

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Maite Murphy, Circuit Court Judge

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S.C. Supreme Court

CEDRIC FLOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002164

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

State of South Carolina

versus

Cedric Flood,

DEFENDANT

CASE NO. 2009-GS-38-1775 and 1776

TRANSCRIPT OF RECORD

DATE:

July 19-21, 2011

BEFORE:

Honorable Edgar W. Dickson, Presiding Judge

And a jury.

APPEARANCES:

Glenn Justis, Esquire

Harrison Bell, Esquire

Assistant Solicitors

For The State

Douglas Mellard, Esquire

Mark Wise, Esquire

Public Defenders

For The Defendant

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1 DATE:

2 JULY 18, 2011

3 BLAIR HEARING (Held in camera):

4 SOLICITOR JUSTIS: May it please the Court.

5 THE COURT: Yes, sir.

6 SOLICITOR JUSTIS: The purpose of this hearing is a Blair
7 hearing. Standing before you, or seated before you is Mr. Cedric
8 Flood. He's charged on two indictments, the first one,
9 Indictment Number 2009-GS-38-1775, for criminal sexual conduct in
10 the first degree, and the second indictment, 2009-GS-38-1776,
11 that's for one count of kidnaping. Both indictments have been
12 true billed by the Orangeburg Grand Jury. Mr. Flood is scheduled
13 to be on trial starting tomorrow, and as I mentioned this is a
14 Blair hearing to determine competency, - - -

15 THE COURT: Alright, sir.

16 SOLICITOR JUSTIS: --- and whether or not he's competent to
17 stand trial.

18 THE COURT: Alright, sir.

19 SOLICITOR JUSTIS: At this time the State would call Dr.
20 Michael Ganssen.

21 THE COURT: Okay. Alright, Dr. Ganssen, she's going to
22 swear you in. Put your left hand on the Bible and raise your
23 right hand.

24 (Whereupon, Dr. Michael Ganssen
25 is duly sworn.)

1 THE COURT: Thank you, Dr. Ganssen.

2 COURT REPORTER: Is it Gassen or Gaskin?

3 THE COURT: Would you please state your name?

4 WITNESS: Ganssen, G-A-N-S-S-E-N.

5 COURT REPORTER: Thank you.

6 THE COURT: Alright, your witness, Mr. Justis.

7 SOLICITOR JUSTIS: Thank you, Your Honor.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court. See
11 next ensuing page for sequential continuation of record.)

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

10

1 (DR. MICHAEL GANSSEN, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS:

4 Q. Dr. Ganssen, where are you employed?

5 A. I'm employed with the South Carolina Department of Mental
6 Health Forensic Evaluation Service, which is in Columbia.

7 Q. Okay. And how long have you been employed there?

8 A. Almost three years.

9 Q. And what is your job title?

10 A. My job title is Chief Psychologist.

11 Q. And what are some of the duties as a Chief Psychologist?

12 A. The primary job duties are conducting competency to stand
13 trial and criminal responsibility evaluations.

14 Q. Okay. And could you tell the Court a little bit about your
15 educational background?

16 A. I completed my doctorate in clinical psychology in Two
17 Thousand Six. Subsequently, I completed a post doctoral
18 fellowship in forensic psychology in Dorthea Dix Hospital in
19 Raleigh, North Carolina. Since that time I worked for one year
20 at the State Hospital in Missouri conducting competency and
21 criminal responsibility evaluations. After that I came to South
22 Carolina.

23 Q. And how long have you been in South Carolina?

24 A. Almost three years.

25 Q. Okay. And have you had an opportunity to testify in Court

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

11

1 in South Carolina before?

2 A. Yes.

3 Q. Have you ever been qualified as an expert in forensic
4 psychology?

5 A. Yes.

6 Q. How many times?

7 A. In South Carolina approximately five or six times.

8 SOLICITOR JUSTIS: At this time, Your Honor, the State
9 would like to offer Dr. Ganssen as an expert in forensic
10 psychology.

11 THE COURT: Any objection?

12 MR. WISE: No objection.

13 THE COURT: He is so qualified. Alright, Mr. Justis.

14 SOLICITOR JUSTIS: Thank you.

15 Q. Did you have an opportunity, or did you receive an Order
16 from the Court to evaluate a Mr. Cedric Flood?

17 A. Yes.

18 Q. I'm showing you what's been marked as Court's Exhibit Number
19 One, do you recognize this?

20 A. Yes, this is the Order we originally received, yes.

21 Q. And that's the Order asking to conduct an evaluation of Mr.
22 Flood?

23 A. Yes.

24 Q. And did you have an opportunity to conduct that evaluation?

25 A. Yes, I interviewed him on four separate occasions last year.

1 Q. Okay. And what information did you gather or obtain prior
2 to the evaluations that you did?

3 A. Typically we try to get Department of Mental Health records
4 on defendants before we see them. In this case there weren't any
5 available at the time. We also received some information from
6 his sister -- or the social worker who sat in on the first
7 interview and we got some information from his sister, although
8 she didn't want to answer too many questions about Mr. Flood.
9 So, we really had limited information before the first interview
10 with him.

11 Q. Did you have an opportunity to review the arrest warrants?

12 A. Yes.

13 Q. And what about, what about school records, those types of
14 things?

15 A. Yes, we eventually did receive school records.

16 Q. Okay. And how did that information help you make your
17 evaluation?

18 A. Well, in this case there was a question about whether or not
19 Mr. Flood has intellectual deficits consistent with mental
20 retardation or a learning disorder, and so, we wanted to get his
21 school records to see if he was placed in special education
22 classes for people or students who have mental retardation or
23 learning disorder, possibly attention deficit, hyper activity
24 disorder. We didn't -- in the records that we received we didn't
25 see any indication of that. He was in vocational rehabilitation

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

13

1 but that's usually just to help students prepare for working. I
2 also received in those records his academic achievement testing
3 scores in which he typically scored anywhere from -- well, he
4 scored anywhere from the first to the fiftieth percentile. So,
5 sometimes his scores were average, sometimes they were far below
6 average.

7 Q. Okay. And when was this evaluation conducted, what were the
8 dates that you actually met with him?

9 A. I met with him March Tenth, Two Thousand Ten, June Second,
10 Two Thousand Ten, July Fifteenth of Two Thousand Ten, and August
11 Tenth of Two Thousand Ten.

12 Q. And was there a reason why you met with him multiple times?

13 A. During the March Tenth, Two Thousand Ten, interview he
14 reported he had sustain serious head injuries in the past that
15 resulted in cognitive deficits, and he said he was considered
16 mentally retarded when he was in school, and the Court Order
17 directs us to request a joint evaluation with the Department of
18 Disability and Special needs when there is an indication that the
19 person may have mental retardation and mental illness.

20 Q. And did you do that?

21 A. Yes. So, on June Second, Two Thousand Ten, July Fifteenth,
22 Two Thousand Ten, and August Tenth, Two Thousand Ten, all of
23 those interviews were completed with another psychologist
24 present, Dr. Cornelius, of DDSN. And if I recall during the June
25 Second, Two Thousand Ten, interview it appeared he wasn't putting

1 forth his best effort in answering questions. We felt the best
2 course of action was to speak with his attorneys and ask them to
3 meet with him and tell him to do his best in answering our
4 questions. So, when we saw him in July of Two Thousand Ten, he
5 appeared to continue to not do his best in answering questions to
6 appear more intellectually or cognitively impaired. We elected
7 to do a fifteen day period of observation at Columbia Care Center
8 just to see if there was any evidence that he actually has a
9 mental disorder. And then we saw him at the end of that fifteen
10 day period of observation. So, that's why I saw him on four
11 different days.

12 Q. Okay. And you mentioned that who else was present during
13 these, these meetings with the defendant?

14 A. On March Tenth, Two Thousand Ten, it was Elizabeth
15 Whetstone, she is a social worker employed by the forensic
16 evaluation service Department of Mental Health Forensic Service,
17 and the other three dates it was Dr. Cornelius who works for the
18 Department of Disabilities and Special Needs.

19 Q. And how much time would you estimate you spent with the
20 defendant over the course of the last year since you originally
21 received that Order?

22 A. Without the times on the report it's hard to say for sure,
23 but it was probably about four hours. And then I met with him
24 again for another twenty-five minutes today.

25 Q. Okay. So, you did have an opportunity to speak with him

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

15

1 again today?

2 A. Yes.

3 Q. Prior to this hearing?

4 A. Yes.

5 Q. Are you familiar with the legal standards for competency to
6 stand trial?

7 A. Yes.

8 Q. And what did you do in your evaluation to determine whether
9 or not he met these standards?

10 A. Well, the first thing that I do is conduct a background
11 interview to see if there's a history suggesting that there's
12 some type of mental disorder present to develop mental
13 disability, mental retardation, bi-polar disorder, schizophrenia,
14 or some type of severe mental illness. And I had to go through
15 that interview with him on three of the four times I met with him
16 because he didn't want to -- he said he didn't want to answer a
17 lot of the questions, so I would try again during subsequent
18 interviews to get the information from him. And then I usually
19 do a competency interview where I ask questions to assess the
20 factual understanding of the legal system, the criminal legal
21 system, their understanding of their own legal situation
22 specifically, as well as their ability to assist their attorney
23 in their own defense. Mr. Flood most of the time would say he
24 didn't -- sometimes he would say he didn't know what he was
25 charged with and at other times he said he did and told me what

1 his charges were. He denied knowing what guilty means, and so, I
2 administered psychological testing which is used to assess
3 whether or not a person is feigning cognitive deficits, and the
4 results were highly indicative that he was feigning cognitive
5 deficits. So, given that it appeared he wasn't putting forth his
6 best effort I couldn't get a valid assessment of his true level
7 of understanding of those three areas that I mentioned. So, we
8 discontinued the interviews because there wasn't any point if we
9 were not going to get valid results.

10 Q. So, over the several times that you met with him in the last
11 year he would, his answers might change, whether or not he
12 understood different things?

13 A. Yes.

14 Q. And in some cases he would claim he did not understand
15 things such as the charges against him?

16 A. Yes.

17 Q. And based on these tests that you gave him, is it your
18 testimony that it showed a high indication that he was making it
19 up?

20 A. Yeah. Yes, one of the tests I gave is used to help assess
21 when a person is feigning memory impairments. These tests are
22 highly sensitive and also highly specific. That means that they
23 don't, they have a low rate of false positives, saying someone's
24 feigning when they're not, as well as a low rate of false
25 negative, saying someone's not feigning when they actually are.

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

17

1 His scores were so low that the statistical likelihood that he
2 would score that low just by guessing was one in five hundred
3 thousand, so that was pretty conclusive evidence that he was
4 feigning.

5 Q. Okay. So, would you say based on his answers that he knows
6 the charges that are against him?

7 A. I would -- based on the interviews, and especially his
8 interview today, yes.

9 Q. Okay. What about, does he know what those charges are,
10 like, could he define those charges, what they mean?

11 A. Well, when I asked him today he said he -- I asked him what
12 he was being accused of, and he said, "They saying I kidnaped
13 somebody." And I said, "Well, what does CSC mean, like criminal
14 sexual conduct? And he said, "I was having sex with her." And
15 I said, "Does that mean, though, that she was going along with it
16 or that it forced?" And he said, "I don't know what they're
17 saying."

18 Q. What about the possible penalties that he's facing, is he
19 familiar with those penalties?

20 A. Today I asked him, "If you're found guilty what could happen
21 to you?" And he said, "I might get a little time, I might get
22 probation." He said that that's what his lawyers have told him.
23 And one of his attorneys was in there with us, and I said, "Well,
24 do you want to ask him?" And he told him the worst he could get
25 would be life in prison. After that I asked him quite a few more

1 questions, and approximately fifteen minutes later I said, "Now
2 what did he tell you earlier that the worst you could get would
3 be?" And he said, "Life without parole."

4 Q. And do you feel he knows the difference between a plea of
5 guilty and not guilty?

6 A. Yes, I asked him, "What does guilty mean?" And again, that
7 was this afternoon, and he said, "Guilty means you did
8 something." And I said, "What does not guilty mean?" And he
9 said, "You ain't did nothing." So, that was his response.

10 Q. What about the duties of various courtroom personnel, the
11 Judge, the solicitor, the defense Attorney, was he familiar with
12 what their jobs are?

13 A. He said the job of the Judge is to sit back and listen. I
14 asked him, "What does a Judge decide?" And he said, "To see if a
15 person is going to trial or if a person is going to plead." I
16 asked him later, I said, "Well, who gives the sentence after a
17 person is found guilty?" And his response was, "The Judge." I
18 asked him what a jury does? He said, "They listen to the case
19 and decide if there's enough evidence," and he said, "And they
20 listen, they see if the case" -- and he kind of started to
21 stumble over his words and I couldn't understand what he was
22 saying, but then he said, "They see if you're guilty or not
23 guilty." I asked him what the jobs of his attorneys were, and he
24 said, "To help me." And I said, "At trial what are they going to
25 try to prove?" And he said, "To see if I'm innocent or guilty."

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

19

1 And I said, "Well, they're going to try to prove of those, which
2 one?" And he said, "To say that I'm innocent." I asked him what
3 the job of the solicitor was, and he said, "To try to negotiate
4 the plea bargain with you and then decide whether you and your
5 lawyer talk about it." And then he again started to kind of
6 ramble and I couldn't understand what he was saying, and I asked,
7 I said, "Well, is the solicitor going to try to prove, what would
8 he try to prove at trial?" And he said, "Guilty or not guilty."
9 And he eventually just seemed kind of confused about what I was
10 asking him, and I explained, I said, I rephrased the question, I
11 said, "Who at trial would try to prove that you're guilty?" And
12 he said, "The prosecutor." And I said, "Well, what else do they
13 call the prosecutor?" And he said, "Solicitor." I said, "So is
14 he for you or against you?" And he said, "Against." I asked
15 some more questions, later came back to that and said, "What's
16 the job of the solicitor?" And he said, "Trying to see if I'm
17 guilty, prove I'm guilty." So, it seemed like sometimes he would
18 stumble over his words a little bit, but if I corrected him or
19 rephrased the question he typically demonstrated an understanding
20 of those issues. He also seemed to know that a witness in Court
21 would be a person that would get up and tell their side of the
22 story. He said, they were going to tell about what happened.

23 Q. Alright. Did you talk any about controlling his behavior in
24 Court, does he know the proper behavior to exhibit in Court?

25 A. I talked with him more about working with his attorneys. I

1 said, "If a disagreement comes up between you and your attorneys
2 how would you handle that?" And he said, "I would talk to them."
3 I said, "Well, what kind of a voice would you use?" And he said,
4 "A normal low voice, a respectful voice." I didn't really have
5 any concerns about whether he knew appropriate courtroom behavior
6 so much as that he has the ability to behave appropriately, and
7 he has demonstrated during past interviews, during his fifteen
8 day period of observation at Columbia Care Center, as well as
9 during his interview with me today that he does have the ability
10 to behave and interact appropriately with others.

11 Q. And was he able to disclose facts about his case to his
12 attorney?

13 A. He -- yeah, I don't want to say anything that's going to
14 jeopardize what his defense strategy might be, but he did say
15 some things that he thought would help in his defense, and it
16 seemed like he was able, he wanted to mention that to his lawyer.

17 Q. Does he -- as to trust, did he seem to accept or trust his
18 lawyers' advice regarding his case?

19 A. Yes. He -- I asked him what he thought, how he described
20 what he knows about his attorneys so far? He said, "They're
21 pretty good," and he expressed a desire to get together and talk
22 with them about his case. He seemed to be confident that they
23 could do a good job for him if it comes to him negotiating a plea
24 bargain. He seemed pretty confident in that as well. So, he
25 expressed a lot of confidence in his attorneys.

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

21

1 Q. Do you have any concerns that he wouldn't be able to follow
2 trial testimony or wouldn't be able to testify if he chose to in
3 Court?

4 A. No, my only concern would be that sometimes he seemed to
5 discuss, go off on tangents when answering questions, and ramble
6 a little bit, so he may need to be redirected if he's asked
7 questions if he were to testify. He may need to be asked follow
8 up questions just to insure that he understands things that are
9 being told to him. But other than that I wouldn't have problems
10 with him, wouldn't perceive that he'd have problems understanding
11 what takes place in the courtroom.

12 Q. Okay. And based on your, your meetings with him, and your
13 and Dr. Cornelius's meetings with him, is there any evidence that
14 the defendant is mentally retarded?

15 A. The only evidence I came across was records from Orangeburg
16 Mental Health Center where they mentioned a diagnosis of mental
17 retardation. But then, ultimately, the most recent records from
18 there did not offer that diagnosis, they just offered a diagnosis
19 of malingering. And I spoke with one of the nurses at the
20 detention center and she had said something about slight mental
21 retardation. I followed up to ask if there was any documentation
22 of psychological testing or other evidence that would show he
23 needs diagnostic criteria for that, and I have not seen any. So,
24 our opinion was that there was no evidence that he would meet the
25 diagnostic criteria for mental retardation.

1 Q. What about any evidence that he has a mental illness?

2 A. He has reported hearing voices in the past. There's not
3 much evidence that he's seeing -- or he said he's seen things and
4 he's heard voices, and there's not much evidence to suggest that
5 he has had hallucinations. He's reported them inconsistently, he
6 reported them to me one time, and then all the times I met with
7 him he denied it. There isn't any documentation of it in the
8 records from the Department of Corrections in spite of being
9 there for ten years. And the staff at Columbia Care Center
10 watched him to see if there was any indication of any symptoms of
11 psychosis or other mental illness and they did not see anything
12 to suggest that he has a psychotic disorder or a mental disorder.

13 Q. Dr. Ganssen, what is your expert opinion to a reasonable
14 degree of psychological certainty regarding Mr. Flood's
15 competency?

16 A. My opinion is that he's competent to stand trial.

17 Q. And did you generate a report of your findings?

18 A. Yes.

19 Q. I'm showing you what's been marked as State's Exhibit Number
20 -- Court Exhibit Number Two, do you recognize that?

21 A. Yes, this is my report.

22 Q. And that's the one you wrote in regards to the meetings you
23 had with him - - -

24 A. Yes.

25 Q. --- other than today's meeting, obviously?

DR. MICHAEL GANSSEN - DIRECT EXAMINATION BY SOLICITOR JUSTIS

23

1 A. That's correct.

2 SOLICITOR JUSTIS: At this time, Your Honor, we'd like to
3 offer this as a Court's exhibit.

4 THE COURT: Is that the report of August Thirteenth, Two
5 Thousand Ten?

6 A. Yes, that's correct.

7 THE COURT: Okay.

8 MR. MELLARD: No objection.

9 THE COURT: Thank you, sir.

10 (Court's Exhibit Two
11 marked and filed.)

12 SOLICITOR JUSTIS: No further questions, please answer any
13 questions Mr. Mellard might have for you.

14 THE COURT: And Mr. Mellard, do you mind if I ask two
15 questions before you ask ...

16 MR. MELLARD: Sure.

17 (NOTE: Blank lines on this page do not indicate any part of
18 record has been omitted.)

1 EXAMINATION BY THE COURT:

2 Q. Dr. Ganssen, this report that you signed on August
3 Thirteenth, I note two other people were involved. Does
4 everybody review this report before it sends out?

5 A. Dr. Cornelius reviewed it, Elizabeth Whetstone - - -

6 Q. Did not?

7 A. --- did not.

8 Q. Okay. Alright. And is he, is Mr. Flood under any type
9 medication that you're aware of?

10 A. He told me he's currently taking two medications, he
11 couldn't tell me the names of those medications. When I spoke to
12 the nursing staff at the detention center they indicated he was
13 taking Elevil, which is an anti-depressant, and Visteril, which
14 is often used for agitation or anxiety, it's usually to help calm
15 people down. I don't have documentation on why those
16 medications have been prescribed.

17 Q. You didn't prescribe them, you're not aware of who
18 prescribed them?

19 A. No.

20 Q. Okay. Would either one of those medications cause him to
21 act in any of the ways that you indicated in your report?

22 A. I think I'd be stepping out of the bounds of my competence -
23 - -

24 Q. Okay.

25 A. --- to address that. Since I'm a psychologist, I didn't go

DR. MICHAEL GANSSEN - EXAMINATION BY THE COURT

25

1 to med school, so - - -

2 Q. Okay. You don't know?

3 A. --- I can't offer an expert opinion on that.

4 Q. Alright, sir. Okay. Thank you, sir.

5 THE COURT: Alright, Mr. Mellard, I'm sorry. He's your
6 witness.

7 (NOTE: Blank lines on this page do not indicate any part of
8 record has been omitted. Headers on testimony pages and hard
9 page breaks between testimony are now required by the Court. See
10 next ensuing page for sequential continuation of record.)

1 CROSS-EXAMINATION BY MR. MELLARD:

2 Q. So, you're a psychologist?

3 A. That's correct.

4 Q. And at the Department of Mental Health?

5 A. Yes.

6 Q. Alright. Have you ever been in private practice? I don't
7 believe you ever said one way or another.

8 A. No, I haven't done any private practice work.

9 Q. Okay. But you'd agree with me that what you do in the
10 Department of Mental Health would be different than what you do
11 in private practice?

12 A. Um ...

13 Q. For instance, you don't have voluntary clients at the
14 Department of Mental Health, they're pretty much brought to you?

15 A. Correct.

16 Q. Okay. And when you're in private practice you're -- I guess
17 you would want to, your concern would be to help your clients
18 out?

19 A. It would depend, I mean, most of the people I know who are
20 in private practice do the exact same types of evaluations I do,
21 their competency to stand trial - - -

22 Q. Okay. Assuming ...

23 A. --- responsibility evaluations, but they're hired - - - -

24 Q. Okay. Well, assuming you didn't do that - - - -

25 A. --- by attorneys to do those.

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 Q. --- you're just a regular psychologist. Your focus would be
2 to help the people, correct?

3 A. That's usually what it would be, yes.

4 Q. Alright. But that's not your focus, that is mental health,
5 your focus is more focused on competency, correct?

6 A. Yes. And in this type of evaluation the client wouldn't be
7 seen as the defendant, the client would be seen as the Court.

8 Q. Okay. So, let's -- the issues related to competency, you
9 don't really want to deal with him, or help him or cure him or
10 anything like that, because that's not your job is, correct?

11 A. Well, we're not supposed to -- we're supposed to be
12 objective and neutral, we don't want to be an advocate for
13 defendants but we also don't want to be prosecution oriented
14 either, we're just supposed to give an opinion on psycho-legal
15 questions, competency or criminal responsibility, so, yes, that's
16 correct.

17 Q. Okay. So, he was evaluated by both the Department of Mental
18 Health, and Disabilities and Special Needs?

19 A. Yes.

20 Q. Okay. And the Department of Mental Health deals with mental
21 illness, correct?

22 A. Yes.

23 Q. Alright. And the Department of Disabilities and Special
24 Needs deals with intellectual problems or intellectual
25 disabilities, I guess is the new term?

1 A. Yes, yeah, I think you're right on that.

2 Q. Okay. I guess, the old term would be mentally retarded, but
3 we don't use that anymore?

4 A. Right.

5 Q. Alright. Now, you would agree with me that just because
6 you have a mental illness doesn't mean that you couldn't be a
7 smart person?

8 A. That's correct.

9 Q. Okay. But on the Disabilities and Special Needs side, if
10 you are mentally, or intellectually disabled, retarded basically,
11 you would not be considered a smart person?

12 A. It would depend on who's offering that opinion but - - -

13 Q. Okay.

14 A. --- if you have the, if you meet the diagnosis criteria for
15 a diagnosis of mental retardation your IQ level is going to be
16 below Ninety-eight Per Cent of the population, so, yes.

17 Q. Okay. Alright, so I guess one of the first things you'd
18 want to know is whether Mr. Flood is mentally ill or not?

19 A. Yes.

20 Q. Okay. And on Page Five of your report you don't rule out
21 the possibility that he has a severe mental illness?

22 A. Do you mean under the diagnostic impressions?

23 Q. Correct, yes, actually the second paragraph, first and
24 second lines.

25 A. Well, what I'm saying is that when someone is malingering or

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 when they're feigning either mental illness symptoms or cognitive
2 or intellectual impairments that doesn't mean that there isn't
3 something legitimate there. And then I note that staff at the
4 Department of Corrections, Columbia Care Center, they've not
5 observed mental illness symptoms or cognitive impairments or
6 intellectual impairments.

7 Q. Correct. But you don't rule out the possibility that he
8 has a severe mental illness? I'm just reading what you wrote.

9 A. Well, I think if you take that sentence all by itself - - -

10 Q. Uh-huh.

11 A. --- it could be read that way. If you read the rest of the
12 paragraph it doesn't read that way.

13 Q. So, can you rule out whether he has a severe mental illness,
14 yes or no?

15 A. I can offer the opinion that it's highly unlikely that he
16 has a severe mental illness, given that there's almost no
17 evidence for it.

18 Q. Okay. And the evidence would be records, correct?

19 A. Records, and his presentation during the interviews, his
20 presentation during his fifteen day stay at Columbia Care Center.

21 Q. Okay. So, the records that the you looked at don't indicate
22 he has any mental illness?

23 A. For the most part, aside from the records that I received
24 today.

25 Q. Okay. And you did receive some records that you did not

1 previously have?

2 A. That's correct.

3 Q. Okay. And these records, and I believe we've given them to
4 the Judge, I don't believe you have that.

5 THE COURT: Are you talking about the Nineteen Ninety-four
6 records?

7 MR. MELLARD: Yes, sir.

8 Q. The Nineteen Ninety-four records, there was a finding that
9 he was not competent to stand trial?

10 A. Yeah, the ...

11 SOLICITOR JUSTIS: Objection, Your Honor, there was no
12 finding.

13 Q. Okay, there was a report that said he was not competent to
14 stand trial?

15 A. That was the opinion of that mental health professional.

16 Q. Alright. And you just got that today, that record today?

17 A. Yes.

18 Q. Alright, so that record contains some sort of indication of
19 mental illness, is that what you're saying?

20 A. The symptoms that are listed in that report are that he was
21 hearing voices and that he was also having visual hallucinations,
22 that he was seeing things that aren't really there. Those are
23 actually the same things he told me during one interview, but
24 then denied during other interviews, and he also denied during
25 his hospitalization at Columbia Care Center. Typically when

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 someone has those types of symptoms there is some observable
2 indication that they are experiencing hallucinations. They are
3 easily -- they're distracted easily, they might look around, they
4 can't follow conversations. There is no indication that he's --
5 no objective observable indication that he has experienced those
6 symptoms.

7 Q. Now, his school records, they indicate -- you've looked at
8 the school records, correct?

9 A. Yes.

10 Q. Okay. And they indicate that his scores at Age Nine on the
11 academic testing ranged from the One Percentile to the Twentieth
12 Percentile? And again, that's in your report.

13 A. Yeah, I just want to - - -

14 Q. Okay.

15 A. --- have the ...

16 THE COURT: You can refer him to what you are reading if you
17 want to.

18 A. Okay, yes, that's correct.

19 Q. Okay. And his high school records for achievement tests
20 ranged from the One Percentile to the Seventeenth Percentile?

21 A. That's correct.

22 Q. Okay. And then, the middle school is where you conclude he
23 reached the Fiftieth Percentile?

24 A. Yes.

25 Q. Okay.

1 A. Or close to it.

2 Q. Okay. And his grades in school, from what you indicated,
3 were all Ds and Fs?

4 A. Yes.

5 Q. Okay. And the Department of Correction records, did you see
6 where he received any mental health counseling?

7 A. He was seen by mental health briefly. I don't, it doesn't
8 seem that they, that they observed any need to follow him
9 regularly during his incarceration.

10 Q. Okay. And, but you don't see where they even followed him?

11 A. They, he reported having some anxiety, they prescribed him a
12 medication for that.

13 Q. Okay.

14 A. But as far as meeting with him on a regular basis, in the
15 records I reviewed I didn't see any indication that they followed
16 -- that Mental Health followed him regularly.

17 Q. Okay. And then his Detention Center records, I believe you
18 looked at those, and those were over a five month period, from
19 October of O-Nine to March of O-Ten?

20 A. Yes.

21 Q. Okay. And then Columbia Regional Care Center, that was for
22 about, approximately, a little less than a month, fifteen days?

23 A. About two weeks, yes.

24 Q. Okay. Alright, and as far as cognitive or intellectual
25 problems, again, your report doesn't rule out the possibility

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 that he has those problems?

2 A. Well, what I've written is that despite his presentation it
3 is highly unlikely that he has significant cognitive or
4 intellectual impairments. So, my opinion is that there is very
5 little to suggest that he's ...

6 Q. And again, that's based on records?

7 A. As well as observations, -- interviews and observations made
8 during that fifteen day period of observation. That was the
9 purpose of admitting him was to see if there was any evidence
10 that he has cognitive impairments.

11 Q. And you're aware that he sustained three serious head
12 injuries?

13 A. He reported he sustained three head injuries. He became
14 angry and even threatening a social worker when asked about the
15 name of the doctor that treated him following one of his head
16 injuries. He said that the doctor is deceased. He told me that
17 doctor is deceased and that we couldn't get those records.

18 Q. Okay.

19 A. He said, we'd just have to believe him.

20 Q. Now, what records do you have to show that he is able to
21 assist me in the defense of this case?

22 A. Well, given that competency is looking at how he is doing
23 presently, I wouldn't base my opinion on his competency to stand
24 trial primarily on records so much as his current presentation.
25 Records are important for forming a diagnosis, but looking at his

1 present functioning, his ability to understand what's going on in
2 the courtroom and assist you isn't going to -- records aren't
3 going to be as pertinent for that.

4 Q. So, records would be important if he's mentally ill or, or,
5 I forget what the word is, retarded, mentally retarded, but
6 they're not important if he's competent, as to whether or not
7 he's competent to stand trial?

8 A. They're important, they're just not as pertinent as how he's
9 doing currently.

10 Q. Okay. So, this is based on all your observations, your
11 opinion?

12 A. It's based on both records and current observations.

13 Q. Well, what records do you have to show that he's able to
14 assist me in the defense?

15 A. The records show that there is little evidence that he has a
16 mental disorder that would adversely affect his competency to
17 stand trial. And then, his performance during our interview
18 today demonstrated that he understands most of what's going on in
19 the courtroom.

20 Q. Alright, so there's -- other than what you've already talked
21 about there are no other records, correct?

22 A. Not that I've seen.

23 Q. Okay. Now, let's talk about what happened today. Now, my
24 understanding is, and I was in there, you asked him what happens
25 if he's found guilty?

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 A. Uh-huh.

2 Q. And his response was, he might get a little time, or he
3 might get some probation?

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. And he didn't know how long he could possibly get until you
8 had him ask me, is that correct?

9 A. I don't know if he knew it or not. He said he didn't.

10 Q. Okay. And then you had him ask me?

11 A. Yes.

12 Q. Okay. And then I told him what he was looking at. But
13 prior to that time, between your interactions he didn't indicate
14 one way or another -- in fact he said he didn't know?

15 A. Correct.

16 Q. Okay. He didn't know tomorrow is about a trial, did he, he
17 thought it was some kind of meeting with the attorneys and him?

18 A. He seemed to think it had something to do with discussing --
19 he seemed to think he was going to be meeting with you and Mr.
20 Wise about a plea bargain is what I gathered from him.

21 Q. He didn't know anything about the trial?

22 A. That's what he said.

23 Q. Okay. Alright, and he said the Judge's job is to listen and
24 to see if a person wants to go to trial or plead, is that ...

25 A. Yes.

1 Q. He also said the Solicitor's job is to offer pleas?

2 A. Yes. I wrote that he said, try and negotiate the plea
3 bargain with you, and then, whether you and your lawyer talk
4 about it.

5 Q. Alright. He also, when you were talking about the criminal
6 sexual conduct case, he said that the hospital board said he
7 didn't, wasn't guilty?

8 A. Correct. I'm sorry?

9 Q. You asked him about the CSC and you -- he talked to you
10 about the hospital reports?

11 A. Okay.

12 Q. And he said, everything is looking good, in those hospital
13 reports, correct?

14 A. Yes. He indicated that was based on information he received
15 from his sister.

16 Q. Okay. And he said that -- well, let me ask you about that.
17 The sister, he kept wanting to call her, didn't he?

18 A. Yes.

19 Q. Okay. And do you think he's relying more on his sister or
20 do you think he's relying on his attorneys in this case?

21 A. It's not clear to me. He agreed, though, once I said, it
22 might be better to talk to your attorneys about how the evidence
23 is looking in your case rather than you sister, - - -

24 Q. Okay.

25 A. --- he agreed to that.

DR. MICHAEL GANSSEN - CROSS-EXAMINATION BY MR. MELLARD

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1 Q. Okay. Well, I mean, when I was in there, if he didn't know
2 what this was, you'd say, it's a pen. And then you would say,
3 well, what is this? And it's a pen. But that doesn't mean he
4 understands about this, that just means he can parrot back what
5 you said to him?

6 A. Correct.

7 Q. Okay. So, based on what y'all talked about in there, he
8 doesn't know he's going to trial tomorrow, he doesn't believe
9 he's looking at life if he's convicted, he thinks if he's found
10 guilty he'll get little time or probation, and he's taking, he's
11 taking advice from his family. Do you think with all that, he is
12 capable of assisting in his defense?

13 A. Yes.

14 Q. Even though he has no understanding of his own situation?

15 A. I think he understands the situation quite well. The things
16 that he was, the areas in which he was lacking I educated him
17 about, and I waited, I didn't just ask him to parrot it back, I
18 waited at least ten minutes to see, now what do you recall about
19 this? And he demonstrated retention of the information that we
20 had given.

21 Q. Right. This is a pen, and then ten minutes later he says,
22 this is a pen. But how does that help him understand his own
23 situation?

24 A. Well, he already, he is already aware that he could be
25 facing time in prison. He's aware that he has serious charges

1 against him. That's a pretty accurate understanding of his
2 situation.

3 Q. IF he doesn't know that he's going to trial tomorrow how can
4 he help?

5 A. Well, I don't know if that's due to a mental illness, I
6 don't know if he's been given correct information. He might have
7 been given correct information by you and Mr. Wise, and his
8 sister has given him information that indicates otherwise. He
9 seemed to be thinking that the next step was a plea bargain or a
10 plea negotiation.

11 Q. So, how is he going to help us for trial when all he's
12 focused on is plea negotiation?

13 A. If that's the defense strategy he wants to use, if that's
14 the approach he wants to take, that's his prerogative. I don't
15 see that as being due to a mental disease or defect.

16 MR. MELLARD: One second. That's all we've got.

17 THE COURT: Thank you, sir. I appreciate it. Anything on
18 cross?

19 SOLICITOR JUSTIS: Real briefly, Your Honor.

20 THE COURT: I mean on redirect, excuse me. I'm sorry.

21 (NOTE: Blank lines on this page do not indicate any part of
22 record has been omitted. Headers on testimony pages and hard
23 page breaks between testimony are now required by the Court. See
24 next ensuing page for sequential continuation of record.)

DR. MICHAEL GANSSEN-REDIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 REDIRECT EXAMINATION BY SOLICITOR JUSTIS:

2 Q. Dr. Ganssen, these tests that you gave him, why did you give
3 him these tests?

4 A. The two tests I gave I administered because I suspected he
5 might be malingering, that he was feigning cognitive deficits.

6 Q. And were the, what were the indications that made you feel
7 that way, what were the things that he was doing, saying, not
8 saying?

9 A. It was things like saying he didn't know what year it was,
10 saying he didn't know what he was charged with, saying he didn't
11 know what the word, guilty, means. Most people, even if they
12 have severe intellectual impairments or cognitive deficits can
13 answer those questions. And when he couldn't I decided it would
14 be appropriate to give psychological testing to see, help
15 determine what he was doing, what his response style was to
16 questions.

17 Q. And Mr. Mellard asked you about mental retardation and some
18 school scores that he had gotten, - - -

19 A. Yes.

20 Q. --- and the different percentiles he was in, the One to
21 Twenty Percentile, - - -

22 A. Yes.

23 Q. --- One to Seventeenth, and then I think in middle school it
24 was something much higher than that?

25 A. Yes. It was, a lot of, most of the scores ran in the

1 forties or ...

2 Q. And a person that has mental retardation, where would their
3 scores typically be?

4 A. Below the Fifth Percentile if not below the Second
5 Percentile.

6 Q. Would it be possible for someone to score low in the Second,
7 Third, Fourth, Fifth Percentile and then score up at the Fortieth
8 Percentile and still be mentally retarded?

9 A. I'd say that would be highly unlikely. It's very difficult
10 for a person on a test of academic achievements or an IQ test or
11 something like that it's very difficult for someone to score
12 better than they have the capacity to score. You can, of course,
13 score lower than what you have the capacity to score by not
14 paying attention or just filling in the bubbles, but as far as
15 scoring higher than your ability is, that's highly unlikely to
16 occur.

17 Q. Finally, Doctor, you know, in your opinion, do you believe
18 he understands the proceedings against him?

19 A. Yes.

20 Q. And do you believe, in your opinion, that he can assist his
21 attorneys in his defense?

22 A. Yes.

23 SOLICITOR JUSTIS: Thank you, no further questions.

24 THE COURT: Anything on recross?

25 MR. MELLARD: No, sir.

1 THE COURT: Alright. You may step down, thank you, Dr.
2 Ganssen.

3 COURT REPORTER: Doctor, you don't have any Court's Exhibits
4 or anything, do you? I mean, there's one, and Judge, you have
5 the other one. Okay, that's fine. Thank you.

6 THE COURT: Alright. Any other witnesses?

7 SOLICITOR JUSTIS: None, Your Honor.

8 THE COURT: Okay. Any witnesses for the Defense?

9 MR. WISE: I'm going to call Mr. Flood.

10 THE COURT: Okay. Alright, sir. Mr. Flood, if you would
11 please step up here. Help him get up here. Okay. and Mr.
12 Flood, if you'd come around here, please, sir. And Mr. Flood, I
13 know that you can't put your hand on the Bible or anything like
14 that, or raise your right hand. Mr. Flood, I do need to swear
15 you in before you take the stand, however, okay? Would you
16 listen to this lady?

17 (Whereupon, Cedric Flood
18 is duly sworn.)

19 THE COURT: Okay. And Mr. Flood, if you'd come on and have
20 a seat right here, please, sir, or are you more comfortable
21 standing? You'd rather stand? Okay. You can stand right
22 there.

23 (NOTE: Blank lines on this page do not indicate any part of
24 record has been omitted. Headers on testimony pages and hard
25 page breaks between testimony are now required by the Court.)

CEDRIC FLOOD - EXAMINATION BY THE COURT

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1 (CEDRIC FLOOD, being first duly sworn,
2 testifies as follows:)

3 EXAMINATION BY THE COURT:

4 Q. Alright. And for the record, I just want to note, Mr.
5 Flood, you had originally told the Court you did not want to come
6 here, is that correct, or told your attorneys?

7 A. What happened, right before I talked to him earlier, he tell
8 me, he said I coming in tomorrow to talk to them.

9 Q. Okay. But I had to send the deputies to come get you, is
10 that correct?

11 A. Yes, sir, but I'm saying, because I talked to him earlier,
12 he told me, he said, I'll come over here tomorrow to talk to him.

13 Q. Okay. Okay. So, you weren't really saying you wouldn't
14 come?

15 A. No, sir. I was coming but, you know what I'm saying, since
16 I look forward to tomorrow to come, but he told me, he said
17 tomorrow.

18 THE COURT: Okay. Well, I'm sorry for that
19 misunderstanding. Okay? Now, Mr. Wise is going to ask you some
20 questions. Okay?

21 Alright, Mr. Wise, your witness.

22 MR. WISE: Thank you, Your Honor.

23 (NOTE: Blank lines on this page do not indicate any part of
24 record has been omitted. Headers on testimony pages and hard
25 page breaks between testimony are now required by the Court.)

CEDRIC FLOOD - DIRECT EXAMINATION BY MR. WISE

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1 DIRECT EXAMINATION BY MR. WISE:

2 Q. Cedric, the Judge asked you about not wanting to come today.
3 How did you know you had to be in Court?

4 A. How do I know? Because a deputy come and get me, because I
5 know when I talked to you earlier you said tomorrow. Understand?
6 And then I was looking forward to tomorrow to come over and talk
7 to y'all.

8 Q. And when they came and asked you to come today why didn't
9 you want to come?

10 A. Because I had just saw you earlier, and then I was looking
11 forward for the doctor to come over there.

12 Q. But when they said the Court wanted you here, you had a
13 Court Order, you still didn't want to come?

14 A. I was coming, you know what I'm saying, okay, but they ain't
15 had to come and get me, but I was coming because I was looking,
16 you know what I'm saying.

17 Q. But you're standing in a blanket. Where is your clothes?

18 A. Oh, I was going to get my clothes on but they didn't give me
19 enough time to get no clothes.

20 Q. You've been sitting here, and you've been listening to what
21 the doctor said?

22 A. Uh-huh.

23 Q. Okay. Tell us what he said.

24 A. He tell me, say, I'm coming to stand trial.

25 Q. What else did he say?

1 A. He said I got just a little illness and stuff.

2 Q. Anything else?

3 A. No, sir, I ain't want to say nothing else.

4 Q. Do you remember anything else he said?

5 A. Yes, sir, but I don't want to say nothing else.

6 Q. You don't want to say anything else?

7 A. NO, sir.

8 Q. Why not, Mr. Flood?

9 A. I don't want to say nothing.

10 Q. I'm sorry?

11 A. I don't want to say nothing else.

12 Q. Okay. So, that's all you want to say?

13 A. Yes, sir.

14 Q. Okay. Do you recognize that the Judge has got to make a
15 determination about whether or not you're going to go to trial
16 tomorrow, right? That's what we're doing here.

17 A. Oh, you ain't never said that, now.

18 Q. Oh, you didn't know that's why you were here?

19 A. No.

20 Q. Why did you think you were here?

21 A. Because you said well, you told me, said I had an idea, I
22 was looking forward to see the doctor, you know what I'm saying,
23 because you ain't mentioned nothing about the Judge that will
24 make the determine, you know what I'm saying.

25 Q. So, when the doctor spoke to you he didn't tell you that

CEDRIC FLOOD - DIRECT EXAMINATION BY MR. WISE

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1 that's why you were going to be here today?

2 A. No, sir.

3 Q. When Mr. Mellard spoke to you he didn't tell you that's why
4 you were going to be here today, you didn't know that?

5 A. No, sir. I'm saying, when I talked to y'all the other day,
6 and when I talked to you the other day you was telling me about
7 tomorrow.

8 Q. So, you weren't aware that this is a part of your case?

9 A. No, sir.

10 Q. And you thought when the deputies came and got you and said
11 you had to come to Court, it wasn't a part of your case?

12 A. I thought, well, I thought, sir, I'd come back over here to
13 talk to y'all and you again.

14 Q. Okay. Okay. Do you remember the questions that Mr. Mellard
15 asked the doctor?

16 A. I mean, I don't want to say nothing, you know what I'm
17 saying.

18 Q. Can you repeat one, one question that your lawyer asked the
19 doctor?

20 A. Yeah, Mr. Mellard asked the doctor what kind of illness I
21 got and stuff like that.

22 Q. Uh-huh. What did he say?

23 A. He was saying, I kind of like got some kind of retarding
24 illnesses and stuff like that.

25 Q. Okay. Now, you've been represented by Mr. Mellard for a

1 while now, right?

2 A. Yes, sir.

3 Q. Okay. Do you remember having a meeting in that room back
4 there behind the courtroom and Mr. Mellard said, tell me, Cedric,
5 what happened this day?

6 A. Yes, sir.

7 Q. And you didn't tell him, did you? You wouldn't tell him,
8 would you?

9 A. No, sir. I was going to tell him, you know what I'm
10 saying, I was going to tell him.

11 Q. But you didn't?

12 A. No, but I didn't.

13 Q. You didn't want to answer his questions, did you?

14 A. Not right then.

15 Q. Not right then. Now, this was two days ago, right?

16 A. I know -- yeah, yes, sir.

17 Q. Okay. Aright.

18 A. That's been the other day, ain't it?

19 Q. I'm sorry?

20 A. Friday, right?

21 Q. Correct. Uh-huh. When we have this trial, if you hear
22 something you don't like, what happens?

23 A. What happens?

24 Q. What happens?

25 A. I can't speak out loud or nothing like that, I know that

CEDRIC FLOOD - DIRECT EXAMINATION BY MR. WISE

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1 Q. When I met you today and I wanted you to look at a form,
2 remember, we kind of talked about that. Okay. But you didn't
3 want to look at that form or sign it for me until you talked to
4 your sister, right?

5 A. Yes, sir, because it's saying about what happened, well, you
6 say you're going to get that witness, I said, well, we're going
7 to get back to each other, and you said, alright, we'll get back
8 to each other.

9 Q. Uh-huh. So, when I asked you to sign a form you say, no,
10 but if your sister said it was okay then you'd do it, right?
11 Right?

12 A. Yes, sir.

13 Q. Okay. And your trial is supposed to start tomorrow, and the
14 day before trial, have you ever sat down and talked to your
15 lawyer and said ...

16 A. No, sir, because I know good and well before we get together
17 for the talk, because you said, I'm going to come over there
18 tomorrow for to talk to y'all, and I said, alright.

19 Q. So, you figure we can get together tomorrow morning be ready
20 to start this trial tomorrow?

21 A. Uh-huh.

22 Q. That's the plan?

23 A. If you want to let's get together we can talk.

24 Q. Okay. Okay. Alright. So, tomorrow morning we sit down and
25 talk a little bit, and we try the case?

CEDRIC FLOOD - DIRECT EXAMINATION BY MR. WISE

48

1 A. Yes, sir.

2 Q. Okay. Alright.

3 A. I can't talk to you before I leave?

4 Q. Yeah, I'm going to talk to you before you leave, yes, sir,
5 yes, sir. Cedric, I want to ask you about ...

6 MR. WISE: That's all. Answer any questions the prosecutor
7 has for you.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court. See
11 next ensuing page for sequential continuation of record.)

CEDRIC FLOOD - CROSS-EXAMINATION BY SOLICITOR JUSTIS

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1 CROSS-EXAMINATION BY SOLICITOR JUSTIS:

2 Q. Mr. Flood, - - -

3 A. Yes, sir.

4 Q. --- prior to getting arrested were you employed?

5 A. Yes, sir.

6 Q. And what was your job?

7 A. I worked in a cleaning company, cleaning up, I was helping a
8 man cleaning up, and then I work at the Pizza Hut, too.

9 Q. So, you work two jobs?

10 A. Yes, sir.

11 Q. How many hours a week would you say you work?

12 A. What?

13 Q. How many hours would you work, would you work twenty hours a
14 week, forty hours a week?

15 A. Oh, I was getting, like, forty hours at the cleaning
16 company, I was getting, like, thirty-two at the Pizza Hut.

17 Q. So, you were working a lot?

18 A. Yes, sir.

19 Q. And you lived, you lived by yourself?

20 A. I don't stay by myself, me and my nephew.

21 Q. Okay. So, it was you and your nephew, and you lived at
22 Street, is that correct?

23 A. Yes, sir.

24 Q. In a trailer there?

25 A. Yes, sir.

1 Q. And did you have a car?

2 A. No, sir, my sister, I always use her vehicle.

3 Q. Okay. So, you had a driver's license?

4 A. Yes, sir.

5 Q. And you work two jobs, correct?

6 A. Yes, sir.

7 Q. How long have you -- how old are you?

8 A. I'm thirty-nine.

9 Q. And of those thirty-nine years how long do you figure you've
10 been working, when was your first job, how old were you?

11 A. For a job like seventeen, but I used to help people go
12 around cutting grass and stuff when I was like a teenager.

13 Q. Right. And then you had a -- when was your first steady
14 job?

15 A. When I was like seventeen.

16 Q. Other than the period of time you spent in the Department of
17 Corrections as an adult, have you been employed, other than when
18 you were in jail?

19 A. Yes, sir, I used to work at the prison industry when I was
20 in jail.

21 Q. Okay. So, you even worked when you were in jail. Did you,
22 who pays all the bills at your house, your nephew or you?

23 A. Oh, me and him pay bills together, we split the bills
24 together.

25 Q. You buy groceries together?

CEDRIC FLOOD - CROSS-EXAMINATION BY SOLICITOR JUSTIS

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1 A. (Motions in the affirmative.)

2 SOLICITOR JUSTIS: Thank you, no further questions.

3 THE COURT: Anything on redirect?

4 MR. WISE: None. That's all we have, Your Honor, thank you.

5 THE COURT: Alright. Thank you, Mr. Flood, you can go and
6 sit back down, please, sir.

7 Any other witnesses?

8 MR. WISE: Sir?

9 THE COURT: Any other witnesses?

10 MR. WISE: No, sir.

11 THE COURT: Okay. Alright, Dr. Ganssen, I want you to come
12 back up here on the witness stand, please, sir, the Court wants
13 to ask you a couple of questions.

14 (NOTE: Blank lines on this page do not indicate any part of
15 record has been omitted. Headers on testimony pages and hard
16 page breaks between testimony are now required by the Court. See
17 next ensuing page for sequential continuation of record.)

DR. MICHAEL GANSSEN - EXAMINATION BY THE COURT

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1 (DR. MICHAEL GANSSEN, having been previously
2 sworn, testifies as follows:)

3 EXAMINATION BY THE COURT:

4 Q. Alright, Dr. Ganssen, you're still under oath, you
5 understand that?

6 A. Yes, sir.

7 Q. Okay. Now, you've been sitting here while Mr. Flood
8 testified?

9 A. Yes, sir.

10 Q. Okay. Has anything he said in his testimony here today
11 changed your opinion in any way whatsoever?

12 A. No.

13 Q. Anything concerns you about what he said today?

14 A. Just not being aware of whether he should be pursuing a plea
15 bargain or whether he's going to actually be going to trial, but
16 it's not uncommon to see defendants who aren't aware of the way
17 things are with that, and in this case it wasn't clear if that
18 was due to just not having had sufficient communications with his
19 attorneys or other reasons, maybe he's been given misinformation
20 by his sister. But he, as I noted during my initial direct
21 examination, I do think that it's prudent to ask him followup
22 questions to insure that he understands what he's being told,
23 because there may be things that he doesn't know. But he
24 demonstrated during my interview that he does have the ability to
25 learn and retain what he's told. I would say that trying to say

DR. MICHAEL GANSSEN - EXAMINATION BY THE COURT

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1 that he was just parroting back answers that I gave him is a
2 misrepresentation of what happened. I asked questions and I
3 asked ten to twenty minutes later what he remembered, and he
4 would repeat it, and not necessarily the same words, a lot of
5 times it was paraphrased, which is more of a display of
6 understanding and more of an indication of understanding what I
7 told him, that just merely repeating the words that I used.

8 Q. But it did appear to you that he was not aware that he was
9 going to trial tomorrow, is that correct?

10 A. Yes, he seemed to think that they were going to be
11 discussing plea negotiations.

12 THE COURT: Okay. Alright, do you have any questions, Mr.
13 Justis?

14 SOLICITOR JUSTIS: No, Your Honor.

15 THE COURT: Okay. Mr. Mellard, do you have any?

16 MR. MELLARD: No, sir.

17 THE COURT: Okay. Thank you, Doctor, I appreciate it. Thank
18 you for coming to Orangeburg.

19 Okay. Alright, Mr. Mellard or Mr. Wise, do y'all have any
20 reports contrary to the report that I've -- the report in
21 evidence?

22 MR. MELLARD: No, sir.

23 THE COURT: The only thing I have is Mr. Flood's testimony?

24 MR. MELLARD: Correct.

25 THE COURT: Okay. Alright.

1 FINDING OF THE COURT:

2 Based on the evidence that I have, I conclude that Mr. Flood
3 is competent to stand trial. Okay. So, that's where we are at
4 twenty minutes 'til six the day before trial.

5 So, y'all talk to him. Okay? And I want to talk to y'all
6 in a minute before we go back in chambers. Okay?

7 Alright, anything else today? Well, there's not going to be
8 anything else today, it's a quarter to six, it's time to go home,
9 so I'll make that decision. Okay? Thank you.

10 What time are we supposed to come back in the morning?
11 Nine? Nine:thirty? Okay.

12 (Recess for the day.)

13 DATE:

14 July 19, 2011

15 THE COURT: Is the State ready?

16 SOLICITOR JUSTIS: The State's Ready, Your Honor.

17 THE COURT: Is the Defense ready?

18 MR. MELLARD: We're Ready.

19 THE COURT: Ms. Harry Dot, are you ready?

20 COURT REPORTER: Yes, sir.

21 THE COURT: Thank you, ma'am.

22 Alright, Ladies and Gentlemen, we are getting ready to go
23 through requesting to see about you being picked as a juror in
24 the case of the State of South Carolina versus Cedric Flood. The
25 solicitor's office is prosecuting this case, and Mr. Justis and

1 Mr. Bell are the attorneys for the State of South Carolina. And
2 if y'all would stand up and introduce yourselves to the jury and
3 tell them the names of the other attorneys that work in the
4 solicitor's office.

5 MR. JUSTIS: Yes, Your Honor. My name is Glenn Justis, and
6 alongside me is Harrison Bell, he's also one of the assistant
7 solicitors who work for David Pascoe, he's the elected solicitor.
8 Other attorneys or solicitors in our office include Sarah Ford,
9 Don Sorenson, Tommy Scott, Rob Clariday, and Crystal Chapman.

10 THE COURT: Okay, thank you, sir.

11 Alright, is any member of the jury panel related by blood or
12 marriage, or a close personal friend of any of the attorneys in
13 the solicitor's office? If so, please stand.

14 Alright, no one is standing.

15 Is any member of the jury panel related by blood or marriage
16 or a close personal friend of any of the other people that you
17 may know of that works in the Orangeburg County Solicitor's
18 Office? If so, please stand.

19 Alright, no one is standing.

20 Alright. Mr. Cedric Flood is the defendant in this case.

21 Mr. Flood, would you mind standing? Okay. Mr. Flood is in
22 the white shirt right here. Mr. Flood, you can be seated, thank
23 you, sir.

24 Is any member of the jury panel related by blood or marriage
25 or a close personal friend of Mr. Cedric Flood? If so, please

1 stand at this time.

2 Alright, no one is standing.

3 Mr. Flood is defended by Mr. Doug Mellard and Mr. Mark Wise
4 of the public defender's office. There are also other attorneys
5 in the public defender's office. If you would identify them, Mr.
6 Mellard.

7 MR. MELLARD: I'm Doug Mellard, this is Mark Wise. There's
8 also Peggy Hinds, Jill Ulman, and Ash Chisolm.

9 THE COURT: Thank you, sir.

10 Any member of the jury panel related by blood or marriage or
11 a close personal friend of any of the attorneys in the Orangeburg
12 County Public Defender's Office? If so, please stand.

13 No one is standing.

14 Any member of the jury panel related by blood or marriage or
15 a close personal friend of any of the office staff that works in
16 the Orangeburg County Public Defender's Office? If so, please
17 stand.

18 Alright, no one is standing.

19 There are a number of people who may be called as
20 prospective witnesses in this case. I'm going to go through
21 their names one at a time. I don't want you to be alarmed at the
22 number of people but these are all people who may be called as
23 witnesses in this case. Bobby Jones of the Orangeburg County
24 Sheriff's Office may be called as a witness in this case. Is any
25 member of the jury panel related by blood or marriage or a close

1 personal friend of Bobby Jones? If so, please stand at this
2 time.

3 Yes, sir, your name again?

4 JUROR HICKMON: Edward Hickmon.

5 THE COURT: Hold on one second. Oh, yeah, Mr. Hickmon. Mr.
6 Hickmon, you know Mr. Bobby Jones or are you related to him?

7 JUROR HICKMON: Related to him.

8 THE COURT: Okay. The fact that -- and when you say
9 related, how are you related to him, a cousin, or ...

10 JUROR HICKMON: I'm his nephew.

11 THE COURT: You're his nephew?

12 JUROR HICKMON: Yes, sir.

13 THE COURT: Okay. The fact that you are, that he is your
14 uncle, would that affect your ability to listen to the evidence
15 in this case and render a fair and impartial verdict?

16 JUROR HICKMON: No, sir.

17 THE COURT: It wouldn't? Okay. Well, then I'll ask you to
18 stay with us then, please, sir.

19 Anybody else?

20 Okay, nobody else.

21 Okay. Another possible witness is Gerald Carter, also who
22 works with the Orangeburg County Sheriff's Office. Any member of
23 the jury panel related by blood or marriage or a close personal
24 friend of Gerald Carter? If so, please stand at this time.

25 Alright, no one is standing.

1 Another possible witness is Kimberly Pugh of the Orangeburg
2 County Sheriff's Office. Any member of the jury panel related by
3 blood or marriage or a close personal friend of Kimberly Pugh?
4 If so, please stand.

5 No one is standing.

6 Another possible witness is Catherine Liesy of the South
7 Carolina Law Enforcement Division. Any member of the jury panel
8 related by blood or marriage or a close personal friend of
9 Catherine Liesy? If so, please stand.

10 No one is standing.

11 Another possible witness is James Shumpert, Orangeburg
12 County Sheriff's Office. Any member of the jury panel related by
13 blood or marriage or a close personal friend of James Shumpert?
14 If so, please stand.

15 Alright, no one is standing.

16 Another possible witness is Minor Any member
17 of the jury panel related by blood or marriage or a close
18 personal friend of Minor

19 You're Mr. ...

20 UNCLE OF Minor Yes, I'm her uncle.

21 THE COURT: Okay, but you're not a member of this jury
22 panel.

23 UNCLE OF Minor No, sir.

24 THE COURT: Okay, you can sit down. Thank you, sir,
25 appreciate it.

1 JUROR GUINYARD: Ruthie Guinyard.

2 THE COURT: Okay, hold on a second, Ms. Guinyard, before you
3 say anything. Let me -- Ms. Guinyard, are you a relative of
4 Rebecca Cleakley?

5 JUROR GUINYARD: I know her because her daughter and I have
6 been spiritual friends.

7 THE COURT: Alright, the fact that her daughter and you are
8 friends, would that affect your ability to listen to the evidence
9 in this case and render a fair and impartial verdict?

10 JUROR GUINYARD: No, it would not.

11 THE COURT: It would not? If you would stay with us, then,
12 please, ma'am.

13 Alright, is any member of the jury panel related by blood or
14 marriage or a close personal friend of anyone who works for a law
15 enforcement agency? If so, please stand.

16 Alright, I'm going to start with you, please, ma'am. Your
17 name?

18 JUROR RHODES: Wanda Rhodes.

19 THE COURT: Wanda Rhodes?

20 JUROR RHODES: Yes, sir.

21 THE COURT: Okay. Ms. Rhodes, does -- do you have a family
22 member who works for a law enforcement agency?

23 JUROR RHODES: Yes, sir.

24 THE COURT: Okay. And which agency?

25 JUROR RHODES: Myrtle Beach, South Carolina.

1 THE COURT: Myrtle Beach? Okay. Alright, the fact that you
2 have a family member that works for the Myrtle Beach Law
3 Enforcement Agency, would that affect your ability to listen to
4 the evidence in this case and render a fair and impartial
5 verdict?

6 JUROR RHODES: No, sir.

7 THE COURT: Okay. If you'd stay with us, please, ma'am, I'd
8 appreciate it.

9 Your name, please, ma'am.

10 JUROR PENDARVIS: Heather Pendarvis.

11 THE COURT: Okay. Ms. Pendarvis, do you have a family who
12 works with a law enforcement agency?

13 JUROR PENDARVIS: My husband.

14 THE COURT: Your husband? What law enforcement -- that's
15 right, you said he was a police?

16 JUROR PENDARVIS: Police Chief of Bowman.

17 THE COURT: Police Chief of Bowman. Alright. Okay, Ms.
18 Pendarvis, the fact that your husband is the Police Chief of
19 Bowman, would that affect your ability to listen to the evidence
20 in this case and render a fair and impartial verdict?

21 JUROR PENDARVIS: No.

22 THE COURT: Okay, alright, thank you, ma'am. If you'd stay
23 with us.

24 Yes, ma'am, your name?

25 JUROR GAFFNEY: Ryelisha Gaffney.

1 Is Minor here? Is that Minor ?

2 Minor , would you mind standing up so the jury can see you?

3 Okay, thank you, Minor .

4 Any member of the jury panel related by blood or marriage to
5 Minor

6 Alright, no one is standing.

7 Any member of the jury panel related by blood or marriage or
8 a close personal friend of Charlease Harley? If so, please stand
9 at this time.

10 Alright, no one is standing.

11 Another possible witness is Lacra Jenkins of the Orangeburg
12 County Sheriff's Office. Any member of the jury panel related by
13 blood or marriage or a close personal friend of Lacra Jenkins?
14 If so, please stand.

15 Alright, no one is standing.

16 Another possible witness is Ellen Hunter, also Orangeburg
17 County Sheriff's Office.

18 SOLICITOR JUSTIS: Your Honor, that is Allen.

19 THE COURT: Allen, excuse me, Allen Hunter. Any member of
20 the jury panel related by blood or marriage or a close personal
21 friend of Allen Hunter? If so, please stand.

22 No one is standing.

23 Another possible witness is Annette Jensen, who works at the
24 Regional Medical Center. Any member of the jury panel related by
25 blood or marriage to Annette Jensen?

1 Alright, no one is standing.

2 Another possible witness is Catina Flood. Any member of the
3 jury panel related by blood or marriage or a close personal
4 friend of Catina Flood? If so, please stand.

5 Alright, no one is standing.

6 Shanita Flood is also a possible witness. Any member of the
7 jury panel related by blood or marriage or a close personal
8 friend of Shanita Flood?

9 Alright, no one is standing.

10 Another possible witness is LaShay Flood. Any member of the
11 jury panel related by blood or marriage or a close personal
12 friend of LaShay Flood? If so, please stand.

13 Alright, no one is standing.

14 Another possible witness is Ada Mae Flood. Any member of the
15 jury panel related by blood or marriage or a close personal
16 friend of Ada Mae Flood? If so, please stand.

17 Alright, no one is standing.

18 Another possible witness is Brian Robinson. Any member of
19 the jury panel related by blood or marriage or a close personal
20 friend of Brian Robinson? If so, please stand.

21 No one is standing.

22 Another possible witness is Rebecca Cleakley. Any member of
23 the jury panel related by blood or marriage or a close personal
24 friend of Rebecca Cleakley? If so, please stand.

25 Yes, ma'am, your name?

1 THE COURT: Okay, Ms. Gaffney, hold on one second. Okay,
2 Ms. Gaffney, you're Number Sixty-six. Do you have a family
3 member who works for law enforcement?

4 JUROR GAFFNEY: Yes, sir, my brother works for the Sheriff's
5 Department.

6 THE COURT: The Orangeburg County Sheriff's Department?

7 JUROR GAFFNEY: Yes, sir.

8 THE COURT: The fact that your brother works for the
9 Orangeburg County Sheriff's Department, would that affect your
10 ability to listen to the evidence in this case and render a fair
11 and impartial verdict?

12 JUROR GAFFNEY: No, sir.

13 THE COURT: Okay. If you would stay with me, then, please,
14 ma'am.

15 Your name, please, ma'am?

16 JUROR DEFAZIO: Betty Jean Defazio, Number Fifty.

17 THE COURT: Hold on one second. Alright, do you have a --
18 Ms. Defazio?

19 JUROR DEFAZIO: My son is a corrections officer at Kirkland.

20 THE COURT: Okay. Your son is a corrections officer?

21 JUROR DEFAZIO: Uh-huh.

22 THE COURT: Okay. The fact that your son is a corrections
23 officer, would that affect your ability to listen to the evidence
24 in this case and render a fair and impartial verdict?

