh-huh.

20 A. I seal it in Renée's presence. And then she will
21 initial and date the seal, and sign and date the front of
22 the bag.

23 Q. Okay. And with regard --

24 MR. HAZZARD:

25 We would -- Defense moves to have

1 this -- uh -- marked as Defense Exhibit next in order for
2 identification at the present time.

3 MS. LIVESAY:

4 No objections, Your Honor.

5 THE COURT:

6 Without objection.

7 WHEREUPON: SLED ITEM NUMBER 1 WAS
8 MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBIT 11
9 FOR IDENTIFICATION BUT WAS APPARENTLY ENTERED INTO
10 EVIDENCE WITHOUT OBJECTION.

11 COURT REPORTER:

12 This will be Defendant's Exhibit
13 11, Your Honor, for identification.

14 MR. HAZZARD:

15 All right.

16 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

17 Q. Now, I hand you a heat-sealed envelope of plastic;
18 State of South Carolina Law Enforcement Division Evidence
19 on the front.

20 It has a -- uh -- tag on it, L10-
21 10426, Number 3.

22 I ask you if you are familiar with
23 this. And if so, how you are familiar with this?

24 A. Uh -- I did handle Item Number 3. Uh -- The -- The
25 contents of the package, this -- uh -- paper bag would

1 have been handed to my by Renee Best of the North Myrtle
2 Beach Department of Public Safety.

3 I would have placed that item into
4 the heat-sealed pouch.

5 And once again, I would have
6 sealed it in her presence, and had her initial and date
7 the seal, and sign and date the front of the bag.

8 MR. HAZZARD:

9 Okay. Defense moves to have this
10 heat-sealed pouch marked for identification as Defense
11 Exhibit next in order.

12 THE COURT:

13 Any objection?

14 (No response.)

15 Any objection?

16 MS. LIVESAY:

17 No objection from the State, Your
18 Honor.

19 WHEREUPON: SLED ITEM NUMBER 3 WAS
20 MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBIT
21 NUMBER 12, FOR IDENTIFICATION ONLY, BUT WAS APPARENTLY
22 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

23 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

24 Q. Okay, ma'am. And I hand you a heat-sealed
25 envelope of plastic that states on the front, South

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1 Carolina Law Enforcement Division Evidence; has a sticker
2 on the front that says L10-10426, Number 4, and ask you
3 if you are familiar with that item?

4 A. Number 4 -- Item Number 4, I am familiar with that
5 item.

6 I received it from Renee Best of
7 the North Myrtle Beach Department of Public Safety.

8 And I would have followed the same
9 -- uh -- procedures as I stated earlier.

10 Q. Okay. Now, you don't actually do the analysis on
11 anything that's inside; I correct?

12 A. No.

13 MR. HAZZARD:

14 Okay.

15 Defense moves to have this item
16 marked as Defense Exhibit next in order for purposes of
17 identification at this time.

18 WHEREUPON: SLED ITEM NUMBER 4
19 WAS MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBIT
20 NUMBER 13 FOR IDENTIFICATION ONLY.

21 COURT REPORTER:

22 And that would be Defendant's
23 Exhibit 13, Your Honor.

24 THE COURT:

25 Very well.

1 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

2 Q. Now, do the records reflect that you have had any
3 other evidence regarding BE [REDACTED] [REDACTED] that
4 came into your custody, care, and possession?

5 A. No sir.

6 Q. Okay. Now with regard to all items regarding the
7 case of BE [REDACTED] [REDACTED] that came into your
8 custody, care, and possession, were those items in proper
9 order as far as industry standards for -- uh -- sealing
10 them at the time they were received by you?

11 A. Yes, they were.

12 Q. Okay. Did they appear to have been altered,
13 tampered, or amended in any way?

14 A. No.

15 Q. Okay. And once you received them, you followed the
16 normal protocol set forth by the South Carolina Law
17 Enforcement Division for handling those objects?

18 A. Yes sir, I did.

19 Q. As far as the actual items within the packages, did
20 you alter, tamper with, change the contents of those
21 packages in any way?

22 A. No, I did not.

23 Q. Okay. And once you handled your part and logged
24 them, and cataloged them and -- uh -- and -- uh -- split
25 them up into the different -- uh -- appropriate ways, and

1 sealed them up, what did you do with them at that time?

2 A. Uh -- I would have placed them in the appropriate
3 intake storage.

4 Uh -- With the CSC Kit, I placed
5 that -- uh -- package, which is Item Number 1 -- uh -- in
6 our DNA Evidence Intake Storage.

7 And that is a refrigerator located
8 inside of our field evidence room.

9 MR. HAZZARD:

10 Okay.

11 The Court's indulgence, Your
12 Honor?

13 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

14 Q. On October 20th of 2010, did you receive a heat-
15 sealed patch (sic) containing buccal swabs described as
16 two swabbings from suspect Mark Alan Elliott, these to be
17 received from -- or have been received from -- uh --
18 Evidence Custodian Renée Best from the North Myrtle Beach
19 Department of Public Safety?

20 A. I did.

21 Q. Okay. And with regard to those buccal swabs, at
22 the time that you received them, were they packaged
23 appropriately based upon industry -- uh -- and scientific
24 standards, ma'am?

25 A. Yes, sir.

1 Q. Okay. And when you received them, what did you do
2 with them, if anything?

3 A. Uh -- As I stated earlier, I would have -- uh --
4 placed the package provided to me in a SLED heat-sealed
5 pouch, and would have sealed it.

6 Q. Uh-huh.

7 A. And I would have had Renee initial and date the
8 seal, and sign and date the front of the bag.

9 And then I would place it in our
10 DNA Evidence Intake Storage.

11 Q. And this item here, provided by Mr. Humbert, this is
12 not an item -- It states on its front -- uh -- heat-
13 sealed -- uh -- impulse plastic -- states on the front
14 South Carolina Law Enforcement Division Evidence Tag on
15 it L10-10426 "c," as in "cat," number, and then "a" as in
16 Adam.

17 Is it your testimony that that is
18 not an item -- uh -- that you were in the chain of
19 custody for?

20 A. I am not in the chain of custody for that item.

21 Q. Okay. Okay. And with regard to all of the items
22 received by you with regard to this case -- uh --
23 referring to BE [REDACTED] [REDACTED] that being the
24 -- uh -- rape kit and the buccal swabs -- uh -- did you
25 alter, contaminate, change, any of the items that you

1 received while they were in your care, custody, and
2 control?

3 A. No, I did not.

4 MR. HAZZARD:

5 Okay. Thank you.

6 Please answer any questions the
7 prosecutor may have.

8 Well, let me ask you this:

9 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

10 Q. Once you completed your part with them, where were
11 these items then sent?

12 A. Uh -- After I completed my part, I placed them in
13 DNA Evidence Intake Storage.

14 Uh -- And after that, I would have
15 removed them from DNA Evidence Intake Storage, and
16 transfer them to the custody of Sheree Brown, which is a
17 Forensic Technician in the DNA Department.

18 Q. Okay. And after you would have transferred them --
19 or after you did in fact transfer them to Sheree Brown,
20 did you have any further interaction with any items in
21 this case, that being dealing with BE [REDACTED]
22 [REDACTED] -- uh -- rape kit, or Mark Elliott -- uh --
23 buccal swabs?

24 A. No. I -- I did not -- uh -- retrieve the rape kit
25 out of the DNA Evidence Intake Storage.

1 Someone else in my department did.

2 But the Item 3 and 4, the buccal
3 swabs, I did transfer to Sheree Brown.

4 And I did not have any further
5 dealings with them after that.

6 Q. Okay. So you took the rape kit, did what you do
7 with it, and you put it in the Intake Storage.

8 A. Yes sir.

9 Q. And that was your last dealing with that; then?

10 A. Yes sir.

11 Q. And with regard to the buccal swabs, you took it and
12 ultimately transferred it to Sheree Brown?

13 A. I did.

14 Q. At the time you transferred the buccal swabs to
15 Sheree Brown, were they in the same condition as the time
16 that you received them?

17 A. Yes, they were.

18 Q. Had not -- or did not appear to have been tampered,
19 amended, or altered in any way?

20 A. No sir.

21 MR. HAZZARD:

22 All right. Thanks.

23 Please answer any questions the
24 prosecutor may have?

25 MS. LIVESAY:

1 Thank, Your Honor. A few
2 questions.

3 CROSS-EXAMINATION BY MS. LIVESAY:

4 Q. Uh -- Ms. Perry, are these bags that you sealed
5 everything up with -- just so everybody knows -- this
6 isn't the original bag that you sealed it in, is it, when
7 Ms. Best gave it to you?

8 A. Uh -- In her presence, this would have been the bag
9 that I sealed it up in when she -- uh -- presented me the
10 evidence.

11 Q. Okay. But this -- this -- this is just the bag
12 that you sealed it up in for it to come back to Horry
13 County?

14 Is that right.

15 A. No. That is the bag that I placed it in when she
16 originally brought it to me.

17 Q. So this bag has never been opened up?

18 A. Yes; it has been opened up.

19 Q. Okay. But it --

20 A. But not by me.

21 Q. Okay. But it has been opened by somebody, and then
22 resealed, and sent back to us?

23 A. Yes.

24 Q. Okay. And it's opened up by whoever handles it
25 next?

1 A. Uh -- It is -- That would have be answered by the
2 DNA Department.

3 But -- uh -- I believe it is
4 opened up by the DNA Analyst.

5 Q. Okay.

6 A. And then he would seal it, and initial, and date
7 where he opened it up.

8 And then -- uh -- when it is
9 returned down to evidence control to be returned back to
10 the agency, it's always sealed.

11 Q. Okay. So it is -- this bag has been opened and re-
12 sealed?

13 A. Yes, it has.

14 Q. Okay. I just want to make that clear. Now -- uh
15 -- how many items will SLED take from an agency? It
16 depends on the case. But not an infinite number?

17 A. Uh -- It -- It depends on the case.

18 Q. Okay. But not an infinite number?

19 A. Uh -- Depends on the case.

20 Q. Okay. Uh -- Do you -- Do you send stuff back with
21 agencies?

22 A. We do.

23 Q. Okay. So when an agency brings you an evidence
24 that's involved in a certain case, you don't always take
25 all that evidence in; do you?

1 A. Uh -- Currently, we changed the case acceptance
2 policy.

3 Uh -- But it used to be that they
4 would take numerous items for cases.

5 Q. That's not a policy now, though, is it?

6 A. Uh -- It is not.

7 Q. What is the policy now?

8 A. Our policy now -- uh -- There's -- It's different
9 for different departments -- uh -- a specific department.

10 Q. Okay. Uh -- How many items do you take in from an
11 agency?

12 A. Uh -- It's according to the case.

13 Q. Okay. But you do send some items back?

14 A. Uh -- I don't have the authority to send it back.
15 If it is -- doesn't follow our case acceptance policy, it
16 is a possibility some items that -- that are submitted
17 can be sent back -- uh -- but they --

18 Q. Without being tested, just sent back with the agent?

19 A. It's a possibility if that -- like, the DNA
20 Department, or other departments -- uh -- they are the
21 ones who may make that decision that they will not accept
22 the evidence.

