

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NATHANIEL WITHERSPOON,

APPELLANT

APPELLATE CASE NO. 2013-001440

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
VS.)
)
NATHANIEL WITHERSPOON,)
)
DEFENDANT.)

VOLUME 1 OF 3

held before the Honorable Deadra L. Jefferson
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on June 19, 2013, Commencing at 9:53 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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PROCEEDINGS

THE COURT: Is the State ready to proceed?

MR. FINCH: We are, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. GRIMES: Yes, ma'am.

THE COURT: Okay. Please bring in the panel,
Mr. Suttler.

Does the defendant wish to have a formal
arraignment?

MR. GRIMES: No, ma'am.

THE COURT: Thank you, sir.

[Whereupon, the jury panel enters the courtroom
at 9:54 a.m.]

- - - - -

JURY VOIR DIRE

THE COURT: Good morning, ladies and gentlemen.
We are going to select a jury for the State of South
Carolina vs. Nathaniel Witherspoon on indictments
2012-GS-10-3101, which is an indictment for criminal
sexual conduct in the first degree, and indictment
2012-GS-10-3192, which is an indictment for burglary
in the first degree, and those indictments allege as
follows: that in Charleston County, South Carolina,
on or about 10/24 of 2011, the defendant, Nathaniel
Witherspoon, also known as Nathaniel Lee Witherspoon,

MIA PERRON, CVR-CM-M

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1 did commit a sexual battery upon the victim, Sharon
2 Rosenbaum, without her consent and with the use of
3 aggravated force and/or while the victim was also the
4 victim of a burglary: to wit, the defendant did
5 forcibly penetrate the victim vaginally, alleging a
6 violation of code section 16-3-652. And that in
7 Charleston County, South Carolina, on or about October
8 24th, 2011, the defendant, Nathaniel Witherspoon, did
9 enter the dwelling of Sharon Rosenbaum, located at
10 [REDACTED], without consent and with the
11 intent to commit a crime therein. That, in addition,
12 the defendant was armed with a deadly weapon, alleging
13 a violation of code section 16-11-311 of the Code of
14 Laws as amended, and alleging all of these actions to
15 be against the peace and dignity of the State of South
16 Carolina.

17 Ladies and gentlemen, we are going to go through
18 a process that is called voir dire where I'm going to
19 ask you-all some questions so that the attorneys can
20 more effectively exercise their peremptory challenges
21 in jury selection. If a question applies to you,
22 please stand and in a loud and clear voice give us
23 your name, your juror number, and an answer to the
24 question, if applicable, and remain standing until the
25 Court has completed questioning you.

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1 their opening unless they're planning on utilizing
2 that statement in some manner.

3 THE COURT: Do y'all plan to use the statement?

4 MR. GRIMES: Not in our opening.

5 THE COURT: That's not my question. My question
6 is broader than that. Do you plan to use the
7 statement?

8 MR. GRIMES: I think we plan to question some
9 detectives about it.

10 THE COURT: Okay. Do we need to have a Jackson
11 v. Denno on that statement, or are you conceding that
12 it was a freely and voluntarily given statement?

13 MR. GRIMES: We acknowledge it's freely and
14 voluntarily given.

15 THE COURT: Okay. So we don't need a Jackson v.
16 Denno.

17 Are there any Biggers issues?

18 MR. FINCH: There are not, Your Honor. It's
19 just a DNA case, a CODIS hit. The victim was never
20 able to identify the defendant.

21 THE COURT: There was another question I was
22 going to ask y'all.

23 Have y'all had any of the exhibits pre-marked?

24 MR. FINCH: We have not, Your Honor.

25 THE COURT: Do you have any, that you've agreed

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1 THE COURT: All right. Please bring in the
2 jury. Oh. Wait a minute. I've got to tell you who
3 the foreperson is. Wait one second.

4 [Whereupon, the Court reviews documents]

5 THE COURT: Number 290, Mr. West, will be the
6 foreperson. I'm sorry. Yeah. Mr. West, number 290.

7 THE BAILIFF: And you're ready for them; right?

8 THE COURT: Yes, ma'am.

9 [Off the record momentarily]

10 THE COURT: Who is going to be giving opening
11 argument on behalf of the State?

12 MR. FINCH: I will, Your Honor.

13 [Whereupon, the jury enters the courtroom at
14 11:14 a.m.]

15 THE BAILIFF: All present, Your Honor.

16 THE COURT: Thank you. You may be seated.

17 [Off the record momentarily]

18 THE COURT: Mr. Suttler, if you could pass out
19 those notebooks for me, and the pens.

20 [Whereupon, the bailiff complies]

21 THE COURT: Ladies and gentlemen, we are going
22 to give you some notebooks so that you can take notes,
23 if you desire to. Please write your juror number on
24 the sticker on the front of that notebook so that you
25 can identify which notepad belongs to you. And I'm

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1 going to give you some note-taking instructions near
2 the end of this preliminary or introductory
3 instruction.

4 Ladies and gentlemen, you've been selected for
5 the case of the State of South Carolina versus
6 Nathaniel Witherspoon, a/k/a, Nathaniel Lee
7 Witherspoon. What I will now say is intended to serve
8 as an introduction to the trial of this case. These
9 remarks are not a charge on the law of this case. And
10 when you hear the Court use the term charge and
11 instruction, they are interchangeable terms. Charge
12 is simply a legal term that means instructions.

13 I will instruct you on the law applicable to
14 this case at the end of the trial before you retire to
15 consider your verdict. This is merely an explanation
16 of the procedure that we will follow in the trial of
17 this case so you may better understand what is
18 happening.

19 The defendant is charged, by two indictments, in
20 this Court with the crimes of criminal sexual conduct
21 in the first degree and burglary first degree, the
22 elements of which I will explain to you at the
23 conclusion of the case after the attorneys have made
24 their closing arguments. The indictments, ladies and
25 gentlemen, are simply the charge or charges by which

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1 the case is brought into court and they are not in any
2 sense evidence of any of the allegations they may
3 contain. The defendant has pled not guilty to the
4 indictments. The State, therefore, has the burden of
5 proving each of the elements of the indictments beyond
6 a reasonable doubt and it will be your duty, ladies
7 and gentlemen, to decide whether the State has met
8 that burden or not.

9 Your purpose as jurors is to find and determine
10 the facts. You are the sole judges of the facts in
11 this case. If at any time I make any comment
12 regarding the facts, you must disregard it. You are
13 to determine the facts from the testimony and the
14 evidence that you hear -- the testimony and the
15 evidence that you hear. It is up to you to determine
16 the inferences which you feel may be properly drawn
17 from that evidence. It is especially important that
18 you perform your duty of determining the facts
19 diligently and conscientiously because ordinarily
20 there is no way to correct an erroneous determination
21 of facts made by a trial jury.

22 On the other hand, and with equal emphasis, the
23 same law that makes you the judges of the facts make
24 me the judge of the law. The law as given by the
25 Court is the only law you may consider. You must

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1 accept and follow it, even though you may disagree
2 with it. The Court cannot tell you what the facts are
3 and you cannot disagree with the Court about what the
4 law is or what the law should be.

5 Your responsibility, ladies and gentlemen, is to
6 take the law as I instruct it and apply it to the
7 facts, as you find them, from the testimony of the
8 witnesses and the other evidence introduced. After
9 doing that, you will render your verdict, a true and
10 just verdict, under the solemn oath that you have
11 taken as jurors in this case.

12 Until I advise you to begin your deliberations,
13 you must not discuss this case with anyone. That
14 includes among yourselves, your friends, family
15 members, or anyone else that could potentially be
16 involved in the case. After the case is submitted to
17 you, you must discuss it only in the jury room with
18 your fellow jurors.

19 The attorneys and the parties in this case have
20 been advised that they should not speak with you at
21 all, so if you should see them in the elevator, in the
22 bathroom, in the hallways, or even in the garage or at
23 a local restaurant during lunch and they don't speak
24 with you, please don't think they are being unfriendly
25 or untoward. They are simply following the Court's

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1 instructions, because we know how very easily an
2 innocent conversation can be misinterpreted during
3 litigation.

4 During the trial you're not to read, listen to,
5 or watch any news reports about this case. That
6 includes anything that might be in the newspaper, on
7 the radio, on television, or on the internet. And
8 you're not to do any independent research of any type
9 on the internet regarding any subject matter or any
10 details or factual circumstances that may be raised in
11 this case. You must not consider anything that you
12 may have read or heard about this case outside the
13 courtroom, whether before or during the course of this
14 trial. It is essential that you maintain an open mind
15 and not decide any issue in this case until all of the
16 evidence has been presented, the parties have made
17 their closing arguments, and I have instructed you on
18 the law applicable to this case.

19 It is your solemn responsibility to determine
20 the guilt or innocence of the defendant and your
21 verdict must be based solely on the law as I instruct
22 you during and at the close of the trial, as well as
23 the evidence that will be presented during this trial.

24 In just a moment the solicitor will make an
25 opening statement in which he or she will explain to

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1 you the issues in this case, or at least what they
2 believe the evidence will show in this case. The
3 attorney for the defendant may make an opening
4 statement, but they are not required to do so.

5 Keep in mind, ladies and gentlemen, that what
6 the attorneys tell you during their opening statements
7 is not evidence in this case. It is only their
8 contention as to what they believe the evidence will
9 show in this case. I would ask that you give them
10 your undivided attention, but keep in mind that what
11 they say is not evidence. The evidence will be
12 presented to you by the testimony of sworn witnesses
13 and/or exhibits which may be introduced into evidence.

14 From time to time during the trial you may hear
15 one of the attorneys say, Your Honor, I object. Just
16 as in sports, business, or any other structured
17 activity, there are certain rules that the attorneys
18 must obey in the presentation of evidence. These
19 rules make sure that you receive the most trustworthy
20 and reliable evidence available. An objection is the
21 procedure that an attorney uses to call a possible
22 violation of these rules to my attention, as the judge
23 of this court, and for this reason you should never
24 hold an attorney's objection against them, nor should
25 you conclude from the Court overruling or sustaining

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1 an objection that I favor one side or the other.

2 Also, from time to time you may hear one of the
3 attorneys say, Your Honor, we have a matter of law to
4 discuss, or they may ask to approach the bench, or I
5 may ask them to approach the bench. Or sometimes it
6 might be necessary for us to exclude you from the
7 courtroom for a short while while we discuss matters
8 of law. The reason we do this is as the finders of
9 the fact we want to insulate you from anything that
10 the Court may say or do in connection with the facts
11 of a case in ruling whether an evidentiary rule
12 procedure -- procedural rule or statute applies, and
13 we would not want you to be influenced by anything the
14 Court may say or do in connection with the facts of
15 this case.

16 In determining what the true facts are in this
17 case, you must decide whether or not the testimony of
18 a witness or witnesses is believable. It is my
19 responsibility to rule as a matter of law whether
20 certain testimony is admissible at all or not but once
21 it is admitted, it is up to you to determine whether
22 you believe it or not.

23 In deciding whether to believe a witness, you
24 have the right to consider the interest of any
25 witness, the bias of any witness, the prejudice of any

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1 witness, the opportunity for the witness to have seen
2 the matters and things about which the witness may
3 testify, and the way the witness acts on the witness
4 stand, something we refer to as demeanor. You have a
5 right to consider anything that is in the record that
6 will help you evaluate the testimony of the witnesses.
7 That means, ladies and gentlemen, that you must pay
8 close attention to them, to observe them, to listen to
9 them, and to pay close attention to the attorneys and
10 the Court. Although I know it is very difficult,
11 please do not allow your thoughts to wander but give
12 strict attention to the testimony so that at the end
13 of the testimony, after the arguments of the lawyers,
14 and the charge on the law given by the Court, you will
15 then be in a position to determine what the true facts
16 are and apply the law to those facts and thus render a
17 true and just verdict in this case.

18 During the course of this trial, you will be
19 given the opportunity to take notes. Note-taking is a
20 privilege you may choose to exercise or choose not to
21 exercise. Please do not feel you are compelled or
22 required to take notes. Not everyone finds note-
23 taking helpful to them.

24 It might be helpful to you to keep an outline of
25 the main points that are being made. Please do not

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1 allow note-taking to become a distraction to you. In
2 other words, don't get so involved in trying to take
3 down every word that you do not allow yourself to
4 observe the witnesses and to allow yourselves to make
5 the appropriate determinations regarding their
6 credibility and believability. You may allow your
7 notes to refresh your own memory once you are sent to
8 deliberate and, your notes should be used for only
9 that purpose and not shared with anyone else.

10 Please be reminded that your notes are for your
11 specific and your individual purposes and to refresh
12 your memory of the general evidence and arguments that
13 have been made during the course of the trial.

14 I would also remind you that your notes are not
15 to be considered any more reliable than someone else's
16 memory. Someone else's memory should be considered
17 just as reliable as notes that may have been taken by
18 another juror.

19 During breaks and recesses, your notes will be
20 left in your seat. And we do that to ensure that
21 there is no premature deliberation regarding any of
22 the facts and circumstances of the case. And if there
23 is an evening recess, please rest assured that your
24 notes will be safeguarded such that your privacy is
25 protected.

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1 It is your added duty, Mr. Foreman, to fill out
2 the verdict form and to write out any questions the
3 jury may have during deliberations.

4 Ladies and gentlemen, the foreperson does not
5 have any greater vote or voice than you do. It is
6 purely an administrative function. That person fills
7 out the verdict form and writes out any questions that
8 the jury may have. And the selection is a completely
9 random process to ensure a cross-section of the
10 community is represented.

11 In order to preserve everyone's rights, I will
12 give the attorneys an opportunity to take exception to
13 anything that the Court has said by way of opening
14 instructions.

15 Are there any exceptions from the State?

16 MR. FINCH: No, Your Honor.

17 THE COURT: Any exceptions from the defense?

18 MR. GRIMES: No, ma'am.

19 THE COURT: Ladies and gentlemen, I would ask
20 that you give the attorneys your undivided attention.

21 The State may proceed.

22 MR. FINCH: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. FINCH: May it please the Court.

25 THE COURT: Yes, sir. You may proceed.

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OPENING STATEMENT

MR. FINCH: Good morning.

You're here to serve a very vital, important function. You're here to decide guilt, for instance, of Mr. Witherspoon. You're also here to weigh the facts, to be the judges of the facts, as presented by the State.

I want to walk you through some of the facts that the State intends to introduce that you'll have a chance to observe, witnesses testify to, or exhibits, and tell you about them. This event centers on activities that took place October 24th, 2011, in North Charleston. In the predawn hours, the victim in this case, Sharon Rosenbaum, was on her couch sleeping. She had friends over the previous day, a little late. She smokes crack with them. This friend had left hours before. She was laying on the couch dozing. In those predawn hours, she heard scratching at the door, kind of a scratching, tapping, at the door. She thought it was her cat, Sweet Pea, so she went to check and let Sweet Pea in. But it wasn't Sweetpea at the door. And in the dark, unlit patio that's in the front of her door, she couldn't see who it was. Because not only was it early in the morning and had Ms. Rosenbaum been dosing, but she had

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1 cataracts at that time. Since been repaired. She's
2 legally blind at that time.

3 She didn't have her glasses. And she went to
4 open the door and a voice to a body she couldn't
5 recognize said, in effect, can I use your phone, I
6 need to call a cab, my car is having trouble,
7 something to that effect. So Ms. Rosenbaum walked
8 back towards her bedroom, because that's where she
9 kept her phone, bedside table. She had a mobile
10 phone. The screen door was still shut. The front
11 door was open. And that figure with the voice was on
12 the other side of the screen door.

13 Ms. Rosenbaum got a couple of steps into her
14 house before that figure entered the house and, as her
15 back was turned, strangled her around her neck and
16 then continued a physical assault, landing injuries to
17 her face, her head, her neck, chest and back. That
18 individual took her towards her bedroom, pushed her
19 down on the floor, dragging her by her hair. He told
20 her that he had a knife, if she said anything,
21 continued screaming, he was going to kill her. So she
22 stopped screaming. She stopped moving. The man who
23 said he had a knife removed her pants, removed her
24 underwear and raped her. Then that man stood up,
25 calmly said, that's all I want. Took her phone and

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1 left.

2 Ms. Rosenbaum collected herself as best she
3 could right after this incident, right after the
4 assault, and ran across over to her neighbor, Frances
5 Combs' trailer. And she banged on a back window, the
6 bedroom window, of that trailer because she knew
7 Frances wasn't going to come to the door. She asked
8 for help, and Frances called the police. She dialed
9 911. And you'll hear from Frances. She's going to be
10 here for Sharon. And the police arrived. And they
11 started to look for a suspect, tried to develop a
12 suspect.

13 And Ms. Rosenbaum went to the hospital to have
14 her injuries looked at, to have x-rays done, MRI.
15 After being medically cleared from one hospital, she
16 was sent on to another hospital to have a procedure
17 commonly known as a rape kit performed where forensic
18 evidence is attempted to be collected from that
19 individual who's been sexually assaulted. That
20 evidence was packaged, collected, sealed, secured, and
21 sent off to the State Law Enforcement Division for
22 potential development of DNA or other forensic
23 evidence.

24 At that time, Ms. Rosenbaum was able to speak to
25 detectives only briefly, since she was being attended

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1 to medically. A couple of days later, she met with
2 Detective Farman and did her best to give a
3 description of the events and any description she
4 could give of this individual.

5 A couple of days later, another officer, Mezell
6 [phonetic], not far away from where Ms. Rosenbaum
7 lived, responding to a different call. It was at
8 night. Looking around for evidence regarding that
9 call. Found a cell phone. That cell phone was the
10 cell phone that belonged to Ms. Rosenbaum. It was her
11 phone number. The police ran that through their
12 system. They found out it was attached to this case.
13 They continued their investigation and they connected
14 that phone to Mr. Witherspoon. He had used that phone
15 for a couple of days from the time of that rape until
16 it was found not far away.

17 A couple of months later -- I know it's hard to
18 believe. A couple of months later the DNA,
19 preliminary DNA, results came back to State Law
20 Enforcement Division and the DNA profile taken from
21 swabs from the victim matched Mr. Witherspoon. Mr.
22 Witherspoon was that man with the voice, who said he
23 had a knife, who raped Sharon Rosenbaum and took her
24 phone, because that's all he wanted. So he took what
25 he wanted.

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1 Now, that's essentially the testimony and the
2 evidence you're going to hear as presented by the
3 State. Now, a lot of times we'll tell people in
4 opening arguments or opening statements that, you
5 know, this case isn't like TV shows like CSI or Law
6 and Order, et cetera.

7 It's not going to be a long case. It's not
8 going to take weeks. We should be finished with the
9 testimony by tomorrow. However, in some ways this
10 has a lot of those elements that people look for in
11 cases: DNA evidence matching an unknown person to a
12 violent crime; other forensic evidence and pieces of
13 evidence that show other facts tied together, like
14 that phone.

15 It's your job to listen to the witnesses.
16 Listen to Ms. Rosenbaum, listen to Ms. Combs, listen
17 to the detectives, the DNA experts. Listen to them.
18 You judge their credibility. You decide at the end
19 whether the State has presented enough evidence to
20 meet the burden beyond a reasonable doubt.

21 Mr. Witherspoon is guilty of breaking into
22 Ms. Rosenbaum's house, entering that house without the
23 consent from the owner, entering with the intent to
24 commit a crime, threatening the use of deadly weapon,
25 injuring her, and in the predawn hours. You decide

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1 whether the State has presented enough information for
2 you to decide beyond a reasonable doubt that Mr.
3 Witherspoon, once inside, sexually assaulted Ms.
4 Rosenbaum, took from her what he wanted, but what she
5 wasn't letting him have. You decide whether her
6 decision to not fight a man who says he has a knife
7 meets the behavior of a victim. You decide. That's
8 your job as the jury.

9 You're the judge of the facts. You'll decide in
10 the end. And after all of the evidence comes in and
11 you take the time to deliberate, I'm confident that
12 you'll come to the decision that Mr. Witherspoon is
13 guilty of burglary in the first degree and guilty of
14 criminal sexual conduct in the first degree for the
15 assault on Ms. Rosenbaum on October 24th, 2011.