25 JUROR DEFAZIO: No.

1 THE COURT: Okay. If you'd stay with me, then, please,
2 ma'am.

3 Your name, please, ma'am?

4 JUROR CHAPUT: Dawn Chaput.

5 THE COURT: What -- Oh, yeah, Number Thirty-five. Okay.
6 Alright, do you have a family member?

7 JUROR CHAPUT: I have two brother-in-laws that are
8 detectives, and I have two nephews and a niece that are in law
9 enforcement and local police officers.

10 THE COURT: Here in Orangeburg?

11 JUROR CHAPUT: In Massachusetts.

12 THE COURT: In -- oh, in Massachusetts?

13 JUROR CHAPUT: That's correct, sir.

14 THE COURT: Alright, and the fact that you have family
15 members that are involved in law enforcement, would that affect
16 your ability to listen to the evidence in this case and render a
17 fair and impartial verdict?

18 JUROR CHAPUT: No, Your Honor.

19 THE COURT: Okay, if you'd stay with me, then, please,
20 ma'am.

21 Anyone else?

22 Okay. Oh, yes, sir?

23 JUROR BROOKS: Horace Brooks, Twenty-four.

24 THE COURT: Okay, Mr. Brooks, you have family members that
25 are in law enforcement?

1 JUROR BROOKS: Yes, I have a niece that's a detective in
2 Berkeley County.

3 THE COURT: Oh, in Berkeley County?

4 JUROR BROOKS: Yes, sir.

5 THE COURT: Okay. Now, the fact that you have a niece who
6 is a detective in Berkeley County, would that affect your ability
7 to listen to the evidence in this case and render a fair and
8 impartial verdict?

9 JUROR BROOKS: No, sir.

10 THE COURT: Okay. Thank you, sir.

11 Yes, ma'am?

12 JUROR MAJOR: My step daughter.

13 THE COURT: No, no, what's your name?

14 JUROR MAJOR: Oh, I'm sorry. Catherine Major, a transfer.

15 THE COURT: Last name again?

16 JUROR MAJOR: Major.

17 THE COURT: Major? Oh, I'm sorry, Ms. Major. Okay,
18 Catherine Major. And you were saying you had a, was it a niece?

19 JUROR MAJOR: Step daughter.

20 THE COURT: Your step daughter. She works at what law
21 enforcement agency?

22 JUROR MAJOR: Orangeburg County.

23 THE COURT: Orangeburg County? Alright, and the fact that
24 you have a step daughter that works in Orangeburg County in law
25 enforcement, would that affect your ability to listen to the

1 evidence in this case and render a fair and impartial verdict?

2 JUROR MAJOR: No, sir.

3 THE COURT: Okay, thank you, ma'am, if you'd stay with us.

4 No one else? Okay.

5 Has any member of the jury panel ever been employed in any
6 civilian or military law enforcement agency? Anyone of y'all, not
7 family members or anything like that, but have anyone of y'all
8 ever been employed by any civilian or military law enforcement
9 agency?

10 Alright, no one is standing.

11 Alright, Ladies and Gentlemen, just so you will know, Mr.
12 Flood has been charged with criminal sexual conduct in the first
13 degree and kidnaping, and he has pled not guilty to those
14 charges, which is the reason we are going to trial here today.
15 Has any member of the jury panel read or heard anything about
16 this case either today or before today? If so, please stand.

17 Alright, no one is standing.

18 Has any member of the jury panel discussed this case or
19 heard anyone else discuss this case either today or before today?
20 If so, please stand.

21 Alright, no one is standing.

22 Has any member of the jury panel formed any opinion about
23 this case? I know you don't know -- very little about it, but
24 has anybody formed an opinion about the case? If so, please
25 stand.

1 Alright, no one is standing.

2 Is there any member of the jury panel, because of the nature
3 of the allegations in this case, would cause any member of the
4 jury panel a problem with sitting as a fair and impartial juror
5 in this matter? If so, please stand.

6 Alright, no one is standing.

7 Has any member of the jury panel, any member of your
8 immediate family, or any close personal friend ever been the
9 victim of a sexual assault either reported or unreported? If so,
10 please stand.

11 Alright -- I'm sorry, your name, please, ma'am.

12 JUROR ANDERSON: Stephanie Anderson, Juror Four.

13 THE COURT: Juror Four. Okay, Ms. Anderson?

14 JUROR ANDERSON: Yes, sir.

15 THE COURT: Okay. Ms. Anderson, was it a family member or a
16 close friend?

17 JUROR ANDERSON: Family member.

18 THE COURT: Ma'am?

19 JUROR ANDERSON: Family member.

20 THE COURT: A family member? Alright.

21 JUROR ANDERSON: It was me that was assaulted by a family
22 member.

23 THE COURT: Oh, okay. Oh, you've been assaulted by a family
24 member?

25 JUROR ANDERSON: Yes, sir.

1 THE COURT: Okay. Ms. Anderson, the fact that you have been
2 assaulted by a family member, would that affect your ability to
3 listen to the evidence in this case and render a fair and
4 impartial verdict?

5 JUROR ANDERSON: No, sir.

6 THE COURT: Okay. If you'd stay with us, please, ma'am.

7 Okay. And I know I'm going to mispronounce your last name?

8 JUROR CHAPUT: Dawn Chaput, Number Thirty-five.

9 THE COURT: Yes, ma'am, was it a family member.

10 JUROR CHAPUT: It was a close friend.

11 THE COURT: A close friend? Okay. The fact that you've had
12 a close friend who was a victim of a sexual assault, would that
13 affect your ability to listen to the evidence in this case and
14 render a fair and impartial verdict?

15 JUROR CHAPUT: No, Your Honor.

16 THE COURT: Okay. If you'd stay with us, then, please,
17 ma'am.

18 Anyone else? Alright.

19 Has any member of the jury panel been a member of or a
20 participant in a support group for sexual assault? If so, please
21 stand.

22 Alright, no one is standing.

23 Other than the people that -- the two ladies that have
24 already stood up, has any member of the jury panel, any member of
25 your immediate family, or any close personal friend ever been the

1 victim of any other type of serious crime? If so, please stand.

2 Alright, no one is standing.

3 Is any member of the jury panel, a member of your immediate
4 family, or a close personal friend a member of MADD, SADD, CAVE,
5 or any other similar type organization which has as its goal the
6 promotion of law enforcement? If so, please stand.

7 Alright, no one is standing.

8 Has any member of the jury panel ever received assistance
9 from the victim's advocacy program? If so, please stand.

10 No one is standing.

11 Has any member of the jury panel or any member of your
12 immediate family ever been prosecuted here or elsewhere? If so,
13 please stand.

14 Alright, no one is standing.

15 Alright, any other questions from the State?

16 SOLICITOR JUSTIS: Nothing from the State, Your Honor.

17 THE COURT: Any other questions from the defendant?

18 MR. MELLARD: None from the defense, Your Honor.

19 THE COURT: Alright. Alright, Ladies and Gentlemen, what
20 we're going to do now is, we're getting ready to run the list to
21 see who is going to be chosen to sit on the jury panel. And in
22 old days it used to be that we'd have someone come up here and
23 they would draw names out of a cylinder like you see them do with
24 the lottery. Now what we do is, we run it through the computer
25 and they will spit out a list of names, and then we will go

1 through that list and either seat or strike jurors. Now, just so
2 you'll know, we will be doing this -- you will be called up to
3 the front. As your name is called if you've got anything with
4 you, ladies like a pocketbook, gentlemen like coats or sweaters
5 or anything like that, if you will come forward right up to the
6 podium right here, turn and face the attorneys, and then they
7 will tell you whether you're going to be seated or excused from
8 jury service today. It's going to take us a while to do that,
9 and so, I'm going to give y'all another short ten minute break if
10 anybody needs to go to the restroom or anything like that. If
11 you'll be back in here at a quarter til ten, we'll see if we can
12 get ready to proceed at that time. Okay? Thank y'all.

13 (Recess)

14 THE COURT: Is the State ready to proceed?

15 SOLICITOR JUSTIS: The State's ready, Your Honor.

16 THE COURT: Is the Defense ready to proceed?

17 MR. MELLARD: The Defense is ready, Your Honor.

18 THE COURT: Alright. Alright, Ladies and Gentlemen, as you
19 recall, when your name is called if you will come forward, stand
20 in front of this podium, and turn and face the attorneys.

21 Alright?

22 Madam Clerk.

23 CLERK: Ready?

24 THE COURT: Yes, ma'am.

25 CLERK: Antonio Negron. What says the State?

1 THE COURT: Yeah, you're doing fine. You get to be the
2 example.

3 SOLICITOR JUSTIS: Please present the juror.

4 MR. MELLARD: Please seat the juror, Your Honor.

5 THE COURT: Alright. Thank you, sir.

6 CLERK: Have a seat in the jury box.

7 THE COURT: If you'd go right over here, and the bailiff is
8 going to show you where you sit. Okay. Now, everybody saw what
9 he did. He did everything right. Okay? Alright.

10 CLERK: Gayle S. Slagle. Please come up and bring your
11 belongings with you. What says the State?

12 SOLICITOR JUSTIS: Please present the juror.

13 MR. MELLARD: Please excuse this jurors, Your Honor.

14 THE COURT: Okay.

15 CLERK: You can go back to your seat, ma'am.

16 Catherine P. Major. What says the State?

17 SOLICITOR JUSTIS: Please present the juror.

18 MR. MELLARD: And please excuse this juror, Your Honor.

19 THE COURT: Okay.

20 CLERK: Return to your seat, please.

21 THE COURT: Thank you, ma'am.

22 CLERK: Edward J. Hickmon. What says the State?

23 SOLICITOR JUSTIS: Please present the juror.

24 THE COURT: What says the Defense?

25 MR. MELLARD: Please excuse the juror, Your Honor.

1 THE COURT: Okay.

2 CLERK: Anthony A. Beckett. What says the State?

3 SOLICITOR JUSTIS: Please present the juror.

4 CLERK: What says the Defense?

5 MR. MELLARD: Please seat the juror.

6 CLERK: Patty R. Kemmerlin. What says the State?

7 SOLICITOR JUSTIS: Please present the juror.

8 CLERK: What says the Defense?

9 THE COURT: What says the Defense?

10 MR. MELLARD: Please excuse this juror, Your Honor.

11 THE COURT: Okay.

12 CLERK: Isaac J. White, Junior. What says the State?

13 SOLICITOR JUSTIS: Please present the juror.

14 CLERK: What says the Defense?

15 MR. MELLARD: Please seat the juror.

16 CLERK: Have a seat in the jury box, please. Thank you.

17 Stephanie R. Anderson. What says the State?

18 SOLICITOR JUSTIS: Please present the juror.

19 CLERK: What says the Defense?

20 MR. MELLARD: Please excuse this juror.

21 CLERK: Stacie Fulton. What says the State?

22 SOLICITOR JUSTIS: Please present the juror.

23 CLERK: What says the Defense?

24 MR. MELLARD: Please seat the juror.

25 CLERK: Have a seat in the jury box, please.

1 Harry L. Rutland. What says the State?

2 SOLICITOR JUSTIS: Please present the juror.

3 CLERK: What says the Defense?

4 MR. MELLARD: Please excuse the juror, Your Honor.

5 CLERK: Please return to your seat.

6 Juanita B. Mabry. What says the State?

7 SOLICITOR JUSTIS: Please present the juror.

8 CLERK: What says the Defense?

9 MR. MELLARD: Please seat the juror.

10 CLERK: Have a seat in the jury box, please.

11 Robert K. Danhauser. What says the State?

12 SOLICITOR JUSTIS: Please present the juror.

13 CLERK: What says the Defense?

14 MR. MELLARD: Please seat this juror.

15 CLERK: Please have a seat in the jury box, please.

16 Gertrude R. Frierson. What says the State?

17 SOLICITOR JUSTIS: Please present the juror.

18 CLERK: What says the Defense?

19 MR. MELLARD: Please seat this juror.

20 CLERK: Please have a seat in the jury box.

21 Juliet Profit. What says the State?

22 SOLICITOR JUSTIS: Please seat this -- or please present
23 this juror.

24 CLERK: What says the Defense?

25 MR. MELLARD: Please excuse this juror.

1 CLERK: Please return to your seat. Thank you.
2 Dawn Chaput. What says the State?
3 SOLICITOR JUSTIS: Please present the juror.
4 CLERK: What says the Defense?
5 MR. MELLARD: Please excuse this juror.
6 CLERK: Please return to your seat.
7 Iva T. White. What says the State?
8 SOLICITOR JUSTIS: Please excuse this juror.
9 CLERK: Return to your seat, please.
10 Kenneth M. Gray. What says the State?
11 SOLICITOR JUSTIS: Please present this juror.
12 CLERK: What says the Defense?
13 MR. MELLARD: Please seat this juror.
14 CLERK: Please have a seat in the jury box.
15 Linda D. Wright. What says the State?
16 SOLICITOR JUSTIS: Please present this juror.
17 CLERK: What says the Defense?
18 MR. MELLARD: Please seat this juror.
19 CLERK: Please have a seat in the jury box. Thank you.
20 Nicholas Moorer. What says the State?
21 SOLICITOR JUSTIS: Please present this juror.
22 CLERK: What says the Defense?
23 MR. MELLARD: Please seat this juror.
24 CLERK: Please have a seat in the jury box.
25 Michael A. Shingler. What says the State?

1 SOLICITOR JUSTIS: Please present the juror.

2 CLERK: What says the Defense?

3 MR. MELLARD: Please seat this juror.

4 CLERK: Have a seat in the jury box, please.

5 Tommy L. Shuler. What says the State?

6 SOLICITOR JUSTIS: Please present the juror.

7 CLERK: What says the Defense?

8 MR. MELLARD: Please seat this juror.

9 CLERK: Please have a seat in the jury box.

10 THE COURT: Alright, Gentlemen, by my calculations we have
11 picked a jury. Is that correct?

12 SOLICITOR JUSTIS: Correct.

13 MR. MELLARD: Yes, sir.

14 THE COURT: Okay. Now, we're going to pick the first
15 alternate.

16 MR. MELLARD: Two and one, right, Your Honor?

17 THE COURT: Yeah, two and one. Alright.

18 CLERK: Heather Pendarvis. What says the State?

19 SOLICITOR JUSTIS: Please present the juror.

20 MR. MELLARD: Please excuse this juror.

21 CLERK: Return to your seat, please.

22 Wanda G. Rhodes. What says the State?

23 SOLICITOR JUSTIS: Please present the juror.

24 CLERK: What says the Defense?

25 MR. MELLARD: Please excuse this juror.

1 CLERK: Please return to your seat.

2 Brittany L. Glenn. What says the State?

3 SOLICITOR JUSTIS: Please present the juror.

4 CLERK: What says the Defense?

5 MR. MELLARD: Please seat this juror.

6 CLERK: Have a seat in the jury box, please.

7 THE COURT: Alright, she will be the first alternate. Now
8 we'll go ahead and pick the second alternate..

9 CLERK: Okay. Marthella Odom. What says the State?

10 SOLICITOR JUSTIS: Please present the juror.

11 CLERK: What says the Defense?

12 MR. MELLARD: Please seat this juror.

13 THE COURT: She will be Alternate Two. Alright.

14 Alright, that will conclude the jury selection. Any issues
15 regarding jury selection from the State?

16 SOLICITOR JUSTIS: None from the State, Your Honor.

17 THE COURT: Any issues regarding jury selection from the
18 Defense?

19 MR. MELLARD: None from the Defense, Your Honor.

20 THE COURT: Okay. Alright, Ladies and Gentlemen,
21 congratulations. You are going to be serving on the jury. Now
22 the first thing I want to tell you, we're going to begin the
23 trial at two o'clock. I'm going to give you a lunch break until
24 two o'clock. So, when you return at two we will be ready to get
25 started. Now you should not discuss this case among yourselves

1 or with anyone else right now. You don't know anything about the
2 case. During the trial we will take breaks but you cannot talk
3 about this case until I tell you to begin your deliberations. We
4 will have the attorneys' opening statements and then we will take
5 the testimony and then we will have closing arguments and my
6 charge on the law, and then you will begin your deliberations,
7 and can begin talking about the case.

8 Alright. You need to follow the bailiff back into the jury
9 room and he will show you how to go out and how to come back in
10 after lunch. And then you all need to be back in the jury room
11 at two o'clock.

12 Again, don't talk with anybody about this case, and don't
13 talk among ourselves.

14 Have a good lunch and we'll see you back at two o'clock.
15 (Whereupon, the jury leaves the courtroom
16 and the following takes place out of the
17 presence of the jury.)

18 THE COURT: Alright. Ladies and Gentlemen who were not
19 chosen, I'm sorry, this is the only trial we had this week so
20 y'all are now excused, and you do not have to call in or report.
21 Thank you very much.

22 Alright, I know we've got some issues that y'all wanted to
23 ...

24 MR. MELLARD: Yes.

25 THE COURT: Okay.

1 MR. MELLARD: Just a few pretrial matters.

2 THE COURT: Alright, sir.

3 MR. MELLARD: First of all, we'd ask the Court to sequester
4 the witnesses.

5 THE COURT: Okay.

6 MR. MELLARD: And that's our standard request in every
7 trial, and we'd ask the Court to do that.

8 THE COURT: And no ...

9 SOLICITOR JUSTIS: The State would have no objection just as
10 long as it's reciprocal.

11 THE COURT: It will be reciprocal.

12 MR. MELLARD: It will be reciprocal, yes, sir.

13 THE COURT: Okay.

14 MR. MELLARD: The second issue concerns the competency of
15 the defendant.

16 THE COURT: Yes, sir.

17 MR. MELLARD: There's two issues. First, the competency at
18 the time of this trial. We had a Blair hearing yesterday, and I
19 believe the Court heard evidence from the doctor at the Mental
20 Health. We obviously do not agree with that assessment. We feel
21 that he is not competent to stand trial. I understand the
22 Court's ruling, but I do want it noted on the record that we do
23 not agree with that. We would object to him standing trial, we
24 do not believe he's competent.

25 THE COURT: Okay. And Mr. Mellard, I will note your

1 objection to my ruling on the record so that it is preserved.

2 Okay?

3 MR. MELLARD: Yes, sir.

4 THE COURT: Thank you, sir.

5 MR. MELLARD: Now, the other issue is, at the time of the
6 guilty plea his competency back in Nineteen Ninety-four, the
7 issue here concerns whether or not they can give him life without
8 parole, and in order to do that they have to have a prior most
9 serious conviction. As I believe we've discussed this, and I
10 believe actually the Court has the records from the Clerk of
11 Court that we gave to them.

12 THE COURT: Yes, sir.

13 MR. MELLARD: In Nineteen Ninety-four, I think the Court can
14 take judicial notice of this, there was a mental evaluation that
15 was ordered by Judge Whetstone in September of Nineteen Ninety-
16 four. The plea did not take place until November. Inside the
17 file is a, is an evaluation of, one evaluation in that file.
18 Whetstone's Order said that the, he would be evaluated and then
19 the evaluation would be filed. There's only one evaluation in
20 there. It says he is currently, in Nineteen Ninety-four, was not
21 competent to stand trial. He subsequently pled to the crime of,
22 I believe, kidnaping, which is what they're using to enhance
23 this. It's our position that the, they should not, you should
24 not use that Nineteen Ninety-four plea to, to use it against him,
25 for life without parole. All the evidence in the file points to

1 the fact that he was not competent to stand trial. Given the
2 fact that the Clerk's file says that, it's our position that that
3 is a, it's reasonable evidence to show that he was not, and so, I
4 would submit that there needs to be a -- I don't know if you call
5 it a burden on the State, but there needs to be some sort of
6 record showing that he was, in fact, competent, given the fact
7 that the Clerk's file shows he was not competent.

8 THE COURT: Yes, sir.

9 MR. MELLARD: And so, we would ask, Number One, for a
10 continuance in the matter to allow us to either get a transcript
11 or to find something to prove, or to back up, I guess, what
12 they're doing, or give them a chance to do the same thing, or in
13 the alternative, that the Court not use that to enhance.

14 THE COURT: Okay. Well, and -- anything else, Mr. Mellard?
15 I'm not trying to cut you short.

16 MR. MELLARD: Nothing on that issue, Your Honor.

17 THE COURT: For the record, Mr. Mellard, you were kind
18 enough to collect those Court files. We did meet in chambers
19 yesterday. We have reviewed those. The, that is a sentencing
20 issue, - - -

21 MR. MELLARD: Yes, sir.

22 THE COURT: --- and so, I'm not going to rule on that at
23 this time, and that will essentially give the State an
24 opportunity to find, or see if they can find any other record
25 between now and the conclusion of the trial to, to counter your

1 arguments regarding whether or not he was actually competent in
2 Nineteen Ninety-four or not. So, I'm not going to continue the
3 trial for that, but at the end of the time, at the end of the
4 trial I will rule on whether or not they're going to be able to
5 use that to, to request a life without parole sentence.

6 SOLICITOR BELL: Your Honor, our position from the State
7 would be the exact opposite, that there is evidence of a plea,
8 there's evidence there was an Order, and that we must presume
9 that the plea was correct. There's been no appeal, no PCR, and I
10 think it's their burden to show something different other than
11 just that one piece of paper in the file.

12 THE COURT: Okay. Mr. Bell, I certainly understand your
13 position. Okay? And I understand the defendant's position.
14 Right now the only thing the Court has in it's file is a medical
15 evaluation that indicates that he was not competent. However, I
16 am also aware of the fact of who the parties were and the Judge,
17 and I am fairly certain that they would not have taken the plea
18 had they been aware of that, and it is in the file. Okay? But
19 I'm not ruling on that from either -- that's a sentencing issue.
20 I'm going to give any party that wants to a chance to get more
21 information to the Court before the conclusion for sentencing,
22 but I understand on the record what your position is.

23 SOLICITOR BELL: And my point is, it sounded like you were
24 saying the State has the burden of producing that, and I don't
25 ...

1 THE COURT: If the State doesn't do anything else I will go
2 with the record I have.

3 SOLICITOR BELL: Okay.

4 THE COURT: Okay? I'm not forcing anybody to do anything
5 more than what's already in the record. Okay?

6 (Court's Exhibit One
7 marked and filed.)

8 MR. MELLARD: And Your Honor, I guess our last issue would
9 be - - -

10 THE COURT: Yes, sir.

11 MR. MELLARD: --- their witness list. They have a Charlease
12 Harley on their witness list. I believe this concerns the prior
13 case from Nineteen Ninety-four, and I believe they're going to
14 try to offer her testimony under some sort of Lyle exception, and
15 so, at some point we need to take that up.

16 THE COURT: Right.

17 SOLICITOR JUSTIS: And we are, Your Honor, we do have a
18 memorandum addressing that issue.

19 THE COURT: Okay.

20 SOLICITOR JUSTIS: And at the proper time we could always, I
21 have copies for the Court.

22 THE COURT: Well, if you'd give them a copy and give me a
23 copy now, and that will give me something to read, because I ...

24 SOLICITOR JUSTIS: Right. At the appropriate time we can,
25 if necessary, address that issue.

1 THE COURT: Okay. Alright. Before she testifies. But we
2 may take it up before, when we come back.

3 SOLICITOR JUSTIS: Yes, sir.

4 THE COURT: Okay. Mr. Justis, you're not planning to call
5 her this afternoon?

6 SOLICITOR JUSTIS: No, Your Honor.

7 THE COURT: You're Not? But it won't be until tomorrow?

8 SOLICITOR JUSTIS: Correct, Your Honor?

9 THE COURT: At the earliest? Okay.

10 MR. WISE: We have one more motion, Your Honor.

11 THE COURT: Oh, yeah, okay.

12 MR. WISE: Very briefly, I assure you.

13 THE COURT: Yes, sir.

14 MR. WISE: One of the witnesses on the State's list is a
15 woman who I don't remember, but she is the same nurse from the
16 hospital. It would ...

17 THE COURT: Annette Jensen?

18 MR. WISE: I believe so, Your Honor.

19 THE COURT: That's the only person from the hospital that's
20 on their list.

21 MR. WISE: Correct. It would a Motion in Limine, Your
22 Honor, to preclude her being qualified as an expert. She is, she
23 was a nurse at the hospital, she examined Minor after
24 this incident. There were no findings made, her examination
25 would be such that it would be, there's no need for an expert

1 designation. There's no expert opinion called for with her
2 examination. This is not a situation where she's got to testify
3 to bruises or tears or anything in any position. Basically,
4 there were no findings, there was nothing found. She examined
5 her as any ER nurse would examine her. I think qualifying her as
6 an expert in sexual assault examining would place an undue
7 emphasis on her testimony which I don't think the Court should
8 do. I submit to the Court, she should just be allowed to testify
9 as a nurse, and the jury can give her testimony whatever weight
10 that they should choose.

11 THE COURT: Okay. And Mr. Justis, was she going to be
12 called as an expert or just to go over the findings?

13 SOLICITOR JUSTIS: The State had no plans on calling her as
14 an expert, - - -

15 THE COURT: Okay.

16 SOLICITOR JUSTIS: --- it's more of just a fact witness and
17 a chain of custody.

18 THE COURT: Okay. As long as she is a fact witness and
19 chain of custody you don't have any objection to that?

20 MR. WISE: None at all.

21 THE COURT: Okay. Alright. Anything else?

22 MR. MELLARD: Nothing from the Defense, Your Honor.

23 THE COURT: Okay. Anything from the State?

24 SOLICITOR JUSTIS: Nothing from the State, Your Honor.

25 THE COURT: Okay. Alright. Gentlemen, if y'all will be

1 back here at two o'clock so we can get ready to start. Thank
2 you.

3 (Recess)

4 (State's Exhibits One Through Thirty-Two
5 are premarked for identification only.)

6 THE COURT: Are we on the record?

7 COURT REPORTER: Yes, sir.

8 THE COURT: Just, Gentlemen, I wanted y'all to know that the
9 Foreman is going to be Kenneth Gray. While we were waiting I
10 sent the bailiff back there and asked the jury to elect a
11 Foreman. So, the Foreman will be Mr. Kenneth Gray. Okay.

12 And Ms. Harry Dot, that will be Court's Exhibit Number one.

13 COURT REPORTER: Judge, we already have Court's One and Two.

14 THE COURT: Well, then, this will be Three.

15 COURT REPORTER: Yes, Sir.

16 THE COURT: That's why you're paid the big bucks, so you can
17 count for me. Okay.

18 COURT REPORTER: Yes, sir.

19 (Court's Exhibit Three
20 marked and filed.)

21 THE COURT: Okay. Alright. Now, anything from the State
22 before we proceed?

23 SOLICITOR JUSTIS: Nothing, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. WISE: I think one thing, Your Honor, - - -

1 THE COURT: Yes, sir.

2 MR. WISE: --- a follow up from the Court's rulings earlier
3 about the same nurse and the designation. I think counsel
4 indicated that they would not try to qualify her as a sexual
5 assault nurse examiner. But the other part of my request was
6 that she not be referred to as a sexual assault nurse examiner
7 but that she identify herself just as a nurse.

8 THE COURT: Well, I don't know what her job is.

9 SOLICITOR BELL: Your Honor, I mean, she's had training for
10 that. I think she can be referred to as that. I'm not going to
11 qualify her as an expert in there but I think she can certainly
12 testify that she's had training in the collection of sexual
13 assault and that's one of her specific jobs is a sexual assault
14 nurse examiner.

15 MR. WISE: I think she can, appropriately should refer to
16 the fact that she's been trained - - -

17 THE COURT: Right.

18 MR. WISE: --- To take, to gather a sexual assault kit, but
19 to refer to herself as a sexual assault nurse, I think what that
20 does is call attention to the fact that this case involves a
21 sexual assault. In other words, the fact that she went there
22 presupposes that there is a sexual assault, which is the issue in
23 this case. And that's why - - -

24 SOLICITOR BELL: Well, they'll find out pretty quick it's a
25 sexual assault.

1 MR. WISE: --- So I think we can, and she can refer to
2 herself, because as I think we all agree now, there was no
3 finding in this rape kit. She can refer to herself as a nurse
4 trained to gather sexual assault kits, and this is what she did
5 and this is what she found.

6 THE COURT: And, of course, I understand, you just don't
7 want her referred to as an expert.

8 MR. WISE: No, no, I don't want her referred to -- I don't
9 want her qualified as an expert, but I don't want her referred to
10 as a sexual assault nurse or a sexual assault nurse examiner.

11 SOLICITOR BELL: Well, that's her job, that's her ...

12 THE COURT: Just wait a minute. I'm going to let you speak.
13 Okay? But just, give me a second and let me -- is that her job?

14 MR. WISE: I don't know if it is her job or not, because my
15 experience is that nurses, you know, your regular RNs, LPNs and
16 all that, they could have, sometimes do these sexual assault
17 kits, but that, too, that she is some kind of specialist or some
18 kind of, some kind of special nurse that deals with sexual
19 assault victims I think is, would be prejudicial, and it's
20 certainly no probative value. She certainly can testify to what
21 she does and how she's trained, but when we start using these
22 titles that designate that she is now dealing with the victim of
23 a crime, then I think it's inappropriate.

24 THE COURT: Okay. Well, and I understand, I think, what
25 you're getting at, you know, but if she, if she gets on the stand

1 and testifies she has received training for that, and the only
2 thing she's going to do is tell us that she had that training, if
3 she is called by them to investigate sexual assaults, okay, I'm
4 going to let him refer to her -- as long as he doesn't refer to
5 her as an expert in sexual assaults or anything like that, I'm
6 fine. She's just going to be a fact witness with the chain of
7 custody. And I think you said, I think -- you're, they didn't
8 find anything, right?

9 MR. WISE: That's correct.

10 THE COURT: Okay.

11 MR. WISE: But what we're trying to do is get away from her
12 having some special designation as opposed to any other -- all
13 she is is a nurse, she's a nurse, and this is part of what she
14 does.

15 THE COURT: Well, I'm going to let her testify. If she
16 comes up and says she has special training as a, to do
17 investigations for sexual assault I'm going to let her testify
18 about that, and refer to that. I'll note your objection to my
19 ruling, but I think -- we're going to get to that pretty quick,
20 you know. Okay?

21 SOLICITOR BELL: And Your Honor, I don't want the Court to
22 be misled, she's, there are findings. There's not no findings in
23 this case.

24 THE COURT: No, no, I mean, I know there are not no findings
25 in the case, but I mean, I -- we're going to go forward, we're

1 going to try it. Okay? As long as he doesn't refer to her as an
2 expert and she's not going to give any expert opinion, we'll be
3 fine. Okay? Anything else? Okay, alright, if you'll bring the
4 jury in.

5 MR. MELLARD: Oh, Your Honor, I just want to make sure, make
6 sure that all the witness are out of the courtroom.

7 THE COURT: Yeah, I think the victim is the only one here,
8 and the first person they're going to call.

9 SOLICITOR JUSTIS: And our lead investigator.

10 THE COURT: Okay. Is that sufficient?

11 MR. MELLARD: Yes, sir.

12 THE COURT: Okay. Thank you, sir. Alright, if you'll bring
13 the jury on out.

14 (Whereupon, the jury enters
15 the courtroom and the following
16 takes place in the presence of
17 the jury.)

18 THE COURT: Ladies and Gentlemen, I thank you for your
19 patience. One of the things that we have been doing while y'all
20 were waiting is marking the evidence and like that, so hopefully,
21 once we get started we won't have to take up a lot of time
22 marking the evidence. So, that's one of the reasons we took a
23 while.

24 And Mr. Gray, congratulations.

25 Alright, now, since we're getting ready to start the trial,

1 as I told you at first when I swore y'all in when y'all were
2 perspective jurors, now that y'all are jurors you get sworn in
3 again as the jury panel. So, if y'all would stand up and raise
4 your right hand.

5 And Madam Clerk, if you'd swear them in as jurors.

6 CLERK: Okay.

7 (Whereupon, the jury is duly
8 sworn and impaneled.)

9 CLERK: Thank you, you may be seated.

10 THE COURT: Thank y'all.

11 Alright, now, Ladies and Gentlemen, we are getting ready to
12 begin the case of the State of South Carolina versus Cedric
13 Flood. I'm going to make a couple of introductory remarks. This
14 is not a charge on the law, this is just to give you an idea of
15 what's going to happen or what I think is going to happen during
16 this trial. The defendant has been indicted for the crimes of
17 criminal sexual conduct in the first degree and kidnaping. The
18 elements I will explain to you at the close of the trial when I
19 charge you on the law.

20 The indictment is simply the charge by which this case is
21 brought to court, it is not evidence of any of the allegations
22 that it contains, and the defendant has pled not guilty to these
23 charges. The State, therefore, has the burden of proving each
24 and every element of the indictment beyond a reasonable doubt,
25 and it is your duty to decide whether or not the State has met

1 that burden.

2 Your job or duty as jurors is to find and determine the
3 facts in this case. You are the sole judges of the facts. If I
4 make any comment regarding the facts in this case I am going to
5 ask you to disregard it. You are to determine the facts from the
6 testimony that you hear from this witness stand and any other
7 evidence that is introduced in court. You are free to find what
8 inferences you feel are proper to be drawn from this evidence.
9 It is especially important that you perform your duty of
10 determining the facts diligently and conscientiously because
11 ordinarily there's no way to correct an erroneous determination
12 of facts by a jury.

13 The same law that makes you the judges of the facts makes me
14 the judge of the law. The law as given by the court is the only
15 law that you must consider. You must accept and follow it even
16 though you may disagree with it. I cannot tell you what the
17 facts are, and you cannot disagree with me about what the law is
18 or should be.

19 Your job is to take the law as I give it to you and apply it
20 to the facts as you find them from the testimony of the witnesses
21 and any other evidence that is introduced. After doing that you
22 will render your verdict, a true and just verdict under the
23 solemn oath that you just took as jurors.

24 Now, as I told you at the very beginning, until I advise you
25 to begin your deliberations you must not discuss this case with

1 anyone, including your fellow jurors, friends, family or anybody
2 involved in this case. After the case is submitted to you, you
3 must discuss it only in the jury room with your fellow jurors.
4 The attorneys and other parties in this case have been advised
5 not to talk to you at all. So, if you see anyone in the hall or
6 around town and they don't speak they're not being unfriendly,
7 they are following my instructions.

8 Now, during the trial you are not to read, listen to, watch
9 any news reports about this case, check the internet to see if
10 there's any news on it. You're not to investigate this case
11 yourself. You are not to consider anything about this case
12 outside of the courtroom, and you're not supposed to read the
13 newspaper reports. And there will be newspaper -- there will be
14 articles in the T&D about this case, but you are not to read
15 them. It is important that you keep an open mind and not decide
16 any issue in this case until all of the evidence has been
17 presented, the parties have made their closing arguments, and I
18 have instructed you on the law. It is your solemn responsibility
19 to determine the guilt or innocence of the defendant, and your
20 verdict must be based solely on the evidence that is presented to
21 you in this trial and on the law as I instruct you during and at
22 the close of the trial.

23 In a moment the solicitor is going to make an opening
24 statement, and during that opening statement he is going to tell
25 you the issues that he believes are important in this case.

1 After he makes his opening statement the attorney for the
2 defendant may also make an opening statement, although he's not
3 required to do so. What the attorneys tell you during their
4 opening statements is not evidence, it is only their contention
5 as to what the issues are. The evidence in this case will be
6 presented to you by the testimony of sworn witnesses from the
7 witness stand and by exhibits which may be introduced into
8 evidence.

9 From time to time during the trial there may be situations
10 where I have to excuse you from the courtroom. The reason I will
11 excuse you from the courtroom is, the attorneys and I may have to
12 discuss some matters of law, and when we discuss some matters of
13 law I may have to comment on some of the facts involved in the
14 case. Since I don't want you to be influenced by anything I say
15 about the facts you will be excused from the courtroom while we
16 have those discussions, because as I told you before, you make
17 the decision about the facts of this case, not me, and I don't
18 want you to be influenced by anything I say about the facts to
19 influence you. It's your decision.

20 In determining what the true facts are in this case you must
21 decide whether or not the testimony of the witnesses, of a
22 witness is believable. It will be my responsibility to determine
23 whether certain testimony is admissible or not. But once the
24 testimony is admitted into evidence, whether or not you believe
25 it is solely for you to determine. In deciding whether or not to

1 believe a witness you have the right to consider the interest of
2 any witness, the bias of any witness, the prejudice of any
3 witness, the opportunity for the witness to have seen the matters
4 and things about which the witness may testify, and the way the
5 witness acts on the witness stand. You have the right to
6 consider anything that is in the record that will help you
7 evaluate the testimony of the witnesses. This means that it is
8 your duty to pay close attention to the witnesses, to observe
9 them, listen to them, and pay close attention to the attorneys
10 and the Court. Please give strict attention to the testimony in
11 this case so that at the end of all the testimony, after the
12 arguments of counsel, after I charge you on the law, you will
13 then be in a position to determine what the true facts are and
14 apply those facts to the law, and thus render a true and just
15 verdict.

16 Alright, Mr. Bell, are you going to do the opening
17 statement?

18 SOLICITOR BELL: Yes, sir.

19 THE COURT: Okay.

20 SOLICITOR BELL: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 SOLICITOR BELL: May it please the court, Mr. Mellard, Mr.
23 wise.

24 OPENING STATEMENT BY SOLICITOR BELL:

25 Mr. Foreman, and Ladies and Gentlemen of the jury, on

1 September Twenty-ninth, Two thousand and Nine, Minor
2 the victim in this case, was taking her son out to the bus stop.
3 She lived off of Street outside of Orangeburg in
4 Orangeburg County. She took her son to the bus stop, she came
5 back to her house, and as she was coming back to go back in her
6 house this man came out from behind a car brandishing a gun and
7 told her to get inside where he told her if she doesn't do what
8 he says he was going to kill her. Through the morning and into
9 the early afternoon of that day at the house they gather up her
10 cell phone, they got a license plate, and they went over to his
11 house off of Street, which is not too awfully far from
12 where she lives off Road outside of Orangeburg, the City of
13 Orangeburg, in Orangeburg County. There during the course of the
14 morning he raped her, having vaginal intercourse with her at
15 least twice, again threatening her, and telling her that he was
16 going to kill her, that -- and he wanted to do, he wanted her to
17 do what he wanted. Then at some point in the early afternoon
18 they realized they had to go get her son, so they both drove over
19 to the bus stop and got her son and brought her back to his house
20 on Street and he raped her again, vaginal intercourse.
21 And then at some point he bound her with duct tape and some play
22 hand cuffs and left, and took the son over to a relative of his's
23 house. Fortunately, they were play hand cuffs, and
24 Minor was able to undo them real quick, get the duct tape
25 off her limbs, off her hands and feet, and run next door and

1 called the police, called Nine One One. The police came and
2 found her. And that's why we're here today, Ladies and
3 Gentlemen. And the State has charged that man with kidnaping and
4 criminal sexual conduct in the first degree.

5 As you heard earlier, my name is Harrison Bell, and this is
6 Glenn Justis. We're both assistant solicitors in the First
7 Judicial Circuit for Orangeburg County. And it's our job to
8 prosecute criminal cases, that is, crimes that people have been
9 charged with, and bring them to Court. We have the burden of
10 proving that man guilty of both charges. He has no burden
11 whatsoever. In fact, as he sits there he's presumed innocent
12 until the time that the State presents more than enough evidence
13 to convince you Ladies and Gentlemen that he's guilty beyond all
14 reasonable doubt.

15 Now, in order to prove him guilty we must prove each element
16 of the two crimes that he is charged with, and I just want to
17 kind of go over these as a preliminary exercise here. First of
18 all we have kidnaping. In South Carolina kidnaping is where
19 somebody, a person is unlawfully seized, confined, invagled,
20 decoyed, kidnaped, abducted or carried away by another person by
21 any means whatsoever, threats or no threats, weapons or no
22 weapons, without the authority of law. That is, they're not
23 being lawfully arrested. Now, kidnaping just mainly means that
24 you take a person's free will away from him, you restrict their
25 movement. It doesn't necessarily mean that you hold them for

1 ransom like you see in movies and everything. If you carry them
2 away against their will that's kidnaping. And that's what
3 happened in this, even to the point where she was bound with hand
4 cuffs and duct tape.

5 Now, the other charge is criminal sexual conduct in the
6 first degree. Criminal sexual conduct in the first degree in
7 South Carolina is a sexual battery, a person commits a sexual
8 battery of another person, vaginal or sexual intercourse is a
9 sexual battery defined in South Carolina, with another person,
10 and with several circumstances involved, aggravating
11 circumstances, which are the use of aggravated force, the use of
12 a gun is aggravated force, or -- not and -- or the victim is also
13 the victim of forcible confinement, kidnaping or any other
14 similar offense or act, or the actor causes the victim without
15 their consent to become mentally incapacitated. Mainly we're
16 concerned with the first two in this case, the aggravated force,
17 and that she was forcibly confined against her will.

18 Now, Ladies and Gentlemen, during the course of this trial
19 the State will present numerous witnesses, probably six, seven,
20 eight witnesses. You'll hear what I just told you about the
21 morning of September Twenty-ninth, Two thousand Nine. You'll
22 hear about the police investigation afterwards, that she was
23 taken to the hospital and she, -- a criminal sexual assault kit
24 was performed on her, and the results were taken to SLED. And
25 what they will end up showing you, Ladies and Gentlemen, is that

1 this man kidnaped her, and this man raped her several times on
2 that day.

3 Now, you will also see some evidence, -- and this trial
4 shouldn't be terribly long. And just because it's not long
5 doesn't mean it's not important. It's important for the State,
6 we're here to enforce our laws. It's important for the victim,
7 Minor , she's here to seek justice. It's important for
8 the defendant because his liberty is at stake.

9 Now, Ladies and Gentlemen, His Honor, Judge Dickson, just
10 told you some things and I kind of want to go back over them. He
11 said he is the judge of the law, and what he says about the law
12 you have taken an oath, you must follow the law that he tells
13 you, even if you don't like it, even if you think it ought to be
14 changed. That cannot enter into it. What he says about the law
15 in this courtroom goes. And he's not the only judge in this
16 courtroom, Ladies and Gentlemen, because you, individually and
17 twelve, are judges of the facts. And there's not a person in
18 this courtroom, not even Judge Dickson, that can tell you how to
19 find those facts. You do it by listening to testimony from this
20 witness stand, any exhibits that may be brought in for you to
21 observe. And at the end you take those facts, you take the law
22 that Judge Dickson charges you, and you try to reach a verdict,
23 you deliberate and reach a verdict, and that's your job.

24 Now, as he also stated, you'll be called upon to judge the
25 credibility of witnesses, or the believability of the witnesses.

1 And you're probably going, how do I do that, how do I tell if
2 somebody's lying or something? Well, unfortunately, I can't tell
3 you how to do that, Ladies and Gentlemen, nobody can. But you
4 did walk into the courtroom today with your common sense, you
5 weren't asked to leave it on the outside. You do it like you do
6 it everyday in life, when your friends, family or strangers talk
7 to you. When you ask them something and they tell you something,
8 you kind of judge whether they're telling you a lie or whether
9 they're telling you the truth. You do that, do that same thing
10 when you see these people up on the witness stand.

11 Now, Ladies and Gentlemen, at the end of the trial I
12 believe, we believe that you'll find more than enough evidence to
13 find Cedric Flood guilty of criminal sexual conduct in the first
14 degree and guilty of kidnaping.

15 Thank you.

16 THE COURT: Thank you, Mr. Bell.

17 Mr. Mellard.

18 MR. MELLARD: Yes, sir.

19 OPENING STATEMENT BY MR. MELLARD:

20 I want to talk to y'all today about presumption of
21 innocence. You know, it's kind of a phrase that solicitors like
22 to just kind of say, and then they move on quickly to tell how
23 bad the person is that's on trial. But before we begin the trial
24 I think we need to spend some time talking about presumption of
25 innocence, because that's what the trial's about, I mean, that's

1 what any fair trial is about. It's not about name calling or
2 telling you how bad somebody is. No, a trial is about one thing,
3 and that is whether our government can convince twelve people
4 that one of its citizens is guilty of a crime. And so, the
5 starting point for any fair trial has to be the presumption of
6 innocence.

7 Now, if you know anything about the history of our country
8 you know that there's been times where people, or groups of
9 people have been presumed to be guilty just by who they are. But
10 I'd like to think we've moved on from that. I'd like to think
11 that we're at a point in our history where we treat all the
12 people the same, that we all have the same rights. And that's
13 what the presumption of innocence is. Simply put, it means
14 treating everybody accused of a crime exactly the same way. It's
15 giving everybody the same benefit of the doubt, rich or poor,
16 black or white, man or woman, young or old. Everyone who is
17 accused of a crime starts out the same way.

18 Now, we all have t.v. sets and we've all seen people on t.v.
19 that we admire accused of crimes. Maybe it's a celebrity, maybe
20 it's a sports figure, maybe it's somebody y'all even know. But
21 if you admire that person your first reaction is probably like,
22 my, there is no way that person could have done that crime, there
23 is no way. You're going to have to prove to me, you'll have to
24 give me some serious evidence to prove that that person is going
25 to be found guilty of a crime. I'm just not going to believe it

1 without serious evidence. That's the presumption of innocence.
2 That's how you must view this trial. Y'all don't know Cedric
3 Flood, you never met him, you don't know where he works, you
4 don't know his family, you don't know anything about him. But
5 you've taken an oath to give him the same benefit of the doubt
6 that you would give that celebrity that you admire or that sports
7 figure that you admire, or that person that you know that's on
8 trial that you admire. So, the presumption of innocence is not
9 some kind of empty phrase, you know, that we can just recite and
10 then forget. The presumption of innocence is the beginning, is
11 the middle, and it's the end of every fair trial.

12 Cedric Flood is presumed innocent. The State of South
13 Carolina says he's committed a crime. Make them prove it.

14 Thank you.

15 THE COURT: Alright, sir. Thank you, Mr. Mellard.

16 Is the State ready to call their first witness?

17 SOLICITOR JUSTIS: Yes, Your Honor.

18 THE COURT: Okay.

19 SOLICITOR JUSTIS: The State calls Minor

20 Stand right here, and she's going to swear you in.

21 THE COURT: Minor , you're going to need to put your
22 left hand on the Bible and raise your right hand, please.

23 CLERK: Raise your right hand. Thank you.

24 (Whereupon, Laure Washington

25 is duly sworn.)

1 CLERK: Thank you. Please state your name for the record.

2 WITNESS: Minor

3 CLERK: Thank you.

4 THE COURT: Alright, wait one second. Ms. Harry Dot, is
5 that microphone where you want it?

6 COURT REPORTER: It is, thank you, Judge.

7 THE COURT: Okay. Thank you, ma'am. Alright.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court. See
11 next ensuing page for sequential continuation of record.)

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 (Minor being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS:

4 Q. Good afternoon, Minor . Where do you live?

5 A. Orangeburg, South Carolina.

6 Q. Okay. And how long have you lived in Orangeburg?

7 THE COURT: Okay, hold on one second. Minor I

8 hate to ask you to this, but you need to speak up. I'm having a
9 hard time hearing you, and I'm close.

10 A. Okay.

11 THE COURT: The jury's way over there and they need to hear
12 you. So, I know ...

13 COURT REPORTER: Oh, could you just turn that down, that's
14 good. And you might want to pull your chair a little bit closer,
15 not too close but -- that's fine, thank you.

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

17 A. You're welcome.

18 THE COURT: Okay. Alright, Mr. Justis, you may proceed.

19 Q. Minor , by the end of your testimony here today will
20 you be able to tell us about the events of September Twenty-
21 ninth, Two thousand and Nine?

22 A. Yes.

23 Q. Okay. And how long have you lived in Orangeburg County?

24 A. All my life.

25 Q. And do you work?

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. Yes.

2 Q. What kind of work do you do?

3 A. Child care.

4 Q. Okay. And . Minor , let's talk about the events of
5 September Twenty-ninth, Two thousand and Nine. Do you remember
6 that day?

7 A. Yes.

8 Q. And what were you doing that day?

9 A. I got up that morning and got my son ready for school.

10 Q. Okay. And how old is your son?

11 A. He'll be eight in October.

12 Q. Okay. So, how old was he back in Two thousand and Nine?

13 A. Six.

14 Q. And was -- what grade was he in?

15 A. Kindergarten.

16 Q. Okay. And where were you living back in Two thousand and
17 Nine?

18 THE COURT: Is it on?

19 COURT REPORTER: Is it cut on down there?

20 SOLICITOR JUSTIS: I see a red light.

21 COURT REPORTER: It's burning? The red light is on?

22 SOLICITOR JUSTIS: There's a red light on.

23 COURT REPORTER: Will you just tap on that mike? Try it
24 now. We're getting feedback now.

25 THE COURT: Alright.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. And where were you living back then?

2 A. Street.

3 Q. Street. And is that in Orangeburg County?

4 A. Yes.

5 Q. Okay. And who was living with you?

6 A. Just me and my son.

7 Q. And you said your son was in kindergarten?

8 A. Yes.

9 Q. And that day, tell us what you were doing with your son?

10 A. I got him ready for school and I walked outside and walked
11 him to the bus stop and put him on the -- after I put him on the
12 bus I walked back home and got ready to open the door.

13 Q. Okay. And when you say you put him on the -- was it a
14 school bus you put him on?

15 A. Yes.

16 Q. And how far was the school bus from your house would you
17 say?

18 A. Like four or five houses down.

19 Q. Okay. So, you returned back to your house, and what
20 happened when you returned back to your house?

21 A. I got ready, I took my keys out and I looked over at my car
22 where my car was parked in front of my room window, and Cedric
23 came from behind my car and jumped on the steps. And I tried to
24 run, I turned around to run back away from the house but then he
25 pulled my shirt and stick the gun in my back.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. Okay. Now, you said Cedric, do you mean Cedric Flood?

2 A. Yes.

3 Q. Did you know Mr. Flood?

4 A. Yes, we used to date.

5 Q. You say you used to date. Had you been broken up?

6 A. Yes.

7 Q. Who broke up with who?

8 A. I broke up with him.

9 Q. And how long did you know, at that point how long did you
10 know Mr. Flood, when did you meet him?

11 A. Just for a few months.

12 Q. Okay.

13 A. Less than six months.

14 Q. And how long had you been broken up?

15 A. For about two months.

16 Q. Okay. And you said he came from behind your car?

17 A. Yes.

18 Q. What kind of car did you have?

19 A. A Plymouth Grand Voyager van.

20 Q. Okay. Minor, I'm showing you what's been marked
21 as State's Exhibit Number Five, do you recognize that?

22 A. Yes.

23 Q. What is that?

24 A. The back of my van.

25 Q. Is that the van that was parked at your house that day?

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. Yes.

2 Q. And Minor , you mentioned that he had a gun?

3 A. Yes.

4 Q. Could you describe the gun for the jury?

5 A. Black, it looked like a pistol.

6 Q. Okay. And what did he do with this black pistol?

7 A. He told me to open the door and go in the house and get my
8 license plate to my car.

9 Q. Okay. And where was he pointing the gun?

10 A. Into my back.

11 Q. Could you see the gun?

12 A. No.

13 Q. And did you go inside the house?

14 A. Yes.

15 Q. And what happened when you got inside the house?

16 A. He told me to give him the key and phone, and go get the
17 license plate. And I went and did that, and all the time he was
18 holding onto my shirt. And then I left, and then he left out the
19 room and he came back into the kitchen and he went in my
20 refrigerator and took some food out there.

21 Q. And what did he do with the gun?

22 A. He was still holding it in his hand.

23 Q. Did he say anything else to you?

24 A. Yeah, he said that, I'm going home, you're going with me,
25 and going to my house because I'm going to kill you.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. And then what happened?

2 A. And then we went out, we was going outside, and he put me in
3 the trunk of my van. And he drove there to his sister's house.
4 And the whole time he was saying that he was going to kill me,
5 and yelling.

6 Q. What kind of things was he yelling?

7 A. Who are you talking to? Why do you want to leave me? Why
8 you won't give me no sex? I want sex. I'm going to kill you.
9 I'm going to make you cut -- I'm going to cut your main veins.

10 Q. And what did you say in response to this, were you
11 responding to him?

12 A. No, I wasn't saying nothing, but crying.

13 Q. . Minor , I'm showing you what's been marked as
14 State's Exhibit Number Eight. Do you recognize that?

15 A. Yes.

16 Q. What is that a photo of?

17 A. The back of my van.

18 Q. Is that where Mr. Flood made you sit?

19 A. Yes.

20 Q. Now, he made you get in the van, he's driving the van, where
21 did he go from there?

22 A. He went to his sister's house.

23 Q. Okay. And where is that located?

24 A. On, off of Road.

25 Q. And is that close by to where your house is?

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. No.

2 Q. Did anything happen at his sister's house?

3 A. Yes. He got out the car and got a license plate from off
4 the back of another car, and got back in the car.

5 Q. And then what happened?

6 A. And then he drove around to another, on another, the next
7 street over and went to his house.

8 Q. Okay. And do you know the address of where he lived, or the
9 name of the street where he lived?

10 A. Street.

11 Q. Street?

12 A.

13 Q. And what happened when you got to his house?

14 A. He pulled out the -- he had some duct tape in his hand, and
15 he was showing me the gun in his pants, and he said if I run,
16 that I better not run. And then he let me get out the car, get
17 out the van, and we went in the house.

18 Q. Minor , at this time I'm showing you what's been
19 marked as State's Exhibit Number One. Do you recognize that?

20 A. Yes.

21 Q. What is that?

22 A. That gun that he had.

23 Q. So, you got to the defendant's house, and he's got the gun.

24 Where does he have the gun?

In the front of his, in his pants.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. Like tucked in his waistband?

2 A. Yes.

3 Q. When you got out of the van where did you go next?

4 A. He was holding onto my shirt and then we went in the house,
5 and then I went in the house and sat down in the living room.

6 Q. Alright, Minor, I'm showing you what's been marked
7 as State's Exhibit Number Eleven, do you recognize that?

8 A. Yes.

9 Q. What is that?

10 A. The end of the trailer that's his house.

11 Q. Okay. And is this where he took you?

12 A. Yes.

13 Q. And you stated you went in the living room. Is that the
14 first room you come to when you come in the house?

15 A. Yes.

16 Q. And what happened when you got in the living room?

17 A. I sat down and he came and sat down on the table in front of
18 me, and he was pointing the gun in my chest, yelling. He kept my
19 phone and started messing with my phone in front of me. And he
20 just kept pointing the gun into my head and my chest and stuff.

21 Q. Now, was there anybody else in the house?

22 A. No.

23 Q. And could you show the jury how he pointed the gun, and use
24 your finger to kind of show where he was pointing the gun?

25 A. Right there and right there.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. And what was he saying when he was pointing the gun at you?

2 A. Asking me do I feel the gun, and you're going to die, your
3 son is going to miss you. And I know he's going to miss you
4 because he loves you. And I'm going to kill you today. And I
5 kept asking him, will you let me go home? And he said, no,
6 you're going to die today.

7 Q. Now, what happened at that point?

8 A. I was just sitting there, and then he got up and said that
9 he wanted sex, and he told me to come on. And then he was
10 holding me and walking me to the back room.

11 Q. And did you go with him?

12 A. Yes.

13 Q. And you said he took you into a back room?

14 A. Yes.

15 Q. What was in the -- can you describe the room, what was in
16 the room?

17 A. It was a bed, a queen size bed and a dresser, and a t.v.

18 Q. Okay. And what happened when you got to that room?

19 A. I sat down -- no, he said, sit down, and I sat down on the
20 bed. Then he told me that he wanted sex and for me to take off
21 my clothes. And he was just pointing the gun all in my face.

22 Q. So, he still had the gun at this point?

23 A. Yes.

24 Q. And what did you do?

25 A. I took off my clothes and laid down.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Q. And what did he -- I'm sorry, go ahead.

2 A. And laid down.

3 Q. And then what did the defendant do?

4 A. He took off his clothes and he, then he picked the gun up,
5 and then he put it back down, and he took off his clothes and got
6 on top of me.

7 Q. And did the defendant have sexual intercourse with you?

8 A. Yes.

9 Q. Minor , do you know if the defendant used a condom?

10 A. No, he didn't.

11 Q. Minor , after the defendant had intercourse with
12 you, what happened at that point?

13 A. He was holding me, and then he went to sleep, so I went to
14 sleep.

15 Q. And at some point did you wake back up?

16 A. Yes.

17 Q. How much later would you estimate you woke back up?

18 A. Probably about thirty minutes or an hour.

19 Q. And when you woke back up was the defendant still there?

20 A. Yes.

21 Q. Did he still have the gun?

22 A. Yes.

23 Q. Was he -- what was he saying or doing at that point when you
24 woke up, did he say anything to you?

25 A. . he said that, do I know that he love me. And then he

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 had sex with me again, and I was crying and asked him would he
2 let me go home.

3 Q. So, he had sexual intercourse with you again when you woke
4 up?

5 A. Yes.

6 Q. After, after that what happened at that point?

7 A. It was coming time to go pick up my son, and I asked him
8 would he let me go, could we go get my son, and he told me yeah.

9 Q. Okay. So, at that point what happened?

10 A. I got up and put my clothes and stuff back on, and I was
11 just sitting down, and then he was holding onto my shirt, and he
12 got the gun and I think he went and did something in the house
13 and, like, hurry up, tried to hurry up and come back in the room
14 with me so I won't run.

15 Q. Okay. And when he came back in the room, you stated he had
16 the gun with him again?

17 A. Yes.

18 Q. And what happened at that point, after you put your clothes
19 back on?

20 A. We went outside to go get my son from off the bus.

21 Q. Okay. And did you drive or walk?

22 A. Drive.

23 Q. Whose vehicle did you go in?

24 A. Mine.

25 Q. The same van that he used to bring you there?

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. Yes.

2 Q. And did you go to the bus stop?

3 A. Yes.

4 Q. And what happened when you got to the bus stop?

5 A. I was sitting down and he was sitting down, and my son's bus
6 pulled up and he got out, he got off the bus and got in the car,
7 and he was sitting down quiet like he knew something was wrong.

8 Q. Did the defendant have a gun?

9 A. Yes.

10 Q. Was he showing the gun to you at that time?

11 A. Yes.

12 Q. After you picked up your son, -- and how old was your son?

13 A. Seven, he'll be eight in October.

14 Q. After you picked up your son where did you go from there?

15 A. Back to his house.

16 Q. Did you ask him if he could take you home?

17 A. Yes.

18 Q. And what did he say?

19 A. He said, no, I'm going to kill you.

20 Q. So, did he drive you back to his house?

21 A. Yes.

22 Q. And when you got back to his house what happened at that
23 point?

24 A. Me and my son got out of the car, and he had the duct tape
25 in his hand again, and I think I asked him what he was going to

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

115

1 do with the duct tape, and he said, I'm going to tie you up with
2 it.

3 Q. Okay. And did you go back in the house?

4 A. Yes.

5 Q. And when you got in the house what happened?

6 A. Me and my son sat down in the living room, and he told me to
7 come on, and we went back in the, a middle room, we went in the
8 middle room and he was about to, well, he hand cuffed me to the
9 bed, the bunk bed in the middle room, and he left out, and he was
10 saying when he come back he was going to kill me.

11 Q. And where was your son while this was going on?

12 A. In the living room, in his living room, sitting down on a
13 chair.

14 Q. Minor , I'm showing you what's been marked as
15 State's Exhibit Number Twelve, do you recognize that?

16 A. Yes.

17 Q. What is that a photograph of?

18 A. The living room and the chair that my son was laying down
19 on.

20 Q. I'm showing you State's Exhibit Number Eighteen, do you
21 recognize that?

22 A. Yes.

23 Q. What is that?

24 A. The bunk bed in the middle room that he hand cuffed my arms
25 to.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

116

1 Q. And finally, let me show you State's Exhibit Number Twenty-
2 three, do you recognize that?

3 A. Yes.

4 Q. What is that?

5 A. The bed that he had sex with me on.

6 Q. So, he took you back into this middle room with a bunk bed
7 in it?

8 A. Yes.

9 Q. Was that the room you were in earlier?

10 A. No.

11 Q. So, it's a different room?

12 A. Yes.

13 Q. And you testified he handcuffed you to that bed. What
14 happened at that point, after he handcuffed you to that bed?

15 A. He went outside and came back in, and took the handcuffs off
16 my arm, and took me in the room, in the same room.

17 Q. Now, when you say, same room, the bunk bed room?

18 A. In the other room, back in the other room.

19 Q. The one you were in earlier in the day?

20 A. Yes.

21 Q. And when you got in that room what happened then?

22 A. He just kept pointing the gun in my face and saying he was
23 going to kill me, and was about to tape me up. And I was just
24 crying.

25 Q. I'm showing you what's been marked as State's Exhibit

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 Number Two. Do you recognize these, Minor ?

2 A. Yes.

3 Q. What are they?

4 A. Handcuffs.

5 THE COURT: And I hate to interrupt you, Minor , but
6 I really need for you to speak up just a little louder if you
7 can.

8 A. They're handcuffs.

9 THE COURT: Thank you, ma'am, that's the right tone.

10 Q. Do these appear to be the handcuffs that were used that day?

11 A. Yes.

12 Q. Now, Minor , when you got back in the bedroom that
13 had the bed in it, what did the defendant do then?

14 A. He started telling me what he was going to do, yelling, and
15 he said that he was going to go to work, and when he got back he
16 was going to kill me.

17 Q. Did the defendant have sex with you again?

18 A. Yes.

19 Q. After he had sex with you then what happened?

20 A. He put the handcuffs -- no, he put the duct tape around my
21 legs, and started putting the duct tape on my head and my mouth,
22 and around my legs, and shaking to see if it was on right.

23 COURT REPORTER: Checking to see what?

SOLICITOR JUSTIS: If it was on right.

Just make sure you speak up.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

118

1 A. Checking to see if it was on right.

2 Q. Okay. And when you say, around your legs, could you kind of
3 show for the jury where you're talking about?

4 A. With my legs together, around my legs, all the way around.

5 Q. And where else did he put the duct tape on your body?

6 A. Around my head and my eyes, my mouth and my eyes.

7 Q. So, could you see?

8 A. No.

9 Q. Could you speak?

10 A. No.

11 Q. And what did he do with the handcuffs?

12 A. He put my arms behind my back and put them on my arms.

13 Q. And after he bound you what did he do next?

14 A. He left out the room and came back and checked a couple of
15 times, and left again, and got my son and got in the car and he
16 left.

17 Q. So, he drove off with your son?

18 A. Yes.

19 Q. Now, after he left the residence, and where were you, were
20 you standing up, were you laying down?

21 A. Laying down.

Q. And where were you laying?

A. On the bed sideways.

Q. On that same bed - - -

A. Yes.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

119

1 Q. --- that we talked about? After he left what did you do?

2 A. I moved my arms a little bit and it came loose.

3 Q. When you say, it came loose, what came loose?

4 A. The handcuffs.

5 Q. Okay. So, when the handcuffs came loose what did you do?

6 A. I got up real fast and pulled all the duct tape from off of
7 me and ran outside. And I waited until I -- well, before I did
8 all that I waited until he left completely, entirely, and leave
9 all the way down the road first.

10 Q. Okay. And you said you removed the duct tape. Where did
11 you put the duct tape?

12 A. I threw it down.

13 Q. Where you were standing?

14 A. Yes.

15 Q. And when you got outside, what did you do next?

16 A. I ran next door.

17 Q. And when you got next door what did you do?

18 A. I was knocking on the door and they let me use the phone.

19 Q. And did ...

20 A. I told them that it was an emergency and I needed to call
21 Nine One One.

22 Q. And did you call Nine One One.

23 A. Yes.

24 Q. And did the police arrive at the scene?

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

120

1 Q. Now, when the police arrived what happened at that point,
2 what did you do at that point?

3 A. I just went outside and went over there and talked to the
4 police -- well, before that, when the police got there they was
5 telling me that, when I was on the phone ...

6 MR. MELLARD: Objection.

7 Q. Don't tell us what anybody else said, that would be hearsay.
8 So, the police arrived. Where were the handcuffs at that point?