23 Q. Okay. So, are you familiar with them not accepting
24 that evidence?

25 A. Uh -- On some cases.

1 Q. Okay. And are you the one that gives the evidence
2 back to the agency to be sent back?

3 A. We -- We are the department that will return the
4 evidence -- uh -- either after analysis, or if it was
5 never tested, back to the agency.

6 Q. Okay. Are there items that you've sent back to
7 agencies that have not been tested?

8 A. Yes, they have been times I've sent back evidence --

9 Q. Okay.

10 A. -- that hasn't not been tested.

11 Q. Because SLED, for whatever, didn't feel like that
12 was something that they wanted to test?

13 A. Correct.

14 Q. Okay. And in this case, did you make any notations
15 of whether or not you sent any evidence back?

16 A. Not that I know of.

17 Q. Okay. Could you send evidence back and it not be
18 noted?

19 A. Uh -- It's a possibility.

20 Q. Okay. So you don't keep a record of everything,
21 just what's taken in and what's tested?

22 A. Right. I have the record of what I logged in that
23 was presented to me.

24 There could be items that -- that
25 an agency took items back; but I won't have that; because

1 I only go by what's on the sheet that is going to be
2 logged in over there.

3 Q. Okay. So you wouldn't have any idea of how many
4 ages an agency sends and y'all don't test and send them
5 back, because y'all don't keep a record of that?

6 A. Uh -- Sometimes there is a record of that.

7 Q. Okay. Some -- All the time --

8 A. If it is accepted at the time of login, and someone
9 makes the decision upstairs in that department that it is
10 not necessary to test these items, then they will come
11 back down to my department, and I will return those items
12 to the submitting agency.

13 They may have been logged in, and
14 may have been in the lab; they just may not have been
15 tested.

16 Or it could be that they brought
17 it in at the time of login, and it wasn't presented to
18 us, and they take it back with them; and it never made it
19 as an item or logged in on the case.

20 Then, I would not have a record of
21 that.

22 Q. Okay. And are there times that SLED says:

23 We're not taking this item --

24 MR. HAZZARD:

25 Okay. Your Honor, at that point,

1 I'm going to ask:

2 Is there any actual relevance to
3 this line of questioning.

4 MS. LIVESAY:

5 Sure there is, Your Honor.

6 MR. HAZZARD:

7 If she is asking specifically
8 about a specific item, I would submit she can ask Ms.
9 Perry about the specific item.

10 MS. LIVESAY:

11 Your Honor, I'm --

12 THE COURT:

13 And that -- that might be helpful;
14 but go ahead, Ms. Livesay.

15 MS. LIVESAY:

16 Thank you.

17 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

18 Q. Are there times when your agency sends back items
19 without being tested?

20 A. Yes.

21 Q. Okay. And there are people in your agency that
22 makes that decision that:

23 We're not testing this item.

24 And they send it back with that
25 agency?

1 A. There have been times; yes.

2 Q. Okay. There have been times. Did -- Was this case
3 a time when you sent back clothes, and would not accept
4 then into SLED and test them?

5 A. I am not sure.

6 Q. Okay. And you're not sure because you don't take a
7 record of the items that you won't take in and won't
8 test; is that right?

9 A. Because, according to my chain of custody, there are
10 not clothes that were submitted on this case.

11 So I am not sure if they have
12 clothes to submit.

13 But I did not log them in.

14 They were not presented to me.

15 Q. Okay. So, it's your testimony that nobody from
16 North Myrtle Beach brought any clothes up there for SLED
17 to test; and SLED told them they wouldn't take them?

18 A. I am not sure.

19 Q. Okay. So you -- you don't know?

20 A. I don't know.

21 Q. Okay. Because you wouldn't take a record of that?

22 A. I don't write that down.

23 Q. Okay.

24 A. But our case acceptance policy now, since 2009, in
25 DNA states they will first accept a CSC Kit and any

1 standards.

2 And they may hold onto clothing in
3 the future if they need it to test it.

4 Q. Okay. They may hold onto it?

5 A. They can hold on to their clothing. If they would
6 like to bring it up for further testing, they can contact
7 the DNA Department.

8 Q. Okay. But SLED makes the ultimate call on what
9 they are going to test and what they aren't going to
10 test?

11 A. Yes.

12 Q. Okay. So just because we send it up there, it
13 doesn't mean y'all are going to test it?

14 A. Correct.

15 MS. LIVESAY:

16 Okay. No further questions.

17 MR. HAZZARD:

18 Very briefly.

19 RECROSS-EXAMINATION BY MR. HAZZARD:

20 Q. In this particular case, do you have any record of
21 sending anything back?

22 A. No sir.

23 Q. Okay. And in fact, that record would best be kept
24 by whoever brought it to you; right?

25 A. Correct.

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1 Q. Okay. Which would be Renee Best? That's who
2 brought you everything else; right?

3 A. Correct.

4 MR. HAZZARD:

5 All right. No further questions.

6 THE COURT:

7 All right, you may step down.

8 WITNESS:

9 Thank you.

10 MR. HAZZARD:

11 Ask that -- uh -- Ms. Perry be
12 excused.

13 THE COURT:

14 Ms. Perry --

15 MS. LIVESAY:

16 That's fine with us, Your Honor.

17 THE COURT:

18 Ms. Perry, you are released from
19 your subpoena.

20 WITNESS:

21 Thank you.

22 MR. HAZZARD:

23 Defense calls Patricia Crooks from
24 the South Carolina Law Enforcement Division at this time.

25 THE COURT:

1 Good afternoon.

2 WITNESS:

3 Good afternoon.

4 WHEREUPON: PATRICIA CROOKS WAS
5 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

6 CLERK:

7 Thank you. Please be seated.

8 Okay. If you will State your
9 full name, and spell your last name; okay.

10 WITNESS:

11 Patricia Crooks; C-r-o-o-k-s.

12 DIRECT EXAMINATION BY MR. HAZZARD:

13 Q. Good afternoon, Ms. Crooks. How are you doing?

14 A. Fine thank you.

15 Q. Okay. Uh -- How are you employed at the present
16 time?

17 A. I'm employed by the South Carolina Law Enforcement
18 Division, also known as SLED.

19 Q. And what is your position up there, ma'am?

20 A. I'm the Forensic Technician in Evidence Control.

21 Q. Okay. And what does a Forensic Technician in
22 Evidence Control do?

23 A. Uh -- My position -- uh -- entails pulling evidence
24 for, either forensic scientist or technicians -- uh --
25 for their examination, taking that evidence back in after

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1 it's been examined, and swatching it; and then -- uh --
2 returning that evidence to the agency that submitted it.

3 Q. Okay. And in this case -- uh -- did you receive or
4 come into contact with -- uh -- some evidence on Case
5 Number "L" as in "Larry," 10-10426?

6 A. Yes, I did.

7 Q. Okay. And is that -- uh -- number, a number that
8 SLED assigns to -- uh -- evidence that they receive?

9 A. In this case, that's correct.

10 Q. And in this case, does that number refer to evidence
11 received -- uh -- that deals with this case; that being
12 Ms. BE [REDACTED] [REDACTED]

13 A. Correct.

14 Q. Okay. Now, tell the jury, if you would, what you
15 received; when you received it; and what you did with it?

16 A. Okay. Uh -- I took custody of Item 1 in this case,
17 a heat-sealed pouch containing CSC Kit described as

18 BE [REDACTED] [REDACTED]

19 I took custody of that -- uh --
20 September the 20th of 2010, at 9:16.

21 I then transferred custody of that
22 evidence to Forensic Technician Sheree Brown -- uh --
23 September the 20th of 2010 at 9:17.

24 Q. Okay. And when you took custody of it on September
25 -- Well, let me ask you this.

1 At -- From that point, did you
2 have anything else to do with, either that item, Item 1,
3 or Items Numbers 2, 3, or 4, in this case?

4 A. Yes, I did.

5 Q. Okay. Tell us about that if you would, ma'am?

6 A. On Item 1.7, which is one sealed white paper bag
7 containing underwear described as BE [REDACTED]
8 [REDACTED] I took that evidence on 10/7/2010 at 15:46
9 from Jan Bryson -- she's a Forensic Technician -- and, in
10 turn, I placed that in storage on 10/7/10 at 15:52, and I
11 placed it -- uh -- in Bin 9, Shelf F, in the evidence
12 room.

13 Okay. Tor Item Number 2 in that
14 case --

15 Q. Uh-huh.

16 A. -- uh -- one heat-sealed pouch containing blood,
17 toxicology, described as labeled [REDACTED] BE :"

18 I --

19 Q. Okay. Let me stop you right there for a second.

20 A. Okay.

21 Q. You mentioned an item 1.7, I believe, or 1.71,
22 something like that, a number with a decimal after it,
23 then another number; correct?

24 A. Yes.

25 Q. Now, does that mean that -- uh -- that's kind of a

1 break down of different things included in the overall
2 Item 1 itself, the overall rape kit?

3 A. As I understand it; yes.

4 Q. Okay. So you've got the rape kit, which itself is
5 Item 1.

6 Then, when it arrives at SLED,
7 it's broken out into different parts.

8 And those different parts start
9 with the first number, the Item 1, because that's where
10 it comes from.

11 But then, there's a decimal; then
12 there's a second number indicating which piece of that
13 overall whole that initially arrived at SLED; right?

14 A. That's -- That's correct. We call those sub-items.

15 Q. Okay. Okay. But all that means is:

16 They're all stuff that came out of
17 the same box, Item 1?

18 A. As far as I know --

19 Q. As far as you know?

20 A. -- yes sir.

21 Q. All right. Now, I'm sorry I interrupted you. You
22 were talking about -- uh -- either Item 3 or Item 4.

23 A. What was Item 2?

24 Q. Item 2; yes ma'am.

25 A. Okay. And that -- that evidence, I removed from

1 the Toxicology Intake Storage --

2 Q. Uh-huh.

3 A. -- within the evidence room on 9/20 of 2010 at 9:12.

4 Q. Uh-huh.

5 A. And I transferred custody of that evidence on

6 9/20/2010 at 9:13 to Forensic Technician Brannon

7 Williams.

8 Q. Okay. Now, with regard to Item 3, did you have any
9 interaction with that item, ma'am?

10 A. No, I did not.

11 Q. And with regard to Item 4, did you have any
12 interaction with that item?

13 A. No, I did not.

14 Q. So we're talking about Item 1 and the subitems from
15 Item 1 that you had interaction with; correct?

16 A. Yes sir.

17 Q. And with regard to that particular item, and its
18 sub-items; that being Item 1, the rape kit for BE

19 [REDACTED] and its sub-items, when you received
20 it -- uh -- and the sub-items -- when you receive those
21 pieces, were they -- uh -- packaged appropriately for
22 SLED protocol and industry standards, ma'am?

23 A. Yes. However, I didn't receive all of the sub-
24 items. I only received sub-items 1.2.

25 Q. Yes ma'am. And with regard --

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1 A. They were intact and sealed.