16 THE COURT: The defense may proceed.
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OPENING STATEMENT

MS. PARNELL: Any way that you look at this, this is going to be a sad and unpleasant story. My client, Mr. Witherspoon, has had a rough life. He's been involved in drugs, he's been involved with prostitutes. We're also going to have to tell you some things about Ms. Rosenbaum that are going to be unpleasant, some things involving drugs, parties, another rough lifestyle.

We're going to present these things to you because they're necessary for us to be able to paint the full picture of what happened. That picture begins with the fact that Ms. Rosenbaum and Mr. Witherspoon were having sex, that they had sex close in time when to this incident occurred, that that is how Mr. Witherspoon's DNA was recovered from Ms. Rosenbaum's person.

We're not challenging that something bad happened to Ms. Rosenbaum on October 24th, but the problem here is that she did not recognize her attacker, that she couldn't provide a general description of the attacker. She described him as being possibly a dark-skinned white man or a light-skinned black male, someone who is soft-spoken, who asked to borrow a phone to call a cab because his car

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1 broke down. She never told the detective that Mr.
2 Witherspoon was the one that raped her. And despite
3 what she might say in testimony today, we're going to
4 present evidence to you that she did know Mr.
5 Witherspoon.

6 As you can see, there was little to go on in
7 this case. And there was no doubt, relief, when the
8 DNA results came back showing that semen collected
9 from her that morning was connected to Mr.
10 Witherspoon. But there was also the underwear that
11 Ms. Rosenbaum believes that she was wearing during the
12 attack, that was submitted to DNA testing, that was
13 returned without any analysis done. There was also a
14 white, bloody tee shirt that was given to authorities
15 by Ms. Rosenbaum that she believes had been worn by
16 her attacker. That tee shirt was tested only to
17 determine the origin of the blood on that tee shirt,
18 and the blood on that tee shirt provided a match to
19 the DNA of Ms. Rosenbaum.

20 Now, arrest warrants were drawn up for Mr.
21 Witherspoon, even though he didn't fit even the
22 general physical description. And the only person
23 that Ms. Rosenbaum could recall visiting her apartment
24 early that night was a man named New York. She was
25 not sure if New York was the person that had attacked

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1 her. She did recall getting some crack cocaine that
2 night and smoking it. She was not willing to provide
3 the name of the person that supplied her with crack
4 cocaine or the person that she might have smoked it
5 with, even though the detective thought that this
6 information might be very important to helping solve
7 the case.

8 Now, the information that was collected during
9 the initial investigator, from neighbors of Ms.
10 Rosenbaum, was that there were a number of individuals
11 that would come and go from this apartment at all
12 hours. Mr. Witherspoon was known to Ms. Rosenbaum.
13 She didn't know him very well, but they did know each
14 other. He was one of a group of other people that
15 would go to her place to party and do drugs.

16 They had consensual sex very near the time of
17 this incident, and during this encounter Mr.
18 Witherspoon received Ms. Rosenbaum's phone. He even
19 went so far as to put his name in the back of the
20 phone, and he used it very frequently for a number
21 of days, mostly calling a female friend of his named
22 Ms. Grossley.

23 This case is going to boil down to the fact that
24 Ms. Rosenbaum was hurt but that she had a very cloudy
25 idea of who hurt her. She was also unwilling to share

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1 certain important information to the authorities. And
2 it boils down to the fact that Mr. Witherspoon is here
3 today because the evidence showed that he had sex with
4 Ms. Rosenbaum near the time of the incident and that
5 he had her cell phone.

6 I'm going to ask that you keep in mind the fact
7 that Ms. Rosenbaum said she did not recognize her
8 attacker, that she said his reason for appearing at
9 her door was because his car had broken down, that she
10 described him as a dark-skinned white male, possibly a
11 light-skinned black male, that she was unsure if the
12 male visitor, New York, was the one that had attacked
13 her, that information that was gathered early on in
14 this investigation and the testimony that you're going
15 to hear in this case will establish that there were a
16 number of people that came and went from this
17 apartment.

18 Mr. Witherspoon has done some bad things in his
19 life, but he did not rape Ms. Rosenbaum. And there's
20 no reason that he should be made to suffer because
21 something bad happened, there are no other leads, and
22 because his DNA proves that he's a way to close a
23 case. You need to find Mr. Witherspoon innocent of
24 raping Ms. Rosenbaum and of breaking into her
25 apartment.

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1 THE COURT: The State may call its first
2 witness.

3 MR. FINCH: The State calls Sharon Rosenbaum.
4 [Whereupon, Ms. Rosenbaum comes forward]

5 THE CLERK OF COURT: Ma'am, this way, please, up
6 here.

7 Raise your right hand.

8 [Whereupon, Ms. Rosenbaum is duly sworn by the
9 clerk of court as follows: do you swear or affirm
10 that your testimony will be the truth, the whole
11 truth, and nothing but the truth, so help you God]

12 THE WITNESS: Yes.

13 THE CLERK OF COURT: Be seated.

14 [Whereupon, Ms. Rosenbaum takes the witness
15 stand]

16 THE CLERK OF COURT: Get as close as you can to
17 this microphone. I need you to get close to the
18 microphone and speak into it.

19 THE WITNESS: Okay.

20 THE CLERK OF COURT: Say your full name and then
21 spell your last name. Okay?

22 THE WITNESS: Sharon Rosenbaum. R-O-S-E-N-
23 B-A-U-M.

24 THE COURT: You may proceed.

25 MR. FINCH: Thank you, Your Honor.

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1 Good morning, Ms. Rosenbaum.

2 THE WITNESS: Good morning.

3 - - - - -

4 SHARON ROSENBAUM,

5 Having Been First Duly Sworn,

6 was Examined and Testified as Follows:

7 DIRECT EXAMINATION.

8 BY MR. FINCH:

9 Q. If you would tell the Court how old you are.

10 A. Sixty-five.

11 Q. And on October 24th, 2011, how old were then?

12 A. I was sixty-four.

13 Q. And where did you grow up?

14 A. Here. South Carolina.

15 Q. In the Charleston area?

16 A. Yes, sir.

17 Q. And, in general, what kind of work have you
18 done?

19 A. Waitress for Gabriel's [phonetic], cleaning.

20 All different things.

21 Q. And do you have any children?

22 A. Yes, sir.

23 Q. How many kids have you got?

24 A. Three.

25 Q. Grandkids?

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1 A. I've got five grandkids.

2 Q. Any great-grandkids?

3 A. Two.

4 Q. How old are they?

5 A. One is a year and a half and one is a little
6 over two.

7 Q. And let me take you back to October 24th, 2011.
8 Where were you living at that time?

9 A. At [REDACTED] [REDACTED].

10 Q. Is that in Charleston County?

11 A. Yes, sir. North Charleston.

12 Q. It's the city of North Charleston --

13 A. Yes, sir.

14 Q. -- in Charleston County?

15 And who lived with you at that time?

16 A. No one.

17 Q. And how long had it been since you had a
18 roommate?

19 A. About two years, I guess.

20 Q. And were you working at that time?

21 A. When I had the roommate?

22 Q. No. Back in 2011.

23 A. No, sir.

24 Q. What was the condition of your eyesight back
25 then?

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1 A. I had cataracts.

2 Q. And do you know what your vision rating was?

3 A. It was 200 and -- twenty two fifty.

4 Q. Twenty, two-fifty?

5 A. Yes, sir.

6 Q. And today did anybody -- did you have an
7 understanding about your ability to see? What was your --
8 were you legally blind?

9 A. Yes, sir.

10 Q. Did you have -- did you wear glasses for that?

11 A. Yes, sir.

12 Q. And did that help your vision?

13 A. Some. But it got to the point that -- the last
14 time I went was a year ago and -- not that long -- so
15 about four months ago and they told me I needed cataract
16 surgery.

17 Q. And have you had that surgery?

18 A. Yes, sir.

19 Q. So you can see better now?

20 A. Yes, sir.

21 Q. And that was pretty recent; right?

22 A. Yes, sir.

23 Q. About how long ago --

24 A. Three weeks ago --

25 Q. -- did you have that done?

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1 A. Three weeks ago.

2 Q. Okay. I want to go back to, like I said, to
3 October 24th, 2011, and maybe the day before, as well. Do
4 you remember that day?

5 A. Bits and pieces of it.

6 Q. Well, just -- well, you answer as best you can
7 to what you remember. Okay?

8 Do you remember what you were doing the evening
9 before October 24th, 2011?

10 A. No, sir.

11 Q. Do you remember if you had any friends over?

12 A. I just had -- the night that -- are we talking
13 about the night that I was raped?

14 Q. The night before or the night of. Yes.

15 A. Okay. I had a friend over. His name's New
16 York. We got high.

17 Q. Say that again, please.

18 A. I had a friend named New York. He came over and
19 we got high.

20 Q. Okay. And you -- you knew it was New York in
21 your house?

22 A. Yes, sir.

23 Q. And how did you know that that was New York in
24 your house?

25 A. Because we been friends for about a little over

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1 a year.

2 Q. Okay. And is -- were you able to recognize New
3 York's voice?

4 A. Yes, sir.

5 Q. And when he was over, if you're wearing your
6 glasses you can recognize his face?

7 A. Yes, sir.

8 Q. And he was over. You said -- you testified that
9 you guys got high?

10 A. Yes, sir.

11 Q. And how did that happen? What were you -- what
12 drugs were you doing?

13 A. Crack.

14 Q. All right. And about how often -- do you
15 remember what time New York left?

16 A. No, sir.

17 Q. Do you know if it was night time or --

18 A. Yes, sir, it was night. It was early in the
19 morning.

20 Q. And what did you do after New York left?

21 A. I laid down and watched TV.

22 Q. And where did you do that?

23 A. Well, I don't know. Sometimes I lay in the
24 bedroom and sometimes I lay in the living room. I don't
25 remember. Like I said -- like I said, that night is bits

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1 and pieces, because I was in the living room with him
2 getting high, you know, and laid in the bedroom. But, you
3 know, sometimes I can't sleep, I'll go back out and lay in
4 the living room. I don't remember exactly. All I know is
5 that I heard my cat at the door. I thought was my cat.

6 Q. Okay. Let me show you what's been marked and
7 admitted as State's Exhibit Number 14. Can you identify
8 that?

9 A. Yes, sir. That's my living room and kitchen.

10 Q. And is that a true and accurate representation
11 of the --

12 A. Yes, sir.

13 Q. Okay. And you were in your living room?

14 A. Part of the time. But like I said, I could have
15 come out going through to the living room. Well, I've got
16 two TVs. I've got one in the bedroom and one in the
17 living room.

18 Q. Okay. At some pint you heard a noise?

19 A. Yes, sir.

20 Q. And what did you think that noise was?

21 A. My cat.

22 Q. What's your cat's name?

23 A. Sweet Pea.

24 Q. How many cats do you have?

25 A. I've got two.

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1 Q. And why did you think it was Sweet Pea?

2 A. Because she used to come knock on the door and
3 say hello. And then he quit saying hello and just comes
4 and knocks. He'll get up on the door and knock up against
5 the door to let me know he was out there.

6 Q. So you heard the noise. And what did you do
7 when you heard that noise?

8 A. I went to the door to let him in.

9 Q. And what did you see when you opened the door?

10 A. There was a guy standing there, a very soft-
11 spoken guy, and he asked me could he use my phone because
12 his car broke down. And I said, yeah. So I went back --
13 went back to the room where I had my phone and I got about
14 halfway -- no, not quite. Right before I got to my TV is
15 where he attacked me. He grabbed me around the throat and
16 he started dragging me to the bedroom. Got to the
17 bedroom. And I had a bicycle that was like parked -- so
18 nobody would steal it. I tried to knock it over. And I
19 grabbed for the curtain. I was doing everything I could
20 to get help, to get away from him. And he grabbed me by
21 my hair, he pulled me down, and he started beating me in
22 my face. And I kept hollering, you know, for somebody to
23 help me. And finally he looked at me, very soft-spoken,
24 and he says, I have a knife. I don't remember anything
25 after that except looking around and looking for something

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1 to put on. I put on a pair of sweat pants, ran to my
2 neighbor's house across the street, banged on her door.
3 She called 911.

4 Q. Do you remember what you told your neighbor?

5 A. I told her that I had been attacked and raped.
6 I mean, I was raped.

7 Q. And she called 911?

8 A. Yes, sir.

9 Q. If you could take a look behind you on the
10 screen. That's showing State's Exhibit Number 14.

11 A. Yes, sir.

12 Q. If you could point to the area where you were
13 first attacked physically, roughly what area --

14 A. About right there before you got to -- that's
15 the TV right there.

16 Q. And what's that room behind --

17 A. That's my bedroom right there.

18 Q. Okay. I'm going to show you what's been
19 previously marked and admitted as State's 15. Show us
20 what we're looking at.

21 A. That's the bicycle that I knocked over. I
22 grabbed for the curtain. I was just fighting, trying to
23 get away from him. He pulled me down. Like where the
24 clothes hamper is is where he pulled me down and raped me.

25 Q. Then after that is when you got up and went over

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1 to your neighbor's house?

2 A. Yes, sir.

3 Q. Do you recall anything that this person said to
4 you after they assaulted you?

5 A. The only thing I remember him saying was, that's
6 all I wanted.

7 Q. And what was going through your mind when he
8 said that?

9 A. I just wanted to -- I just wanted to survive.
10 He was beating me, and I was scared. I just wanted him to
11 go away. You know, I just wanted to live through it.

12 Q. And after that person said that's all I wanted,
13 what happened next? Where did he go?

14 A. I don't know. I just know -- I just know that I
15 was looking around trying to find my phone. And I didn't
16 see him and I couldn't find my phone. I found my pants.
17 I put my pants on. I didn't put my underclothes on, I
18 just put my pants on and --

19 Q. And what were you going to do with the phone?

20 A. I was going to call for help.

21 Q. And were you able to find your phone?

22 A. No, sir.

23 Q. What was your phone number at that time?

24 A. [REDACTED].

25 Q. And what's your phone number now?

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1 A. [REDACTED].

2 Q. How long has that been your phone number?

3 A. For a good four years.

4 Q. Have you -- did you loan anybody your phone that
5 night?

6 A. No, sir. I never loan my phone out.

7 Q. Why is that?

8 A. I lived alone. That was the only way I had to
9 get out if something happened. If I needed help or
10 anything, I had the phone.

11 Q. So after you couldn't find your phone is when
12 you went over to Ms. Combs' house?

13 A. Yes, sir.

14 Q. After police arrived, tell us what happened
15 then.

16 A. They started asking me a bunch of questions. I
17 don't know what order they asked me, but I told them what
18 happened. And they asked if I knew him. I said I don't
19 know because I couldn't see his face because he came up
20 from behind me. And I told them that he asked to use the
21 phone, and he said it really calm, like very soft-spoken,
22 very calm. It felt -- you know, he wasn't -- he sounded
23 like maybe a nice guy or something, you know.

24 Q. Did you invite him in your house?

25 A. No, sir. I suggested, you know, I'll go get the

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1 phone.

2 Q. Did you go to the hospital?

3 A. Yes, sir.

4 Q. Do you remember what hospital you went to?

5 A. Roper Saint Francis and Medical University.

6 Q. Do you know how you got to Roper Saint Francis?

7 A. Roper Saint Francis, the ambulance took me.

8 Q. And when you were at Roper Saint Francis, do you
9 remember any treatments or testing they did on you?

10 A. I remember them putting me on the table and
11 having some kind of machine go around me, to x-ray me, to
12 see if I had any concussions or anything.

13 Q. And did -- how were you feeling physically at
14 that time?

15 A. Scared.

16 Q. Well, did you have any pain anywhere?

17 A. My head.

18 Q. Where did it hurt on your head?

19 A. And I couldn't hardly breathe. My throat was
20 hurting all through here [indicates].

21 Q. Did you have any cuts?

22 A. Just on my neck, where he had caught it with his
23 fingernails.

24 Q. I'm going to show you what's been previously
25 marked and admitted as State's Exhibits 4, 5, 6, 7 and 8.

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1 Take a look at those items and tell me if you recognize
2 those items.

3 A. That's me. I don't remember this one, the one
4 on my cheek. I don't remember a cut. But it could have.
5 Like I said, I was in shock. All I know is that my head
6 hurt so bad.

7 I would not look in a mirror. I looked one time
8 and I started seeing the bruises and I turned away. I
9 didn't look in the mirror for a long time after that. I
10 didn't want to see it.

11 Okay. This I remember him scratching me -- I
12 remember him pushing me down. He had -- he was pushing me
13 down like that there. But he kept beating me in the face.

14 And this is -- this one is where he beat me on
15 the side of my face. But he beat me all through here,
16 just kept beating me and beating me. And when he said he
17 had a knife, I just --

18 Q. If you'll look behind you on that screen, I'm
19 showing you State's Number 5. And that's a picture of
20 your neck?

21 A. Yes, sir.

22 Q. You can take a look at the other photographs.

23 [Whereupon, the witness reviews documents]

24 A. They're all me.

25 Q. [Mr. Finch] And those were taken the day of the

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1 incident?

2 A. [Indicates affirmatively]

3 Q. After you were at Roper Saint Francis and they
4 did those medical procedures on you, what happened next?
5 Were you transported to another hospital?

6 A. Yes, sir. I had a detective take me from there
7 to Medical University for the rape kit.

8 Q. And when you were at the Medical University, you
9 said they did a rape kit there?

10 A. Yes, sir.

11 Q. And do you remember about how long that took?

12 A. No, sir.

13 I -- it seemed like it just took forever for --
14 I mean, it just -- I don't know. I was just so confused
15 and so scared, I just wanted to go home. Just wanted it
16 all to be over with.

17 Q. And you were able to answer questions that the
18 nurse asked you?

19 A. [Indicates affirmatively]

20 Q. And you told her what happened to you?

21 A. Yes, sir.

22 Q. And the nurse there took those pictures of you?

23 A. Yes, sir.

24 Q. I want to go back to the -- when you thought it
25 was Sweet Pea at the door. When you opened the door, was

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1 it light outside or dark outside?

2 A. No. It was dark.

3 Q. Do you know what time it was?

4 A. No, sir.

5 Like I said, I wasn't expecting anybody or
6 anything. I was watching TV. I don't even remember what
7 I was watching on TV.

8 Q. Those injuries that we see photographs of, where
9 did those happen? Where did you receive those injuries?

10 A. In the bedroom.

11 Q. And --

12 A. Except maybe the ones on the neck. Like I said,
13 he grabbed me by the neck and on my hands to push me into
14 the bedroom. And he was beating on me in the bedroom and
15 I still kept fighting. That's when he told me to -- that
16 he had a knife, to shut up. And I shut up.

17 Q. And you told police -- you weren't able to
18 identify anybody, were you?

19 A. No, sir.

20 Q. If you knew who did this, or if you thought you
21 knew who did this, what would you have done?

22 A. Well, I'd call the law. I'd a told them who did
23 it.

24 I didn't know who did it, but I knew I had to
25 stop him somehow.

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1 Q. After they did the rape kit at MUSC, where did
2 you go?

3 A. I went back home.

4 Q. And did you go back to your apartment?

5 A. Yes, sir.

6 Q. Do you still live there now?

7 A. No, sir.

8 Q. Why not?

9 A. I couldn't stand it there.

10 Q. And how long had you lived in that apartment?

11 A. Twenty-five years.

12 Q. I'm sorry. Can you say that again?

13 A. Twenty-five years.

14 Q. Where do you live now, generally? You don't
15 have to give us the address. But generally?

16 A. Across the street with a friend of mine that I
17 know. She let -- she took me in.

18 MR. FINCH: Beg the Court's indulgence.

19 [Whereupon, Mr. Finch and Ms. Riddle confer]

20 Q. [Mr. Finch] I just want to ask you briefly
21 about your phone. You testified that was your phone
22 number and is your phone number now.