9 A. Still on my arm.

10 Q. Were they both on your arm, or just one?

11 A. Just one.

12 Q. Okay. At some point in time did someone remove those
13 handcuffs?

14 A. Yes.

15 Q. And who removed the handcuffs?

16 A. The ambulance.

17 Q. Okay. Were you in the ambulance?

18 A. Yes.

19 Q. Okay. Did you have an opportunity to give a verbal
20 statement there at the scene to police when they arrived?

21 A. No.

22 Q. Did you give a statement at some point later on?

23 A. Yes.

24 Q. Okay. And where was that?

25 A. In, at the hospital.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

121

1 Q. Okay. So, you mentioned that you were sitting in an
2 ambulance when they took the handcuff off. Did you eventually go
3 to the hospital?

4 A. Yes.

5 Q. And did you have an exam?

6 A. Yes.

7 Q. And I think you mentioned that the police took a statement
8 from you at that point?

9 A. Yes.

10 Q. Did you have any injuries on you that you can recall?

11 A. No.

12 Q. Minor , did you willingly go with Mr. Flood that
13 day?

14 A. No.

15 Q. Did you willingly have sex with him that day?

16 A. No.

17 Q. Minor , do you see the man who -- do you see Cedric
18 Flood in the courtroom today?

19 A. Yes.

20 Q. Could you point him out for the jury?

21 A. (Witness points towards defendant.)

22 SOLICITOR JUSTIS: Please let the record reflect that the
23 witness has identified the defendant, Cedric Flood.

24 THE COURT: The record so reflects.

25 SOLICITOR JUSTIS: I beg the Court's indulgence.

Minor

- DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 THE COURT: Yes, sir.

2 SOLICITOR JUSTIS: No further questions, Minor ,
3 please answer any questions Mr. Mellard might have.

4 THE COURT: Alright, Mr. Mellard, your witness.

5 (NOTE: Blank lines on this page do not indicate any part of
6 record has been omitted. Headers on testimony pages and hard
7 page breaks between testimony are now required by the Court. See
8 next ensuing page for sequential continuation of record.)

Minor - CROSS-EXAMINATION BY MR. MELLARD

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1 CROSS-EXAMINATION BY MR. MELLARD:

2 Q. You've known Cedric for ...

3 A. Yes.

4 Q. You know Cedric. In fact, y'all dated?

5 A. Yes.

6 Q. Okay. And y'all were boyfriend and girlfriend?

7 A. Yes.

8 Q. Okay. And y'all lived together?

9 A. No.

10 Q. You didn't, never stayed over at his house?

11 A. Sometimes.

12 Q. Okay. Alright. And it's my understanding you have a son?

13 A. Yes.

14 Q. Okay. And he's eight years old?

15 A. Yes.

16 Q. Okay. Now, let's talk about what happened on September
17 Twenty-ninth, Two thousand Nine. It's my understanding that on
18 that day you were living at
19 Street, is that correct?

20 A. Yes.

21 Q. Okay. And had you lived at this address with Cedric Flood?

22 A. No.

23 Q. Alright. Were you living at this address when you and
24 Cedric Flood were dating?

A. Yes.

Minor

- CROSS-EXAMINATION BY MR. MELLARD

124

1 Q. Okay. And you're claiming that on September Twenty-ninth he
2 jumped out of the bushes with a gun?

3 A. Yes.

4 Q. Okay. Didn't knock on the door?

5 A. No.

6 Q. He just jumped out of the bushes?

7 A. Yes.

8 Q. Okay. And he had a gun, correct?

9 A. Yes.

10 Q. Alright. And you said it was a black gun?

11 A. Yes.

12 Q. Okay. And I believe you identified this as the black hand
13 gun?

14 A. Yes.

15 Q. Okay. And he waved this at you?

16 A. Yes.

17 Q. Okay. And while he was waving it at you did you ever notice
18 the word, Crossman, written on it?

19 A. No.

20 Q. Okay. Did you ever notice that it was a BB gun?

21 A. No.

22 Q. Okay. And did you ever hear BBs rattling around in it?

23 A. No.

24 Q. Okay. So, it was an unloaded BB gun?

25 A. I guess so.

Minor

- CROSS-EXAMINATION BY MR. MELLARD

125

1 Q. Okay. Alright.

2 MR. MELLARD: Do you want me to put it back in the bag?

3 Q. Alright, and then he tells you to go get the tag to your
4 car, correct?

5 A. Yes.

6 Q. Okay. So, you had this car, and I believe you said it was a
7 van. You didn't keep the tags on it?

8 A. No, because it wasn't update.

9 Q. Okay. So, you just kept the tags inside your house?

10 A. Yes.

11 Q. Okay. And then you claim he puts you in the car and drives
12 you to his sister's house, his sister's house?

13 A. Yes.

14 Q. Okay. And then y'all go to his house on Street, I
15 believe?

16 A. Yes.

17 Q. Okay. And you told the police that that was Cedric's house?

18 A. Yes.

19 Q. And you know that because you and Cedric had been boyfriend
20 and girlfriend?

21 A. Yes.

22 Q. And you had been over there before?

23 A. Yes.

24 Q. Alright, so you go to his house and then you claim -- let's
25 see -- that he's going to -- at some point he gets you son off

Minor

- CROSS-EXAMINATION BY MR. MELLARD

126

1 the bus at one:thirty, you go to get your son?

2 A. Yes.

3 Q. Okay. And again, he knows your son's bus schedule because
4 y'all were boyfriend and girlfriend?

5 A. Yes.

6 Q. Okay. Alright. So, at some point he tells you he wants to
7 have sex with you?

8 A. Yes.

9 Q. Okay. And while he's doing that he's waving the BB gun at
10 you?

11 A. Yes.

12 Q. Okay. And then you said y'all had sex, correct?

13 A. Yes.

14 Q. Alright. And then you said that after you had sex he goes
15 to sleep and then you went to sleep also?

16 A. Yes.

17 Q. Okay. So, you didn't try to take the gun away while he was
18 sleeping?

19 A. No.

20 Q. You didn't try to wait for him to go to sleep and then run
21 out the door?

22 A. No, I was too scared.

23 Q. Okay. So, you just had sex with someone you say you didn't
24 want to have sex with, correct?

25 A. Yes.

Minor

- CROSS-EXAMINATION BY MR. MELLARD

127

1 Q. Okay. And you're in a house with someone who's threatening
2 you with an unloaded BB gun?

3 A. Yes.

4 Q. Okay. And you said you were scared?

5 A. Yes.

6 Q. But you don't try to get away when he goes to sleep?

7 A. No.

8 Q. Okay. And then you sleep until about eleven:fifteen,
9 correct?

10 A. Yes.

11 Q. Okay. And then you wake up and Cedric wakes up?

12 A. Yes.

13 Q. Okay. And then you go to the bus stop?

14 A. Yes.

15 Q. Alright. And you're sitting there with him waiting for the
16 bus to come?

17 A. Yes.

18 Q. And then the bus comes?

19 A. Yes.

20 Q. Okay. And then your child gets off the bus?

21 A. Yes.

22 Q. And then he gets in the car with you and Cedric?

23 A. Yes.

24 Q. Okay. You don't call for help?

25 A. No.

Minor

- CROSS-EXAMINATION BY MR. MELLARD

128

1 Q. You don't try to signal the bus driver?

2 A. No.

3 Q. You don't tell your son to run?

4 A. No.

5 Q. Instead you allow your son to get off the bus and get into a
6 car which you say is driven by a man who's threatening to hurt
7 you?

8 A. No, because I don't want him, he was with me.

9 Q. Who was with you?

10 A. My son.

11 Q. Your son was on the bus.

12 A. No, I'm saying when he got off the bus he ain't had nowhere
13 else to go.

14 Q. Correct. But you're saying Cedric is a bad person, he's
15 going to hurt you, but you let your son get in the car with him?

16 A. Well, I didn't want to tell him to run because he's not
17 going to know where to run at.

18 Q. The bus driver is right there, the bus is right there. Then
19 you and Cedric and your son go back to your house, correct?

20 A. Yes.

21 Q. Alright. And you take your son into the house?

22 A. Yes.

23 Q. Again, you don't tell him to run?

24 A. No, because he didn't know really what was going on, but he
had a feeling.

Minor

- CROSS-EXAMINATION BY MR. MELLARD

129

1 Q. So, you don't -- he has a feeling, and you don't tell him to
2 run?

3 A. No.

4 Q. You don't tell him to go for help?

5 A. No.

6 Q. Alright. You just allow your son to go into a house with a
7 person you're claiming is kidnaping and raping you. Alright.
8 So, then you and your son go in the living room, right?

9 A. Yes.

10 Q. Okay. And then he goes -- Cedric goes into the kitchen you
11 said and gets something to eat?

12 A. Yes.

13 Q. Okay. And again, you don't tell your son to run?

14 A. No.

15 Q. You don't try to get in the way so he can get out of this
16 danger that you say he's in, that you say is in this house?

17 A. No.

18 Q. Alright. And then Cedric calls you into a back bedroom?

19 A. He walked me in the bedroom.

20 Q. Okay. He walks you back there, and your son is sitting in
21 the living room?

22 A. Yes.

23 Q. Okay. And you claim that Cedric handcuffs you?

24 A. Yes.

25 Q. Okay. And you claim he put the duct tape on you?

Minor

- CROSS-EXAMINATION BY MR. MELLARD

130

1 A. Yes.

2 Q. Alright. And your son's just sitting there in the living
3 room?

4 A. Yes.

5 Q. Okay. And then you say that Cedric leaves the house?

6 A. Yes.

7 Q. Alright. And almost immediately the handcuffs come loose
8 and you're able to get free?

9 A. Yes.

10 Q. Alright. And then that's when you said you called the cops,
11 correct?

12 A. Yes.

13 MR. MELLARD: Alright, hold on one second. No more
14 questions.

15 THE COURT: Alright. Anything on redirect?

16 SOLICITOR JUSTIS: Briefly, Your Honor.

17 (NOTE: Blank lines on this page do not indicate any part of
18 record has been omitted. Headers on testimony pages and hard
19 page breaks between testimony are now required by the Court. See
20 next ensuing page for sequential continuation of record.)

Minor

- REDIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 REDIRECT EXAMINATION BY SOLICITOR JUSTIS:

2 Q. Minor did you know that was a BB gun?

3 A. No.

4 Q. And at the bus stop did he have this gun with him?

5 A. Yes.

6 Q. Did he have this gun when he returned back to his house with
7 your son?

8 A. Yes.

9 Q. Minor, you testified that he got something to eat
10 when he came back with your son, he went in the kitchen and got
11 something to eat and you were in the living room, correct?

12 A. Yes.

13 Q. I'm showing you what's been marked as State's Exhibit Number
14 Thirteen. Do you recognize that?

15 A. Yes.

16 Q. What's that a picture of?

17 A. The kitchen.

18 Q. And what's this area right next to the kitchen?

19 A. The living room.

20 SOLICITOR JUSTIS: Thank you, no further questions.

21 THE COURT: Anything on recross?

22 MR. MELLARD: No questions, Your honor.

23 THE COURT: Alright, Ms. Minor, you may step down.

24 Okay? Thank you, ma'am.

Alright, Ladies and Gentlemen, I'm going to allow y'all to

1 take -- we're going to take a short ten minute break and let
2 y'all go back and, you know, so we can just take a break.
3 Remember, you have just heard one witness. You cannot talk about
4 this case at all at this time. Okay? Thank y'all.

5 (Whereupon, the jury retires
6 to the jury room and the following
7 takes place out of the presence
8 of the jury.)

9 THE COURT: ALRIGHT, Mr. Justice and Mr. Mellard, we have
10 to make sure that the witnesses talk up. Okay? Just so y'all
11 will both be aware of that. Okay?

12 SOLICITOR JUSTIS: Your Honor, obviously, she was very
13 emotional there on the stand.

14 THE COURT: No, I understand that.

15 SOLICITOR JUSTIS: I think the rest of my witnesses will be
16 fine.

17 THE COURT: And I just wanted to make sure. If y'all want
18 to test it some while we're in the break, you know, I'd just
19 like to make sure that that's turned up. I know that the
20 officers, we're probably not going to have any trouble hearing
21 them.

22 SOLICITOR JUSTIS: Right. And Minor 's very soft
23 spoken.

24 THE COURT: No, I understand, and I hated to bother her
testimony, but I just want you to know that.

1 COURT REPORTER: Judge, Rich knows how to adjust this if
2 they need it to be adjusted. Where is Rich?

3 THE COURT: He's right here, he's trying to hide. Okay?
4 Thank you, ma'am.

5 (Recess)

6 THE COURT: Is the State ready to proceed?

7 SOLICITOR BELL: The State's ready, Your Honor?

8 THE COURT: Defense? Is the Defense ready to proceed?

9 MR. MELLARD: I'm sorry. Yes, we're ready.

10 THE COURT: Okay, thank you. Alright, bring the jury back
11 in.

12 (Whereupon, the jury enters
13 the courtroom and the following
14 takes place in the presence
15 of the jury.)

16 THE COURT: Call your next witness.

17 SOLICITOR BELL: The State would call Annette Jensen to the
18 stand.

19 Come around, Ms. Jensen, and be sworn.

20 CLERK: Place your left hand on the Bible and raise your
21 right hand, please.

22 (Whereupon, Annette Jensen
23 is duly sworn.)

24 CLERK: Thank you, ma'am. Please sit down, have a seat and
25 state your name for the record.

1 WITNESS: Annette Jensen.

2 COURT REPORTER: Spell Jensen, please.

3 WITNESS: J-E-N-S-E-N.

4 (NOTE: Blank lines on this page do not indicate any part of
5 record has been omitted. Headers on testimony pages and hard
6 page breaks between testimony are now required by the Court. See
7 next ensuing page for sequential continuation of record.)

ANNETTE JENSEN - DIRECT EXAMINATION BY SOLICITOR BELL

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1 (ANNETTE JENSEN, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR BELL:

4 Q. Thank you, ma'am. Ms. Jensen, where are you employed?

5 A. At the Regional Medical Center.

6 Q. And how are you employed there?

7 A. Employed as a labor and delivery nurse, and I also work as a
8 SANE nurse.

9 Q. Okay. Would you tell the jury what training and educational
10 background you have for being a nurse?

11 A. I graduated in Camden, New Jersey, from the HOLEEN Folk
12 School of Nursing in Nineteen Eighty-three.

13 Q. Okay. And you're a registered nurse?

14 A. I am.

15 Q. Are you licensed?

16 A. I am.

17 Q. By the State of South Carolina?

18 A. Yes, sir.

19 Q. Okay. And you said you were a SANE nurse, what is a SANE
20 nurse?

21 A. It stands for Sexual Assault Nurse Examiner.

22 Q. Okay. And have you had any additional ...

23 MR. MELLARD: Your Honor, I'd object to that, the testimony
24 regarding her -- I'd like to move to strike that. I think it's
25 irrelevant.

1 THE COURT: Okay. Well, I overrule your objection. Thank
2 you, sir. Okay. Go ahead.

3 Q. Have you had any additional training or education to be a
4 SANE nurse?

5 A. Yes, sir.

6 Q. And what is that, what have you had?

7 A. In May of Two thousand and Eight I went to a special course
8 in Rock Hill, South Carolina, where we spent a week learning how
9 to collect evidence and take statements.

10 Q. Okay. And being the Sexual Assault Nurse Examiner is there
11 a specific protocol you have to do when you do that?

12 A. Yes.

13 Q. Okay. And you do, is there a certain way you have to do
14 things and how to pack up evidence and all that, and how to seal
15 it and all that?

16 A. Absolutely.

17 Q. So, it's a bit of a specialty, is that correct?

18 A. It is.

19 Q. Okay. Now, Ms. Jensen, were you working back on September
20 Twenty-ninth of Two thousand Nine?

21 A. Yes.

22 Q. And do you remember examining a Ms. Minor

23 A. I do.

24 Q. And can you tell me how you came to examine her on that day?
th SANE nurse I'm on call for the hospital, and when a

ANNETTE JENSEN - DIRECT EXAMINATION BY SOLICITOR BELL

137

1 patient is brought into the hospital and a sexual exam kit is
2 requested, they call me and I come in.

3 Q. Okay. Who requested the kit?

4 A. The Sheriff's Department.

5 Q. Okay. Law Enforcement?

6 A. Uh-huh.

7 Q. In this case the Sheriff's Department?

8 A. Yes, sir.

9 Q. Good. So, did they call you back to the hospital, or were
10 you already in the hospital?

11 A. They called me from home to come.

12 Q. Alright. And when you got there what did you do, where did
13 this exam take place in the hospital?

14 A. The exam takes place, in Two Thousand and Nine we had a
15 specific room in the hospital that was designated for nothing
16 other than sexual assault exams.

17 Q. And when you got there what happened, what did you do?

18 A. When I got there I met with Minor first and then I
19 obtained a consent from her that it would be okay for me to go
20 ahead and do an exam kit, and explained to her everything that
21 was going to happen.

22 Q. Excuse me, I'm sorry.

23 A. That's okay.

24 Q. How did she present herself?

25 A. She was very upset.

1 Q. And what do you, what's the first thing you do after getting
2 her consent?

3 A. After I obtain the consent from Ms. Washington I take her
4 from where she was in the emergency room to the special room
5 where we do the exams.

6 Q. And before you do a specific exam do you get, like, a
7 history on her?

8 A. Absolutely, but not until we get to the specific room.

9 Q. So, you get to the specific room, and basically, I'm going
10 to kind of leap through this because you can't testify to what
11 she told you, I just want to kind of - - -

12 A. Okay.

13 Q. --- items that she would have told you. Okay?

14 A. Uh-huh.

15 Q. So, that's why I'm kind of -- so, she would give you her
16 history, is that correct?

17 A. Yes, sir, she would.

18 Q. Her age and her sexual history, and she would give you a
19 little brief synopsis of what happened to her, is that correct?

20 A. Yes.

21 Q. Okay. And after you take the history and all that, what do
22 you do?

23 A. After I take the history, I would have told Minor
24 this, after she tells me, she gives me a statement as to what
25 happened and that kind of directs the direction that the exam

ANNETTE JENSEN - DIRECT EXAMINATION BY SOLICITOR BELL

139

1 goes then. Once she and I were in the room together, and the
2 room is under lock and key where we are, and in her presence I
3 think ahead and I can open the kit to collect evidence.

4 Q. Alright. And what I want to show you is what's been marked
5 as State's Three for identification. And I know it's not quite
6 the same as it was, but is that what you have?

7 A. Yes.

8 Q. And is it sealed when you have it, before you do an exam?

9 A. Before I do an exam it's sealed along the edges here. You
10 can see, I always take my pen and unseal it. You can see where
11 it's sealed.

12 Q. Okay.

13 A. So, each individual box is sealed.

14 Q. Okay. And what is inside this box before you do an exam?

15 A. It has q-tips for taking swabs. It has information to give
16 to the patient. It has a report to fill out. We do ours
17 computer generated, but it has a written report in there that we
18 are to fill out.

19 Q. Okay. Alright. Does it have any other items?

20 A. Bags to put things in.

21 Q. Let me show you -- and they've been separated kind of --
22 this is what's been marked State's Thirty-one for identification.
23 Are these some of the items that were originally in that?

24 A. Yeah.

25 Q. And also what's been marked as State's Thirty-two for

1 identification?

2 A. Yes.

3 Q. Okay. And those items are in there and nothing's been done
4 with them, is that correct?

5 A. No. Because they would be sealed.

6 Q. Okay. After you take that kit that we mentioned, what do
7 you do next?

8 A. Well, after I open the kit I go ahead and I take samples
9 that would be applicable to the history that the patient's given
10 me.

11 Q. Okay. Let me ask you this, do you kind of do an overall --
12 before you do that, though, where you start taking samples, do
13 you kind of do an overall evaluation of, to see if there are any
14 injuries or anything to the body?

15 A. Yes.

16 Q. And did you do that in this case?

17 A. I did.

18 Q. Okay. Did you notice any injuries?

19 A. I have indicated, reddened areas on her ankles, her right
20 ankle and her wrist, and below one of her ears and below one of
21 her eyes.

22 Q. Okay. And after you do this general exam that's when you
23 start collecting samples?

24 A. Yes.

25 Q. Okay. And what samples do you collect?

ANNETTE JENSEN - DIRECT EXAMINATION BY SOLICITOR BELL

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1 A. We do vaginal swabs and rectal swabs. We do a swab, we swab
2 Minor 's mouth, something called a BUCCAL swab which
3 would identify her DNA so that indeed if I say that I was talking
4 to her that I would have proof that I was talking to her, that
5 she was with me. And then in accordance if there's any other
6 issues, any other areas of the body that would be indicated
7 that needed swabs done I would also do that.

8 Q. Okay. And in this particular case you did, among other
9 things, these items that are in State's Thirty-one, is that
10 correct?

11 A. Yes.

12 Q. And let me see -- and instead, I think on this one, one of
13 the items, it says, known blood, zip lock bag, you don't do the
14 blood, you do the BUCCAL swab?

15 A. I do a BUCCAL swab.

16 Q. And that's the q-tip inside the mouth?

17 A. Uh-huh.

18 Q. Okay. And that would have been in this particular...

19 A. Yeah. Each one of the swabs has its own individual envelope
20 so that each specimen goes into an individual envelope. And then
21 they're packaged in like groups in the larger envelope, and then
22 sealed again.

23 Q. Okay.

24 A. But there would be several specimens like this one.

Okay. And her known sample would have been in this

1 envelope, is that correct?

2 A. Yes. Oral swab and blood that's in here.

3 Q. Okay.

4 SOLICITOR BELL: I want to make this Thirty-three for
5 identification.

6 THE COURT: State's Thirty-three?

7 SOLICITOR BELL: Yes.

8 (State's Exhibit Thirty-three,
9 Minor known sample,
10 marked for identification.)

11 Q. And let me -- so, in State's Thirty-three, that's Ms. Minor
12 known sample, is that correct?

13 A. Yes.

14 Q. Okay. And let me show you what's been marked as -- I've
15 already shown you this one, but State's Thirty-two?

16 A. Yes.

17 Q. And what is that?

18 A. This is a vaginal swab.

19 Q. Okay. And that's the one that you took from Minor

20

21 A. Yes.

22 Q. And how do you know that that's so?

23 A. Where it's marked, vaginal swab, I date and I time each
24 entry that I do. I would obtained a vaginal swab from her, I
would have put it in a dryer that's in the room, and Minor

ANNETTE JENSEN - DIRECT EXAMINATION BY SOLICITOR BELL

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1 Minor and I never left the room until each one of these
2 envelopes was sealed.

3 Q. Okay.

4 A. So, ...

5 Q. And it has her name on it from the, - - -

6 A. Yes.

7 Q. --- I guess a hospital ...

8 A. It has a hospital sticker on it.

9 Q. Okay. Alright. And once you finished that, what do you do
10 after you finish taking these samples?

11 A. After I finish taking the samples and grouping them, I seal
12 -- each individual envelope has a seal on the back of it.

13 Q. Like ...

14 A. Yes, sir, at the top, it's sealed like that, and then I put
15 those in the larger envelopes, and I place an evidence seal on
16 top of that. That would be the red ...

17 Q. Right there?

18 A. With my initials on it, yes. The evidence seal goes on top
19 of that. Then I take the three big envelopes and I put them
20 inside of the box, the kit box, and then I seal that with an
21 evidence seal.

22 Q. Okay. So, just to kind of review, you would take State's
23 Thirty-two, the vaginal swabs, - - -

24 A. Oh-huh.

25 Q. --- and you'd put them into State's Thirty-three, - - -

1 A. Yes.

2 Q. --- and seal it with this red mark, is that correct?

3 A. Yes.

4 Q. And then you'd take State's Thirty-three and put it into
5 State's Number Three for identification, is that correct?

6 A. Yes.

7 Q. Along with all these other envelopes?

8 A. All the other envelopes that come in the large box, and then
9 I would seal that.

10 Q. Okay. And then this is sealed, and then that's your
11 signature on there?

12 A. Yes, and my initials are on the tape.

13 Q. And your initials. Okay. And then, once you had this box
14 all collected and sealed up what did you do with it?

15 A. I called somebody from the Sheriff's Department to come and
16 pick it up.

17 Q. Okay. And let me show you State's Three for identification,
18 does it indicate who you gave that on there?

19 A. It does. I called Bobby Jones and that's who came.

20 Q. Okay. And the lady that you examined that day, do you see
21 her in the courtroom today?

22 A. I do.

23 Q. Could you point her out, please?

24 A. She's right straight ahead of me.

25 SOLICITOR BELL: Let the record reflect that the witness has

1 identified the victim in this case, Ms. Minor

2 THE COURT: The record so reflects.

3 SOLICITOR BELL: Thank you, Ms. Jensen, please answer any
4 questions that the Defense may have for you.

5 THE COURT: Mr. Wise.

6 MR. WISE: May it please the Court.

7 THE COURT: Yes, sir.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court. See
11 next ensuing page for sequential continuation of record.)

1 CROSS-EXAMINATION BY MR. WISE:

2 Q. Good afternoon, Ms. Jensen, how are you?

3 A. Good.

4 Q. My name is Mark Wise, I'm representing Mr. Flood today. Ms.
5 Jensen, one of the first things, one of the earlier things you
6 testified to was that Minor was upset. But you did
7 know, didn't you, that you found her controlled and readily
8 responding to questions and making good eye contact with you?

9 A. I did, in the examining room. They asked me when I first
10 met with her in the emergency room.

11 Q. Okay. But when you met with her that's how she was?

12 A. She was upset when I first met with her, yes.

13 Q. But when you got her she was -- when you started talking to
14 her ...

15 A. When I started the official history taking she was, gave me
16 very clear answers.

17 Q. Okay. Alright. And I think you described the bruising as
18 being about ...

19 A. Now, I did not, I do not believe that I saw any bruises on
20 her, I saw reddened - - -

21 Q. Reddened.

22 A. --- just reddened areas, yes, sir.

23 Q. Thank you. The reddened areas, these were relatively small
24 reddened areas, wouldn't you agree?

25 A. I would have measurements on my report.

ANNETTE JENSEN - CROSS-EXAMINATION BY MR. WISE

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1 Q. Sure.

2 MR. WISE: May I approach the witness, Your Honor?

3 THE COURT: Sure.

4 Q. Is that your report?

5 A. It is.

6 Q. Okay. The reddened areas, about an inch, is that right? I
7 Know you have them there in centimeters.

8 A. Yes. I have this one here in centimeters, two, three
9 centimeters, so three centimeters would probably be about two
10 inches.

11 Q. Okay. So, two to three, an inch and a half to two inches?

12 A. Yes, sir.

13 Q. And that's the, what was on her wrist?

14 A. On her wrist and maybe an ankle - - -

15 Q. Okay.

16 A. --- and in the ear.

17 Q. In the ear, exactly, so ...

18 A. Uh-huh.

19 Q. Okay. When you -- you described a little redness below the
20 right eye?

21 A. Uh-huh.

22 Q. Okay. But you didn't put any measurements on that. Would
you say about the same size as the others?

I couldn't give an exact measurement but yes, a small mark
the right eye.

1 Q. Okay. Alright. No other bruising around the face?

2 A. No.

3 Q. Okay. There were no cuts on her at all?

4 A. No, they would have been in the report.

5 Q. No swelling on any part of her body, her head or anything
6 else?

7 A. No.

8 Q. No marks around her mouth?

9 A. No.

10 Q. Okay. And then you did a vaginal examination?

11 A. I did.

12 Q. Okay. And you swabbed her vagina with a q-tip?

13 A. Yes.

14 Q. Why, why do you do that?

15 A. Because I go by the history that Minor gave me, and
16 it indicated that a vaginal swab would be appropriate.

17 Q. Okay.

18 A. I do that so if there's any DNA evidence there to ...

19 Q. So, you were looking for DNA, that's why you did that?

20 A. Yes, sir.

21 Q. Okay. When you did the examination of her vagina you didn't
22 see any bruising in her vagina, did you?

23 A. I did not.

Okay. And you didn't see any vaginal tears in her vagina,
right?

ANNETTE JENSEN - CROSS-EXAMINATION BY MR. WISE

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1 A. No.

2 Q. Okay. And just so the jury understands, what's a vaginal
3 tear, that term?

4 A. A vaginal tear is also like an abrasion. It can sometimes
5 be called sort of like when you skin your knee. When something
6 pushes against something else it pushes skin back which causes a
7 tear.

8 Q. Okay. You didn't see any swelling in her vagina?

9 A. No.

10 Q. And no redness in her vagina?

11 A. No.

12 Q. Okay. When you looked at her vagina it looked like, for
13 lack of a better term, a normal vagina?

14 A. Yes, sir.

15 Q. Okay. Alright. When you also looked in her vagina you were
16 looking for sperm in looking at it?

17 A. Yes.

18 Q. Okay. But you didn't see any sperm?

19 A. No.

20 Q. Okay. If you know, how long after sperm would be placed in
21 a vagina would you be able to still find sperm in a vagina?

22 A. Not that I would call myself and expert on that, but I know
23 that our hours of limitation on collection are seventy-two hours.

24 Q. Okay. You also collected some gray briefs from

25 Minor ?

1 A. I did.

2 Q. You gave them to ...

3 A. They were sealed in the box, yes.

4 Q. Alright, very good. And you did a combing of her pubic
5 hair?

6 A. I did.

7 Q. Would you explain to the jury what that means?

8 A. They don't, it's not necessarily done anymore. For each
9 person that comes in, over their pubic hair -- you just take a
10 regular small hair comb and run it over the public area and take
11 any loose hairs that we receive from doing that and place them on
12 a towelet and then fold the towelet up and then seal it into
13 evidence.

14 Q. Okay. And you did that in this case?

15 A. I did.

16 Q. And you put it in the box?

17 A. I did.

18 Q. And gave it to Officer Jones?

19 A. I did.

20 Q. Perfect. I'm going to go back to the redness for a little
21 bit. When you looked at the ...

22 MR. WISE: I withdraw that.

23 Q. You said that you, your limit on when you would do a vaginal
24 swab would be ninety-six hours?

25 A. Seventy-two hours.

ANNETTE JENSEN - CROSS-EXAMINATION BY MR. WISE

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1 Q. Seventy-two hours.

2 A. Uh-huh.

3 Q. And that means, if somebody said that there was, they had
4 had sex, however the circumstances, before seventy-two hours, you
5 would do the vaginal swab?

6 A. No. Then it would enter into play if three days had passed
7 by, if law enforcement would even order a kit at that point in
8 time.

9 Q. I get you.

10 A. It would be more of a physical exam and a statement.

11 Q. And did you talk to Minor about the last time she
12 had had sex?

13 SOLICITOR BELL: Objection, Your honor.

14 THE COURT: You mean -- just so I can get clarification, you
15 mean ...

16 MR. WISE: Just, period, just ...

17 THE COURT: Okay. I overrule, I mean, I sustain that
18 objection.

19 MR. WISE: Okay.

20 Q. When you were finished with your examination you released
21 her to go home?

22 A. Yes, sir.

23 Q. She didn't have to see any other doctors in the hospital?

24 A. She saw Dr. Pryor before she seen me.

25 Q. She saw Dr. Pryor, too, and after she was done with you

ANNETTE JENSEN - CROSS-EXAMINATION BY MR. WISE

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1 there was no follow up necessary?

2 A. No.

3 Q. Okay. She could go?

4 A. Yes.

5 MR. WISE: Let me have one moment.

6 THE COURT: Sure.

7 MR. WISE: Ms. Jensen, thank you.

8 THE COURT: Mr. Bell, anything on redirect?

9 SOLICITOR BELL: Yes, a few questions, Your Honor.

10 THE COURT: Alright, sir.

11 (NOTE: Blank lines on this page do not indicate any part of
12 record has been omitted. Headers on testimony pages and hard
13 page breaks between testimony are now required by the Court. See
14 next ensuing page for sequential continuation of record.)

ANNETTE JENSEN - REDIRECT EXAMINATION BY SOLICITOR BELL

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1 REDIRECT EXAMINATION BY SOLICITOR BELL:

2 Q. Ms. Jensen, how many sexual protocol exams would you think
3 you've done in your experience?

4 A. In the last three years, probably about twenty-five.

5 Q. Did you see trauma in all of them?

6 A. No, sir.

7 Q. Is that unusual that you don't see trauma in these?

8 A. Not at all.

9 Q. Or redness to the vagina? And I mean, trauma to the vagina?

10 A. It's not unusual not to see any.

11 Q. So, just because there's no trauma doesn't mean potentially
12 a sexual assault didn't occur, in your experience?

13 A. No.

14 Q. Okay. Now, you were asked about your -- the injuries that
15 you saw by Mr. Wise. Let me show you these three pages and ask
16 if you recognize those pages?

17 A. I do.

18 Q. And what are those?

19 A. These are body, like, bodies, and then when we record an
20 injury it records, it points to where the injury is on the
21 diagram.

22 Q. Okay. And on the first page, which actually, I think, is
23 Page Seven of your total protocol?

24 A. Yes.

25 Q. What injuries do you show there?

1 A. It says that there was redness on the right wrist.

2 Q. What kind of redness, just a red mark or ...

3 A. Reddened area, yes.

4 Q. Okay.

5 A. Not a bruise, not a cut, not anything bleeding, but a red
6 area.

7 Q. Okay.

8 A. I documented a red area below the right eye, and I
9 documented on the right ankle there was a white area, a band area
10 approximately five inches long.

11 Q. What do you mean by a band area, or a white area?

12 A. Describing this, like when somebody takes off a band-aid or
13 a piece of tape or, leaves a mark, there's a little residual
14 something sticky there that was about five inches long on an
15 ankle.

16 Q. Would it appear to be adhesive?

17 A. I can't write what it appears to be or not, but I - - -

18 Q. But it was a white band?

19 A. --- A white band.

20 Q. Okay. Alright. And on Page, I think the next page is Page
21 Eight?

22 A. Yes.

23 Q. And what injuries have you got to document there?

24 A. There was redness right below the right ear.

25 Q. Okay.

ANNETTE JENSEN - REDIRECT EXAMINATION BY SOLICITOR BELL

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1 A. And then, Page Nine has the area pointing to the area on the
2 wrist again, on the right wrist.

3 Q. Just a closeup of the wrist?

4 A. Yes.

5 SOLICITOR BELL: Okay. Thank you.

6 Your Honor, We'd offer this as State's Thirty-four.

7 THE COURT: Any objection?

8 COURT REPORTER: ID or ...

9 SOLICITOR BELL: Into evidence. I'd offer it into evidence.

10 THE COURT: Any objections? Show that to Mr. Wise.

11 MR. WISE: The witness testified to what she observed both
12 on direct, cross, and now redirect, so I would, I would argue
13 that this would be irrelevant, it would be, it would not be
14 relevant evidence in this case, that she's already testified to
15 what she observed.

16 THE COURT: Okay. I'm going to overrule your objection.
17 I'll let it go in over your objection, and note your objection
18 for the record. Okay? That's Number Thirty-four?

19 COURT REPORTER: Yes, sir, it is. What is it?

20 SOLICITOR BELL: It's a protocol diagram.

21 COURT REPORTER: State's Thirty-four.

22 (State's Exhibit Thirty-four
23 marked and filed.)

24 SOLICITOR BELL: Thank you, Ms. Jensen, answer any questions
25 that the Defense may have for you.

1 THE COURT: Anything on recross?

2 MR. WISE: No, sir.

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

4 SOLICITOR BELL: And Your Honor, we'd ask that she be
5 excused.

6 THE COURT: Any objection?

7 MR. WISE: No objection.

8 THE COURT: Alright. You're excused. Thank you for coming,
9 ma'am.

10 The State can call their next witness.

11 SOLICITOR BELL: The State would call James Shumpert to the
12 stand. He should be out in the hall..

13 (Whereupon, the witness
14 enters the courtroom.)

15 CLERK: Please place your left hand on the Bible and raise
16 your right hand.

17 (Whereupon, James Shumpert
18 is duly sworn.)

19 CLERK: Thank you, sir. Please state your name, and have a
20 seat.

21 WITNESS: My name is James Shumpert.

22 THE COURT: Your witness.

23 SOLICITOR BELL: Thank you, Your Honor.

24 (NOTE: Blank lines on this page do not indicate any part of
25 record has been omitted.)

JAMES SHUMPERT - DIRECT EXAMINATION BY SOLICITOR BELL

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1 (JAMES SHUMPERT, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR BELL:

4 Q. Mr. Shumpert, where are you employed?

5 A. I'm employed with the Orangeburg County Sheriff's Office.

6 Q. And how are you employed there?

7 A. I'm the lieutenant over the Criminal Investigation Division.

8 Q. Okay. And how long have you been the lieutenant over the
9 Criminal Investigation Division.

10 A. About a year.

11 Q. What did you do before that?

12 A. I was the sergeant over the Criminal Investigation Division.
13 I started in investigations back in Two thousand Five.

14 Q. Okay. How long have you been in law enforcement?

15 A. Approximately thirteen, maybe fourteen years.

16 Q. All with the Orangeburg County Sheriff's Department or ...

17 A. No, I first started my career in law enforcement in
18 Columbia, South Carolina, at the Department of Juvenile Justice.

19 Q. How long have you been with the Orangeburg County Sheriff's
20 Department?

21 A. Twelve years.

22 Q. Generally, what training have you had in your law
23 enforcement career?

24 A. Initially I went to the Academy to be certified as a Class
Officer. After that I went to investigations, I went to a

1 week long course dealing with criminal investigations, then I
2 went back for a two week course with criminal investigations and
3 crime scenes.

4 Q. Lieutenant Shumpert, do you recall an incident that occurred
5 back on September Twenty-ninth, Two thousand and Nine, in
6 Orangeburg County?

7 A. I do.

8 Q. I believe that you were called out to Street, is that
9 right?

10 A. Correct.

11 Q. Do you recall the address that you were called out to?

12 A. I don't remember the address.

13 Q. Do you recall about what time?

14 A. I'd have to look back at my notes. It was in the latter part
15 of the day, I can't remember the time.

16 Q. Okay. Why were you called out there?

17 A. In reference to a possible kidnaping and what we call
18 Thirty-one, which is rape.

19 Q. Okay. And when you got there what did you find?

20 A. When I arrived on the scene a young lady was on the back of
21 the ambulance. She was very hysterical, crying and she had --
22 the paramedics was working on her at the time and she had a
23 handcuff on one of her wrists, one was on and one was unattached.
24 And when I went to take it off I found it to be plastic. And I
25 believe also it looked like she had been duct taped at the time,

JAMES SHUMPERT - DIRECT EXAMINATION BY SOLICITOR BELL

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1 around her ankles and her mouth area.

2 Q. Okay. Do you see that lady in the courtroom today?

3 A. Yes, I do.

4 Q. Where do you see her?

5 A. Sitting right there behind Bobby Jones.

6 SOLICITOR BELL: Okay. Your Honor, let the record reflect
7 that the witness has identified the victim, Minor

8 THE COURT: The record so reflects.

9 Q. You said that it appeared to be duct tape. What led you to
10 believe that?

11 A. Well, actually, she said on the back of the ambulance ...

12 MR. WISE: Objection, Your honor.

13 THE COURT: Overruled. Okay.

14 A. Actually, she said on the back of the ambulance she had been
15 taped up, and then when I looked at her lower leg area - - -

16 MR. WISE: Objection, Your honor. Again - - -

17 THE COURT: That's okay, that's okay. I understand -- she's
18 already testified.

19 MR. WISE: That's correct. It just ...

20 THE COURT: Yes, sir. Go ahead.

21 MR. WISE: I think there's -- it's all about this hearsay.

22 I think there is case law that says, even after she testifies,
23 the testimony can only be corroborated as to certain aspects when
24 someone is testifying.

25 THE COURT: Alright, sir.

1 MR. WISE: I can further quote the case, Your Honor.

2 THE COURT: Okay, but that's okay.

3 Well, Mr. Bell, if you can just ask him what he saw and like
4 that, and not what she said.

5 SOLICITOR BELL: Well, he was going to that in a second.

6 THE COURT: Okay. So, let's just make it clear that he's
7 just going to testify as to what he saw. Okay?

8 Q. You were getting ready to say you looked at ...

9 A. The lower legs we could tell that she had been duct taped.

10 Q. And, I mean, what led you, that you could tell from your
11 observation?

12 A. I believe at the time, I'd probably have to look up in my
13 notes, but I believe we collected it off the ambulance. But I
14 also remember that we did take those handcuffs. So, the
15 investigation that I performed on the back of the ambulance led
16 me to collect what evidence that was brought to my attention.

17 Q. Okay. Let me show you what has been -- let me show you what
18 has been marked as State's Two for identification and ask if
19 you've seen those?

20 A. Yes, sir.

21 Q. And what are those?

22 A. It appears to be the same type of handcuffs that was on the
23 victim on the back of the ambulance.

24 Q. And that you took off of her?

I did.

JAMES SHUMPERT - DIRECT EXAMINATION BY SOLICITOR BELL

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1 Q. Okay.

2 SOLICITOR BELL: Your Honor, I'd offer these as State's Two
3 into evidence at this point.

4 THE COURT: Any objection?

5 MR. WISE: No, objection.

6 THE COURT: Huh?

7 MR. WISE: No objection.

8 THE COURT: Okay. State's Number Two is in evidence.

9 COURT REPORTER: Hand it to me, Mr. Bell. State's Two.
10 (State's Exhibit Two
11 marked and filed.)

12 Q. And Lieutenant Shumpert, without saying what she told you,
13 did you have an occasion to talk to Minor at the scene?

14 A. I did, on the back of the ambulance.

15 Q. And she described what happened?

16 A. She did.

17 Q. Okay. And as a result of talking with her what did you do?

18 A. After speaking with the victim at that time I went to secure
19 a search warrant for the residence.

20 Q. And why did you get a search warrant?

21 A. Well, like I say again, the evidence that was -- the
22 investigation that I performed on the back of the ambulance at
23 that time and the information that I had collected led me to
24 believe that there may be evidence possibly in the residence.

25 Q. Okay. And did you go get a -- did you know if that house

1 was hers or not?

2 A. At the time I believe we found -- I've written it down, I
3 can't remember whose house it was.

4 Q. Okay. But you decided to get a search warrant, is that
5 correct?

6 A. I did.

7 Q. And what did you do to get a search warrant?

8 A. Well, what I did first, I made sure somebody stayed at the
9 property so nobody couldn't go in or come out the residence. At
10 that time I went back to the office, typed up a search warrant,
11 presented it to the magistrate, and got probable cause to get a
12 search warrant.

13 Q. Okay. And did you physically go to the magistrate's office
14 and have the magistrate sign ---

15 A. I did.

16 Q. --- and present it to the magistrate?

17 A. I did.

18 Q. Okay. And then, did you execute the search warrant?

19 A. No, you're not able to execute your own search warrant, so I
20 contacted Lieutenant Carter who's over our forensic unit. He
21 executed the search warrant. He went in and collected the
22 evidence, but I also went in with him.

23 Q. Okay. Do you recall what you saw inside the house when you
24 went in with him?

25 A. I remember going into the house, I think it was the back

JAMES SHUMPERT - DIRECT EXAMINATION BY SOLICITOR BELL .

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1 bedroom. I did find some duct tape that had appeared to be used
2 already. And at that time I believe I brung it to Lieutenant
3 Carter's attention. And at that time I just went back and I
4 backed out, because that's pretty much Lieutenant Carter's area
5 as far as collecting evidence and enforcing the search warrant.

6 Q. So, you pointed it out to him and then he would have
7 collected it and photographed it, etcetera?

8 A. He would have, yes, sir.

9 Q. Okay. And Lieutenant Shumpert, that address that you were
10 at, what county is that located in?

11 A. Orangeburg County.

12 SOLICITOR BELL: Thank you, Lieutenant Shumpert, please
13 answer any questions that the Defense may have for you.

14 THE COURT: Mr. Wise.

15 MR. WISE: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 (NOTE: Blank lines on this page do not indicate any part of
18 record has been omitted. Headers on testimony pages and hard
19 page breaks between testimony are now required by the Court. See
20 next ensuing page for sequential continuation of record.)

JAMES SHUMPERT - CROSS-EXAMINATION BY MR. WISE

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1 CROSS-EXAMINATION BY MR. WISE:

2 Q. Lieutenant Shumpert, how are you?

3 A. Fine, sir.

4 Q. I just have a couple of questions.

5 A. Yes, sir.

6 Q. Your testimony is that when you encountered Minor
7 she had this handcuff on her?

8 A. Yes, sir.

9 Q. One wrist?

10 A. One wrist, correct.

11 Q. One handcuff on one wrist?

12 A. One handcuff on one wrist.

13 Q. Okay. Do you remember which wrist?

14 A. No, I do not.

15 Q. These handcuffs as they are now, is that the way they were
16 when you saw them, aside from the fact that Minor isn't
17 attached to them anymore?

18 A. Right. You mean the condition?

19 Q. Yes.

20 A. I would assume. I didn't do a full examination. Like I
21 said, I just took them off and turned them into evidence.22 Q. Alright. The, one handcuff is, I guess, still engaged, is
23 that the right way to describe it?

24 A. Yes, sir.

25 Q. Okay. The other appears to have been, the handcuff is kind

JAMES SHUMPERT - CROSS-EXAMINATION BY MR. WISE

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1 of looped through?

2 A. Yes, sir.

3 Q. Okay. You don't remember which one of these she had on her?

4 A. No, sir, no, I don't remember.

5 Q. How did you get them off of her?

6 A. I'd have to see them again, but I don't remember. I thought
7 they was real at the time by looking at them, but it's a little
8 latch right here at the back. You push down on it, it comes
9 open.

10 Q. A little latch in the back?

11 A. Uh-huh.

12 Q. Okay. Can you show me that one more time?

13 A. Push down on it and pull back.

14 Q. This latch right here?

15 A. Yes, sir.

16 Q. You push down and it opens?

17 A. Correct.

18 Q. When you looked at them was that obvious to you?

19 A. No, not at -- they were apparent -- like I say, looking at
20 them, when I first looked at them and saw them on her, I assumed
21 that they were real, they appeared to be real, they appeared to
22 be real until actually seeing the little latch on the back and
23 actually taking them off. That's when I knew they were kind of
24 fake.

25 Q. Okay. Do you remember how, for lack of a better term,

1 closed the handcuff was?

2 A. How closed?

3 Q. Yeah. Was it like that, was it, you know, a larger opening?

4 A. I'm not sure which one, the one that was on her wrist or the
5 one that was ...

6 Q. Yeah, the one that was on her wrist?

7 A. Well, it was, it was on her wrist is all I can tell you.

8 Q. Okay. Alright, you don't remember?

9 A. It was on her wrist, that's all.

10 Q. And the other one, was it, had it been opened so that it was
11 kind of hanging down like that?

12 A. I cant remember.

13 Q. You can't remember?

14 A. It could have been looped as well, I don't remember.

15 Q. You don't remember?

16 A. I don't remember.

17 MR. WISE: Could I have one moment?

18 THE COURT: Okay.

19 MR. WISE: Lieutenant, thank you.

20 THE COURT: Anything on redirect?

21 SOLICITOR BELL: No, thank you, Lieutenant.

22 THE COURT: Thank you, Lieutenant.

23 SOLICITOR BELL: He can be excused, too, Your Honor.

24 THE COURT: Any objection to him being excused?

25 MR. WISE: No objection, Your Honor.

1 THE COURT: Okay. You're excused, thank you, sir,
2 appreciate it.

3 Alright, does the State want to call the next witness?

4 SOLICITOR JUSTIS: The State calls Allen Hunter.

5 (Whereupon, Allen Hunter
6 enters the courtroom.)

7 CLERK: Please put your left hand on the Bible and raise
8 your right hand.

9 (Whereupon, Allen Hunter
10 is duly sworn.)

11 CLERK: Please have a seat and state your full name for the
12 record.

13 WITNESS: Allen Hunter.

14 THE COURT: Alright, Mr. Justis, your witness.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and hard
17 page breaks between testimony are now required by the Court. See
18 next ensuing page for sequential continuation of record.)

ALLEN HUNTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 (ALLEN HUNTER, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS

4 Q. Officer Hunter, where are you employed?

5 A. Orangeburg County Sheriff's Office.

6 Q. And how long have you been in law enforcement?

7 A. Eight years.

8 Q. And what is your position with the Orangeburg County
9 Sheriff's Office?

10 A. I'm Patrol Supervisor.

11 Q. And were you on duty on September Twenty-ninth, Two Thousand
12 and Nine?

13 A. Yes, sir.

14 Q. And did you have an opportunity to respond to an area on
15 Street just off Road on that date?

16 A. Yes, sir.

17 Q. Okay. And when you arrived on Street what did you
18 notice?

19 A. I saw a van.

20 Q. And where was that van located?

21 A. It was parked on the back of his sister's residence.

22 Q. I am showing you what's been marked as State's Exhibit
23 what is that?

That is the van with the license plate on it.

Is this the one that you spotted on Street?

ALLEN HUNTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

169

1 A. Yes.

2 Q. And when you spotted that vehicle what did you do at that
3 point?

4 A. I ran the license number and checked the van. I had another
5 deputy with me. A female came out which was his sister. I asked
6 her where Mr. Flood was, and she said he wasn't there. She
7 brought the kid to the door.

8 Q. Are you talking about the victim's son?

9 A. Correct. At that point I took the kid into custody and
10 waited until he came around.

11 Q. And at that time did you make contact with Mr. Flood?

12 A. Not at that time, but shortly after that Mr. Flood came out
13 of the wood line.

14 Q. And you saw him?

15 A. Right. It's a street light. It's another street light
16 between two trailers that were in the wood line.

17 Q. And when he came out of the wood line what did you do?

18 A. I went ahead and apprehended him.

19 Q. And the person you apprehended that day, do you see him in
20 the courtroom?

21 A. (Witness points toward the defendant at the defense table.)

22 SOLICITOR JUSTIS: Let the record reflect that the witness
23 has identified the defendant, Cedric Flood.

24 THE COURT: The record will so reflect.

Officer Hunter, was that the extent of your involvement in

ALLEN HUNTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS .

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1 this case?

2 A. Yes, sir.

3 SOLICITOR JUSTIS: I have no further questions. Please
4 answer any questions the Defense may have.

5 THE COURT: Alright. Mr. Wise, your witness.

6 (NOTE: Blank lines on this page do not indicate any part of
7 record has been omitted. Headers on testimony pages and hard
8 page breaks between testimony are now required by the Court. See
9 next ensuing page for sequential continuation of record.)

ALLEN HUNTER - CROSS-EXAMINATION BY MR. WISE

171

1 CROSS-EXAMINATION BY MR. WISE:

2 Q. Officer Hunter, when you apprehended Mr. Flood did you have
3 to run him down?

4 A. No, sir.

5 Q. Was he resisting arrest?

6 A. No, sir. He was pretty much acting as if he didn't know
7 what was going on. That's about it. I kind of called him out
8 and we kind of met together.

9 Q. He saw you were a deputy and he just walked up to you?

10 A. Yes, sir.

11 Q. Did he resist in any way?

12 A. No, sir.

13 MR. WISE: That's all I have.

14 THE COURT: Alright. Anything on redirect?

15 SOLICITOR JUSTIS: No redirect, Your Honor.

16 THE COURT: Okay. Thank you, Officer, you may step down.
17 Thank you for coming.

18 Alright. Call your next witness.

19 SOLICITOR JUSTIS: The State calls Officer Bobby Jones.

20 CLERK: Sir, please place your left hand on the Bible and
21 raise your right hand.

22 (Whereupon, Bobby Jones
23 is duly sworn.)

24 CLERK: Please have a seat and state your full name for the
25 record.

1 WITNESS: Bobby Jones.

2 THE COURT: Alright. You may proceed.

3 (NOTE: Blank lines on this page do not indicate any part of
4 record has been omitted. Headers on testimony pages and hard
5 page breaks between testimony are now required by the Court. See
6 next ensuing page for sequential continuation of record.)

BOBBY JONES - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 (BOBBY JONES, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS:

4 Q. Officer Jones, where are you employed?

5 A. I'm an investigator with the Orangeburg County Sheriff's
6 Office.

7 Q. And how long have you been in law enforcement?

8 A. Approximately twelve years.

9 Q. And Officer Jones, what was your involvement in this case?

10 A. As an investigator I would be called out on a case to follow
11 up on any leads that we need to be working on.

12 Q. And did you have an opportunity to respond to a call to a
13 crime scene on September Twenty-ninth, Two thousand and Nine, in
14 reference to an alleged kidnaping?

15 A. Yes, sir.

16 Q. And where was that crime scene located?

17 A. It was located on Street.

18 Q. And is that located in Orangeburg County?

19 A. Yes, sir.

20 Q. And would you describe what you did when you arrived at the
21 crime scene?

22 A. When I arrived on the scene officers were already there.

23 The victim was already in the back of an ambulance. They were
24 securing the scene, and at that time we just started collecting
evidence and securing the scene.

1 Q. And were you accompanied by someone when you ...

2 A. Yes, I was accompanied by Lieutenant Lacro Jenkins.

3 Q. And did you have an opportunity to speak with the victim at
4 the scene?

5 A. The persons that was there made initial contact with her. I
6 did later.

7 Q. Where was that at?

8 A. At the TRMC, at the hospital.

9 Q. And what happened when you made contact with the victim at
10 the hospital?

11 A. I interviewed her, and she made a statement.

12 Q. And was that statement recorded?

13 A. It was written by someone, the nurse at the hospital. The
14 nurse at the hospital was there and she did a rape kit.

15 Q. And was that pretty much the extent of your involvement with
16 the victim at the hospital that evening?

17 A. Yes, sir.

18 Q. Did you have an opportunity to go back to the hospital later
19 that evening?

20 A. I was called back to the hospital later that evening. My
21 reason was to collect the rape kit from the nurse.

22 Q. I am showing you what's been marked for identification as
state's Exhibit Number Three. Can you identify that?

A. Yes, sir.

Q. And what is that?

BOBBY JONES - DIRECT EXAMINATION BY SOLICITOR JUSTIS

175

1 A. That's the rape kit that I collected from the nurse that
2 night.

3 Q. And this rape kit, was it sealed up when you collected it?

4 A. Yes, sir.

5 Q. Were there any breaks in the tapes on the sides of it?

6 A. No, sir.

7 Q. Now, after you picked up that rape kit as you call it, did
8 it appear to be tampered with in any way?

9 A. No, sir.

10 Q. And what did you do with the rape kit?

11 A. I took it back to our office where we have a room where we
12 keep and store evidence that we have until it can be turned over
13 to the evidence custodian in the evidence room that is separate
14 from our office.

15 Q. And when you say in the office, would that be in the
16 criminal investigation office?

17 A. Yes, sir.

18 Q. So, you secured the box in that room?

19 A. Yes, sir.

20 Q. Does that -- is that room locked?

21 A. Well, it is locked but any investigator in our office has
22 access to it.

23 Q. You mentioned that this is a room that you have in the
24 Criminal Division office?

Yes, sir.

1 Q. And you would keep it until you had an opportunity to take
2 it somewhere else?

3 A. Yes, sir.

4 Q. And did you have an opportunity to take it to another
5 evidence room?

6 A. Yes, I took it to our evidence custodian, Kimberly Pugh.

7 Q. And do you remember exactly when you took it to her, was it
8 that night or was it days later?

9 A. If I remember correctly I received it on September Twenty-
10 ninth and I took it to her on October First.

11 Q. The First?

12 A. Yes, the First.

13 Q. Now, while this kit was in your possession was it locked in
14 the Criminal Investigation Division room?

15 A. Yes, sir.

16 Q. And while it was in your possession was it tampered with in
17 any way?

18 A. No, sir.

19 Q. So, when you picked it up from your little office and took
20 it to the next area did it appear to have been tampered with?

21 A. No, sir.

22 SOLICITOR JUSTIS: I beg the Court's indulgence one moment.

23 THE COURT: Certainly.

24 Q. Officer Jones, was this the extent of your involvement in
25 this case?

1 A. Well, being the lead investigator in this case, I put it all
2 together and then taped it.

3 SOLICITOR JUSTIS: Thank you, Officer Jones, I don't have
4 anymore questions. Please answer any questions the Defense may
5 have.

6 THE COURT: Alright, Mr. Mellard, your witness.

7 MR. MELLARD: We don't have any questions, Your Honor.

8 THE COURT: Okay.

9 Alright, Ladies and gentlemen, at this point we're going to
10 let you go home for the day. You have heard some of the
11 testimony in this case, but not all of it. So, remember the
12 things I told you at the very first, you cannot begin talking
13 about this case among yourselves or with anyone else. As I
14 warned you, you are not to read any news reports, listen to
15 anything on the radio or T.V., check the internet to see if
16 there's any news on it. You're not to investigate this case
17 yourself, you can't ride by the scene or anything like that. You
18 are not to consider anything about this case outside of what you
19 hear and see in this courtroom.

20 So right now I'm going to excuse you all for the day. I
21 will see you back here at Nine O'clock in the morning. When you
22 get here in the morning come straight to the jury room.

23 Alright, I hope you all have a good night, and we will see
24 you in the morning at Nine O'clock.

25 (Whereupon, the jury leaves

1 the courtroom for the day
2 and the following takes
3 place out of the
4 presence of the jury.)

5 THE COURT: Nine o'clock in the morning, I've told the jury
6 to be back, so ...

7 COURT REPORTER: Okay. Are you going to keep some of the
8 exhibits that's not in yet?

9 SOLICITOR JUSTIS: I'm just going to ...

10 COURT REPORTER: Can you give everything to Rich overnight
11 to be locked up?

12 SOLICITOR JUSTIS: Yeah. No, no, we'll put everything in
13 the box. We've got a box here that we can keep it in.

14 COURT REPORTER: Okay.

15 THE COURT: Okay. We'll see y'all at nine o'clock in the
16 morning.

17 SOLICITOR JUSTIS: Right. And we're going to put everything
18 in a box. We have a box that we can put it in.

19 COURT REPORTER: And you're going to give it to Rich - - -

20 SOLICITOR JUSTIS: Yes, yes.

21 COURT REPORTER: --- to keep to lock it up overnight?

22 SOLICITOR JUSTIS: Yes.

23 COURT REPORTER: Okay. I misunderstood you, I'm very
24 sorry.

25 (Recess for the Day.)

1 DATE:

2 July 20, 2011

3 THE COURT: Is the State ready to proceed?

4 SOLICITOR JUSTIS: The State's ready to proceed, Your Honor.

5 THE COURT: Alright. Is the Defense ready to proceed?

6 MR. MELLARD: We're ready.

7 THE COURT: Alright. If you'll bring the jury on in,
8 please, ma'am. Thank you, ma'am.

9 (Whereupon, the jury
10 enters the courtroom.)

11 THE COURT: Good morning, Ladies and Gentlemen, I hope y'all
12 had a good evening. Okay. I hope y'all have not read anything
13 in the paper, nobody has contacted you or anything like that
14 concerning the case. Alright. I appreciate your patience, but
15 what we were doing was trying to get some of the exhibits marked
16 and things like that so that the testimony could go a little more
17 smoothly again today. We're getting ready to continue with the
18 trial, so again, I appreciate y'all's attention. And, let's see,
19 Mr. Justis, is this your witness?

20 SOLICITOR JUSTIS: Yes, Your Honor.

21 THE COURT: Alright, if you'd call your next witness,
22 please, sir.

23 SOLICITOR JUSTIS: If it please the Court.

THE COURT: Yes, sir.

SOLICITOR JUSTIS: The State calls Lieutenant Gerald Carter.

1 (Whereupon, Gerald Carter
2 enters the courtroom.)

3 CLERK: Please place your left hand on the Bible and raise
4 your right hand.

5 (Whereupon, Gerald David Carter
6 is duly sworn.)

7 CLERK: Thank you. Have a seat and please state your name
8 for the record.

9 WITNESS: Gerald David Carter.

10 (NOTE: Blank lines on this page do not indicate any part of
11 record has been omitted. Headers on testimony pages and hard
12 page breaks between testimony are now required by the Court. See
13 next ensuing page for sequential continuation of record.)

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 (GERALD D. CARTER, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS:

4 Q. Lieutenant Carter, did you have an opportunity to conduct a
5 search warrant on September Twenty-ninth, Two thousand and Nine?

6 A. Yes, I did.

7 Q. And are you prepared to testify as a result of that search
8 warrant?

9 A. Yes, sir, I am.

10 Q. Before we get there let's talk a little bit about your
11 background and where you work. Where do you work?

12 A. I work at the Orangeburg County Sheriff's Office.

13 Q. And what is, what is your position there?

14 A. Currently I run the forensic services unit, the crime scene
15 unit.

16 Q. And what are some of your duties?

17 A. To execute search warrants in efforts to collect evidence
18 of, during investigations of criminal activity, and to oversee
19 other officers who do the same.

20 Q. And how long have you been employed with the Orangeburg
21 County Sheriff's Office?

22 A. About eighteen and a half years.

23 Q. And how long have you been in law enforcement?

24 A. Full time, as a full time officer, eighteen and a half
25 years.

1 Q. And were you something else prior to that?

2 A. I was a reserve officer at Orangeburg for about four and a
3 half years prior.

4 Q. So, total, about twenty-three years involved in law
5 enforcement?

6 A. Almost, yes, sir.

7 Q. And have you had any kind of training in crime scene
8 investigation?

9 A. Yes, sir, I have.

10 Q. And what type of training have you had?

11 A. I'm a graduate of the National Forensic Academy, it's in
12 Knoxville, Tennessee, it's associated with the University of
13 Tennessee. I'm certified as a crime scene investigator through
14 the International Association of Identification. I've had
15 various other formal training throughout my years, including
16 fingerprint classification and comparison, blood stain analysis,
17 shooting reconstruction. I've had probably six to seven hundred
18 hours of formal training in the field of crime scene
19 investigation, taking in all the different disciplines that we
20 have to know about.

21 Q. Alright. And do you get continuing training?

22 A. Yes, sir. Usually I'll attend some form of formal training
23 once a year.

24 Q. And how many crime scenes would you estimate you've
25 processed over the years?

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. In the last about six years since becoming a full time crime
2 scene investigator, approximately three hundred and fifty,
3 somewhere around there.

4 Q. Okay, Lieutenant Carter, let me turn your attention to the
5 late afternoon, early evening of September Twenty-ninth, Two
6 thousand and Nine. Were you on duty that day?

7 A. Yes, sir.

8 Q. And did you have an opportunity to execute a search warrant?

9 A. Yes, I did.

10 Q. And where did you execute that search warrant?

11 A. It was on Street here in Orangeburg. I would have to
12 look to be sure of the actual number on the house. I believe it
13 was possibly Twenty Seventy-eight, but I would have to look to
14 verify that.

15 Q. And what, what kind of house was it?

16 A. It was a single wide mobile home.

17 Q. And is Street located in Orangeburg County?

18 A. Yes, sir, it is, it's very near the City of Orangeburg, it's
19 close, close to Orangeburg.

20 Q. And can you describe the general area, were there other
21 houses around?

22 A. It's down a dead end two rut dirt road, and there are two or
23 three other mobile homes on this road.

24 Q. But it's not on a main drag or anything?

25 A. It's not a main street, no, sir.

1 Q. Okay. And approximately what time did you arrive at
2 Street to do your search warrant?

3 A. Just before seven p.m.

4 Q. And when you arrived on the scene at Street what was
5 the first thing you did, or what's the first thing you normally
6 do when you conduct a search warrant?

7 A. Well, what I like to do before I do any kind of processing
8 or execute a search warrant, have some background on the case so
9 I know what I'm looking for. In this case I talked with
10 investigators on the scene. They explained to me that they were
11 investigating a report of a sexual assault with a kidnaping
12 element to it that occurred in the mobile home. They also said
13 according to the victim's statements to them that I might would
14 be on the lookout for ...