2 Q. Okay. And with regard to Sub-item 1.2, and that is
3 -- Well, how is that listed?

4 What is that listed as, ma'am?

5 A. Let me see. Is that the -- Correction, it was not
6 1.2. It's 1.7.

7 Q. Okay.

8 A. That was my mistake.

9 Q. All right. No problem, ma'am.

10 So what is Item -- What is Item
11 1.7 defined as or described as?

12 A. Uh -- One sealed white paper bag containing
13 underwear described as BE [REDACTED] [REDACTED]

14 Q. Okay. And any other sub-items did you have
15 interaction with in this case?

16 A. No, I did not.

17 Q. Okay. But now as far as the CSC Kit itself, Item 1
18 as a whole -- uh -- you received that as a whole?

19 Is that correct; September 20th of
20 2010 at 9:16 AM?

21 Is that correct?

22 A. That's correct.

23 Q. Okay. And when you received Item 1 as a whole, was
24 it in appropriate condition as far as packaging and
25 sealing?

1 A. Yes, it was.

2 Q. Okay. And did you, when you received it -- uh --
3 did you do anything to alter, amend, or contaminate,
4 destroy the item as a whole, or anything contained within
5 that item, the rape kit?

6 A. No, I did not.

7 Q. Okay. And with regard to Item 1 itself, what did
8 you do with it after you took possession of it on
9 September 20th, 2010 and 9:16 AM?

10 A. I transferred that evidence to Forensic Technician
11 Sheree Brown --

12 Q. Okay.

13 A. -- uh -- at 9:17.

14 Q. And when you transferred this to Ms. Brown at 9:17,
15 in exactly one minute later, was it still in the same
16 condition as when you received it?

17 A. Yes, it was.

18 Q. Had not been altered, or amended, or changed in any
19 way?

20 A. No, it had not.

21 MR. HAZZARD:

22 All right. Thank you.

23 Please answer any questions that
24 the State may have?

25 Thank you so much for being here.

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1 WITNESS:

2 Okay.

3 MS. LIVESAY:

4 I have no questions for this
5 witness, Your Honor.

6 THE COURT:

7 You may step down.

8 Any -- uh -- objection to
9 releasing this witness from her subpoena?

10 MR. HAZZARD:

11 None from the Defense, Your Honor.

12 THE COURT:

13 How about from the State?

14 MS. LIVESAY:

15 None from the State, Your Honor.

16 THE COURT:

17 All right.

18 You are released from your
19 subpoena. Thank you for coming.

20 WITNESS:

21 Thank you.

22 THE COURT:

23 Call your next witness.

24 MR. HAZZARD:

25 The Defense would call Sheree

1 Brown at this time, Your Honor.

2 WHEREUPON: SHEREE BROWN WAS DULY
3 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

4 CLERK:

5 Thank you. Please be seated.

6 Okay. Please state your full
7 name and spell your last name?

8 WITNESS:

9 Sheree Brown; B-r-o-w-n.

10 DIRECT EXAMINATION BY MR. HAZZARD:

11 Q. Hey, Ms. Brown. How are you employed?

12 A. Good.

13 Q. (Laughs.) Actually, I was --

14 A. Oh --

15 Q. Well, how are you doing?

16 A. I'm doing good.

17 Q. All right, Sheree. And how you employed, ma'am?

18 A. Uh -- I'm employed with the South Carolina Law
19 Enforcement Division, also known as SLED.

20 Q. Okay. And how long have you been so employed?

21 A. Uh -- Almost 16 and a half years.

22 Q. All right. Uh -- What is your position at SLED,
23 ma'am? What did you do?

24 A. Well, currently, I'm a for -- uh -- Forensic
25 Technician in -- within the DNA Department.

1 Q. And what does a Forensic Technician do, ma'am?

2 A. Uh -- One of my duties as a -- a Technician within
3 the DNA Department is retrieving evidence from Evidence
4 Control that was submitted to SLED by -- uh -- law
5 enforcement agencies within the State of South Carolina.

6 Q. Okay. And in this case, did you happen to have
7 the -- uh -- cause to deal with and handle some evidence
8 in Case L, as in Larry, 10-10426?

9 A. Yes.

10 Q. And does that case deal with -- uh -- Ms. BE

11 [REDACTED]

12 A. Correct.

13 Q. Okay. If you would, please tell the jury -- uh --
14 Well, first let me ask you this:

15 First of all, tell us:

16 Uh -- What did you come into
17 contact with and when did you come into contact with it?

18 A. Uh -- I can read from my chain of custody. Uh --

19 Q. Would that help you refresh your recollection,
20 ma'am?

21 A. Yes, it would be.

22 Q. Okay. Thank you, ma'am.

23 A. Uh -- SLED Item Number 1 that -- uh -- it's assigned
24 -- A case is assigned when it comes in the door, and it's
25 given a Lab Number; L10-10426.

1 And then, each item that is
2 submitted is given a chronological number.

3 So, I was in contact with Item
4 Number 1.

5 Q. Uh-huh.

6 A. And it's a CSC Kit described from BE [REDACTED]

7 [REDACTED]

8 Q. Uh-huh.

9 A. Uh -- When I received that from Patricia Crooks on
10 9/20/2010, she transferred it from her custody to my
11 custody.

12 I kept it at my custody until
13 October the 4th, 2010.

14 But during that time when it was
15 in my custody -- uh -- I opened up the heat-sealed pouch
16 --

17 Q. Uh-huh.

18 A. -- and it was in there -- it had -- the CSC Kit had
19 several items.

20 Q. Uh-huh.

21 A. So our policy within the lab, I take the liquid
22 blood tubes that are drawn when it's collected --

23 Q. Uh-huh.

24 A. -- and I stabilized it.

25 Q. Okay.

1 A. And that -- stabilizing, it means I took the blood
2 liquid part and put it on a filter paper and let it dry;
3 and then repackaged up.

4 Q. Okay. And is that -- uh -- subject -- is that
5 something that is consistent with South Carolina Law
6 Enforcement Division protocol and industry scientific
7 protocol?

8 A. Yes.

9 Q. Okay. Please continue, ma'am.

10 A. So that became Item 1.1.

11 Q. Okay.

12 A. So those -- those two items was then transferred to
13 a -- uh -- secure storage drawer within the DNA
14 Department.

15 Q. And when did you transferred that Item 1.1 to the
16 DNA storage drawer?

17 A. One -- Item 1 and 1.1 was transferred on October the
18 4th, 2010.

19 Q. Okay. Please continue, ma'am.

20 A. And then my next contact -- uh -- came with Items 4
21 -- uh -- 3 and 4.

22 Q. Okay. So let's stop right there.

23 So at that point, then, Item 1,
24 which started out as the -- uh -- CSC Kit for BE
25 [REDACTED] [REDACTED] has been opened by you, separated out

1 to some extent as far as at least the blood standard, and
2 -- uh -- placed in a DNA storage drawer?

3 Is that correct?

4 A. Correct.

5 Q. Okay. And at -- After that time -- After placing
6 it in the DNA storage drawer, did you have any other
7 dealings with Items 1m or its subparts?

8 A. No, I did not.

9 Q. Okay. And then, you indicated the next thing that
10 you dealt with in this case would've been Item 4?

11 A. Uh -- Items 3 and num -- and 4.

12 Q. Okay. And what was Item 3, ma'am?

13 A. Item 3 -- uh -- is listed as one heat-sealed pouch
14 containing buccal swabs described as two swabbings from
15 victim MH

16 Q. Okay.

17 A. And --

18 MS. LIVESAY:

19 Your Honor, at this time, I would
20 say I have to make an objection.

21 I thought it had already been a
22 ruling on the evidence that was going to be admissible.

23 I'm not sure why now we're
24 allowing ---

25 THE COURT:

1 She's just identifying a buccal
2 swab, Ms. -- uh -- Livesay.

3 Uh -- Go ahead, Mr. Hazzard.

4 MR. HAZZARD:

5 Okay.

6 THE COURT:

7 We may have to get to that point
8 later; but not now.

9 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

10 Q. Now with regard to -- let's see -- Bear with me one
11 moment please, ma'am.

12 And with regard to Item 4, did you
13 have any dealings with that item, ma'am?

14 A. Yes.

15 Q. Okay. And what is Item 4 listed as?

16 A. One heat-sealed pouch containing buccal swabs
17 described as two swabbings from suspect Mark Alan
18 Elliott.

19 Q. Okay. And when did you deal with this Item 4, and
20 what did you do with it?

21 A. Uh -- Item 4; I received it from Forensic Technician
22 Nikki Perry on 10/21.

23 And she gave custody to me in the
24 computer. And I physically took custody of it on
25 10/21/2010.

1 Q. Okay. And when you physically took custody of Item
2 4, the buccal swabs from Mark Alan Elliott, and the Item
3 1 itself as a whole, and then the subpart -- uh -- Item
4 1.1, the blood standard -- and let's make sure.

5 Did you deal with any other
6 subpart of Item 1, other than the blood standard, ma'am?

7 A. No, I did not.

8 Q. Okay. So with regard to Item 1 as a whole, you're
9 dealing with that; and Item 1.1, the blood standard.

10 Were those items -- uh -- when you
11 received them in appropriate condition as far as being
12 sealed per SLED standards and scientific industry
13 standards?

14 A. Yes.

15 Q. Okay. And did you alter them, change them, amend
16 them, in any way, shape, or form, while they were in your
17 possession, care, custody, and control?

18 A. I only stabilized the blood standard.

19 Q. Okay. And in stabilizing the blood standard -- uh
20 -- to your training and knowledge, does that in any way
21 change the blood itself?

22 A. No, it does not.

23 Q. Okay. And with Item 4, I believe you said was the
24 buccal swabs taken from Mr. Elliott?

25 Is that correct?

1 A. Correct.

2 Q. Okay. When you received that -- uh -- was it
3 appropriately packaged?

4 Did it appear at that time when
5 you received it that it had been damaged or tampered with
6 in any way, shape, or form?

7 A. Uh -- No, it was not.

8 Q. Okay. And while it was in your care, custody, and
9 control, did you damage it, amend it, adulterate it, or
10 change it in any way?

11 A. No.

12 Q. Okay. And what did you subsequently do with Item
13 4, ma'am?

14 A. It was in my custody. And DNA analyst Jassup --
15 Jasper Humbert -- uh -- took custody of it --

16 Q. Okay.

17 A. -- because he was the DNA Analyst on the case.

18 Q. Okay. And when you gave custody of it to him, was
19 this -- uh -- in substantially the same condition as when
20 you received it?