23 A. Yes, sir.

24 Q. Did you have to get a new phone?

25 A. Yes, sir.

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1 Q. And was your phone provider able to transfer
2 your number over?

3 A. Yes, sir.

4 Q. Do you know how long it was until you got the
5 new phone?

6 A. The next day.

7 Q. And the phone company took care of transferring
8 your number over for you --

9 A. Yes, sir.

10 Q. -- and turned off the service, as far as you
11 know?

12 A. As far as I know. I told them that the phone
13 was stolen, that I wanted to have another one and have the
14 number transferred.

15 MR. FINCH: If you would, Ms. Rosenbaum, please
16 answer any questions the defense may have for you.

17 THE WITNESS: All right.

18 THE COURT: You may proceed.

19 MR. GRIMES: Thank you, Your Honor.

20 THE COURT: You're welcome.

21 MR. GRIMES: May it please the Court.

22 THE COURT: Yes, sir. You may proceed.

23 MR. GRIMES: Good morning.

24 THE WITNESS: Good morning.

25

- - -

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CROSS-EXAMINATION

BY MR. GRIMES:

Q. Ms. Rosenbaum, first I want to ask you a few questions about your ability to ID the person who came to your house on October 24th, 2011. Okay?

A. Yes, sir.

Q. Now, I believe you testified before that you were watching a movie?

A. Yes, sir.

Q. Do you remember what movie you were watching?

A. No, sir.

Q. And this was early in the morning?

A. Yes, sir.

Q. And you were either on your couch on in your bedroom?

A. Yes, sir.

Q. And then you heard a noise at the door and thought it was your cat?

A. Yes, sir.

Q. And then you walked to the door and talked to the person there?

A. Yes, sir.

MR. GRIMES: May I approach the witness, Your Honor?

THE COURT: Uh-huh.

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1 Q. [Mr. Grimes] If you can sort of tell me how far
2 you were from that person?

3 A. About right there.

4 Q. Right here?

5 A. Yes, sir.

6 Q. So he was at the screen door. And then was
7 there another door?

8 A. There was a wooden door.

9 Q. Okay. And you were right there?

10 A. Yes, sir.

11 Q. Was the wooden door already open?

12 A. Pardon me?

13 Q. Was the wooden door already open?

14 A. No, sir.

15 Q. Did you open the wooden door, or did he open the
16 wooden door?

17 A. I did.

18 Q. At the time you opened the wooden door, were you
19 closer than this?

20 A. No, sir.

21 That -- when I opened the door, that's where he
22 was standing was about where you are now.

23 Q. Okay. Was he right -- so he was a little bit
24 back from the door?

25 A. Yeah.

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1 Q. Okay. And you would be right at the door?

2 A. Uh-huh.

3 Q. Okay. And then you said it was dark outside?

4 A. Yes, sir.

5 Q. And you weren't wearing your glasses?

6 A. No, sir.

7 Q. And you walked straight from either the bedroom
8 -- or the bedroom or the living room to the door?

9 A. Yes, sir.

10 Q. Okay. And didn't do anything between that time?

11 A. Pardon me?

12 Q. You didn't do anything in between that walk,
13 like get a cup of coffee or --

14 A. No, sir.

15 Q. Okay. And according to your testimony, that
16 person came in after you went to go get your phone?

17 A. Yes, sir.

18 Q. And sort of grabbed you from behind?

19 A. Yes, sir.

20 Q. And during that struggle, were you ever face-to-
21 face with the person?

22 A. No, sir.

23 Q. Did you ever see his arms?

24 A. He had clothes on so I couldn't tell.

25 Q. Do you remember what kind of clothes he had on?

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1 A. No, sir.

2 Q. Do you remember saying he had a beanie hat on?

3 A. Some kind of hat. I'm not sure. It kind of
4 come down. Like I said, he was behind me.

5 Q. Okay. Did you see his hands?

6 A. No, sir.

7 Q. And, now, when you eventually -- you talked to
8 the police, at first you couldn't give them any
9 description, whether the person was black or white, could
10 you?

11 A. No, sir.

12 Q. And then later when you talked to Detective
13 Farman, you gave her a statement; correct?

14 A. Uh-huh.

15 Q. And when you were giving -- at that point, you
16 had no idea who this person was; right?

17 A. Right.

18 Q. So you wanted to give as much information as you
19 could to Detective Farman?

20 A. Yes, sir.

21 Q. You wanted to find out who this person was so
22 they could arrest him?

23 A. Yes, sir.

24 Q. And the more information you gave to Detective
25 Farman, the better she could do her job?

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1 A. Yes, sir.

2 Q. And anything that she thought would be important
3 you would want to give to her; right?

4 A. Yes, sir.

5 Q. And you told Detective Farman that the person
6 was either a light-skinned black guy? Do you recall
7 saying -- telling Detective Farman that?

8 A. I said he was -- I wasn't sure, that he was --
9 could be a black guy or a dark-skinned white guy.

10 Q. Well, the description is pretty important.

11 A. He was standing behind me, sir.

12 Q. Okay. But you told Detective Farman that he
13 looked like a light-skinned black guy. Do you recall
14 telling her that?

15 A. His hands, yeah.

16 Q. Ma'am?

17 A. His hands.

18 Q. Okay. Or a dark-skinned white guy; is that
19 correct?

20 A. Yes, sir.

21 Q. And you think -- you said maybe an Italian guy?

22 A. Yeah. I wasn't sure.

23 Q. Okay. And you gave that description to her at
24 Roper hospital?

25 A. I'm not sure where I gave it to her at. I had

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1 so many people asking me questions.

2 Q. If I showed you a copy of your statement, would
3 that refresh your memory as to where you gave it at?

4 A. Well, I talked to her in the car, I talked to
5 her at the hospital, and I talked to her inside my house,
6 so I'm not sure where it was when I told her what.

7 Q. Okay. Now, I want to talk a little bit about
8 cooperation with the police. Okay?

9 A. Yes, sir.

10 Q. I think you testified earlier that anything that
11 Detective Farman thought would be important, you would
12 want to tell her.

13 A. Yes, sir. If I remembered it and it was true.

14 Q. All right. Do you recall her asking you about
15 the people that you associated with?

16 A. Yes, sir.

17 Q. And the people that you did crack cocaine with?

18 A. Yes, sir.

19 Q. And who you did it with and who you bought it
20 from?

21 A. Yes, sir.

22 Q. And Detective Farman asked you for their names;
23 correct?

24 A. Yes, sir.

25 Q. And you refused to give them your -- give her

1 their names; correct?

2 A. Yes, sir.

3 Q. In fact, you got pretty upset or agitated when
4 she kept asking you?

5 A. I give her one name that I got was -- I got high
6 with that night.

7 Q. That was New York?

8 A. Yes, sir.

9 Q. What's New York's real name?

10 A. I don't know.

11 Q. Now, you said you did cocaine, and it sounded
12 like a fair amount, maybe once or twice a week?

13 A. Something like that.

14 Q. All right. How do you pay for the cocaine?

15 MR. FINCH: Objection. Relevance.

16 THE COURT: I'm going to give him a little
17 latitude.

18 But you need to -- subject to connection. Be
19 careful, Mr. Grimes.

20 A. I have friends that would come over and get me
21 high.

22 Q. [Mr. Grimes] Ma'am?

23 A. I have friends that came over to get me high.

24 Q. They just give it to you? These friends just
25 gave you cocaine?

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- 1 A. They smoked it with me.
- 2 Q. Never traded cocaine for a phone?
- 3 A. No, sir.
- 4 Q. Or anything else?
- 5 A. No, sir.
- 6 Q. Do you know a person named Derrick Felder?
- 7 A. The name doesn't ring a bell.
- 8 Q. Do you know a lady named Tammy Stiles?
- 9 A. No, sir.
- 10 Q. Do you know a Joseph Mazyck?
- 11 A. No, sir.
- 12 Q. If I showed you pictures of a couple of people,
- 13 would that refresh your memory?
- 14 A. I don't know them.
- 15 Q. You're sure about that?
- 16 A. Yes, sir.
- 17 Q. And it's your testimony that you don't know
- 18 Nathaniel?
- 19 A. True.
- 20 Q. You never hung out with him before?
- 21 A. No, sir.
- 22 Q. Never had him over to your house?
- 23 A. No, sir.
- 24 Q. Never did drugs with him?
- 25 A. No, sir.

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1 Q. Never had sex with him?

2 A. No, sir.

3 Q. And that's your testimony today?

4 A. Yes, sir.

5 Q. Now, I want to ask you just a couple of other
6 questions about cooperation. Did you cooperate fully and
7 give all truthful answers to the SANE nurse?

8 A. Yes, sir.

9 Q. And do you recall her sort of making a report or
10 having a form for you to go through?

11 A. Pardon me?

12 Q. Do you recall her having a form for you to go
13 through and check off questions?

14 A. Yes, sir.

15 Q. Okay. And do you recall her asking if you used
16 drugs or alcohol?

17 MR. FINCH: Objection. Hearsay.

18 THE COURT: You may -- repeat the question
19 again.

20 Q. [Mr. Grimes] Do you recall the SANE nurse
21 asking you if you used drugs or alcohol?

22 THE COURT: Overruled. Statements made for
23 purposes of diagnosis or treatment. Exception to the
24 hearsay rule.

25 You may proceed. Ma'am, you may answer the

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1 question if you remember it. Do you need it repeated?

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Please repeat the question.

4 Q. [Mr. Grimes] Do you recall the SANE nurse
5 asking you if you used drugs or alcohol?

6 A. Yes, sir.

7 Q. And you told her no; correct?

8 A. I didn't use alcohol.

9 Q. And you told her no to that, didn't you?

10 A. Yes, sir.

11 Q. And you didn't tell her you used drugs, did you?

12 A. I don't remember. I think I did, though, but
13 I'm not sure.

14 MR. GRIMES: May I approach the witness, Your
15 Honor?

16 THE COURT: It depends. Approach the bench,
17 please.

18 MR. GRIMES: Ma'am?

19 THE COURT: Approach.

20 [Whereupon, an off-the-record bench conference
21 is held]

22 THE COURT: You may proceed.

23 Q. [Mr. Grimes] Did you tell the nurse at MUSC
24 there in the sexual assault exam that you used cocaine?

25 A. Like I said, sir, I don't remember.

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1 Q. And when the nurse filled out the report, did
2 you review it and make sure it was done accurately, or did
3 the nurse give you an opportunity to review the report?

4 A. I don't remember, sir.

5 Q. One of the last questions I want to ask goes
6 again back to your cooperation with Detective Farman. In
7 addition to New York, who else did you use cocaine with?

8 MR. FINCH: Objection. Relevance.

9 THE COURT: Approach, please.

10 [Whereupon, an off-the-record bench conference
11 is held]

12 THE COURT: You may proceed.

13 MR. GRIMES: I'm sorry. That question was over
14 broad.

15 Q. [Mr. Grimes] The week before this incident, how
16 many people did you use cocaine with?

17 A. About three.

18 Q. And who were they?

19 A. A guy named Cooper, a guy named New York, and a
20 guy -- a friend of mine named Pam.

21 Q. Nickname Pan?

22 A. No. Her real name is Pam.

23 Q. And the guy named Cooper, is that -- is he sort
24 of nicknamed Super Cooper?

25 A. Uh-huh.

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1 Q. And isn't it true that he's the one that
2 introduced you to Mr. Witherspoon?

3 A. No, sir.

4 Q. And then they would just give you the cocaine
5 for free? Or did they exchange something for it?

6 A. They smoked it with me.

7 Q. Ma'am?

8 A. They wanted a place a smoke and so they get --
9 they'd come there to smoke and they'd give me some so they
10 could smoke there with me, just to have a place to smoke.

11 Q. So you sort provided a safe place for people to
12 smoke cocaine and do other stuff?

13 A. They were friends.

14 MR. GRIMES: Can I have one moment, Your Honor?

15 THE COURT: Yes.

16 [Whereupon, Mr. Grimes and Ms. Parnell confer]

17 Q. [Mr. Grimes] One final thing about clothing.
18 I'm going to show you what's been marked as Defendant's
19 Exhibit 10. I believe you testified before you weren't
20 sure what clothing the person was wearing?

21 A. No, sir.

22 Q. Do you recall pointing out a piece of clothing
23 and giving it to Detective Farman?

24 A. I found it, yes.

25 Q. And it was a white tee shirt?

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1 A. Tee -- yes, sir.

2 Q. And this appears to be the one?

3 A. Yes, sir.

4 Q. And apart from that, you don't know what
5 clothing the person was wearing?

6 A. No, sir.

7 MR. GRIMES: Can I have one moment, Your Honor?

8 THE COURT: Yes, sir.

9 MR. GRIMES: Thank you.

10 THE COURT: You're welcome.

11 [Whereupon, Mr. Grimes reviews documents]

12 MR. GRIMES: Thank you, Your Honor. I have no
13 further questions.

14 THE COURT: Any redirect of the witness?

15 MR. FINCH: Briefly, Your Honor.

16 THE COURT: You may proceed.

17 REDIRECT EXAMINATION

18 BY MR. FINCH:

19 Q. Ms. Rosenbaum, when you talked to Detective
20 Farman, you were completely forthright and honest with
21 her?

22 A. Yes, sir.

23 Q. And why was that?

24 A. Because I couldn't -- they couldn't find the
25 person that did it if I hadn't a been.

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1 Q. And you wanted to find this person?

2 A. Yes, sir.

3 Q. And you would have given them any information
4 that you thought would help?

5 A. If it was true, yes.

6 Q. And were you truthful with officers?

7 A. Yes, sir.

8 MR. FINCH: Objection. Vouching.

9 THE COURT: Sustained.

10 MR. FINCH: No further questions.

11 THE COURT: Any objection to the witness being
12 excused? From the State?

13 MR. FINCH: No, Your Honor.

14 THE COURT: From the defense?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: Ma'am, you're excused. You may step
17 down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You're welcome, ma'am.

20 [Whereupon, Ms. Rosenbaum is excused and exits
21 the witness stand]

22 THE COURT: Ladies and gentlemen, we're going to
23 take a very brief restroom break. During the break,
24 please do not discuss the case among yourself. And if
25 you would leave your notepads in your seats.

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FRANCES COMBS,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. FINCH:

Q. If you would tell the Court where it is you're employed.

A. Old Country -- Golden Corral.

Q. What do you do at Golden Corral?

A. I'm a cook.

Q. How long have you been there?

A. Five years.

Q. And how long have you lived in the Charleston area?

A. Since 1976.

Q. And where do you currently live?

A. Same residence. [REDACTED] [REDACTED]

Q. Have you lived there since 1976?

A. Yes.

Q. And who lives in your house with you?

A. Ms. Rosenbaum.

Q. How long has she lived in your house with you?

A. About a year and a half now.

Q. I want to take you back to October 24th, 2011,

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1 in the predawn hours. It was dark. Do you remember that
2 day?

3 A. Yes, sir.

4 Q. Okay. Tell me what you remember about that day.

5 A. I was in bed, and Ms. Rosenbaum came to my back
6 bedroom and was pounding on there saying -- stating that
7 she was assaulted and raped.

8 Q. What was her demeanor at the time?

9 MS. PARNELL: Objection, Your Honor.

10 THE COURT: Prior witness.

11 But you need to establish the appropriate
12 foundation as to time and place, and that's all she
13 can say.

14 Q. [Mr. Finch] What was Ms. Rosenbaum's demeanor
15 at that time?

16 THE COURT: You need to establish the date and
17 time and proximity to this incident.

18 Q. [Mr. Finch] Was that on October 24th, 2011?

19 A. Yes.

20 Q. And how far away do you live from where
21 Ms. Rosenbaum lived at the time?

22 A. About three feet.

23 Q. Okay. And she told you she had been sexually
24 assaulted?

25 A. Yes.

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1 Q. And did she tell you where that happened?

2 A. Yes. She said it was in her apartment.

3 Q. And did she tell you when that happened?

4 A. She said it just happened.

5 Q. Okay. And what was -- how was she acting when
6 you saw her?

7 A. She was disoriented and she was -- we were both
8 in shock because the word rape, you know, automatically --

9 Q. Do you -- was she -- did she seem under any
10 stress at that time?

11 A. Well, I jumped out of bed and I ran to her and I
12 sat her on the steps. And when I sat her down, her eyes
13 rolled back in her head. And it really scared me because
14 she went stiff and I thought she had a heart attack or
15 something.

16 Q. And how long had you known Ms. Rosenbaum at that
17 time?

18 A. I met her after my mom passed away in 2007.

19 Q. And had you ever seen her act like that before?

20 A. No.

21 Q. How did that make you feel when you saw her act
22 this way?

23 A. It scared me.

24 Q. What did you do after Ms. Rosenbaum came over
25 and asked you for help?

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1 A. Like I said, I put her on the steps and when
2 that happened, I -- I got her to, because -- when I got
3 her to, I tapped her face. And that didn't work, so I
4 shook her a bit and then I got her in the house. That's
5 when she woke up, when I shook her. And I got her into
6 the house and we called 911.

7 Q. And you communicated what you did to 911?

8 A. Right.

9 Q. And that's when the police arrived?

10 A. Yes.

11 Q. And other than being Ms. Rosenbaum's friend and
12 placing that call to 911, did you give any statements to
13 law enforcement or help them in their investigation?

14 A. As to what I seen?

15 Q. Correct.

16 A. Well, previously, I was -- before I had gone to
17 bed, I was up about an hour or so before that. I had
18 taken my dog out. But I didn't see anybody -- you know,
19 people were milling around.

20 Q. In that area do people -- do people generally
21 mill around in that area?

22 A. Every now and then. But, you know, I'm the type
23 of person that I keep to myself. And it's not the best
24 place to be, but, you know, people were going to work and
25 that..

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1 Q. And -- but you didn't hear -- or you weren't
2 able to --

3 A. No.

4 Q. -- give the police any description of --

5 A. No, sir.

6 Q. -- an assailant?

7 MR. FINCH: Thank you. If you would answer any
8 questions the defense may have for you.

9 THE COURT: You may proceed.

10 MS. PARNELL: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. PARNELL: Good day, Ms. Combs.

13 REDIRECT EXAMINATION

14 BY MS. PARNELL:

15 Q. When you stated earlier to the solicitor that
16 some people were milling around, were they milling around
17 the apartment of Ms. Rosenbaum?

18 A. Well, it was like some of the neighbors were
19 going to work and some were, you know, visiting from house
20 to house, you know. And that was about it, yeah.

21 Q. Now, you're currently renting to Ms. Rosenbaum?

22 A. Yes.

23 Q. But you were neighbors at the time?

24 A. Yes.

25 Q. And you were neighbors and you were friends?

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1 A. Yes.

2 Q. And you certainly cared about Ms. Rosenbaum?

3 A. Yes.

4 Q. You were probably very worried when she showed
5 up at your house early that morning?

6 A. Right.

7 Q. And you called the police?

8 A. Yes.

9 Q. And I'm sure that you were hoping that they
10 would catch whoever did this to her?

11 A. Right.

12 Q. You want her to feel safe and secure?

13 A. Right.

14 Q. And that means that you would help out with this
15 investigation any way that you could?

16 A. Right.

17 Q. But you didn't see the person that attacked Ms.
18 Rosenbaum?

19 A. No.

20 Q. And you did not see her get attacked?

21 A. No.

22 MS. PARNELL: That's all the questions I have.

23 Thank you.

24 THE COURT: Any redirect of the witness?

25 MR. FINCH: No, Your Honor.

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1 THE COURT: Any objection to the witness being
2 excused? From the State?