15 MR. MELLARD: Objection, Your Honor.

16 THE COURT: The objection is sustained. Just -- you know
17 the rules.

18 A. I understand. Right.

19 THE COURT: Alright. Thank you, sir.

20 A. Other evidence, I was looking for other evidence.

21 Q. Now, when I talk about executing a search warrant, is there
22 some kind of document that you have that tells you to do that?

23 A. Yes, sir, the search warrant itself.

24 Q. And what kind of things would be in a search warrant as far
25 as what kind of sections or instructions would be in there?

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. The primary sections of a search warrant specifically asks
2 where you're going to search and whether it would be a structure
3 like a house or mobile home or a vehicle, it would need to know
4 specifically where you're going to search. It needs to know,
5 what are you looking for. If there's any specific evidence that
6 could possibly be there it would be specifically listed in the
7 search warrant. And then the third section is the affidavit
8 portion where the officer who swears to the warrant explains why
9 we need to search this particular location for these particular
10 items.

11 Q. Thank you. So, when you got there you mentioned you spoke
12 with officers on the scene to kind of get an idea of what's going
13 on. You've done that, what do you do next?

14 A. I would do a, what I call a visual survey. I would walk
15 around and through the scene to see for myself what is present,
16 what is readily present that may be of evidentiary value. I look
17 at the layout, in this case, of a residence, how the rooms are
18 laid out, and basically formulate a strategy for searching the
19 residence.

20 Q. Now, while you're doing the search warrant do you have an
21 opportunity, do you take any pictures?

22 A. Yes, sir, I do.

23 Q. And what's the purpose of taking pictures?

24 A. Simply documentation. I take several sets, if you will.
25 The first set is of what I find exactly as it is and how it's

1 found, with nothing moved, no numbered placards put out. These
2 are general pictures of the scene as I found it, what it looked
3 like when I got there.

4 Q. And did you have an opportunity to take some pictures in
5 this case?

6 A. Yes, sir, I did.

7 Q. Lieutenant Carter, I'm showing you what's been marked as
8 State's Exhibit Number Ten and Number Eleven, do you recognize
9 these?

10 A. Yes, sir. These are photos, general photos I took that
11 night. One is of the mail box, it's basically an ID photo of
12 where I'm searching. It shows the address on the mail box. The
13 other is the end of the trailer, the mobile home nearest to the
14 mail box to associate the two.

15 THE COURT: Which is which?

16 A. State's Exhibit Number Ten is just of the mail box, - - -

17 THE COURT: Alright, sir.

18 A. --- a close up, if you will, to see if you can easily read
19 what's on it. State's Exhibit Number Eleven is the picture of
20 the end of the mobile home with the mail box to put the two
21 together.

22 SOLICITOR JUSTIS: At this time the State would offer
23 State's Exhibits Ten and Eleven into evidence.

24 THE COURT: Any objection?

25 MR. WISE: No, Your Honor.

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 THE COURT: Okay. They are so admitted into evidence.

2 COURT REPORTER: State's Ten and Eleven.

3 (State's Exhibits Ten and Eleven

4 marked and filed.)

5 Q. Lieutenant Carter, did you have an opportunity to go into
6 the residence?

7 A. Yes, sir, I did.

8 Q. Could you tell the jury what you observed when you went into
9 the residence?

10 A. I entered the residence through what I deem as the front
11 door which led into the living room area. When I went into there
12 I would first look through the living room area for anything of
13 evidentiary value, what appeared to be of evidentiary value, and
14 then I would proceed through the remainder of the residence. As
15 I went through the residence I didn't collect anything from the
16 living room or find anything there. The kitchen was to my right,
17 and then that led into a hallway which went to two bedrooms and a
18 bathroom, and then to my left of the front door there was another
19 short hallway, if you would, and had another bathroom and a
20 bedroom at the end of the trailer.

21 Q. Okay. So, you walked through all that?

22 A. Yes, sir.

23 Q. Were there any other officers, did you take other people
24 with you?

25 A. No, sir.

1 Q. Okay. But there's officers outside?

2 A. Yes, sir.

3 Q. And I'm showing you what's been marked as State's Exhibits
4 Twelve, Thirteen and Fourteen. Do you recognize these?

5 A. Yes, sir, I do.

6 Q. And what are they?

7 A. Let me get them in order. State's Exhibit Twelve is a
8 general picture of basically in front, when I came in the front
9 door, and this is what was in front of me. There's a couch and
10 it looks like a stereo system or something there, but that was in
11 the den area of the residence. State's Exhibit Thirteen would
12 have been slightly to the right but it's a picture of the kitchen
13 area, just right of the front door as I came in. And is that
14 Seventeen?

15 Q. I think it's ...

16 A. I don't want to call the wrong exhibit number.

17 Q. Fourteen, I believe.

18 A. Fourteen? Okay.

19 COURT REPORTER: Seventeen.

20 A. Seventeen, okay. And State's Exhibit Seventeen is a general
21 photograph of the hallway to the right of the front door which
22 leads back to a small bedroom and bathroom and then another
23 bedroom all the way at the end of the mobile home.

24 Q. And these were the living room, the kitchen and the hallway
25 you previously discussed?

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

189

1 A. Yes, sir, they were, they are.

2 Q. And on State's Exhibit Number Thirteen, I believe you stated
3 that's the kitchen?

4 A. Yes, sir.

5 Q. And where would you have been standing to take that picture?

6 A. Just inside the, I would have stepped one or two steps in
7 the den area so I could get a good overall picture of the kitchen
8 area, and that also would show, to the right side you can see
9 where it starts to lead down the hallway.

10 Q. Okay. So, the kitchen and the den or living room area are
11 kind of connected?

12 A. Yes, sir, it's all basically one big room.

13 SOLICITOR JUSTIS: At this time the State would offer
14 State's Exhibits Twelve, Thirteen and Seventeen into evidence.

15 THE COURT: Any objection?

16 MR. WISE: No, Your Honor.

17 THE COURT: Okay. They are in evidence.

18 COURT REPORTER: State's Twelve, Thirteen and Seventeen.
19 (State's Exhibits Twelve, Thirteen and Seventeen
20 marked and filed.)

21 Q. Did you have an opportunity to go into any of the other
22 rooms besides the living room and the kitchen?

23 A. Yes, sir. I entered every room in the residence.

24 Q. Okay. Could you, could you explain to the jury, just kind
25 of walk through your search and which rooms you went into?

1 A. Initially I turned to the right and went down the hallway
2 towards the two bedrooms and the bathroom. The first room I
3 came to was on my left, it was a small bedroom. Immediately
4 there I observed a partial piece of roll of gray duct tape that
5 was sitting up on a VCR in that bedroom. Once I left that room
6 the next room I would have come on was the bathroom to my left.
7 The only thing I observed in here that seemed pertinent was a
8 small piece of duct tape on the floor. Once I left the bathroom
9 then I proceeded to the bedroom at the end of the hall. In this
10 room I observed more duct tape, it was a piece of duct tape on
11 the floor just inside the door, and another piece of duct tape on
12 the floor but closer to one corner of the bed. There were normal
13 bedroom furnishings in this room. Once I made these observations
14 and saw what was in this room then I backed up and went to the
15 other end of the trailer. There was a bathroom, again it would
16 have been on my left as I went down this short hallway. I didn't
17 observe anything pertinent in that bathroom. From there I went
18 into the final bedroom which was at the opposite end of the
19 trailer, and this would have been to the left of the door I
20 entered initially. In there, there were furnishings, there was a
21 chest of drawers and a dresser I believe, it was a dresser there.
22 I observed a condom that was unopened on the dresser, some other
23 items in plain view basically in this room, and that was the
24 extent of my search in that room at that time.

25 Q. Okay. I'm showing you what's been marked as State's

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1 Exhibits Fourteen, Fifteen, Sixteen, Nineteen and Twenty.

2 Lieutenant Carter, do you recognize these?

3 A. Yes, sir, I do.

4 Q. And what are they?

5 A. These are photographs of items I took while I was doing my
6 initial documentation, general documentation in the residence.
7 State's Exhibit Number Fourteen is a photograph of the dresser
8 area, the top dresser area in the bedroom that I looked in which
9 would have been right of the front door depicting or showing the
10 items on the dresser, and in particular, the, there was the
11 unopened condom in Item Fourteen was my main emphasis in this
12 photo. State's Exhibit Number Fifteen is a photograph of the
13 same dresser and again the condom is the main item I wanted to
14 photograph here, it's just from a different angle, from in front
15 of the dresser. State's Exhibit Number Nineteen is a close up
16 photograph of the roll of duct tape which was found in the small
17 bedroom down the initial hallway I went down, which would have
18 been to my right, sitting on top of a VCR. State's Exhibit
19 Number Twenty is a small piece of duct tape which was on the
20 floor of the bathroom down the hallway to my right as I came in
21 the front door. And State's Exhibit Number Sixteen is back to
22 the bedroom to my left at the end of the mobile home. Again,
23 it's the dresser from the other exhibits and the primary focus in
24 this photograph was some BBs like for a BB gun which was sitting
25 on top of a, it looks like a folded up shirt on this dresser.

1 SOLICITOR JUSTIS: Thank you. At this time, Your Honor, the
2 State would like to offer State's Exhibits Fourteen, Fifteen,
3 Sixteen, Nineteen and Twenty into evidence.

4 THE COURT: Any objection?

5 MR. WISE: May I see them just one moment? Your Honor, we
6 don't have any objection to Nineteen and Twenty. Fourteen,
7 Fifteen and Sixteen I think are from a bedroom that at this point
8 has been, aside from it's in this mobile home has no connection
9 to any of the evidence, any of the testimony in this case. I
10 think it's irrelevant and we'd ask that they not be admitted.

11 THE COURT: Alright.

12 MR. WISE: He testified they were from an opposite bedroom.
13 There's no connection of who stayed in this bedroom, why they are
14 -- this is another bedroom, it's just a depiction of a bedroom
15 that's opposite the bedroom where the tape is.

16 THE COURT: Okay.

17 SOLICITOR JUSTIS: And Your Honor, the State would say that
18 it's very relevant. We've had testimony that there was duct tape
19 used, and it's a picture of a roll of duct tape.

20 MR. WISE: No, no, the duct tape we're fine with, Your
21 Honor. It's those others.

22 THE COURT: Those others, yeah.

23 SOLICITOR JUSTIS: These other ones, there's allegations of
24 a BB gun, and there's BBs in this picture.

25 THE COURT: Okay.

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1 SOLICITOR JUSTIS: Which is Number Fourteen.

2 MR. WISE: Your Honor, at this point the officers testified,
3 and I haven't seen anything to the contrary, that he thinks they
4 were BBs. I'm not showing it being collected evidence that we
5 haven't been provided. So, at this point his testimony seems to
6 be speculative about what it is, and it's unconnected to, at this
7 point, to Mr. Flood. I mean, at some point they may make the
8 connection, but at this point I don't think they have.

9 THE COURT: Okay. Well, I'm going to note your objection on
10 the record, I am going to overrule it. It is part of his -- it
11 is his testimony as to how he conducted the investigation, and
12 those are pictures, and so I'm going to let it in for that
13 purpose. Okay?

14 SOLICITOR JUSTIS: And that would be as to Number ...

15 THE COURT: Fourteen, Fifteen and Sixteen are let in over
16 objection, Nineteen and Twenty are in evidence without objection.

17 COURT REPORTER: State's Fourteen, Fifteen, Sixteen,
18 Nineteen and Twenty.

19 THE COURT: Correct. Thank you, ma'am.

20 (State's Exhibits Fourteen, Fifteen, Sixteen, Nineteen
21 and Twenty marked and filed.)

22 Q. Lieutenant Carter, what type of beds did you locate in this
23 dwelling?

24 A. Standard beds, I mean, it had, you know, mattresses and
25 blankets, comforters.

1 Q. Did all the bedrooms have beds in them?

2 A. I know the bedroom at the end of the hallway on the right
3 did. I honestly can't remember if the one all the way to the
4 left had a bed or not, I would have to look at my photos to be
5 honest, to remember.

6 Q. Well, would it refresh your memory to look at some of the
7 photos?

8 A. Yes, sir, it would.

9 Q. I'm showing you what's been marked as State's Exhibit Number
10 Eighteen, do you recognize that?

11 A. Yes, sir, I recognize the, I recognize this photo.

12 Q. And what is it?

13 A. State's Exhibit Eighteen is the small bedroom down the right
14 hallway, the first bedroom on your left, and there are a set of
15 bunk beds in that room. And that's a photo of the bunk beds.

16 Q. Thank you.

17 SOLICITOR JUSTIS: The State would offer State's Exhibit
18 Number Eighteen into evidence at this time.

19 THE COURT: Any objection?

20 MR. WISE: No, Your Honor.

21 THE COURT: Okay. It is so admitted.

22 COURT REPORTER: State's Eighteen.

23 (State's Exhibit Eighteen

24 marked and filed.)

Showing you what's been marked as State's Exhibits

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1 Twenty-two, Twenty-three, Twenty-four and Twenty-five. Do you
2 recognize these?

3 A. Yes, sir, I do.

4 Q. And what are they?

5 A. State's Exhibit Number Twenty-two is a picture of a piece of
6 gray duct tape. And this was located in the bedroom to the right
7 of the front door all the way at the end. The tape was on the
8 floor approximately two feet inside that door on the floor.
9 State's Exhibit Number Twenty-three is a photograph of the bed
10 with associated, the bed linens as I found it in that room, the
11 same bedroom all the way at the right hand end of the trailer,
12 mobile home. State's Exhibit Number Twenty-four again is in the
13 same bedroom, all the way to the right end of the mobile home.
14 It's a slightly larger piece of duct tape and it was found on the
15 floor near the left hand corner of that bed as you would look at
16 it from the foot, and it's on that left corner. And State's
17 Exhibit Number Twenty-five is a second photo,-- is a second photo
18 of the same piece of tape which is shown in State's Exhibit
19 Number Twenty-two, it just has the numerical placard giving it a
20 number identified on the scene.

21 Q. Thank you.

22 SOLICITOR JUSTIS: At this time the State would like to
23 offer State's Exhibits Twenty-two, Twenty-three, Twenty-four and
24 Twenty-five into evidence.

25 THE COURT: All objection.

1 MR. WISE: No.

2 THE COURT: Okay. Exhibits Twenty-two, Twenty-three,
3 Twenty-four and Twenty-five are admitted into evidence.

4 COURT REPORTER: State's Twenty-two, Twenty-three, Twenty-
5 four and Twenty-five.

6 (State's Exhibits Twenty-two, Twenty-three, Twenty-four
7 and Twenty-five marked and filed.)

8 Q. And Lieutenant Carter, did you collect any of these items
9 that you took photographs of?

10 A. Yes, sir, I did.

11 Q. Did you have an opportunity to collect any of the duct tape
12 that was in the trailer?

13 A. Yes, sir, I did.

14 (State's Exhibits Thirty-Five through
15 Thirty-nine marked for identification only.)

16 Q. Lieutenant Carter, I'm showing you what's been marked as
17 State's Exhibits Number Thirty-six, Thirty-seven, Thirty-five,
18 Thirty-eight and Thirty-nine. Would you please open those items
19 and identify them for the Court?

20 A. State's Exhibit Thirty-six is labeled as a partial roll of
21 duct tape in the hallway bedroom sitting on a VCR. That's my
22 handwriting and my initials on the outside of that package.

23 Q. And is that how you packaged them when you collected them?

24 A. Yes. This is how I would have collected them in this bag
25 that night. Do you want me to pull it out or ...

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1 Q. Sure.

2 A. And this would be the partial roll of duct tape that I
3 collected that night on the scene.

4 Q. You can go to the next one.

5 A. State's Exhibit Thirty-seven, again, a small brown paper
6 bag, and marked as my Item Number Twenty-two, a small piece of
7 duct tape from the bathroom floor, and it has my initials on it.
8 This is stapled shut really good.

9 Q. Were you the one that stapled it?

10 A. Yes. And there's a small piece of duct tape which was
11 collected from the bathroom floor. This was in the bathroom to
12 the right of the front door that I went into. State's Exhibit
13 Number Thirty-five is marked, it's a brown paper bag marked as my
14 Item Number Three, a piece of duct tape on bedroom floor just
15 inside of the door, and it has my initials. Again, duct tape,
16 and this would be the duct tape I collected. State's Exhibit
17 Number Thirty-eight is marked as my Item Number Four, a piece of
18 duct tape with hair attached on bedroom floor near the corner of
19 the bed, and it has my initials. This would be the larger piece
20 of duct tape and it still has hair attached to it that I
21 collected from the bedroom to the right of the front door.
22 State's Exhibit Number Thirty-nine is marked as my Item Number
23 Seven, it's a piece of duct tape on the ground between the front
24 steps and there was a large pine tree was the only other marker I
25 had, and it has my initials on it. Again, it's a small piece of

1 duct tape, and it was actually collected from outside.

2 Q. And these are the items that you collected?

3 A. Yes, sir.

4 Q. And you placed them in these bags?

5 A. Yes, sir.

6 SOLICITOR JUSTIS: At this time the State would like to
7 offer State's Exhibits Number Thirty-nine, Thirty-eight, Thirty-
8 seven, Thirty-six and Thirty-five into evidence.

9 MR. WISE: No objection.

10 THE COURT: Alright. Those items are admitted into
11 evidence.

12 COURT REPORTER: State's Thirty-nine, Thirty-eight, Thirty-
13 seven, Thirty-six and Thirty-five.

14 (State's Exhibits Thirty-nine, Thirty-eight, Thirty-seven,
15 Thirty-six and Thirty-five marked and filed.)

16 Q. Lieutenant, I'm showing you State's Exhibits Twenty-seven,
17 Twenty-eight and Twenty-nine, do you recognize these?

18 A. Yes, sir, I do.

19 Q. And what are they?

20 A. These were photographs I took of the bedroom at the end of
21 the mobile home as I went to the left, from the front door.
22 State's Exhibit Number Twenty-seven, excuse me, is a photograph
23 of a chest of drawer set which was in that bedroom. On top of it
24 is a VCR and a television set in there. State's Exhibit Number
25 This right is a photograph inside the top drawer of the chest

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1 of drawers shown in State's Exhibit Number Twenty-seven. The
2 primary focus of this photograph is a black cell phone which was
3 located in that drawer. State's Exhibit Number Twenty-nine is a
4 photograph I took in this same bedroom. It is the second drawer
5 from the top in the chest of drawers, and the primary focus of
6 the photograph was a black in color BB gun which was located in
7 that drawer.

8 Q. Thank you, Lieutenant.

9 SOLICITOR JUSTIS: At this time the State offers Twenty-
10 seven, Twenty-eight and Twenty-nine into evidence.

11 THE COURT: Any objection?

12 MR. WISE: None, Your Honor.

13 THE COURT: Twenty-seven, Twenty-eight and Twenty-nine are
14 in evidence.

15 COURT REPORTER: State's Twenty-seven, Twenty-eight and
16 Twenty-nine.

17 (State's Exhibits Twenty-seven, Twenty-eight and Twenty-nine
18 marked and filed.)

19 Q. Lieutenant Carter, did you have an opportunity to collect
20 the BB pistol?

21 A. Yes, sir, I did.

22 Q. I'm showing you State's Exhibit Number One, do you recognize
23 this?

24 A. Yes, sir, this would be the BB pistol I collected.

25 SOLICITOR JUSTIS: At this time the State would offer

1 State's One into evidence.

2 MR. WISE: No objection.

3 THE COURT: Alright, sir.

4 COURT REPORTER: State's One.

5 (State's Exhibit One

6 marked and filed.)

7 Q. Lieutenant Carter, did you have an opportunity to search the
8 outside of the residence?

9 A. Yes, sir, as a part of any search I would always survey the
10 outside to look for evidence on the exterior of the residence.

11 Q. Did you find any evidence on the exterior?

12 A. The only thing I found that was collected as possible
13 evidence was my Item Number Seven, was a small piece of gray duct
14 tape on the exterior, just outside the front door on the ground.

15 Q. Was that the extent of your search warrant of the home?

16 A. Yes, sir. Once I collected those items everything had been
17 documented and collected that I found.

18 Q. Okay, now, after you finished the search warrant, you
19 collected items, what did you do next, what did you do with those
20 items?

21 A. I would have taken these items and secured them at the
22 office.

23 Q. And when you say, at the office, could you explain a little
24 bit what that means?

25 A. At night time the regular evidence custodian, she had

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1 already left for the day. We have a room that is associated with
2 the evidence room. It is secure, and I would have stored it
3 temporarily in this room until I could actually put it on an
4 evidence room report and get it to the evidence custodian for
5 permanent storage.

6 Q. And who would have access to this room where you placed
7 them?

8 A. Myself and the evidence custodian, Kimberly Pugh, were the
9 only two.

10 Q. And at some point subsequent did you turn it over to the
11 evidence custodian?

12 A. Yes, I did.

13 Q. Did you have an opportunity to process the victim's van in
14 this case?

15 A. Yes, sir, I did process her vehicle, yes, sir.

16 Q. And what did you do to process her vehicle, what does that
17 entail?

18 A. It's similar to the, with a residence or a structure, you
19 take the same steps. I documented the exterior and the interior
20 by photograph, searched it, or did a visual survey to see if
21 there was any evidence, which appeared to be evidence of the
22 crime in the van. And I would have documented and collected any
23 such evidence.

24 Q. I'm showing you what's been marked as State's Exhibits
25 Number Five and Eight. Do you recognize those?

1 A. Yes, I do.

2 Q. And what are they?

3 A. State's Exhibit Number Five is a photograph of the rear of
4 the van I searched. It shows the entire rear plus the South
5 Carolina vehicle tag. State's Exhibit Number Eight is another
6 photograph from the rear but with the cargo, or the back hatch
7 door open, and it's a picture down through the van from the rear.

8 Q. And was that a fair and accurate representation of what the
9 van looked like when you ...

10 A. Yes, sir, when I searched it, yes, sir.

11 SOLICITOR JUSTIS: The State would offer State's Eight and
12 Five into evidence.

13 MR. WISE: No objection.

14 THE COURT: Okay. State's Five and Eight are into evidence.

15 COURT REPORTER: State's Five and Eight.

16 (State's Exhibits Five and Eight
17 marked and filed.)

18 SOLICITOR JUSTIS: I beg the Court's indulgence.

19 THE COURT: Okay.

20 Q. And you mentioned when you did the search warrant of the
21 home you mentioned a cell phone?

22 A. Yes, sir.

23 Q. Were you able to identify who that cell phone belonged to?

24 A. Yes, sir, that phone belonged to the victim. It was her
25 cell phone.

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1 Q. And what happened to that cell phone?

2 A. It would have been placed into evidence. I honestly do not
3 recall whether or not she has ever been given that phone back,
4 she may have -- it may have been returned to her.

5 Q. Would there be anything that could refresh your memory on
6 whether or not she had received her phone back?

7 A. If the phone was given back to the victim, or any type of
8 property is given back to the victim there should be a receipt
9 done to document that.

10 Q. Okay.

11 SOLICITOR JUSTIS: Could I have this marked for ID purposes
12 only?

13 COURT REPORTER: State's Forty for id.

14 (State's Exhibit Forty, Property Receipt,
15 marked for identification only.)

16 SOLICITOR JUSTIS: Thank you.

17 Q. Lieutenant Carter, I'm showing you what's been marked as
18 State's Exhibit Number Forty for identification purposes. Do you
19 recognize that?

20 A. Yes, sir, I do.

21 Q. And what is that?

22 A. This would be Orangeburg County Sheriff's Office property
23 receipt. It would have been typed up by me, and it shows the
24 return of property to Minor

25 Q. Does that refresh your memory concerning the whereabouts

1 of the cell phone?

2 A. Yes, sir. It's listed as Item Number One of four items, a
3 Motorola cell phone, and it has the DEC, which is the equivalent
4 of a serial number for a cell phone. It was returned to her on
5 October the First of Two thousand and Nine. It was released by
6 me, and this release was witnessed by another Orangeburg County
7 Sheriff's Office employee, Tiese Britt, and Minor signed
8 as the person who received the items.

9 Q. Thank you. Now, Lieutenant, did you have an opportunity to
10 collect any DNA samples in this case?

11 A. Yes, sir, I did.

12 Q. And from whom did you collect those DNA samples?

13 A. I collected them from the defendant in this case, the
14 gentleman in the blue shirt.

15 Q. And where did you collect those, those items, where were
16 you?

17 A. I collected those items here in this courthouse.

18 Q. And explain a little bit how you collect a DNA sample, or
19 how you collected the DNA sample?

20 A. The actual physical collection?

21 Q. Correct.

22 A. What we do pretty much now is go with the saliva samples
23 from a person's mouth. And what I would do is get sterile swabs
24 which are sealed and opened only at the time of use. These swabs
25 would be rubbed between the cheek and the gum of the subject

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1 you're collecting a sample from. Once they are collected they
2 have to be allowed to completely dry and then they would be
3 sealed in an evidence packaging for testing at a later date.

4 Q. And how do you dry them?

5 A. You have to air dry them. That's the only way to dry them.
6 Any heat that's applied could destroy the DNA evidence.

7 Q. And is that what you did in this case?

8 A. Yes, sir.

9 Q. I'm showing you what's been marked as State's Exhibit Number
10 Four, do you recognize this?

11 A. Yes, sir, this would be the type of envelope that I would
12 use to do the final seal on evidence of that nature. It's marked
13 with other identifying information such as case number and what
14 not. It says that it was two oral swabs collected at the
15 courthouse from Cedric Flood, and it's initialed by myself.

16 Q. Okay. And is that one the, the smaller envelope in there,
17 the yellow, or whatever?

18 A. That would be. Normally what I do is take the swabs once
19 they've dried, they're actually six inches long with a wooden
20 shaft. I'll break the shaft off, put them in a small coin
21 envelope and seal them in this, and then put them in the larger
22 envelope just not to lose them, because they're harder to keep up
23 with in the small envelop. So, I put them in a big envelope to
24 keep up with them.

25 Q. Would you seal that envelope?

1 A. Yes, sir.

2 Q. Okay. What about this, this plastic thing that's around it,
3 what's that?

4 A. The plastic bag is a State Law Enforcement Division, or
5 SLED, -- anytime you take evidence into their forensic services,
6 even if you sealed it they reseal it, and the person who
7 delivered the evidence would initial it and date it and that type
8 of thing.

9 Q. So, you would have sealed it in that yellow envelope in
10 there?

11 A. Right, I would have placed it in there.

12 Q. And then, someone else ...

13 A. Yes, sir.

14 Q. --- does things to it after that and seals it in the bigger
15 envelope, you didn't do that?

16 A. No, sir, I didn't put it in the plastic.

17 Q. Now, when you, after you collect the evidence and you seal
18 it and you put some identifying information you testified to on
19 that envelope, what do you do with it from that point?

20 A. Then it would be logged into our long term evidence storage.
21 The evidence custodian, Kimberly Pugh, she would have received
22 it.

23 Q. And while it was in your custody did you tamper with it?

24 A. No.

25 Q. Did you open it up?

GERALD D. CARTER - DIRECT EXAMINATION BY SOLICITOR JUSTIS

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1 A. No, once it was placed in the envelope and sealed we
2 wouldn't have opened it again.

3 Q. And who did you transfer it to?

4 A. Kimberly Pugh, the Orangeburg County Sheriff's Office
5 evidence custodian.

6 Q. Do you happen to remember the date that you did that?

7 A. No, sir, not off the top of my head, I don't.

8 Q. Thank you. Lieutenant Carter ...

9 SOLICITOR JUSTIS: I beg the Court's indulgence one moment.

10 Q. Was that the extent of your involvement in this case,
11 Lieutenant Carter?

12 A. Yes, sir, I believe so.

13 SOLICITOR JUSTIS: No further questions, please answer any
14 questions that Mr. Wise may have.

15 THE COURT: Alright, sir. And Mr. Wise, before you get
16 started, okay, it's a little past ten:thirty. I want to give the
17 jury a chance to stretch their legs, go to the restroom, whatever
18 they need. We will be back in here in about ten minutes. I'm
19 going to excuse y'all to go to the jury room for a minute. Let
20 me again remind you, you cannot talk about this case yet. You
21 have not heard all the evidence. So, y'all are excused to go
22 back into the jury room for about ten minutes. Thank you.

23 (Whereupon, the jury retires
24 to the jury room, and the
25 following takes place out

1 of the presence of the jury.)

2 THE COURT: Lieutenant Carter, as long as you're on the
3 witness stand, you understand you cannot have any conversations
4 about your testimony or anything like that with anyone?

5 LIEUTENANT CARTER: Yes, sir.

6 THE COURT: Okay. Alright, sir. We're going to be in
7 recess for ten minutes. Okay? Are we still on the record?

8 COURT REPORTER: Yes, sir.

9 THE COURT: Mr. Wise, I did that because I knew it would
10 probably take a while. Okay. That's alright?

11 MR. WISE: It would. Thank you, Your Honor.

12 THE COURT: Yes, sir. Okay, thank you, sir.

13 (Recess)

14 THE COURT: Okay, so are you ready, we can bring the jury
15 back out? Is the State Ready?

16 SOLICITOR JUSTIS: The State's ready, Your Honor.

17 THE COURT: Is the Defense ready?

18 MR. WISE: We're ready.

19 THE COURT: Alright, bring them back out.

20 MR. MELLARD: One of the family members, please remind them
21 about relaying information to the sequestered witnesses.

22 THE COURT: oh, yeah. Yesterday -- are we on the record,
23 Ms. Harry Dot?

24 COURT REPORTER: Yes, sir.

25 THE COURT: Yesterday it was brought to my attention by the

1 Clerk's office that one of the ladies -- two people who were
2 witnesses, or not witnesses, but were witnessing the trial were
3 going back out in the hall and discussing the testimony with the
4 sequestered witnesses. And so, yesterday I told the sheriff --
5 I told the deputies that they weren't allowed in the courtroom.
6 And I'm going to maintain that today, just so y'all will be aware
7 of that. Okay?

8 COURT REPORTER: You said you told them they weren't allowed
9 in Court?

10 THE COURT: Ms. Harry Dot, we'll straighten that out.
11 (Whereupon, the jury enters
12 the courtroom and the
13 following takes place in
14 the presence of the jury.)

15 THE COURT: Alright, Ladies and Gentlemen, I hope y'all
16 enjoyed your break. We're getting ready to get started, right
17 back in it.

18 Lieutenant Carter, you're still under oath. And Mr. Wise,
19 it's your witness. Thank you, sir.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and hard
22 page breaks between testimony are now required by the Court.)

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

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1 CROSS-EXAMINATION BY MR. WISE:

2 Q. Lieutenant Carter, good morning.

3 A. Good morning, sir.

4 Q. I don't think I will be very long. I wanted to start by
5 talking about your processing of the scene, - - -

6 A. Yes, sir.

7 Q. --- Mr. Cedric's trailer. What did you take out of there?

8 A. Items of evidence that I collected?

9 Q. Yes. Let me be more specific, did you take any bedding out
10 of there?

11 A. Yes, sir, I did.

12 Q. Okay. Alright. And did you analyze that bedding, or did
13 you have it analyzed to see if there was DNA on it?

14 A. Not to my knowledge.

15 Q. Okay. When you were doing your processing of the scene did
16 you find any blood anywhere?

17 A. No, sir.

18 Q. Okay. You found a BB gun?

19 A. Yes, sir.

20 Q. Okay. And which room was the BB gun in?

21 A. The BB gun would have been in the bedroom all the way at the
22 end of the mobile home when you came in the front door into the
23 living room, - - -

24

-- turn to your left, follow that all the way down to the

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

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1 end of the mobile home there's a bedroom at the end. It would
2 have been that bedroom.

3 Q. That's the, kind of the bedroom that's at the opposite end
4 of the trailer. There are two bedrooms at one end and one at the
5 other end?

6 A. Correct. To the right of the front door there's a small
7 bedroom in the hallway, - - -

8 Q. Yes.

9 A. --- and then there's another bedroom at the very end, - - -

10 Q. Okay.

11 A. --- and to the left there's a third bedroom all the way at
12 the end.

13 Q. Okay. So, if you walk into the trailer and turn right and
14 walk straight down the hallway to the left, at the very end,
15 there's a bedroom on the left and there's a bedroom on the
16 right?

17 A. Yes, sir, there would be a bedroom in the hallway on the
18 left, and then one all the way at the end. The door goes
19 straight -- the hallway goes straight into that bedroom.

20 Q. So, there are two bedrooms at the end, one in the hallway
21 and then one at the very end?

22 A. Right.

23 Q. Okay. Okay.

24 A. That would be correct.

25 Q. So, you walk down the hallway you're looking into a bedroom?

1 A. Yes, sir.

2 Q. Okay. And if you were walking toward that bedroom that
3 you're looking into you would pass a bedroom on the right?

4 A. On the left.

5 Q. On the left?

6 A. Yes, sir.

7 Q. A bedroom straight ahead past the bedroom on the left?

8 A. Yes, sir.

9 Q. Okay. Do you know which bedroom between the one straight
10 ahead and the one on the left was Mr. Flood's bedroom?

11 A. I honestly don't know which one he, was his.

12 Q. Okay. Alright. Okay. So, you'd have a bedroom straight
13 ahead and a bedroom on the left. Now, if you come to the trailer
14 and go to the left there is a hallway and then there is another
15 bedroom down there?

16 A. Yes, sir.

17 Q. Okay. And the BB gun was found in the bedroom coming into
18 the trailer, going left?

19 A. Yes, sir.

20 Q. Okay. Okay. And it was found in a dresser in that bedroom?

21 A. It was a chest of drawers.

22 Q. A chest of drawers?

23 A. Yes, sir.

24 Q. Okay. Did you fingerprint the BB gun?

25 A. No, sir.

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

213

1 Q. Okay. Did, when you found the BB gun, when you looked at it
2 did you know what it was?

3 A. I knew it to be a BB gun, yes, sir.

4 Q. Okay. There's a slide on this BB gun that you use to
5 operate it?

6 A. Yes, sir.

7 Q. Okay. What position was the slide in, was it back or was it
8 forward?

9 A. It was locked back when I found it.

10 Q. It was locked back?

11 A. Yes, sir.

12 Q. So, to, to operate this you pull that back?

13 A. Yes, sir.

14 Q. And that's the way you found it?

15 A. Yes, sir.

16 Q. Just like that?

17 A. Yes, sir.

18 Q. Okay. Okay, and it was in that bedroom in the hall coming
19 into the trailer, going to the left, it was in that bedroom that
20 you found the BBs?

21 A. Yes, sir.

22 Q. Things that you said were BBs?

23 A. Yes, sir.

24 Q. Did you collect those things?

25 A. No, sir, I didn't collect the BBs.

1 Q. You just left them there?

2 A. Yes, sir.

3 Q. Okay. You didn't find a real gun, just to be clear?

4 A. I'm trying to answer you properly. One that's considered a
5 firearm that shoots regular bullets, no, sir, we didn't find any
6 real gun.

7 Q. In your processing of this trailer did you find any torn
8 clothing?

9 A. No, sir.

10 Q. Okay. Did you find any torn underwear?

11 A. No, sir.

12 Q. Did you fingerprint the trailer?

13 A. No, sir.

14 Q. Okay. No room?

15 A. No room.

16 Q. Okay. Alright. Now, you said you found Minor 's
17 cell phone?

18 A. Yes, sir.

19 Q. Where was that?

20 A. That was in the bedroom as we described all the way to the
21 left of the front door, and it was in the chest of drawers, in
22 the top drawer.

23 Q. Okay. I'm going to do it this way, that bedroom straight
24 back, was it in that bedroom, or was it in the bedroom that you
25 passed on the left?

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

215

1 A. No, it was on the opposite end of the mobile home.

2 Q. The opposite end?

3 A. Right. It was in, you come in the front door, turn left,
4 and there's the single bedroom down there.

5 Q. Yes.

6 A. That's the one it was in, in the chest of drawers.

7 Q. Okay. Alright. Okay. When you found her cell phone did
8 you look at it, open it up?

9 A. Yes, sir.

10 Q. Did you look to see what numbers had been called, or what
11 numbers she called?

12 A. I don't recall looking at the numbers.

13 Q. Okay. Okay, let's talk about duct tape. Well, let me just
14 to be, so we're clear, State's Twenty-three, - - -

15 A. Yes, sir.

16 Q. --- this was taken from the bedroom straight down the
17 hallway?

18 A. It would have been to the right where the two bedrooms are,
19 this is the one all the way at the end, straight at the end.

20 Q. All the way at the end, right.

21 A. Straight down, yes, sir.

22 Q. Okay. One at the end, and one to the left?

23 A. Right.

24 Q. This is the one straight down?

25 A. Correct.

1 Q. This is the main, -- is this Mr. Flood's bedroom, do you
2 know?

3 A. Again, I don't know if it's actually his bedroom, but it was
4 a fully furnished bedroom.

5 Q. Okay. Okay. And State's -- so State's Thirty-eight, this
6 duct tape, which bedroom was this found in?

7 A. I'd have to look at the item number.

8 Q. Does that help?

9 A. This duct tape, Item Number Four, would have been in the
10 bedroom to the right all the way at the end.

11 Q. That bedroom?

12 A. Yes, sir, in that bedroom.

13 Q. Okay. This piece of duct tape, State's Thirty-five, was
14 found where?

15 A. That would have been in the same bedroom.

16 Q. The same bedroom?

17 A. Yes, sir.

18 Q. Alright. This little piece?

19 A. Yes, sir.

20 Q. Found in a bathroom?

21 A. That was found in the bathroom, basically between, still on
22 the right, between the two bedrooms. There was a bedroom on the
23 left, bathroom on the left, and then you go straight into the
24 bedroom.

25 Q. Is that all the duct tape, did I miss any?

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

217

- 1 A. The piece from outside.
- 2 Q. Oh, yeah. This was outside?
- 3 A. Yes, sir, that was outside.
- 4 Q. And this was all that was found inside?
- 5 A. Yes, sir.
- 6 Q. This roll of duct tape, is this the way it was found when
- 7 you - - -
- 8 A. Yes, sir.
- 9 Q. --- just like that?
- 10 A. Yes, sir.
- 11 Q. Okay. Fingerprinted?
- 12 A. No, sir.
- 13 Q. Okay. Did you fingerprint any of the duct tape?
- 14 A. No, sir.
- 15 Q. Okay. The, you said there's hair on one of these pieces of
- 16 duct tape?
- 17 A. Yes, sir.
- 18 Q. Did you analyze that hair at all?
- 19 A. Not to my knowledge.
- 20 Q. Okay. So, when you say it's hair, you say that ---
- 21 A. It should have been Number Four, I think.
- 22 Q. --- because it looks like hair?
- 23 A. It looks like hair.
- 24 Q. Okay.
- 25 A. Yes, sir.

1 Q. Did you find any on this piece of duct tape, this piece of
2 duct tape, State's Thirty-five?

3 A. Yes, sir.

4 Q. Did you find any hair on this duct tape?

5 A. No, sir, I didn't find it at the time of collection, no,
6 sir.

7 Q. Okay. Did you ever have it analyzed to see if there was any
8 hair on there?

9 A. Not to my knowledge.

10 Q. Okay. State's Thirty-five, did you have it fingerprinted?

11 A. No, sir.

12 Q. Did you have it tested for DNA?

13 A. Not to my knowledge.

14 Q. Okay. What makes you think this tape was used in this
15 incidence, why do you say that?

16 A. Well, I collected it from the scene based on the criminal
17 investigation which indicated that the victim had been bound with
18 duct tape.

19 Q. Yeah. Let's lay it out there, you were told that
20 Minor said she was bound with duct tape?

21 A. Right.

22 Q. You walk into the house, you find duct tape, you assume this
23 is the duct tape?

24 A. Correct, that's why I was collecting it, yeah.

25 Q. Okay. Alright. Okay. As part of your responsibilities as

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

219

1 the, being the person in charge of forensics, did you kind of
2 take a look at all the other evidence you had in this case?

3 A. Uh ...

4 Q. You know, over -- you know, say, what else do we have in
5 this case, anything else we need to analyze, anything else we
6 need to look at?

7 A. Not -- well, in many cases I do. In this particular case --
8 well, let me back up. Most of our analyses for DNA and things of
9 this nature is done at the South Carolina Law Enforcement
10 Division, or SLED as it is called. In most cases evidence sent
11 to them for analysis is sent pretty soon after it's collected,
12 it's not very long after it's been collected. In this particular
13 case there was a significant amount of time prior to collecting a
14 DNA sample, which is required by SLED prior to submitting items
15 to be DNA tested, and because of this time in between the initial
16 collection and the standard DNA sample that was eventually
17 collected I didn't go beyond that. The case had gotten to a
18 point where there were other people involved that could have -- I
19 could have as well, but I didn't in this case.

20 Q. No problem, I understand. You're familiar, though, with
21 everything that's been collected in this case, aren't you?

22 A. Yes, sir.

23 Q. Okay. One of the things that was collected was a combing of
24 the vaginal hair from Minor , you're familiar with that?

25 A. I'm familiar with the process, yes, sir.

1 Q. Okay. Did you, were there any hairs from Mr. Cedric found
2 in that combing?

3 A. I honestly don't know.

4 Q. You don't know. Okay. Alright. A witness testified that
5 Minor had given some gray underwear to the nurse at the
6 hospital. Any DNA found in that underwear?

7 A. I'm assuming, I can't say assuming on the stand, but the
8 sexual assault collection kit is what you're referring to?

9 Q. Uh-huh.

10 A. That would have been, that evidence was collected by medical
11 personnel and then sealed by them. I would have never seen it.

12 Q. Oh, no, no, no, I ...

13 A. I don't know if it was in there or not.

14 Q. You don't know. Okay. Okay. I ask you only because you're
15 in charge of forensics.

16 A. Right.

17 Q. This is your thing?

18 A. Yes, sir.

19 Q. It's what you do?

20 A. Yes, sir.

21 Q. Okay. Alright. Did you -- you said you processed
22 Minor's vehicle?

23 A. Yes, sir.

Q. Okay. Did you find any fingerprints in the vehicle?

No, sir.

GERALD D. CARTER - CROSS-EXAMINATION BY MR. WISE

221

1 Q. Okay. Alright. And did you process . Minor 's
2 residence, did you go there?

3 A. No, sir, I never went to the residence.

4 Q. When you got involved in this case you knew what all the
5 allegations were, correct, about what happened from beginning to
6 end?

7 A. I can't, I would think I knew most of what was going on, but
8 if there was something out there -- I didn't have any reference
9 to her residence.

10 Q. Okay.

11 A. I didn't know her residence was involved.

12 Q. You didn't know her residence was involved?

13 A. No, sir.

14 Q. Okay. Okay. So, because you know and I know that you do a
15 very good job.

16 A. I try.

17 Q. You don't leave any stone unturned.

18 A. I try.

19 Q. Okay. Let's go back to that bedroom, when you walk in and
20 you go to the left?

21 A. Yes, sir.

22 Q. Okay. When you were in that bedroom did you find -- the
23 the we're looking at, this State's Thirty-five, if you can
24 an estimate, how long is this piece of duct tape, if it
25 stretched out?

1 A. Maybe ten inches, nine or ten inches stretched out.

2 Q. Okay. And just so I'm clear, the duct tape was found in
3 which bedroom?

4 A. It would have been the bedroom on the left, when you turn to
5 the right, the small bedroom to the left.

6 Q. Okay. The bedroom you pass to get to the big bedroom?

7 A. Exactly, yes, sir.

8 Q. And State's Twenty-seven is which bedroom?

9 A. That's going to be the bedroom all the way to the left.

10 Q. When you come in you go to the left?

11 A. Yes, sir.

12 Q. Okay.

13 MR. WISE: Your Honor, could I have one moment?

14 THE COURT: Sure.

15 MR. WISE: Lieutenant Carter, always a pleasure.

16 A. Thank you.

17 THE COURT: Anything on redirect?

18 SOLICITOR JUSTIS: Briefly, Your Honor.

19 THE COURT: Okay.

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and hard
22 page breaks between testimony are now required by the Court. See
23 next ensuing page for sequential continuation of record.)

GERALD D. CARTER - REDIRECT EXAMINATION BY SOLICITOR JUSTIS

223

1 REDIRECT EXAMINATION BY SOLICITOR JUSTIS:

2 Q. Lieutenant Carter, how big was this trailer, as far as
3 length?

4 A. I believe it was like a seventy foot mobile home, roughly.

5 Q. Okay, so ...

6 A. Seventy feet long, and probably fourteen feet wide.

7 Q. Would it fit in this courtroom?

8 A. You might could get it in here, it would be close.

9 Q. And that's from one end to the other?

10 A. One end to the other, yes, sir.

11 Q. And now, the BB gun you found, you stated it was in a chest
12 of drawers?

13 A. The second drawer from the top, yes, sir.

14 Q. And what was in the first drawer?

15 A. The victim's, later identified as the victim's cell phone.

16 Q. So, the cell phone and the BB gun were found together in the
17 same chest of drawers, just different drawers?

18 A. Right, the same chest of drawers, the victim's phone was in
19 the top drawer and the BB gun was found in the second drawer.

20 Q. And this was a room different from where the bed was at?

21 A. The bed with the - - -

22 Q. With the ...

23 A. --- black and white comforter.

24 Q. The zebra ...

25 A. Yeah, the zebra print blanket, yes, sir, opposite ends of

1 the trailer.

2 Q. And how long have you been in law enforcement?

3 A. Altogether, almost twenty-three years.

4 Q. If I were to pull this pistol out - - -

5 A. Yes, sir.

6 Q. --- would you be able to tell immediately that it was a BB
7 gun, as a law enforcement officer?

8 A. As a law enforcement officer?

9 Q. And you didn't know that, and I pulled this out, what would
10 your normal reaction be as a law enforcement officer, I'm on the
11 street, I pull this pistol out?

12 A. It would depend on the circumstances. If it was something
13 where it was very slow, very -- but if you just pulled it out of
14 your belt, I would draw down on you.

15 SOLICITOR JUSTIS: Thank you, no further questions.

16 THE COURT: Anything on recross?

17 MR. WISE: Very briefly.

18 THE COURT: Yes, sir.

19 (NOTE: Blank lines on this page do not indicate any part of
20 record has been omitted. Headers on testimony pages and hard
21 page breaks between testimony are now required by the Court. See
22 next ensuing page for sequential continuation of record.)

GERALD D. CARTER - RECROSS-EXAMINATION BY MR. WISE

225

1 RECROSS-EXAMINATION BY MR. WISE:

2 Q. If I walked up to you on the street and had this gun, and
3 I'm going like this, and I'm waving it around - - -

4 A. Uh-huh.

5 Q. --- and I'm pointing it at you, and I've got it up on you,
6 and you're looking at it, I'm not pulling it out, I'm not on the
7 street, it's not at night, and this happens over, I don't know,
8 how many minutes, ten, fifteen minutes, you see it, would you
9 know it's a BB gun?

10 A. The way you've got it showing it to me right now, I know
11 that's a BB gun. If circumstances -- I've been in that situation
12 in real life. I almost killed a man because of a BB gun.

13 Q. You can, a person comes up to you on the street and they
14 pull a gun out their waist, you're a police officer, you're going
15 to be concerned about that?

16 A. Yes, sir.

17 Q. Absolutely. Okay. But if you're looking at this gun like
18 you looked at, you knew it was BB gun, right?

19 A. When I saw it in the chest of drawers, yes, sir, I knew it
20 was a BB gun.

21 MR. WISE: Thank you. Nothing further.

22 THE COURT: Alright. That's it?

23 MR. WISE: Yes, sir.

24 THE COURT: Okay. Thank you, sir. Alright, you may step
25 down. Thank you, sir, I appreciate it.

1 Call your next witness.

2 SOLICITOR JUSTIS: Kimberly Pugh.

3 (Whereupon, the witness
4 enters the courtroom.)

5 CLERK: Place your left hand on the Bible, please, and raise
6 your right hand.

7 (Whereupon, Kimberly Pugh
8 is duly sworn.)

9 CLERK: Thank you. Will you please have a seat and state
10 your name for the record.

11 WITNESS: Kimberly Pugh.

12 (NOTE: Blank lines on this page do not indicate any part of
13 record has been omitted. Headers on testimony pages and hard
14 page breaks between testimony are now required by the Court. See
15 next ensuing page for sequential continuation of record.)

KIMBERLY PUGH - DIRECT EXAMINATION BY SOLICITOR BELL

227

1 (KIMBERLY PUGH, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR BELL:

4 Q. Ms. Pugh, where do you work?

5 A. The Orangeburg County Sheriff's Office.

6 Q. And what are your duties at the Orangeburg County Sheriff's
7 office.

8 A. I'm the evidence room custodian.

9 Q. And what does the evidence room custodian, what are your
10 duties?

11 A. It's my job to collect, preserve, maintain and occasionally
12 transport the evidence to SLED for analysis.

13 Q. Okay. How long have you been doing this?

14 A. For about four years.

15 Q. Okay. And in this case that we're dealing with did you
16 obtain items of evidence from, I believe, Lieutenant Carter?

17 A. Some of them.

18 Q. Some of them?

19 A. Yes, sir.

20 Q. For instance, what did you get?

21 A. From Lieutenant Carter I received the BB pistol.

22 Q. Which, let me -- that would be State's One into evidence?

23 A. Yes.

24 Q. Okay.

25 A. The duct tape.

- 1 Q. Okay. Is that the roll of duct tape?
- 2 A. The roll of duct tape and several pieces of duct tape.
- 3 Q. Which would be, State's Thirty-six is the roll of duct tape?
- 4 A. Yes, sir.
- 5 Q. And do you need to look at the bag?
- 6 A. Yes, sir.
- 7 Q. Okay. State's Thirty-nine?
- 8 A. Yes, sir.
- 9 Q. Okay. State's Thirty-five?
- 10 A. Yes, sir.
- 11 Q. State's Thirty-eight?
- 12 A. Yes, sir.
- 13 Q. And State's Thirty-seven?
- 14 A. Yes, sir.
- 15 Q. Now, did you receive some items from other officers in this
- 16 case?
- 17 A. I did. I received a pair of handcuffs, and a criminal
- 18 sexual conduct kit from Officer Jones, Bobby Jones.
- 19 Q. Okay. These are State's Two, would this be what you
- 20 received from Officer Jones?
- 21 A. Yes.
- 22 Q. And you said you received a sexual assault kit?
- 23 A. That's correct.
- 24 Q. And that would be, is this what you actually received?
- 25 A. Yes.

KIMBERLY PUGH - DIRECT EXAMINATION BY SOLICITOR BELL

229

1 Q. Okay. And that's what is marked as State's Three for
2 identification?

3 A. Yes.

4 Q. And that's the box?

5 A. The box and at the time it had things inside of it, I don't
6 know exactly, it was sealed when I received it.

7 Q. Okay. And those items that we would -- have been previously
8 testified would be State's Thirty-three, Thirty-two, and Thirty-
9 one collectively in State's Three. Okay. Now, State's Three,
10 I'm going to leave it up there for identification with the other
11 contents, what did you do with that box?

12 A. I took -- initially I took that box and placed it in a
13 refrigerator.

14 Q. Okay.

15 A. And then I eventually took it to SLED for analysis.

16 Q. Okay. And also from Lieutenant Carter eventually, let me
17 show you what's been marked as State's Four for identification
18 and ask you if you recognize these?

19 A. Yes.

20 Q. And what is that?

21 A. That's the oral swabs from Cedric Flood.

22 Q. Okay. And that was received later on than you received
23 these other items, is that correct?

24 A. Yes, that's correct.

25 Q. When did you receive those from Lieutenant Carter?

1 A. This I received on September Twenty-ninth, Two thousand and
2 ten.

3 Q. Okay. Now, did you take what's been marked as State's Four
4 and State's Three to SLED at the same time?

5 A. I did.

6 Q. Okay. And when did you take those items to SLED, State Law
7 Enforcement Division?

8 A. Those were taken on September Thirtieth, Two thousand Ten.

9 Q. Okay. So, State's Three for identification, the contents
10 had stayed in your refrigerator from around October first-- or
11 September Twenty-ninth of Two thousand Nine, until September
12 Thirtieth of Two thousand Ten?

13 A. That's correct.

14 Q. Okay. In your locked evidence room?

15 A. Yes.

16 Q. Okay. And when you took these items, these two items to
17 SLED, State's Three and Four for identification, what happens?

18 A. I go to SLED and I speak with one of the evidence
19 technicians. This one was Amy Stevens. And they take the items
20 and enter them into their computer system, and I give them
21 custody of the items.

22 Q. Did you do anything, did you seal them or do anything up
23 there, or watch them be sealed?

24 A. I did. I placed them in -- these items in those bags,
25 and I put initials and the date over the seal.

KIMBERLY PUGH - DIRECT EXAMINATION BY SOLICITOR BELL

231

1 Q. Okay. And, of course, along with State's Three for ID we
2 had State's Thirty-one, Thirty-two and Thirty-three, I believe,
3 that were inside it, correct?

4 A. Yes.

5 Q. Okay. And now, let me turn your attention back to State's
6 Four for identification, the Buccal swabs. You received that
7 manilla envelope inside the plastic bag, is that correct?

8 A. I did.

9 Q. And it was sealed when you received it?

10 A. It was.

11 Q. It had not been tampered with?

12 A. No, sir.

13 Q. And you took this manilla envelope to SLED, is that
14 correct?

15 A. I did.

16 Q. And then, that was placed in this bag at SLED, right?

17 A. In my presence, yes.

18 Q. Right. And I think -- are your initials on that bag?

19 A. Yes, sir.

20 Q. Okay. Is that them right there?

21 A. K.W.P.

22 Q. Okay. And the same thing, you put this whole box in a bag
23 or ...

24 A. No, I took the box by itself. They take the items from the
25 inside and place them in their bags, and they give me the box

1 back.

2 Q. Okay. So, you just gave them -- and the box was sealed when
3 you had it?

4 A. Right.

5 Q. Had it been tampered with when you had it in your
6 possession?

7 A. No, sir.

8 Q. And had it been tampered with for the year that it was in
9 your refrigerator?

10 A. No, sir.

11 Q. Does anybody else have access to that refrigerator?

12 A. Lieutenant Carter.

13 Q. Okay. Is he the only other person that has access to your
14 evidence room?

15 A. Yes.

16 Q. Okay. And so, these items, State's Three and Four, and then
17 there are other items inside State's Three for identification,
18 you left at SLED, is that correct?

19 A. That is correct.

20 Q. And then you received all these back at some point?

21 A. Yes, sir.

22 Q. And they had been broken up by that time, they had been in
23 when you received them back?

24 A. Yes, sir.

Different envelopes that were inside State's Three for ...

KIMBERLY PUGH - DIRECT EXAMINATION BY SOLICITOR BELL

233

1 A. The items, the envelopes and the items were in there.

2 Q. In the big envelope?

3 A. Yes.

4 Q. Okay.

5 SOLICITOR BELL: Thank you, Ms. Pugh, please answer any
6 questions the Defense has.

7 A. Yes, sir.

8 THE COURT: Alright.

9 MR. WISE: We don't have any questions, Your Honor.

10 THE COURT: Alright. You may step down. Thank you for
11 coming, ma'am.

12 WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 SOLICITOR JUSTIS: The State calls Catherine Liesy.

15 COURT REPORTER: That's not -- she doesn't have an exhibit
16 in her hand, does she?

17 SOLICITOR JUSTIS: No, that's her notes.

18 (Whereupon, the witness

19 enters the courtroom.)

20 CLERK: Place your left hand on the Bible and raise your
21 right hand.

22 (Whereupon, Catherine Liesy
23 is duly sworn.)

24 CLERK: Thank you. Have a seat, and please state your name
25 for the record.

KIMBERLY PUGH - DIRECT EXAMINATION BY SOLICITOR BELL

234

1 WITNESS: Catherine Liesy.

2 THE COURT: Okay, Mr. Justis, you may proceed.

3 (NOTE: Blank lines on this page do not indicate any part of
4 record has been omitted.)

CATHERINE LIESEY - DIRECT EXAMINATION BY SOLICITOR JUSTIS

235

1 (CATHERINE LIESY, being first duly sworn,
2 testifies as follows:)

3 DIRECT EXAMINATION BY SOLICITOR JUSTIS:

4 Q. Ms. Liesy, did you have an opportunity to perform DNA
5 testing in this case?

6 A. Yes, I did.

7 Q. And are you prepared to testify about the results of that
8 testing today?

9 A. I am.

10 Q. Before we get to that let's talk a little bit about your
11 education, your background, where you work. Please tell us where
12 you work?

13 A. I'm employed by the South Carolina State Law Enforcement
14 Division also known as SLED.

15 Q. And what's your job title there?

16 A. I'm a forensic scientist, assigned to the DNA and serology
17 unit.

18 Q. And how long have you been with SLED?

19 A. For five years.

20 Q. And what are some of your duties as a forensic scientist?

21 A. My responsibilities include processing forensic cases,
22 generating reports based on the result and conclusions drawn, and
23 testifying to those reports if necessary.

24 Q. And what type of education do you have?

25 A. I have a Bachelor of Science Degree in genetic engineering

1 from Cedar Crest College in Allentown, Pennsylvania.

2 Q. And do you have any type of specialized training?

3 A. We receive in house training for every type of analysis or
4 test that we run during the course of our daily work. I'm also
5 required to attend outside training either on general forensic
6 topics or on specific instrumentation or statistical analysis on
7 a yearly basis.

8 Q. And have you ever testified in Court before?

9 A. Yes, I have.

10 Q. And have you ever been qualified as an expert witness in the
11 field of forensic DNA analysis?

12 A. Yes, I have.

13 Q. And has that been in South Carolina?

14 A. I've been qualified in South Carolina, California, New
15 Jersey, Massachusetts, Florida, the District of Columbia, as well
16 as Federal Court in Florence, South Carolina.

17 Q. And where did you work before SLED?

18 A. Prior to my appointment with SLED I spent four years working
19 as a forensic DNA analyst at Orchid Cellmark, which is a private
20 testing facility, it was located in Maryland. I ran basically
21 the same type of tests and analyses that I do here at SLED.

22 Q. Okay. And I don't want to age you, but did you have
23 experience before that in the same type of work?

24 A. I recall that I worked at a gene chroming laboratory using
the same basic testing processes but a slightly different

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1 application.

2 Q. Okay. And how many times have you testified as an expert
3 witness?

4 A. Approximately thirty in all.

5 SOLICITOR JUSTIS: Your Honor, at this time the State would
6 offer Ms. Liesy as an expert in DNA analysis.

7 THE COURT: Any objection?

8 MR. WISE: No objection.

9 THE COURT: Okay. She is so qualified as a DNA analysis
10 expert.

11 Q. Ms. Liesy, could you explain to the jury what forensic DNA
12 analysis is?

13 A. The purpose of forensic DNA testing is to try and develop a
14 DNA profile from an unknown biological material that's left
15 either at a crime scene or on a piece of evidence and try and
16 determine whether or not a known individual could have been the
17 contributor of that particular evidence.

18 Q. Okay. And what is DNA?

19 A. DNA stands for DEOXYRIBO NUCLEIC ACID. It's the genetic
20 material found in all of our body cells with the exception of our
21 red blood cells. DNA is packaged in destructors called
22 chromosomes which contain our genes. And genes are simply
23 strains of DNA that contain our physical characteristics, our
24 height, color. We receive half of our DNA from our
25 mother, from our father. Therefore, we have copies of every

1 gene. And approximately Ninety-nine Point Nine per cent of an
2 individual's DNA is identical to that of everyone else's, and
3 it's the variation in that remaining Point One per cent that
4 allows us to tell different people apart.

5 Q. And how do you perform this testing?

6 A. When we receive items at SLED we first extract DNA from the
7 item, we're basically just removing and cleaning up the DNA from
8 that particular item. The next step is called amplification
9 where we're making copies of specific pieces of DNA that we're
10 interested in testing. Once we have those pieces copied we type
11 them, we basically just assign a number to each copy. So, we
12 test fifteen different DNA locations, and the overall collection
13 of DNA types at those locations gives us a DNA profile. If we're
14 able to develop a DNA profile from evidence we can then compare
15 it to the DNA profile of a known individual to try and determine
16 whether or not that individual contributed the DNA to the
17 evidence.

18 Q. And are there people that have the same DNA?

19 A. Identical twins would have the same DNA. Other than that
20 your DNA would be unique.

21 Q. And did you have an opportunity to perform any testing in
22 this case?

23 A. Yes, I did.

Q. And what items did you test?

A. I performed testing on vaginal swabs and a known DNA

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1 standard that were submitted as part of a sexual assault evidence
2 collection kit from Minor I also tested a DNA
3 standard collected from Cedric Flood.

4 Q. I'm showing you what's been marked as State's Exhibit Number
5 Three, do you recognize that?

6 A. The box that the CAC kits, or the sexual assault collection
7 kits come in are not submitted to the laboratory. This made its
8 way to me if this is what the items were collected in.

9 Q. Correct. Do you recognize State's Exhibit Number Thirty-
10 two?

11 A. Yes, I do.

12 Q. And what is it?

13 A. These are the vaginal swabs that came in as part of the
14 sexual assault evidence collection kit. I recognize the SLED
15 case number and item number as well as my initials.

16 Q. And do you identify this item, it's State's Exhibit Number
17 Thirty-three?

18 A. This is another portion of the sexual assault evidence
19 collection kit. There's several envelopes that are submitted
20 within the kit including the DNA standard from Minor
21 which was collected as an oral swab. It's basically just a
22 sterile cotton, almost a q-tip, that's rubbed on the inside of
23 the cheek to collect cells.

24 Q. And when you received that, is it -- what kind of condition
25 is that in, how would it look when you would have received that?

1 A. All of the items that we receive are submitted within a
2 plastic heat sealed pouch. When they're brought into SLED the
3 submitting agent places them in the pouch, seals it, and then
4 initials and dates the seal.

5 Q. Okay. Are there people that possibly handle that material
6 before it gets to you?

7 A. Yes. When it's submitted one of our login technicians will
8 take the items in. It's then typically transferred by different
9 technicians or analysts and stored in locked facilities until I'm
10 able to take custody to perform testing.

11 Q. Would it be standard procedure for those individuals to open
12 up any of the bags?

13 A. No, it wouldn't. With some items, if liquid blood comes in,
14 for instance, a technician may be required to open it and pour
15 it. In this particular case there was no liquid blood so the
16 heat sealed pouch was intact and was not opened before it arrived
17 to me.

18 Q. So, when you received this it would have been intact?

19 A. Correct, it would have been intact and within a heat sealed
20 plastic pouch.

21 Q. Okay. And would you have opened up that pouch?

22 A. Yes, I would.

23 Q. So, you could perform your tests?

24 A. Correct.

25 Q. I'm showing you what's been marked as State's Exhibit Number

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1 Thirty-one, do you recognize that?

2 A. These are the remaining items that were included with the
3 sexual assault evidence collected kit from Minor

4 Q. And when you received this what kind of condition was it in
5 when you received it?

6 A. The heat sealed pouch, obviously, it's been cut open. It
7 would have been sealed. The initials and the date that it was
8 sealed are apparent. I opened it several times and after opening
9 it to be tested I sealed it back up with my initials and the
10 date.

11 Q. And are your initials and the date on that particular
12 package?

13 A. Yes, they are.

14 Q. So, the top would have been sealed, this part would have
15 been sealed by the agency when they brought it in?

16 A. That's correct. When the items were submitted the top
17 portion would have been sealed.

18 Q. And then when you get a bag like this that has stuff in it
19 then you open it up -- how do you open it up?

20 A. With a scalpel, we just usually cut down the side just to
21 open enough of a portion that we can remove items from there.