21 A. Yes.

22 MR. HAZZARD:

23 Okay. No further questions for

24 Ms. Brown.

25 Please answer the questions the

1 State may have.

2 MS. LIVESAY:

3 I have no questions for this
4 witness, Your Honor.

5 THE COURT:

6 You may step down, Ms. Brown. Any
7 objection to my excusing Ms. Brown?

8 MR. HAZZARD:

9 None from the Defendant, Your
10 Honor.

11 THE COURT:

12 From the State?

13 MS. LIVESAY:

14 Nothing from the State, Your
15 Honor.

16 THE COURT:

17 Ms. Brown, you're released from
18 your subpoena. Thank you for coming.

19 MR. HAZZARD:

20 Defense would call Jasper Humbert
21 to the stand.

22 MS. LIVESAY:

23 Your Honor, at this time, the
24 State, obviously, asked for, as an abundance of caution,
25 some motions be heard outside the presence of the jury.

1 THE COURT:

2 All right.

3 Take the jury back.

4 (WHEREUPON: The jury empanelled
5 in the case withdrew from the courtroom at 4:08 PM,
6 November 18, 2010; and was no longer present during the
7 following proceedings.)

8 THE COURT:

9 All right.

10 MS. LIVESAY:

11 Your Honor, the State just asks
12 that -- uh -- A. If we could, because there's obviously
13 already been mentioned that a swab was taken from Matthew
14 Howard even though the rule says:

15 No, That was inadmissible.

16 THE COURT:

17 No, I didn't rule on that.

18 And what difference does it make
19 that Mr. --

20 MS. LIVESAY:

21 He has indicated --

22 THE COURT:

23 -- Howard -- Howard had a swab?

24 I mean, that doesn't tell the jury
25 anything.

1 MS. LIVESAY:

2 My question at this point, though,
3 is the questions that are going to be asked to Jasper by
4 the Defense.

5 I'd like to have some idea, or
6 some in camera hearing.

7 Because once the jury hears those
8 answers, that's going to be --

9 THE COURT:

10 Well, what are you're going to ask
11 him?

12 MS. LIVESAY:

13 Are -- Are we asking --

14 THE COURT:

15 Mr. Howard? I mean -- uh -- Mr.
16 Hazzard?

17 MR. HAZZARD:

18 I guess, first of all, Your Honor,
19 with regard to the Item 3 issue -- the issue of
20 mentioning MH

21 I would submit, and I've already
22 explained to opposing counsel, the reason that occurred
23 is because the prosecutor has this policy of they keep
24 redacting things.

25 So, they actually redacted the

1 name on the copy of the discovery I received.

2 And all I see is, it says:

3 Two swabbings from victim.

4 And so I'm assuming it was Ms.

5 [REDACTED]

6 Never my intention to have
7 anything said about Mr. Howard.

8 Now, as far as what I'm going to
9 ask Mr. -- briefly -- to Mr. Humbert, besides obviously
10 completing the chain of custody, moving those items into
11 evidence up there; that being 1, 3, and 4.

12 Uh -- I'm simply going to ask him
13 with regard to -- let's see -- his report regarding Item
14 1.3, which are vaginal swabs, and Item 1.5, which are
15 rectal swabs:

16 Is it a fair statement based on
17 his report due to his -- Is his statement -- or is his
18 report that Mark Elliott is excluded as a possible
19 contributor to the -- uh -- vaginal swabs, or whatever
20 was taken as a part of the vaginal swab; and with regards
21 to Item 1.5, the rectal swab:

22 Is it true that Mr. Elliott -- I
23 mean, I -- I guess I can say he's excluded, because he
24 doesn't mention Mr. Elliott at all.

25 He says it's an unidentified male,

1 which I would think would obviously exclude Mr. Elliott.

2 THE COURT:

3 Well, just ask him if he was able
4 to exclude Mr. Elliott from the vaginal and anal swabs?

5 MR. HAZZARD:

6 All right, sir.

7 MS. LIVESAY:

8 Can we ask him, Your Honor, if
9 there's a match.

10 Because obviously, if we're asking
11 him:

12 Can he be excluded as a
13 contributor?

14 Then, we've already let the jury
15 know that we are talking about some sort of mixture, or
16 there's a possibility --

17 THE COURT:

18 Well, what we're going to do is
19 ask him what -- And -- And Ms. Livesay, you've got to
20 understand, you had these test run.

21 The rape shield is not a blanket
22 prohibition against any evidence of prior sexual conduct
23 by the victim.

24 Proffered evidence of the victim's
25 sexual conduct is admissible where it's essential for a

1 fair and -- a fair and full trial of the -- or
2 determination of the defendant's guilt; and not issued or
3 offered to attack the victim's credibility.

4 That's the purpose of rape shield.

5 That's the ruling of The Court in
6 State versus Finley.

7 Now, I'm trying to keep it all
8 out. And I want to keep it all out, Mr. Hazzard.

9 But if you go very deeply into
10 this as to why they couldn't get a match on the other
11 matters --

12 MS. LIVESAY:

13 I -- I have no intentions of going
14 into it. That's --

15 THE COURT:

16 Well, somebody -- You'd better be
17 careful.

18 Mr. Hazzard, I think we can get
19 everything you need by simply asking:

20 If there was -- If he can use the
21 word "match," or "exclude."

22 Ask him if he got a match. And
23 then ask him if it excludes him.

24 MS. LIVESAY:

25 I -- I think if we're asking if

1 there's a match and whether or not he was --

2 THE COURT:

3 Why don't you ask.

4 MS. LIVESAY:

5 -- excluded or indicated.

6 I don't see why we can't just ask

7 him:

8 Does he DNA match up to anything?

9 No.

10 Did his DNA match up on these

11 items?

12 No.

13 Is there a match?

14 No.

15 I don't see why we have to get

16 into contributors and --

17 THE COURT:

18 I don't think you have to.

19 MS. LIVESAY:

20 -- was he excluded as a

21 contributor.

22 THE COURT:

23 I don't think you have to.

24 MR. HAZZARD:

25 Then, do you want to stipulate to

1 that now --

2 MS. LIVESAY:

3 I don't see why I have stipulate
4 it.

5 MR. HAZZARD:

6 -- that there is --

7 MS. LIVESAY:

8 We'll just ask him:

9 Is that a match?

10 No.

11 I mean --

12 MR. HAZZARD:

13 That's --

14 THE COURT:

15 Well, I mean, you got to let him
16 ask it, Ms. Livesay.

17 If you don't want to stipulate to
18 the results; that's fine.

19 You know, you're not stipulating
20 to any of the chain. And we're spending the afternoon
21 going through the chain.

22 And we'll do that.

23 But you got to let him ask the
24 questions if you're not willing to stipulate it in some
25 form that agreeable to you.

1 If you will stipulate it in some
2 form that's agreeable, we don't have to call the
3 witnesses.

4 You don't have to worry about a
5 problem.

6 If you're not, we got to let him
7 ask the question.

8 In -- In some form or fashion,
9 this witness needs to testify as to whether there's DNA
10 evidence against Mr. Elliott?

11 I mean --

12 MS. LIVESAY:

13 I understand, Your Honor.

14 THE COURT:

15 -- Defense is willing to just
16 fashion a stipulation between yourselves that you both
17 think's fair.

18 And we'll just give it to the
19 jury.

20 The DNA tests did not incriminate
21 him; or whatever.

22 MS. LIVESAY:

23 Uh -- We can go ahead and call him
24 instead of us stipulating, Your Honor.

25 THE COURT:

1 Okay. All right.

2 Bring the jury back.

3 MR. HAZZARD:

4 Your Honor, specifically I am
5 going to be dealing only with the vaginal swabs, the
6 rectal swabs, and -- uh -- Mr. Elliott's buccal swabs;
7 ask him if he tested them; and ask him based upon -- uh
8 -- the report that he issued on October 27th, 2010 -- uh
9 -- is it a correct statement of scientific fact that Mr.
10 Elliott is excluded -- uh -- from -- uh --

11 THE COURT:

12 Well, let's just not --

13 MR. HAZZARD:

14 -- any match that --

15 THE COURT:

16 -- not to ask him -- He may tell
17 you that "excluded" is not the right word.

18 We'll just have to see.

19 MR. HAZZARD:

20 Your Honor, that's what it says:

21 Excluded as a possible --

22 THE COURT:

23 Okay. All right. Good.

24 MR. HAZZARD:

25 -- contributor to the mixture.

1 THE COURT:

2 If that's what --

3 MR. HAZZARD:

4 That determining what's --

5 THE COURT:

6 -- the report says -- If that's
7 what it says, that's what it is.

8 MR. HAZZARD:

9 All right. Okay.

10 (WHEREUPON: The jury empanelled
11 in the case was escorted back into the courtroom at 4:14
12 PM, November 18, 2010; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 All right, call you next witness.

16 MR. HAZZARD:

17 The Defense calls Jasper Humbert
18 of the South Carolina Law Enforcement Division.

19 THE COURT:

20 Mr. Humbert, come right around.

21 WITNESS:

22 Yes sir.

23 WHEREUPON: JASPER HUMBERT WAS

24 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

25 CLERK:

TESTIMONY OF JASPER HUMBERT

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1 Thank you. Please be seated.

2 Okay. If you will State your
3 full name, and spell your last name.

4 WITNESS:

5 My name is Jasper Humbert; H-u-m-
6 b-e-r-t.

7 DIRECT EXAMINATION BY MR. HAZZARD:

8 Q. Uh -- Mr. Humbert, how are you employed at present?

9 A. Uh -- I'm employed at the -- uh -- South Carolina
10 Law Enforcement Division, also known as SLED.

11 Q. And what do you do for the South Carolina Law
12 Enforcement Division, also known as SLED?

13 A. I'm a forensic DNA Analyst in the DNA Department.

14 Q. If you would, tell me what course of education and
15 training does one have to be to hold that position?

16 What's your education and
17 training, sir?

18 A. Well -- uh -- I have a Bachelors of Science Degree
19 in -- uh -- Biology from Armstrong Atlantic State
20 University in Savannah, Georgia.

21 I have a Masters in Biological
22 Sciences from -- uh -- the University of Iowa.

23 And I have a further three years
24 of -- uh -- graduate education in a Genetics' PhD Program
25 from the Penn State Medical College in Hershey,

1 Pennsylvania.

2 Q. And again, how long have you been employed at SLED
3 in that position as a Forensic DNA Analyst?

4 A. Uh -- Approximately 4 and a half years.

5 Q. Okay. And in that position, did you have the
6 opportunity and cause to analyze some evidence on a case
7 listed as L-10- -- L-10 --- L10-10426, sir?

8 A. Uh -- Yes, I did.

9 A. Okay. And that deals with -- uh -- samples taken
10 from Ms. BE [REDACTED] [REDACTED] sir?

11 A. Uh -- That is correct.

12 Q. Okay. And did you also have the opportunity and
13 cause to deal with some buccal swabs -- uh -- taken from
14 Mark Alan Elliott?

15 A. Uh -- The swabs were labeled "Mark Elliott."

16 Q. "Mark Elliott?" Okay. And did you do anything, or
17 have any interaction with those swabs?

18 A. Uh -- I basically did a DNA test on those swabs.

19 Q. Okay. Now what did you receive? Or, Let me show
20 you these items.

21 I have here, items that have been
22 marked for identification as Defendant's 12, Defendant's
23 11, and Defendant's 13 for identification.