3 MR. FINCH: No, Your Honor.

4 THE COURT: From the defense?

5 MR. GRIMES: No, Your Honor.

6 THE COURT: Ma'am, you're excused.

7 [Whereupon, Ms. Combs is excused and exits the
8 witness stand]

9 THE COURT: You may call your next witness.

10 MS. RIDDLE: The State calls Sargent John
11 Reynolds

12 [Whereupon, Mr. Reynolds comes forward]

13 THE CLERK OF COURT: Raise your right hand.

14 [Whereupon, Mr. Reynolds is duly sworn by the
15 clerk of court as follows: do you swear or affirm
16 that your testimony will be the truth, the whole
17 truth, and nothing but the truth, so help you God]

18 THE WITNESS: Yes.

19 THE CLERK OF COURT: Be seated.

20 [Whereupon, Mr. Reynolds takes the witness
21 stand]

22 THE CLERK OF COURT: If you'll state your full
23 name and spell your last name for the record.

24 THE WITNESS: John Reynolds. R-E-Y-N-O-L-D-S.

25 THE COURT: You may proceed.

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1 MS. RIDDLE: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MS. RIDDLE: Sargent Reynolds, how are you
4 doing?

5 THE WITNESS: Good. Okay.

6 - - - - -

7 JOHN REYNOLDS,

8 Having Been First Duly Sworn,

9 was Examined and Testified as Follows:

10 DIRECT EXAMINATION

11 BY MS. RIDDLE:

12 Q. Would you tell the jury what your job is.

13 A. I'm employed by the City of North Charleston. I
14 currently hold the rank of a police sargent.

15 Q. And you're employed with?

16 A. City of North Charleston.

17 Q. The City of North Charleston.

18 And that -- did you hold that same job on
19 October 24th, 2011?

20 A. I held the same rank, but on that date I was
21 assigned as the crime scene unit supervisor for the North
22 Charleston Police Department.

23 Q. And how long have you been employed by North
24 Charleston?

25 A. A little over seventeen years.

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1 Q. And what kind of training have you had?

2 A. Approximately twelve out of the seventeen years
3 I've been employed there I spent in investigations, of
4 which five years where I spent as a crime scene
5 investigator and another seven years as a detective
6 working a wide variety of cases. I've also been sent to
7 numerous crime scene investigation schools, crime scene
8 processing schools, and also detective schools.

9 Q. And what were your duties back on October 24th,
10 2011?

11 A. I was working in my capacity as the crime scene
12 unit supervisor.

13 Q. And what does that job entail?

14 A. Not only to supervise and lead the members of
15 the team, but also to respond to crime scenes.

16 Q. And did you become involved in an investigation
17 occurring on October 24th, 2011, at [REDACTED],
18 [REDACTED]?

19 A. Yes, I did.

20 Q. And is that address in Charleston County?

21 A. Yes, it is.

22 Q. Tell the jury how you became involved.

23 A. I was requested to respond to the scene in
24 reference to a sexual assault that had occurred shortly
25 before we were notified. And when I got there, I met with

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1 the responding officers who had initially responded.

2 Q. And what did you do when you met with those
3 officers?

4 A. I met with the supervisor who was on the scene.
5 Gave me a brief outline about what happened with the
6 information that they preliminarily got from the victim
7 before she was transported to the hospital. And I started
8 investigating the scene --

9 Q. And once you had gotten the background on the
10 case, what did you do next?

11 A. The background of the case: it was explained to
12 me that a subject had come to the door of the apartment,
13 knocked on it, female victim had opened the door and male
14 subject had made entry. I was told that he had covered --

15 MS. PARSELL: Objection, Your Honor.

16 THE COURT: Basis?

17 MS. PARSELL: Hearsay.

18 THE COURT: Statements made for purposes of
19 investigation come as an exception to the hearsay
20 rule, as they're not offered for their truth.

21 You may proceed.

22 MS. PARSELL: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 A. The subject had covered the female's head with
25 an unknown covering and also struck her in the upper body

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1 with what I was told was his fist. She was then told to
2 go to the back bedroom and take her pants off and
3 whereupon he started to sexually assault her. I was also
4 told that the subject had taken her cell phone and then
5 fled the residence.

6 Q. [Ms. Riddle] And once you gathered that
7 background information, what did you do next?

8 A. I started photographing the apartment from the
9 exterior, taking it from various angles just to show where
10 the incident location happened. I then made entry to the
11 residence and started taking photographs of the inside.
12 Once I was in the front door, I entered into a
13 livingroom/diningroom area and photographed that. And I
14 walked farther into the residence where a rear bedroom was
15 located. I also photographed that area, also.

16 Q. Did you collect any other evidence?

17 A. I did collect a pair of pink panties that the
18 supervisor had told me she had been wearing during the
19 attack. And I also examined for other signs of physical
20 evidence.

21 Q. Did you check for possible DNA sources?

22 A. Yes, I did.

23 I was told that the sexual assault had occurred
24 on a bed that was located in the back bedroom. Examined
25 it first visually for signs of wet bodily fluids, semen,

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1 vaginal secretion, saliva, anything that might have been
2 wet and freshly left there. I saw numerous dried stains
3 there that appeared to have been there for quite some
4 time.

5 I also used what's called an alternate light
6 source, to scan the bed and bedroom with. And what it
7 does is fluoresce urine, semen, and body fluids such as
8 that. But everything thing there had been deposited there
9 previously, in my opinion.

10 Q. Is it fair to say that you were unable to find
11 any visible sources of DNA?

12 A. That is correct.

13 Q. And did you dust for fingerprints?

14 A. No, I did not.

15 Based on what I was told initially, and
16 communication between the officers on the scene and also
17 with the victim who was at the hospital, all indications
18 appeared that the subject was led into the residence, did
19 not touch anything besides the victim, they went straight
20 to the back bedroom, the assault occurred on the bed, and
21 whereupon as soon as the assault was completed the subject
22 left the residence without handling or touching anything
23 else.

24 Q. Did you examine the door to the residence?

25 A. Yes, I did.

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1 Q. And what did you find on the door?

2 A. The door to the residence was not conducive to
3 retaining latent print detail. And by that, I mean the
4 ridges on your fingertips. In situations such as this
5 where if people are handling things, our field-processing
6 techniques you would really need a smooth, glossy surface
7 to do that, such as a car-paint job or the monitor on this
8 computer here. The door to this house was a wooden door
9 with flaking paint and it was just not conducive to
10 retaining latent prints.

11 MS. RIDDLE: Your Honor, may I approach?

12 THE COURT: Uh-huh.

13 [Whereupon, Ms. Riddle reviews documents]

14 Q. [Ms. Riddle] Sargent Reynolds, I'm going to
15 hand you what's been marked as State's Exhibits 13, 14, 15
16 and 16. Can you tell me if you recognize those?

17 [Whereupon, the witness reviews documents]

18 A. I do.

19 Q. [Ms. Riddle] What are those items?

20 A. These photographs were taken by me on that
21 morning, utilizing my Nikon D-40 camera that I use in the
22 crime scene investigation work, and these fairly and
23 accurately depict the crime scene as I found it when I got
24 there.

25 Q. Thank you.

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1 MS. RIDDLE: Your Honor, the State moves to
2 admit State's Exhibits 13 through 16 at this time.

3 THE COURT: They've all been admitted without
4 objection.

5 MS. RIDDLE: Thank you, Your Honor.

6 THE COURT: You may proceed.

7 Q. [Ms. Riddle] Sargent Reynolds, what is that a
8 picture of?

9 A. That is the front of the residence, from the
10 street area, the exterior of it.

11 Q. That's the residence you were investigating that
12 night --

13 A. That is correct.

14 Q. -- or that morning?

15 And can you tell the jury what this is a picture
16 of?

17 A. That's taken from just inside the doorway, from
18 the exterior, into the livingroom/diningroom area.

19 Q. Thank you.

20 And how about this one?

21 A. That is the doorway leading into the rear
22 bedroom.

23 Q. And, lastly, this one?

24 A. That is the bed that was depicted in the last
25 photograph, but that is a picture of the rear bedroom.

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1 Q. Did you have any other involvement in this case?

2 A. No, I did not, besides collecting the panties
3 and preserving them and packaging them and also making a
4 copy of the CDs for investigative purposes.

5 MS. RIDDLE: Beg the Court's indulgence.

6 THE COURT: Uh-huh.

7 [Whereupon, Ms. Riddle and Mr. Finch confer]

8 MS. RIDDLE: Please answer any questions the
9 defense may have.

10 THE COURT: You may proceed.

11 MS. PARNELL: Thank you, Your Honor.

12 THE COURT: Uh-huh.

13 MS. PARNELL: Good day, Sargent Reynolds.

14 THE WITNESS: Good afternoon.

15 REDIRECT EXAMINATION

16 BY MS. PARNELL:

17 Q. Now, you were not able to speak to Ms. Rosenbaum
18 when you responded to the scene; is that correct?

19 A. That is correct. She had already been
20 transported.

21 Q. And you didn't take any statements from her at
22 any time?

23 A. No, I did not.

24 Q. But you did take some photos?

25 A. That is correct.

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1 Q. And in those photos, the apartment does appear
2 to be in some level of disarray?

3 A. Correct.

4 Q. Would it be fair to say that, in general, the
5 apartment was somewhat disheveled?

6 THE WITNESS: Your Honor, I'm not going to be
7 able to answer this question with a simple yes or no.
8 Can I explain my answer to explain?

9 THE COURT: You need to answer yes or no, and
10 then you'll be allowed to explain your answer.

11 MS. RIDDLE: Objection, Your Honor. It's
12 outside the scope.

13 THE COURT: She's given wide latitude in cross-
14 examination. The question will stand.

15 Sir, do you need the question repeated?

16 THE WITNESS: Yes.

17 THE COURT: Please repeat the question.

18 MS. PARNELL: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 Q. [Ms. Parnell] Would it be fair to say that the
21 apartment was in a general state of being disheveled?

22 A. Yes.

23 Q. And because of that, would it be hard for you to
24 tell what disarray might have been caused by an attack?

25 A. No.

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1 Q. So the disarray in the apartment, in general,
2 would not make it difficult for you to tell what
3 additional items had been upset or turned over due to an
4 attack?

5 A. That is correct. We were unable to determine.

6 Q. I'm sorry?

7 A. We were unable to determine whether or not
8 anything was handled.

9 Q. But there were some pink underwear that was
10 found on the floor of the bedroom?

11 A. Correct.

12 Q. Okay. And you did have information that that
13 was worn by Ms. Rosenbaum during the attack?

14 A. At some time. Yes.

15 Q. Okay. And that's why you collected them?

16 A. Correct.

17 Q. Now, the purpose of that collection was to later
18 examine that underwear for any forensic evidence?

19 A. That is correct.

20 Q. And that's because there might be some DNA
21 evidence that could be recovered from those panties?

22 A. Yes.

23 Q. Is there also the possibility that DNA can be
24 left at a crime scene by touch?

25 A. Yes.

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1 Q. And would an example of that be when someone
2 goes to touch a doorframe or a window, that they might
3 leave some DNA behind?

4 A. Yes.

5 Q. Was there any examination done at the crime
6 scene for any DNA that might be recovered from the actual
7 crime scene?

8 A. Yes. I did examine the bed area where the
9 sexual assault occurred.

10 Q. Did you examine any other portion of that
11 apartment?

12 A. No.

13 Q. Were you aware of a white tee shirt that might
14 have been worn by Ms. Rosenbaum's attacker?

15 A. No, I was not.

16 Q. If you were aware of that, would you have
17 collected that shirt from the crime scene?

18 A. Yes, I would have.

19 Q. And would it have been important to know if any
20 of the suspect's DNA was on that shirt?

21 A. Yes, it would have.

22 Q. If you were to collect that shirt to submit,
23 would you collect the entire shirt or just a part of that
24 shirt?

25 A. I would collect the whole shirt.

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1 Q. And is the reason for that because you don't
2 know where on that shirt DNA might appear?

3 A. That's correct.

4 Q. Now, when you're collecting forensic evidence to
5 later be tested for DNA, that's considered very fragile
6 evidence?

7 A. Yes.

8 Q. And because of that, there are certain
9 precautions that you have to take to prevent
10 contamination?

11 A. Correct.

12 Q. Is one of those basic precautions that you would
13 mark off the crime scene?

14 A. I'm not sure I understand the question.

15 Q. I'll rephrase that.

16 Would one of those precautions be that you would
17 try to prevent other people from entering that crime
18 scene?

19 A. Yes.

20 Q. And another precaution might be that you would
21 wear gloves when you're handling this evidence?

22 A. Yes.

23 Q. That you would try to avoid sneezing on the
24 evidence?

25 A. Yes.

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1 Q. Or coughing on the evidence?

2 A. Yes.

3 Q. And there are certain policies and procedures
4 that are established in North Charleston that you would
5 follow to prevent that kind of contamination?

6 A. That is correct.

7 MS. PARNELL: Your Honor, if I may have just one
8 moment?

9 THE COURT: Uh-huh.

10 [Whereupon, Ms. Parnell and Mr. Grimes confer]

11 MS. PARNELL: Thank you. That's all the
12 questions I have for this witness.

13 THE COURT: Any redirect of the witness?

14 MS. RIDDLE: Briefly, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MS. RIDDLE:

18 Q. Sargent Reynolds, CSC, is it fair to say that
19 the most probative DNA evidence is going to come from the
20 victim?

21 A. Absolutely.

22 MS. RIDDLE: Thank you very much.

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

25 MS. RIDDLE: No objection, Your Honor.

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1 THE COURT: From the defense?

2 MS. PARNELL: Your Honor, may I have one more
3 recross?

4 THE COURT: Limited to redirect.

5 MS. PARNELL: Thank you, Your Honor.

6 RECROSS-EXAMINATION

7 BY MS. PARNELL:

8 Q. Sargent Reynolds, you stated that the most
9 prevalent evidence would be collected from the victim?

10 A. Yes.

11 Q. And would that be assuming that it was believed
12 that an attacker in a sexual assault had ejaculated inside
13 that victim?

14 A. That is correct.

15 MS. PARNELL: That's all the questions I have,
16 Your Honor.

17 THE COURT: Any further questions from the
18 State?

19 MS. RIDDLE: No, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused? From the State?

22 MS. RIDDLE: No, Your Honor.

23 THE COURT: From the defense?

24 MR. GRIMES: No, Your Honor.

25 THE COURT: Sir, you're excused.

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1 THE COURT: You're welcome.

2 MS. RIDDLE: Good afternoon, Officer Lawless.

3 THE WITNESS: Good afternoon.

4 - - - - -

5 MATT LAWLESS,

6 Having Been First Duly Sworn,

7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MS. RIDDLE:

10 Q. What is your job?

11 A. I am a police officer with the North Charleston
12 Police Department.

13 Q. And what is your title?

14 A. I am a sargent on patrol.

15 Q. And what was your title back in October of 2011?

16 A. I was a neighborhood resource officer for
17 Ferndale and Russeldale.

18 Q. And how long have you been employed with North
19 Charleston?

20 A. About ten and a half years.

21 Q. What kind of training do you have?

22 A. Homicide investigation, white-collar crime
23 investigation, interview and interrogation, radar, Data
24 Master.

25 Q. And what are your duties with the North

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1 Charleston Police Department?

2 A. Just patrol. Supervisor.

3 Q. What does that entail?

4 A. Patrolling the neighborhoods, and directing
5 people where to go, and assisting with answering calls.

6 Q. Did you become involved in an investigation
7 occurring on October 24th, 2011, at [REDACTED],
8 [REDACTED]?

9 A. Yes.

10 Q. And tell the jury how you became involved.

11 A. On the 26th of October, about 10:14, I responded
12 to the area of [REDACTED], which is in
13 Russeldale, in reference to some shots fired. While
14 walking the area, looking for shell casings and stuff, I
15 located a phone laying on the ground. Had the name N.
16 Witherspoon on the screen. The phone no longer had
17 service. Wore gloves while handling the phone, thinking
18 it might have been involved with the shooting or belonged
19 to a victim of any shooting and they were no longer at the
20 scene.

21 Q. Let me stop you for just a minute. You said it
22 was [REDACTED]?

23 A. Yes.

24 Q. That's where you responded?

25 A. Yes.

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- 1 Q. Are you familiar with where [REDACTED] is?
- 2 A. Yes, I am.
- 3 Q. Is it close to that area?
- 4 A. It's not too far. It's about a mile away.
- 5 Q. Okay. And you said you came across a phone?
- 6 A. Yes, I did.
- 7 Q. And what did you notice about the phone?
- 8 A. It was laying on the ground. It was open. And
- 9 it had the name N. Witherspoon on the screen.
- 10 Q. Okay. Did the phone appear abandoned?
- 11 A. Yes.
- 12 Q. And were you interested in this phone?
- 13 A. Interested in trying to see who it belonged to.
- 14 Q. So did you pick the phone up?
- 15 A. I did.
- 16 Q. And what did you do with the phone?
- 17 A. I attempted to call the phone numbers on there
- 18 to see who it belonged to, and then I went to go put it in
- 19 evidence for found property.
- 20 Q. And did you look to see what phone numbers were
- 21 in the phone?
- 22 A. I did. And the phone number for the phone when
- 23 I took the phone was [REDACTED], was the phone number
- 24 for the phone, and then it had an additional number of
- 25 [REDACTED].

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1 Q. So those numbers had been programed in as the
2 numbers for that phone?

3 A. Yes.

4 Q. And you said you saw the name N. Witherspoon?

5 A. Yes, I did.

6 Q. Where did that name appear?

7 A. It was on the screen.

8 Q. Okay. And what else did you do with the phone?

9 A. I just put it in evidence.

10 Q. Okay. And you said you attempted to call?

11 A. I attempted to call some of the phone numbers to
12 see who it belonged to, but nobody would answer.

13 Q. Okay. Had the service to the phone been
14 disconnected?

15 A. Yes, it had.

16 Q. Okay. And what did you do with the phone?

17 A. I put it in evidence and then upon -- after
18 putting it in evidence, I checked the phone number and
19 found that it was associated with this incident, and
20 contacted Detective Farman and advised her that a phone
21 was in evidence.

22 Q. Okay. Did you have any other involvement in
23 this case?

24 A. No, ma'am.

25 MS. RIDDLE: Thank you. Please answer any

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1 questions the defense may have.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: You may proceed.

4 MR. GRIMES: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. GRIMES: May it please the Court.

7 THE COURT: Yes, sir. You may proceed.

8 MR. GRIMES: Good afternoon. Nice to see you
9 again, Officer Lawless -- excuse me -- Sargent
10 Lawless.

11 THE WITNESS: How are you doing?

12 MR. GRIMES: Pretty good. How are you doing
13 today?

14 THE WITNESS: I'm good.

15 MR. GRIMES: Good weekend --

16 THE WITNESS: Yes, sir.

17 MR. GRIMES: -- my schedule's all mixed up this
18 week.

19 CROSS-EXAMINATION

20 BY MR. GRIMES:

21 Q. Now, you said you found this phone when you
22 responded to a shots-called incident?

23 A. Yes, sir.

24 Q. And the shots-called, this had nothing to do
25 with the incident in this case; right?

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1 A. No.

2 Q. And you said it was a robbery?

3 A. It was a shot, like shots heard in the area. I
4 was just walking the area, looking for shell casings, and
5 found the phone laying on the ground.

6 Q. Okay. And that area is sort of Russeldale,
7 Ferndale area?

8 A. Yes, sir. Russeldale.

9 Q. Russeldale.
10 And they're -- is it fair to say it's sort of a
11 moderate and sometimes heavy crime area over there?

12 A. Yeah, I guess so.

13 Q. Is it fair to say there's a lot of sort of drug
14 activity over there?

15 A. Yes.

16 Q. And in your ten years of experience, you've
17 investigated several drug crimes I think at --

18 A. Yes.

19 Q. Sort of possessions and possession with intent
20 to distribute? Distributions?

21 A. Yes.

22 Q. And you've dealt with people who are addicted to
23 drugs?

24 A. Yes.

25 Q. And when someone is addicted to drugs or wants

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1 drugs, they --

2 MS. RIDDLE: Objection, Your Honor.

3 THE COURT: Basis?

4 MS. RIDDLE: Relevance.

5 THE COURT: Please approach.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: You may proceed.

9 MR. GRIMES: Thank you, Your Honor.

10 Q. [Mr. Grimes] And you've investigated drug
11 crimes?

12 A. Yes, sir.

13 Q. And made arrests?

14 A. Yes, sir.

15 Q. And have you ever had occasion in your
16 investigation to see people trading phones for drugs?

17 A. Yes, sir.

18 Q. And there's people who trade their car for
19 drugs? There's a term they call crack rentals?

20 A. Yes, sir.

21 Q. And they may trade other things for drugs, too;
22 correct?

23 A. Yes.

24 Q. And you said you sort of checked the phone and
25 saw N. Witherspoon on the phone name?

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1 A. On the screen. Yes.