22 Q. Down this side?

23 A. Correct.

24 Q. And then you would put a seal when you're done, in the
25 repackaging you seal it back up?

1 A. Correct.

2 Q. And then you put your initials, identification and
3 everything on there?

4 A. Correct.

5 Q. I'm showing you what's been marked as State's Exhibit Number
6 Four. Do you recognize that?

7 A. Yes, I do. This is the DNA standard that was submitted for
8 Cedric Flood.

9 Q. Okay. And when you received that item what condition was it
10 in?

11 A. The heat sealed pouch was intact, and labeled appropriately.

12 Q. Okay. And did you have an opportunity to open up that
13 pouch?

14 A. Yes, I did.

15 Q. And how do you know you opened up that pouch?

16 A. My initials and the date that I resealed the pouch are
17 located on the seam along the side where I resealed it.

18 Q. So, you would have done the same thing, opened it with a
19 scalpel on the side?

20 A. Correct.

21 Q. Took the items out, did your testing?

22 A. That's correct, yes.

23 Q. And then resealed it?

24 A. Yes, sir.

25 Q. And those are your identification on the side there?

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1 A. Correct.

2 SOLICITOR JUSTIS: I beg the Court's indulgence.

3 Q. Okay, now, when you, when you got these items what did you
4 do with them at that time?

5 A. I first performed what's called a presumptive serology test
6 on the vaginal swab. It's a test that we run to see if there's
7 any indication of semen present. As it was a sexual assault
8 that's obviously one item that we're interested in looking at.
9 That initial test was positive, indicating the possible presence
10 of semen. I then performed a DNA extraction on that item to try
11 and develop male DNA profile as well as female DNA profile from
12 the victim. I then developed DNA profiles from both Ms.
13 Washington and Mr. Flood for comparison purposes.

14 Q. So, basically, you were able to identify semen in the
15 vaginal swab?

16 A. That's correct.

17 Q. And then you made sure you developed a profile for
18 Minor , which is where the vaginal swab came from?

19 A. That's correct.

20 Q. And then, the other individual would have been Mr. Cedric
21 Flood, you were asked to compare that?

22 A. Yes, sir.

23 Q. And you established those two standards. So, they would be
24 as known standards?

A. Correct. When we say standard we mean an item that has been

1 taken directly from a known individual that we use for comparison
2 with evidence.

3 Q. I'm showing you again what's State's Exhibit Number Four.
4 You said that was Mr. Flood's Buccal swab?

5 A. That's correct.

6 Q. And is that what you developed a standard from?

7 A. Yes, it is.

8 Q. And when you received it had it appeared to have been
9 tampered with?

10 A. No, it was appropriately sealed and labeled.

11 Q. And then you did what you needed to do with the items and
12 you resealed it?

13 A. That's correct.

14 SOLICITOR JUSTIS: At this time the State would offer
15 State's Exhibit Number Four into evidence.

16 THE COURT: Any objection?

17 MR. WISE: No objection.

18 THE COURT: Alright, State's Number Four is in evidence.

19 (State's Exhibit Four
20 marked and filed.)

21 SOLICITOR JUSTIS: Thank you.

22 Q. I'm showing you what's been marked as State's Exhibit
23 Thirty-one that you looked at earlier, and what items are located
in that bag?

A. This particular bag includes a pair of panties that were

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1 submitted, as well as pubic hair combings that were collected.
2 There are several other envelopes but when we send a kit out
3 there are envelopes for specific items to be collected, there
4 were several envelopes that were not collected, so those are
5 contained in the package as well.

6 Q. Okay. And when you received that package it was sealed?

7 A. Yes, it was.

8 Q. It hadn't appeared to have been tampered with?

9 A. No. It would have been opened by Technician Sherrie Brown
10 to check for blood. There was none, so she sealed it back up
11 appropriately, labeled it with her initials and the date that she
12 opened it, and then it was transferred on to me.

13 Q. Okay.

14 SOLICITOR JUSTIS: At this time the State would offer
15 State's Thirty-one into evidence.

16 THE COURT: Any objection?

17 MR. MELLARD: Your Honor, could we approach?

18 THE COURT: Sure.

19 (Whereupon, a bench conference
20 is had out of the hearing of
21 the Jury and Court Reporter.)

22 THE COURT: Any objection, Mr. Mellard?

23 MR. MELLARD: No objection.

24 THE COURT: Okay. Number Thirty-one is in evidence..

25 (State's Exhibit Thirty-one

1 marked and filed.)

2 Q. I'm showing you State's Exhibits Thirty-two and Thirty-
3 three. I think you previously identified those as, I believe, a
4 vaginal swab and the other one, the bigger envelope was ...

5 A. Yes, sir.

6 Q. Okay. And were they sealed when you received them?

7 A. Yes, they were. These items would have been in the same
8 heat sealed pouch as the panties and the pubic hair combings.

9 SOLICITOR JUSTIS: At this time the State would offer
10 State's Thirty-two and Thirty-three into evidence.

11 THE COURT: Any objection?

12 MR. MELLARD: No objection.

13 THE COURT: Alright, sir. State's Exhibits Thirty-two and
14 Thirty-three are in evidence.

15 Q. And finally ...

16 COURT REPORTER: Just a moment.

17 (State's Exhibits Thirty-two and Thirty-three
18 marked and filed.)

19 Q. And finally, State's Exhibit Number Three, I think you
20 testified that that was a box that you personally didn't receive?

21 A. That's correct.

22 Q. But are you familiar with what that box is used for?

23 A. When we send the kits out, the envelopes that all of the
24 evidentiary items would be collected in come in a box like this.
25 I believe that there is what's called a rape protocol paperwork

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1 to be filled out, an incident report to be filled out. These
2 boxes typically aren't submitted with the items, and I never took
3 custody of this particular item.

4 Q. You don't -- by the time, by the time it comes to you it
5 would be, you're telling me that those envelopes that have
6 previously been admitted were in that box at one time?

7 A. I would assume so, - - -

8 Q. Right.

9 A. --- we hand these out to different agencies or solicitor's
10 offices to be used for collection, you know, but again, the boxes
11 themselves don't come back to us.

12 Q. Right. To you in the forensic science department?

13 A. Correct.

14 SOLICITOR JUSTIS: The State would offer State's Exhibit
15 Number Three into evidence.

16 THE COURT: Any objection?

17 MR. MELLARD: She, she testified she had no personal
18 knowledge of it, Your honor. Therefore, we would say that we
19 object to that.

20 THE COURT: Okay. I sustain that objection. You can recall
21 somebody and put somebody else up to identify it -- the other
22 lady. Okay.

23 Q. And Ms. Liesy, after you tested the samples and you stated
24 you resealed them, did you receive any results of your analysis?

25 A. Yes, sir, I did.

1 Q. And did you record these results in some sort of report?

2 A. I did.

3 Q. And in your expert opinion what were the results of your
4 testing?

5 A. The DNA profile developed from the semen on the vaginal
6 swabs matches the DNA profile of Cedric Flood. The probability
7 of randomly selecting an unrelated individual having a DNA
8 profile matching the semen on this item is approximately one in
9 fifty-one quadrillion.

10 Q. And do you have any knowledge approximately how many people
11 reside on the face of the earth currently?

12 A. The current population is between six and seven billion.

13 Q. Six to seven billion?

14 A. Yes, sir.

15 Q. And you stated this was one in fifty-one quadrillion?

16 A. That's correct.

17 Q. And how, I mean, what's the relationship between seven
18 billion, let's say, and fifty-one quadrillion?

19 A. Fifty-one quadrillion would be several million times larger
20 than the current population of the earth.

21 SOLICITOR JUSTIS: I beg the Court's indulgence.

22 Q. Ms. Liesy, you testified that there was a match to Cedric
23 Flood, so are you saying that his DNA was found in the semen that
24 was, that was on the vaginal swab from Minor ?

25 A. I can say with a reasonable degree of scientific certainty

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1 that Mr. Flood was the contributor of the DNA that I obtained
2 from that fraction of the item, yes.

3 Q. And it's based on, that's that one in fifty-one quadrillion?

4 A. Correct.

5 SOLICITOR JUSTIS: Thank you, no further questions.

6 THE COURT: Alright. Mr. Mellard?

7 MR. MELLARD: Yes, sir.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court. See
11 next ensuing page for sequential continuation of record.)

1 CROSS-EXAMINATION BY MR. MELLARD:

2 Q. The vaginal swab, you can't tell when that semen was
3 deposited there?

4 A. Not specifically.

5 Q. You couldn't say July Twentieth at eleven:forty-five in the
6 morning?

7 A. That's correct.

8 Q. Okay. You couldn't, it could been a day before today, it
9 could have been two days, it could have been three days. You
10 can't pinpoint the date or time it was placed there, correct?

11 A. There is a limit to how long the semen could be there and
12 still provide a DNA sample. A typical range would be Twenty-four,
13 possibly up to Forty-eight hours, but I can't pinpoint a specific
14 time, no, sir.

15 Q. Okay.

16 MR. MELLARD: That's all.

17 THE COURT: Anything on redirect?

18 SOLICITOR JUSTIS: Nothing on redirect, Your Honor.

19 THE COURT: Alright. Thank you, ma'am.

20 WITNESS: Thank you, sir.

21 THE COURT: You may step down. Appreciate it.

22 Call your next witness.

23 SOLICITOR JUSTIS: Briefly, Your Honor?

24 THE COURT: Okay.

25 SOLICITOR JUSTIS: May we approach, Your Honor?

1 THE COURT: Okay. From the Nineteen Ninety-four case, and
2 in Nineteen Ninety-four Mr. Flood had pled guilty to criminal
3 sexual conduct in the second degree and kidnaping, one in
4 Orangeburg and one in Calhoun, is that correct?

5 SOLICITOR JUSTIS: That's correct, Your Honor.

6 THE COURT: Okay. Now, the State has presented to the Court
7 a memorandum in support of having Ms. Jenkins testify under the
8 Lyle, State versus Lyle, and using the Rule Four O Four, B,
9 reasoning to allow her to testify. And I believe y'all were
10 using those exceptions to try and get that testimony in, is that
11 correct?

12 SOLICITOR JUSTIS: That's correct, Your Honor.

13 THE COURT: And you presented the memorandum, and we have
14 had meetings about that in chambers. Rather than put Ms. Harley
15 under oath, what I had suggested to the attorneys was that I
16 would use the fax, I was going to submit the memorandum that you
17 had given me as a proffer of the facts that she would be
18 testifying to should she come and testify. Is that correct?

19 SOLICITOR JUSTIS: That's correct, Your Honor.

20 THE COURT: Okay. Now, and Mr. Mellard, have you had a
21 chance to review this?

22 MR. MELLARD: I have, Your Honor.

23 THE COURT: And I realize that the facts couched is in the
24 best light for the State?

25 MR. MELLARD: Yes, sir.

1 THE COURT: Okay. But what I'm going to do is, I'm going to
2 mark that, this memorandum that I have simply for the purpose of
3 proffering the factual testimony, not anything for the legal
4 arguments and like that. Make that clear on the record. Okay.

5 Now, I have read that, I have read the cases involved since
6 Lyle and like that, and my ruling is, as far as on the direct, as
7 in the part of the State's case is, I believe that having that
8 testimony come in at this stage would be more prejudicial than
9 probative, so I am not going to allow it in at this time.
10 However, I have, and I am again cautioning the Defense to
11 realize, so that they will realize that any comments that would
12 tend to indicate that Mr. Flood would not do an act like this, or
13 is a good person, or anything like that, would have a tendency to
14 open the door and that Ms. Harley could then be called for
15 impeachment purposes. Y'all are all aware of that?

16 MR. MELLARD: We are aware of that, Your Honor.

17 THE COURT: Okay. Alright, anything else that I need to put
18 on the record for the State's benefit regarding this?

19 SOLICITOR JUSTIS: Nothing from the State, Your Honor.

20 THE COURT: Okay. Anything from the Defense?

21 MR. MELLARD: No, sir.

22 THE COURT: Okay. and I'm going to have this marked as
23 Court's Exhibit, is this Number Four, Ms. Harry Dot?

24 COURT REPORTER: Just one moment. Yes, sir, it is.

25 THE COURT: Number Four then.

1 COURT REPORTER: Court's Four.

2 THE COURT: Court's Number Four.

3 (Court's Exhibit Four
4 marked and filed.)

5 THE COURT: Alright, now, the, the jury is going to be back
6 here at two. Do y'all have any charges that y'all want, any
7 specific charges that y'all have?

8 MR. MELLARD: We will look at them over lunch, Your Honor.

9 THE COURT: Alright, sir.

10 MR. MELLARD: And we will get back to you.

11 THE COURT: Alright. Yes, sir.

12 SOLICITOR BELL: Your Honor, I'm sorry, I just wanted to
13 take up one other matter - - -

14 THE COURT: Okay.

15 SOLICITOR BELL: --- before the State rests.

16 THE COURT: Okay.

17 SOLICITOR BELL: You denied through the testimony of Ms.
18 Liesy, State's Three. I'm not arguing with the Court, but I
19 would simply, we would offer State's Three based on the
20 cumulative testimony throughout the trial that State's Three
21 contained, I think State's Thirty-one, Thirty-two and Thirty-
22 three was put in the, by the nurse, and we would offer that into
23 evidence before we rested.

24 THE COURT: Well, putting it in based on the nurse's
25 testimony okay, I understand. But putting it in through someone

1 who had not seen it, I wasn't going to put it in.

2 SOLICITOR BELL: I understand.

3 THE COURT: Okay.

4 SOLICITOR BELL: What we would do is, when the jury came
5 back we would offer it into evidence as State's Three before we
6 rested.

7 THE COURT: Okay. That will be fine. And make sure that
8 y'all have, before you rest, make sure that all the evidence that
9 you wanted put in has been put into evidence, because there are a
10 number of documents that have not been put in.

11 SOLICITOR BELL: Yes, sir.

12 THE COURT: So, y'all will have some time to do that. And I
13 don't know what y'all want to do about presenting the defendant's
14 case, but if y'all want to get back a little before so we can
15 question, so we'll know what to do, if y'all want to get back
16 here at one:thirty and tell me, - - -

17 MR. MELLARD: Yes, sir.

18 THE COURT: --- would that be alright with y'all?

19 MR. MELLARD: Yes, sir.

20 THE COURT: That would give y'all plenty of time?

21 MR. MELLARD: It gives us time, yes, sir.

22 THE COURT: Okay. Alright. Okay, we're in recess. The
23 jury won't be back until two, but I'd ask y'all to be back at
24 one:thirty. Thank y'all.

25 COURT REPORTER: Judge, do you want this courtroom locked

1 because all of these exhibits are in here?

2 THE COURT: Yes, ma'am.

3 COURT REPORTER: I mean locked.

4 THE COURT: Yeah. Could I have the courtroom locked and
5 reopened at one:thirty?

6 BAILIFF: Yes, sir.

7 THE COURT: Thank you, sir, appreciate it.

8 SOLICITOR BELL: I just wanted to make sure what's in and
9 what's not.

10 COURT REPORTER: Okay.

11 THE COURT: And y'all need -- and Mr. Mellard, y'all, just
12 while we break make sure we've got all the evidence. Okay?

13 MR. MELLARD: Your Honor, we have a little issue we need to
14 take up real quick.

15 THE COURT: Okay. Do you want to talk in chambers?

16 MR. MELLARD: Yes, sir.

17 THE COURT: Okay. Y'all come on back.

18 (Whereupon, The Court and Attorneys
19 confer in chambers, off the record.)

20 (Recess)

21 THE COURT: Ms. Harry Dot, we're going to go on the record.

22 Mr. Mellard, do you have a motion for the Court?

23 MR. MELLARD: Yes, sir. At this time I'd like to move for a
24 mistrial.

THE COURT: Yes, sir.

1 MR. MELLARD: It's based on a newspaper article which was
2 printed, I believe, on today's date. The caption reads, "Man
3 faces rape, kidnaping charges." I believe there's a Court
4 exhibit, I'm not really sure what number we did.

5 THE COURT: No, I haven't made an exhibit of that.

6 MR. MELLARD: Oh, you have not made it?

7 THE COURT: I have not.

8 MR. MELLARD: I believe Ms. Harry Dot...

9 THE COURT: Oh, you did?

10 MR. MELLARD: Yes, I believe she did.

11 THE COURT: Oh, good, I see it right over there. That's a
12 Court exhibit. Yeah, thank you. Thank you. Court's Exhibit
13 what?

14 MR. MELLARD: Court's Exhibit Number Five, Your Honor.

15 THE COURT: Okay. Yes, sir, thank you.

16 (Court's Exhibit Five
17 marked and filed.)

18 MR. MELLARD: And in this newspaper article, on Page Two,
19 well, it starts off by saying, an Orangeburg man could get life
20 if he's found guilty of this crime -- Your Honor, we don't have
21 the defendant here.

22 THE COURT: I'm sorry. Why don't we wait and get him.
23 (Whereupon, the defendant
24 enters the courtroom.)

25 THE COURT: Is the jury here?

1 BAILIFF: We don't have them yet.

2 THE COURT: We don't have them yet?

3 BAILIFF: We still need four more.

4 THE COURT: Four more? Okay. That gives us time, we're
5 working, so that will work out fine. Oh, let me tell y'all -
6 alright, I'm sorry, Mr. Mellard, you were saying you were moving
7 for a mistrial, and were referring to Court's Exhibit Number
8 Five, which is the newspaper article in the T and D?

9 MR. MELLARD: Yes, sir.

10 THE COURT: Yes, sir, I apologize.

11 MR. MELLARD: And it starts off that he could get life in
12 prison if he's found guilty. And then, on Page, I've got Page
13 Three or Four, I'm not sure which.

14 THE COURT: I've got just two pages.

15 MR. MELLARD: Two pages, okay, it will be on your Page Two,
16 - - -

17 THE COURT: Yes, sir.

18 MR. MELLARD: --- it, it states that what the jurors won't
19 hear in this story is his previous charge of criminal sexual
20 conduct, and it says he pled guilty to a strangely similar case,
21 and it gives the background of the previous case, which, as the
22 Court's already ruled, should not be even looked at.

23 THE COURT: Right.

24 MR. MELLARD: So, it's our position that there is no way
25 these fourteen people could not have either heard something, read

1 something, spoke to somebody about it. This newspaper article is
2 right in front of the courthouse in a, I guess, a bin is what
3 you'd call it. It's at the steps that they have to come up. So,
4 we would move for a mistrial, Your Honor, and that's our basis.

5 THE COURT: Okay. Thank you, sir. Alright, Mr. Mellard, I
6 understand your motion, I am concerned about the article itself.
7 What I intend to do is, I intend to poll the jurors and find out,
8 and reserve judgement on your motion until I have polled the
9 jurors. Okay?

10 Mr. Justis, anything that you wanted to say on the record or
11 -- would be fine.

12 SOLICITOR JUSTIS: I would just say if he's concerned about,
13 you know, some of the information in the article, but from them
14 reading it through a box where the paper is folded and everything
15 right in front of the courthouse where everyone would see them, I
16 think that's a little absurd.

17 THE COURT: Well, I don't think that's what his concern is,
18 I think his concern is somebody actually read the article. You
19 know, I know he mentioned that it's right out front and like
20 that, but -- at least that's my impression.

21 MR. MELLARD: Yes, sir, it is, I mean ...

22 SOLICITOR JUSTIS: And Your Honor asked them this morning
23 about that, if they had read them, and they said, no, but that
24 will be fine.

25 THE COURT: Just to be on the safe side I'm going to poll

1 the jury just to make sure. Okay? And Gentlemen, what I'm going
2 to do is, I'm going to ask the bailiff to bring out the jurors,
3 what I have is a copy of my jury list, so they're going to call
4 them out one at a time on the list, and then we will question
5 them. And then, when you go back in there, tell them that I just
6 need to ask them individual questions, you know, don't get all
7 concerned, you know. And then, yeah, the ones that are
8 highlighted, if you'd call that one at a time. Okay?

9 (Whereupon, Juror Negron
10 enters the courtroom.)

11 THE COURT: You are Mr. Negron?

12 JUROR NEGRON: Negron, yes.

13 THE COURT: Okay. Earlier this morning I asked all the
14 jurors if they had read, heard or seen anything about this trial
15 either in print or radio or t.v. Have you seen or read anything?

16 JUROR NEGRON: No, sir.

17 THE COURT: Okay. There was an article in the T and D that
18 appeared this morning. You did not read that article?

19 JUROR NEGRON: No, sir.

20 THE COURT: Okay, alright, sir. Are you aware of any jurors
21 that have read that article?

22 JUROR NEGRON: Not as far as I know.

23 THE COURT: Okay. No one has said anything?

24 JUROR NEGRON: We haven't ...

25 THE COURT: You haven't talked about it?

1 JUROR NEGRON: No, sir.

2 THE COURT: You did what I told you to do?

3 JUROR NEGRON: Yes, sir.

4 THE COURT: Alright, sir. Okay. Has anyone come to you and
5 tried to talk to you about this case?

6 JUROR NEGRON: No, sir.

7 THE COURT: Okay, great. Thank you, sir. Now, what I'm
8 going to do is, I'm going to send you back into the grand jury
9 room, so I can ask everybody. Okay?

10 JUROR NEGRON: Yes, sir.

11 THE COURT: Okay. Thank you, sir.

12 (Whereupon, Juror Negron

13 leaves the courtroom

14 and Juror Beckett

15 enters the courtroom.)

16 THE COURT: Come on up here. You are Mr. Beckett?

17 JUROR BECKETT: Yes, sir.

18 THE COURT: Okay. I've just got to ask you questions out in
19 front of everybody.

20 JUROR BECKETT: Okay.

21 THE COURT: Okay. Mr. Beckett, when everybody came in I
22 asked, made sure that nobody had read anything, seen anything or
23 heard anything about this case.

24 JUROR BECKETT: Right.

THE COURT: Had you heard anything coming in?

1 JUROR BECKETT: No, sir.

2 THE COURT: Okay. An article appeared in the T and D this
3 morning. Did you read that article?

4 JUROR BECKETT: No, sir.

5 THE COURT: Okay. Do you know anything about the article?

6 JUROR BECKETT: Well, our foreman had told us about it, that
7 he had spotted it in the case when he was walking in.

8 THE COURT: Okay.

9 JUROR BECKETT: So, he just warned all of us to stay away
10 from that.

11 THE COURT: Okay. Okay. But you have not read the article?

12 JUROR BECKETT: No, sir.

13 THE COURT: Not seen it, you don't know anything about it
14 other than you saw it on the front page?

15 JUROR BECKETT: Yes, sir.

16 THE COURT: Okay. Has anybody talked to you about any of
17 the contents of that article?

18 JUROR BECKETT: No, sir.

19 THE COURT: Okay. Alright, sir. Has anybody talked to you
20 about this case whatsoever?

21 JUROR BECKETT: No, sir.

22 THE COURT: Okay. Thank you, sir, appreciate it.

23 (Whereupon, Juror Beckett

24 leaves the courtroom

25 and Juror White

1 enters the courtroom.)

2 THE COURT: Mr. White. Mr. White, this morning when y'all
3 came in I asked y'all if y'all had heard, read or seen anything
4 about this case in the news, radio, t.v., or internet or anything
5 like that. Have you seen anything like that?

6 JUROR WHITE: No, sir.

7 THE COURT: Okay. The T and D had an article today about
8 this case in the newspaper today. Did you read it?

9 JUROR WHITE: No.

10 THE COURT: Has anybody told you about that case?

11 JUROR WHITE: I heard one of the jurors say that they had
12 seen a headline.

13 THE COURT: Okay.

14 JUROR WHITE: But that's it.

15 THE COURT: Okay, alright, sir. And nobody has come up to
16 talk to you about this case or try to influence you in any way
17 whatsoever?

18 JUROR WHITE: No.

19 THE COURT: Okay. Y'all have been doing what you're
20 supposed to do?

21 JUROR WHITE: Yes, sir.

22 THE COURT: Alright. Thank you, Mr. White, I appreciate it.
23 Thank you, sir.

24 (Whereupon, Juror White
25 leaves the courtroom,

1 and Juror Fulton

2 enters the courtroom.)

3 THE COURT: Hey, Ms. Fulton, this morning when y'all came in
4 I asked y'all if y'all had seen, read anything -- seen anything
5 on t.v., read anything in the paper, heard anything on the radio
6 about this case. Have you?

7 JUROR FULTON: No.

8 THE COURT: Okay. The T and D had an article about this in
9 the paper today. Are you aware of that article?

10 JUROR FULTON: Yes.

11 THE COURT: Okay. Did you, do you know, has anybody talked
12 to you about that article or anything that was said in that
13 article?

14 JUROR FULTON: No.

15 THE COURT: Okay. Alright, so you're doing what I told you
16 to do?

17 JUROR FULTON: Yes.

18 THE COURT: And nobody's come up and talked to you about
19 this case?

20 JUROR FULTON: No.

21 THE COURT: Okay. Thank you, ma'am, appreciate it.

22 (Whereupon Juror Fulton

23 leaves the courtroom,

24 and Juror Mabry

25 enters the courtroom.)

1 THE COURT: Ms. Mabry?

2 JUROR MABRY: Yes.

3 THE COURT: Ms. Mabry, hey, good morning, I'm sorry, good
4 afternoon now. I'm sorry. Ms. Mabry, this morning when I asked
5 all of the jurors at one time, I ask them if y'all had read
6 anything, heard anything on the radio, seen anything on t.v.
7 about this case, and the answer was that you had not. Have you
8 heard any, read, ...

9 JUROR MABRY: Nothing.

10 THE COURT: Nothing. Okay. The T and D had an article
11 about this case in the paper today. Are you aware about that
12 article?

13 JUROR MABRY: No, I haven't even seen the newspaper.

14 THE COURT: Okay. Okay. So, you, and nobody has talked to
15 you about it or anything like that?

16 JUROR MABRY: Huh-huh, no.

17 THE COURT: Okay. So, y'all have been doing what I told you
18 to do?

19 JUROR MABRY: We're trying, yes, sir.

20 THE COURT: Yeah, and I appreciate that. Thank you, ma'am,
21 I appreciate it. Thank you.

22 (Whereupon, Juror Mabry
23 leaves the courtroom,
24 and Juror Danhauser
25 enters the courtroom.)

1 THE COURT: Mr. Danhauser?

2 JUROR DANHAUSER: Danhauser.

3 THE COURT: Danhauser. Okay. Mr. Danhauser, the, I asked
4 this morning to make sure that nobody had read anything in the
5 paper, heard anything on the radio, seen anything on t.v. about
6 this case, and everybody said they haven't. You have not?

7 JUROR DANHAUSER: No, I have not.

8 THE COURT: Okay. The T and D had an article about -- the T
9 and D had an article about this case in the newspaper this
10 morning. Are you aware of that?

11 JUROR DANHAUSER: I live in Holly Hill.

12 THE COURT: You don't get the T and D?

13 JUROR DANHAUSER: No.

14 THE COURT: So, you haven't seen it or heard it?

15 JUROR DANHAUSER: I don't get a newspaper.

16 THE COURT: Oh, you don't. Okay. That's probably a good
17 thing to do in Holly Hill. Okay. Has anybody talked to you
18 about this article or about this case?

19 JUROR DANHAUSER: No.

20 THE COURT: Okay, so you've been doing exactly what I told
21 you to do?

22 JUROR DANHAUSER: Yes.

23 THE COURT: Okay. Thank you, sir.

24 (Whereupon, Juror Danhauser

25 leaves the courtroom,

1 and Juror Frierson

2 enters the courtroom.)

3 THE COURT: Alright, Ms. Frierson?

4 JUROR FRIERSON: Yes, sir.

5 THE COURT: Okay, this morning I asked all the jurors if
6 they had read anything about this case, seen anything on t.v.,
7 heard anything on the radio about this case. Have you heard,
8 seen or read anything about this case?

9 JUROR FRIERSON: No, sir.

10 THE COURT: Okay. The T and D had an article about this
11 case in it today. Are you aware of anything in the article,
12 contained in the article, or even aware of the article?

13 JUROR FRIERSON: I knew that there was an article, but I
14 never saw it and I don't know what's in it.

15 THE COURT: Okay. How are you aware of the article?

16 JUROR FRIERSON: My husband said, your trial is in the
17 paper, on the front page.

18 THE COURT: Okay. And that's all he told you?

19 JUROR FRIERSON: Yes, sir.

20 THE COURT: Okay. So, you're not aware what was said in
21 this article?

22 JUROR FRIERSON: No, sir.

23 THE COURT: Okay. Other than your husband telling you that
24 the case was in the newspaper today, has anybody talked to you
about the facts in the case, any of the background of this case?

1 JUROR FRIERSON: No, sir.

2 THE COURT: Okay. Alright. So, you've been doing what I
3 told you to do?

4 JUROR FRIERSON: Absolutely.

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

6 (Whereupon, Juror Frierson

7 leaves the courtroom,

8 and Juror Gray

9 enters the courtroom.)

10 THE COURT: Okay, Mr. Gray. Mr. Gray, this morning when I
11 was asking everybody if they had read anything about the case,
12 heard anything on the radio, seen anything on t.v. about this
13 case, everybody said they had not. Is that correct?

14 JUROR GRAY: That's correct.

15 THE COURT: I believe you, you are aware that there is an
16 article in the T and D today?

17 JUROR GRAY: Yes.

18 THE COURT: Have you read the article?

19 JUROR GRAY: No.

20 THE COURT: Are you familiar with anything about the
21 article?

22 JUROR GRAY: No.

23 THE COURT: None of the background?

24 JUROR GRAY: No. I just saw it on the front page and warned
them.

1 THE COURT: Okay. Did you, did you warn all the jurors
2 about it or say anything about it to them?

3 JUROR GRAY: No.

4 THE COURT: Okay.

5 JUROR GRAY: Well, - - -

6 THE COURT: Go ahead.

7 JUROR GRAY: Let me take that back.

8 THE COURT: Yes, sir.

9 JUROR GRAY: I did say, don't look at the box in the front
10 of the courthouse steps - - -

11 THE COURT: Okay.

12 JUROR GRAY: --- Because it's displayed there.

13 THE COURT: Okay. Other than that warning which goes along
14 with what I told y'all to do, has anybody talked to you about
15 this case or anything like that?

16 JUROR GRAY: No.

17 THE COURT: Okay. So, you've been doing what I told you to
18 do?

19 JUROR GRAY: Yes.

20 THE COURT: Okay, great. Okay. Thank you, Mr. Gray.

21 (Whereupon, Juror Gray
22 leaves the courtroom,
23 and Juror Wright
24 enters the courtroom.)

25 THE COURT: Ms. Wright, yes, ma'am, that's fine. Ms.

1 Wright, this morning when y'all came in I asked to make sure that
2 y'all had not read anything about this case, heard anything about
3 it, or seen anything about it on the t.v. And everybody said
4 they haven't.

5 JUROR WRIGHT: Yes.

6 THE COURT: Okay. Have you seen, read or heard anything
7 about this case?

8 JUROR WRIGHT: No.

9 THE COURT: Okay. The T and D contains an article about
10 this, there's an article about this in the T and D. Are you
11 aware of that article?

12 JUROR WRIGHT: No.

13 THE COURT: Okay. So, you don't know anything about it?

14 JUROR WRIGHT: No.

15 THE COURT: Okay. Has anybody tried to talk to you about
16 this case?

17 JUROR WRIGHT: No.

18 THE COURT: Okay. You've been doing what I told you to do?

19 JUROR WRIGHT: Right.

20 THE COURT: Okay. Thank you, Ms. Wright, thank you, ma'am.

21 (Whereupon, Juror Wright
22 leaves the courtroom, and
23 Juror Moorer
24 enters the courtroom.)

25 THE COURT: Mr. Moorer, come on in, please, sir. Mr.

1 Moorer, this morning I asked y'all if y'all had read anything
2 about this case, heard anything on the radio, saw anything on
3 t.v. about this case. Is that correct?

4 JUROR MOORER: Yes, sir.

5 THE COURT: Have you seen, read or heard anything about this
6 case?

7 JUROR MOORER: No, sir.

8 THE COURT: Are you aware that the T and D had an article
9 about this case?

10 JUROR MOORER: No, sir.

11 THE COURT: Okay. So, you don't know anything about that?

12 JUROR MOORER: No, sir.

13 THE COURT: Has anybody tried to talk to you about this
14 case?

15 JUROR MOORER: No, sir.

16 THE COURT: Okay. So, you've been doing what I told you to
17 do?

18 JUROR MOORER: Yes, sir.

19 THE COURT: Thank you, Mr. Moorer, I appreciate it.

20 (Whereupon, Juror Moorer

21 leaves the courtroom,

22 and Juror Shingler

23 enters the courtroom.)

24 THE COURT: Hey, Mr. Shingler. Mr. Shingler, this morning I
25 asked everybody if they had read anything about this case, heard

1 anything about this case on the radio, saw anything on t.v. about
2 this case, and everybody said they had not. Is that correct?

3 JUROR SHINGLER: Yes.

4 THE COURT: You have not read, heard or seen anything about
5 this case other than what - - -

6 JUROR SHINGLER: No more than what I saw in the paper this
7 morning coming into the courthouse.

8 THE COURT: Okay. What did you see in the paper?

9 JUROR SHINGER: It just had the paper out in the front of
10 the ...

11 THE COURT: Yes, sir.

12 JUROR SHINGLER: That's all.

13 THE COURT: Well, what -- tell me what you saw?

14 JUROR SHINGLER: Well, it had this, the trial or something.
15 It was right in front of the courthouse coming in this morning.

16 THE COURT: No, I mean, I understand, but I mean, just what
17 do you recall from what you saw?

18 JUROR SHINGLER: Well, it had a picture of the ...

19 THE COURT: Of the good looking defense attorney right
20 there?

21 JUROR SHINGLER: I don't want to say good looking, but ...

22 THE COURT: Okay, well, then, that was him, that was him.
23 Okay. So, you saw his picture?

24 JUROR SHINGLER: Right here.

25 THE COURT: Did you read the article?

1 JUROR SHINGLER: No, no, it was as I was coming into the
2 courthouse and saw the paper stand right there.

3 THE COURT: Okay. So, you don't know anything that was in
4 the article or anything like that?

5 JUROR SHINGLER: No.

6 THE COURT: You were just admiring the picture?

7 JUROR SHINGLER: No, I don't want to say that either.

8 THE COURT: I don't blame you, I don't blame you. So, like
9 you said, you don't know anything, and nobody has tried to talk
10 to you about this case whatsoever?

11 JUROR SHINGLER: No.

12 THE COURT: You've been doing exactly what I told you to do?

13 JUROR SHINGLER: Yes.

14 THE COURT: Alright, sir, thank you. I appreciate it, Mr.
15 Shingler.

16 (Whereupon, Juror Shingler
17 leaves the courtroom,
18 and Juror Shuler
19 enters the courtroom.)

20 THE COURT: Alright, Mr. Shuler. Mr. Shuler, this morning I
21 asked all the jurors if they had read anything in the newspaper
22 or anywhere else, seen anything on t.v., heard anything on the
23 radio about this case. Everybody said they haven't. Is that a
24 true statement, you have not seen, read or heard anything?

25 JUROR SHULER: No.

1 THE COURT: Are you aware the T and D had an article about
2 this case?

3 JUROR SHULER: Right.

4 THE COURT: You are. How are you aware about that?

5 JUROR SHULER: Somebody told me about it but I didn't pay it
6 no attention.

7 THE COURT: Who told you about it?

8 JUROR SHULER: A guy on my job.

9 THE COURT: A guy on your job?

10 JUROR SHULER: Is that the case y'all was on? That's what
11 he said, and I told him I can talk about it.

12 THE COURT: He said, is that the case you're on?

13 JUROR SHULER: Yeah, and I told him, I can't talk about it.

14 THE COURT: He didn't tell you any facts about the case?

15 JUROR SHULER: No, no, no.

16 THE COURT: You don't know anything about it?

17 JUROR SHULER: No.

18 THE COURT: Okay. Alright. So, other than that has anybody
19 tried to talk to you about this case or anything like that?

20 JUROR SHULER: Oh, no, no.

21 THE COURT: Okay. So, you've been doing what I told you to
22 do.

23 JUROR SHULER: Right.

24 THE COURT: Thank you, Mr. Shuler.

JUROR SHULER: Right.

1 (Whereupon, Juror Shuler
2 leaves the courtroom,
3 and Juror Glenn
4 enters the courtroom.)

5 THE COURT: Alright, Ms. Glenn, how are you?

6 JUROR GLENN: Good.

7 THE COURT: Ms. Glenn, this morning I asked everybody if
8 they had read anything in the newspaper about this case, heard
9 anything on the radio, seen anything on t.v. about this case.
10 Have you read, heard or seen anything about this case?

11 JUROR GLENN: No, sir.

12 THE COURT: Are you aware that the T and D had an article
13 about this case today?

14 JUROR GLENN: No, sir.

15 THE COURT: Okay. So, you don't know anything about it?

16 JUROR GLENN: Huh-uh.

17 THE COURT: You don't know anything about what the article
18 said?

19 JUROR GLENN: Huh-uh.

20 THE COURT: Okay. Has anybody tried to talk to you about
21 this case?

22 JUROR GLENN: No, sir.

THE COURT: Okay. So, you've been doing what I asked you to
do?

JUROR GLENN: Yes, sir.

1 THE COURT: Okay. Thank you, ma'am, I appreciate it.

2 (Whereupon, Juror Glenn

3 leaves the courtroom,

4 and Juror Odom

5 enters the courtroom.)

6 THE COURT: Hey, Ms. Odom.

7 JUROR ODOM: How are you?

8 THE COURT: I'm doing fine. Ms. Odom, earlier this morning
9 I asked everybody if they had read anything about this case,
10 heard anything on the radio about this case, seen anything on
11 t.v. about this case. Have you?

12 JUROR ODOM: No, I haven't read anything about it, but I
13 did, you know, when I picked up my paper out my box this morning,
14 open it and it was there, but I didn't read it.

15 THE COURT: You didn't read the article at all?

16 JUROR ODOM: No, I didn't read the article.

17 THE COURT: Alright. You don't know anything about what the
18 article said or anything like that?

19 JUROR ODOM: No, I don't.

20 THE COURT: Okay.

21 JUROR ODOM: No more than the headline.

22 THE COURT: Okay. You read the headline and realized it
23 was this case?

24 JUROR ODOM: Yeah, after I saw it, I realized that was it,
25 but I didn't read, I said, no, I couldn't read it.

1 THE COURT: Okay, thank you, ma'am. Has anybody tried to
2 talk to you about this case?

3 JUROR ODOM: Nothing but my twelve year old grandson tried
4 to ask me what we were doing. I said, I can't talk to you about
5 it.

6 THE COURT: Okay. So, you've been doing what I told you to
7 do?

8 JUROR ODOM: Yes, I have.

9 THE COURT: Okay. Thank you, Ms. Odom, I appreciate it.

10 JUROR ODOM: You're quite welcome.

11 THE COURT: Okay. Now you can let everybody go back into
12 the jury room. Okay, thank you, ma'am.

13 (Whereupon, Juror Odom
14 leaves the courtroom.)

15 THE COURT: Alright, Mr. Mellard, anything on followup?

16 MR. MELLARD: I just need a ruling on my motion, Your Honor.

17 THE COURT: Yes, sir. No, I understand. Mr. Mellard, I
18 have, as you know, you were here when I polled the jury. I don't
19 think the jury has read the article, seen anything about it or
20 anything like that with which to taint the jury pool, so I am
21 going to deny your motion for a mistrial.

22 MR. MELLARD: Okay.

23 THE COURT: Okay? Alright, now, let's see, is the State
24 ready to proceed?

25 SOLICITOR JUSTIS: The State's ready, Your Honor.

1 THE COURT: Okay. Is the Defense ready to proceed?

2 MR. MELLARD: Ready, Your Honor.

3 THE COURT: Okay. Alright. Tell them to come on back in.

4 (Whereupon, the jury enters the

5 courtroom, and the following

6 takes place in the

7 presence of the jury.)

8 THE COURT: Alright, Ladies and Gentlemen, I thank you for
9 following my directions, I appreciate it. Because this is a
10 serious matter, that was the reason I had to just double check
11 and ask everybody. Okay?

12 We're now getting ready to continue with the trial.

13 And Mr. Justis.

14 SOLICITOR JUSTIS: Thank you, Your Honor, at this time the
15 State would move to offer State's Exhibit Number Three into
16 evidence, that is the box that the rape kit came in, the CSC kit.
17 The State would argue that we laid a proper foundation with
18 several witnesses, including the SANE nurse, Annette Jensen, and
19 also with subsequent holders of that box, to include Kim Pugh,
20 the evidence custodian of the Orangeburg Sheriff's Office, and
21 when she got, I think her testimony was, when she got to SLED she
22 actually removed the contents of the box, and those were sealed
23 up separately, and that's what the, our SLED forensic scientist
24 testified to. And the actual box was given back to her to bring
25 back, and was actually sealed.

1 THE COURT: Right. Any objection from the Defense?

2 MR. MELLARD: Just the previous objection we made, Your
3 Honor.

4 THE COURT: Okay. Alright, I am going to allow that into
5 evidence. Okay? And I'm allowing it into evidence based on the
6 testimony of the nurse and Ms. Pugh.

7 SOLICITOR JUSTIS: That's correct, Your Honor.

8 THE COURT: Okay. Alright.

9 COURT REPORTER: State's Three.

10 (State's Exhibit Three
11 marked and filed.)

12 THE COURT: Alright, Mr. Justis, what's next?

13 SOLICITOR JUSTIS: At this time, Your Honor, the State
14 rests.

15 THE COURT: Alright. Now, Ladies and Gentlemen, I know
16 y'all have just got out here. The State has now rested its case.
17 There are some things that we have to take up outside the
18 presence of the jury after the State rests before I can bring you
19 back out to hear what the Defense is going to do in this case.
20 So, now I'm going to get you go back in the jury room. I'm sorry
21 you're not going to have any soft seats, I've heard that that is
22 something you like, but unfortunately, you'll be back in the hard
23 seats in the jury room. Okay? Y'all will be back in there for a
24 few minutes until I call you back out. Thank you.
25 (Whereupon, the jury retires

1 to the jury room and the
2 following takes place outside
3 the presence of the jury.)

4 THE COURT: Mr. Mellard.

5 MR. MELLARD: Your Honor, - - -

6 THE COURT: Yes, sir.

7 MR. MELLARD: --- at this time we'd renew our objection to
8 your finding that the defendant was competent to stand trial. We
9 just want the record to reflect that we still do not believe he's
10 competent to stand trial.

11 THE COURT: And I certainly understand your position, I
12 really do, but unfortunately, the, I had the Blair hearing
13 yesterday, there was no contrary evidence, and so, I am going to
14 deny that motion. But I will note your objection so it will stay
15 on the record.

16 MR. MELLARD: Yes, sir. And we would move for a directed
17 verdict on the criminal sexual conduct charge. It's our belief
18 that they have not presented enough evidence for this case to go
19 to the jury on that charge. And similarly, on the kidnaping
20 charge we would also move for a directed verdict, again on the
21 same grounds that we believe they have not presented enough
22 evidence for the case to go to the jury.

23 THE COURT: Alright, sir. And Mr. Mellard, I appreciate
24 your argument. I believe there is enough evidence in the record
25 for which the jury could find him guilty of both of these

1 charges. Okay? But I'll note your objection to my ruling so it
2 will be preserved on the record.

3 MR. MELLARD: Yes, sir.

4 THE COURT: Okay. Anything else?

5 MR. MELLARD: Nothing at this time.

6 THE COURT: Okay. Now, we will go ahead and take up the
7 matter of testimony.

8 MR. MELLARD: Yes, sir.

9 THE COURT: Okay. Alright, sir. Alright, Mr. Flood, I need
10 for you to raise your right hand, please, sir.

11 (Whereupon, Defendant Cedric Flood
12 is duly sworn.)

13 DEFENDANT FLOOD: Yes, sir, but I don't want to testify.

14 THE COURT: Okay. Well, that's what I'm going to ask you
15 about. Okay? But for purposes of answering my questions right
16 now, you're going to tell me the truth, is that correct?

17 DEFENDANT FLOOD: Okay, you can put your arm down.

18 (NOTE: Blank lines on this page do not indicate any part of
19 record has been omitted. Headers on testimony pages and hard
20 page breaks between testimony are now required by the Court. See
21 next ensuing page for sequential continuation of record.)

CEDRIC FLOOD - EXAMINATION, IN CAMERA, BY THE COURT

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1 (CEDRIC FLOOD, being first duly sworn,
2 testifies, in camera, as follows:)

3 EXAMINATION, IN CAMERA, BY THE COURT:

4 Q. Now, first of all I'm just going to go over, explain your
5 rights to you to make sure we have it clear on the record. If I
6 say something that you do not understand, let me know and I will
7 try to explain it to you in more detail. Do you understand
8 that?

9 A. Yes, sir.

10 Q. Okay. Now, we are ready for you to present your case if you
11 wish to, but you also have the right to claim the protections
12 given to you by the Fifth Amendment of the Constitution which
13 states in part that no person shall be compelled in any criminal
14 case to be a witness against himself. That means you cannot be
15 required to testify in this case. You have the right to testify
16 on your own behalf; however, no one can make you testify. This
17 is a personal right that no one can,-- and no one can waive this
18 right except you. If you decide to testify you will be subject
19 to the same rules that govern other witnesses, and you may be
20 examined and cross-examined on any relevant issue in this case.

21 In addition, if you have any convictions involving
22 dishonesty or false statements or for crimes punishable by
23 imprisonment for more than one year and the Court determines that
24 the probative value of admitting this evidence outweighs its
25 prejudicial effect to you, the Solicitor will be able to

1 introduce your record to attack your credibility.

2 If you decide to testify this decision on your part must be
3 freely, voluntarily, and intelligently made, with knowledge of
4 the protections given to you by the Fifth Amendment, and the
5 consequences of your decision to testify. If you decide not to
6 testify I will instruct the jurors that they cannot give the fact
7 that you did not testify any consideration whatsoever, and that
8 there is to be absolutely no prejudice to you because you did not
9 testify. It is left entirely up to you whether or not you
10 testify. Now, I understand you have already talked to your
11 attorneys about this?

12 A. Yes, sir.

13 Q. Okay. And I understand, -- even though you have talked with
14 your attorneys, do you understand that the final decision is left
15 entirely up to you?

16 A. Yes, sir.

17 Q. Okay. Do you need anymore time to talk to your attorneys or
18 to anyone else?

19 A. Yes, sir.

20 Q. Huh?

21 A. Yes, sir.

22 Q. Oh, you need some more time?

23 A. Yes, sir.

24 Q. You need to talk to them for another minute?

25 A. Yes, sir.

CEDRIC FLOOD - EXAMINATION, IN CAMERA, BY THE COURT

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1 THE COURT: Okay. I'll give you a minute. Do you want to
2 step out? Right out there for just a second.
3 (Whereupon, the defendant
4 and Defense counsel leave
5 the courtroom for a brief
6 conference, and then
7 return to the courtroom.)

8 THE COURT: Ms. Walker, are you ready?

9 COURT REPORTER: Yes, sir.

10 Q. Okay. Mr. Flood, you've had an opportunity again to talk
11 with your attorneys over your decision?

12 A. Yes, sir.

13 Q. Okay. Now, have you understood everything that I've
14 explained to you?

15 A. Yes, sir.

16 Q. Have you understood everything that your attorneys have told
17 you?

18 A. Yes, sir.

19 Q. Do you have any questions about what I have explained to
20 you?

21 A. No, sir.

22 Q. Okay. And I know, but just let me confirm, have you
discussed with your lawyers whether or not you should testify,
have you talked it over with them?

A. Yes, sir, not only that, but I just talked to them.

1 Q. Yeah, I know, you've already talked with them about it, is
2 that correct?

3 A. Yes, sir.

4 Q. Okay. Alright, sir. Now, the question I need for you to
5 answer, do you wish to testify in this case?

6 A. No, sir.

7 Q. No?

8 A. No, sir.

9 THE COURT: Alright, sir, I appreciate it. Thank you, sir.
10 And Mr. Mellard, it's my understanding that you don't have
11 any other witnesses?

12 MR. MELLARD: No, sir.

13 THE COURT: Okay. It's my understanding y'all have not put
14 in any evidence in this case?

15 MR. MELLARD: No, sir.

16 THE COURT: So, you're going to take the position that you
17 get to close?

18 MR. MELLARD: That would be our position, that we could
19 close last, yes, sir.

20 THE COURT: Alright, okay. What I'll do is, I will bring
21 the jury back in, and give you an opportunity to close on the
22 record. Okay. After that are y'all ready to go now, do y'all
23 need, are y'all going to need a few minutes? How long do you
24 want me to -- or do ...

25 SOLICITOR JUSTIS: What I think we'd like to do is just

1 briefly talk to you about the charges, if we can resolve that
2 issue - - -

3 THE COURT: Okay.

4 SOLICITOR JUSTIS: - and then when we come back out we can
5 just, we can just go.

6 THE COURT: Okay. Alright, okay, but let me bring the jury
7 out for just a second.

8 Yes, sir, Mr. Wise, you look like you wanted to say
9 something?

10 MR. WISE: Your Honor, thank you, Your Honor, now that we've
11 made that decision will you allow Mr. Flood's family to return to
12 the courtroom?

13 THE COURT: Oh, yeah, they can come in. I'm sorry, they can
14 come in now.

15 Anything else?

16 MR. WISE: No, Your Honor, thank you.

17 THE COURT: Okay. Anything from the State?

18 SOLICITOR JUSTIS: Nothing from the State, Your Honor.

19 THE COURT: Okay. Will you bring the jury back in?

20 (Whereupon, the jury enters
21 the courtroom, and the
22 following takes place in the
23 presence of the jury.)

24 THE COURT: The State has already rested their case, now
25 we're getting ready to begin with the defendant's portion of the

1 case.

2 Alright, Mr. Mellard, or Mr. Wise, whichever.

3 MR. MELLARD: Your Honor, the Defense rests.

4 THE COURT: Alright. Ladies and Gentlemen, the Defense has
5 rested in this case. That means you have now heard all of the
6 testimony that you are going to hear in this case. Even though
7 you've heard all the testimony you're going to hear in this case,
8 you still have to hear the closing arguments of the attorneys and
9 my charge on the law, and until you have heard that you cannot
10 begin your deliberations in this matter or begin talking about
11 this case on anything that you've heard so far.

12 Now, since we're now getting into the transition phase of
13 going to the closing arguments and then to the charge on the law
14 it's going to take us just a few minutes to get everything in
15 order to do that, so I'm going to ask you again, now, I'm going
16 to ask you to go back into the jury room. It's kind of like,
17 stand up, sit down when you go to a football game or anything
18 like that. But now, again, you cannot talk about this case.
19 I'll ask y'all to go back in the jury room for a few minutes
20 while we get everything straight so we can begin closing
21 arguments. Okay? Thank y'all.

22 (Whereupon, the jury retires
23 to the jury room, and the
24 following takes place out of the
25 presence of the jury.)

1 THE COURT: Do y'all want to go back in there and talk about
2 the charges?

3 SOLICITOR JUSTIS: Yes, sir.

4 THE COURT: Okay. Y'all come on and we'll go back in there.

5 (Whereupon, the Court
6 and the attorneys have a
7 conference in chambers,
8 off the record, and then
9 return to the courtroom.)

10 THE COURT: Alright, Ms. Harry Dot, we're going to put
11 something on the record, and we're not going to have anybody in
12 the courtroom while we put something on the record. So, I'm
13 going to ask everybody not involved in this case to go outside,
14 clear the courtroom for a minute.

15 (Whereupon, everyone except
16 the Court, attorneys, defendant
17 and court reporter leaves the
18 courtroom, and the following
19 takes place in camera.)

20 (NOTE: Blank lines on this page do not indicate any part of
21 record has been omitted. Headers on testimony pages and hard
22 page breaks between testimony are now required by the Court. See
23 next ensuing page for sequential continuation of record.)

CEDRIC FLOOD - RE-EXAMINATION BY THE COURT

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1 (CEDRIC FLOOD, Having previously been
2 duly sworn, testifies as follows:)

3 RE-EXAMINATION BY THE COURT:

4 Q. Okay. Alright, Mr. Flood, I just want to make sure -- your
5 attorneys have asked me to make sure that I went over some
6 things, I put some things on the record just to make sure that
7 you understood what was going on here today. Okay?

8 A. Okay.

9 Q. And Mr. Flood, do you understand that you are charged with
10 First Degree Criminal Sexual Conduct, and Kidnaping?

11 A. Yes, sir.

12 Q. Okay. It's also my understanding that you pled guilty to
13 those same charges in Nineteen Ninety-four, is that correct?

14 A. Yes, sir.

15 Q. Okay. And you served some time with the Department of
16 Corrections?

17 A. Yes, sir.

18 Q. Okay. Now, up to the time that we got to this trial today,
19 at different times your attorneys talked to you about pleading
20 guilty?

21 A. Yes, sir.

22 Q. Okay. And you chose not to plead guilty, and go through
23 this trial, is that correct?

24 A. Yes, sir.

25 Q. Okay. I want to make sure you understand that this case is

CEDRIC FLOOD - RE-EXAMINATION BY THE COURT

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1 now getting ready to go to the jury.

2 A. Yes, sir.

3 Q. The jury is going to make a determination of whether you are
4 guilty or not guilty. Okay. And I have no idea what they're
5 going to do.

6 A. Yes, sir.

7 Q. Okay. But I need to make sure you are aware of the fact
8 that if you are found guilty you know that you are facing life
9 without the possibility of parole?

10 A. Yes, sir.

11 Q. Okay. Now, that's only going to be if I determine there are
12 some issues in the Nineteen Ninety-four case about a medical
13 evaluation?

14 A. Yes, sir.

15 Q. Okay. So, that's only going to happen if I feel like that
16 you were properly evaluated in Nineteen Ninety-four. Do you
17 understand that?

18 A. Yes, sir.

19 Q. Okay.

20 THE COURT: Anything else, Mr. Mellard?

21 MR. MELLARD: No, sir.

22 THE COURT Okay. Alright, thank you, Mr. Flood.

23 Alright are we about ready to -- oh, yeah, I'm sorry, yeah,
24 I'm sorry. I didn't mean to stop you.

25 MR. MELLARD: We've rested.

1 THE COURT: Yes, sir.

2 MR. MELLARD: And so, at this time I'd renew our motions for
3 directed verdict on the charge of criminal sexual conduct, first,
4 and kidnaping, Your Honor.

5 THE COURT: Alright, sir. And Mr. Mellard, I am going to
6 again deny your motions.

7 MR. MELLARD: Yes, sir.

8 THE COURT: And I'll note again for the record your
9 objection to my ruling on your motions.

10 MR. MELLARD: Yes, sir.

11 THE COURT: Alright, anything else?

12 MR. MELLARD: Nothing, Your Honor.

13 THE COURT: Okay. Are y'all ready for the jury, is the
14 State ready to do its closing?

15 SOLICITOR JUSTIS: Yes, Your Honor.

16 THE COURT: Okay. Is the Defense ready to do its closing?

17 MR. MELLARD: Yes, sir.

18 THE COURT: And you keep looking at Mr. Wise, is he going to
19 do it?

20 MR. MELLARD: He's going to do the closing, that's all.

21 MR. WISE: I'm sorry, Your Honor.

22 THE COURT: You are. Is the Defense ready?

23 MR. WISE: We are.

24 THE COURT: Okay. Alright, you can go ahead and bring them
25 back in.

1 (Whereupon, the jury enters
2 the courtroom, and the
3 following takes place in the
4 presence of the jury.)

5 THE COURT: Alright, Ladies and Gentlemen, we're ready to go
6 into the final stages of the trial. We are now getting ready for
7 y'all to hear the closing arguments of the attorneys and then I'm
8 going to charge y'all on the law. Y'all have been very attentive
9 during this trial and I appreciate it. These closing arguments
10 are indeed arguments. These are the attorneys who are trying to
11 convince you to look at the case in the way that they want you to
12 look at this case. Okay? After they have made their closing
13 arguments I will charge you on the law to be applied in this
14 case, and then I will go over the verdict forms, and then I will
15 excuse you to go back to the jury room. At that time I will not
16 get you to begin your deliberations yet because I will have to
17 review my charges on the law with the attorneys and make sure
18 that you were properly charged on the law. If there are no
19 corrections to be made to my charges then the bailiffs will come
20 back into your jury room with the verdict forms and with the
21 evidence and you will be asked to begin your deliberations at
22 that time. Okay.

23 Alright, let's see, Mr. Justis, are you ready to close?

24 SOLICITOR JUSTIS: Yes, Your Honor.

25 THE COURT: Alright.

1 SOLICITOR JUSTIS: May it please the Court.

2 THE COURT: Yes, sir.

3 CLOSING ARGUMENT BY SOLICITOR JUSTIS:

4 SOLICITOR JUSTIS: September Twenty-ninth, Two thousand and
5 Nine, that's the day the nightmare began for Ms. Minor
6 seated right there. It began for her and it began
7 for her son. She was threatened, he had a gun, this gun pointed
8 right at her, at her chest, at her head, at her back. She was
9 taken into her house, she was forced into her car, in the back of
10 her car, the trunk, not the seat, right there, in the back of her
11 van, like a piece of luggage. And then she was taken here, her
12 own personal house of horror. And all this was done by that man
13 right there, Cedric Flood. He's the one that did it.

14 Now Ladies and Gentlemen, I want to thank you for your
15 service the last couple of days. I know it hasn't been an easy
16 trial to listen to. Some parts drawn out, other parts things you
17 don't want to hear about, things that people don't want to
18 testify about, but I want to thank you for your service.

19 You took an oath. You took an oath to do two things, to
20 decide this case on the law and the facts, the evidence. The
21 Judge explained to you, he's the judge of the law, you're the
22 judge of the facts and the evidence. And right now I want to
23 talk to you a little bit about the law and then we'll talk about
24 the evidence in this case.

25 You heard, as Mr. Bell said in his opening statement, he

1 briefly covered the law, the first thing Mr. Flood is charged
2 with is kidnaping. And quite simply, it's unlawfully seizing,
3 confining, inveigle, which means like to lure, decoy, kidnap,
4 abduct or carry away any other person by any means whatsoever
5 without the authority of law. Seize, for example, grabbing
6 Minor by the shirt with a gun in her back. Confinement,
7 taking these handcuffs and locking them to a bunk bed. Kidnap, I
8 think that's pretty self-explanatory. Abduct, carry away, he
9 took her to his house, he took her to his sister's house, he took
10 her to the bus stop to pick up her six year old child and then
11 brought both of them back. Any other person, we talked about
12 Minor. By any means whatsoever. he doesn't have use a gun,
13 but he used this gun. Without the authority of law, in other
14 words, she wasn't under arrest, he didn't have any authority to
15 do that.

16 Next he's charged with criminal sexual conduct in the first
17 degree. And that's real briefly, as Mr. Bell said, a sexual
18 battery, which in this case, was sexual intercourse. You heard
19 . Minor testify, not once, not twice, but three times he
20 had sexual intercourse with her against her will, three times.
21 With another person, Minor. With one of the following
22 circumstances -- one, not all three, but one, the State only has
23 to prove one: The first one is use of aggravated force.
24 Aggravated force can be met by using a deadly weapon, and the
25 Judge will charge you on what a deadly weapon is. The State

1 would contend that this is aggravated force. There can be other
2 forms of force, too. The victim is also -- or the victim is also
3 a victim of a forcible confinement, kidnaping, and it lists some
4 other crimes, or any other similar offense. I've already talked
5 to you about the kidnaping, he's also charged with kidnaping.
6 And then, third, the actor causes the victim without their
7 consent to be mentally incapacitated, that's what he's doing.
8 Some kind of drugs or alcohol, the State's not contending that,
9 there's no evidence of that in this case. But the first two, the
10 State would contend there has been evidence of both of those, not
11 just one, but both of those.

12 Those are the two crimes that he's charged with.

13 Now, the evidence you've heard in this case, or the evidence
14 in this case comes in two forms: Number One is testimony from
15 that witness stand. People come here, they put their hand on the
16 Bible and take an oath to tell the truth, the whole truth, and
17 nothing but the truth. The other form of evidence is physical
18 evidence, like this, and these, and all this stuff, that's
19 physical evidence.

20 And when you heard people testify on the stand one thing the
21 Judge will tell you about is, you judge their credibility, and
22 Mr. Bell talked about that, how you judge people's credibility.
23 You deal with people every day, when people tell you stuff you
24 make evaluations, do I believe them, you know, what are the
25 factors you look at? You know, are they forthright? You know, do

1 they have the ability to testify about the facts they're
2 testifying about? You know, do they have that ability to witness
3 what they're testifying about? Do they have any bias, do they
4 have any reason to lie? Those are the things that you weigh in
5 your mind when you talk about credibility of the witnesses. And
6 you may believe all of the person's testimony, the Judge will
7 tell you this, some of a person's testimony, or none of it,
8 that's for you to decide because you're the judge of the facts.

9 Now, reasonable doubt. You heard that the State must prove
10 the case beyond a reasonable doubt. Let me tell you what that
11 doesn't mean, it doesn't mean proof beyond any and all doubt, it
12 has to be a reasonable doubt. So, when you look back at the
13 evidence and think back about the testimony, ask yourself, is it
14 reasonable? Is it reasonable? You know, some people might say,
15 might not believe that the earth revolves around the sun, but is
16 that reasonable, would that be a reasonable belief? You must be
17 firmly convinced, that's what reasonable doubt is, firmly
18 convinced, to find him guilty.

19 Now, the Defense, they'll speak after me, and I don't know
20 what they're going to say, I can only guess what some of their
21 arguments might be, but they would want you to believe that
22 because Minor and Mr. Flood were boyfriend-girlfriend,
23 or ex-boyfriend-girlfriend, that this wasn't a rape, this wasn't
24 a kidnaping, this is what ex-boyfriends and girlfriends do, that
25 it's okay because they were ex-boyfriend and girlfriend. Somehow

1 they brought up about fingerprints and everything, was his
2 fingerprints in the car, and things like, they're ex-boyfriend
3 and girlfriend. I'm sure they probably were.

4 They might, they also inferred that this is a BB gun, it's
5 not a real gun, just a BB gun. What did Lieutenant Carter say?
6 He almost killed a man over a BB gun one time. And that's a
7 police officer that's been in law enforcement for twenty years,
8 almost, he's been a police officer almost as long as
9 Minor has been alive. Is it reasonable that she wouldn't
10 believe this might be a real gun?

11 Fake handcuffs, oh, she could have just got out of these,
12 they're fake handcuffs, you know, they're fake handcuffs because
13 they have a little latch, something you buy in a toy store or
14 something. They're metal, they have a latch, and when you press
15 that latch -- you'll have these back there, you can play with
16 them. You can open them up. They're fake handcuffs so she
17 couldn't have been confined because they're fake. Is that
18 reasonable? What did Lieutenant Shumpert say? When he first saw
19 them he thought they were real, because they're shiny and they
20 look almost like real police handcuffs from a distance. But when
21 he got close, this is another officer with a lot of experience,
22 when he saw them then he realized. But that's a law enforcement
23 officer with thirteen, fourteen years experience, not a young
24 twenty some odd year old lady that has no law enforcement
25 experience. But thank God, they were fake, she was able to get

1 out of them.

2 But you know what wasn't fake? This duct tape, that's not
3 fake duct tape, that's real duct tape, and it sticks. And you'll
4 have all this duct tape they found back there. And you'll get to
5 look at it and touch it and realize that, remember, Lieutenant
6 Carter, when he was trying to pull it out of the bag, how good it
7 stuck to the bag. Well, I'm sure it stuck to . Minor 's
8 face pretty good, too, with hair on it. And notice, notice in
9 the nurse's report, which is in evidence and it will be back
10 there, notice where some of her, she had an injury right behind
11 the ear, right by the hair line, had some redness or a mark.