24 A. Uh -- This -- uh -- evidence pouch -- uh -- should
25 hold the buccal swabs from a -- uh -- MH

1 Uh -- Item 4 will be buccal swabs
2 from Mark Elliott.

3 Q. Okay.

4 A. And -- uh -- Defendant's Exhibit 11, which SLED Item
5 1 -- uh --

6 Q. Uh-huh.

7 A. -- should be the sexual assault kit.

8 Q. Okay. And what all does -- As part of the sexual
9 assault kit, did you have -- uh -- 1.3 as a subpart of
10 the total kit, and 1.5?

11 A. Uh -- Yes, I did.

12 Q. And should those be included, and to your knowledge,
13 are they the included in -- in that item you're holding?

14 A. Uh -- They should be. Uh -- I could open it and
15 pull them out if need be.

16 But, if -- I have sealed this
17 pouch and have my initials on it, so I would assume that
18 those items are in it.

19 Q. Okay. When you say you are referring to that
20 pouch, please read the -- uh -- evidence number on it.

21 A. Evidence item -- uh -- Defendant's' Exhibit Number
22 11.

23 Q. Okay. All right. So you recognize the
24 Defendant's Exhibits that I've handed you.

25 And that's what again?

1 11, 12, and 13?

2 A. Uh -- That is correct.

3 MR. HAZZARD:

4 Okay.

5 Move to have these items admitted
6 into evidence at this time as Defense Exhibits, Your
7 Honor.

8 THE COURT:

9 Counsel.

10 MS. LIVESAY:

11 There was no objection, Your
12 Honor.

13 THE COURT:

14 All without objection.

15 WHEREUPON: ITEMS EARLIER MARKED
16 BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS NUMBERS 11,
17 12, AND 13, WERE NOW ENTERED INTO EVIDENCE WITHOUT
18 OBJECTION.

19 MR. HAZZARD:

20 Okay.

21 The Court's indulgence?

22 Are we ready, sir? Okay.

23 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

24 Q. Now, over the course of you employment with SLED --
25 uh -- roughly do you -- can you tell the jury how many --

TESTIMONY OF JASPER HUMBERT

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1 uh -- CSC Kits you've analyzed and processed?

2 How many DNA samples you've done?

3 A. Uh -- For sexual assault kits, I've probably done in
4 the hundreds at this time.

5 And as far as samples go, well
6 into the thousands.

7 Q. Okay. And I'm going to -- uh -- focus my position
8 in this case -- or my questions in this case -- uh --
9 specifically on Item 1.3, which are the -- which are
10 vaginal swabs, and Item 1.5, which are rectal swabs -- uh
11 -- taken from Ms. BE [REDACTED] [REDACTED]

12 Is that correct based on your
13 documentation?

14 A. Uh -- That is correct.

15 Q. Okay. With regard to those two items, did you
16 perform analysis on them, sir?

17 A. Yes, I did.

18 Q. Okay. And as part of that analysis, did you also
19 analyze the buccal swabs taken from Mark Elliott?

20 A. Uh -- Yes, I did.

21 Q. And did you do -- How do you -- And how do you
22 compare these things?

23 Why -- How do you compare his DNA
24 results with something from someone else?

25 A. Well, basically the way that I test items is:

1 I will get a -- uh -- evidence
2 item or a buccal swab, and I'll extract the DNA, and run
3 some tests on it.

4 And I will then get a series of
5 numbers which is a DNA profile.

6 Uh -- I then would compare --

7 Q. Is this like the lottery? The numbers just pop up?
8 Or is there some scientific means to this?

9 A. Uh -- The numbers correspond to -- uh -- basically
10 the number of repeats that are tested at different areas
11 on someone's DNA.

12 Q. Okay.

13 A. So we test -- uh -- 15 locations for these repeats.
14 And we test for a sex determination.

15 And we get a set of numbers from
16 the number of repeats that at these locations.

17 And then we can compare items to
18 one another to see that they are the same or not.

19 Q. All right. To keep it a little simpler:

20 Is it a fair statement -- of very
21 watered down scientific -- to say that:

22 With regard to DNA, it's basically
23 a road map, or a set of instructions for the creation of
24 the human body?

25 A. Uh -- That is what the -- uh -- general consensus is

1 for what it does.

2 Q. Uh-huh.

3 A. Uh -- DNA is the blueprint for a person.

4 Q. Uh-huh.

5 Q. Uh -- And the way that I use it is that:

6 I test for those repeats and show
7 comparisons.

8 Q. Okay. And now with regard about what, 95 percent
9 of all human DNA is about the same; right?

10 A. Uh -- Not --

11 Q. I mean, is that -- can you determine --

12 A. -- or more.

13 Q. Or more?

14 A. I mean, some estimates, that's higher; but --

15 Q. And --

16 A. -- uh -- for what I do, I test regions that are --
17 show a lot of difference between people.

18 Q. Okay. Okay. And is that what you did in this
19 case?

20 A. That is what I did in this case, yes.

21 Q. Okay. So with regard to the vaginal swab taken
22 from -- uh -- Ms. [REDACTED] and the rectal swab taken
23 from Ms. [REDACTED] and your comparison -- uh -- to the
24 buccal swab taken from Mr. Howard, is it a fair statement
25 to say that:

1 There was not a mat -- That --
2 That Mark Elliott's DNA is not there with regard to those
3 items? That it was not a match, very simply?

4 A. Uh -- On 1.3 and 1.5 -- uh --

5 Q. Okay. Let me stop you right there. Let me come up
6 here and look at it.

7 A. Okay.

8 MR. HAZZARD:

9 We have a matter to take up
10 outside the jury -- from the jury, Your Honor.

11 THE COURT:

12 All right. Okay.

13 Take the jury out.

14 (WHEREUPON: The jury empanelled
15 in the case withdrew from the courtroom at 4:22 PM,
16 November 18, 2010; and was no longer present during the
17 following proceedings.)

18 MR. HAZZARD:

19 Now, Mr. Humbert, what I'm going
20 to need from you specifically -- or what I am --

21 THE COURT:

22 Let me -- Let me talk to Mr.
23 Humbert.

24 MR. HAZZARD:

25 Yes sir.

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1 THE COURT:

2 Mr. Humbert -- uh -- in this
3 matter, we're -- we're dealing with several principles of
4 law, one of which is Rape Shield Statute.

5 And the Rape Shield Statute in and
6 the cases that follow indicate unless absolutely
7 necessary for a full and fair trial of the defendant, no
8 evidence of prior specific sexual activity by a victim
9 should be admitted.

10 So from what I have heard from
11 these -- both of these attorneys -- uh -- about the test
12 that you have run in this case, that that creates
13 somewhat of a problem; because there may have been a
14 contributor -- uh -- at least on the -- uh -- the vaginal
15 swab and the rectal swab that -- uh -- the evidence would
16 indicate, engaged in a sexual act with Ms. [REDACTED] but
17 it was not Mr. --

18 MR. HAZZARD:

19 Elliott.

20 THE COURT:

21 -- uh -- Mr. -- uh --

22 MR. HAZZARD:

23 Elliott.

24 THE COURT:

25 Mr. Elliott. I'm sorry.

1 It was not Mr. Elliott.

2 And we would like to get to the
3 fact that there was no evidence of sexual contact from
4 the anal swabs and the -- uh -- rectal swabs -- uh -- on
5 the part of Mr. Elliott.

6 Do you understand where we're
7 trying to go?

8 WITNESS:

9 Yes.

10 THE COURT:

11 Now, are you able to, based on
12 your -- your knowledge, and -- and the things that you
13 have testified to, and the test that you ran, are you
14 able to present that fact to a jury without going into
15 the fact that there was -- uh -- uh -- what appears to
16 have been other sexual conduct; that is, there was
17 another contributor.

18 WITNESS:

19 I should be able to do that.

20 THE COURT:

21 Then you understand what our
22 problem is here.

23 WITNESS:

24 Yes, I do.

25 THE COURT:

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1 Okay.

2 There is some evidence we'd like
3 to get in; that needs to get in. But we don't -- uh --
4 There's some evidence that, if it is possible to exclude
5 it, I wanted it excluded.

6 You understand that?

7 WITNESS:

8 Yes sir.

9 THE COURT:

10 All right.

11 Now, any problem with what I have
12 instructed this witness, Mr. Howard -- uh -- Mr. Hazzard?

13 MR. HAZZARD:

14 None from the Defense, Your Honor.

15 THE COURT:

16 How about it, Ms. -- uh --

17 MS. LIVESAY:

18 No sir.

19 THE COURT:

20 -- Livesay?

21 MS. LIVESAY:

22 No sir.

23 THE COURT:

24 Okay.

25 Let's bring them in.

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 4:27
3 PM, November 18, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 All right. We have our jury
7 back.

8 Mr. -- uh -- Hazzard, proceed.

9 MR. HAZZARD:

10 Thank Your Honor.

11 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

12 Q. Uh -- Jasper, when we took a break, I was asking you
13 about your testing of the -- the vaginal swabs and the --
14 the rectal swabs taken from Ms. [REDACTED] as part of the
15 rape kit protocol.

16 Do you remember that?

17 A. Yes, I do.

18 Q. Okay. And you received these items -- uh -- listed
19 as Item 1.3, and 1.5, as a part of the total Item Number
20 1 of the CSC Kit.

21 Is that correct sir?

22 A. That's correct.

23 Q. And sometime subsequent to that, you also received
24 buccal swabs containing Mark Elliott's DNA.

25 Is that correct?

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1 A. That is correct.

2 Q. Okay. And subsequent to receiving that, did you
3 test both the Item 1.3, the vaginal swabs; 1.5, the
4 rectal swab; and -- uh -- the items that is -- uh -- the
5 buccal swab from Mark Elliott. I believe, it's Item 4?

6 A. Uh -- That is correct. I tested them.

7 Q. Okay. As simply as I can put it -- uh -- based on
8 your -- uh -- knowledge and experience, and your
9 professional opinion --

10 MR. HAZZARD:

11 And I will back up on that and
12 based on -- uh -- Mr. Humbert's training and experience,
13 I ask that he be qualified as an expert in the State of
14 South Carolina in the area of Forensic DNA Analysis, Your
15 Honor.

16 THE COURT:

17 Ms. -- uh -- Livesay?

18 MS. LIVESAY:

19 I have no objection.

20 THE COURT:

21 All right.

22 Mr. Humphries (sic) is known to
23 The Court. And he has been qualified as an expert in
24 this state before; and he is so qualified as an expert in
25 DNA Analysis for the purposes of this trial.

1 MR. HAZZARD:

2 Okay.

3 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

4 Q. Now, would it -- There is -- Mr. Elliott's DNA is
5 not in the vaginal swab, Item 1.3; it's not in the rectal
6 swab, Item 1.5; is it, sir?