2 Q. Programmed in there?

3 A. Yes.

4 Q. And you kind of checked the numbers, numbers
5 that were programmed in there?

6 A. Yes.

7 Q. But you never talked to Mr. Witherspoon about
8 how he got the phone, did you?

9 A. No.

10 Q. And you said the facts that had given rise to
11 this case, you never investigated anything, those -- those
12 facts, did you?

13 A. No.

14 Q. Never interviewed Ms. Rosenbaum?

15 A. No.

16 Q. Or any of the witnesses involved?

17 A. No.

18 MR. GRIMES: Can I have one moment, Your Honor?

19 THE COURT: Uh-huh.

20 MR. GRIMES: Thank you.

21 [Whereupon, Mr. Grimes reviews documents]

22 MR. GRIMES: Your Honor, I have no further
23 questions.

24 THE COURT: Any redirect?

25 MS. RIDDLE: Briefly, Your Honor.

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1 THE COURT: You may proceed.

2 MS. RIDDLE: Thank you.

3 THE COURT: You're welcome.

4 REDIRECT EXAMINATION

5 BY MS. RIDDLE:

6 Q. Officer Lawless, you weren't provided any
7 information in this case that the phone was traded for
8 drugs, were you?

9 A. No, I was not.

10 MS. RIDDLE: Thank you very much.

11 THE WITNESS: Thank you.

12 THE COURT: Any objection to the witness being
13 excused? From the State?

14 MS. RIDDLE: No, Your Honor.

15 THE COURT: From the defense?

16 MR. GRIMES: No, Your Honor.

17 THE COURT: Sir, you're excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 [Whereupon, Mr. Lawless is excused and exits the
21 witness stand]

22 THE COURT: You may call your next witness.

23 MR. FINCH: The State calls Jill Farman.

24 [Whereupon, Ms. Farman comes forward]

25 [Whereupon, Ms. Farman is duly sworn by the

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1 clerk of court as follows: do you swear or affirm
2 that your testimony will be the truth, the whole
3 truth, and nothing but the truth, so help you God]

4 THE WITNESS: Yes, I do.

5 THE CLERK OF COURT: Be seated.

6 THE WITNESS: Thank you.

7 [Whereupon, Ms. Farman takes the witness stand]

8 THE CLERK OF COURT: And please state your full
9 name and spell your last name for the record.

10 THE WITNESS: My name is Jill Fieldstead Farman.
11 My last name is spelled F-A-R-M-A-N.

12 THE COURT: You may proceed.

13 MR. FINCH: Thank you, Your Honor.

14 Good afternoon, Ms. Farman.

15 - - - - -

16 JILL FARMAN,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. FINCH:

21 Q. If you would tell the Court where you're
22 employed?

23 A. I'm employed with North Charleston Police
24 Department.

25 Q. And what's the position you hold with NCPD

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1 currently?

2 A. Currently, I am a neighborhood resource officer
3 for the Ferndale and Russeldale neighborhood.

4 Q. And back in October, 2011, did you hold that
5 same position?

6 A. No, sir.

7 Q. And what did you do back then?

8 A. I was a detective-investigator for our special
9 victims unit.

10 Q. And what are some of the things that the Special
11 Victims Unit, or SVU, that they investigate?

12 A. We investigated all crimes involving and against
13 children, child abuse. We also investigated all sex-
14 related crimes, elder abuse.

15 Q. And if a sexual assault, then, is reported to
16 detectives, are detectives dispatched to the scene if it's
17 feasible?

18 A. Not -- we wouldn't be dispatched to them. If we
19 were working and if it happened during, you know, daylight
20 hours, they might call for a detective. But primarily,
21 cases are assigned to us through -- after the initial
22 reports are completed, by patrol, and then they would come
23 to us.

24 Q. On October 24th, 2011, were you called out and
25 called to service regarding an alleged sexual assault on

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1 [REDACTED]?

2 A. It was in the early-morning hours.

3 I was notified by my supervisor, one of my
4 supervisors, lieutenant, that there had been a report of a
5 sexual assault and she requested that I respond to Roper
6 Saint Francis to meet with the victim.

7 Q. And was it your -- what was your understanding
8 as to why the victim was at Roper Saint Francis?

9 A. That she had been transported to have her
10 medical condition -- that there were some injuries.

11 Q. And did you, in fact, meet with Ms. Rosenbaum at
12 Roper Saint Francis?

13 A. Yes, sir.

14 Q. Did you have an opportunity to speak with
15 Ms. Rosenbaum there?

16 A. Yes, sir.

17 Q. What was the physical condition that you
18 observed Ms. Rosenbaum at that time?

19 A. When I made contact with Ms. Rosenbaum in the
20 hospital room in the emergency department, she had
21 numerous abrasions to her face that -- what appeared to be
22 dried blood. I significantly remember the one on the side
23 of her face. She had what appeared to be petechia or
24 marks of redness across the neck. She talked about her
25 head hurting her. I know they were going to be doing some

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1 MRIs. I remember also dried blood and some marks up on
2 her forehead, as well.

3 Q. And you mentioned petechia. In your training,
4 is that indicative of any type of injury?

5 A. It's trauma that we often see when there is
6 strangulation or something that's compressing the blood
7 vessels around the neck.

8 Q. I want to show you what's been previously marked
9 and admitted as State's Exhibit Number 4. Can you tell us
10 what's on that photo?

11 A. This is a picture of Ms. Rosenbaum the day at
12 the hospital. This is the dried blood I spoke of around
13 her ear. And this -- I see the scratch across her neck
14 and some redness below.

15 Q. If you could just indicate on that picture,
16 which is State's 4, where -- it's a little washed out,
17 perhaps -- where you're -- indicate that dried blood you
18 mentioned.

19 A. The blood is seen up here by her ear, coming
20 down from her ear and across the side of her face.

21 Q. And a scratch to the neck?

22 A. A little hard to see here, but I believe we've
23 got this mark right here.

24 Q. Thank you.

25 Were you able to speak with Ms. Rosenbaum while

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1 she was, at Roper Saint Francis?

2 A. I was.

3 Q. And were you able to get information regarding a
4 possible suspect?

5 A. I explained to her that we would need to get a
6 written statement from her, although I knew that we might
7 not be able to complete it at that time, due to the fact
8 that she had -- they were doing some medical testing.

9 She did give me a brief description. She said
10 that the gentleman was very soft-spoken. She stated it
11 may have been a dark-skinned white male, I believe she
12 said maybe Italian or a light-skinned black male. But she
13 made it very clear that she was legally blind and her
14 description was very vague.

15 Q. Also, in your -- let me back up.

16 Did you have -- after Ms. Rosenbaum went in for
17 her medical treatment, you mentioned MRIs, things of that
18 nature, did you have further contact with her that night
19 as far as taking the statement?

20 A. Well, that was in the morning. And I -- she had
21 to go to MUSC. They will not do rape kits at any other
22 hospital. So I let her know that once she was medically
23 cleared, that our victims advocate was going to transport
24 her to MUSC and that she would need to contact me after
25 the rape kit was completed and then we would sit down and

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1 finish her statement.

2 Q. And did she contact you?

3 A. Yes.

4 Q. When was that?

5 A. That was the -- later that morning. I'm sorry.

6 No. I correct myself. That was the next day.

7 Q. And what did you do after Ms. Rosenbaum
8 contacted you?

9 A. I met with her.

10 Q. Where did you meet with her?

11 A. At the [REDACTED].

12 Q. Was that her home?

13 A. Yes.

14 Q. Did you meet with her in your car or inside the
15 address?

16 A. We finished the statement sitting outside of her
17 address. But she did -- you know, I walked up to the door
18 to obviously greet her and to meet her. But we did sit
19 inside of my car and finish the statement.

20 Q. At that point in time, what was her demeanor
21 like?

22 A. She was exhausted. I could tell that she
23 clearly hadn't had a lot of sleep, which is very common
24 for rape victims in the time that I've worked those cases.
25 They often have a hard time sleeping. She was anxious,

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1 sad. She was very tearful and upset, emotionally upset.

2 Q. Did you try to get a further description of any
3 possible suspect at that time?

4 A. I did. I did.

5 Q. Were you able to develop any more detail, as to
6 the suspect, on that subsequent meeting?

7 A. She told me that she remembered him having some
8 sort of hat on. I believe it was a beanie type hat, is
9 how we described it in her statement.

10 Q. And you talked to Ms. Rosenbaum about her drug
11 use that she's testified to?

12 A. I did.

13 Q. And what was important about those questions
14 regarding any possible suspect?

15 A. Well, any time we're investigating any type of
16 crime, you have to really think -- look at the bigger
17 picture. And so I wanted to know who had been in her
18 house, what they had been doing. So I know that she had
19 told me about this New York subject, that he had been
20 there the night before. And I questioned her about the
21 drug use and smoking crack. And the way she described it
22 to me was that basically, you know, here she had the
23 apartment, she had been there for twenty-five years, and
24 so, you know, New York would come over or a friend would
25 come over and allow her to smoke some of the crack with

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1 them because it gave them a place to be able to smoke the
2 crack.

3 Q. And was she forthcoming about who those other
4 individuals were would smoke crack with her?

5 A. No. She didn't want to discuss that.

6 Q. Do you know why?

7 A. I think she was being protective. I think that
8 the people that --

9 MR. GRIMES: Objection. Calls for speculation.

10 THE COURT: You have to lay the appropriate
11 foundation to put that within her rational perception.
12 Otherwise, it's speculation. Sustained. Rephrase.

13 Q. [Mr. Finch] Did you at any point in time
14 indicate that you were also investigating narcotics use?

15 A. No.

16 Q. Did Ms. Rosenbaum know you were a police
17 officer?

18 A. Yes.

19 Q. Did she seem to understand that a police officer
20 could arrest someone or -- for probable cause of the crime
21 committed?

22 A. Yes.

23 Q. Such as possession of crack cocaine?

24 A. Yes.

25 Q. And that the identity of somebody who had

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1 possessed cocaine could lead to an arrest?

2 A. Yes.

3 MR. GRIMES: Objection. Leading.

4 THE COURT: Sustained. Leading. Rephrase.

5 Q. [Mr. Finch] Did Ms. Rosenbaum understand -- did
6 Ms. Rosenbaum understand that the police arrest crack
7 users?

8 A. Yes.

9 And when we were discussing quite openly about
10 her narcotics use and what she had done, I made it very
11 clear what my role in this investigation was, and that was
12 to investigate a sexual assault and potential burglary,
13 and that I wasn't concerned -- I wasn't there or concerned
14 about what or who she smoked crack with for the sake of
15 the smoking of the crack, I needed to know who she knew,
16 who the people in her life were. That's just part of any
17 investigation.

18 Q. And did Ms. Rosenbaum indicate anything about
19 who it could have been that came to her house that night?

20 A. I asked her about if she had any idea who would
21 want to hurt her, who might do this to her. And I asked
22 quite openly about this New York friend and she had
23 explained about, you know, that he was her friend and she
24 knew him. And I said, well, what about someone that knows
25 New York or could it be a friend of New York. And she

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1 said it could be anybody, I mean, it -- possibly. She
2 really -- we didn't have a suspect at that point.

3 Q. From your perception, dealing with victims and
4 interviewing people as a detective --

5 A. Uh-huh.

6 Q. -- did you get any indication that Ms. Rosenbaum
7 was being less than forthcoming about who she thought it
8 could be?

9 MR. GRIMES: Objection. Calls for vouching.

10 THE COURT: Sustained.

11 Q. [Mr. Finch] In your experience interviewing
12 victims, what did you take away from Ms. Rosenbaum in this
13 investigation?

14 A. Ms. Rosenbaum was cooperative as a victim.

15 I've certainly seen, in my professional
16 experience, a range of uncooperativeness to
17 cooperativeness with victims and I -- it was my perception
18 that Ms. Rosenbaum was extremely cooperative with me with
19 the investigation. She was always available to talk or
20 meet with us as we needed.

21 Q. Let me ask you about the date of the incident,
22 10/24/2011. Did you also check for possible video
23 evidence?

24 A. I did.

25 Q. Where did you do that?

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1 A. I went across the street. Where the apartment
2 was located was at the entrance of a trailer park, and
3 across the street as it comes out onto [REDACTED] -- it's
4 kind of hard to explain, but there was a business that was
5 called ProPac. It ran off of [REDACTED]. And when I went
6 over to inquire -- I saw some cameras. And I went over to
7 inquire and learned that the business was vacant and it
8 was actually being used by some border-patrol K-9 units
9 for training. And they advised that there was no business
10 there and the cameras were not operational.

11 Q. After you met with Ms. Rosenbaum and took her
12 statement, what did you do next in the case?

13 A. I followed up at some other businesses in the
14 area, just to see if anybody had seen anything. I also
15 was looking to see if there was a vehicle that might have
16 been left in the area because of the suspect had told Ms.
17 Rosenbaum that his car had broken down. So I just did a
18 general kind of patrol sweep of the neighborhood. I also
19 attempted to speak to, you know, neighbors about the area,
20 if they had seen anything.

21 Q. Did you know if anything was taken from the
22 home?

23 A. Yes.

24 Ms. Rosenbaum had told me in the very beginning,
25 even at the hospital, that her cell phone had been taken.

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1 MR. GRIMES: Objection.

2 THE COURT: Basis?

3 MR. GRIMES: Hearsay.

4 THE COURT: Please approach.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 Q. [Mr. Finch] Did you learn about any evidence
8 that was later submitted, after the incident date,
9 regarding this case?

10 A. Yes.

11 I was contacted in reference to the cell phone
12 that was found in Russeldale by Officer Lawless.

13 Q. And in viewing the documents and the information
14 in this case, what relationship does that phone have to --

15 A. It was --

16 Q. -- this case?

17 A. It was Ms. Rosenbaum's phone.

18 Q. And how do you know that?

19 A. Because it was the same phone number that had
20 been provided by Ms. Rosenbaum as her phone number. And I
21 believe that one of the witnesses, Ms. Combs', phone
22 number was still in the phone, as well.

23 Q. And did you have an opportunity to do anything
24 with that phone?

25 A. I did.

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1 MR. FINCH: May I approach the witness, Your
2 Honor?

3 THE COURT: Uh-huh.

4 Q. [Mr. Finch] I'm going to show you what's been
5 previously marked and admitted as State's Exhibit 3. Can
6 you identify this item?

7 A. That's the phone that was found in Russeldale.
8 Ms. Rosenbaum's phone.

9 Q. And what did you do with that phone?

10 A. The phone had been logged into evidence. So
11 when I came into work the next morning -- I had been
12 contacted late, I believe it was on the 27th, by Officer
13 Lawless in reference to him finding the phone. When I
14 came in the next morning into work, I got the phone out of
15 evidence.

16 And I called Ms. Rosenbaum about the phone and
17 set up a time to meet with her. There were numerous
18 calls. I just looked for calls to and from, you know,
19 what the usage was on the phone, and I noticed that
20 between the time period of when the sexual assault was
21 reported at October 24th at 6:30 a.m., and when Officer
22 Lawless had found the phone at approximately 10:00 p.m. on
23 the 26th, there were -- there was numerous phone calls
24 that had been made to and from.

25 I was able to get ahold of Ms. Rosenbaum through

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1 contacting her neighbor and she had stated that she had
2 recently gotten a new phone and the number had been
3 transferred over.

4 Q. Do you know if that phone was in service? The
5 phone I just showed you, State's 3, was that in service at
6 the time that it was in evidence? Do you know?

7 A. It was not in service.

8 Q. Did you get any other type -- did you do
9 anything further with the phone?

10 A. Yes, I did.

11 I looked through the phone and looked at the
12 multiple contacts that had been inputted into the phone,
13 the names that had been put into the phone. I met with
14 Ms. Rosenbaum and I questioned her about a few of the
15 contacts, that had numerous phone calls to and from, and
16 asked her if she knew who these people were and she stated
17 she did not.

18 Q. Did you meet with anyone who was associated with
19 any of those contact numbers?

20 A. Yes, sir.

21 On November 3rd, I obtained a search warrant for
22 a phone number that was in the phone and listed as
23 Princess. It had been called on multiple occasions at the
24 time that we believed that the phone was in the possession
25 of the suspect. Once I got that search warrant

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1 information back, I contacted the owner of that number and
2 called her in to meet with her.

3 Q. And did you speak with her?

4 A. I did.

5 Q. And from your conversations with her, were you
6 able to develop a suspect as to using that phone?

7 A. Yes, sir.

8 Q. And who was that suspect?

9 A. Nathaniel Witherspoon.

10 Q. And is Mr. Witherspoon in the courtroom today?

11 A. Yes, he is.

12 Q. Can you identify him, please.

13 A. He's the defendant.

14 MR. FINCH: Let the record reflect that the
15 detective has identified the defendant, Nathaniel
16 Witherspoon.

17 THE COURT: You may proceed.

18 Q. [Mr. Finch] What did you do next in this case?

19 A. Upon -- with speaking to the lady who had
20 identified him or --

21 Q. After you identified Mr. Witherspoon as somebody
22 who used that phone, what did you do next in this case?

23 A. I spoke with my sargent about the case.

24 And we were interested in knowing where SLED was
25 with the DNA results -- that can be quite a lengthy

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1 process -- and so we made contacts with them and advised
2 them that we had a possible suspect. Because SLED will
3 not analyze a rape kit unless you have a listed suspect,
4 so without a listed suspect it's not going to be analyzed.
5 So I called SLED and let them know that we had a potential
6 suspect and it was Nathaniel Witherspoon. And we gave
7 them the information and they --

8 Q. If I can interrupt.

9 MR. FINCH: Your Honor, I think we may have a
10 matter of law to take up.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 THE COURT: You may proceed.

14 MR. GRIMES: May I have one moment, Your Honor?

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Grimes and Mr. Finch confer]

17 MR. GRIMES: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. FINCH: Thank you.

20 THE COURT: You're welcome.

21 Q. [Mr. Finch] Ms. Farman, you then contacted
22 State Law Enforcement Division?

23 A. Uh-huh.

24 Q. And provided them with some information to help
25 them make a potential comparison; is that correct?

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1 A. Correct.

2 Q. And after that, what information did you receive
3 from SLED?

4 A. A CODIS hit.

5 Q. And CODIS is a database?

6 A. Correct.

7 Q. A database where they'll keep DNA profiles --

8 A. Correct.

9 Q. -- that they have on file?

10 A. Correct.

11 Q. And do you know -- yes or no: do you know how
12 that process works?

13 A. No.

14 Q. Okay. But, essentially, you were told that a
15 profile developed from some evidence from this case
16 matched a profile for Nathaniel Witherspoon?

17 A. Correct.

18 Q. And based on that information, what did you do?

19 A. I did affidavits for his arrest.

20 Q. And do you remember what date you got the
21 information from SLED?

22 [Whereupon, the witness reviews documents]

23 A. I believe it was March the 8th.

24 Q. [Mr. Finch] Of what year? 2012?

25 A. 2012.

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1 Q. And per your policy, then, did you have to do
2 any further investigation at that point, as far as the
3 DNA? Did you have to get a sample from the defendant?

4 A. Yes.

5 We have to get a buccal swab from the defendant,
6 which is something that we can do before or after arrest.

7 Q. And just generally how does that work, the
8 collection of that evidence?

9 A. You mean just obtaining that or --

10 Q. How does that -- yes. How do you obtain -- tell
11 us what a buccal swab is.

12 A. Okay. A buccal swab is a -- it's almost like a
13 Q-Tip that we scrape the inside of the -- very lightly,
14 it's not scraping -- but just the inside of the mouth and
15 around, you know, the inside of the lips, for a DNA
16 sample. And they use that for a comparison.