12 Something else they might assert to you is that she could
13 leave at anytime. Why didn't she leave? Why didn't she just say,
14 I'm out of here, and take off, go next door, call the neighbors?
15 But I contend to you, it's a small trailer. He didn't leave her
16 sight, he had that gun with him all the time, she said he even
17 put the gun down real quick so he could take his clothes off, and
18 picked it back up. While he was having sex with her he was
19 holding the gun to her. So, she's supposed to -- is it
20 reasonable that she would tell her son, oh, just go run and get
21 help? I know he has what I think might be a gun, but just go run
22 and go get help.

23 And then, finally, one of the other things they kind of
24 inferred is that there was no vaginal tear and no vaginal
25 bruising when they talked to the nurse, when the nurse testified.

1 And the nurse said, that's not unusual. And if you look at what
2 Minor said, she never alleged that he brutally raped
3 her. He had sex with her, while pointing this at her.

4 Now, there may be many other things that they might suggest
5 to you that shows that their client is not guilty, but ask
6 yourself when you hear these, does it make sense, is it
7 reasonable?

8 Now, I told you, we talked about the law, now let's talk
9 about the evidence. Mr. Mellard in his opening statement made
10 the comment that presumption of innocence is something that the
11 defendant is entitled to. When we start the trial and when the
12 trial goes on he has this presumption of innocence, and he's
13 absolutely right. When he said that the presumption of innocence
14 is at the beginning, and the end of a fair trial, that's what he
15 said, and I agree with him. So, let's look at the beginning of
16 this trial.

17 Minor testified, and what she testified to, you
18 heard her, ex-boyfriend, she had broken up with him. He meets
19 her at her home when she's coming back from the school bus stop.
20 And I'm not going to go through all the details, but he takes her
21 hostage, eventually takes her back to his place, rapes her once,
22 twice, three times. This is something that lasts from about
23 seven or eight o'clock in the morning until late in the
24 afternoon, all day long she's going through this. She gets duct
25 taped, duct tape over her eyes, and she even testifies that after

1 he duct taped her eyes and her mouth where she couldn't see,
2 couldn't speak, she heard him leave the room, then come back,
3 leave the room, come back, and eventually he left the room, got
4 her child, her six year old child, and then left in the car. And
5 it was at that point she felt he was gone, she could try to get
6 out, and she did. And what did she do? She immediately went
7 next door and called nine one one. She didn't wait a day, she
8 didn't wait two days, she did it immediately. And what were some
9 of the threats he told her? I'm going to kill you, you're not
10 leaving, your son is going to miss you. Those are the kind of
11 threats to her. That's what she testified to. That's the
12 evidence in this case. And then he's supposed to be leaving for
13 work, he takes the kid, he leaves for work, tells her, I'll be
14 back. That's why he ties her up so she can't go anywhere. But
15 where did they find him? Is he at work? No. He's at his
16 sister's house. And where is he? He's coming from the woods
17 when the officer pulls up. The car is parked at the house, or
18 the van, and he's coming from the woods.

19 And something I must show you, and this is very important,
20 in South Carolina, criminal sexual conduct, testimony of the
21 victim does not need to be corroborated. This is the law in
22 South Carolina. The testimony of the victim need not be
23 corroborated in prosecutions under Section -- these are, includes
24 criminal sexual conduct in the first degree. That means her
25 testimony alone convicts him for criminal sexual conduct. The

1 State doesn't need anything else. When she took the stand and
2 she told this story, that's enough to convict him. That's what
3 the law says. The evidence shows that her testimony alone
4 convicts him, but we've got more than that. I'll just leave this
5 up here. We've got more than that.

6 Let's go to the middle of the trial. We did the beginning,
7 what's the middle? And in the middle of the trial we had a
8 nurse, some law enforcement, people testified. And what did the
9 nurse tell us? She told us that she was upset when she came in
10 when she first talked to her, she could tell she was upset. She
11 noticed some white bands, she called them. And I think the term
12 she used was like if you pull a band-aid or tape off. She
13 noticed them on her skin. And it's in the report. It shows
14 where that was, around her legs. And then she also talked about
15 redness, redness on her wrists, redness on the wrists.

16 And then law enforcement, what did they say? Lieutenant
17 Shumpert, she was upset, she had one cuff on her, he had to take
18 the other cuff off. You know, it was hanging, it was on one
19 wrist, he had to take them off of her. She's sitting in the
20 ambulance like that and he took the other one off.

21 And Lieutenant Carter, he was the individual that did the
22 search warrant, the forensic guy. And he gets a report that she
23 was duct taped, there was a gun used, so what does he do? He
does the search warrant, he takes pictures, and you'll have all
these pictures, that's why we had to introduce them all into

1 evidence so that you can have them back there to look at. He
2 takes these pictures and he collects evidence. He collects the
3 gun. And the funny thing is, the Defense would have you believe
4 that the gun and all this stuff is, like, not where the rape
5 happens, on the other side of the house. But the interesting
6 thing is, the gun and the victim's phone are located in the same
7 chest of drawers. One is in one drawer, one is right below it.
8 You can look at the pictures and see it. Sure, it's on the other
9 side of the house, but remember those couple of times after he
10 tied her up and blind folded her and she can't talk, he's leaving
11 the room and coming back? I submit to you, that's when he's
12 hiding the gun, that's when he's hiding her phone, he doesn't
13 want her to find the phone if she does get out. The evidence,
14 it's all spread out because if she gets out, she's tearing this
15 stuff off, and she's heading towards the door to get outside, get
16 to the neighbor and call the police.

17 The bottom line is, when they conducted that search warrant
18 they found what they were looking for. When she took the stand
19 and said, I was duct taped, they did a search warrant and guess
20 what? They find duct tape, not only a roll of duct tape but used
21 duct tape. That's called corroboration, something I don't have
22 to have for the law but we've got it in this case. Law
23 enforcement and this nurse are corroborating her story.

24 Finally, because remember her testimony alone convicts him.
25 Finally, the end of the trial, what did we have at the end of the

1 trial? Well, we had a forensic scientist from SLED. You heard
2 all throughout the trial people talking about these swabs, and
3 they packaged this and checked all that, and finally at the end
4 we found out what all that was for, because they tested it. They
5 got a known sample from the victim and they got a known sample
6 from Mr. Flood. And what did they find? That there was semen in
7 her vagina when they did the swab, and guess who's semen it was?
8 His. In fact, the expert witness testified, the result, one in
9 fifty-one quadrillion, that's fifteen zeros after the fifty-one.
10 If you took the entire population of the earth, as she testified
11 there's about six to seven billion people on the earth right now,
12 you would have probably seven to eight million earths to find a
13 DNA that matched. Mr. Flood's a lucky man, his matched. One in
14 fifty-one quadrillion.

15 Now, they would have you believe that, well, there's no
16 proof on when that semen got there. The only evidence in this
17 case of him having sex with the victim is on September Twenty-
18 ninth, when he kidnaped her and raped her once, twice, three
19 times, the only evidence.

20 Testimony of the victim need not be corroborated. Well, we
21 had her testimony, we've got law enforcement, we've got the
22 nurse, and now we have science. I submit to you, not only is
23 that beyond a reasonable doubt, that's beyond any doubt, Ladies
24 and Gentlemen.

25 You know, when the facts are not on your side you argue the

1 law. When the law is not on your side you argue the facts. If
2 neither is on your side, just confuse the jury. Minor
3 came into Court yesterday and she tried to speak loudly. You
4 know, we had to play with the microphones, very soft spoken. But
5 you, the jurors, will have the loudest voice. When you go back
6 and deliberate, when you come back with your verdict you will
7 have the loudest voice in this courtroom. And I ask you to do
8 what the evidence, the evidence that came from this witness stand
9 and these exhibits, the evidence, do what the evidence compels
10 and justice demands, And that is, find Cedric Flood guilty of
11 kidnaping and criminal sexual conduct in the first degree of Ms.

12 Minor

13 Thank you.

14 THE COURT: Thank you, Mr. Justis.

15 Alright, Mr. Wise.

16 MR. WISE: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. WISE: Do I have permission to move this podium?

19 THE COURT: Sure. Get comfortable.

20 MR. WISE: Thank you.

21 CLOSING ARGUMENT BY MR. WISE:

22 MR. WISE: Mr. Mellard and I have been representing Cedric
23 for a little while. As we got prepared to try the case and come
24 before you and help him out, people have come to me and they have
25 said, what's this case about, what happened? And it occurred to

1 me last night that people, and maybe some of you believe that I'm
2 going to get up here and tell you what happened, I'm going to
3 tell you a story about what happened, but I'm not. Because I
4 wasn't there, and I don't know. But I do submit to you that, I
5 submit to you that whatever happened in the trailer was not
6 exactly how Minor said it happened. I submit to you
7 that there are some things about this situation that as I looked
8 at it then and looked at it since and look at it now cause me
9 some concern. They should cause you to have a reasonable doubt.
10 Let's talk about them.

11 I think the problem, and I couldn't put my finger on it, but
12 I think the problem crystalized for me when Lieutenant Carter
13 testified. And he was testifying and then it hit me, he said he
14 got information about what happened to Minor, and then
15 they did their investigation. In other words, he goes to the
16 scene, the police go to the scene, they hear what the allegation
17 is, they accept that as true, and then everything they do follows
18 from that. Their investigation tracks what they were told
19 happened versus having any skepticism about what happened.

20 Now, Mr. Justis has said, rightfully so, that the State does
21 not have to corroborate what Minor says, and that's the
22 law, they don't have to. And he said it so often that it got me
23 thinking about it. They didn't corroborate what she said.
24 That's why he wants you to understand that they don't have to.
25 There was no attempt made to analyze, take a step back from this

1 situation, say, okay, let's take a look, look at it from all
2 sides. And I think if they had done so they would have seen that
3 this could not have happened exactly the way they were led to
4 believe it happened. There are too many things that just didn't
5 fit together.

6 Let's start with the forensic evidence. Mr. Justis talked
7 about some of it, but remember this, when the nurse looked at
8 Minor 's vagina what did she see? She saw what she described
9 as a normal vagina. She saw not just no bruising, not just no
10 tears, she didn't even see any signs. She looked, that's what
11 she does, that's what she's trained to do. Now, remember why
12 that's significant, because the testimony is that Mr. Flood had
13 sex with Minor three times, and that at no time did he
14 use a condom. So, and she, she talked about, you know, what
15 happened, and I'm not going to go into all that, but you heard
16 what happened. Based on what she said you would have expected to
17 find some sperm even if it's dead sperm. There would be
18 something there. If you look at her report, and the report is
19 now in evidence, at the top of the report her physical
20 examination, she has a box checked, no findings. There was no
21 findings because there was nothing there. Now, I submit to you
22 that you can't have this kind of report as a result of what she
23 said happened. The two don't line up. Remember, I asked one of
24 the witnesses, but, I think it was the nurse, about the gray
25 briefs that Minor was wearing. She said that she gave

1 them to one of the police officers, and then I asked about any
2 DNA in the gray briefs, and because she gave them to the same
3 nurse I just assumed that she was wearing them. But there was no
4 sperm, no semen in those briefs. I asked about the, I asked the
5 nurse about vaginal combing. Remember, she talked about how they
6 do that and why they do that. And then I asked, were there any
7 hairs from Mr. Flood in that combing, and the answer was, no. No
8 hair. I asked Lieutenant Carter, any DNA in the bedding in the
9 house? Any DNA? They didn't come forward with any DNA. Now, as
10 we know, and we don't dispute, there was sperm found in her
11 vagina. But we also know that sperm can live in a vagina for
12 days after sexual intercourse. The thing that got my attention
13 was her comment that -- the nurse's comment that after her
14 examination Minor simply went home. I think that says
15 something about what happened.

16 Now, let's talk about the BB gun. It's very easy to say Mr.
17 Flood used that gun, and as Mr. Justis said they don't have to
18 corroborate it. But as I say, the police accepted that as true.
19 She said, it must be true. So, they made an attempt to
20 corroborate what she said. Quite simply, fingerprinting the gun
21 -- the State wants you to believe that Mr. Flood used that gun.
22 The easy way to resolve whether he did or whether he didn't was
23 to take it -- they find it in the drawer, dust it for
24 fingerprints, and then you know. As we sit here right now, the
25 only thing we know for sure about this is that there was no real

1 gun. We know that. I submit that if you look at this you know
2 it's not a real gun. Lieutenant Carter and I got into a little
3 back and forth, but he basically said he looked at it and he knew
4 it was a BB gun when he looked at it. She got a good look at it,
5 she knew what it was also. If you look at the photo of the BB
6 gun, one of the things you will see is -- and remember what
7 Lieutenant Carter said, he photographed things exactly how he
8 found them, he said this -- oh, you'll see this. The gun was
9 found like that. That's how he found it. That's what
10 Minor said. It lends itself to recognizing that it's not a
11 real gun.

12 Let's talk about the handcuffs for a minute. The same issue
13 I think with the handcuffs. Minor said, he handcuffed
14 me. She had one handcuff on her wrist. Everybody assumed he
15 handcuffed her. A simple way to corroborate that, fingerprints.
16 Then you know. And we don't have that.

17 The other thing she testified to was that she was handcuffed
18 behind her back. And if you watched as Mr. Justis was doing his
19 closing, he had his hands, put his hands behind his back, and he
20 rocked back and forth. And it kind of made the point that if
21 somebody had been handcuffed the way she said she was, the effort
22 that she had to go through to get out of these handcuffs would
23 have produced more than a little redness, a one to two inch mark
24 of redness on her wrist. When they found her she had one
25 handcuff on. When I listened to the testimony, and maybe it's

1 just the skeptic in me, everybody says she took one off, but I
2 wondered if one was not put on. In any event, when you look at
3 these handcuffs, the bruising, the lack of fingerprints, you have
4 to be concerned about whether they were actually locked. Much
5 like the duct tape.

6 There was no duct tape found in the room where they said
7 this happened. Well, let me rephrase that, let me rephrase that.
8 The roll of duct tape, the roll was not found in the room where
9 they said this happened. To believe it happened the way they
10 said, the way Minor says, you'd have to believe that
11 somebody would do this, tape her with the duct tape, and then
12 walk away and find a place to put it, take it in another room.
13 And I submit that that's not likely how it happened. And also,
14 if you look at the duct tape, this is how they said they found
15 it. Now, what you have to believe is, with all that was going on
16 with his attempt to tie her up or to tape her up, he would nice
17 and neatly just cut this duct tape, and you can essentially look
18 at it, that's a nice, neat tear there, and then place it neatly
19 in another room. I submit to you, that's a good indication that
20 maybe this duct tape wasn't involved in that. No tape hanging
21 off. I asked about fingerprinting this duct tape, it wasn't
22 done. Why not? And I understand that, I'm not being critical.
23 She said that he used the duct tape, they found the duct tape, so
24 that's pretty much the beginning and the end of it.

25 There was this small piece of duct tape that caught my

1 attention that was found in the bath room. And I just wondered
2 about that, because if you remember, there was no testimony about
3 anything being in the bath room, going in the bath room. Mr.
4 Flood was never in the bath room, she never mentioned him using
5 the bath room at all. She never said she went in the bath room.
6 But there was duct tape in the bath room, and they bring that in
7 as an example of what they found there.

8 I thought about and listened to the evidence about the duct
9 taping of the legs, and I wondered, and that's why I asked them
10 about, asked Lieutenant Carter about the amount of duct tape
11 found. They said they found seven inches. So what they'd have
12 you believe is that seven inches of duct tape, a little more
13 than, I think they said ten inches, a little less than a foot,
14 that Mr. Flood attempted to bind up somebody to keep them from
15 leaving. I submit, it just didn't happen, it just didn't happen.

16 I asked about any hair or skin or saliva or DNA from any
17 duct tape, any of the pieces of duct tape you have in front of
18 you. There is none, nothing, no hair, no skin, nothing. I
19 submit to you that if this tape were wrapped around her head as
20 she would describe you would find something on the duct tape.

21 We talked a little bit about the hair on the duct tape, and
22 I guess, like what was testified today, if you see a piece of
23 duct tape that has hair on it, and I just asked the simple
24 question, did you check it? What kind of hair is it? Is it
25 human hair? Okay, is it her hair? We don't know, but we assume,

1 they assume, and want you to assume, duct tape, she says she was
2 duct taped, she says it's wrapped around her head, it must be her
3 hair. Just a little skepticism, just a little extra effort, just
4 a little effort to corroborate something that she says. If she
5 says so, it must be so. As Lieutenant Carter said, what I was
6 told is what I did.

7 If you look at all the duct tape that's involved, the two
8 pieces in the bedroom and the pieces outside, all that duct tape,
9 I submit to you, you can take it back and look at it, lay it out,
10 there's not enough duct tape there to do what the State alleges
11 was done to her. It's just not there. And the reason I think
12 it's not there is because this duct tape was just not used in the
13 way they said it was used.

14 I asked Ms., the nurse about bruising around the face
15 because I was concerned, if somebody wraps your face in duct tape
16 you think there would be some bruising. There was no bruising
17 around her face or her eyes from the duct tape. A little redness
18 I think is what she testified to. I submit to you, if somebody
19 has done that to you, done that to somebody, there would be
20 extensive bruising from that, especially if, especially if
21 somebody were trying to pick that duct tape off in a hurry.

22 Remember how Minor talked about moving her legs and then
23 the duct tape came off? I submit that you can't really get duct
24 tape off your legs that way. I've never had my legs duct taped, I
now, but I would submit to you that if somebody has their legs

1 duct taped and they're wiggling the way she described it, there
2 would be, again, some blood or some skin or at least some DNA on
3 the duct tape. There would be more bruising on the duct tape.
4 there is no blood or skin or DNA on it here. There was this
5 testimony about her legs, I think Mr. Justis referred to it,
6 looking like a band-aid had been pulled off, or I think he said a
7 band-aid might have been pulled off. The simple answer is to
8 check that area to see if there is any adhesive on her legs. It
9 takes a couple of seconds. But then you know, then you know.

10 I expected to see the shirt. Minor was wearing.
11 They don't have to corroborate, but you remember, if you just
12 listened to the testimony as I did, she's running, he's pulling
13 her shirt, a couple of different times he's pulling her shirt. If
14 it's not torn you would at least, at least expect to see a shirt
15 that was stretched, because that's what would happen if somebody
16 is pulled and pushed and restrained the way it is alleged that
17 she was. It appears that the police just never asked about it.
18 It was just never an issue.

19 Let's talk about her injuries for a little bit, just a
20 little. There appears to be a lack of physical injuries in this
21 case. Why do I say that? Number one, it starts with the nurse
22 saying there are no injuries, but also, Minor said she
23 wasn't injured. You don't have to corroborate it, but a little
24 skepticism. You know, I hear what you're saying, I do, but
25 that's a lot of activity, a lot of violence the way you're

1 describing it for you to end up with no injuries. And I submit
2 that that's a good indication that this attack wasn't the kind of
3 violent attack the State would have you believe it was, that
4 there was really, it just really didn't happen that way.

5 Lieutenant Washington talked about finding a phone --
6 Lieutenant Carter talked about finding a phone. I asked if he
7 had checked the phone, picked it up, opened it up, see who she
8 called, see who called her. Remember, we're talking about an
9 incident involving an ex-boyfriend. Just, I think a little bit
10 of just curiosity, you'd want to know, well, did the two of
11 these, ex-boyfriend, ex-girlfriend, have any contact with each
12 other? Might that, you know, be important for us to know?
13 Didn't ask, didn't check, don't know, didn't care.
14 Understandable, because she said this is what happened, so that's
15 what they go with.

16 Now, you'd have to -- I'd like you to take a moment to look
17 at what they say Cedric did. And back in the beginning of the
18 trial Mr. Bell said that you have to use your common sense. And
19 I'd like you to use your common sense to think about whether or
20 not Cedric would do the things they allege that he's done. Let's
21 start with this, . Minor says that he drove around in her
22 car to get tags for a car when they were driving her car, which I
23 just assume had tags on there. Would he do that, after what they
24 say he had done? Would he drive around for that reason? Which
25 really is no reason.

1 The other thing they say he did was that he took
2 Minor to the bus stop and waited for the bus to pick up her
3 child. So, you have Minor and Cedric in a car waiting
4 for the school bus to come. And then, I wanted to talk to you
5 about that, I wondered would a mother do that? Would a mother
6 pick up her son and then take him to a place where a man has
7 already threatened to kill her, would a mom do that? I don't
8 think so. Obviously, you heard it all, she never tried to call
9 for help, never blew the horn, never tried to run, but I submit
10 that that shows it probably just didn't happen the way she says
11 it did.

12 To believe that Mr. Flood did the things that the State
13 alleges he did you have to believe that after the, after he
14 attacked he allowed her to take a nap, and she took a nap, and
15 that he also took a nap. And that she never tried to leave, and
16 she never tried to get the gun. All things you've heard, and you
17 understand at this point. You have to believe that while this
18 thing was going on between him and Minor and the son was
19 in the house, he goes into the kitchen and he cooks. He's making
20 food. You have to believe that he would take Minor into
21 a room, that she starts crying, that her son is waiting outside
22 and that he attacks her in that situation. That's hard to
23 believe. I don't think anybody would do that, that he would go
24 inside and outside leaving the son in the house, in and out, back
25 and forth, that that would happen. I Just don't think it makes

1 sense.

2 One of the things that I just had to scratch my head about a
3 little bit was this allegation that he would viciously attack his
4 ex-girlfriend and then take her son to a play date. I just don't
5 think that's logical.

6 But I think, I think this, if you want to understand what
7 happened here, look at Cedric's actions when he encountered
8 Sergeant Hunter. When he saw Sergeant Hunter what did he do? He
9 did nothing. He didn't try to run, didn't try to flee, indeed,
10 he walked right up to him. That, those are not the actions of
11 someone who has just committed a crime the way the State alleges
12 he did. He walked up to the sergeant because he knew he had done
13 nothing wrong and he had nothing to hide. And that's why I say
14 that the police should have done a little more about this
15 situation, to investigate or corroborate, because you have a guy
16 that's alleged to have done what he did, who seems to be not at
17 all concerned about interacting with the police. And the thought
18 is, well, maybe since he's not showing any flight, maybe we need
19 to look at this a little more.

20 Now, Mr. Justis said that I would say things, and you have
21 to think about what I'm saying and if it's reasonable. And I've
22 raised a lot of points, and I don't think I'm telling you
23 anything you haven't thought about. And I'm sure, if given the
24 opportunity, if Mr. Justis could come back in front of you and
25 explain everything I just said, take each one and explain it

1 away. I'm sure he can. But what I doubt he can do is explain
2 how all of these issues, all the things can exist in one case as
3 they do here, that there is no corroboration of any of the things
4 that Minor says.

5 Now, I submit that you can, as Mr. Justis says, you can
6 convict a person on the testimony of one person, but I submit
7 that in this case, in this case you should not convict Mr. Flood
8 on one person's testimony, whereas here the physical evidence
9 does not only not support what the complaining witness is saying,
10 but actually goes against it. It's contrary to what she's
11 saying. The police could have done a great many things to
12 investigate, to corroborate, to figure out what happened here,
13 and they did none of that. They heard from Minor, and
14 that's all they knew, that's all they really wanted to know. And
15 that's what caused me in the very beginning to have some
16 concerns, and that's why I submit to you, you should have a
17 reasonable doubt about Cedric. The State says he kidnaped, that
18 he grabbed her with a BB gun, took her to his house, bound her
19 with duct tape, and placed handcuffs to keep her from leaving.
20 Was she at the house? Probably. Was she forced to come to the
21 house, did he try to keep her at the house? I submit, no, that
22 didn't happen.

23 Lastly, I don't doubt that the two of them had sex. They
24 were boyfriend, girlfriend, and that's what some ex-boyfriends
25 and girlfriends do. The issue is whether or not the sex was

1 forced. That's what this comes down to. If you look at the
2 evidence, I submit it was not.

3 In the very beginning Mr. Mellard came up in front of you
4 and he talked about the presumption of innocence. And what he
5 was saying without saying it is that the presumption of innocence
6 is something that we start with. And the presumption of
7 innocence in this case would say that the sex was voluntary. Why
8 would she complain or make it up? If this didn't happen why
9 would she say it did? And as I said in the beginning, I can't
10 tell you for sure, I can't give you a reason. I can make up a
11 number of reasons. I've been given a number of reasons about
12 why, but the bottom line is, it's all going to be my guess about
13 what happened. The bottom line is, I don't think you have the
14 answer. I don't have the answer, the State hasn't given you the
15 answer, but we know this, it couldn't have been as she said it
16 was. That's why we have these ideals that Mr. Mellard
17 passionately spoke about in the beginning, the presumption of
18 innocence.

19 We talked about the reasonable doubt. It's the obligation
20 of the State to prove Cedric guilty beyond a reasonable doubt,
21 it's not my job to prove him innocent. I submit that the State
22 has not met their obligation. I submit that on this day Cedric
23 and Minor did all the things that couple, couples do sometimes,
24 they meet, they went to one of their houses, they spent time
25 together, they made love, they took a nap, they went out, they

1 got up and got the child from the bus, and Cedric went to work.
2 That's what happened. Given the state of the evidence that was
3 presented to you, given what you have, I submit that's more
4 likely to be what occurred than anything else. That fits the
5 evidence that you've been given, no force, no injuries, no
6 kidnaping. And I ask you to so find and send Cedric home.

7 Thank you.

8 THE COURT: Thank you, Mr. Wise.

9 CHARGE BY THE COURT:

10 THE COURT: Alright, Ladies and Gentlemen, it is now my turn
11 to tell you what the law is in this case.

12 Do you mind moving that? Yeah, move that. The foreman
13 wants to see me, I know that. Okay.

14 Okay. Alright, Mr. Flood has been indicted for criminal
15 sexual conduct in the first degree and kidnaping. And the fact
16 that he was arrested, charged, and indicted in this is not
17 evidence and cannot be considered by you as evidence of guilt in
18 this case, nor does it create any presumption or inference of
19 guilt. These documents are simply the formal written instruments
20 which contain the charges made against the defendant. They are
21 the formal documents by which this case is brought into Court.

22 The defendant has pled not guilty to these indictments and
23 that plea put the burden on the State to prove the defendant
24 guilty. A person charged with committing a criminal offense in
25 South Carolina is never required to prove himself innocent. I

1 charge you that it is an important rule of the law that a
2 defendant in a criminal trial, no matter what the seriousness of
3 the charge may be, will always be presumed innocent of the crime
4 for which the indictment was issued unless the guilt has been
5 proven by evidence satisfying you, the Jury, of that guilt beyond
6 a reasonable doubt. This presumption of innocence does not end
7 when you begin your deliberations, but it accompanies the
8 defendant throughout the trial until you reach a verdict of guilt
9 based on evidence satisfying you of that guilt beyond a
10 reasonable doubt. The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the defendant which
12 remains with the defendant until it has been stripped from the
13 defendant by evidence satisfying you, the Jury, of the
14 defendant's guilt beyond a reasonable doubt. The presumption of
15 innocence is not a mere legal theory, it is not just a legal
16 phrase, it is a substantial right to which every defendant is
17 entitled unless you, the Jury, are satisfied from the evidence of
18 the defendant's guilt beyond a reasonable doubt.

19 The defendant is entitled to every inference in his favor
20 which can reasonably be drawn from the evidence. When two
21 inferences may be drawn from the same set of facts, one
22 consistent with the verdict of guilty, and one inference
23 consistent with a verdict of not guilty, the defendant is
24 entitled to the inference which is consistent with a verdict of
25 not guilty. You cannot find the defendant guilty based upon

1 suspicion, conjecture or speculation, no matter how strong. A
2 conviction can only be based upon proof of guilt beyond a
3 reasonable doubt. If the proof does not meet that standard you
4 must find the defendant not guilty.

5 What is reasonable doubt in the law? A reasonable doubt is
6 the kind of doubt that would cause a reasonable person to
7 hesitate to act. The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt. Some of you may have
9 served as jurors in civil cases where you were told that it is
10 only necessary to prove that a fact is more likely true than not
11 true, such as by the greater weight or preponderance of the
12 evidence. In criminal cases the State's proof must be more
13 powerful than that, it must be beyond a reasonable doubt. Proof
14 beyond a reasonable doubt is proof that leaves you firmly
15 convinced of the defendant's guilt. There are very few things in
16 this world that we know with absolute certainty, and in criminal
17 cases the law does not require proof that overcomes every
18 possible doubt. Based on your consideration of the evidence, if
19 you are firmly convinced that the defendant is guilty of the
20 crime charged you must find the defendant guilty. If, on the
21 other hand, you think there is a real possibility that the
22 defendant is not guilty, you must give the defendant the benefit
23 of the doubt and find him not guilty.

24 During the trial you and I have certain duties to perform.
25 As the trial judge it is my responsibility to preside over the

1 trial in this case, and I also have the duty to rule on the
2 admissibility of evidence offered during this trial. You are to
3 consider only the competent evidence before you. If there was
4 any testimony ordered stricken from the record in this case
5 during the trial you must disregard that testimony. You are to
6 consider only the testimony that has been presented from this
7 witness stand and any exhibits which have been made a part of the
8 record. I have the duty to charge you the law applicable to this
9 case. As the presiding judge I am the sole judge of the law in
10 this case, and it is your duty as Jurors to accept and apply the
11 law as I state it to you. If you already have any idea as to
12 what the law is, or what the law ought to be and it does not
13 agree with what I now tell you the law is, you must abandon this
14 idea because you are sworn to accept the law and apply the law
15 exactly as I now state it to you.

16 In every case tried before a jury, the jury is the sole and
17 exclusive judge of the facts in the case. A trial judge cannot
18 intimate, state, comment on, or make any statement to a trial
19 jury about the facts in the case. Since you, the jury, are the
20 sole judges of the facts in this case you are not to infer from
21 what I've said during the progress of the trial in ruling upon
22 the admissibility of evidence, or otherwise, or anything that I
23 say now during the course of this instruction to you that I have
24 any opinion about the facts in this case. The law does not allow
25 me to have an opinion about the facts in this case, and I do not

1 have one. This is a matter solely for you, the jury, to
2 determine. As jurors it is your duty to determine the effect,
3 value, weight and truth of the evidence presented during this
4 trial.

5 There are two types of evidence which are generally
6 presented during a trial, direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a person who
8 claims to have actual knowledge of a fact, such as an eye
9 witness. It is evidence which immediately establishes the main
10 fact to be proven. Circumstantial evidence is proof of a chain
11 of facts and circumstances indicating the existence of a fact.
12 It is evidence which immediately establishes collateral facts
13 from which the main fact may be inferred. Circumstantial
14 evidence is based on inference and not on personal knowledge or
15 observation. The law makes absolutely no distinction between the
16 weight or value to be given to either direct or circumstantial
17 evidence, nor is a greater degree of certainty required of
18 circumstantial evidence than of direct evidence. You should
19 weigh all of the evidence in this case. After weighing all the
20 evidence, if you are not convinced of the guilt of the defendant
21 beyond a reasonable doubt you must find the defendant not guilty.

22 Necessarily, you must determine the credibility of the
23 witnesses who have testified in this case. Credibility simply
24 means believability. It becomes your duty as jurors to analyze
25 and to evaluate the evidence and determine which evidence

1 convinces you of its truth. In determining the believability of
2 witnesses who have testified in this case you may believe one
3 witness over several witnesses, or several witnesses over one
4 witness. You may believe a part of the testimony of a witness
5 and reject the remaining part of the testimony of that same
6 witness. You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited to you any
9 interest, bias, prejudice, or other motive in this case. You may
10 also consider the appearance and manner of a witness while on the
11 witness stand.

12 The testimony of a victim in a criminal sexual conduct case
13 need not be corroborated.

14 The rules of evidence ordinarily do not permit witnesses to
15 testify to opinions or conclusions. An exception to this rule
16 exists for witnesses we call expert witnesses. A witness who by
17 education and experience has become an expert in some art,
18 science, profession or calling may state an opinion as to
19 relevant and material matter in which the witness claims to be an
20 expert and may also state the reasons for the opinion. You
21 should consider any expert opinion received in evidence in this
22 case and like any other evidence give it the weight you think it
23 deserves. If you decide that the opinion of an expert witness is
not based on sufficient education and experience, or if you
conclude that the reasons given in support of the opinion are not

1 sound or that the opinion is outweighed by other evidence, you
2 may disregard the opinion entirely. An expert witness's
3 testimony is to be given no greater weight than that of other
4 witnesses simply because the witness is an expert. Further, you
5 are not required to accept an expert's opinion even though it is
6 not contradicted.

7 I instruct you and emphasize that the fact that the
8 defendant did not testify is not a factor to be considered by you
9 in any way in your deliberation and in your consideration on the
10 question of the guilt or innocence of the defendant. It must not
11 be considered by you in any manner whatsoever. A defendant has
12 the constitutional right to remain silent, and the assertion of
13 this right must not be considered by you in your deliberations.
14 I repeat, under your oath you are to draw no conclusion
15 whatsoever from the fact that the defendant in this case did not
16 testify. The fact that this defendant did not testify should not
17 even be discussed in the jury room. The burden of proof, as I
18 have stated to you, is on the State. The defendant is not
19 required to prove his innocence. The burden of proof remains on
20 the State to prove guilt beyond a reasonable doubt.

21 In order to establish criminal liability, criminal intent is
22 required. For example, the mental state required to be proven by
23 the State for a particular crime might be purpose, intent,
24 knowledge, reckless or criminal negligence. Criminal intent must
25 be proven by the State beyond a reasonable doubt. Criminal

1 intent is always a matter that must be determined by the jury
2 from the circumstances surrounding the situation. There is no
3 way to prove intent to a mathematical certainty. There's no way
4 medical science can dissect a person's brain and determine what
5 the person had in mind, so the law says that criminal intent may
6 be inferred from the circumstances shown to have existed. This
7 is how you make a determination of whether or not the element
8 requiring intent is present. It is not necessary to establish
9 intent by direct and positive evidence, but intent may be
10 established by inference in the same way as any other fact, by
11 taking into consideration the acts of the parties and all the
12 facts and circumstances of the case. Criminal intent is a mental
13 state, a conscious wrong doing. It is up to you to determine
14 what the defendant intended to do based on the circumstances
15 shown to have existed. Criminal intent can arise from an action
16 or a failure to act. It may arise from negligence, reckless or
17 indifference to duty or to consequences that is considered by the
18 law to be the equivalent of criminal intent.

19 The defendant is charged with criminal sexual conduct in the
20 first degree. The first element which the State must prove
21 beyond a reasonable doubt is that the defendant engaged in a
22 sexual battery with the victim. A sexual battery is sexual
23 intercourse, cunnilingus, fellatio, anal intercourse, or any
24 intrusion, however slight, on any part of a person's body or of
25 any object into the genital or anal openings of another person's

body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes. If you find that the State has not shown beyond a reasonable doubt that a sexual battery occurred you would stop deliberating and your verdict would have to be not guilty. If you find that a sexual battery did occur you must then decide whether the State has proven beyond a reasonable doubt that the defendant used aggravated force to accomplish the sexual battery. Aggravated force means the use of physical force or physical violence of a high and aggravated nature to overcome the victim. This includes the threat of using a deadly weapon, or that the victim submitted to a sexual battery while the victim was also the victim of forcible confinement, kidnaping, robbery, extortion, burglary, house breaking, or any other similar acts or offenses.

The defendant is also charged with kidnaping. The State must prove beyond a reasonable doubt that the defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away another person without authority of law.

To do a thing unlawfully is to do it willfully against the law.

Knowingly means with knowledge, consciously not accidentally.

Seize means to take hold of suddenly or forcibly.

Confine means to limit, restrict or enclose within bounds, person, or to shut or keep in.

1 Inveigle means to lure, entice or lead astray by false
2 representations, promises or other deceitful means.

3 Decoy means to lure by or as if by decoy. A decoy is
4 something to entice a person into a trap.

5 Kidnap is to remove a person against his will by unlawful
6 force or by fraud.

7 Abduct means to carry off secretly or by force for an
8 illegal purpose.

9 Carry away means to remove.

10 The State does not have to prove that the defendant did all these
11 things. Instead, if you find beyond a reasonable doubt that the
12 defendant did any of these things you may find the defendant
13 guilty of kidnaping. Something done without authority of law is
14 something which the law does not sanction, permit, allow, condone
15 or provide justification for. Kidnaping does not have to be for
16 any personal or monetary gain or for any illegal purpose, but it
17 may be for any reason whatsoever.

18 A deadly weapon is any article, instrument or substance
19 which is likely to cause death or great bodily harm. Whether an
20 instrument has been used as a deadly weapon depends on the facts
21 and circumstances of each case. The following are examples of
22 instruments which may be deadly weapons: A pistol, a shot gun, a
23 rifle, a dirk, a dagger, a knife, a sling shot, metal knuckles, a
24 razor, gasoline, a fire bomb, or a molotov cocktail, and lighter
fluid. A gun may be a deadly weapon even if it is not operating.

1 Now, I have declared the law to you through these
2 instructions to help guide you to a just and lawful verdict.
3 Whether some of these instructions will apply will depend upon
4 what you find to be the facts. The fact that I have instructed
5 you on various subjects in this case must not be taken as
6 indicating an opinion of this Court as to what you should find to
7 be the facts or as to what your verdict should be.

8 Your verdict must represent the considered judgement of each
9 juror. In order to return a verdict it is necessary that each
10 one of you jurors agree on that verdict. Your verdict must be
11 unanimous, all twelve of you must agree on the verdict. Your
12 verdict cannot be based on sympathy, passion, prejudice, emotion,
13 or any other consideration not in evidence in this case.

14 Remember at all times, you are not partisans favoring one party
15 over another, you are the judges of the facts. Your sole
16 interest is to seek the truth from the evidence in this case.

17 Now, I've got a verdict form, and it is the form for this
18 case. Okay. And Mr. Foreman, I'm not going to give it to you
19 now, but I'm going to go over it. Okay? You're going to get it
20 in a minute, I'll go over that. But this is the verdict form,
21 it's got the indictment numbers for both the criminal sexual
22 conduct in the first degree and the kidnaping charge. You have
23 two questions you have to answer, and these are the directions:
24 Please circle the appropriate verdict below and follow the
25 instructions carefully. Now, the first question that you have to

1 answer as jurors and you have to answer it unanimously is, we,
2 the jury, unanimously find the defendant, as to the first charge
3 of criminal sexual conduct, first degree, guilty or not guilty.
4 You can put them in any other order, it doesn't matter, but you
5 have to circle whichever one y'all agree to. The second thing
6 y'all have to decide is, we, the jury, unanimously find the
7 defendant, as to the second charge of kidnaping, guilty or not
8 guilty. That's, -- after you've done those two things, stop your
9 deliberations, and you as the foreman will sign and date it.
10 Okay?

11 Now, I'm not giving you the verdict form because you can't
12 begin your deliberations yet. I told y'all earlier in the trial
13 that after I charge you on the law I will let you go back into
14 the jury room. After that I will go over the charges with the
15 attorneys to make sure I charged everything properly, or if I've
16 left out something they wanted me to charge. If everything was
17 okay and I don't have to bring you back out to recharge anything
18 or reexplain anything, then the verdict form and all this
19 evidence is going to be brought back into the jury room by the
20 bailiffs and they will tell you to begin your deliberations. You
21 cannot begin talking about this case until the evidence and the
22 verdict form comes back in and you are told to begin your
23 deliberations. Okay?

24 I'm going to excuse y'all now, and let y'all go back into
25 the jury room, and hopefully, you will be able to begin your

24 (Whereupon, the jury foreman
25 enters the courtroom.)

1 THE COURT: Come on back this way. My law clerk, -- if
2 you'll just walk right around here, my law clerk will take you
3 back in there and you can use the phone. Okay?

4 (Whereupon, the jury foreman
5 leaves the courtroom.)

6 THE COURT: Alright, bring the alternates in.
7 (Whereupon, the alternates
8 enter the courtroom.)

9 THE COURT: Alright, Ms. Glenn and Ms. Odom, I want to tell
10 y'all how much I appreciate y'all serving as alternates. The, as
11 you know we've completed the case, we've got all the jurors so we
12 don't need to use y'all as jurors. So, y'all are excused to go.
13 Now, if y'all want to stay y'all are welcome to stay, y'all can
14 wait in the back like everybody else is going to be doing, or
15 y'all are free to go and do whatever you want to, but I want to
16 tell you again how much I appreciate you being willing to serve.
17 Okay? Thank y'all very much.

18 JUROR ODOM: You're quite welcome.

19 THE COURT: Appreciate it.
20 (Whereupon, the jury begins
21 deliberations at 4:25 p.m.)

22 (Recess)

23 (Whereupon, the jury sends
24 a note in at 5:05 p.m.)

25 THE COURT: Gentlemen, we have, they are asking for the

1 definition of law for kidnaping and criminal sexual conduct.

2 They indicated they wanted to see the chart?

3 BAILIFF: What Mr. Justis had on the display about the
4 kidnaping.

5 THE COURT: They've indicated they want to see the chart.
6 I'm not inclined to let them see the chart, that's not evidence.
7 Okay. If they want me to re -- I can re-give them the
8 definitions that I charged them on. What's the State's position?

9 SOLICITOR JUSTIS: I would agree. We normally don't give
10 them a written ...

11 THE COURT: Right. Okay. Is that what you want, to
12 recharge them?

13 SOLICITOR JUSTIS: That's fine.

14 MR. MELLARD: That's fine, Your Honor.

15 THE COURT: Okay. Alright. You can go ahead and bring the
16 jury back out and I'll tell them -- what I'm going to do is tell
17 them I can't give them the chart because it's not in evidence,
18 but I can redo, I'll reread the charge. Okay?

19 (Whereupon, the jury
20 enters the courtroom.)

21 THE COURT: Ladies and Gentlemen, I have a note from y'all
22 that said y'all need the definition of law for kidnaping and
23 criminal sexual conduct. I believe the bailiff has indicated
24 that y'all would like to see the charts that were used. The
25 charts are not in evidence, they were part of the argument. What

1 I can do is, I can recharge you my charge on kidnaping and
2 criminal sexual conduct in the first degree, and that's what I'm
3 going to do right now. Okay?

4 RECHARGE BY THE COURT:

5 Criminal sexual conduct, first degree. The defendant is
6 charged with criminal sexual conduct in the first degree. The
7 first element which the State must prove beyond a reasonable
8 doubt is that the defendant engaged in a sexual battery with the
9 victim. A sexual battery is sexual intercourse, cunnilingus,
10 fellatio, anal intercourse, or any intrusion, however slight, of
11 any part of a person's body or any object into the genital or
12 anal openings of another person's body except when the intrusion
13 is accomplished for medically recognized treatment or diagnostic
14 purposes. If you find that the State has not shown beyond a
15 reasonable doubt that a sexual battery occurred you would stop
16 deliberating and your verdict would have to be not guilty. If
17 you find that a sexual battery did occur you must then decide
18 whether the State has proven beyond a reasonable doubt that the
19 defendant used aggravated force to accomplish sexual battery.
20 Aggravated force means the use of physical force or physical
21 violence of a high and aggravated nature to overcome the victim.
22 This includes threat of using a deadly weapon or that the victim
23 submitted to sexual battery while the victim was also the victim
24 of forcible confinement, kidnaping, robbery, extortion, burglary,
25 house breaking, or any other similar act or offense. That was

1 criminal sexual conduct.

2 Kidnaping. The defendant is charged with kidnaping. The
3 State must prove beyond a reasonable doubt that the defendant
4 knowingly and unlawfully seized, confined, inveigled, decoyed,
5 kidnaped, abducted or carried away another person without
6 authority of law.

7 To do a thing unlawfully is to do it willfully against the
8 law.

9 Knowingly means with knowledge, consciously, not
10 accidentally.

11 Seize means to take hold of suddenly or forcibly.

12 Confine means to limit, restrict or enclose within bounds,
13 imprison, or to shut or keep in.

14 Inveigle means to lure, entice or lead astray by false
15 representations, promises or other deceitful means.

16 Decoy means to lure by, or as if by decoy. A decoy is
17 something to entice a person into a trap.

18 Kidnap is to remove a person against his will by unlawful
19 force or by fraud.

20 Abduct means to carry off secretly or by force for an
21 illegal purpose.

22 Carry away means to remove.

23 The State does not have to prove that the defendant did all of
24 these things. Instead, if you find beyond a reasonable doubt
that the defendant did any of these things you may find the

1 defendant guilty of kidnaping, something done without authority
2 of law or something which the law does not sanction, permit,
3 allow, condone or provide justification for. The kidnaping does
4 not have to be for any personal or monetary gain or for any
5 illegal purpose, but may be for any reason whatsoever.

6 Those are the two definitions by the law of South Carolina
7 as to first degree criminal sexual conduct and kidnaping. Okay?

8 Y'all can retire back -- no, you can't do it that way. If
9 y'all have another question you can write it down, but y'all need
10 to, y'all can now go back in the jury room and continue with your
11 deliberations.

12 Thank you.

13 (Whereupon, the jury retires
14 to the jury room
15 and continues deliberations.)

16 THE COURT: Alright. Mark this as Court's Exhibit Six.
17 (Court's Exhibit Six
18 marked and filed.)

19 THE COURT: Alright, we're in recess for a while.

20 Mr. Mellard, wait a minute, we're going to go back on the
21 record. Any exception to my charge?

22 SOLICITOR JUSTIS: None, Your Honor.

23 THE COURT: Okay. Any exceptions?

24 MR. MELLARD: None from the Defense.

25 THE COURT: Okay. Thank you, sir.

1 (Recess)

2 (Whereupon, the jury
3 sends in another note.)

4 THE COURT: Alright, we've got another question from the
5 jury, and the question from the jury is, can we get the victim's
6 transcript? Well, you know, we don't have a transcript. The
7 only thing I can do is replay it. Hold on a second, Ms. Harry
8 Dot.

9 (Whereupon, the defendant
10 enters the courtroom.)

11 THE COURT: Oh, I'm sorry, I didn't -- Mr. Flood I didn't
12 see you come back out here. Mr. Flood, I've just told your
13 attorneys and the State's attorneys, the jury has another
14 question. They would like to get the victim's transcript, but we
15 don't have real time transcription, so we can't do that. The
16 only thing I can do is replay her testimony, and that's only --
17 and it's going to take a while for Ms. Harry Dot to find it and
18 to set it up so we can see if we can hear it. That's my only
19 suggestion. Anything else from the State?

20 SOLICITOR JUSTIS: Well, the State would suggest, you know,
21 what we could do is just let them go home, bring them back in the
22 morning, and that would give us time to get that all cued up and
23 ready to go. That would give them, they've been here all day,
24 that would give them a good night's sleep, and they'd be able to
25 hear it fresh in the morning, and that would give us a chance to

1 have it cued up. Because if you try to find it now what time is
2 it going to be before you can get ready to replay it, and then
3 you have to play it, and then they'll go back there. And that
4 would be my suggestion.

5 THE COURT: Okay.

6 SOLICITOR JUSTIS: They've been here all day.

7 THE COURT: The defense, what do you think?

8 MR. MELLARD: I would object to that. That's allowing her
9 to testify twice, and I would object to that.

10 THE COURT: Okay. Well, I ...

11 MR. MELLARD: I mean, they heard everybody's testimony, they
12 heard it. They should be able to, between the twelve of them, to
13 reconstruct what they heard.

14 THE COURT: Okay. Okay.

15 SOLICITOR JUSTIS: They should be able to review it just
16 like they review, you know, a physical piece of evidence.

17 THE COURT: Okay. Alright, since I don't have any agreement
18 on this let me think about it for a minute. Okay? Alright,
19 we'll stand down for a minute.

20 (Recess)

21 THE COURT: Did I give you that sheet?

22 COURT REPORTER: I don't think you did, Judge.

23 THE COURT: I didn't?

24 COURT REPORTER: No, sir.

25 THE COURT: Well, I'll have to see what I did with it. I'm

1 talking about the note. See if I left it in there. I'm sorry.
2 Okay, thank you, sir. Alright, are you ready?

3 COURT REPORTER: Yes, sir.

4 THE COURT: Okay. Alright, the jury would like the
5 transcript, and we've already talked about that. The only thing
6 I can do is play the tape and it's going to take a while to play
7 the tape if I decide to do it. The Defense has objected saying
8 she's essentially getting to testify twice. And you know, I
9 understand your concern, Mr. Mellard, I really do, but when the
10 jury requests something to help them make what they believe to be
11 a fair, just and impartial verdict, as the judge I've got to
12 think about whether or not they really need it or not. And so,
13 what I'm going to do is, I'm going to allow them to listen to the
14 transcript again, that portion of the transcript.

15 MR. MELLARD: And that's the problem I kind of have. We
16 don't know what they're looking for.

17 THE COURT: No, I don't, I'm just, I know ...

18 MR. MELLARD: We don't know what they're interested in.

19 THE COURT: They're going to have to listen to every part of
20 her testimony.

21 MR. MELLARD: And again, they're not really -- by listening
22 to the testimony they're not just hearing facts, they're hearing
23 facts and emotion, and again, it's giving her a chance to testify
24 twice.

25 THE COURT: And I understand your objection to me, my

1 decision to do that, and so, I'm going to note your objection on
2 the record so that it will be preserved.

3 My next question, though, is, it's going to take a while,
4 we've got to check to see if it can work, you know. I was
5 concerned, as you may recall, during the original testimony of
6 her trying to speak up. I think I asked her to speak up at least
7 three times. And so, I'm hoping it's going to be on the tape,
8 but if it's not, it's not, you know.

9 MR. MELLARD: I would have concerns if they're hearing an
10 incomplete record.

11 THE COURT: Well, I'm going to have some concerns about
12 that, too, but I, she's sitting right there, I'm hoping -- but I
13 won't know until we listen to the tape, you know. And it's going
14 to take Ms. Harry Dot a while to find it on the tape, cue it up,
15 and for us to practice to make sure it works. And having said
16 that, it's now a little bit after six. Do you want me to bring
17 them back out here and tell them that, and tell them we're going
18 to take a break and come back in the morning so they'll be fresh,
19 or ...

20 MR. MELLARD: I don't have a problem with them coming back
21 in the morning.

22 SOLICITOR JUSTIS: And the State doesn't either. I think
23 that would probably be the best.

24 THE COURT: Okay. Well, then, noting your objection to the,
25 me playing the tape, what I'm going to do is, I'm going to ask,

1 I'm going to bring them back out here and tell them that's what
2 we're going to have to do because that's the only way we can
3 handle this.

4 MR. MELLARD: Well, I would ask the Court to makes sure we
5 have a complete tape before you decide one way or another.

6 THE COURT: Okay. Well, I mean, I will review it.

7 MR. MELLARD: I don't think it would be fair for them to
8 only hear part of her testimony if they want to hear it all.

9 THE COURT: No, I ...

10 SOLICITOR JUSTIS: We can do that in the evening.

11 THE COURT: Okay, well, I mean, I will review it.

12 MR. MELLARD: I don't think it would be fair for them to
13 only hear part of her testimony if they want to hear it all.

14 SOLICITOR JUSTIS: We can do that during the evening, I mean
15 ...

16 THE COURT: We will do that. If it turns out we can't
17 apparently hear it, then that's a whole other issue, we'll come
18 back and revisit this issue and explain it to them in the
19 morning.

20 MR. MELLARD: Yes, sir, I just didn't want to promise them
21 anything that we ...

22 THE COURT: I'll just tell them this is what we've got to
23 do. It takes a while.

24 MR. MELLARD: Yes, sir.

25 THE COURT: Okay. Okay. And by this time next week she's.

1 going to be doing live transcript, live transcription.

2 Okay.

3 MR. MELLARD: She's not laughing.

4 THE COURT: She's not laughing. Okay.

5 BAILIFF: Do you want me to bring them out?

6 THE COURT: Yeah, thank you, ma'am, if you'll bring them
7 back out.

8 Ms. Harry Dot, mark this as a Court's Exhibit.

9 (Court's Exhibit Seven
10 marked and filed.)

11 (Whereupon, the jury
12 enters the courtroom.)

13 THE COURT: Ladies and Gentlemen, the question that y'all
14 have sent to me now is, can we get the victim's transcript, and
15 by that I'm assuming you mean what she testified to here today.
16 Okay. Now, we can't do, we don't have a transcript that's
17 available right now. The only thing we can do is replay the tape
18 of the testimony, and we can do that. The problem we have is,
19 we've got to go back through the tape, get it cued in right,
20 review it to make sure that all the testimony is clearly where
21 you can hear it, and then play it back for you out in the
22 courtroom. That will take us a while to do that, and since this
23 is where y'all seem to be at an impasse, what, and since now it's
24 after six, what I'm planning on doing is to let y'all go home for
25 the evening and come back tomorrow morning. I'm going to tell

1 y'all to come back tomorrow morning at nine:thirty. Again, you
2 are to stop your deliberations at this point, so that means when
3 y'all go back into the jury room and get your things and things
4 like that y'all are to stop your deliberations, you can't talk in
5 ones or twos or anything like that. Again, I'm reminding you,
6 I'm sure there's going to be an article in the T and D about
7 this, you cannot read the paper, you cannot talk to anybody about
8 it, you cannot check on the internet, listen to the radio, any
9 news reports, all of that kind of stuff. Okay? All the evidence
10 that you need to decide this case you have heard already, even
11 though I understand you wish to hear her testimony one more time.
12 Okay? Now, so again, I'm going to excuse you. Deliberations
13 have stopped for today. You are to meet back in the jury room at
14 nine:thirty tomorrow morning. Okay? And I'll tell you where we
15 are with hearing her testimony again. Okay? Y'all are excused.
16 Thank you.

17 (Whereupon, the jury leaves
18 the courtroom for the day
19 and the following takes place
20 out of the hearing of the jury.)

21 THE COURT: What I -- how long did she testify? Wait, I
22 know.

23 COURT REPORTER: I would estimate about an hour, but I, you
24 know, it's hard to do.

25 THE COURT: Yeah, actually, she testified about forty

1 minutes. Okay?

2 COURT REPORTER: Okay.

3 THE COURT: From Three:0-four to Three:forty-four, according
4 to my calculations. Do y'all want to let's sit here tonight and
5 let's see if we can get that straight before y'all leave or do
6 y'all want to come back much earlier than nine:thirty to make
7 sure we've got it? I'd just as soon sit here and make sure we've
8 got it straight.

9 MR. MELLARD: Can we all get together?

10 THE COURT: Yeah. Why don't y'all get together and talk for
11 a little while, and while y'all are doing that Ms. Harry Dot is
12 going to be trying to find that. Okay? Y'all talk.

13 (Whereupon, the Solicitors and Defense
14 Counsel confer off the record.)

15 THE COURT: That was not a long discussion.

16 Alright, we'll be in recess until nine:thirty in the
17 morning.

18 (Recess for the day.)

19 DATE:

20 July 21, 2011

21 THE COURT: Alright, just so you all know, we are getting
22 ready to play the tape now, and we are going through the whole
23 thing.

24 MR. MELLARD: I would just like to bring the Court's
25 attention to the newspaper article that was in the T and D this

1 morning. I would again make a motion for a mistrial.

2 THE COURT: And you were kind enough to underline it for me.
3 Have you seen a copy?

4 SOLICITOR JUSTIS: Yes, sir.

5 THE COURT: And again, what I will do is, I will poll the
6 jury again before I make a decision regarding your motion for a
7 mistrial.

8 MR. MELLARD: You mean as a group?

9 SOLICITOR JUSTIS: It is almost accusatory to the jurors,
10 and I just think the general polling of the entire jury would be
11 just -- calling them out and specifically bringing each one out -
12 - it's a waste of time. If they know not to read the paper they
13 are not going to know - - -

14 THE COURT: I understand your position.

15 SOLICITOR JUSTIS: --- because I just think it is really
16 prejudicial to imply that somebody would do something wrong. And
17 I just think it is going to hurt their deliberations if you call
18 them out individually and all.

19 THE COURT: Well, I will have to ask them about it. I
20 understand your concern but I think, by the same token ...

21 SOLICITOR JUSTIS: I think it would give them the impression
22 that there is something in that article - - -

23 THE COURT: Did you hear anything?

24 SOLICITOR JUSTIS: --- because I think we are highlighting -
25 - I think a reasonable person would get the feeling -- it might

1 make them want to read the paper now. The perception I would
2 start to receive -- it's like asking your kid the same question
3 over and over again to get them to answer how you want them to
4 answer.

5 THE COURT: Well, I will think about it.

6 MR. MELLARD: This jury does not know how we normally
7 conduct polling. Normally you would bring them out as a group.
8 They don't know that you don't do this all the time, that this is
9 not a normal thing to do this. If it was just a normal question
10 - but this is something that is highly prejudicial is the reason
11 that we need to do this individually.

12 THE COURT: Well, I will think about it. I will poll them
13 but I will think about how I am going to do it.

14 Let's take a few minutes.

15 (Recess)

16 THE COURT: Alright, is the State ready?

17 SOLICITOR JUSTIS: The State's ready.

18 THE COURT: Is the Defense ready?

19 MR. WISE: The Defense is ready, Your Honor, and the
20 defendant is ready also.

21 THE COURT: Alright. We have a few things to go over.

22 Okay, Mr. Bell and Mr. Mellard need to be in here.

23 I think I can handle it.

24 (Whereupon, Mr. Bell and Mr. Mellard
25 enter courtroom.)

1 THE COURT: We had already talked about polling the jury.

2 As far as the playing of the tape, Mr. Mellard made the
3 objection yesterday.

4 MR. MELLARD: What the jury wanted was the transcript, which
5 is factual, and my objection was that that would get her, the
6 victim, to testify twice. So, I would just like to renew my
7 objection to playing the tape.

8 THE COURT: Okay. I note your objection.

9 MR. MELLARD: My second objection, we are now in
10 deliberations. The jury, they wanted a transcript, they wanted
11 to read the transcript. Now, when we play this tape, with her
12 sitting there crying -- this is jury deliberations, so what I
13 would suggest is that we clear this courtroom. They need to hear
14 what they want to hear without any other people being in here.
15 We are in jury deliberations. The tape can't be taken back to
16 them. In my opinion this room becomes the jury room while they
17 are listening to the tape.

18 SOLICITOR JUSTIS: This is a public courtroom. I think the
19 victim has a right to be here.

20 THE COURT: My take on that is -- my take on that is, we are
21 playing this tape for the jury's benefit. And I am going to play
22 the entire tape for the jury's benefit. And Mr. Mellard is
23 right, this should be the jury room. Now, having said that, the
24 attorneys are going to have to be present, and we can sit in that
25 back room -- if we can sit in that back room. I don't mind the

1 attorneys staying in here but as far as anybody else in the
2 courtroom, they will all have to go.

3 Mr. Mellard, you have said your client is going to waive his
4 presence while we play this?

5 MR. MELLARD: It would only be fair.

6 THE COURT: It must just be the jury's time.

7 MR. MELLARD: Yes, sir, and that means ...

8 SOLICITOR BELL: If we are going to do this -- I have never
9 seen it happen.

10 THE COURT: It is always nice to do something for the first
11 time.

12 MR. WISE: Thank you, Your Honor.

13 THE COURT: Let me just get back to -- you attorneys have
14 talked about waiving his presence while we play the tape.

15 MR. MELLARD: Yes, sir.

16 THE COURT: Mr. Flood, do you understand that, do you desire
17 to do that?

18 DEFENDANT FLOOD: Yes, sir.

19 THE COURT: He said he understood he was waiving his
20 presence in the courtroom while we are playing the tape. So,
21 everyone, including the defendant and the victim, will clear the
22 courtroom.

23 SOLICITOR BELL: I would object.

24 MR. MELLARD: She was emotional.

25 SOLICITOR BELL: It makes no difference.

1 THE COURT: And Mr. Bell, I understand that. Right now they
2 wanted the transcript. We can let them rehear the tape which is
3 going to have the emotional stuff on it.

4 Now, having said that, I agree with Mr. Mellard's analogy
5 that this is part of the jury room, and what I would prefer to do
6 -- I could just take this evidence back into the jury room and
7 play it. So, instead of doing that I bring the jury out here as
8 part of their deliberations, except the attorneys will be in
9 here. I understand, -- I heard Mr. Justis mention that the
10 victim has a right to be here. This is not going to be the
11 courtroom for a few minutes, it is going to be the jury room.

12 If you have an objection to that on the ...

13 SOLICITOR BELL: I think we waive objection.

14 THE COURT: Alright, everybody is out of the courtroom
15 except the attorneys. I want you all to be close in case there
16 is something wrong with the tape.

17 Alright, now, the other thing we will do is poll the jury.
18 Let me tell you what I am going to do when I poll the jury. They
19 just stand right there, I am going to bring them on out and ask
20 them about whether they have read the article in the newspaper
21 individually, and that's how we are going to proceed. Any
22 objection?

23 SOLICITOR JUSTIS: I think that's a fair resolution.

24 THE COURT: Are you ready to play the tape?

25 COURT REPORTER: Yes, sir.

1 THE COURT: Bring the jury on out, please, ma'am.

2 (Whereupon, the jury enters

3 the courtroom.)

4 THE COURT: Good morning, ladies and gentlemen of the jury.
5 I hope you all got a good rest. Now, just to let you know, you
6 have begun your deliberations. Normally speaking, it would be
7 nice if we could bring the tape back into the jury room. Since
8 that is not easy to do we will bring you out here. Nobody is in
9 here except you and the attorneys, possibly deputies are back
10 there, but no one else is in the courtroom. Let me just tell
11 you, I think we have sat in your seats in the jury box to make
12 sure you can hear, and if, however, you cannot hear you can stand
13 up and move and get right in front of the speaker. Get
14 comfortable to make sure you can hear it.

15 Now, the final thing before we start rehearing the tape is,
16 because this is a case that is getting some news coverage I'm
17 going to poll you again this morning as to whether anybody has
18 talked to you. The way we are going to ask you the question is,
19 each one of you should stand up and respond by name. Now, the
20 question that I am going to ask each one of you right now, have
21 any of you read any articles in the newspaper, heard anything on
22 the radio, or anything on t.v. or talked to anyone about this
23 case?

24 Mr. Negron?

25 JUROR NEGRON: No, sir, I have not.

1 THE COURT: Mr. Beckett?

2 JUROR BECKETT: No, sir, I have not.

3 THE COURT: Mr. White?

4 JUROR WHITE: No, sir, I have not.

5 THE COURT: Ms. Fulton?

6 JUROR FULTON: No, sir, I have not.

7 THE COURT: Ms. Mabry?

8 JUROR MABRY: No, sir, I have not.

9 THE COURT: Mr. Danhauser?

10 JUROR DANHAUSER: I have not.

11 THE COURT: Ms. Frierson?

12 JUROR FRIERSON: No, sir, I have not.

13 THE COURT: Mr. Gray?

14 JUROR GRAY: No, Your Honor.

15 THE COURT: Ms. Wright?

16 JUROR WRIGHT: No, sir.

17 THE COURT: Mr. Moorer?

18 JUROR MOORER: No, sir, I have not.

19 THE COURT: Mr. Shingler?

20 JUROR SHINGLER: No, sir, I have not.

21 THE COURT: And Mr. Shuler?

22 JUROR SHULER: No, sir.

23 THE COURT: Okay. I appreciate you all following my
24 instructions. Particularly like most people you want to read the
25 paper in the morning, so I appreciate you all not doing that.

1 I will go back on the record later, Ms. Harry Dot. If you
2 would start playing the tape.

3 Now, if for some reason you can't hear it, you are welcome
4 to come stand by the mikes. This is now the jury room.

5 (Whereupon, Minor 's testimony
6 is played for the jury in its entirety.)

7 THE COURT: Alright, Ladies and Gentlemen, you have now
8 heard the testimony of the victim, as you requested. GO back
9 into the jury room and then you can begin your deliberations, and
10 we will send all the exhibits in to you along with the verdict
11 form. This will take another minute.