7 A. Uh -- No.

8 MR. HAZZARD:

9 Thank you.

10 No further questions, Your Honor.

11 MS. LIVESAY:

12 I have a few, Your Honor.

13 THE COURT:

14 All right.

15 CROSS-EXAMINATION BY MS. LIVESAY:

16 Q. Mr. Humphrey (sic), do -- you do a lot of tests on
17 these rape kits; don't you?

18 A. Yes, I do.

19 Q. Is it unusual for a suspect's DNA not to show up on
20 one of these rape kits?

21 A. Uh -- It's not unusual.

22 Q. Okay. Now, we're talking about DNA; so we're
23 basically talking about semen; aren't we?

24 A. Uh -- I do a -- When I get a kit, I do a test for
25 semen. And then, I will try to develop a DNA Profile

1 from the -- the semen.

2 Q. Okay. So you're testing first to see if there is
3 even semen there?

4 A. Yes, that's correct.

5 Q. Okay. Now -- So really, what it's evidence of, is
6 not whether or not there's been a sexual assault; but
7 whether or not the defendant has ejaculated?

8 Is that right?

9 A. Uh -- All I can say is that:

10 If I don't get a DNA Profile there
11 -- uh -- I can't really say why.

12 I mean, whether or not someone
13 doesn't ejaculate or not -- uh -- could explain why.

14 But I'm not sure.

15 Q. Okay. But indeed, it would take ejaculation for
16 there to be semen on the rape kit?

17 Is that right?

18 A. Uh -- I wouldn't -- I can't be sure.

19 All I can say is that:

20 Uh -- A lot of the time, I'll test
21 the rape kit, and a good portion of the time, I do not
22 get a suspect on the rape kit.

23 Uh -- Whether or not it is because
24 of ejaculation, or some other factor, I can't be certain.

25 Q. Okay. But obviously, it would be more likely that

1 semen would be found if a defendant ejaculated?

2 A. I -- I would assume so.

3 Q. Okay. Just as a man, you would assume so. And
4 would that be right?

5 A. I -- Just logically, I would assume that. But --

6 Q. Okay.

7 A. -- that's my opinion.

8 Q. Right; I understand. And so, if a defendant didn't
9 ejaculate, it probably wouldn't be unusual that there was
10 no semen?

11 Is that right?

12 A. Uh -- If he didn't put his DNA into her, or semen,
13 or whatever, I would not get a profile off of it, because
14 it wouldn't be there.

15 Q. Okay. And -- And you are testing a semen profile?
16 That's what you're testing?

17 Is that right?

18 A. I'm testing and getting a DNA Profile from what I've
19 tested for semen?

20 Q. Okay. So obviously every time you test a rape kit,
21 semen is not there?

22 A. That's correct.

23 Q. Okay. And it would certainly make sense -- you are
24 an expert -- that it would be less likely that semen
25 would be there if there was no -- there would not be

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1 semen if there was no ejaculation?

2 Is that right?

3 MR. HAZZARD:

4 Your Honor, I would ask that
5 counsel be mindful to keep her theorizing --

6 THE COURT:

7 You know, you've asked that
8 question about six times.

9 Do you need to ask it again?

10 MR. HAZZARD:

11 Because if she wanted to talk
12 about --

13 MS. LIVESAY:

14 No, Your Honor.

15 MR. HAZZARD:

16 -- whether there's semen there.

17 THE COURT:

18 Okay.

19 CROSS-EXAMINATION BY MS. LIVESAY CONTINUED:

20 Q. So basically, whether -- Your -- Your basic test is
21 just whether or not -- the first test is just whether or
22 not there's semen?

23 A. That's correct.

24 Q. Okay. And if there's not, that's the end of it.

25 Is that correct?

1 A. Uh -- That's correct. Typically, we won't look any
2 further.

3 Q. Okay. So there has to be semen there for you to be
4 able to run a test?

5 A. Uh -- Yes, in most cases.

6 MS. LIVESAY:

7 No further questions, Your Honor.

8 REDIRECT EXAMINATION BY MR. HAZZARD:

9 Q. Ms. Livesay asked you -- or indicated there had to
10 be semen there to run a test.

11 Is that correct, sir?

12 A. Uh -- For the test for semen --

13 Q. Uh-huh.

14 A. -- we test to see if semen is there.

15 Q. Uh-huh. And in this case, what were you testing
16 for?

17 A. Uh -- I typically test for semen on swabs I get in a
18 rape kit.

19 Q. Hmm.

20 A. So that's what I do for when I screen the rape kit.

21 Q. Okay. If there is penetration, can there be a
22 transfer -- Well, let me ask you like this:

23 She asked you about all the ways
24 that you would get a negative result.

25 Is one way to get a negative

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1 result, is someone doesn't have sex with somebody else?

2 A. Yes --]

3 Q. Thank you.

4 A. -- that's correct. That is one way.

5 Q. And she indicated one of the ways would be that
6 semen isn't present; that that would be a way you
7 couldn't get a -- get a test result?

8 Is that correct?

9 A. That is correct.

10 Q. In the instant case, was there semen present?

11 MS. LIVESAY:

12 Your Honor --

13 THE COURT:

14 Don't answer that.

15 Send the jury out.

16 (WHEREUPON: The jury empanelled
17 in the case withdrew from the courtroom at 4:34 PM,
18 November 18, 2010; and was no longer present during the
19 following proceedings.)

20 THE COURT:

21 No, Mr. Hazzard. We're not going
22 there.

23 MR. HAZZARD:

24 Your Honor, she gets to ask him
25 about how:

1 There's no match because there's
2 no semen present, which is blatantly unfair --

3 THE COURT:

4 Well, you can take care of that.

5 You're going to ask him:

6 Did you retrieve any semen -- uh

7 -- that matches Mr. -- uh -- Elliott?

8 MR. HAZZARD:

9 Then, that's how I'll ask it.

10 THE COURT:

11 All right. Well, you ask it that
12 way.

13 MR. HAZZARD:

14 I'll ask it that way.

15 THE COURT:

16 Ms. Livesay, you talked all about
17 it. Now, I'm not letting you go any further.

18 But I'm going to let him say:

19 Did you get any semen that matched
20 him?

21 And you're going to stop it right
22 there.

23 (No response.)

24 THE COURT:

25 Okay.

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1 DEPUTY:

2 Bring them in?

3 THE COURT:

4 All right.

5 MR. HAZZARD:

6 Okay.

7 So the question is:

8 If any semen was tested, none of
9 it matched Mark Elliott, correct?

10 THE COURT:

11 No.

12 MR. HAZZARD:

13 How do you want me to ask it?

14 THE COURT:

15 Did you recover any semen that
16 matched him?

17 MR. HAZZARD:

18 Any semen that matched him. Got
19 you. I got you.

20 THE COURT:

21 Okay. And I want it left right
22 there.

23 MR. HAZZARD:

24 Okay.

25 WITNESS:

1 Can I -- uh -- say something real
2 quick.

3 THE COURT:

4 Yes.

5 WITNESS:

6 Uh -- I get a DNA profile. I
7 can't -- So basically, if you ask me, I wouldn't know if
8 I got a profile from semen specifically, because I did
9 the two test separately.

10 MR. HAZZARD:

11 Okay.

12 WITNESS:

13 Does that make sense? So --

14 THE COURT:

15 Or skin cells, probably?

16 WITNESS:

17 Yes. I mean -- So just to
18 clarify that before -- okay --

19 THE COURT:

20 Okay. All right.

21 MS. LIVESAY:

22 I don't know how -- you know -- we
23 can make -- I mean, the question was completely
24 inappropriate:

25 Was there semen present?

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1 That was the whole thing we were
2 trying to keep out.

3 MR. HAZZARD:

4 You're the one who asked him all
5 this wild thing about:

6 If there's no semen there --

7 THE COURT:

8 All right. All right.

9 You know where I'm going with this
10 thing.

11 I'm going to let you ask:

12 If there was any semen, or any
13 other source of DNA, that would -- that matched your
14 client?

15 And that's what I want you to ask?

16 MR. HAZZARD:

17 Okay.

18 THE COURT:

19 Okay.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 4:37
22 PM, November 18, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 Go ahead.

1 MR. HAZZARD:

2 Thank Your Honor.

3 REDIRECT EXAMINATION BY MR. HAZZARD:

4 Q. Mr. Humbert, I'm trying to keep it as simple as I
5 can.

6 In regards to this case, Ms.

7 BE [REDACTED] and Mark Elliott, in your
8 test, was there any semen or any other source of DNA that
9 matched Mark Elliott?

10 A. No.

11 MR. HAZZARD:

12 Thank you. No further questions.

13 MS. LIVESAY:

14 Just one question, Your Honor.

15 THE COURT:

16 Go ahead.

17 RECROSS-EXAMINATION BY MS. LIVESAY:

18 Q. Did you to a presumptive test first on this case?

19 A. Uh -- I had done presumptive tests on this case;
20 yes.

21 Q. And do you do one on every case?

22 A. Uh -- If it's requested?

23 Q. Uh -- On -- On all of the rape kits, are you looking
24 for some sort of physical evidence?

25 A. Uh -- I'm looking for some -- or -- I'm asked to

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1 test items from rape kits.

2 Q. Okay. And is it unusual when you're looking at the
3 rape kit for there not to be any DNA on the item?

4 A. Uh -- It's possible that that can happen.

5 Q. Okay. So when you're testing all of these rape
6 kits for -- to see whether or not a suspect's DNA is on
7 the rape kit --

8 MR. HAZZARD:

9 Again, Your Honor, I would ask
10 that --

11 THE COURT:

12 And we've been there. That's it.
13 We've been there.

14 That question's been asked and
15 answered. It's not a proper question for redirect.

16 Okay. Call your next witness.

17 You may step down, Mr. Humbert.

18 WITNESS:

19 Thank you.

20 THE COURT:

21 Any further need for Mr. Humbert?

22 MR. HAZZARD:

23 None from the Defense, Your Honor.

24 MS. LIVESAY:

25 None from the State, Your Honor.

1 THE COURT:

2 All right.

3 Mr. Humbert, you're released from
4 your subpoena.

5 MR. HAZZARD:

6 Thank you for coming, sir; and
7 have a safe trip back.

8 THE COURT:

9 All right. Who's your next
10 witness?

11 MR. HAZZARD:

12 Your Honor, at this time, the
13 Defense rests.

14 THE COURT:

15 All right. Take your jury out.

16 Let me speak for moment to the --
17 uh -- defendant.

18 (WHEREUPON: The jury empanelled
19 in the case withdrew from the courtroom at 4:39 PM,
20 November 18, 2010; and was no longer present during the
21 following proceedings.)

22 THE COURT:

23 All right.

24 Would you please stand, Mr.

25 Elliott?

DEFENDANT ADVISED OF RIGHTS

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1 Place Mr. Elliott under oath.

2 (WHEREUPON: Defendant Mark
3 Elliott was sworn by the Clerk in open court at 4:40 PM,
4 November 18, 2010.)

5 THE COURT:

6 Mr. Elliott, at this time, I'm
7 going to explain to you certain of your rights.

8 And if you don't understand
9 anything I say, I want you let me know.

10 Uh -- If you want me to explain
11 anything in a more detailed manner, just let me know
12 that.

13 Do you understand that?

14 DEFENDANT:

15 (Nods in the affirmative.)