17 Q. And was that done in this case?

18 A. It was.

19 Q. And that was sent off to SLED for further
20 comparison?

21 A. It was.

22 Q. And did you obtain any results from that?

23 A. Yes, sir, we did.

24 Q. And what was that result?

25 A. That Mr. Witherspoon's semen was identified and

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1 matched to Ms. Rosenbaum's sexual assault kit.

2 MR. FINCH: Please answer any questions the
3 defense may have.

4 THE COURT: You may proceed.

5 MR. GRIMES: Good afternoon, Detective Farman.

6 THE WITNESS: Mr. Grimes.

7 MR. GRIMES: It's good to see you again.

8 THE WITNESS: Good to see you.

9 MR. GRIMES: I haven't seen you quite as much
10 since you've changed positions.

11 THE WITNESS: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. GRIMES:

14 Q. I want to ask -- I'm going to go a little bit
15 out of order here.

16 A. Okay.

17 Q. I want to ask you something that you just
18 testified to.

19 A. Uh-huh.

20 Q. You testified that once you received the sort of
21 DNA hit on Mr. Witherspoon, that you went and got an
22 arrest warrant?

23 A. We received the SLED report and the warrants
24 were drafted the next day or shortly thereafter.

25 Q. Between March 8th and the -- I believe the

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1 warrants were drafted on --

2 [Whereupon, Mr. Grimes reviews documents]

3 Q. [Mr. Grimes] -- March 9th --

4 A. Correct.

5 Q. -- did you do any investigation?

6 A. Between?

7 Q. March 8th and March 9th.

8 A. No.

9 Q. You never asked Ms. Rosenbaum if she had had
10 consensual sex with Mr. Witherspoon?

11 A. No.

12 Q. Because if she had had consensual sex with
13 Mr. Witherspoon, that would explain why his DNA would be
14 there; correct?

15 A. It could be an option as to why his DNA was
16 there, yes.

17 But that consensual sex would have had to have
18 been -- well, I can't testify to that because I'm not sure
19 scientifically.

20 Q. Okay. Yeah. That's a whole --

21 A. Yes.

22 Q. -- specialty right there, isn't it?

23 A. Right.

24 Q. Now, I want to ask you a little bit about sort
25 of information that you received during the evening. And

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1 as an officer, you want to do a full investigation of the
2 case; correct?

3 A. Yes, sir.

4 Q. And you want to do a fair investigation?

5 A. Of course.

6 Q. And one reason for that is to make sure you get
7 the right person?

8 A. Well, it's just as important for us to clear an
9 innocent person as it is to find a correct suspect.
10 That's our job.

11 Q. Exactly. Because if an innocent person were to
12 go to jail, then the person who committed the crime would
13 still be out there?

14 A. Of course.

15 Q. And he might still be raping people,
16 burglarizing, and doing whatever?

17 A. Of course.

18 Q. And when you're doing this full and fair
19 investigation, you get several types of information in the
20 case; correct?

21 A. Are you speaking to this case specifically, or
22 any case?

23 Q. Any case.

24 A. As an investigator, sure, there's many things we
25 get.

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1 Q. For example, you may have an eyewitness to a
2 case?

3 A. Some cases have eyewitnesses. Very few, but
4 some do.

5 Q. And you would have physical evidence such as
6 fingerprints, DNA?

7 A. Sometimes you do. But unfortunately, it's less
8 likely to have physical evidence in sexual assault type
9 cases.

10 Q. But it depends on all sort of things, too,
11 because the cases you used to do they might not -- people
12 might not report it right away, especially minors;
13 correct?

14 A. Correct. I think every case is very
15 individualized.

16 Q. Yes, ma'am.

17 And you may also have -- sometimes you'll have
18 forensic evidence if it's gunshot residue?

19 A. Sure.

20 Q. In other cases you'll have statements from the
21 accused; correct?

22 A. Correct.

23 Q. And, for example, if you are investigating a
24 shooting case and the accused said, well, I did shoot him
25 but I was acting in self-defense, you would want to

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1 investigate that possibility; correct?

2 A. I would want to investigate --

3 MR. FINCH: Objection. Relevance.

4 THE COURT: Please repeat the question, Mr.
5 Grimes.

6 Q. [Mr. Grimes] For example, if you were
7 investigating a shooting case and the suspect or defendant
8 told you he shot somebody but was acting in self-defense,
9 you would want to investigate his side of the story;
10 correct?

11 THE COURT: Overruled. It goes to the extent of
12 the investigation.

13 You may answer the question.

14 THE WITNESS: Yes, ma'am.

15 A. I think that every investigation is different,
16 and every investigation needs to be thorough, and it's all
17 on a case-by-case basis.

18 Q. [Mr. Grimes] And if someone was to give you
19 what they call an alibi defense, or I was in Jamaica at
20 the time this happened, you might want to investigate
21 that; correct?

22 A. Of course.

23 Q. And for example in a rape case, if you received
24 the information that there was consensual sex between the
25 parties, you would want to investigate that?

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1 A. Yes.

2 Q. Now, I want to ask you a little bit about this
3 case specifically now. I believe you said the warrants
4 were signed on March 9th?

5 A. Correct.

6 Q. And they were served on Mr. Witherspoon it looks
7 like the same date, March 9th?

8 A. Yes, sir.

9 Q. Then he was interviewed by Detective Terry --

10 A. Correct.

11 Q. -- on March 9th?

12 A. Correct.

13 Q. And that interview was recorded on CD?

14 A. It was.

15 Q. Okay. And you've had an opportunity to listen
16 to that interview?

17 A. I have, yes.

18 Q. And the information that you learned in that
19 interview is something you would want to investigate, too;
20 correct?

21 A. Correct.

22 Q. And in this case you received information that
23 Mr. Witherspoon said he had consensual sexual --

24 MR. FINCH: Objection. Hearsay.

25 THE COURT: Please approach.

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1 [Whereupon, an off-the-record bench conference
2 is held]

3 THE COURT: Proceed.

4 MR. GRIMES: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 Q. [Mr. Grimes] Again, you've listened to the
7 audiotape?

8 A. I have.

9 Q. And based upon that audiotape, did you
10 investigate the defendant's consent?

11 A. No.

12 Q. Did you investigate --

13 A. And if I can further answer why I did not?

14 THE COURT: Ma'am, you may explain your answer.

15 A. Whether there was consensual sex or not,
16 Ms. Rosenbaum presented as a victim of a very violent
17 assault. No consensual sex that I'm familiar with, sir,
18 appears that way. The physical evidence showed
19 differently.

20 Q. [Mr. Grimes] And did you investigate whether
21 Mr. Witherspoon and Ms. Rosenbaum had a history of sexual
22 relations?

23 A. That wouldn't be important to this case. No,
24 sir.

25 Q. It wouldn't be important?

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1 A. No. Because Ms. Rosenbaum was assaulted, was
2 sexually assaulted, and she had physical evidence to
3 support that.

4 Q. Well, we understand -- I guess there's a sort of
5 a line. You know, obviously, we're not saying she wasn't
6 assaulted or perhaps even sexually assaulted on October
7 24th at about 5:30, 6:30. But Ms. Rosenbaum has also
8 testified that she had no idea who Mr. Witherspoon is;
9 right?

10 A. Correct.

11 Q. And if you find out that she did have a prior
12 consensual relationship with Mr. Witherspoon, would that
13 have changed your evaluation of the case?

14 MR. FINCH: Objection. Pitting.

15 THE COURT: Please repeat the question, Mr.
16 Grimes.

17 Q. [Mr. Grimes] And if you had information that
18 there had been a prior consensual relationship between Mr.
19 Witherspoon and Ms. Rosenbaum, would that have changed
20 your evaluation of the case?

21 THE COURT: Overruled.

22 A. Ask that again.

23 Q. [Mr. Grimes] If you had received information
24 that Mr. Witherspoon had had a prior consensual sexual
25 relationship with Ms. Rosenbaum, would that have changed

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1 your evaluation of the case?

2 A. No.

3 Q. Okay. Going back, I'm going to ask you just
4 about some general cases now.

5 When you talk to witnesses and you find
6 witnesses are truthful and give you credible accounts, are
7 those cases stronger than cases where the witnesses give
8 you untruthful accounts or lie to you?

9 A. Rephrase that question. I don't understand what
10 you're trying to ask me, sir.

11 Q. If you get -- if you're investigating a case and
12 in one case the witness is truthful with you and in
13 another case the witness lies to you, which case is
14 stronger for you?

15 A. Truthful --

16 MR. FINCH: Objection.

17 A. -- or lying based on -- I mean --

18 MR. FINCH: Objection.

19 THE COURT: What is the basis of the objection?

20 MR. FINCH: It calls for speculation.

21 THE COURT: You need to rephrase that question.

22 It also -- it's just problematic in the way it's
23 phrased. You need to rephrase it.

24 Sustained.

25 MR. GRIMES: Thank you, Your Honor.

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1 THE COURT: It's confusing to me, so I know she
2 is having a little difficult time with it.

3 MR. GRIMES: Probably a little confusing to me.

4 THE COURT: Proceed.

5 MR. GRIMES: I'll try to make my point a little
6 bit --

7 Q. [Mr. Grimes] And when you were -- I'm going
8 back to here in this case. When you were interviewing Ms.
9 Rosenbaum, you wanted to find out how many people she had
10 had contact with and who was coming to her house; correct?

11 A. Correct.

12 Q. And the reason for that is because you believed
13 those people could be a suspect?

14 A. They could be a potential suspect, they could be
15 a potential witness. They could be, you know, anything.

16 Q. And that's why you wanted to know who was coming
17 over; correct?

18 A. Right.

19 Q. And according to your report, Ms. Rosenbaum told
20 you it's possible that whoever raped her possibly had been
21 at her home at some point in the past?

22 A. Right.

23 Q. So someone like New York could be a possible
24 suspect?

25 A. He could have been a possible suspect if the

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1 victim wasn't able to explain to me how she knew him, that
2 she would have recognized his voice.

3 So as part of an investigation, and when you're
4 talking to a victim, you're talking about all of that.
5 You're having a conversation about the comings and goings
6 and, you know, I --

7 Q. Well, would it be fair to say you were able to
8 rule out New York because she would have been able to
9 recognize his voice even though -- even if her glasses
10 were off?

11 A. Correct.

12 Q. Now, as to Cooper or Super Cooper, she didn't
13 even give you that person's name, did she?

14 A. I don't have any knowledge of that person.

15 Q. You don't know if he's a light-skinned black
16 male?

17 A. I don't know him.

18 Q. You don't know if he's a dark-skinned white
19 male?

20 A. I don't know him.

21 Q. And maybe other friends who come over there with
22 them, you don't know what they looked like, either, do
23 you?

24 A. I don't know any other friends that come over to
25 her apartment.

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1 Q. Because she wasn't telling you everyone that was
2 coming over; correct?

3 A. She told me that New York had been there the
4 night before, but that was the extent of that
5 conversation.

6 Q. And Mr. Finch asked you a lot of questions
7 about, you know, her being afraid to tell you because she
8 might get arrested for a drug charge; correct?

9 A. Well, I think he asked one question about that.

10 Q. Okay.

11 A. But that is very likely. With a lot of victims
12 that may be involved in other sort of criminal activity,
13 they get very nervous about speaking to the police if
14 they're involved in any other sort of criminal activity
15 because they feel nervous --

16 Q. They don't want to get locked up.

17 A. -- that we're going to hold that against them.

18 Q. Regardless if someone's here -- like Hispanic
19 citizens or Hispanic people sometimes get robbed and
20 targeted because people know they might not go to the
21 police; correct?

22 A. Any -- yeah. Anybody that may be in fear of law
23 enforcement.

24 Q. And you basically told Ms. Rosenbaum that you
25 weren't out there to investigate any drug charges?

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1 A. I tell -- that's common. I tell any victim
2 that's concerned about that.

3 Q. Now, I'm going to go back and ask you some more
4 questions about stuff that could have been followed up on
5 in this case.

6 A. Uh-huh.

7 Q. I think when you were talking to Mr. Finch, you
8 talked about other evidence you may have received and you
9 talked about the phone.

10 A. Uh-huh.

11 Q. I think that was all the evidence you mentioned;
12 correct?

13 A. Right.

14 There was that tee shirt that was discussed,
15 yes.

16 Q. And that's in the box right there?

17 A. Correct.

18 Q. And she gave that to you when you went to meet
19 her at her place?

20 A. Correct.

21 Q. And that was sent off to SLED and tested;
22 correct?

23 A. I believe so.

24 Q. And the testing that was done was just on the
25 blood; correct?

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1 A. I believe so. I don't have knowledge as to what
2 they do with -- how crime scene processes or what their
3 process is. We submit it to crime scene and let them know
4 to add it to the evidence for this case.

5 Q. And then it would be up to crime scene to ask
6 for DNA testing? Or would that be something you would ask
7 for?

8 A. That would be -- crime scene would do the
9 request to SLED for the DNA testing. Obviously, there was
10 blood on the shirt. So I was interested in whose blood
11 that was that was on the shirt because Ms. Rosenbaum
12 didn't have a lot of memory when I met with her when she
13 had found the shirt, which is, again, very common for rape
14 victims.

15 Q. And, you know, checking someone's neckline would
16 be pretty easy, correct, for DNA? Or checking a shirt's
17 neckline for DNA would be pretty easy; correct?

18 MR. FINCH: Objection.

19 THE COURT: Basis?

20 MR. FINCH: Outside her field of knowledge.

21 THE COURT: Please repeat your question, Mr.
22 Grimes.

23 MR. GRIMES: I'll try to rephrase it.

24 Q. [Mr. Grimes] Asking SLED to check a shirt's
25 neckline for DNA evidence would be easy, wouldn't it?

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1 THE COURT: You need to establish the foundation
2 that that would have been within the parameters of her
3 responsibility and her rational knowledge.

4 Sustained. Rephrase.

5 Q. [Mr. Grimes] And are you the lead detective in
6 this case?

7 A. I am.

8 Q. And the lead detective is in charge of sort of
9 getting the case ready for prosecution and gathering all
10 the evidence in the case?

11 A. We're in charge of investigating the case.

12 Q. Okay. And the investigation would be gathering
13 the evidence you need, looking -- and following up on
14 leads?

15 A. Right.

16 Q. And if you have physical evidence, following up
17 on leads would be getting the appropriate testing done?

18 A. I think I know what you're getting at, Mr.
19 Grimes, and I will tell you that when we submit evidence
20 to crime scene or when we submit evidence to the evidence,
21 we let crime scene know that we put something into
22 evidence and then they look at what you have already and
23 then they make a determination as to what the proper
24 procedures are. That is something I have zero knowledge,
25 very little knowledge, of.

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1 Q. The buck would stop with Sargent Reynolds, I
2 guess, rather than you?

3 A. As far as what they decide to --

4 Q. Get tested.

5 A. -- and what happens when it gets to SLED and
6 what they choose.

7 Q. And this is a little odd because -- you called
8 -- and I guess your sargent called SLED to see if the DNA
9 testing was being done on the rape kit; correct?

10 A. We made contact with SLED to advise them of the
11 -- to add the suspect to the case.

12 Q. How come -- if crime scene is in charge of doing
13 the testing, how come they didn't call?

14 A. Because we came up with the -- through out
15 investigation, we came up with the name of a suspect.

16 Q. And Sargent Reynolds, he didn't come up with the
17 shirt, did he?

18 A. He didn't -- I'm sorry. What?

19 Q. Sargent Reynolds wasn't given the -- didn't come
20 up with the shirt. That was given to you when you
21 interviewed her?

22 A. And I submitted it to evidence.

23 Q. And then, for whatever reason, it never got
24 tested for DNA; correct?

25 A. I believe it did get tested for DNA.

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1 Q. Just the blood sample, though; right?

2 A. [No response]

3 Q. You didn't do any DNA testing? That was the DNA
4 analyst coming tomorrow?

5 A. Right.

6 Q. I'll ask them about that.

7 What about the toxicology report that was done,
8 the SANE report?

9 A. That would have come back on the -- that usually
10 comes through SLED, as well, the report. And I don't
11 recall there being a toxicology report or what the results
12 of it were. Ms. Rosenbaum was honest with me about her
13 drug use.

14 Q. And how much crack had she done the night
15 before?

16 A. She didn't specify an amount. She said she
17 smoked some crack.

18 Q. And depending on the amount of crack you smoke,
19 that can affect your ability to perceive things; correct?

20 MR. FINCH: Objection. Lack of foundation.

21 THE COURT: Lack of foundation. Outside of her
22 rational perception or expertise or her knowledge.

23 Q. [Mr. Grimes] But if you had gotten a toxicology
24 test back, it would have shown you how much crack she had
25 smoked?

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1 MR. FINCH: Objection. Outside her field of
2 expertise.

3 THE COURT: Sustained. Foundation.

4 Q. [Mr. Grimes] Now, Sargent Reynolds talked about
5 some dried stains on the bed. Do you recall that?

6 A. I recall his testimony, yes.

7 Q. If you received information that Mr. Witherspoon
8 had prior consensual relations, sexual relations, with Ms.
9 Rosenbaum, would it have been important to check those
10 dried stains to see if his DNA was there?

11 A. I can't answer that because I don't know what
12 the science is behind dried stains on beds and --

13 Q. And I believe you testified that you got a
14 search warrant for some phone records?

15 A. I did.

16 Q. And those are the phone records of Ms.
17 Rosenbaum's phone? Or was it Princess' phone?

18 A. It was a search warrant for that phone number
19 that was Princess' phone number.

20 Q. So you never got any records for Ms. Rosenbaum's
21 phone?

22 A. No, because I was able to just see where it had
23 been -- you know, on the phone I could tell who had been
24 called.

25 Q. And how far back did that go?

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1 A. I don't recall.

2 Q. And you went -- did you go through all the
3 numbers of Ms. Rosenbaum, or just the ones from October
4 24th --

5 A. The ones that I could see in the phone.

6 Q. Do you know how far back that went?

7 A. I don't.

8 MR. GRIMES: Can I have one moment, Your Honor?

9 THE COURT: Uh-huh.

10 MR. GRIMES: Thank you.

11 [Whereupon, Mr. Grimes reviews documents]

12 Q. [Mr. Grimes] And during the incident, I believe
13 Ms. Rosenbaum testified she was hollering a lot?

14 MR. FINCH: Objection.

15 THE COURT: Basis?

16 MR. FINCH: Pitting.

17 THE COURT: She's not being asked to comment on
18 the witness' voracity.

19 But I think you need to rephrase it, Mr. Grimes,
20 if you can.

21 Q. [Mr. Grimes] During your investigation, did you
22 learn that Ms. Rosenbaum hollered during the incident?

23 A. I can review her statement, if that's what
24 you're asking me.

25 Q. Do you have a copy of her statement?

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1 A. [No response]

2 [Whereupon, the witness reviews documents]

3 A. I don't recall her saying anything about
4 hollering.

5 Q. [Mr. Grimes] In her statement?

6 A. In her statement. No, I don't remember her
7 saying that to me, as well.

8 Q. Maybe that --

9 A. I know there was an altercation, both physical
10 and verbal altercation, that took place when he had
11 grabbed from behind the --

12 Q. I'm going to show you just a couple of pictures
13 here, what's been marked as Defendant's Exhibit 8. I
14 believe Ms. Rosenbaum lived in [REDACTED]?

15 A. I believe it was the far one.

16 Q. The far one over here?

17 A. Yeah. Uh-huh.

18 Q. And these apartments are pretty close to each
19 other?

20 A. Yes, sir.

21 Q. And I think this is a closeup of her apartment.
22 Is that --

23 A. Uh-huh. Yes, sir.

24 Q. -- is that Exhibit 9?

25 A. [No response]

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1 Q. And I'm going to show you this Exhibit 6. Is
2 this the screen door that --

3 A. Yes, sir.

4 Q. And when you were talking to the neighbors, no
5 one heard anything about any type of struggling or
6 altercation?

7 A. No.

8 I spoke to a few of the neighbors and asked that
9 question. And that did not surprise me because I remember
10 she had told me that he had placed his hand around her
11 neck and over her mouth so she couldn't scream.