12 (Whereupon, the jury retires to
13 the jury room to continue their
14 deliberations.)

15 THE COURT: Alright, anything from the State?

16 MR. JUSTIS: Nothing.

17 MR. MELLARD: Nothing from the Defense.

18 THE COURT: Alright, you can unlock the doors now. Thank
19 you, sir.

20 Alright, we will be in recess for a while.

21 (Recess)

22 (Whereupon, the jury sends
23 in another note.)

24 THE COURT: Alright, we now have a jury question, well,
25 actually we have a jury statement. The jury has informed the

1 Court that they cannot come to a unanimous decision on either
2 charge. Now, they probably haven't been given enough time to
3 deliberate is the Court's position. What I was going to do is --
4 well, I have two choices, I can just let them sit back there for
5 a little while and not give them the Allen charge, or I can go
6 ahead and give the Allen charge. I'm inclined to go ahead and
7 give them the Allen charge and then we've got a work day ahead of
8 us and we'll just see what happens.

9 What's the State's position on that?

10 SOLICITOR JUSTIS: That's fine, Your Honor.

11 THE COURT: What's the Defense's position? I'm always open
12 to suggestions.

13 MR. MELLARD: That's fine, Your Honor.

14 THE COURT: Okay. Alright. Ms. Harry Dot, you want to mark
15 that as ...

16 COURT REPORTER: I believe that would be Eight.

17 THE COURT: That will be Eight.

18 (Court's Exhibit Eight
19 marked and filed.)

20 THE COURT: Bring them on out.

21 (Whereupon, the jury enters the courtroom,
22 and the following takes place in the
23 of the jury.)

THE COURT: Alright. I have gotten your note. I have
advised the attorneys that y'all have not been able to reach a

1 unanimous verdict. But let me tell you, that is not going to end
2 your deliberations at this time. Okay. I am going to read y'all
3 an additional charge that I am required to read, and then I'm
4 going to send you back into the jury room. Okay?

5 ADDITIONAL ALLEN CHARGE BY THE COURT:

6 Now, you have stated to the Court that you have been unable
7 to agree on a verdict in this case. As I instructed you earlier,
8 the verdict of the jury must be unanimous. When a matter is in
9 dispute it isn't easy for even two people to agree. So, when
10 twelve people must agree it becomes even more difficult. In most
11 cases absolute certainty cannot be reached or expected. However,
12 you have a duty to make every reasonable effort to reach a
13 unanimous verdict. In doing this you should consult with one
14 another, express your own views and listen to the opinions of
15 your fellow jurors. Tell each other how you feel, and why you
16 feel that way. Discuss your differences with open minds.
17 Although the verdict of the jury must be unanimous, every one of
18 you has the right to your own opinion. The verdict you agree to
19 must be your own verdict, the result of your own convictions and
20 you should not give up your firmly held beliefs merely to be in
21 agreement with your fellow jurors. The majority should consider
22 the minority's position, and the minority should consider the
23 majority's position. You should carefully consider and respect
24 the opinions of each other and re-evaluate your position for
25 reasonableness, correctness, and impartiality. You must lay

1 aside all outside matters and reexamine the questions before you
2 based on the law and the evidence in this case. If you do not
3 agree on a verdict in this case I must declare a mistrial. In
4 that case it does not mean that anybody wins, it just means that
5 at some future time I will try this case with some other jury
6 sitting where you now sit. The same participants will come and
7 the same lawyers will ask basically the same questions and get
8 basically the same answers, and we will go through this whole
9 entire process again. You were selected in the same manner and
10 from the same source as any future jury will be, and there is no
11 reason for me to suppose that the case will ever be submitted to
12 twelve more intelligent, impartial, conscientious and competent
13 jurors than you, or that more or clearer evidence will be
14 produced on one side or the other. Therefore, I ask you to
15 return to your deliberations with the hope that you can arrive at
16 a verdict within a reasonable time. So, I am sending you back
17 into the jury room for you to continue your deliberations. Okay?
18 Thank you.

19 (Whereupon, the jury
20 retires to the jury room,
21 and continues their
22 deliberations.)

23 THE COURT: Alright, anything from the State regarding my
24 charge?

SOLICITOR JUSTIS: Nothing, Your Honor.

1 THE COURT: Anything from the Defense regarding my charge?

2 MR. MELLARD: No, sir.

3 THE COURT: Okay. We're in recess. Thank y'all.

4 (Recess)

5 (Whereupon, two more notes by
6 the jury are sent into the
7 Court, and a conference is had
8 with the Court and attorneys
9 off the record, in chambers,
10 after which the Court and
11 attorneys enter the courtroom.)

12 THE COURT: Alright, bring them back in.

13 (Whereupon, the jury enters
14 the courtroom.)

15 ADDITIONAL CHARGE BY THE COURT:

16 THE COURT: I've gotten two notes from you. I did not
17 respond to the first one, so I got the second one that's
18 essentially the same thing. You know, it reminds me of when my
19 children repeat things like I was hard of hearing, and I
20 apologize for not getting back to you sooner than that. But let
21 me tell you, I'm not going to recharge the law to you again, I'm
22 not going to do that. But I want y'all -- if y'all have ever
23 been involved in Court proceedings before, y'all know that it
24 takes a lot of people a lot of time and a lot of work just to get
25 to Court. Okay? And we've been in this trial now for a few

1 days, and I know these deliberations have been hard on y'all, and
2 I know that they are some very hard decisions that you are being
3 asked to make, and I know that there's serious disagreement among
4 you. But I want to remind you that if you think it is tough on
5 you, I want you to think about how tough it is on the parties.

6 Now, the parties want you to make a decision in this case,
7 and they want you to make that decision without compromising any
8 of your convictions or your beliefs. Now, considering that and
9 considering that it's still early in the day, I want to apologize
10 to you and tell you that rather than try this case again I'm
11 treating this as a work day. Sometimes you've got to work
12 overtime. So, I'm asking y'all to return to your deliberations
13 and bring back a fair, just and impartial verdict. Okay? Thank
14 y'all very much.

15 (Whereupon, the jury retires
16 to the jury room at 2:50 p.m.
17 and continues deliberations.)
18 (Court's Exhibits Nine and Ten
19 marked and filed.)

20 THE COURT: Okay. Thank you, Ms. Harry Dot.

21 And just so the record will reflect this, I went over this
22 charge with the other attorneys, or with the attorneys, excuse
23 me, in chambers, reviewed this before I came out and put this on
24 the record. And just to make sure everything is clean, Mr.
25 Justis, do you have any exceptions to my additional charge?

1 SOLICITOR JUSTIS: No exceptions, Your Honor.

2 THE COURT: Mr. Mellard?

3 MR. MELLARD: No, sir.

4 THE COURT: Okay. Then, we are in recess and we'll see what
5 happens. Thank you.

6 (Recess)

7 THE COURT: Ms. Harry Dot, are we ready?

8 COURT REPORTER: Yes, sir.

9 THE COURT: Alright, I have been told that the jury has
10 reached a verdict. Is the State ready?

11 SOLICITOR JUSTIS: The State's ready, Your Honor.

12 THE COURT: Is the Defense ready?

13 MR. MELLARD: Yes, Sir.

14 THE COURT: Okay. Bring the jury in, please.

15 (Whereupon, the jury returns

16 with a verdict at 5:00 p.m.)

17 THE COURT: Mr. Foreman, have you reached a verdict?

18 JUROR FOREMAN: Yes, we have, Your Honor.

19 THE COURT: Okay. Is that verdict unanimous?

20 JUROR FOREMAN: Yes, sir.

21 THE COURT: Okay. Would you give the bailiff the verdict
22 form? Thank you, ma'am.

23 (Whereupon, the Court

24 examines the verdict.)

THE COURT: Alright.

1 VERDICT OF THE JURY:

2 THE COURT: In the case of State of South Carolina versus
3 Cedric Flood, Indictment Number 2009-GS-38-1775, we, the jury,
4 unanimously find the defendant as to the first charge of criminal
5 sexual conduct in the first degree not guilty.

6 Indictment Number 2009-GS-38-1776, we, the jury, unanimously
7 find the defendant as to the second charge of kidnaping guilty.

8 This was signed by the foreman of the jury and dated July
9 Twenty-first, Two Thousand Eleven.

10 Alright, anything from the State regarding the verdict?

11 SOLICITOR JUSTIS: Nothing, Your Honor.

12 THE COURT: Anything from the Defense regarding the verdict?

13 MR. MELLARD: We'd ask that you poll the jury, Your Honor.

14 THE COURT: Okay. Ladies and Gentlemen of the jury, the
15 defendant has asked that I poll the jury in much the same manner
16 that I have polled y'all earlier today for other reasons. Okay?
17 So, what I'm going to do is, I'm going to call your names and ask
18 you the questions regarding the verdict. And Mr. Negrón, you
19 always get to go first.

20 JUROR NEGRON: I'm sorry.

21 THE COURT: If you'd please stand, sir. Mr. Negrón, you've
22 heard me read the verdict form into the record, is that correct?

23 JUROR NEGRON: Yes, sir.

THE COURT: Okay. Is this your verdict?

JUROR NEGRON: Yes, sir.

1 THE COURT: Is it still your verdict?

2 JUROR NEGRON: Yes, sir.

3 THE COURT: Okay, thank you, sir.

4 Mr. Beckett.

5 JUROR BECKETT: Yes, sir.

6 THE COURT: You've heard me read the verdict into the
7 record, is that correct?

8 JUROR BECKETT: Yes, sir.

9 THE COURT: Is this your verdict?

10 JUROR BECKETT: Yes, sir.

11 THE COURT: Is it still your verdict?

12 JUROR BECKETT: Yes, sir.

13 THE COURT: Alright, thank you, sir.

14 Mr. White. You've heard me read the verdict form into the
15 record?

16 JUROR WHITE: Yes, sir.

17 THE COURT: Is this your verdict?

18 JUROR WHITE: Yes, sir.

19 THE COURT: Is it still your verdict?

20 JUROR WHITE: Yes, it is.

21 THE COURT: Thank you, sir.

22 Ms. Fulton. You've heard me read this verdict into the
23 record?

24 JUROR FULTON: Yes.

25 THE COURT: Is this your verdict?

1 JUROR FULTON: Yes, sir, it is.

2 THE COURT: Is it still your verdict?

3 JUROR FULTON: Yes, sir, it is.

4 THE COURT: Okay. Ms. Mabry. You've heard me read the
5 verdict into the record?

6 JUROR MABRY: Yes, sir.

7 THE COURT: Is this your verdict?

8 JUROR MABRY: Yes, sir.

9 THE COURT: Is it still your verdict?

10 JUROR MABRY: Yes, it is.

11 THE COURT: Okay. Mr. Danhauser. You've heard me read this
12 verdict into the record?

13 JUROR DANHAUSER: Yes, sir.

14 THE COURT: Okay. Is this your verdict?

15 JUROR DANHAUSER: Yes, sir.

16 THE COURT: Is it still your verdict?

17 JUROR DANHAUSER: Yes, sir.

18 THE COURT: Thank you, sir.

19 Ms. Frierson. You've heard me read this verdict into the
20 record?

21 JUROR FRIERSON: Yes, sir.

22 THE COURT: Is this your verdict?

23 JUROR FRIERSON: Yes, it is.

24 THE COURT: Is it still your verdict?

25 JUROR FRIERSON: Yes, it is.

1 THE COURT: Thank you, ma'am.

2 Mr. Gray. You've heard me read this into the record?

3 JUROR GRAY: Yes, Your Honor.

4 THE COURT: Okay. Is this your verdict?

5 JUROR GRAY: Yes.

6 THE COURT: Is it still your verdict?

7 JUROR GRAY: Yes.

8 THE COURT: Okay. Ms. Wright. Ms. Wright, you've heard me
9 read this verdict into the record?

10 JUROR WRIGHT: Yes, sir.

11 THE COURT: Okay. Is this your verdict?

12 JUROR WRIGHT: Yes, it is.

13 THE COURT: Is it still your verdict?

14 JUROR WRIGHT: Yes.

15 THE COURT: Thank you, ma'am.

16 Mr. Moorner.

17 JUROR MOORER: Yes, sir.

18 THE COURT: Mr. Moorner, you've heard me read this verdict
19 into the record?

20 JUROR MOORER: Yes, sir.

21 THE COURT: Is this your verdict?

22 JUROR MOORER: Yes, sir.

23 THE COURT: Is it still your verdict?

24 JUROR MOORER: Yes, sir.

25 THE COURT: Thank you, sir.

1 Mr. Shingler. Mr. Shingler, you've heard me read this
2 verdict into the record?

3 JUROR SHINGLER: Yes.

4 THE COURT: Is this your verdict?

5 JUROR SHINGLER: Yes.

6 THE COURT: Is it still your verdict?

7 JUROR SHINGLER: Yes, sir.

8 THE COURT: Thank you, sir.

9 And Mr. Shuler. Mr. Shuler, you've heard me read this
10 verdict into the record?

11 JUROR SHULER: Yes, sir.

12 THE COURT: Is this your verdict?

13 JUROR SHULER: Yes, sir.

14 THE COURT: Is it still your verdict?

15 JUROR SHULER: Yes, sir.

16 THE COURT: Alright, thank you. Thank you.

17 Anything else from the State? Anything else from the State?

18 SOLICITOR JUSTIS: Nothing, Your Honor.

19 THE COURT: Anything else from the Defense?

20 MR. MELLARD: Not as far as the jury.

21 THE COURT: Okay. Thank you.

22 Ladies and Gentlemen, I want to tell you how much I
23 appreciate -- I know y'all paid attention during the trial, I
24 know that you had a very concerned and passionate deliberation,
I appreciate it, I really do. But your service is now ended.

1 We really do appreciate your service. I know there are many
2 other things that you would rather have been doing during these
3 past three days, but it was a great benefit to the County and to
4 the State, and we do appreciate your service. And again, you're
5 going to be paid just an excessive amount of money. Anyway,
6 y'all are now excused to go. Thank y'all so much for your
7 service, and I hope you have a wonderful weekend. Thank you.
8 (Whereupon, the jury
9 leaves the jury box.)

10 THE COURT: Anything from the State?

11 SOLICITOR JUSTIS: The only thing, the sentencing, Your
12 Honor.

13 THE COURT: Alright, sir. Alright, anything from the
14 Defense before ...

15 MR. MELLARD: Yes, sir.

16 THE COURT: Yes, sir. Okay.

17 MR. MELLARD: At this time we would renew all motions we've
18 made, including the issue of competency, including the issue of
19 the directed verdict.

20 We would also move for a motion for a new trial. It's our
21 position that there's no evidence to support a conviction of
22 kidnaping, and the guilty verdict on the kidnaping is entirely
23 inconsistent with their verdict of not guilty on the CSC charge.

24 THE COURT: Alright, with regard to renewing your motion as
25 to his competency, I would again deny that.

1 In regard to your motion for a directed verdict, again I am
2 denying that for reasons earlier stated.

3 Regarding your motion for a new trial based on the fact that
4 there is no evidence to convict him of kidnaping, I'm going to
5 deny it on those grounds. Okay? I think there's plenty of
6 evidence in the record that a jury could find that he did kidnap
7 her.

8 Now, I'm also going to deny it with regard to your argument
9 that it is inconsistent. He had two separate charges, and the
10 jury had in its, had the ability to find one or the other guilty
11 or not guilty. They chose to do that, and so I'm going to deny
12 your request based on the fact that you believe it was an
13 inconsistent verdict, that you had to convict or find not guilty
14 of both. Okay.

15 MR. MELLARD: Yes, sir.

16 THE COURT: I'll note your objection to my ruling on the
17 record so that it will be preserved.

18 Anything else?

19 MR. MELLARD: Nothing, Your Honor.

20 THE COURT: Okay. Alright. Let's take a few minutes and
21 then we'll come back and y'all can finish filling out the
22 sentencing sheet.

23 SOLICITOR JUSTIS: It's filled out, Your Honor.

24 THE COURT: It's filled out? Okay. Well, we're still going
25 to take a few minutes. Take about five minutes.

1 (Recess)

2 THE COURT: Ms. Harry Dot, we're back on the record, State
3 versus Cedric Flood. Are you ready to proceed?

4 COURT REPORTER: Yes, sir.

5 THE COURT: Okay.

6 SOLICITOR JUSTIS: The State's ready, Your Honor.

7 THE COURT: Okay. Is the Defense ready?

8 MR. MELLARD: Defense is ready, Your Honor.

9 THE COURT: Okay. Alright, Mr. Justis, let me hear from
10 you.

11 SOLICITOR JUSTIS: Your Honor, I have the sentencing sheet,
12 and the indicted case that he was convicted of.

13 THE COURT: Okay.

14 SOLICITOR JUSTIS: May I approach?

15 THE COURT: Yes, sir. Thank you, sir. Alright.

16 SOLICITOR JUSTIS: And Your Honor, as far as the prior for
17 Mr. Flood, he does have a Nineteen Ninety-two shoplifting
18 conviction, a Nineteen Ninety-four kidnaping, and criminal sexual
19 conduct in the second degree conviction for which he received
20 twenty years. He served approximately ten and a half years, was
21 released in Two Thousand and Five, and I have some arrests, I
22 don't have dispositions, a Magistrate arrest for simple assault
23 and battery and a couple of unlawful use of telephone from March
24 of Two Thousand and Nine, and of course, this charge.

25 THE COURT: Alright.

1 SOLICITOR JUSTIS: Back on August Twentieth of Two Thousand
2 Ten, the State served notice to the Defense on the record that we
3 sought to seek a life without parole sentence if he was convicted
4 on either the CSC, first, or the kidnaping, or both. So, the
5 State would ask that based on Seventeen Twenty-five Forty-five of
6 the South Carolina Code of Laws, this being his second conviction
7 for a most serious crime, there is no discretion, he must be
8 sentenced to a life without parole sentence. And I did have a
9 copy of the conviction for kidnaping back in Calhoun County in
10 Nineteen Ninety-four which serves as proof of his first most
11 serious, and of course, today would be the second most serious.

12 THE COURT: Okay, now, Mr. Justis, one of the things, -- I
13 got that file, and one of the things that we were concerned with
14 was the medical report. You had -- okay, let me see ...

15 SOLICITOR JUSTIS: Mr. Bell actually has a copy of that,
16 Your Honor.

17 THE COURT: Okay, Mr. Bell, do you have a copy for the
18 Defense?

19 SOLICITOR BELL: They've got it, we've given them three
20 copies.

21 THE COURT: They've been given three copies, this is the
22 Court's copy?

23 SOLICITOR BELL: Yes, this is the copy for the Court.

24 THE COURT: Okay. Hold on one second. Mr. Justis or Mr.
25 Bell, I believe it's your position that this would then clear up

1 the issue regarding the, whether or not he was competent to plead
2 guilty in Nineteen Ninety-four?

3 SOLICITOR JUSTIS: Absolutely, Your Honor.

4 THE COURT: Okay. Anything else?

5 SOLICITOR JUSTIS: Nothing further from the State.

6 COURT: Alright.

7 COURT REPORTER: Excuse me, Judge, is that something I
8 should mark?

9 THE COURT: Yeah, I'm going to let you mark it.

10 COURT REPORTER: Oh, I'm sorry.

11 THE COURT: That's okay. Alright, Mr. Mellard, or Mr. Wise,
12 I don't know who's, you're both doing it?

13 MR. MELLARD: Yes, sir.

14 THE COURT: Alright. Yes, sir.

15 MR. MELLARD: The Clerk said that you have a copy of the
16 Clerk's file?

17 THE COURT: Yes, sir. I have the Clerk's file.

18 MR. MELLARD: You have it?

19 THE COURT: Yes, sir.

20 MR. MELLARD: You do have the Clerk's file?

21 THE COURT: I have the Clerk's file, yes, sir.

22 MR. MELLARD: And what the document in the Clerk's file says
23 is that he was not competent.

24 THE COURT: Right.

25 MR. MELLARD: And they have provided you with a document

1 that says competent.

2 THE COURT: Yes, sir.

3 MR. MELLARD: So, we have two competing documents, one says
4 he's not competent and one says he is competent.

5 THE COURT: Right.

6 MR. MELLARD: And any case like that, for instance, in this
7 case, the Court is the ultimate finder of whether a person is
8 competent or not competent. And in the records we have no
9 finding by the Court one way or another. And without that
10 finding it's our position that there is no resolution to this
11 issue. The medical people made their evaluations, but the final
12 determiner is the Court. And so because there's nothing in that
13 record showing that the Court made a finding that he's competent
14 it's our position that issue is still out there and there's no
15 resolution to it. And because there's no resolution to it, it's
16 our position that he should not -- that that prior conviction
17 should not be used to, to sentence him to life without parole.

18 THE COURT: Alright, sir. Mr. Mellard -- okay. Alright,
19 anything else?

20 MR. MELLARD: No, sir.

21 THE COURT: Alright. Okay. Alright. Okay, we're going to
22 stand down for a moment and I'm going to look over this stuff. I
23 will come back out here and tell you whether I'm going to make my
24 decision today or in the morning. Okay?

25 (Recess)

1 THE COURT: Mr. Bell.

2 SOLICITOR BELL: Yes, sir.

3 THE COURT: You handed up to the Court a copy of the
4 evaluation by Dr. Donald Morgan, MD, that was done on October
5 Fourteenth, Nineteen Ninety-four, evaluating Mr. Cedric Flood for
6 purposes of his competency to stand trial?

7 SOLICITOR BELL: Yes, sir.

8 THE COURT: Okay. Tell the Court how you obtained a copy of
9 this?

10 SOLICITOR BELL: Our office, and I believe our investigator,
11 Mr. Walt Turner, contacted one of his attorneys, Mr. Martin Banks
12 of Calhoun County, I believe he was his attorney on the kidnaping
13 case if I'm not mistaken, and he went back and found his file and
14 faxed us a copy of this report.

15 THE COURT: Okay. Now, as I understand it, Mr. Flood pled
16 guilty to the kidnaping charge in Calhoun County in Nineteen
17 Ninety-four?

18 SOLICITOR BELL: Yes.

19 THE COURT: And he pled guilty to the criminal sexual
20 conduct charge here in Orangeburg County, is that correct?

21 SOLICITOR BELL: I think they were done at the same time.

22 THE COURT: Yeah, they were done at the same time, done on
23 the same day.

24 SOLICITOR BELL: That's correct.

THE COURT: But the kidnaping was a Calhoun County case?

1 SOLICITOR BELL: Yes, sir.

2 THE COURT: Okay. Alright. Now, I'm getting ready to do
3 the sentencing in this case. I know there are people concerned
4 about the sentencing here, and I want to caution everybody that
5 there is going to be no emotional outbreak or anything like that
6 when I read the sentence. If you cannot remain calm then I will
7 ask you, I'm giving you the opportunity now to leave the
8 courtroom.

9 Alright, everybody else in the courtroom is going to remain
10 calm while I do this.

11 Alright. Mr. Mellard, regarding the Nineteen Ninety-four
12 convictions, - - -

13 MR. MELLARD: Yes, sir.

14 THE COURT: --- the Order in that case, the Order of the
15 Honorable Charles Whetstone ordered that the evaluation be
16 completed on or before October Fourteenth, Nineteen Ninety-four,
17 and he issued that Order in response to the report that we were
18 so concerned about at the beginning of this trial.

19 MR. MELLARD: Yes, sir. I think he also put in there that
20 the results would be filed, if I'm not mistaken.

21 THE COURT: It says, "completed report and filed on or
22 before", yes, sir, yes, sir. Now, the report that I have
23 gotten from the officer of the Court has advised this Court that
24 the report from the kidnaping file in the Calhoun County

1 MR. MELLARD: Yes, sir.

2 THE COURT: This report evaluation on Cedric Flood is dated
3 on October Fourteenth, Nineteen Ninety-four. You have a copy of
4 it?

5 MR. MELLARD: I do have a copy, I don't have it in front of
6 me but I do have a copy of it.

7 THE COURT: Yes, sir. The findings that were made in this
8 case that he is competent to stand trial also mirrors the
9 findings that were made for this mental evaluation that we had
10 Mr. Flood undergo for this trial.

11 MR. MELLARD: Yes, sir. I think that's fair to say.

12 THE COURT: Okay. Now, having -- this Court is also aware
13 of the people that were involved in that case. I know Judge
14 Whetstone was the sentencing Judge, Ms. Garrick was the attorney
15 for the defendant, the prosecuting attorney, was Jimmy Williams.
16 I am convinced that they would not have accepted the plea if that
17 report had not gone into evidence, or they were aware of it
18 before the Judge would accept the plea. Now, I understand that
19 you would object to that.

20 MR. MELLARD: Yes, sir.

21 THE COURT: Yes, sir, and I want to preserve that objection
22 for the record. Okay? But for the purposes of this hearing my
23 finding is that in Nineteen Ninety-four he was convicted, he pled
guilty to two most serious offenses, criminal sexual conduct in
the first degree and kidnaping.

1 MR. MELLARD: I believe it was ...

2 SOLICITOR JUSTIS: Your Honor, I believe it was criminal
3 sexual conduct, second degree.

4 THE COURT: Oh, second degree. Okay.

5 SOLICITOR JUSTIS: Right. And the State contends that the
6 kidnaping was the most serious offense.

7 THE COURT: Oh, kidnaping. Okay. And the criminal sexual
8 conduct, second degree, was just a most serious?

9 MR. MELLARD: Serious.

10 SOLICITOR JUSTIS: And that was just serious.

11 THE COURT: Serious. Okay. I mean, not most serious, but
12 serious. That's correct.

13 SOLICITOR JUSTIS: Correct, Your Honor.

14 THE COURT: So, he had a prior most serious offense, if I
15 accept that?

16 MR. MELLARD: If you accept what you have just said, yes,
17 sir, with the understanding that we disagree on that.

18 THE COURT: And I understand that you are objecting to that,
19 and I am again making sure, every time I can say it in the
20 record, that you're objecting to me concluding that.

21 MR. MELLARD: Yes, sir.

22 THE COURT: But based upon that, this jury has convicted him
23 of kidnaping, another most serious offense.

24 MR. MELLARD: Yes, sir.

25 THE COURT: Okay.

1 SENTENCE OF THE COURT:

2 THE COURT: And noting your objection to that earlier ruling
3 also, Code Section Seventeen Twenty-five Forty-five of the South
4 Carolina Code mandates that he be sentenced to life without the
5 possibility of parole. Okay?

6 As a result the sentence of this Court, Mr. Flood, is, you
7 are sentenced to the State Department of Corrections for life
8 without the possibility of parole.

9 Thank y'all.

10 SOLICITOR JUSTIS: Thank you, Your Honor.

11 MR. MELLARD: Thank you, Your Honor.

12 COURT REPORTER: Judge, how should I mark that?

13 THE COURT: A Court's exhibit.

14 COURT REPORTER: A Court's exhibit?

15 THE COURT: Yes, ma'am. Here, pass that over there. That's
16 the sentencing sheet.

17 (Court's Exhibit Eleven
18 marked and filed.)

19 THE COURT: Alright, thank y'all.

20 ---END OF TRANSCRIPT---

WITNESSES

Bobby Jones

373

DOCKET NO. 2009GS38-1775

The State of South Carolina

County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Orangeburg County Sheriff

2009013038

COURT OF GENERAL SESSIONS

February 1, 2010 TERM

ARREST WARRANT NUMBER

M212719

Defendant

Arrested: October 1, 2009

THE STATE
vs.

Witness:

Cedric Flood

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Mary Beth W. Brown
Date FEB 03 2010

Foreperson of Grand Jury

Date: February 3, 2010

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

2010 FEB -3 A 11:40
FILED FOR RECORD
MIRANDA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

SC Code: 16-3-652

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

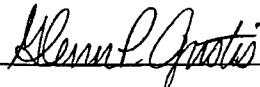
INDICTMENT
2009GS38-1775

At a Court of General Sessions, convened on February 1, 2010 the Grand Jurors of Orangeburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about September 29, 2009, the Defendant, Cedric Flood, did commit a sexual battery upon the victim, Minor in that the defendant did have sexual intercourse multiple times with the victim without consent of the victim and the victim did submit to sexual battery under aggravated force, and/or the victim was subjected to forcible confinement and kidnapping,. This offense in violation of Section 16-03-652 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

WITNESSES

Bobby Jones

375

DOCKET NO. 2009GS38-1776

The State of South Carolina

County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Orangeburg County Sheriff

2009013038

ARREST WARRANT NUMBER

M212720

Arrested: October 1, 2009

THE STATE

vs.

Cedric Flood

ACTION OF GRAND JURY

FEB 03 2010

Date

Foreperson of Grand Jury
Date: February 3, 2010

VERDICT

Indictment for

KIDNAPPING

SC Code: 16-3-910

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2010 FEB - 3 A 11:40

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

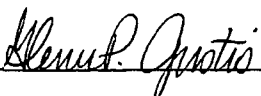
INDICTMENT
2009GS38-1776

At a Court of General Sessions, convened on February 1, 2010 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about September 29, 2009, the Defendant, Cedric Flood, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Minor without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **377**COUNTY OF OrangeburgSTATE VS
Cedric Flood

AKA:

Race: B Sex: M Age: 39DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was:

TO: KidnappingINDICTMENT/CASE#: 2009GS38-1776A/W#: M212720Date of Offense: 9/29/2009S.C. Code § 16-3-910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Justis, Glenn P.

SC Bar# 766016

Cedric Flood

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life without parole months/years or ☐ under the Youthful Offender Act not to exceed 30 years and/or to pay a fine of \$ possibility of parole, provided that upon the service of life without possibility of parole days/months/years and/or payment of \$ plus costs and assessments as applicable; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference. life without possibility of parole☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.**Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.**

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Vernetha G. Glen
Clerk of Court/ Deputy Clerk days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning \$ paid to Public Defender FundOther: ☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.PRESIDING JUDGE Judge Code: 2153Sentence Date: July 21, 2011

Court Reporter

Harris Dot Walker

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)Cedric Flood #217089)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections; Lieber Corr. Inst.
2. Name and location of Court which imposed sentence Orangenburg Ct. of General Sessions -
3. Name(s) of co-defendant(s) (if any) N/A Hon. Edgar W. Dickson, Presiding Judge
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-65-38-1776; kidnapping
 - (b) X
 - (c) X
5. The date upon which sentence was imposed and the terms of the sentence TRUE CC
 - (a) July 21, 2011
 - (b) July 21, 2011

CLERK OF COURT

Revised 3/2003

- (c) X
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. /
- iii. /
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. /
- iii. /
- (c) the date of each such result:
- i. April 10, 2013
- ii. /
- iii. /
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No.: 2013-UP-140
- ii. /
- iii. /
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) see attached memorandum

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Cedric Flood, #217089,
Applicant,

-VS-

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS

Indictment # 2009-GS-38-1775

Memorandum Of Law In Support
Of Application For Post-Conviction
Relief Pursuant To South Carolina Code
Ann. §§ 17-27-20 Through 17-27-160

COMES NOW, above captioned Applicant, Cedric Flood, #217089, pro se, seeking relief in this Honorable Court pursuant to South Carolina Code Ann. §§ 17-27-20 through 17-27-160, claiming that his rights have been violated in a number of ways including but not limited to his Sixth Amendment right to the effective assistance of trial counsel, and his Fourteenth Amendment right to due process of law that is protected under the United States Constitution, and Article I, §§ 3 and 14 of the South Carolina State Constitution.

Respectfully Submitted,

Cedric Flood

Cedric Flood

Furthermore, the trial judge advised the attorneys that he was inclined to give the jury an Allen¹ charge; however, he was opened to suggestions. At that point, the trial judge asked Appellant's trial counsel their position on him giving the Allen charge. Appellant's trial counsel replied, "That's fine, Your Honor."

Thereafter, the trial judge gave the jury an Allen charge. (Tr. pp. 352-354.) The jury retired to the jury room and continued deliberations. (Tr. p. 354). After the trial judge gave the Allen charge, the trial judge asked, "Anything from the Defense regarding my charge?" (Tr. p. 355.) Appellant's trial counsel replied, "No, sir."

At some point, the jury sent the trial judge two additional jury notes. (Tr. p. 355; *Court's Ex. 9; Court's Ex. 10*.) Both notes stated the there was one juror that indicated he would "never" change his mind. The trial judge held an off-the-record conference in his chambers with the attorneys. (Tr. p. 355.) The trial judge brought the jury back into the courtroom and gave the following charge:

THE COURT: I've gotten two notes from you. I did not respond to the first one, so I got the second one that's essentially the same thing. You know, it reminds me of when my children repeat things like I was hard of hearing, and I apologize for not getting back to you sooner than that. But let me tell you, I'm not going to recharge the law to you again, I'm not going to do that. But I want y'all - - if y'all have ever been involved in Court proceedings before, y'all know that it takes a lot of people a lot of time and a lot of work just to get to Court. Okay? And we've been in this trial now for a few days, and I know these deliberations have been hard on y'all, and I know that they are some very hard decisions that you are being asked to make, and I know that there's serious disagreement among you. But I want to remind you that if you think it is tough on you, I want you to think about how tough it is on the parties.

¹ Allen v. United States, 164 U.S. 492 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

STATEMENT OF THE CASE

The Applicant, Cedric Flood was arrested and charged with criminal sexual conduct-first degree and kidnapping by the Orangeburg County Sheriff's Department, on October 1st, 2009. He was indicted for the same offenses by the Orangeburg County Grand Jury on February 3rd, 2010. Applicant proceeded to trial by jury and a judge, the Honorable Edgar W. Dickson, presiding judge. He was represented by Douglas Melland and Mark Wise, Esquires, of the Orangeburg County Public Defender's Office. Glenn Justis and Harrison Bell of the Orangeburg County Solicitor's Office represented the state. The jury convicted Applicant of kidnapping, but acquitted him of the criminal sexual conduct-first degree. He was sentenced to life in prison without parole pursuant to S.C. Code Ann. §17-25-45 (1976). Applicant timely filed an appeal of his conviction and sentence in the South Carolina Court of Appeals, Appellate Case No. 2011-196546. Appellate Defender Susan B. Hackett of the Division of Appellate Defense. Julie K. Keeney, Assistant Attorney General, of the Office of Attorney General, represented Respondent. The Court of Appeals, by Unpublished Opinion No. 2013-UP-140, Affirmed Applicant's conviction and sentence on April 10th, 2013, PER CURIAM, pursuant to Rule 220(b), SCACR, and the following authorities: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the court will not be considered on appeal."); Pinckney v. Pettijohn Builders, Inc., 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986) (holding a party may not argue on appeal that a jury charge was erroneous where trial counsel stated he had no objection to a specific aspect of the jury charge).

STANDARD OF REVIEW

The Sixth Amendment challenge to the effectiveness of Applicant's trial counsel is governed by the deferential standard announced in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), which dealt with ineffective assistance of counsel in a capital case sentencing proceeding, and was premised in part on the similarity between such a proceeding and the usual criminal trial.

In Strickland, the Supreme Court established a two part test for reviewing claims of ineffective assistance of counsel. Id. at 690. Applicant must first demonstrate that counsel's performance fell below an objective standard of reasonableness. Second, if Applicant is able to demonstrate that his trial counsel's performance was objectively unreasonable, he must then "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceed would have been different." Id. at 694. As a result, Applicant's trial counsel may be deemed ineffective only if his "conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id. at 696. A "reasonable probability" is a probability sufficient to undermine the confidence in the outcome of the proceeding. Williams v. Taylor, 529 U.S. at 405-06.

10.(a) Ineffective Assistance Of Counsel

11.(a) Ineffective Assistance Of Counsel - Issue One

Trial Counsel Rendered The Ineffective Assistance Of Counsel In Violation Of Applicant's Rights Guaranteed Him By The Sixth And Fourteenth Amendments To The United States Constitution, And Article 1, §§ 3 And 14 Of The South Carolina State Constitution For His Failure To Object To A Coercive Supplemental Charge Being Given To The Jury, After The Jury Advised The Trial Judge That They Could Not Reach A Unanimous Decision On Either Charge, And After The Trial Judge Had Given An Allen Charge.

11.(a) Ineffective Assistance Of Counsel - Issue Two

Trial Counsel Rendered The Ineffective Assistance Of Counsel In Violation Of Applicant's Rights Guaranteed Him By The Sixth And Fourteenth Amendments To The United States Constitution, And Article 1, §§ 3 and 14 Of The South Carolina State Constitution For Failing To Object To The Trial Judge Not Comporting With South Code Ann. §14-7-1330 (1976).

To save the Court's time, Applicant will address these issues together since the facts of one encompass the other.

FACTS

Applicant was tried for criminal sexual conduct 1st degree and kidnapping. At the conclusion of his trial, Applicant was acquitted on the CSC charge, but the jury found him guilty of kidnapping, and he was sentenced to life without parole, pursuant to S.C. Code Ann. §17-25-45. This occurred after the trial judge had given an Allen^① charge to the jury, and after the jury sent two jury notes to the trial judge, advising him "that there was one juror that indicated he would 'never' change his mind." Due to trial counsel's deficient performance, Applicant was denied a fair trial, and the verdict was constitutionally infirm, due to coerced verdict.

The jury begins deliberations at 4:25 p.m., on July 20, 2011. Tr. p. 331, L1. 20-21.

① Allen v. United States, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

At 5:05 p.m., the jury sends a note to the trial judge, asking for the definition of kidnapping and criminal sexual conduct. Tr. p. 331, L. 23- p. 332, L. 1. The judge then recharges the jury on its previous charge on criminal sexual conduct and kidnapping. The jury retires to the jury room and continues deliberations. Tr. p. 333, L. 4- p. 335, L. 15. No time is specified by the Court Reporter ("Ct. Rpt.") as to when the jury returns to the jury room.

Sometime between 5:05 p.m. and after 6:00 p.m., the jury sends the trial judge a note requesting the victim's transcript, on July 20, 2011, the trial judge then excuses the jury for the night. On July 21, 2011, the trial judge replays the victim's testimony, in its entirety to the jury. Tr. p. 336, L. 1- p. 351, L. 14.

At some point in time, the jury after having listened to the victim's testimony replayed, retires to the jury room to continue their deliberations. Tr. p. 351, L. 5-14.

At an unspecified time, the jury sends a note to the trial judge, advising him that "the jury cannot come to a unanimous decision on either charge. The trial judge then advises the state and trial counsel that its inclined to go ahead and give the jury an Allen charge. There's no objection from the State nor trial counsel. Tr. p. 351, L. 22- p. 352, L. 13.

The trial judge then brings the jury back into the courtroom and informs them that he has advised the attorneys that they have not been able to reach a unanimous decision. The trial judge then proceeds with Allen charge. Tr. p. 352, L. 1-3; p. 353, L. 6- p. 354, L. 17.

At an unspecified time, the jury retires to the jury room and continues deliberations. Tr. p. 354, L. 19-22.

Again, at an unspecified time, the jury sends the trial judge two more jury notes, back to back. Tr. p. 355, L. 5-7.

The jury is then brought back into the courtroom. Tr. p. 355, L. 12-14.

The trial judge then gives the following additional charge:

continued #3

I've gotten two notes from you. I did not respond to the first one, so I got the second one that's essentially the same thing. You know, it reminds me when my children repeat things like I was hard of hearing, and I apologize for not getting back to you sooner than that. But let me tell you, I'm not going to recharge the law to you again, I'm not going to do that. But I want y'all -- if y'all have ever been involved in Court proceedings before, y'all know that it takes a lot of people a lot of time and a lot of work just to get to Court. Okay? And we've been in this trial now for a few days, and I know these deliberations have been hard on y'all, and I know that they are some very hard decisions that you are being asked to make, and I know that there's serious disagreement among you. But I want to remind you that if you think it is tough on you, I want you to think about how tough it is on the parties.

Now, the parties want you to make a decision in this case, and they want you to make a decision without compromising any of your convictions or your beliefs. Now, considering that it's still early in the day, I want to apologize to you and tell you that rather than try this case again I'm treating this as a work day. Sometimes you've got to work overtime. So, I'm asking y'all to return to your deliberations and bring back a fair, just and impartial verdict. Okay?

Tr. p. 355, L. 16 - p. 356, L. 13

At 2:50 p.m., the jury retires to the jury room and continues deliberations. Tr. p. 355, L. 15-17.

The trial judge inquires whether the attorneys have any exceptions to its additional charge. There's no exceptions/object-ions from neither the State nor trial counsel. Tr. p. 356, L. 21 - p. 357, L. 3.

Two hours later, the jury returns its verdict.

Then, at some point, the jury sent the trial judge two additional jury notes. Both notes stated "that there was one juror that indicated he would never change his mind. Tr. p. 355, Ll. 5-7. The record itself is silent as to this fact. But see Page 5 of "Respondent's Initial Brief" (attached hereto), tagged as Court's Exhibit(s) 9 and 10.

Here, trial counsel's performance was deficient, for failing to object to coercive supplemental charge being given to the jury after an Allen charge had been given to the jury, in the following ways:

- (i) It allowed the trial judge to coerce the jury into returning a guilty after they [jury] repeatedly informed him that they would not be able to reach a unanimous decision;
- (ii) Applicant was denied appellate review of being tried by a jury and having an uncoerced verdict rendered by that body;
- (iii) That the trial judge had been advised twice as to "one" juror holding out, and said charge could have been interpreted as singling out that one juror;
- (iv) The trial judge compared the jurors to "children";

ISSUE TWO

Trial counsel's performance was deficient for failing to object to the trial judge not comporting with S.C. Code Ann. § 14-7-1330(1976), in that, trial judge's decision to have a twice deadlocked jury continue to deliberate. Thus, denying the Applicant a fair trial, and due process, in the following ways:

The trial judge, after having given an Allen charge to the jury, received two additional jury notes after returning to the jury room and continuing deliberations, advising trial judge "that there was one juror who would never change his mind," the trial judge did not respond to the first note, the jury sent a second note, again, advising the trial judge the same.

Here, the trial judge did not disclose the contents of the two jury notes to the Applicant. As a matter of fact, the trial judge withheld pertinent information from Applicant and trial counsel as well as the State, in his failure to reveal contents of the notes:

deprived trial counsel of pertinent facts necessary to make informed decisions concerning Applicant's right to have uncoerced verdict rendered by his jury, and mistrial declared due to twice deadlocked jury continuing deliberations.

Section 14-7-1330 provides:

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of law.

§14-7-1330 is intended "to prevent forced verdicts, and to prevent undue severity of jury service." State v. Freely, 105 S.C. 243, 89 S.E.643 (1916).

The South Carolina Supreme Court, in State v. Steven Louis Barnes, Opinion No. 27234 (March 20, 2013), on writ of certiorari to the Court of Appeals, reversed and remanded Barnes conviction and sentence for a new trial because the trial court decided to have a twice deadlocked jury continue to deliberate, in that, the trial court's decision violated the mandate of S.C. Code Ann. §14-7-1330 (1976).

The distinguishing fact between Barnes and the present case is ① that trial counsel objected and obtained a ruling for appellate review. And ② In the present case, the trial judge withheld pertinent facts from trial counsel, thereby preventing trial counsel to make informed decisions, depriving Applicant of a fair trial, an uncoerced verdict, the denial of attorney at a critical stage in the trial proceeding.

The trial court misrepresented the facts concerning the contents of the two jury notes when he "advised the jury 'that he would not recharge to law to them[jury] again. The jury did not request any definition nor additional information or facts concerning the trial. The jury did state, 'That there was a juror who would 'never' change his mind'."

Applicant and his attorney(s) were denied a meaningful opportunity to protect Applicant's constitutional rights when - the trial judge did not disclose the contents of the first jury note [just did not respond], upon the jury sending a second note to the trial judge, the trial judge again failed to reveal the contents of the second note, which, the trial judge advised the jury, the attorneys, that he would not recharge the law again - when, in fact, the jury did not request that they needed to be charged, advised of the law, nor any definitions from the trial judge, when, in fact, both jury notes stated that "there's a juror that will never change his mind."

As Applicant's transcript of record reveals, trial counsel not only failed to object to the trial judge giving a coercive supplemental jury charge, counsel approved of the charge, confirms that trial counsel rendered the ineffective assistance of counsel, and prejudiced Applicant, by allowing him to be unlawfully convicted by a coerced jury, in violation of his Sixth Amendment right to effective assistance of counsel, and Fourteenth Amendment right to a fair proceeding. The duty of counsel is not merely to do "something" rather than nothing on behalf of one's client, but act as the client's effective advocate during each critical stage of the defense. Cronic, 466 U.S. at 659 & n. 25, 104 S.Ct. 2039; see also Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2678 (1986) (single error may constitute ineffective of counsel); Strickland, 466 U.S. at 695-96, 104 S.Ct. 2052 (effect of any particular error depends on circumstances of the case).

The trial judge's withholding pertinent information from the Applicant and his trial counsel, that "there was a juror that would never change his mind," after receiving not one jury note but two, then the trial judge misrepresented the facts pertinent to trial counsel's assistance, specifically, prejudiced Applicant, by depriving trial counsel, and the Applicant, of making an informed decision, to move for a mistrial, based on a deadlocked jury, and sending the jury back to deliberations, deprived Applicant of a fair trial, and, the ineffective assistance of trial counsel at a critical stage in Applicant's trial proceeding, as well as appellate review of issue.

It is noteworthy that the jury having been given an Allen charge, after advising the trial judge that they could not reach a unanimous decision, then sending two more jury notes to the trial judge advising

continued #7

the judge that "there was a juror who would never change his mind," returned a "compromise" verdict of "guilty" on the kidnapping charge, and rendering a "not guilty" on the criminal sexual conduct charge, resulting in the Applicant being sentenced to a life without parole pursuant to S.C. Code §17-25-45 (1976), based on a prior conviction. Applicant's prejudice is overwhelming.

The United States Supreme Court has declared that a presumption of prejudice is appropriate, as described in United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984).

Applicant asserts that trial counsel's assistance, here, was rendered ineffective, due to the fact that the trial judge not only failed to disclose the contents of two jury notes stating that a juror was "holding out," the trial judge misrepresented the "contents" of the notes, to the attorneys, thereby depriving trial counsel of the pertinent information to make informed decisions concerning the Applicant's defense. Thus, trial counsel's performance meets the first criteria, in that, prejudice is presumed when the defendant is completely denied counsel at a critical stage at his trial, and this, jury charge and recharge—a second coercive supplemental charge—jury deliberations, is a critical stage in Applicant's trial proceeding.

The Applicant respectfully requests this Honorable Court vacate his conviction and sentence, or, in the alternative, reverse and remand for a new trial.

iv. _____
 (d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First Opportunity and Only Allowable Post-Trial hearing

(b) to raise Ineffective Assistance of Counsel

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Douglas Mellard, Esquire; Mark Wise, Esquire, Orangeburg Cty. Public Defender's Office, Orangeburg, South Carolina
 - ii. Susan B. Hackett, Appellate Counsel, S.C. Comm. on Indigent Defense
 - iii. Div. of Appellate Defense, Post Office Box 11589, Columbia, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:
conviction and sentence vacated, or reversed and remanded for new trial and any other relief the Court deems just and proper
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of DORCHESTER)

Cedric Flood #217089)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Cedric Flood

SWORN to and subscribed before me this _____
day of _____, 2_____.

_____(L.S.)
Notary Public

My Commission Expires: _____

2013 JUL 22 PM 10:39
FILED
CLERK OF COURT
ANCHORAGE COUNTY

TRUE COPY
CLERK OF COURT
ANCHORAGE COUNTY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Cedric Flood, #217089

I, Cedric Flood, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X Cedric Flood

Applicant

SWORN or affirmed to and subscribed before me this
25th day of July, 2013.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

2013 JUL 29 PM 3:29
RECEIVED
CLERK OF COURT
ORANGEBURG COUNTY, SC

Angie Parker
CLERK OF COURT
ORANGEBURG COUNTY, SC

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Cedric Flood, #217089,	)	2013-CP-38-0875
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed July 29, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was true bill indicted during the February 2010 of the Orangeburg County Grand Jury for Criminal Sexual Conduct with a Minor in the First Degree (2009-GS-38-1775) and Kidnapping (2009-GS-38-1776). Douglas Mellard and Mark Wise, Esquire, represented Applicant. On July 19-21, 2011, the Applicant proceeded to a trial by jury before the Honorable Edgar W. Dickson. Applicant was convicted of Kidnapping and acquitted of Criminal Sexual Conduct with a Minor in the First Degree. Judge Dickson sentenced Applicant to confinement for life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Flood, No. 2013-UP-140 (Ct. App. April 10, 2013). The Remittitur was issued on June 5, 2013.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and Applicant's trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- "Failure to object to a coercive supplemental charge being given to the jury, after the jury advised the trial judge that they could not reach a unanimous decision on either charge, and after the trial judge had given an Allen charge."
- "Failure to object to the trial judge not comporting with South Code Ann. § 14-7-1330 (1976)."

Any claims not specifically enumerated in the post-conviction relief Application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In his Application, Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Megan E. Harrigan
Attorneys for the Respondents

October 9, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2013-CP-38-0875
	)	
CEDRIC FLOOD, #217089	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street
Suite 104
Columbia, SC 29201

DATED this 9th day of October, 2013.


Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS)

COUNTY OF ORANGEBURG)

DOCKET NO. 2013-CP-38-0875)

CEDRIC FLOOD)

Plaintiff)

vs.)

STATE OF SOUTH CAROLINA)

Defendant)

TRANSCRIPT OF RECORD

May 27, 2014

St. George, South Carolina

B E F O R E:

THE HONORABLE MAITÉ MURPHY, JUDGE

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

JONATHAN D. WALLER, ESQ.
Attorney for the PlaintiffMEGAN E. HARRIGAN, ESQ.
Attorney for the StateJOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

Cedric Flood v State of S.C.
Proceedings
May 27, 2014

PROCEEDINGS

MS. HARRIGAN: May it please the court?

THE COURT: Yes, ma'am.

MS. HARRIGAN: Your Honor, the final matter of the day is Cedric Flood versus the State of South Carolina, docket number 2013-CP-38-0875. Mr. Flood was true bill indicted during the February 2010 term of the Orangeburg County Grand Jury for Criminal Sexual Conduct with a Minor in the First Degree -- excuse me, not with a minor, just Criminal Sexual Conduct in the First Degree and Kidnapping. Doug Mellard and Mark Wise represented Mr. Flood.

On July 19 through 21st 2011, Mr. Flood proceeded to a jury trial before the Honorable Edgar W. Dixon where Mr. Flood was convicted of Kidnapping and acquitted of Criminal Sexual Conduct in the First Degree. Judge Dixon sentenced Mr. Flood to confinement of life without the possibility of parole, pursuant to SC Code Annotated 17-25-45. A timely notice of appeal was filed on Mr. Flood's behalf and an appeal was perfected.

The South Carolina Court of Appeals affirmed Mr. Flood's conviction and sentence on April 10, 2013. The remittiter was issued on June 5, 2013. On July 29, 2013 Mr. Flood filed a timely application for post conviction relief alleging that he was being held unlawfully based

Cedric Flood v State of S.C.
Proceedings
May 27, 2014

1 on two specific allegations of ineffective assistance of
2 counsel. The first is a failure to object to a course of
3 supplemental charge being given to the jury after the
4 jury advised the trial Judge that they could not reach a
5 unanimous decision on either charge and after the trial
6 judge had already given an Allen Charge.

7 And the second ground is failure to object to the
8 trial Judge not comporting with South Carolina Code
9 Annotated 14-7-1330. The State made its return on
10 October 9, 2013 requesting an evidentiary hearing be held
11 and he's represented in this action by Jonathan Waller.
12 I'll turn it over to Mr. Waller at this time.

13 THE COURT: Mr. Waller?

14 MR. WALLER: Thank you, Your Honor. The applicant
15 would call Cedric Flood to the stand.

16 THE COURT: Mr. Flood if you'd come forward to the
17 witness stand, please?

18 [Whereupon, Mr. Flood comes forward]

19 CLERK OF COURT: Raise your right hand. State your
20 full name for the record.

21 THE WITNESS: Cedric Flood.

22 [Whereupon the witness is duly sworn by the Clerk of
23 Court]

24 THE COURT: Your witness, Mr. Waller.

25 MR. WALLER: Thank you, Your Honor. May it please

Cedric Flood v State of S.C.
Proceedings
May 27, 2014

1 the court?

2 THE COURT: Yes, sir.

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Cedric Flood v State of S.C.
Cedric Flood-Direct Examination by Mr. Waller
May 27, 2014

1 CEDRIC FLOOD,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WALLER:
6 Q. Mr. Flood, how are you this afternoon?
7 A. I'm doing fine.
8 Q. Okay. Mr. Flood, if you would do me a favor and
9 speak up clearly into that microphone so this nice lady
10 up here can hear you.
11 A. All right.
12 Q. Answer my questions loudly and then when I'm
13 finished please answer any questions Ms. Harrigan has.
14 A. All right.
15 Q. Mr. Flood, when you were first arrested and charged
16 with these crimes, how did you go about getting Mr.
17 Mellard and Mr. Wise as your attorneys?
18 A. Well, I got them at the Public Defender office they
19 working with me Mr. Mark Wise at first and Mr. Mellard.
20 Q. Okay. And when did you first meet them?
21 A. Well, I can't remember what date or when I meet
22 them, but I was going over there back and forth to see
23 them. I'm saying, every now then they called me over
24 there and then I go over there and see them and then when
25 Mr. Mellard, I go see him and talk to him and then he was

Cedric Flood v State of S.C.

Cedric Flood-Direct Examination by Mr. Waller

May 27, 2014

1 not really talking about nothing every time when I go see
2 him, the only thing that Mr. Mellard was telling me oh,
3 you going to jail.

4 Q. Okay. How did you get over there to see -- did you
5 meet with them together?

6 A. Sometime I go meet with them together or either the
7 sometimes I go meet with Mr. Wise all by himself.

8 Q. Okay. When they were representing you, did they
9 discuss the two charges that you had against you with
10 you?

11 A. No, sir. Not really, cause see when I really was
12 trying to talk to them Mr. Mellard but Mr. Mellard won't
13 be talking more about nothing. Only thing he be telling
14 me you know you did the charge, so you need to go ahead
15 and confess up to it.

16 So I told him say, I did not did the crime. So he
17 told me he say, he going to go investigate the case and
18 he never even investigated any kind of case.

19 Q. Okay. Did they discuss the penalties that each case
20 -- or that each charge carried with respect to you, in
21 particular?

22 A. Not -- no sir, not really. Because see, when I was
23 trying to talk to Mr. Mellard, I couldn't really get
24 nothing out of Mr. Mellard because he was not really
25 going to talk about whole lot of nothing. Only thing

Cedric Flood v State of S.C.
Cedric Flood-Direct Examination by Mr. Waller
May 27, 2014

1 that Mr. Mellard had wanted me for trying to do, he was
2 telling me he said man go ahead and plead guilty or
3 either go ahead and say what you did and stuff like that.

4 And Mr. Mellard, he ain't really wanted to talk
5 about nothing. Only thing when I go talk to him, he be
6 dropping his pen round the desk all the time. And so I
7 couldn't really get no results out of him.

8 Q. Okay. So he didn't tell you what you were facing?

9 A. Mr. Mellard really was not going to talk about
10 nothing.

11 Q. Okay. What -- how about Mr. Wise?

12 A. Mr. Wise was saying he was going to do all that I
13 ask him to do, but it seem like when he working with Mr.
14 Mellard because he -- Mr. Mellard out and so they didn't
15 even work out right. It didn't went right.

16 Q. Okay. Do you remember meeting with a doctor named
17 Michael Ganson [phonetic]? Did they discuss with you
18 getting evaluated?

19 A. Hey, you know what I'm saying. Every time I go meet
20 with him, he ain't really talking more about nothing
21 either, you know what I'm saying? He really went on
22 about my childhood and stuff like that.

23 Q. Okay. And if you would, and I'm sorry this is kind
24 of a personal question, I know you've had a couple --
25 tell the court, if you can, about some -- any injuries

Cedric Flood v State of S.C.

Cedric Flood-Direct Examination by Mr. Waller

May 27, 2014

1 you've had in your life.

2 A. Oh, I've had some head injuries and stuff and see
3 when I had explain that to Mr. Mellard, but Mr. Mellard,
4 he told me he said he was going to get me checked out by
5 a doctor or whatever. But Mr. Mellard ain't really been
6 doing his job. He ain't really did nothing for me.

7 Q. Okay. Did they get you checked out?

8 A. No, not really. He ain't really did nothing.

9 Q. Okay. At what point in your conversations with Mr.
10 Mellard and Mr. Wise, did y'all decide that you were
11 going to go to trial on these two charges?

12 A. See, what happened -- Mr. Mellard wait till at the
13 last minute to try to tell me talking about stop the
14 trial. I told him said no, I'm not going to stop the
15 trial because I know I didn't did nothing and I wanted to
16 see what you said they said that they got on me, so I
17 want to see what they got.

18 Q. What do you mean stop the trial?

19 A. He didn't want for them to start the trial.

20 Q. What -- why would they stop the trial?

21 A. No, I mean, he was telling me say, stop the trial
22 and you go ahead and just plead out and then after that
23 all oh you want to plea. I told him said no, I'm not
24 going to stop no trial, I want to keep going with it.

25 Q. Okay, okay. Why was he telling you to stop the

Cedric Flood v State of S.C.

Cedric Flood-Direct Examination by Mr. Waller

May 27, 2014

1 trial?

2 A. Why? I feel like that he know that he didn't did
3 his job to represent me right and so that's why he wanted
4 to stop the trial try to take a plea bargain with him and
5 then at -- he really was telling me some big numbers.

6 He been coming at me with some big numbers; he ain't
7 really said what the number was he was just throwing some
8 numbers out around the table at me.

9 Q. Okay. And so at some point y'all did have a trial?

10 A. Yes, sir. Yes, sir.

11 Q. How long did that trial last?

12 A. The trial lasted three days.

13 Q. Okay. And what did y'all talk about during the
14 trial?

15 A. Mr. Mellard really was not talking about nothing
16 during the trial, know what I'm saying; nothing. Know
17 what I'm saying, he supposed to been doing his part for
18 me, but Mr. Mellard seem like that didn't really did his
19 part. Know what I'm saying, he didn't really do -- he
20 ain't really did no objections when he supposed to be
21 objecting to.

22 Q. Okay. Did you talk to anybody but Mr. Mellard and
23 Mr. Wise?

24 A. No, those was the only two I talked to. But see at
25 first, I had Peggy Hines [phonetic] and then I fired

Cedric Flood v State of S.C.

Cedric Flood-Direct Examination by Mr. Waller

May 27, 2014

1 Peggy Hines because me and her kind of got into it and
2 then I fire her and then they give me Mr. Wise and Mr.
3 Mellard.

4 Q. Okay. How about ---

5 A. --- Right at the same law firm they give me -- or
6 right at the same public defender office.

7 Q. How about any family members? Were you talking to
8 your family during the trial?

9 A. I was talking to -- with my sister during the trial,
10 know what I'm saying? They would let say when I got like
11 a break this was -- when they take like a break then they
12 would let me talk with my sister and then she was telling
13 me say don't stop the trial, just keep on going with it
14 know what I'm saying. Because it seemed like to me Mr.
15 Mellard was not trying to help me and so I was so then at
16 that I wanted to go on with the trial.

17 Q. Okay. When y'all were getting ready for the trial,
18 okay you follow me?

19 A. Yes, sir.

20 Q. Okay. When ya'll were getting ready for the trial
21 and y'all were talking about what y'all were going to do
22 to get ready for the trial, what did y'all discuss?

23 A. Mr. Mellard didn't discuss nothing about what we
24 going to do to get ready for the trial or nothing. They
25 start going down the names, just picking the names --

Cedric Flood v State of S.C.
Cedric Flood-Direct Examination by Mr. Waller
May 27, 2014

1 just picking the people that who they going to pick or
2 whatever, however they was doing it. And then he didn't
3 discuss about what we going to do for the trial, what
4 kind of defense he going to put up, or either how we
5 going to do this thing or nothing, or how we going to
6 work it out or what.

7 Q. Okay. So y'all didn't talk about any defenses?

8 A. None of that.

9 Q. Did y'all discuss the -- did y'all discuss defense
10 in general? Nothing specific, but in general?

11 A. No, sir. We didn't discuss no defense in general
12 for nothing.

13 Q. Okay. When the trial is going on, what -- you're
14 sitting at the table with them?

15 A. Yes, sir. I was sitting at the table with them, but
16 they was talking inside, you know, they was using their
17 little motions or what how they was talking to the Judge
18 you know what I'm saying. I didn't understand that or
19 what they was doing.

20 Q. Okay. Were they -- so they were not telling you
21 what was going on during the trial?

22 A. No, sir, none of that. None of that.

23 Q. When we got down to the very end of the trial, do
24 you remember that?

25 A. I know when we got down to the end of the trial and

Cedric Flood v State of S.C.

Cedric Flood-Direct Examination by Mr. Waller

May 27, 2014

1 then they did the closing arguments or whatever they was
2 doing during the closing arguments of the trial. But,
3 the thing that what Mr. Mellard supposed to object to but
4 that he ain't did no objection.

5 Q. Okay. Let me back you up real quick though. When
6 the -- when all the evidence stopped.

7 A. Yes, sir.

8 Q. And the jury starts talking about the case.

9 A. Yes, sir.

10 Q. Okay. Do you remember that?

11 A. Yes, sir.

12 Q. Okay. How long was the jury not in the court room
13 talking about the case?

14 A. Oh what, I couldn't remember about that how long
15 that they was inside the court room but not talking about
16 the case but, I know they sent some notes out there, but
17 I ain't know what's been on the notes.

18 Q. Well how ---

19 A. --- and then they -- he ain't been trying to find
20 out well what's that in the notes.

21 Q. We're going to talk about the notes in just one
22 second.

23 A. Okay.

24 Q. How, if you remember and it's fine if you don't, how
25 long when everybody stopped from the witness stand where

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1 you're sitting now and the jury wasn't there anymore. Do
2 you just remember kind of an estimate?

3 A. I cannot remember how long it was.

4 Q. An hour?

5 A. I couldn't remember, it might have been like 45
6 minutes, 30 minutes, I don't know. I...

7 Q. Okay. Let's talk about those notes you just
8 mentioned a little bit. The jury sent several notes,
9 didn't they? Do you remember the jury sending notes?

10 A. I know full well that the bailiff -- well the lady
11 who would bring the notes out there would keep coming out
12 and I think she come in about like four times.

13 But then the Judge look at the notes, he sent them
14 back out there and then he don't say nothing about the
15 notes and then well my attorney, he ain't never asked
16 about what's from the notes, what's it say on the notes.

17 Q. Do you know if your attorney saw the notes?

18 A. I don't know.

19 Q. You don't know, okay. Did they ever tell you they
20 didn't see the notes?

21 A. They didn't tell me nothing about no notes or
22 nothing.

23 Q. Okay. Mr. Flood, you filed this post conviction
24 relief action and I -- with regards to you as a witness,
25 I think I've asked all the questions that I need from

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1 you.

2 A. All right.

3 Q. But I want to -- if I've forgotten anything or left
4 anything out, is there anything that I've left out that
5 you want the Judge to know so she can have all the
6 information to be able to make an informed decision?

7 A. Yeah, well check this out, I had want to know what
8 had been on the notes for myself. And then when my
9 attorney, he take a break and went into the chamber with
10 the Judge and so I ain't know what's been saying back
11 there or what's been discussed.

12 Because inside for the record, he -- they had a off
13 the record conference and so I ain't know what they both
14 been discussing back there because they he ain't never
15 come back out and they ain't going to tell me nothing,
16 what's really been going on.

17 Only thing really that he been telling me say to
18 stop the trial. Then I tell him say no, I want to keep
19 on going on with it.

20 Q. Okay. So they're -- so you didn't -- your lawyers
21 went back in chambers with the Judge.

22 A. They got a conference -- they had want an off the
23 record conference right on about exhibit 9 and 10.

24 Q. Okay. But you don't know what ---

25 A. --- no, sir ---

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1 Q. --- was it an exhibit 9.