16 THE COURT:

17 Fair enough, right?

18 COURT REPORTER:

19 Your Honor, he needs to answer up
20 because if he --

21 THE COURT:

22 You're going to have to speak up,
23 Mr. Elliott.

24 COURT REPORTER:

25 Speak into that microphone.

1 THE COURT:

2 Do you understand what I've told
3 you, Mr. Elliott?

4 DEFENDANT:

5 Yes, sir.

6 THE COURT:

7 All right.

8 Now, Mr. Elliott, we've reached
9 the stage of the trial where you may present your defense
10 -- or your attorney has been presenting your defense.

11 And you have the right to claim
12 the protections given to you by the Fifth Amendment of
13 the Constitution to the United States.

14 And that amendment says in part:

15 No person shall be compelled in
16 any criminal case to be a witness against himself.

17 This means that:

18 You cannot be required to testify
19 in this case.

20 You have the right to testify on
21 your own behalf.

22 However, no one can make you
23 testify.

24 And this is a personal right. And
25 no one can waive this right except you.

1 If you decide to testify, you will
2 be subject to the same rules that govern other witnesses,
3 and you may be examined and cross-examined on any
4 relevant issue in the case.

5 In addition, if you have any
6 convictions involving dishonesty or false statements, or
7 for crimes punishable by imprisonment for more than one
8 year, and This Court determines that the probative value
9 of admitting the evidence outweighs its prejudicial
10 effect to you, the Solicitor will be able to introduce
11 your record to attack your credibility.

12 If you decide to testify, the
13 decision on your part must be freely, voluntarily, and
14 intelligently made, with knowledge of the protections
15 given to you by the Fifth Amendment -- uh -- and the
16 consequences of your decision to testify; okay.

17 Do you -- If you decide not to
18 testify, I will instruct the jurors that they cannot give
19 the fact that you did not testify any consideration
20 whatsoever; and that there is to be absolutely no
21 prejudice to you because you did not testify.

22 It is left entirely up to you
23 whether or not you will testify in this case.

24 Now, you may talk with your
25 attorney, your family, your friends, or anyone else. But

1 the final decision will be left entirely up to you.

2 Do you understand what I've
3 explained to you?

4 DEFENDANT:

5 Yes, Your Honor.

6 WITNESS:

7 Do you have any questions about
8 what I've explained to you?

9 WITNESS:

10 No sir.

11 THE COURT:

12 Have you discussed this with your
13 lawyer -- uh -- and -- uh -- talked with him about
14 whether or not you should testify?

15 WITNESS:

16 Yes, I have

17 THE COURT:

18 Do you wish to talk with your
19 lawyer anymore?

20 WITNESS:

21 No, I don't.

22 THE COURT:

23 Do you wish to testify?

24 WITNESS:

25 No I don't want to testify.

1 THE COURT:

2 All right. Very well. Thank you
3 very much.

4 Uh -- Bring them back in.

5 The Defense rests?

6 MR. HAZZARD:

7 The Defense rests, Your Honor; and
8 renews its motions for a directed verdict.

9 THE COURT:

10 Okay. We will get to that in just
11 a second and let you put it on the record.

12 MR. HAZZARD:

13 Okay.

14 (WHEREUPON: The jury empanelled
15 in the case was escorted back into the courtroom at 4:44
16 PM, November 18, 2010; and was in fact present during the
17 following proceedings.)

18 THE COURT:

19 Ladies and gentlemen, we have
20 concluded the testimony in this case.

21 The Defense has rested, as has the
22 -- uh -- the State.

23 We will hear no further testimony.

24 But it is five o'clock, or right
25 at it. So I want to do is this:

1 I'm going to bring you back in the
2 morning at 9:30.

3 At that time, I will let the State
4 and the Defense submit closing arguments to you.

5 That will be followed by my
6 instruction to you on the law.

7 Let me tell you that it's been my
8 practice to -- uh -- handle my instructions a little
9 differently than any other judge that I know of, in that:

10 I appreciate the fact that we have
11 brought you here -- uh -- from your -- your jobs and the
12 things that you are familiar with, and put you in the
13 courtroom. And we have expected you to understand
14 everything that we are doing.

15 So I know that it would be
16 difficult for you to comprehend everything that I'm
17 saying when I instruct you on the law.

18 So what I do is:

19 I prepare a transcript of my
20 instructions on the law. And I provide that to you, so
21 that you will have it in your -- your jury room.

22 It doesn't mean that you should
23 not pay -- pay close -- close attention when I am giving
24 you your instruction on the law.

25 Uh -- Sometimes it's better to

1 hear it than to read it.

2 But I will have that for you
3 tomorrow.

4 I'm going to ask you not to read
5 any newspaper reports. Not to -- uh -- look on the
6 Internet. Not to make any independent investigations
7 about this case.

8 Don't talk to your family and your
9 friends. Don't even talk among each other.

10 Don't call these friends that
11 you've made during these last four weeks -- I mean, 4
12 days -- while you were on this jury tonight and talk
13 about the case.

14 I want you to defer beginning any
15 semblance of -- of deliberation until after you have
16 heard my charge on the law.

17 And, as I said, I will be giving
18 that to you tomorrow.

19 Now, Mr. -- uh -- uh -- Roth, I
20 want you to take the jury back to the jury room and let
21 them collect their things and help them get out to their
22 vehicles.

23 And I'll look forward to seeing
24 you in the morning.

25 And Mr. Roth, what are we going

1 to have in the morning?

2 Are we going to have ham biscuits

3 or -- or donuts?

4 (Laughter erupts in the

5 courtroom.)

6 FOREPERSON:

7 Biscuits.

8 BAILIFF:

9 Biscuits.

10 THE COURT:

11 They liked those biscuits better

12 than those donuts; okay.

13 Well, we'll have some -- uh --

14 some ham biscuits and some coffee and all for you in the

15 morning.

16 Just get in here, and Mr. Roth

17 will take care of you just like he has all week.

18 (WHEREUPON: The jury empanelled

19 in the case withdrew from the courtroom at 4:47 PM,

20 November 18, 2010; and was no longer present during the

21 following proceedings.)

22 THE COURT:

23 All right, Mr. Hazzard. make your

24 motions.

25 MR. HAZZARD:

1 Your Honor, as the testimony is
2 closed in this matter, the Defense -- uh -- not to
3 belabor the points, but the Defense does renew their
4 motions for directed verdicts with regard to the charge
5 of kidnapping; with regard to the charges of CSC First;
6 CSC Second with a Minor; and failure to stop for blue
7 light.

8 And the Defense stands on those
9 arguments previously made.

10 THE COURT:

11 All right, Mr. Hazzard.

12 And I appreciate your -- uh --
13 your effort on behalf of your client, but I would
14 respectfully deny your -- your motions -- uh -- upon the
15 same grounds that I have previously stated.

16 Let me tell you -- uh -- Counsel
17 -- uh -- that I have -- uh -- or Claire and I have
18 prepared -- uh -- my proposed charge -- uh -- that I will
19 be giving tomorrow.

20 I -- uh -- have copies for you, so
21 that you can have them at your disposal this evening.

22 Uh -- Ms. -- uh -- Green has the
23 over by the door, a copy for each of you.

24 Also, I think she has a copy of
25 the verdict form -- uh -- for you as well.

1 I'd like for you to be here at
2 9:00 in the morning. And -- uh -- if you have any
3 additions -- uh -- or deletions to the -- uh -- proposed
4 charge, or objections to the verdict form so, that we can
5 discuss that; all right.

6 MR. HAZZARD:

7 Yes, sir, Your Honor.

8 THE COURT:

9 Uh -- Be prepared to go forward
10 with your argument.

11 I -- uh -- You're -- I would
12 assume that you're going to go first, Mr. Hazzard?
13 You've put up some evidence.

14 MR. HAZZARD:

15 That's correct, Your Honor.

16 THE COURT:

17 And that will be followed by Ms.
18 -- uh -- Ms. Livesay?

19 Ms. Livesay, you're not going to
20 open on the law before he does; do you?

21 MS. LIVESAY:

22 No sir.

23 THE COURT:

24 Or, are you?

25 MS. LIVESAY:

1 No sir.

2 THE COURT:

3 Okay.

4 Ms. Livesay chooses not to open on
5 the law. And -- uh -- Mr. Hazzard, that means you will
6 kick off; okay.

7 MR. HAZZARD:

8 That is understood, Your Honor.

9 THE COURT:

10 Let's be ready to go.

11 MR. HAZZARD:

12 Yes sir; 9:00 AM.

13 (WHEREUPON: The court was
14 declared in recess at 4:52 PM, November 18, 2010.)

15 (WHEREUPON: The court was called
16 to order by the Bailiff at 9:31 AM, November 19, 2010;
17 and all pertinent parties, along with their counsel, were
18 back and present in the courtroom.)

19 DEPUTY:

20 Order in the court. All Rise.

21 THE COURT:

22 Good morning. Good morning.

23 Good to see you all. Please be
24 seated. Please be seated.

25 I understand that we are ready to

1 go.

2 Mr. Roth tells me that we have all
3 our jurors.

4 And I see we have the defendant.

5 Where is Mr. Roth this morning?

6 Brooks, would you have Mr. Roth
7 bring in that jury for me?

8 DEPUTY:

9 Yes, sir.

10 (WHEREUPON: The jury empanelled
11 in the case was escorted back into the courtroom at 9:33
12 AM, November 19, 2010; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 Good morning. It's good to see
16 you all back.

17 FOREPERSON:

18 Good morning, sir.

19 THE COURT:

20 Good to see all of our jurors and
21 our alternate.

22 I hope you had a nice evening and
23 Mr. -- uh -- Roth had something for you this morning; and
24 we're ready to go.

25 As I explained to you yesterday,

1 we have completed all the evidence in this case for you
2 to consider in your deliberations.

3 We're at the point that the
4 attorneys will make closing arguments -- final arguments
5 to you.

6 Again, let me stress that the same
7 rules that apply to opening remarks apply to closing
8 remarks as -- as well.

9 Uh -- Nothing that they -- uh --
10 the attorneys say -- uh -- is evidence in the case. It
11 is their view of the evidence.

12 And if they were to inadvertently
13 -- uh -- mention something that you didn't hear, or a
14 piece of evidence that you didn't see, you won't consider
15 that.

16 You will only consider the
17 evidence that you heard from the -- uh -- the -- uh --
18 witness stand.

19 Uh -- Mr. Hazzard, I understand,
20 will argue for the Defense. And he will go first. And
21 that will be followed by Ms. Livesay.

22 After the -- the attorneys have
23 had an opportunity to argue the case, then I will
24 instruct you as to the law.

25 The attorneys also have the

1 opportunity to speak you concerning the -- the law that
2 you will apply -- uh -- in your deliberations.

3 Please understand -- uh -- that --
4 uh -- if they should deviate from the law as I give it to
5 you, you will disregard that. Because you are bound to
6 apply only the law that I charge you, because I am, as I
7 said earlier, the sole giver of the law in this case;
8 okay.