12 Q. No one heard a bicycle come falling or curtains
13 being pulled down or anything?

14 A. No.

15 Q. Now, after Mr. Witherspoon was arrested, did you
16 do any search warrants of his residence?

17 A. No.

18 I didn't know where he was staying. I didn't
19 have any knowledge of his residence. I knew that he had a
20 sister that lived in Goose Creek that he would kind of
21 come and go from, but my belief was that he was transient.

22 Q. Did you talk to any of his family members?

23 A. No.

24 Q. You never asked them if he had any type of
25 beanie hat that Ms. Rosenbaum might have recognized?

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1 A. No, because I didn't believe that he lived with
2 his family.

3 He was -- he couldn't be located by other
4 agencies that were looking for him, so I knew that he
5 wasn't going to be able to -- he didn't have a permanent,
6 set address.

7 Q. Okay. But when -- the arrest warrants were
8 signed March 9th and he was arrested the same day?

9 A. I believe so, yes, sir.

10 Q. So, obviously, North Charleston had no problem
11 finding him, did they?

12 A. No.

13 It went to -- we didn't -- I didn't specifically
14 find him. It went to -- we have a special division that
15 does felony warrants. IOP.

16 Q. And they do like all the felony warrants and
17 everything?

18 A. The majority. We don't serve our own warrants,
19 usually.

20 Q. And when he was being interviewed by Detective
21 Terry, he was cooperative and voluntarily gave the buccal
22 swab?

23 MR. FINCH: Objection, Your Honor. Outside her
24 personal knowledge. Foundation.

25 THE COURT: I haven't heard the whole question.

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1 Please state the question.

2 Q. [Mr. Grimes] When he was interviewed by
3 Detective Terry, he was cooperative and voluntarily gave a
4 sample of a buccal swab?

5 A. That is my understanding. I wasn't in the
6 interview.

7 Q. And it's your understanding from the interview
8 that he made no admissions regarding any type of guilt in
9 this case, did he?

10 MR. FINCH: Objection, Your Honor. Hearsay.

11 THE COURT: I hate to admit this, but I could
12 barely -- there's a fan. I need you to speak up, Mr.
13 Grimes.

14 MR. GRIMES: I'm sorry.

15 THE COURT: Please repeat that for me.

16 Q. [Mr. Grimes] During his interview with
17 Detective Terry, he didn't make any admissions of guilt or
18 anything, did he?

19 THE COURT: What is the basis of the objection?

20 MR. FINCH: Hearsay.

21 THE COURT: Please approach.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Sustained. Proceed.

25 MR. GRIMES: May I have a moment, Your Honor?

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1 [Whereupon, Mr. Grimes and Ms. Parnell confer]

2 MR. GRIMES: Let me check one thing and then --

3 [Whereupon, Mr. Grimes reviews documents]

4 MR. GRIMES: Thank you, Your Honor. I have no
5 further questions.

6 THE COURT: Any redirect of the witness?

7 MR. FINCH: No, Your Honor.

8 THE COURT: Ma'am, you may step down.

9 [Whereupon, Ms. Farman is excused and exits the
10 witness stand.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 we're going to take advantage of this break in
13 testimony to take a restroom break.

14 During the break, please do not discuss the case
15 and please leave your notepads in your seats.

16 If you would go with the bailiffs, please.

17 [Whereupon, the jury exits the courtroom at
18 3:53 p.m.]

19 THE COURT: Is there anything before we take a
20 restroom break? From the State?

21 MR. FINCH: No, Your Honor.

22 THE COURT: From the defense?

23 MR. GRIMES: No, Your Honor.

24 THE COURT: Okay. I'm going to try to resolve a
25 quick discovery dispute in my date certain for next

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1 message to him.

2 THE COURT: Well, I don't need y'all to try, I
3 need it to be done, because I don't need any snafues.

4 MR. GRIMES: I believe Ms. Campbell is taking
5 care of that, Your Honor.

6 THE COURT: Okay. Thank you, sir.

7 [Whereupon, the jury enters the courtroom at
8 4:21 p.m.]

9 THE BAILIFF: All present, Your Honor.

10 THE COURT: You may be seated.

11 Ladies and gentlemen, we will now resume
12 testimony.

13 The State may proceed.

14 MR. FINCH: Thank you, Your Honor. The State
15 calls Janet Ward.

16 [Whereupon, Ms. Ward comes forward]

17 THE CLERK OF COURT: Raise your right hand.

18 [Whereupon, Ms. Ward is duly sworn by the clerk
19 of court as follows: do you swear or affirm that your
20 testimony will be the truth, the whole truth, and
21 nothing but the truth, so help you God]

22 THE WITNESS: Yes.

23 THE CLERK OF COURT: Be seated. If you would
24 speak into this microphone.

25 State your full name and spell your last name.

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1 THE WITNESS: Janet Ward. W-A-R-D.

2 [Whereupon, Ms. Ward takes the witness stand]

3 THE COURT: You may proceed.

4 MR. FINCH: Thank you, Your Honor.

5 - - - - -

6 JANET WARD,

7 Having Been First Duly Sworn,

8 was Examined and Testified as Follows:

9 DIRECT EXAMINATION

10 BY MR. FINCH:

11 Q. Ms. Ward, if you would please tell the Court
12 where it is you're employed.

13 A. I'm employed at the Medical University.

14 Q. And what is your job title at MUSC?

15 A. I'm a sexual assault nurse examiner.

16 Q. And as a sexual assault nurse examiner -- well,
17 let me back up.

18 How long have you been a nurse?

19 A. I've been a nurse for ten years.

20 Q. And has that all been as a sexual assault nurse
21 examiner?

22 A. No.

23 I've been a sexual assault nurse examiner for
24 three years, and my other background is primarily is
25 surgical trauma ICU.

MIA PERRON, CVR-CM-M

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1 Q. And let me ask you about being a sexual assault
2 nurse examiner. What are some of the duties and
3 responsibilities you have at MUSC with that job?

4 A. As a sexual assault nurse examiner, I'm
5 specially trained to care for patients who present to the
6 Medical University, that has been sexually assaulted, in
7 order for me to do a comprehensive sexual assault exam, a
8 forensic exam, with the collection of evidence.

9 Q. And what is the purpose of that exam?

10 A. For medical -- the purpose of it is for medical
11 diagnoses and treatment and collection of evidence.

12 Q. And what type of evidence would you seek to
13 collect during this exam?

14 A. We would collect evidence -- we do a -- we do a
15 physical exam and collect evidence off of the patient as
16 they have given us in history of the assault -- based off
17 the history of the assault.

18 Q. And do you also do any assessment of any other
19 physical needs for that patient at that time?

20 A. Yes.

21 We do a complete medical history when we first
22 receive the patient from the emergence room. We do a full
23 physical assessment, and then we do a full genital
24 assessment, and collect evidence based off of our
25 findings.

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1 Q. You mentioned after patients come from the
2 emergency room. Do all patients come to you through the
3 emergency room at MUSC?

4 A. Yes.

5 Q. And are you dispatched to meet with that
6 patient?

7 A. Yes.

8 Q. How does that happen?

9 A. All -- our sexual assault team is on call
10 twenty-four hours a day, seven days a week. When a
11 patient presents to the emergency room, the adult
12 emergency room, they will tell the registration ladies or
13 gentlemen that they've been sexually assaulted and they
14 will immediately page us. Someone from our team,
15 whomever is on call, where we will respond within fifty
16 minutes.

17 Q. And what's the purpose of that quick response?

18 A. Because the patient has come in. We want to get
19 him or her treated -- seen, treated, just as quickly as
20 possible.

21 Q. Does that help with the collection of evidence?

22 A. It does help with the collection of evidence.
23 It's very important. The sooner the response, the better
24 chance of being able to obtain DNA.

25 Q. Now, as part of a sexual assault exam that you

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1 perform in your duties at MUSC, take us through that. How
2 does it -- how does it start?

3 A. When a patient first -- when we first receive a
4 patient from MUSC or from the emergency room -- I'm sorry
5 -- we take them back to a -- we have a special room, back
6 adjacent from the emergency room. It's private. It's
7 only used by sexual assault teams. We'll take them into
8 that room where we'll do a complete medical history,
9 surgical history, then we will do a complete physical
10 exam. We will ask the patient the history of the assault.
11 Then after we get the history of the assault, we'll take
12 them -- I'm sorry.

13 We do the history and then we'll do a complete
14 physical exam, once we have moved them over to the exam
15 table. Then we will do the genital exam. Then after we
16 have completed our exam, our photography, all of those
17 things, we will prophylactically treat the patient with
18 medication and then work through all of their discharge
19 teaching and -- discharge teaching and all the
20 availability of the resources that we have for them.

21 MR. FINCH: Your Honor, may I approach the
22 witness?

23 THE COURT: You may.

24 Q. [Mr. Finch] Ms. Ward, what's the purpose of
25 getting the medical history of the patient?

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1 A. The purpose of the medical history is that it
2 lets us know about the patient and if they have any type
3 of any medical conditions that -- you know, just your
4 basic medical history that we -- that you need to be aware
5 of.

6 Q. And regarding the medical history that's
7 pertinent to a sexual assault that they're presenting for,
8 what's the purpose of getting that history?

9 A. Of the history --

10 Q. Of the specific --

11 A. -- could you repeat that?

12 Q. Of the specific assault as opposed to a general
13 medical history.

14 A. That helps -- when we get the history of what
15 happened in the assault, that helps us to be able to know
16 how to guide our exam. In respect to when we're looking
17 at the patient, we're looking for injuries, we're looking
18 for if the patient -- if -- anything that the patient
19 tells us that they've been touched or kissed or licked or
20 however. It just helps us to know where to swab for
21 evidence.

22 Q. And did you take that history from Ms.
23 Rosenbaum?

24 A. Yes, we did.

25 Q. And did you make any notations while you were

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1 taking that history?

2 A. I did.

3 Q. And are those memorialized in any formal
4 document?

5 A. Yes.

6 We have the -- we have paperwork from both SLED
7 -- paperwork from both SLED, as well as paperwork that we
8 use in our program.

9 Q. And where does the paperwork -- you said from
10 SLED. Where does that come from?

11 A. Our evidence collection -- the kit that -- we
12 use a kit for evidence collection. It comes in a sealed
13 box that we break the box when we are ready to begin
14 collecting evidence. Inside of that, we have several
15 envelopes along with I believe it is six pages of
16 documentation that we fill out that goes -- and then once
17 the evidence is collected, we put it back in, seal it back
18 up.

19 Q. I'm going to show you what's been previously
20 marked and admitted as State's Exhibit Number 1. Can you
21 identify that item?

22 A. That's the sexual assault kit that I used.

23 Q. And --

24 A. These are my initials.

25 Q. Is this the kit you used for the collection of

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1 evidence with Ms. Rosenbaum?

2 A. Yes, sir.

3 Q. And that contains you said swabs and paperwork
4 and other items?

5 A. Yes, sir.

6 Q. I want to just go through briefly, then, some of
7 the medical history that Ms. Rosenbaum provided to you.
8 And let me ask you just: in your process, in general, do
9 you take notes as the patient is talking to you and then
10 fill in the paperwork, or do you go down the paperwork
11 itself and fill in the lines as you go?

12 A. Many times we will take notes while the patient
13 is talking to us, asking those questions.

14 Q. And then go back and --

15 A. And then go back in when we are -- when we are
16 finished.

17 Q. I want to direct you to the sexual assault exam
18 protocol, page 1 of 6. It's at the bottom there.

19 A. Yes, sir.

20 Q. Close to the bottom you took some information
21 regarding pre- and post-assault-related history.

22 A. Yes, sir.

23 Q. What's the purpose of that?

24 A. The pertinent pre- and post-sexual-related
25 history, we will ask the patient that -- because one of

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1 the -- when a patient states they've been sexually
2 assaulted, one of the swab -- we are swabbing for DNA. We
3 want to know if they have had sexual intercourse within
4 the past seven days. That way, if -- once that these
5 swabs are obtained and they're ran through SLED, it will
6 identify any DNA that is there. And if the patient tells
7 us they've had sexual intercourse within the last seven
8 days, and someone comes up -- you know, it shows that it
9 was whomever, you know, it just helps to rule that person
10 out as being the assailant.

11 Q. And in your paperwork, you're identifying
12 somebody -- anybody other than --

13 A. Anybody other than --

14 Q. -- the alleged assailant?

15 A. -- the alleged assailant.

16 Q. And regarding that history, what was the
17 response?

18 A. In the response was that there had not been any
19 sexual intercourse orally, vaginally, or anally within
20 the past seven days.

21 Q. Did Ms. Rosenbaum tell you about how this
22 assault occurred --

23 A. She did.

24 Q. -- physical aspects of it?

25 What did she tell you?

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1 MR. GRIMES: Objection.

2 THE COURT: Basis?

3 MR. GRIMES: Hearsay.

4 THE COURT: You need to establish the foundation
5 in the nature of the outcry or that it's for purposes
6 of diagnosis or treatment, and come within the
7 exception.

8 Q. [Mr. Finch] You were taking a medical history
9 regarding the alleged assault; correct?

10 A. Yes, sir.

11 Q. And that helps to guide you in your treatment,
12 potential treatment --

13 A. Yes.

14 Q. -- and/or the collection of evidence?

15 A. Yes, sir.

16 Q. So if somebody were to allege they were
17 strangled, that might guide an --

18 A. Yes.

19 Q. -- a physical assessment?

20 A. Yes, sir.

21 Q. What did Ms. Rosenbaum tell you about this
22 assault?

23 MR. GRIMES: Objection, Your Honor. We would
24 renew our previous objection.

25 THE COURT: Overruled only to the extent that it

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1 affects diagnosis and treatment, but not to bolster
2 any statements regarding the assault.

3 You need to rephrase the question and it needs
4 to be foundationally supported that it was necessary
5 for the treatment of this particular person.

6 Q. [Mr. Finch] If a patient comes to you and says
7 they've been strangled, does that affect your treatment of
8 that patient?

9 A. It does.

10 Q. Did Ms. Rosenbaum say that she had been
11 strangled in this assault?

12 THE COURT: Sustained. Leading.

13 You need to rephrase the question that does not
14 project the answer.

15 Q. [Mr. Finch] What did Ms. Rosenbaum tell you
16 about this physical -- the physical nature of this
17 assault?

18 THE COURT: Overruled. For statement of
19 diagnosis and treatment. For that purpose only. You
20 may proceed.

21 Ma'am, you may answer the question. Do you need
22 it repeated?

23 THE WITNESS: Yes, please.

24 THE COURT: Please repeat the question.

25 Q. [Mr. Finch] What did Ms. Rosenbaum tell you

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1 about the physical aspect of this assault?

2 A. That the assailant grabbed the patient, put his
3 hand over her face, she --

4 THE COURT: Sustained. Diagnosis and treatment.
5 How it happened is irrelevant.

6 THE WITNESS: Okay.

7 THE COURT: The fact that it did happen is
8 relevant and any treatment as a result would be
9 relevant.

10 MR. FINCH: May we approach, Your Honor?

11 THE COURT: You may.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Proceed.

15 Q. [Mr. Finch] Is part of your treatment of the
16 patient to look them over for physical injuries?

17 A. Yes.

18 Q. And does that happen in any -- just one specific
19 part of the body or the entire body?

20 A. We look at the entire body, from the head to the
21 toe.

22 Q. And did you note any injuries to Ms. Rosenbaum
23 in this case?

24 A. I did.

25 Q. What were those injuries?

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1 A. Ms. Rosenbaum had multiple injuries to her face,
2 her neck, her shoulder, and her back.

3 Q. And did you document those injuries through
4 photograph?

5 A. I did.

6 Q. I'm going to show you what's been previously
7 admitted as State's 5, 6, 7, 8, 9, 10, 11 and 12. Can you
8 identify those items?

9 [Whereupon, the witness reviews documents]

10 A. Exhibit Number 5 -- do you want me --

11 Q. [Mr. Finch] You don't have to go through. Just
12 in general, from 5 to 12, are those the photos that you
13 took?

14 [Whereupon, the witness reviews documents]

15 A. Yes, sir.

16 Q. [Mr. Finch] And were those injuries that you
17 noted -- if we could go through them. Those are on page 5
18 of 6 at the bottom. If you could just take us through the
19 injuries that you noted to the patient.

20 A. On her right neck she had a nine-centimeter
21 scratch. On her forehead she had red and purple
22 generalized bruising across her forehead. On her right
23 forehead she had a two-centimeter by a one-and-a-half
24 centimeter bruised area. On her left forehead she had a
25 two-and-a-half-by-three-centimeter red-purple area. Her

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1 right face, she had multiple red-purple areas that
2 extended down the side of her cheek. Her left neck she
3 had a three-centimeter pinpoint dot in the middle of her
4 chest. Generally, just around her neck she had multiple
5 just small bruises, red and purple in color. Her left arm
6 was noted to be tender to touch. Her left shoulder, she
7 had a six centimeter by two centimeter red area that was
8 tender. Her left mid back she had a half a centimeter by
9 four centimeter carpet-burned appeared area. On her
10 right face she had a three-by-a-half-a-centimeter scratch
11 with bloody residue. In the -- under the lateral eyes
12 were both darkened. Across the bridge of her nose was
13 bruised. And her chest had red areas that were tender to
14 touch, as well.

15 Q. And by way of example, I'm showing you here --
16 if you'll look at the screen behind you. This is State's
17 Number 8. Is this the area you're referring to, as far as
18 the generalized bruising?

19 A. Yes. Forehead, red and -- yes, that is the
20 generalized bruising.

21 And then there's the two spots on each --

22 Q. And when you -- after you finished that head-to-
23 toe exam for physical injuries, did you then move on to
24 evidence collection?

25 A. Yes.

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1 Q. And where do you direct your evidence
2 collection? Is that also guided by the history?

3 A. That's all guided by the history.

4 Q. And in this case I refer you to page 6 of 6
5 under the section DNA evidence collected. And that's --
6 you don't know necessarily if it's DNA but it's --

7 A. Right. We don't know.

8 Q. So but you go through areas of the body of
9 interest, guided by the history?

10 A. Yes.

11 Q. And tell us what type of evidence collection you
12 did in this case.

13 A. I did -- I swabbed in the -- a vaginal smear and
14 a vaginal swab. I did a combed pubic hair. I did a known
15 buccal swab. I did fingernail scrapings and cuttings. I
16 did a lick, kiss, suck, bite-mark swab, and a
17 miscellaneous materials.

18 Q. Now, I want to direct you and ask you about
19 vaginal swab and smear. Is that internal or external?

20 A. That's internal.

21 Q. Are there any external swabbings that happens to
22 the vaginal area?

23 A. The external part of -- the external part of the
24 genitalia, the -- which is identified by the labia minora,
25 majora, the hymen, the clitoral hood. That area is

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1 considered the external genitalia. The perineum and
2 posterior fourchette and vicularis.

3 Q. So you took several swabs of her vaginal area?

4 A. Yes, sir.

5 Q. What do you do with those swabs?

6 A. Once those swabs are obtained, we have those --
7 we put those in a container to keep them all separated.
8 Once all these swabs are obtained, they go inside of a
9 dryer, an air dryer, that is locked. We leave that locked
10 until they're completely dried. Once they're dried, they
11 are labeled again -- because they're labeled before and
12 then we re-label them inside of the envelope that is
13 sealed -- sealed and initialed that I was the one that did
14 it. I re-label that with the patient's name, my name, the
15 date on which they were obtained.

16 Q. And after that, what do you do with the kit?

17 A. Once the labels are all in their packaging they
18 go back inside the kit, where the kit is repackaged, is
19 resealed.

20 Q. And let me ask you just briefly about
21 toxicology. As part of your examination, do you pull
22 blood or urine samples for toxicology?

23 A. We do if it is indicated that there has been a
24 drug used.

25 Q. And when you say a drug used: recreationally,

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1 or to facilitate an assault?