2 A. No, sir. No, sir. I ain't know what's been
3 discussed back there or what.

4 Q. Okay. Is there anything else that you can think of
5 that I've left out about how your trial went?

6 A. See, I figure in that when my lawyers will do some
7 objections, my trial would come out just a little bit
8 better than how it had turn out.

9 MR. WALLER: Okay. Your Honor, at this time I
10 have no further questions for this witness.

11 THE COURT: Ms. Harrigan?

12 MS. HARRIGAN: The State has no cross for this
13 witness.

14 THE COURT: Mr. Flood, you may step down, thank
15 you.

16 THE WITNESS: Thank you, ma'am.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

19 THE COURT: You may call your next witness.

20 MR. WALLER: Thank you, Your Honor, I would call
21 Mark Wise.

22 MR. MELLARD: He just stepped out to the bathroom.

23 MR. WALLER: All right, I will call Doug Mellard,
24 then.

25 [Whereupon, Mr. Mellard comes forward]

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1 CLERK OF COURT: Please raise your right hand and
2 state your full name for the record.

3 THE WITNESS: Robert Douglas Simmons Mellard.

4 [Whereupon the witness is duly sworn by the Clerk of
5 Court]

6 THE COURT: Your witness.

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Cedric Flood v State of S.C.
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1 ROBERT D. MELLARD,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WALLER:
6 Q. Mr. Mellard, how are you today?
7 A. I'm all right.
8 Q. I just want to briefly go through your initial
9 representation, then we'll move on to the trial.
10 A. Okay.
11 Q. When you were first appointed to represent Mr.
12 Flood, you filed discovery motions?
13 A. Well, Ms. Hines was originally representing Mr.
14 Flood. They didn't get along, so then I took over the
15 case, but discovery had already been sent.
16 Q. Okay. But you received discovery?
17 A. Right.
18 Q. Okay. And you reviewed it?
19 A. I reviewed it.
20 Q. Did you review with Mr. Flood?
21 A. I reviewed it and I also gave him a copy of it.
22 Q. Okay. How much was it? How much information was
23 it?
24 A. I mean, I got my file right there if you want ---
25 Q. --- just ballpark it for me.

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1 A. Ballpark it, probably about maybe that thick
2 [indicates] maybe.

3 Q. Okay. How long did it take you to -- you to get
4 through it by yourself?

5 A. I don't know. I mean most of the discovery -- the
6 way I look at it is the end part of it is mostly a rap-
7 sheet. The first part of it is just kind of the summary
8 of what's going on. Then you have statements and things
9 like that, so it took me maybe 30-40 minutes to go
10 through it.

11 Q. Okay. How long did it take you to go through it
12 with Mr. Flood?

13 A. Mr. Flood was one of these people that -- let me
14 just back up. When I first took the case over from Ms.
15 Hines, I sent Mr. Flood a letter setting out the charges,
16 the elements they'd have to plea, and also the
17 possibility that he could served with life without
18 parole.

19 I don't know if Ms. Hines had already told him that
20 or not, but our meetings after that point not necessarily
21 as productive as I would have liked them to be.

22 Q. Okay. At what point was the determination made and
23 what was it based on to move to have him evaluated?

24 A. Well, he was looking at life without parole and
25 generally when someone is looking at life without parole,

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1 I get them evaluated.

2 Q. Okay. Was there anything aside from that that would
3 have led you to?

4 A. The fact that he -- I don't know, he just he was
5 uncooperative I think is the best word. Angry,
6 uncooperative, and frankly he's not the fastest person in
7 the world. I don't want to be critical.

8 Q. Okay. When you moved to have him evaluated then,
9 were you aware that he had been evaluated prior, in a
10 prior case?

11 A. There was an issue at trial where he had been
12 evaluation -- he had had, I believe a conviction for
13 pretty much a similar circumstance; a Kidnap and a CSC.

14 Towards the end of right when we were getting ready
15 for trial, I started looking into that and what I found
16 was that there was a discrepancy in the Clerk of Court's
17 Office in Calhoun County and I think I brought that up at
18 trial to keep him from getting life without parole.

19 And basically if -- and Mr. Wise might remember this
20 better, but what I remember was that there was no order
21 in the Calhoun County file ever finding him competent.

22 Q. Okay. I want to skip forward a little bit, if I
23 can. How did the State's case go up, in your opinion?
24 How was y'all's attack on the State's case? How did it
25 go?

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1 A. I think we did about as good as we could've done.

2 He had the prior bad act part from the other conviction,

3 we kept that out. Thought we did a real good job of

4 cross-examining the witnesses. We got a not guilty on

5 the CSC, so I thought we did pretty good.

6 Q. Okay. When all the evidence is in and the jury

7 finally gets it, how long was the jury deliberating for?

8 A. I want to say, maybe two hours the first day and all

9 day the second.

10 Q. Okay. When you say all day?

11 A. I want to say maybe from nine to around five,

12 something like that.

13 Q. Okay. Did the jury ever have any questions?

14 A. They had questions.

15 Q. Okay. Do you recall what the questions were?

16 A. Not off the top of my head, no.

17 Q. If I showed you a copy of the transcript would that

18 help?

19 A. That might help.

20 [Whereupon, the witness reviews document]

21 A. I've got the transcript if you just give me the

22 page.

23 Q. Okay. I believe its page 331.

24 A. Okay. 331?

25 Q. Yes, sir. At the very, very bottom, the last line

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1 starts it.
2 A. Okay. Okay 332 you mean?
3 Q. Yes, sir.
4 A. Okay. All right.
5 Q. What was the discussion when you, Mr. Mellard, Mr.
6 Flood -- not Mr. Mellard.
7 A. --- Mr. Wise?
8 Q. You and Mr. Wise and Mr. Flood regarding what to do
9 about the note and recharging the law in that instance.
10 A. I don't really recall to tell you the truth. Let me
11 check my notes to see if I wrote it down.
12 [Whereupon, the witness reviews documents]
13 A. I don't recall.
14 Q. Okay. If you would turn to 336?
15 A. Okay.
16 Q. I believe there was another note?
17 A. Uh Huh.
18 Q. Do you have any notes as to what y'all might have
19 discussed there?
20 A. No, I didn't write that part down.
21 Q. Okay.
22 A. I'll tell you how I usually do things, if you want
23 to know. Usually the Judge would bring us in, say we got
24 a note from the jury. He'd tell us what the note said
25 and then we would usually go back out, tell Mr. Flood

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1 what the note said and try to figure out what to do.

2 That's normally what we do.

3 Q. Okay. And is there -- do you have any reason to
4 believe that's not what you did here?

5 A. I don't have any reason to believe that.

6 Q. Okay. If you would, turn to page 352 for me.

7 A. Okay.

8 Q. The jury was unable to reach a unanimous verdict, is
9 that correct?

10 A. Correct.

11 Q. So the Judge gave them the Allen Charge?

12 A. Right.

13 Q. Okay, you did not object?

14 A. No.

15 Q. Okay. At some point after that, the jury comes
16 back with two more notes.

17 A. Okay.

18 Q. Do you have anything in your notes, or recall what
19 those two notes were specifically?

20 A. No I don't. Not in my notes.

21 Q. Okay. You and Mr. Wise and I'm assuming the
22 Solicitor and the Judge had a chambers conference after
23 the -- regarding the two notes. Do you remember anything
24 about that?

25 A. No. Usually -- here's what I remember about going

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1 in there. I remember something about notes and then I
2 also remember that twice while we were in chambers the
3 Solicitor gave us offers to resolve the case, which would
4 be less than life. The first time was 25 years; he gave
5 us an offer of 25 years. We spoke to Mr. Flood about it,
6 let me see.

7 [Whereupon the witness reviews documents]

8 He called his sister and there was no plea, he
9 didn't want to plea. Second day, we got offered 20
10 years, same thing as last time he wouldn't decide until
11 he called his sister. So he met with his sister and no
12 plea.

13 Q. Okay.

14 A. That is what I remember.

15 Q. If you would, turn to page 355.

16 A. Okay.

17 Q. Are you familiar with Title 14, Chapter 7, section
18 1330 of the South Carolina Code?

19 A. Refresh my memory.

20 Q. Procedure when jury fails to agree.

21 A. At this time I am, at that time I was not. You're
22 talking about the second Allen Charge?

23 Q. Yes.

24 A. Yeah.

25 Q. Okay. Specifically, about the actual charge that

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1 was given, y'all were aware of the charge before it was
2 given, is that correct?

3 A. The Allen Charge?

4 Q. Yes. Not the first Allen Charge, the second charge.

5 A. We were aware that the court was wanting to give
6 one.

7 Q. Did you see it beforehand?

8 A. I don't know if I saw it beforehand.

9 Q. Okay. Did you object to that charge?

10 A. Oh, no.

11 Q. Okay. Why?

12 A. Because that was about the best jury we were going
13 to get. That jury for a day and a couple of hours, they
14 were screaming at each other, they were yelling at each
15 other, they had to send bailiffs in to break them up.

16 That was pretty much the best jury we were going to
17 possibly get. We didn't know which way it was leaning,
18 but we knew we had about as good a jury as we were going
19 to get.

20 Q. Okay. But you, again, you did not know 14-7-1330
21 at that time?

22 A. At that time.

23 Q. Okay. If you had -- strike that, I apologize. I
24 want to go, turn your attention to page 368 and we
25 briefly touched on this earlier. There was an issue with

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1 the prior conviction and a competency evaluation that had
2 been conducted.

3 A. Correct.

4 Q. What -- were y'all aware of the previous evaluation
5 prior to then?

6 A. What we did was I got the Calhoun file, the Clerk of
7 Court file, and it had something in there that basically
8 said he was evaluated but there was no result, whether he
9 was declared competent or not competent.

10 So, my argument was you shouldn't LWOP him because
11 we don't know whether he was declared competent in that
12 other case, and if he wasn't declared competent in that
13 other case by order, then you should not hold that
14 against him.

15 Q. Did you, based on the Judge's ruling on that issue,
16 did you make any motions following ---

17 MS. HARRIGAN: --- Your Honor, if I could just
18 object for the record, this is not one of the two
19 specific grounds that Mr. Flood has pled in his PCR
20 application and no amendments have been filed in this
21 regard.

22 THE COURT: All right. Let's stick to what was
23 pled Mr. Waller.

24 MR. WALLER: Yes, Your Honor.

25 Q. [Mr. Waller] Was there any discussion amongst you,

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1 Mr. Wise, and Mr. Flood of moving for a mistrial at any
2 point other than the newspaper article motions y'all
3 raised?

4 A. I don't believe so.

5 MR. WALLER: Okay. Your Honor, I have no further
6 questions for this witness.

7 THE COURT: Cross-examination?

8 MS. HARRIGAN: Yes, Your Honor.

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Cedric Flood v State of S.C.
Robert D. Mellard-Cross-Examination by Ms. Harrigan
May 27, 2014

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN:

3 Q. Mr. Mellard, how long have you been practicing law?

4 A. Since 1997.

5 Q. What percentage of your practice is criminal defense

6 work?

7 A. It's 100 percent, now.

8 Q. How long have you been at the PD's office?

9 A. Since 2005.

10 Q. Is this the first trial that you've ever been co-

11 counsel with Mr. Wise on?

12 A. I don't know. I don't know.

13 Q. Were you lead counsel?

14 A. I believe so, yeah.

15 Q. When did you ask him to second chair the case?

16 A. Let's see, I wrote that down.

17 [Whereupon, the witness reviews his records]

18 A. He was served notice of life without parole on

19 August 23rd, 2010 and that same day I gave the file

20 information to Mark Wise.

21 Q. Is that your office's standard practice when someone

22 is served with notice of life without parole to seek a

23 second chair for trial?

24 A. We always have second chairs at trial. I mean, it

25 doesn't matter whether it's an LWOP case or not..

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1 Q. And I believe you testified before at one of your
2 initial visits you told Mr. Flood that the State was
3 seeking life without parole and after that the meetings
4 were not productive?

5 A. Yeah...

6 Q. Can you elaborate on why they weren't productive?

7 A. He would get mad and he would say all I'm saying is
8 life, life, life, trial, trial, trial. And what I was
9 trying to explain to him was we didn't have a choice
10 about the trial because they were served -- they wanted
11 to seek life -- on him. So, there wasn't like an
12 opportunity to plea because they were going all or
13 nothing.

14 Q. And there was never an offer to the best of your
15 recollection?

16 A. There was once we finished the trial.

17 Q. But, pre-trial.

18 A. Not to my knowledge.

19 Q. And you testified that there was a Calhoun County
20 incident that was similar to this one, correct?

21 A. Correct.

22 Q. Can you elaborate for that -- elaborate on that for
23 the court?

24 A. I believe he had a prior Kidnapping and CSC act in
25 Calhoun County in which the Solicitor wanted to try to

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1 bring in under a prior bad act. And I believe that the
2 Judge ended up ruling that it was so similar that it
3 would be prejudicial to do it, so he kept it out.

4 Q. There was discussion before about the numerous jury
5 notes from during deliberations. If you'll turn again to
6 the second jury note, which is on page 336?

7 A. Okay.

8 [Whereupon, the witness complies]

9 Q. And if you'll kind of review what the jury note said
10 and your response, just to yourself, I've got some
11 questions about that.

12 [Whereupon, the witness reviews document]

13 A. Oh yeah, that's about replaying the testimony of the
14 victim.

15 Q. Did you object to that?

16 A. I did. I objected to it, I objected on two grounds.
17 Number one, I objected that it would just be letting her
18 testify twice. And number two, I objected that allowing
19 her to be in the courtroom when the jury was hearing it
20 would be prejudicial.

21 So, what I asked the court to do was to basically
22 figure -- consider any place the jury was is considered
23 the jury room and then kick everybody else out the
24 courtroom?

25 Q. And is that what the court ultimately did?

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1 A. That's what they did.

2 Q. When you testified that you don't have any notes on
3 what happened here, but your standard practice is that
4 you would discuss the jury notes with co-counsel and your
5 client?

6 A. Yes.

7 Q. And you have no reason to believe you did not do
8 that here?

9 A. No, ma'am.

10 Q. Do you recall during deliberations moving for a
11 mistrial at any point? If you'll look at page 344 to
12 refresh your recollection, if necessary.

13 A. Okay.

14 [Whereupon, the witness reviews document]

15 A. Yeah, there's an article in the T&D, Times and
16 Democrat and I basically moved for a mistrial on that.

17 Q. So, this wasn't a situation where the jury's
18 deliberating and you're just kicked back not doing
19 anything anymore, you're still communicating with your
20 client and arguing motions on his behalf, correct?

21 A. We're still arguing motions. We're still talking
22 about maybe pleading him to 20 years, I mean; we're doing
23 everything we can.

24 Q. And I believe you testified that when the third note
25 came back that the jury couldn't reach a unanimous

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1 verdict, there was an in chambers discussion?

2 A. Yeah. I think what happened was, and I'm not sure
3 maybe Mr. Wise can clarify, but I think I was in chambers
4 and I think he was with Mr. Flood and I was kind of
5 everywhere. I was with Mr. Flood, out in the hallway,
6 trying to find his sister, in chambers with the
7 Solicitor.

8 Q. Was this your first jury trial in front of Judge
9 Dixon?

10 A. I don't think so.

11 Q. Was this your first jury charge where an Allen
12 Charge has been given?

13 A. I don't think so.

14 Q. Do you have a standard practice when it comes to
15 Allen Charges? Do you always object on the record or
16 just kind of wait and hear the charge?

17 A. I usually see what the charge is.

18 Q. Have you had an opportunity to review the court's
19 official Allen Charge that came in response to the third
20 note in preparation for your testimony today?

21 A. I looked it over real quick.

22 Q. Do you find it objectionable?

23 A. No.

24 Q. And then after that there were a fourth and fifth
25 note from the jury. Do you recall whether or not the

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Robert D. Mellard-Cross-Examination by Ms. Harrigan

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1 court responded in between those two notes or was it just
2 a fourth and then an immediate fifth and then a response?

3 A. I believe the -- if this is what you're talking
4 about, I believe he didn't respond to one and so then
5 they sent the same one out.

6 Q. And at this point did you -- did all the attorneys
7 in the court have another in chambers discussion to the
8 best of your recollection?

9 A. I don't remember.

10 Q. Okay.

11 A. I would assume we did, but I don't remember.

12 Q. Okay. And you testified before you didn't object or
13 move for a mistrial because you thought it was the best
14 jury you could ever possibly get?

15 A. That's true.

16 Q. Can you elaborate more on that?

17 A. Like I said, they were out for a day and a couple of
18 hours. They were yelling at each other, they were --
19 they had to send people in to break them up we could hear
20 them in the court room screaming at each other.

21 To me it seemed like this was going to be the best
22 jury we could get and nothing has changed my opinion on
23 that.

24 Q. Did you discuss that with Mr. Flood?

25 A. I believe we did, but I can't -- my notes don't show

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1 that I did, but I believe so.

2 Q. Would your standard practice in that type of a
3 situation be to discuss that with your client?

4 A. Yeah, I tried to let him know everything that I can
5 that's going on.

6 Q. And again, you discussed that with Mr. Wise as well?

7 A. I believe so. He knew what was going on.

8 MS. HARRIGAN: Moment's indulgence, Your Honor.

9 [Whereupon, Ms. Harrigan reviews documents]

10 Q. [Ms. Harrigan] And I believe your testimony was
11 that you didn't originally know of section 14-7-1330, but
12 you do now?

13 A. Right.

14 Q. Is this the trial that brought that statute to your
15 attention?

16 A. Right. Uh Huh.

17 Q. But at the time, you had never had a situation like
18 that before?

19 A. No.

20 Q. Do you recall when Judge Dixon gave that additional
21 charge to the jury whether there was any protest from the
22 jury about going back in and continuing with their
23 deliberations?

24 A. I don't believe there was -- I don't remember
25 hearing any -- I don't see it, so.

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1 Q. And again, you said this was a vocal jury that you
2 could hear in the courtroom?

3 A. They were pretty vocal.

4 Q. Do you recall how long until the verdicts came in
5 after they were sent back to the jury room that second
6 time?

7 A. I don't. I think it was a couple hours.

8 Q. And the jury acquitted him of the Criminal Sexual
9 Conduct in the First Degree, correct?

10 A. Correct.

11 Q. Had you explained to Mr. Flood that the State was
12 seeking life without parole on both charges?

13 A. He knew that.

14 Q. And you were able to successfully argue to the court
15 that he shouldn't be sentenced to mandatory life under
16 17-25-45, correct?

17 A. Are you talking about the mental stuff that we had
18 talked about earlier?

19 Q. Yeah.

20 A. I had -- that was my argument and I think the Judge
21 was going to buy that argument, but at some point Mr.
22 Flood's prior attorney produced an order which was not in
23 the Clerk of Court's file basically saying that he was
24 competent back at the prior and he turned that over to
25 the Solicitor's office.

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1 Q. So the order showing he was competent in the Calhoun
2 County case was eventually turned over to the State, you,
3 and the court?

4 A. It was turned over to the State and then we got it
5 from the State.

6 MS. HARRIGAN: Moment's indulgence, Your Honor.

7 [Whereupon, Ms. Harrigan reviews documents]

8 MS. HARRIGAN: No further questions, thank you.

9 THE COURT: Any redirect?

10 MR. WALLER: Just briefly, Your Honor.

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Cedric Flood v State of S.C.
Robert D. Mellard-Redirect Examination by Mr. Waller
May 27, 2014

1 REDIRECT EXAMINATION

2 BY MR. WALLER:

3 Q. You said this was a pretty loud, boisterous jury?

4 A. Correct.

5 Q. So you could hear them?

6 A. Correct.

7 Q. Could you hear specifically what they were saying?

8 A. No. You could just hear them screaming at each
9 other.

10 Q. Okay. But you couldn't make out words?

11 A. No, I didn't try.

12 Q. Okay. When the fourth note, the one that was not
13 responded to was sent out, were you aware that it was
14 out?

15 A. I don't know. My notes don't show one way or
16 another.

17 Q. Okay. If you had been aware of it would you have
18 brought it to the court's attention, asked for it to be
19 put on the record?

20 A. Oh, I probably would have, yes.

21 Q. When did you become aware of the fifth note?

22 A. That I don't know, but I assume that -- I can't
23 really answer that, I don't know. All I know is that the
24 transcript says that the Judge didn't reply to the fourth
25 one so the jury sent out another one.

Cedric Flood v State of S.C.
Robert D. Mellard-Redirect Examination by Mr. Waller
May 27, 2014

1 Q. Going back to the jury and them being boisterous, I
2 guess is the best way to put it. You moved a couple of
3 times to poll the jury during the trial, before the
4 verdict, is that correct?

5 A. I would assume so. If there's like a newspaper
6 article that comes out, I'll sometimes poll the jury to
7 make sure they haven't seen it.

8 Q. Did you ever consider polling the jury when they
9 were sent back the second time to -- as to their consent
10 to be sent back?

11 A. No.

12 Q. Did you ever ask for a ruling from the Judge on
13 whether the jury consented to being sent back?

14 A. No.

15 MR. WALLER: No further questions.

16 THE COURT: You may step down, sir, thank you.

17 THE WITNESS: All right.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: You may call your next witness.

21 MR. WALLER: Thank you, Your Honor. We call Mark
22 Wise.

23 [Whereupon, Mr. Wise comes forward]

24 CLERK OF COURT: Please raise your right hand.

25 State your full name for the record.

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 THE WITNESS: Mark Wise.

2 [Whereupon the witness is duly sworn by the Clerk of
3 Court]

4 THE COURT: Your witness.

5 - - - - -

6 MARK WISE,

7 Having been first duly sworn,

8 Was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WALLER:

11 Q. Mr. Wise, how are you?

12 A. I am well, thank you.

13 Q. Mr. Wise, you were not, you were the second chair on
14 this trial, is that correct?

15 A. Yes.

16 Q. When did your involvement begin?

17 A. I don't remember the date.

18 Q. How far out from trial?

19 A. I just don't recall.

20 Q. Okay. Once the trial began, once the trial went up
21 were you 50-50, did you have a compartmentalized piece of
22 the trial and were just responsible for your witnesses?
23 How did your relationship with Mr. Mellard work, for
24 trying the case?

25 A. Mr. Mellard was lead counsel, so he made the

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 decisions about who would do what during the course of
2 the trial. I sat and I interacted with Mr. Flood and I
3 did do parts of the trial, but I basically did the things
4 that Mr. Mellard asked me to do during the course of the
5 trial.

6 Q. Okay. When the jury began its deliberations where
7 were you in relation to Mr. Mellard and Mr. Flood?

8 A. When they initially went out we would have all been
9 together.

10 Q. Okay. When the first question from the jury came
11 back, where was everybody?

12 A. I don't remember.

13 Q. Okay. Do you remember the second question from the
14 jury?

15 A. No, in terms of where we were?

16 Q. What was everybody responsible for when that was
17 going on? Who was talking to who; that kind of thing.

18 A. Well it was pretty fluid. We would have all been in
19 conversations both with the Solicitor's office and with
20 Mr. Flood.

21 There was a time when Mr. Flood and I would interact
22 with each other and Mr. Mellard would be dealing with
23 other issues, but I can't specifically say at different
24 points during that process where I was doing compared to
25 what Mr. Mellard was and Mr. Flood was.

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 Q. Okay. At various points during the trial and
2 during the deliberations, motions for mistrial were made
3 based on newspaper articles, is that correct?

4 A. Yes.

5 Q. And there were motions to poll the jury. Is that
6 correct?

7 A. Yes.

8 Q. Okay. When the jury came back deadlocked for the
9 first time, what were the discussions like as to what
10 y'all's position on Allen Charge were?

11 A. One of the, and I can't remember if it was during
12 the first time the jury came back, but Mr. Flood and I
13 had a discussion about this issue of the jury being
14 unable to reach a decision.

15 Mr. Flood felt that the jury would decide in his
16 favor and he was pretty set about getting them to a
17 verdict. He did not want a mistrial. Then we discussed
18 asking for a mistrial, but he felt that it was going to
19 work out for him.

20 Q. That was after when?

21 A. I can't tell you which note.

22 Q. Okay. When the jury sends two more notes, court's
23 exhibits 9 and 10. Nine, I don't believe was answered by
24 the Judge, ten was essentially the same thing. What --
25 when were you aware of both of those notes or each one

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 individually?

2 A. I don't recall.

3 Q. What was the thought process, what was y'all's
4 response to the Judge giving an additional charge to the
5 jury?

6 A. We did not oppose it because we, again, Mr. Flood
7 felt that if the jury were forced to make a decision that
8 they would decide in his favor.

9 Q. Did you have an opportunity to review the charge
10 before the Judge charged the jury?

11 A. The last charge?

12 Q. Yes, sir.

13 A. No.

14 Q. Did you have any objection to the nature of the
15 language of the charge?

16 A. I don't think at that point I had an opinion on it.
17 I don't think I had seen it, if it had been seen, so no,
18 no I didn't.

19 Q. Once it was given, did you have any objection to the
20 language of it?

21 A. No, I don't think so.

22 Q. Okay. Did you have any objection to the fact that
23 it was given at all?

24 A. No.

25 Q. At that point in time were you aware of Section 14-7

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 1330?

2 A. I believe I was. I'm aware of the section and I
3 think I was aware of it at the time.

4 Q. So you were aware of it?

5 A. I think I was.

6 Q. Did you bring that up in y'all's discussions?

7 A. No, because the issue that we were confronting was
8 one of whether or not we could get a mistrial or whether
9 or not the Judge should make the jury continue to
10 deliberate.

11 And Mr. Flood wanted them to continue to try to
12 reach a decision. So we did not, I did not do -- tell
13 Mr. Mellard that he should ask for a mistrial or do
14 anything to stop that process.

15 Q. Okay. Was there -- when that final charge was
16 given, was there any question to polling the jury as to
17 their consent to continue deliberations?

18 A. No.

19 Q. Was there any talk of that at all, about the jury
20 going back again?

21 A. I can't remember when the discussions were had, but
22 we continued with this issue of discussing with Mr. Flood
23 whether or not he wanted to stop this process or keep
24 going forward.

25 Q. When you say stop the process, how do you mean?

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 A. I think ---

2 Q. --- with what result?

3 A. With a mistrial and trying it again.

4 Q. Was there ever any discussion of asking for a ruling
5 on the jury's consent to continue deliberations?

6 A. Hey, and I'm sorry, I just need to back up. Ask for
7 a mistrial or enter into a plea that the State had at
8 that point let out there. I'm sorry; can you repeat the
9 last question?

10 Q. Sure. Was there ever any discussions about asking
11 for a judicial ruling on the jury's consent?

12 A. No.

13 Q. Could you hear the jury in the jury room?

14 A. Yes.

15 Q. Could you hear specifically what they were saying?

16 A. No.

17 Q. Were any post-trial motions made regarding the
18 charge or Section 14-7-1330 that you're aware of?

19 A. I don't recall.

20 MR. WALLER: No further questions, Your Honor.

21 THE COURT: Thank you.

22 MS. HARRIGAN: No questions of this witness.

23 THE COURT: All right. Mr. Wise, you may step
24 down, thank you.

25 THE WITNESS: Thank you.

Cedric Flood v State of S.C.
Mark Wise-Direct Examination by Mr. Waller
May 27, 2014

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: You may call your next witness.

4 MR. WALLER: No further witnesses, Your Honor.

5 MS. HARRIGAN: The State has no witnesses to call,
6 but does have a brief argument to make in closing.

7 THE COURT: All right. You may proceed, Mr.
8 Waller.

9 MR. WALLER: Thank you, Your Honor.

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Cedric Flood v State of S.C.
Closing Argument-By Mr. Waller
May 27, 2014

1 CLOSING ARGUMENT

2 BY MR. WALLER:

3 Your Honor, at this time I would request that you
4 grant Mr. Flood's application for post-conviction relief.
5 I believe that the record has shown that counsel's
6 effectiveness fell below the standards for several
7 reasons.

8 If Your Honor will make note, it should be in the
9 packet, of the order dismissing the appeal in this case.
10 It was dismissed for failure to preserve issues for
11 appellate review. Your Honor, there's a case, Drayton v
12 Evatt, it's 430 S.E.2d 517 from 1993 and it specifically
13 discusses issues that need to be preserved for appeal,
14 otherwise it's ineffective assistance of counsel. Your
15 Honor, not only that and I have several things.

16 [Whereupon, Mr. Waller confers with Ms. Harrigan]

17 MR. WALLER: If Your Honor will permit me to
18 approach.

19 [Whereupon, Mr. Waller provides documents to the
20 court]

21 MR. WALLER: Two cases and there's also a copy of
22 the section, Your Honor. Your Honor, not only did
23 counsel not object to the giving of the additional
24 charge, failing to preserve that issue for appeal he
25 didn't bring the section to the court's attention. The

Cedric Flood v State of S.C.
Closing Argument-By Mr. Waller
May 27, 2014

1 statute is pretty clear that without the jury's consent,
2 if they are deadlocked for a second time a mistrial is
3 the proper procedure.

4 Your Honor, there's a case Buff v SCDOT 573 S.E.2d
5 279, that has a great discussion of the statute and what
6 is considered consent. In this scenario, or situation,
7 there was no request that the jury be asked if they
8 consented. There was -- the jury just went back into the
9 jury room.

10 Your Honor, two of the cases I handed up, Dawson v
11 State holds that failure to object to a jury instruction
12 is ineffective assistance of counsel when it rises to
13 this level. The fact that it was given, I think was
14 ineffective, the nature of it I think was ineffective,
15 failure to move for a mistrial based on that statute I
16 believe was ineffective and failing to preserve all those
17 issues on appeal kind of ties everything back in together
18 in the two separate issues.

19 So, the applicant would request that the court grant
20 his application for post conviction relief based on those
21 cases and issues.

22 THE COURT: All right. Thank you Mr. Waller. Ms.
23 Harrigan?

24
25

Cedric Flood v State of S.C.
Closing Argument-By Ms. Harrigan
May 27, 2014

1 CLOSING ARGUMENT

2 BY MS. HARRIGAN:

3 Your Honor, in reply the State would assert that the
4 applicant has not met his standard as set forth by
5 Strickland, first turning to the deficiency prong. We
6 have testimony that counsels conferred with client and
7 that Mr. Flood as the client actually asked them to not
8 make a mistrial or an objection to continuing forward or
9 this additional some might call Allen Charge going
10 forward because he thought that it would work out in his
11 favor. They conferred with him and he asked his counsel
12 not to do so.

13 Also, we have testimony from Mr. Mellard that there
14 was a strategic decision. He thought it was the best
15 jury he was going to get and couldn't have been better
16 and so the State would submit no deficiency has been
17 shown.

18 And the State would also turning then to the
19 statute, there's no evidence that the jury did not
20 consent to continuing on with deliberation. If you look
21 at Buff v SCDOT which was cited by Mr. Waller and is also
22 cited in the brief of respondent that is part of Your
23 Honor's packet. Consent to continue with deliberation
24 can either be expressed or implied and here the State
25 would argue we have implicit consent to continue on.

Cedric Flood v State of S.C.
Closing Argument-By Ms. Harrigan
May 27, 2014

1 This was a very boisterous and vocal jury who sent
2 numerous notes and could be heard throughout the
3 courtroom. They did not object to going back, they did
4 not send an additional note. Instead, they came back
5 with a verdict that was favorable in some ways to Mr.
6 Flood and not favorable in other ways.

7 So, the state would argue that the applicant has not
8 met the two prongs as required by Strickland and ask that
9 you deny this application for post conviction relief.

10 THE COURT: Thank you. What I'll do is I'll take
11 the time to review the packet and notify both parties of
12 the ruling in writing.

13 MS. HARRIGAN: Thank you, Your Honor.

14 MR. WALLER: Thank you, Your Honor.

15 *****END OF TRANSCRIPT OF RECORD*****
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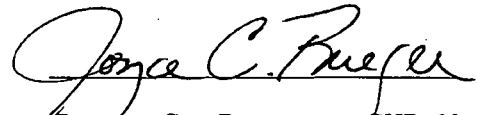
Cedric Flood v State of S.C.
Certificate of the Court Reporter
May 27, 2014

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Orangeburg County, South
Carolina on the 27th day of May, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

December 6, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Cedric Flood, #217089,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2013-CP-38-00875

ORDER OF DISMISSAL
ATTEST: TRUE COPY

Winnia B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed July 29, 2013. The State made its Return on October 9, 2013, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 27, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Jonathan D. Waller, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the February 2010 term of the Orangeburg County Grand Jury for Criminal Sexual Conduct in the First Degree (2009-GS-38-01775) and

RECEIVED

SEP 11 2014

Referred to

Answered

Harrigan/dm

ATTEST: TRUE COPY

W. J. [unclear]

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

Kidnapping (2009-GS-38-01776). Applicant was represented by R. Douglas Mellard and Mark Wise, both of the Orangeburg County Public Defender's Office. On July 19-21, 2011, Applicant proceeded to a trial by jury before the Honorable Edgar W. Dickson. Applicant was convicted of Kidnapping and acquitted of Criminal Sexual Conduct in the First Degree. Judge Dickson sentenced Applicant to confinement for life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

A timely Notice of Applicant was filed on Applicant's behalf and an appeal was perfected. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Flood, No. 2013-UP-140 (Ct. App. April 10, 2013). The Remittitur was issued on June 5, 2013.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel
 - a. "Failure to object to a coercive supplemental charge being given to the jury, after the jury advised the trial judge that they could not reach a unanimous decision on either charge, and after the trial judge had given an Allen¹ charge," and
 - b. "Failure to object to the trial judge not comporting with South Code Ann. § 14-7-1330 (1976)."

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsels R. Douglas Mellard, (hereafter "Mellard") and Mark Wise (hereafter "Wise"). This Court also had before it Applicant's trial transcript, the records from the

¹ Allen v. United States, 164 U.S. 492 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

Orangeburg County Clerk of Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that Mellard was appointed to represent him and Wise assisted with his case. He testified that neither Mellard nor Wise discussed the case with him, but repeatedly told him that they knew he was guilty. He testified that Mellard "was just comin' at [him] with big numbers" and telling him he would receive a lengthy sentence if convicted. He testified that Mellard had him evaluated and he discussed childhood head injuries with counsel. He testified that the trial lasted three days and that Mellard did not speak to him during the trial. He testified that counsel should have objected to jury notes during deliberations but that counsel failed to do so. He also testified that counsel did not show him these notes. He testified that he did discuss moving for a mistrial with counsel when the jury could not reach a verdict or after the trial court gave additional instruction, but that he asked counsel not to move for a mistrial because he thought he would be acquitted and did not want another trial.

Following Applicant's testimony, Mellard was called to testify by Applicant. He testified that he has been practicing law since 1997 and that his practice is exclusively criminal defense. He testified that he was appointed while employed at the Orangeburg County Public Defender's Office, where he is still presently employed. He testified that a fellow public defender, Margaret Hinds, was originally appointed to represent Applicant and that he took over the case because Applicant did not get along with Hinds. He testified that he asked Wise to act as his second chair, which is customary for cases that are likely going to trial. He testified that he filed the

appropriate Rule 5/Brady motions and reviewed these materials with Applicant. He testified that he also reviewed the elements of the offenses and potential sentences with Applicant. He testified that the State served Applicant with its intention to seek life without parole pursuant to S.C. Code § 17-25-45 based on Applicant's prior convictions. He elaborated that Applicant had been convicted for the same crimes for a similar factual scenario and those were being used to seek enhancement. He testified that it was a significant concern that the State would seek to introduce those prior offenses and he discussed this with Applicant.

Mellard testified that he sought and obtained a competency evaluation for Applicant. He testified that this is his standard practice when a client is facing a significant sentence. He testified that Applicant was found competent to stand trial. He testified that Applicant had also been evaluated previously during the pendency of his first set of similar charges and was likewise found competent.

Mellard testified that he thinks he and Wise performed well during Applicant's trial, particularly when cross-examining the State's witnesses. He testified that he was able to get an acquittal on the criminal sexual conduct charge, but that Applicant was convicted of kidnapping. He testified that this verdict did not seem analogous to the facts presented at trial and that he made this argument during post-trial motions.

Mellard testified that the jury sent several notes during deliberations, indicating difficulty reaching a consensus. He elaborated He testified that his standard practice is to review all jury notes with his client and he has no reason to believe he did not do so in the present case. He testified that in between the initial jury notes, the State offered Applicant two plea deals, one for

twenty-five years and a second for twenty years. He testified that it was Applicant's decision to reject both plea offers and proceed forward because he felt confident about this jury reaching an acquittal. He testified he also discussed moving for a mistrial with Applicant after the initial Allen charge given by the court and the subsequent charge, but that each time Applicant again indicated he wanted to proceed forward with trial based on his belief that he would be acquitted of all charges. Additionally, he testified that he did not want to move for a mistrial or object for strategic reasons because it was "the most favorable jury [he] was ever going to get" because the entire panel was in constant argument. He testified that the jury was yelling back in forth so much during deliberations that it was audible from the courtroom. He also testified that the bailiffs had to break up fights among jurors numerous times. However, he testified that following the final instruction given by the court, the jury seemed calm and did not protest to any additional deliberation. He testified that he believes the jury would have informed the court if it did not think additional deliberation would be useful or they did not consent to additional deliberation, as it was a very boisterous jury.

Following Mellard's testimony, Applicant called Wise to testify. Wise testified that he acted as second chair on the case upon Mellard's request and that he was a fellow public defender. He testified that during deliberations, he was sitting with both Mellard and Applicant. He testified that he specifically recalled discussing the jury notes with Applicant, including the two final notes indicating that the jury could not reach a consensus. He testified that there were in chambers discussions about how to proceed and additional charges to be given, which were then discussed with Applicant. He testified that he, Applicant, Mellard were all in agreement

that it would be best to give an additional charge to hopefully get the jury to make a decision since it was a favorable jury for Applicant. He testified that he specifically recalled speaking with Applicant regarding moving for a mistrial and that Applicant was adamant that he wanted to proceed forward. He testified, similar to Mellard, that this particular jury was very animated and argumentative. He testified that following the court's final instruction to the jury, he did not hear any protests or other comments from the jury that they did not wish to deliberate further.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are the specific findings as to Applicant's allegations of ineffective assistance of counsel:

Allegation that counsel was ineffective for failing to object to a coercive supplemental charge being given to the jury, after the jury advised the trial judge that they could not reach a unanimous decision on either charge, and after the trial judge had given an Allen charge

Applicant alleges that counsel was ineffective for failing to object to the "coercive supplemental charge" given to the jury after the initial Allen charge. See Tr. p. 355-56. However, the uncontroverted testimony from all witnesses, including Applicant, is that Applicant adamantly did not want counsel to object or move for a mistrial. Mellard and Wise both testified

that they reviewed all jury notes with Applicant and discussed possible options, including moving for a mistrial or objecting, and that Applicant advised them he wanted the trial to proceed forward, including additional instruction from the court urging the jury to reach a verdict. This Court finds that counsel's decision to refrain from objecting or move for a mistrial was based on informed conversations with their client and his adamant insistence that the jury proceed forward under guidance from the court to reach a verdict was prudent and in accordance with their client's wishes. This Court finds that Counsel's performance was reasonable based on professional standards. See Cherry, supra. As this Court finds no deficiency exists, this allegation must be denied and dismissed with prejudice.

Allegation that counsel was ineffective for failing to object to the trial judge not comporting with South Code Ann. § 14-7-1330 (1976)

Applicant alleges that counsel was ineffective for failing to object to trial court not comporting with South Code Ann. § 14-7-1330 by giving the jury additional instruction following the Allen charge and urging the jury to reach a verdict. See Tr. p. 355-56. This Court finds that this allegation is without merit, as the trial court's additional instruction did not violate South Code Ann. § 14-7-1330. Therefore, counsel was not deficient for not objecting and Applicant cannot establish prejudice.

Section 14-7-1330 of the South Carolina Code provides the procedure a trial judge must use when a jury fails to agree upon a verdict:

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed

upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.

S.C. Code Ann. § 14-7-1330 (emphasis added). In Edwards v. Edwards, our Supreme Court held that the jury implicitly consented to the continuation of deliberations, where the jury returned to the courtroom three times without having agreed upon a verdict, and only finally reached a verdict after additional instruction by the court asking the jury to return to the jury room one more time. Id. The Edwards court determined that S.C. Code Ann. § 14-7-1330 had not been violated because the jury made “no response or indication of unwillingness on the part of any member of the jury, but on the contrary they returned immediately to the jury room for further deliberation.” Id. This Court finds the instant case to be akin to Edwards and finds that the trial court did not violate S.C. Code Ann. § 14-7-1330. Therefore, this Court finds counsel’s decision not to object to be reasonable and in accordance with professional norms, as such an objection would not have been warranted. As this Court finds no deficiency exists, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

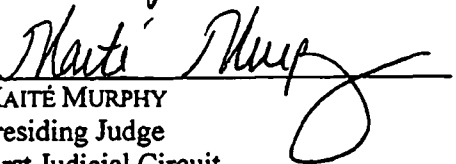
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 27 day of August, 2014.


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

 South Carolina.



ALAN WILSON
ATTORNEY GENERAL

September 2, 2014

The Honorable Winnifa Brown-Clark
Clerk of Court Orangeburg County
PO Box 9000
Orangeburg, SC 29115-9000

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CLERK OF COURT
ORANGEBURG COUNTY

Re: Cedric Flood, #217089 v. State of South Carolina
2013-CP-38-00875

Dear Ms. Brown-Clark:

Enclosed please find the original **Order of Dismissal** signed by the Honorable Maité Murphy, in the above-captioned case, for filing in your office. Please forward a **time stamped copy** back to our office for our file.

Sincerely,

Megan E. Harrigan
Assistant Attorney General

MEH/sbm
Enclosure

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

CEDRIC FLOOD, #217089

Applicant,

v.

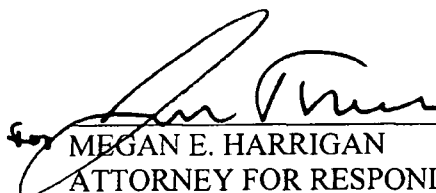
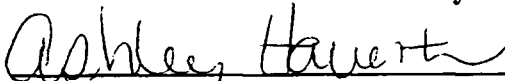
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Jonathan D. Waller, Esquire
The Law Office of Jonathan Waller, LLC
1720 Main Street, Suite 104
Columbia, SC 29201**

This 19th day of September, 2014.
MEGAN E. HARRIGAN
ATTORNEY FOR RESPONDENTSWORN to before me this 19th day of September, 2014.
Notary Public for South Carolina.
My Commission Expires: 3-18-2023

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CEDRIC FLOOD,

APPELLANT

Appellate Case No. 2011-196546

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court judge erred when he improperly coerced the jury into rendering a guilty plea after sending them back to deliberate a second time, and having given them a second, coercive jury charge, after they insisted they were deadlocked, in violation of S.C. Code Ann. §14-7-1330 (1976)?

STATEMENT OF THE CASE

Cedric Flood was indicted by the Orangeburg County grand jury for criminal sexual conduct, 1st degree and kidnapping. He was tried before the Honorable Edgar W. Dickson and a jury between July 19-21, 2011. He was represented by Douglas Mellard and Mark Wise, Esquires. Glenn Justis and Harrison Bell represented the state. The jury acquitted Flood of criminal sexual conduct, but convicted him of kidnapping. He was sentenced to life in prison pursuant to S.C. Code Ann. §17-25-45 (1976).

This appeal timely follows.

ARGUMENT

The trial court judge erred when he improperly coerced the jury into rendering a guilty plea after sending them back to deliberate a second time, and having given them a second, coercive jury charge, after they insisted they were deadlocked, in violation of S.C. Code Ann. §14-7-1330 (1976).

Cedric Flood was tried for criminal sexual conduct, 1st degree and kidnapping. At the conclusion of trial, the jury acquitted Flood of criminal sexual conduct, but found him guilty of kidnapping. This occurred after the judge gave the jury a highly coercive jury charge, after having already given them an Allen¹ charge, which renders this verdict constitutionally infirm.

During deliberations, the jury sent the trial court judge a note that informed him that they could not come to a unanimous decision on either charge. The judge summarily concluded “they probably haven’t been given enough time to deliberate is the Court’s position.” R. 71, l. 24- 72, l. 3. This note was marked as Court’s Exhibit #8, and the Orangeburg County Clerk of Court has informed counsel that this note is in a sealed envelope. And see Supp. R. 2 which notes the sealed envelope with question from jury. The judge then gave the jury an Allen charge. R. 73, ll. 5- 18. The jury was then sent out to deliberate again.

The jury then sent out two more notes, marked as Court’s Exhibits #9 and #10, and the trial court judge addressed the jury:

THE COURT: I’ve gotten two notes from you. I did not respond to the first one, so I got the second one that’s essentially the same thing. You

¹ Allen v. United States, 164 U.S. 492 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

know, it reminds me of when my children repeat things like I was hard of hearing, and I apologize for not getting back to you sooner than that. But let me tell you, I'm not going to recharge the law to you again, I'm not going to do that. But I want ya'll—if ya'll have ever been involved in Court proceedings before, ya'll know that it takes a lot of people a lot of time and a lot of work just to get to Court. Okay? And we've been in this trial now for a few days, and I know these deliberations have been hard on ya'll, and I know that they are some very hard decisions that you are being asked to make, and I know that there's serious disagreement among you. But I want to remind you that if you think it is tough on you, I want you to think about how tough it is on the parties.

Now, the parties want you to make a decision in this case, and they want you to make that decision without compromising any of your convictions or your beliefs. Now, considering that and considering that it's still early in the day, I want to apologize to you and tell you that rather than try this case again I'm treating this as a work day. Sometimes you got to work overtime. So, I'm asking y'all to return to your deliberations and bring back a fair, just and impartial verdict. Okay? Thank ya'll very much.

R. 75, ll. 16- 14.

Two hours later, the jury came back with its verdict.

The trial court judge erred when he coerced the jury into returning a guilty verdict after they repeatedly informed him that they would not be able to reach a unanimous decision.

It is universally recognized that a genuine inability of the jury to reach a unanimous verdict constitutes a manifest necessity for the declaration of a mistrial. 21 Am.Jur.2d *Criminal Law* §402 (2003). The trial judge . . . has a duty to urge the jury to reach a verdict, provided he does not coerce them. State v. Williams, 344 S.C. 260, 263-64, 543 S.E.2d 260, 262 (Ct.App.2001). The typical judicial mechanism for encouraging an indecisive jury is the Allen charge, in which jurors are instructed on, among other things, their duties to approach the evidence with an open mind and consider the opinions of their fellow jurors. If a jury, following additional deliberations in the wake of an Allen charge, remains

deadlocked, section 14-7-1330 of the South Carolina Code of Laws is triggered. The statute reads, in pertinent part, “[b]ut if [the jury] returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law.” S.C. Code Ann. §14-7-1330 (1976). See State v. Robinson, 360 S.C. 187, 600 S.E.2d 100 (Ct. App. 2004).

Here, the trial court judge erred by not comporting with the applicable statute and by charging the jury with a highly coercive jury charge. Given that the resulting verdict was for only one charge, it appears that the judge’s admonitions resulted in a compromise verdict that has resulted in Flood’s receiving a life sentence, based on a prior conviction. The prejudice is overwhelming. Flood was denied his right to due process, respectfully Flood passes Court to reverse his convictions and remand this case for trial.

CONCLUSION

For the preceding reason, Flood respectfully asks this Court to reverse his conviction and remand his case for trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of October, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 3, 2012

Susan B. Hackett

Susan B. Hackett
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S.C. Commission on Indigent Defense
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

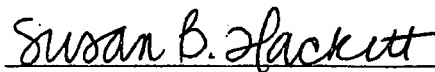
V.

CEDRIC FLOOD,

APPELLANT

CERTIFICATE OF SERVICE

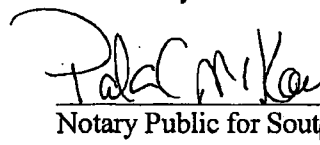
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Katie Keeney, Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 3rd day of October, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of October, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.



Division of Appellate Defense
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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

October 3, 2012

Julie Kate Keeney, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Cedric Flood

Dear Julie:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/eab

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson., Circuit Court Judge
Appellate Case No. 2011-196546

THE STATE,

RESPONDENT,

vs.

CEDRIC FLOOD

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL**I.**

Appellant failed to preserve the issue regarding section 14-7-1330 of the South Carolina Code. Nevertheless, the trial judge did not err when he sent the jury back to deliberations for the second time with the jury's consent.

STATEMENT OF THE CASE

An Orangeburg County Grand Jury indicted Appellant for first-degree criminal sexual conduct and kidnapping. On July 19, 2011, Appellant proceeded to trial. Attorneys Douglas Mellard and Mark Wise represented Appellant, and Assistant Solicitors Glenn Justis and Harrison Bell represented the State.

On July 21, 2011, the jury returned a verdict of not guilty on the first-degree criminal sexual conduct charge and a verdict of guilty on the kidnapping charge. (R. p. 78.) The Honorable Edgar W. Dickson sentenced Appellant to life without the possibility of parole pursuant to section 17-25-45 of the South Carolina Code. (R. p. 93.)

STATEMENT OF FACTS

On September 29, 2009, Appellant kidnapped his ex-girlfriend ("the victim"). (R. p. 2; R. pp. 5-10.)

At trial, the victim testified that when she returned to her house, she saw Appellant behind her car. (R. p. 4.) The victim tried to run away from Appellant; however, she was unable to escape. Appellant pointed a gun to her back. Appellant told the victim, "I'm going home, you're going with me, and going to my house because I'm going to kill you." (R. p. 6.) Appellant shoved victim in the trunk of the victim's van and drove to Appellant's sister's house. (R. p. 7.) As Appellant drove to his sister's house, he kept telling the victim that he was going to kill her.

After they arrived at Appellant's sister's house, Appellant took the victim to the living room and pointed the gun to the victim's head and chest. (R. p. 9.) There was no one else in the house. Appellant told the victim that her son was going to miss her after Appellant kills her. (R. p. 10.) Thereafter, Appellant got up and told the victim that he wanted sex and demanded the victim come to the back room. According to the victim, Appellant pointed the gun at the victim and told her to take her clothes off. Scared for her life, the victim complied. Appellant took his clothes off and got on top of the victim. (R. p. 11.) Appellant had sexual intercourse with the victim multiples times. (R. pp. 11-12; R. pp. 14-16.)

At some point, Appellant put duct tape on the victim's legs, head, eyes, and mouth. (R. pp. 16-17.) In addition, Appellant handcuffed the victim to the bed. (R. pp. 13-16.) Eventually, Appellant left. (R. p. 17.) At that point, the victim was able to get out of the handcuffs and escape. (R. p. 18.)

At trial, Lt. James Shumpert testified that when he arrived on the scene, the victim had a handcuff on one of her wrists. (R. p. 34.) Furthermore, the victim looked like she had been duct taped around her ankles and her mouth. (R. pp. 34-36.) After Lt. Shumpert obtained a search warrant, he went inside Appellant's sister's house and found duct tape in the bedroom where the victim claimed she was tied up. (R. pp. 38-39.) In addition, one of the officers found a BB gun in one of the bedrooms. (R. p. 47.) At trial, a forensic scientist testified that the DNA profile developed from the semen on the victim's vaginal swab matched the DNA profile of Appellant. (R. p. 48; R. pp. 49-50.)

On July 20, 2011, at 4:25 p.m., the jury began deliberations. (R. p. 51.) On the same day, at 5:05 p.m., the jury sent a note to the judge asking for the definition of law for kidnapping and criminal sexual conduct. (R. pp. 51-52.) The trial judge re-read the jury charges on kidnapping and criminal sexual conduct. (R. pp. 52-55.) Shortly thereafter, the jury returned to deliberations. (R. p. 55.) After 6:00 p.m. that evening, the jury sent the judge another note indicating that they wanted to hear the victim's testimony again. (R. p. 56; R. p. 59.) The trial judge decided to retire the jury for the evening and replay the victim's testimony at 9:30 the next morning. (R. pp. 61-63.)

The next morning, the trial judge replayed the victim's testimony for the jury, and the jury continued their deliberations. (R. p. 71.) At some point, the jury sent a note informing the trial judge that they could not come to a unanimous decision on either charge. The trial judge stated that the jury probably just needed some more time to deliberate. (R. p. 72.)

Furthermore, the trial judge advised the attorneys that he was inclined to give the jury an Allen¹ charge; however, he was opened to suggestions. At that point, the trial judge asked Appellant's trial counsel their position on him giving the Allen charge. Appellant's trial counsel replied, "That's fine, Your Honor."

Thereafter, the trial judge gave the jury an Allen charge. (R. pp. 72-74.) The jury retired to the jury room and continued deliberations. (R. p. 74). After the trial judge gave the Allen charge, the trial judge asked, "Anything from the Defense regarding my charge?" (R. p. 75.) Appellant's trial counsel replied, "No, sir."

At some point, the jury sent the trial judge two additional jury notes. (R. p. 75; R. p. 94.) Both notes stated there was one juror that indicated he would "never" change his mind. The trial judge held an off-the-record conference in his chambers with the attorneys. (R. p. 75.) The trial judge brought the jury back into the courtroom and gave the following charge:

THE COURT: I've gotten two notes from you. I did not respond to the first one, so I got the second one that's essentially the same thing. You know, it reminds me of when my children repeat things like I was hard of hearing, and I apologize for not getting back to you sooner than that. But let me tell you, I'm not going to recharge the law to you again, I'm not going to do that. But I want y'all - - if y'all have ever been involved in Court proceedings before, y'all know that it takes a lot of people a lot of time and a lot of work just to get to Court. Okay? And we've been in this trial now for a few days, and I know these deliberations have been hard on y'all, and I know that they are some very hard decisions that you are being asked to make, and I know that there's serious disagreement among you. But I want to remind you that if you think it is tough on you, I want you to think about how tough it is on the parties.

¹ Allen v. United States, 164 U.S. 492 (1896) (defining the charge used to encourage a deadlocked jury to reach a verdict).

Now, the parties want you to make a decision in this case, and they want you to make that decision without compromising any of your convictions or your beliefs. Now, considering that and considering it's still early in the day, I want to apologize to you and tell you that rather than try this case again I'm treating this as a work day. Sometimes you've got to work overtime. So, I'm asking y'all to return to your deliberations and bring back a fair, just and impartial verdict. Okay? Thank y'all very much.

(R. pp. 75-76.)

At 2:50 p.m., the jury returned to the jury room and continued deliberations.

Thereafter, in attempt to clarify the record, the trial judge stated that the attorneys reviewed the additional charge in chambers before he read the charge to the jury. (R. p. 76.) Moreover, the trial judge asked Appellant's trial counsel if Appellant had any exceptions to the additional charge, and Appellant's trial counsel replied, "No, sir."

At 5:00 p.m. that day, the jury returned a verdict. (R. p. 77.)

ARGUMENT

I.

Appellant failed to preserve the issue regarding section 14-7-1330 of the South Carolina Code. Nevertheless, the trial judge did not err when he sent the jury back to deliberations for the second time with the jury's consent.

Appellant contends the trial judge erred when he sent the jury back to deliberations for the second time in violation of section 14-7-1330 of the South Carolina Code. However, not only did Appellant not object to the additional charge, Appellant reviewed the additional charge beforehand and consented to the charge. (R. pp. 76-77.) Because Appellant failed to object to the additional charge and call to the attention of the trial judge section 14-7-1330, the issue was not preserved for review. Regardless, the trial judge did not err when he gave the jury the additional charge and the jury continued deliberations.

A. Appellant failed to preserve the issue regarding section 14-7-1330 of the South Carolina Code.

Although Appellant argues on appeal that the trial judge erred when he gave the jury an additional charge after the jury returned for the second time, Appellant never objected to the additional charge during trial. Furthermore, the trial judge allowed Appellant to review the additional charge beforehand, and Appellant consented to the additional charge. (R. pp. 76-77.)

"An issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review." State v. Nichols, 325 S.C. 111, 120, 481 S.E.2d 118, 123 (1997) (emphasis added); see also State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been

raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.”); see also State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998) (holding error in jury instructions is not preserved for review if the defendant fails to object).

Furthermore, not only did Appellant fail to object to the additional charge, Appellant reviewed the charge beforehand and consented to the additional charge. (R. pp. 76-77.) Because Appellant conceded during trial that the charge was proper, the issue is not preserved. See State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000) (holding an issue conceded at trial is not preserved for review); see also Hendrix v. E. Distrib., Inc., 320 S.C. 218, 219, 464 S.E.2d 112, 113 (1995) (holding where issue is not preserved for review, it should not be addressed by appellate court); Dunbar 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (citing Hendrix) (“An issue that was not preserved for review should not be addressed by the Court of Appeals, and the court’s opinion should be vacated to the extent it addressed an issue that was not preserved.”):

In summary, Appellant never objected to the additional charge, in fact, Appellant consented to the additional charge. Therefore, the issue Appellant now complains of on appeal is not preserved for review.

B. Furthermore, the trial judge did not err when he gave the additional charge to the jury.

Appellant contends the trial judge erred when he gave an additional charge after the jury returned twice without a verdict. However, the trial judge did not violate section 14-7-1330 of the South Carolina Code because the jury consented to the continuation of deliberations.

Furthermore, the additional charge was not coercive because the trial judge told the jury not to give up any of their convictions or beliefs.

i. The trial judge did not violate section 14-7-1330.

Section 14-7-1330 of the South Carolina Code provides the procedure a trial judge must use when a jury fails to agree upon a verdict:

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, **it shall not be sent out again without its own consent** unless it shall ask from the court some further explanation of the law.

S.C. Code Ann. § 14-7-1330 (emphasis added).

This Court advised the following: “At the second indication of deadlock, courts typically inquire as to whether more deliberations would be beneficial to the jury, and the issue of consent is determined from the jury’s response.” State v. Robinson, 360 S.C. 187, 193-194, 600 S.E.2d 100, 103 (Ct. App. 2004); see also State v. Drakeford, 120 S.C. 400, 113 S.E. 307 (1922) (noting that whether the jury exercised “due and thorough deliberation upon any cause” without reaching a unanimous verdict must be determined by the trial court in the exercise of sound discretion).

Moreover, in Edwards v. Edwards, our Supreme Court held that the jury implicitly consented to the continuation of deliberations. 239 S.C 85, 93, 121 S.E.2d 432, 436 (1961). In Edwards, the jury returned to the courtroom three times without having agreed upon a verdict. Id. The trial judge asked the jury to return to the jury room one more time. Id.

Our Supreme Court reasoned:

There was no response or indication of unwillingness on the part of any member of the jury, but on the contrary they returned immediately to the jury room for further deliberation. No verbal acceptance of the request of the trial Judge was made, but consent was implied. Had there been a statement to the effect that further consideration of the case was without their consent, it would have become the duty of the trial Judge to discharge them. However, under the circumstances, if the Judge was satisfied in the exercise of his discretion that the jury consented to return for further deliberation, he should not have dismissed them but permitted further deliberation as was done in the instant case.

Id.; see also Buff v. South Carolina Dep't of Transp., 342 S.C. 416, 422, 537 S.E.2d 279, 282 (2000) (“[W]hen a jury has twice indicated it is deadlocked, the trial judge should diplomatically discuss with the jury whether further deliberations could be beneficial. The jury's consent to resume or to discontinue deliberations is determined, either expressly or impliedly, by its response to the trial judge's comments.”)

Similar to the jury in Edwards, the jury in this case made no response or indication of an unwillingness to return to deliberations. Therefore, because consent was implied, the judge did not violate section 14-7-1330 of the South Carolina Code.

ii. The additional charge was not coercive.

Appellant claims the additional charge was coercive. However, the judge merely encouraged the jury to keep an open mind and consider the opinions of the other jurors. The trial judge made it clear that he did not want anyone to compromise their convictions or beliefs.

“The trial judge has a duty to urge the jury to reach a verdict, but he may not coerce it.” State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 108-109 (1996) (holding the trial judge's second Allen charge was not coercive). When determining whether or not a charge is coercive,

courts look at the following factors: 1) the length of the deliberations prior to the charge; 2) the length of the deliberations following the Allen charge; 3) and the total length of deliberations. State v. Williams, 344 S.C. 260, 264, 543 S.E.2d 260, 262-263 (Ct. App. 2001) (holding the trial judge did not coerce a verdict by implying the jury would have to deliberate indefinitely).

Furthermore, “[t]he trial judge may not indicate to or threaten the jury that they must agree or, failing to agree, they will remain in the jury room for a specified length of time. Id. at 264, 543 S.E.2d at 263. Moreover, this Court has held that it is not coercive to charge a jury that the failure to reach a verdict will require a new trial at additional expense. State v. Ayers, 284 S.C. 266, 325 S.E.2d 579 (Ct. App. 1985).

Turning to the case at hand, Appellant failed to provide a sufficient record for review regarding the length of deliberations prior to the first Allen charge and the length of deliberations prior to the additional charge. See State v. Mitchell, 330 S.C. 189, 194, 498 S.E.2d 642, 644 (1998) (holding the burden is on appellant to provide a sufficient record for review.) Thus, this Court is unable to apply the factors mentioned above.

However, when this Court looks at the trial judge’s instructions as a whole, it is clear the charge was not coercive. See Williams, 344 S.C. at 264, 543 S.E.2d at 263 (“Review of an Allen charge requires this court to consider the charge in light of the accompanying circumstances.”). Here, the jury only deliberated for approximately an hour and a half on the first day of deliberations. On the following morning, the jury listened to the victim’s testimony again. After hearing the additional Allen charge, the jury returned to the jury room at 2:50 p.m. and returned a verdict at 5:00 p.m. Furthermore, the trial judge never threatened or indicated to the jury that

they must agree, or failing to agree, they would remain in the jury room for a specified amount of time. In summary, the additional charge was not coercive.

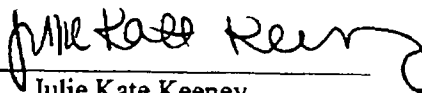
CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General
Bar # 100145

By: 
Julie Kate Keeney
Bar# 100145

Office of the Attorney General
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ATTORNEYS FOR RESPONDENT

September 27, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge
Appellate Case No. 2011-196546

THE STATE,

Respondent,

vs.

CEDRIC FLOOD,

Appellant.

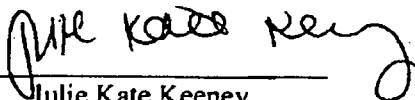
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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Attorney General

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By: 
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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

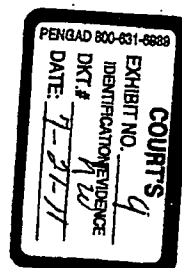
I further certify that all parties required by Rule to be served have been served.
This 27th day of September, 2012.

Ellen R. DuBois

ELLEN R. DUBOIS
Legal Assistant

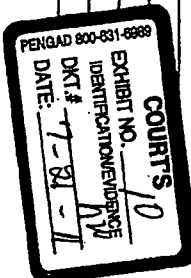
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We have one juror that has said
for two days of deliberation that
he will "never" change his mind.



Comments:

We have a juror that has said for the
past two days of deliberation that he
will "never" change his mind.



Name: (Optional)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Cedric Flood, Appellant.

Appellate Case No. 2011-196546

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-140
Submitted February 1, 2013 – Filed April 10, 2013

AFFIRMED

Appellate Defender Susan B. Hackett, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Julie K. Keeney, both of Columbia;
and Solicitor David M. Pascoe, of Orangeburg, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *Pinckney v. Pettijohn Builders, Inc.*, 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986) (holding a party may not argue on appeal that a jury charge was erroneous where trial counsel stated he had no objection to a specific aspect of the jury charge).

AFFIRMED.¹

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.