9 Now, Mr. Hazzard, are you ready?

10 MR. HAZZARD:

11 The Defense is ready, Your Honor.

12 THE COURT:

13 All right. Go -- uh -- Go ahead.

14 MR. HAZZARD:

15 Thank Your Honor. May it please
16 The Court?

17 Good morning ladies and gentlemen.
18 How are you?

19 FOREPERSON AND SOME OTHERS:

20 Good morning, sir.

21 MR. HAZZARD:

22 We are at the end of a trial. It
23 has taken us a week. And you have heard all of the
24 evidence that there is to hear; all of the testimony; all
25 of the physical evidence; all of the photographs; it is

1 all in.

2 And now that it is all said and
3 done, the one thing we know is this, that:

4 According to the State of South
5 Carolina, Mark Elliott is the most interesting man in the
6 world.

7 He is a robber who robs without a
8 weapon and doesn't take anything.

9 He is a kidnapper who kidnaps
10 without a weapon, without any sign of force, and from a
11 distance by simply saying:

12 Get in the car.

13 And he is the only person on the
14 face of the earth we go in can have sexual relations with
15 someone and leave no physical evidence, no DNA behind.

16 That is the case the State has
17 brought you.

18 Now, how did we end up here in the
19 first place?

20 There was the allegation made --
21 or what the State say happens, is this:

22 Sometime between 3:00 and 3:30 AM
23 on Monday morning, June 29th, 2009, Mark Elliott comes
24 into contact with Mr. Howard, Ms. [REDACTED] and Mr.
25 Bradley; okay.

1 That:

2 He then, in this quiet
3 neighborhood full of older people with houses close
4 together, as the pictures show, tells them all to get
5 down on the ground and he's going to rob them.

6 But then, he decides, I guess, not
7 to rob them; or who really knows.

8 And that's one of the real
9 problems with this case, is:

10 No one really knows what happened
11 that morning.

12 Because out of all the people
13 involved, no one's telling the absolute truth.

14 Mark isn't telling the absolute
15 truth when he's talking to Detective Abercrombie, because
16 Mark is in the drug game. And one of the first rules of
17 the drug game is:

18 You don't give up the game.

19 You don't tell about people in the
20 game.

21 You never admit that.

22 Now, what's the one area where
23 Mark is always consistent and steady forth:

24 I did not rob anyone.

25 I did not kidnap anyone.

1 I did not rape anyone; okay.

2 With regard to Ms. [REDACTED] it
3 will be your determination whether she is telling the
4 truth as to what happened that morning.

5 And we talked a lot about the cell
6 phone records and things of that nature because remember,
7 her testimony is that:

8 These young men came down to
9 visit.

10 They arrived around 6:00 PM on the
11 previous evening, June 28th, that being a Sunday.

12 That:

13 They spent time together while the
14 -- uh -- chaperones, the Carawans, are out at a bar.

15 Uh -- That:

16 These two young ladies, the
17 Carawans' daughter, Blythe and -- uh -- Ms. [REDACTED]
18 meet back with the Carawans at the bar later on. And
19 someone drives somebody home.

20 I don't know if the kids had to
21 drive the Carawans home or the Carawans drove the kids
22 home.

23 But somehow, they get back to 1907
24 South Hillside Drive.

25 That:

1 Uh -- Sometime -- and -- and by my
2 recollection, it kind of keeps shifting and changing in
3 the State's case.

4 Sometime between 11:00 PM and 1:00
5 AM, the two young men come over, because, as in Ms.

6 [REDACTED] words:

7 The Carawans would be passed out
8 by that time.

9 Once they come over, then the
10 testimony is:

11 They stayed there until -- again
12 it changes -- sometime between two o'clock and 2:30
13 before there is apparently, or allegedly, some argument.

14 And the two young men, who know
15 nothing about the area, leave and go to a hotel parking
16 lot for purposes unknown.

17 That:

18 They are there for 5 or 10
19 minutes. Then, that they supposedly come on back, which
20 would put us -- you know -- somewhere between 2:20 and
21 2:40.

22 Unfortunately, the phone records
23 tell a different story. The phone records tell that:

24 Between around 12:15 all the way
25 up to about 3:17, there is -- is -- there is conversation

1 of some form back and forth between Ms. [REDACTED] and Mr.
2 Howard; okay.

3 And she says:

4 Well, as far as texting is
5 concerned -- which was the first part -- the 12:00 and
6 one o'clock part -- we were -- were texting even though
7 we were in each other's company; okay.

8 And I kind of -- I -- I'll give
9 you that one.

10 But when your testimony is that:

11 He's right here with me in this
12 little tiny yard but I'm calling him on the phone and
13 he's calling me between 2:00 and 3:00.

14 Come on now, folks.

15 And why is that of significance?

16 What's significant about it is
17 this:

18 If you are the victim of an actual
19 real crime, what do you have to hide?

20 What do you have to change?

21 Why do the facts have to be
22 massaged and manipulated?

23 See, all I can go on is what we
24 know and what can't be disputed, because everybody's got
25 their version.

1 But like the phone records, things
2 like that, can't be disputed.

3 And what do they tell us?

4 They tell us that:

5 Those two folks weren't together;
6 Mr. Howard and Ms. [REDACTED] weren't together; but that
7 their regular conversation back and forth on the phone;
8 him contacting her, her contacting him.

9 And the reason that's strange to
10 me is:

11 Again, supposedly Mr. Bradley and
12 Mr. Howard don't know anything about the beach area, you
13 know.

14 Had to get directions to come
15 down. Had to look on MapQuest.

16 Or, they both -- Where are they
17 driving around for that hour, hour and a half, two hours;
18 and they're calling back and talking; and back and forth,
19 and -- Is somebody looking for something?

20 You think maybe somebody's out
21 searching for something? Searching for some drugs
22 perhaps?

23 No.

24 According to them, around -- like
25 I said, around 3:15 -- 3:20 -- 3:25 -- again, it switches

1 and changes -- they come upon Mark Elliott; and there is
2 discussion and conversation.

3 Both sides would admit that; that
4 there is discussion and conversation.

5 And then, that's where the wild
6 divergence begins.

7 That:

8 After this discussion and
9 conversation, all of a sudden, Mark Elliott then hops out
10 of the car and says:

11 Everybody get on the ground.

12 Now how it is they end up
13 allegedly on the ground out in the street when everyone
14 was standing in the yard, Mr. Bradley, Mr. Howard, and
15 Ms. [REDACTED]

16 And according to Ms. [REDACTED]
17 testimony, Mr. Elliott's driver's side door is facing the
18 house.

19 The house is here. The car's
20 facing this way. He opens the door.

21 So, he steps out in the yard with
22 them.

23 But somehow, according to them,
24 all of them get marched, I guess, around the car or
25 behind the car out into the street in this quiet

1 residential neighborhood after three o'clock in the
2 morning.

3 And one thing I know, being a
4 little bit older -- uh -- I'm -- I'm blessed to have a
5 mother who's made it to the age of 79.

6 And my mother lives in the same I
7 grew up in 40 years ago.

8 And she has neighbors that we are
9 blessed that she has who have all been her neighbors for
10 about 38 -- 39 years.

11 And they're all older like her.

12 But one thing I know is, that:

13 Older folks are up at all hours of
14 the morning and the night. They can get up at any hour.
15 They may be up for any length of time.

16 They'll get up at 5:00 AM.

17 They'll get up and go use the
18 restroom at 3:00 AM.

19 They are just -- they're up; and
20 they are alert, you know. They keep an eye on the
21 neighborhood.

22 But yet, in this quiet residential
23 area with older folks, where the houses are right beside
24 each other, one beside the other, Mark Elliott is able to
25 take these three young people and place them face down in

1 the road, and for what purpose?

2 Because, supposedly he's going to
3 rob them.

4 But then, apparently no robbery
5 ever occurs.

6 And so Mark is charged with
7 several things obviously.

8 He's charged with kidnapping.

9 He's charged with criminal sexual
10 conduct first; criminal sexual conduct second with a
11 minor; failure to stop for blue light.

12 And, as we discussed, he also has
13 three indictments for attempted armed robbery.

14 But as Detective Abercrombie told
15 you:

16 Yes; I've -- I've filled out those
17 warrants. I've served those warrants. He is charged
18 with it.

19 All right.

20 Y'all are here today. Y'all have
21 been here all week. I've been here all week. The
22 prosecutors been here all week. The witnesses have been
23 here all week. The judge and the court reporter have
24 been here all week.

25 But those charges are not brought

1 before you for your consideration, and for you to return
2 a verdict on.

3 I would submit to you:

4 That tells you what the State
5 thinks of the charges of attempted armed robbery.

6 So let's think about that for a
7 second.

8 The very first significant event
9 in the chain of events that is the State's case, they
10 don't believe in, and don't bring it before you for your
11 consideration; okay.

12 Now, where were we?

13 We were at the car. They were on
14 the ground; okay.

15 According to their testimony and
16 their truth, Mr. Elliott then tells everybody to get up;
17 and tells the two fellows to just start walking.

18 Because, of course, if you're
19 going to kidnap someone, obviously, the first thing you
20 want to do is, you want to leave two witnesses to go run
21 and tell the story; right.

22 Isn't that what you want to do?

23 And so these two young men, Mr.
24 Howard and Mr. Bradley -- uh -- according to them, just
25 walk off and leave their friend -- just walk off and

1 leave their friend.

2 And Mr. Elliott then, this most
3 interesting and curious man, while he's standing on the
4 driver's side near the back of his car -- and Ms.

5 [REDACTED] testified she was standing on the passenger
6 side near the back of his car -- he then simply says:

7 Go get in the car.

8 And that is how this kidnapping is
9 accomplished.

10 Go get in the car.

11 Now, in order to make it seem like
12 a kidnapping, the story goes that he had some form of
13 what appeared to be a gun; okay -- what appeared to be a
14 gun?

15 The problem with that is this:

16 When you tell a story -- When you
17 tell a story -- the truth, everything always fits
18 together. And when you tell the truth everything always
19 fits together.

20 When you tell a story, you always
21 have those stray ends, those niggling details which do
22 not match up.

23 So, how could he do this
24 kidnapping?

25 Well, we thought he had a weapon

1 with him.

2 Okay; that's fine. That's fair
3 enough.

4 We had a little discussion
5 regarding the lighting conditions.

6 And even though there is a -- you
7 know -- power pole out there that you can see in the
8 State's picture -- you know -- apparently -- uh -- Santee
9 Cooper -- you know -- Electrical Authority isn't doing
10 their job, because the light isn't very bright according
11 to Ms. [REDACTED]

12 So they can't -- they can't really
13 tell whether it's a weapon or not according to them.

14 But I then asked:

15 Okay. Ms. [REDACTED] you indicate
16 that he frisked you before he put you in the car.

17 And that's what Mr. Bradley said:

18 As I was walking away, I looked
19 over my shoulder and it looked as if he was frisking her.

20 Okay. Niggling detail number
21 one:

22 Where does this weapon go?

23 Because I asked if he used two
24 hands or one.

25 Oh, he used both hands, casually