2 A. For facilitation of an assault.

3 Q. And if you would explain that to the jury, the
4 difference between those two things.

5 A. If somebody is -- if they are -- if a patient
6 comes in and they believe that they have been drugged,
7 either alcohol or another type of substance, we would --
8 all within a time period -- within twenty-four hours, we
9 will draw blood and urine. Within thirty-six -- if the
10 assault happened within thirty-six hours, we'll do urine
11 only after the first twenty-four. And that helps us to --
12 and we would indicate if the patient had told us that they
13 had used a drug in their recreational. That way, that
14 helps -- that will -- when they run the toxicology, they
15 can see if there's something in the system that the
16 patient has not used on their own.

17 Q. And in this case did you take any screen --

18 A. I --

19 Q. -- any fluids for a tox screen?

20 A. I did not.

21 Q. And in this case the history -- injuries that
22 you noted and testified to, were those consistent with the
23 history given by the patient?

24 A. Yes, it is.

25 MR. FINCH: Please answer any questions the

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1 defense may have for you.

2 THE WITNESS: Thank you.

3 MR. GRIMES: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. GRIMES: May it please the Court.

6 THE COURT: You may proceed.

7 MR. GRIMES: Good afternoon, Ms. Ward.

8 THE WITNESS: Hi there.

9 MR. GRIMES: How are you doing today?

10 THE WITNESS: I'm good. How are you?

11 MR. GRIMES: Not too bad.

12 CROSS-EXAMINATION

13 BY MR. GRIMES:

14 Q. Now, I want to follow up a little bit on what
15 Mr. Finch asked you --

16 A. Okay.

17 Q. -- about the toxicology report.

18 A. Okay.

19 Q. You said that in this case one was not taken?

20 A. No, sir, one was not taken.

21 Q. Or performed?

22 A. No, sir.

23 Q. And one reason for that is because Ms. Rosenbaum
24 told you that she had not used drugs or alcohol within
25 seventy-two hours?

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1 A. That's correct.

2 Q. And you had a lot of discussion about the
3 injuries that Ms. Rosenbaum had.

4 A. Yes, sir.

5 Q. And those -- a lot of injuries to the face, the
6 upper body?

7 A. Yes, sir.

8 Q. But there were no injuries found to the vagina
9 or vaginal area, were there?

10 A. No, there was not.

11 Q. Okay. Now, I want to ask you a little bit about
12 the sexual assault kit.

13 A. Okay.

14 Q. Are those kits sent to you directly from SLED?

15 A. Yes, they are.

16 Q. And they're sealed when you get them?

17 A. Yes, they are.

18 Q. And one reason for that is to avoid any type of
19 contamination?

20 A. That's correct.

21 Q. Because DNA evidence is very sensitive?

22 A. That is correct.

23 Q. And when you are preforming the swabs, you wear
24 gloves, don't you?

25 A. I do.

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1 Q. Again, one reason is to avoid contamination?

2 A. [Indicates affirmatively]

3 Q. Is that correct?

4 A. [Indicates affirmatively] That's correct.

5 MR. GRIMES: You just need to answer yes for the
6 court reporter.

7 Q. [Mr. Grimes] And then you said after you get
8 the swabs, they're put into a container?

9 A. Yes, sir.

10 Q. And then dried and sealed?

11 A. Yes.

12 Q. And when you're doing -- during that process you
13 want to avoid any contamination, too; correct?

14 A. That is correct.

15 Q. And if you thought there might have been some
16 type of contamination, that might have been noted on your
17 report or you might redo the test?

18 A. I would make a note.

19 Q. And in your report here, you made no notes about
20 any type of possible contamination, is there?

21 A. That is correct.

22 Q. And, finally, you don't know anything firsthand
23 about this incident, do you?

24 A. I --

25 Q. You weren't there at the time of the alleged

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1 sexual assault, were you?

2 A. I was not.

3 MR. GRIMES: May I have one moment, please, Your
4 Honor?

5 [Whereupon, Mr. Grimes and Ms. Parnell confer]

6 MR. GRIMES: Thank you, Your Honor. I have no
7 further questions.

8 THE COURT: Any redirect?

9 MR. FINCH: Briefly, Your Honor.

10 THE COURT: You may proceed.

11 MR. FINCH: Thank you.

12 THE COURT: You're welcome.

13 REDIRECT EXAMINATION

14 BY MR. FINCH:

15 Q. Ms. Ward, in your experience -- in your position
16 at MUSC, how many sexual assault exams have you performed?

17 A. I personally have performed ninety-seven.

18 Q. And how many -- do you have occasion to review
19 other files --

20 A. Yes.

21 Q. -- in your position?

22 A. Yes.

23 We do peer review and case review of all
24 files.

25 Q. And how would you classify -- based on your

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1 history with that, and your experience, how would you --
2 how would you classify a lack of an injury in the genital
3 region?

4 A. Well, if you think about the way that a woman's
5 body is made, a woman's body is made to give birth. It's
6 very elastic. It is made so that a baby can come out. So
7 -- and with all -- with the hormones that our bodies
8 produce, it causes a lot of elasticity. So a sexual
9 assault could occur without there being any injury.

10 MR. FINCH: Thank you. No further questions,
11 Your Honor.

12 THE COURT: Any objection to the witness being
13 excused? From the State?

14 MR. FINCH: No, Your Honor.

15 THE COURT: From the defense?

16 MR. GRIMES: No, Your Honor.

17 THE COURT: Ma'am, you're excused.

18 THE WITNESS: Thank you.

19 [Whereupon, Ms. Ward is excused and exits the
20 witness stand]

21 THE COURT: Counsel approach for me.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Ladies and gentlemen, we were going
25 to proceed with some administrative matters, so to

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1 you sat in traffic for two hours. But we all arrived
2 safety, so everything happens the way it's supposed
3 to.

4 We are now going to resume trial testimony. The
5 State may proceed.

6 MR. FINCH: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 - - - - -

10 STIPULATION OF COUNSEL

11 MR. FINCH: Attorneys for the State and defense
12 agree and stipulate to the following: the North
13 Charleston Police Department, NCPD, case number 2011-
14 039667, an item labeled sexual assault evidence
15 collection kit, SA kit, was collected from the victim,
16 Sharon Rosenbaum, by Janet Ward, RN, and submitted to
17 PSO W. VanHorn at MUSC's property room at 3:45 p.m. on
18 October 24th, 2011. It was then secured in the
19 evidence room by Sargent Davis, also of MUSC, Public
20 Safety, at 4:15 p.m. the same day. At seven o'clock
21 on October 24th, 2011, Officer Scott Wyant of NCPD
22 took custody of the item and logged it into NCPD's
23 evidence room. Subsequently, that item was taken by
24 Alex Teachey, of NCPD, to the State Law Enforcement
25 Division, SLED, in Columbia, South Carolina. Teachey

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1 signed the item into SLED to Amy Stephens at SLED on
2 October 28, 2011. The item was assigned SLED item
3 number 1 or SLED lab number L-1112226. Patricia
4 Crooks, also of SLED, delivered it to Lilly Gallman of
5 SLED, who then subdivided the contents of the kit into
6 items 1.1 through 1.10. Gallman then performed DNA
7 analysis on items 1.3, 1.4 and 1.5. At all times the
8 SA kit was stored and transported in accordance with
9 SLED and NCPD policies. At no time was the item
10 damaged or changed from its original condition from
11 the time of collection until the time of the work done
12 by Lilly Gallman.

13 - - - - -

14 STIPULATION OF COUNSEL

15 Attorneys for the State and defense agree and
16 stipulate to the following: in North Charleston
17 Police Department NCPD case number 2011-093667, an
18 item labeled buccal swab was collected from the
19 defendant, Nathaniel Witherspoon, and submitted into
20 evidence by Detective Christopher Terry on March 9,
21 2012. Subsequently, that items was taken by Alex
22 Teachey of NCPD to the State Law Enforcement Division,
23 SLED, in Columbia, South Carolina. Teachey signed the
24 items into SLED to Nikki Perry Hughes at SLED on March
25 23rd, 2012. The items was assigned SLED item number 4

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1 or SLED's lab number L11-12226. Patricia Crooks, also
2 of SLED, delivered it to Catherine Leisy of SLED, who
3 then performed DNA analysis on it. At no time was the
4 item damaged or changed from its original condition
5 from the time of the collection until the time of the
6 work done by Catherine Leisy.

7 For the record, the State was reading from
8 State's Exhibit Number 17 and State's Exhibit Number
9 17 -- or number 18 related to State's Exhibit Number 1
10 and Number 2, respectfully.

11 THE COURT: Ladies and gentlemen, a stipulation
12 is an agreement between the parties and it requires no
13 further proof.

14 The State may proceed.

15 MR. FINCH: Thank you, Your Honor.

16 The State calls Catherine Leisy.

17 THE COURT: If the witness would come to the
18 stand to be sworn.

19 [Whereupon, Ms. Leisy comes forward]

20 [Whereupon, Ms. Leisy is duly sworn by the clerk
21 of court as follows: do you swear or affirm that your
22 testimony will be the truth, the whole truth, and
23 nothing but the truth, so help you God]

24 THE WITNESS: I do.

25 THE CLERK OF COURT: Be seated.

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1 [Whereupon, Ms. Leisy takes the witness stand]

2 THE CLERK OF COURT: If you'll please state your
3 full name and spell your last name for the record.

4 THE WITNESS: Catherine Leisy. L-E-I-S-Y.

5 THE COURT: You may proceed.

6 MR. FINCH: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. FINCH: Good morning, Ms. Leisy.

9 THE WITNESS: Good morning.

10 - - - - -

11 CATHERINE LEISY,

12 Having Been First Duly Sworn,

13 was Examined and Testified as Follows:

14 DIRECT EXAMINATION

15 BY MR. FINCH:

16 Q. And if you would tell the Court where it is that
17 you're employed.

18 A. I work for the South Carolina Law Enforcement
19 Division, more commonly known as SLED.

20 Q. And what's your position with SLED?

21 A. I am a forensic scientist assigned to the DNA
22 and serology unit.

23 Q. And how long have you been doing that?

24 A. Seven years.

25 Q. And if you would tell us about your educational

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1 background.

2 A. Yes, sir.

3 I have a Bachelor of Science degree in genetic
4 engineering from Cedar Crest College in Allentown,
5 Pennsylvania.

6 Q. And do you have any specialized training in the
7 field of DNA?

8 A. I have received in-house training, by other
9 court-qualified analysts at SLED, to cover all of the
10 different tests -- types of tests and analyses I'm
11 required to perform. I'm also required to participate in
12 continuing education, which involves attending seminars or
13 conferences that are specific to the types of tests I'm
14 required to perform.

15 Q. Have you been certified by SLED to perform
16 forensic DNA analysis?

17 A. Yes, I have.

18 Q. Have you had any teaching or instructional
19 duties in the area of DNA analysis in the past?

20 A. I assist in the training of newly-hired analysts
21 in the DNA serology department.

22 Q. About how many DNA cases have you handed in your
23 tenure at SLED?

24 A. I would say that I've issued reports on over
25 1,000 cases since I've been at SLED.

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1 Q. Have you ever been qualified as an expert in the
2 field of DNA analysis previously?

3 A. I have.

4 Q. How many times?

5 A. I've been qualified on approximately fifty
6 occasions in jurisdictions throughout the state of South
7 Carolina, as well as California, Massachusetts, New
8 Jersey, the District of Columbia, and United States
9 District Court.

10 MR. FINCH: Your Honor, at this time the State
11 would offer Catherine Leisy as an expert in the field
12 of DNA analysis.

13 THE COURT: Any questions or objections?

14 MR. GRIMES: Just have two or three questions.

15 THE COURT: You may proceed.

16 MR. GRIMES: Good morning, Ms. Leisy.

17 THE WITNESS: Good morning, sir.

18 VOIR DIRE EXAMINATION

19 BY MR. GRIMES:

20 Q. As part of your I guess continuing education, do
21 you read publications that come out?

22 A. I do.

23 I'm required to read at least ten publication
24 articles a year, but it's not uncommon to read articles
25 regarding specific situations that come up in certain

1 cases.

2 Q. And are you familiar with sort of the federal
3 guidelines on DNA studies?

4 A. Yes, sir.

5 Q. And are you familiar with like other state
6 guidelines on DNA studies?

7 A. In terms of protocols or?

8 Q. Protocols and I guess things of that --

9 A. Each laboratory, whether it be county, state or
10 federal, has its own written protocols and -- we call SOPs
11 or Standard Operating Procedures. They would vary
12 slightly between different laboratories.

13 Q. I guess one -- for example, if California came
14 out with a new DNA method, would you sort of keep up with
15 that and see if there was a better method, you might use
16 that in South Carolina?

17 A. We try and keep up as best we can with new
18 methods that come out. We perform validations, or
19 basically studies, to make sure these new methods would
20 work the way that we expect them to in the laboratory and
21 we try to stay as current as we can with new technologies,
22 yes, sir.

23 MR. GRIMES: Thank you.

24 And I have no objection with her being qualified
25 as an expert, Your Honor.

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1 THE COURT: Admitted without objection.

2 You may proceed.

3 MR. FINCH: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. FINCH:

7 Q. Ms. Leisy, if you would tell the Court what is
8 DNA.

9 A. DNA stands for deoxyribonucleic acid.

10 It's the genetic material found in all of our
11 body cells, with the exception of our red blood cells.
12 DNA is packaged into structures called chromosomes, which
13 contain our genes. And genes are simply strands of DNA
14 that code for our physical characteristics, such as our
15 height or our eye color. We receive one copy of DNA from
16 our mother and one from our father, and therefore we end
17 up with two copies of every gene.

18 Now, approximately 99.9 percent of an
19 individual's DNA is identical to that of everyone else's
20 and it's the variation in that remaining .1 percent that
21 allows us to tell different people apart.

22 Q. And why can it be forensically significant?

23 A. Forensically, what we're trying to do is
24 determine whether or not an unknown biological stain
25 that's been left at a crime scene or on an item of

1 evidence could or could not have been contributed by a
2 known individual whose DNA standard has been submitted for
3 comparison purposes. It basically let's us try to
4 identify the contributor of a stain left at a crime scene.

5 Q. And if you could: does anybody have the same
6 DNA profile?

7 A. With the exception of identical twins, no.

8 Q. Could you explain to the jury, in general terms,
9 how you go about developing a DNA profile?

10 A. The first step in a DNA profile is the
11 extraction of that DNA, where we remove the DNA from the
12 item of evidence that we're interested in testing.

13 The next step is known as amplification, where
14 we copy specific locations in the DNA that we're
15 interested in testing. Those locations are known as short
16 tandem repeats or STRs. They're just short core units of
17 DNA that are repeated a certain number of times. So,
18 basically, we're just counting -- excuse me -- we're
19 copying this location so that we have enough that we can
20 count the number of repeats at each unit.

21 We then assign DNA types to these locations. So
22 if at one particular STR locations, say the DNA that I
23 received from my father had eight repeat units and the DNA
24 I received from my mother had nine, my DNA types at that
25 location are just eight and nine. The numbers correspond

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1 to the number of repeat units. We test fifteen different
2 STR locations, and the DNA types at all of those locations
3 give us what we call a DNA profile.

4 Once a profile has been developed from an item
5 of evidence, it can be compared to the profile from a
6 known individual to see if they match, at which point we
7 can determine whether or not that individual contributed
8 that DNA from the evidence.

9 Q. And with regard to this case, did you develop
10 any profiles from items submitted as part of L11-12226?

11 A. Yes, I did.

12 Q. And what were those items?

13 A. The only items that I specifically tested was
14 SLED item 4, which was a buccal swab or a known standard
15 from a Nathaniel Witherspoon.

16 Q. Were you able to develop a profile from that?

17 A. I was.

18 Q. And there were other items submitted and
19 profiles were developed from that; is that correct?

20 A. That is correct.

21 Q. Who did that?

22 A. The initial testing on the sexual assault kit
23 was performed by DNA analyst Lilly Gallman.

24 Q. And what did you do with those findings?

25 A. I took the DNA profiles that Ms. Gallman

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1 developed and compared them to the DNA profile that I
2 developed from Nathaniel Witherspoon.

3 Q. And what were the results of that comparison?

4 A. If I may refer to my notes?

5 [Whereupon, the witness reviews documents]

6 A. There were three items that Ms. Gallman tested
7 that contained male DNA from the sexual assault evidence
8 collection kit. One was SLED item 1.5, which was swabs
9 from external genital. And the DNA profile developed from
10 the semen on the external genital swabs matches the DNA
11 profile of Nathaniel Witherspoon. And the probability of
12 randomly selecting an unrelated individual who could have
13 contributed a DNA profile matching semen on this item is
14 approximately 1 in 320 quadrillion.

15 The DNA profile developed from the semen on SLED
16 item 1.3, which was vaginal swabs, also matches the DNA
17 profile of Nathaniel Witherspoon. The DNA profile
18 developed from the non-sperm fraction of the vaginal swabs
19 is a mixture of at least two individuals. The DNA profile
20 developed from the major contributor to this mixture is
21 consistent with the DNA profile of Sharon Rosenbaum.
22 Nathaniel Witherspoon cannot be excluded as a possible
23 minor contributor to this mixture. And a DNA type not
24 attributable to either Ms. Rosenbaum or Mr. Witherspoon
25 was also present in the mixture.

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1 The DNA profile developed from the sperm
2 fraction of item 1.4, which was swabs from perineum, is a
3 mixture of at least two individuals. Sharon Rosenbaum and
4 Nathaniel Witherspoon cannot be excluded as possible
5 contributors to this mixture. And the DNA type not
6 attributable to Ms. Rosenbaum or Mr. Witherspoon is also
7 present in this mixture.

8 And the DNA profile developed from the non-sperm
9 fraction of the swabs from the perineum is a mixture of at
10 least two individuals. Sharon Rosenbaum and Nathaniel
11 Witherspoon cannot be excluded as possible contributors to
12 this mixture.

13 Q. You mentioned mixtures. If you can tell the
14 Court what a DNA mixture is.

15 A. When we say mixture, it simply indicates that we
16 had DNA from at least two individuals. It could be more,
17 but we know that we had DNA from more than one person.

18 Q. And what's a major contributor?

19 A. When you have a mixture, if one individual
20 contributes significantly more DNA than the other, it
21 gives off a much stronger signal which allows us to
22 essentially pull their profile out of the mixture and
23 treat it as if it were a single source for a single
24 profile.

25 Q. And what is a minor contributor?

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1 A. A minor contributor just means that that
2 individual contributed less DNA than someone else to the
3 mixture.

4 Because we have less information, it can make it
5 more difficult for us to make a comparison and I would not
6 be able to make an identification to a minor contributor.

7 Q. And you mentioned DNA material not attributable
8 to the victim and the defendant in this case.

9 A. That's correct.

10 Q. How much DNA material are we talking about?

11 A. There were two different items where I found
12 there was one DNA type at one location, for each of these
13 items, that could not have been contributed by either Ms.
14 Rosenbaum or Mr. Witherspoon.

15 Q. And how many locations are on a DNA profile?

16 A. We test fifteen.

17 Q. And how many possible repeats do you get, per
18 location, for a profile?

19 A. That would depend on exactly what types are
20 present. We would expect there to be either one type --
21 in a single-source profile, there would either be one or
22 two types per location.

23 If you inherit an eight from your mother and a
24 nine from your father, your DNA types are eight and nine.
25 If you inherit a nine from both parents, you would only

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1 have a nine at that location. For a single contributor,
2 there could be one or two types.

3 Q. So if I understand you correctly, so if we have
4 fifteen locations we could be looking at a possibility, in
5 a single-source profile, thirty repeats total to her -- as
6 many as thirty and as few as fifteen?

7 A. There could be a total of thirty types in a
8 profile, correct, for a single source.

9 Q. And what is a threshold for a partial profile?

10 A. A partial technically is anything less than that
11 full fifteen location information.

12 As far as interpretable profiles, I like to see
13 data at at least four or five of those locations before
14 I'll make an interpretation.

15 Q. And in this case you alluded to item 1. --
16 pardon me -- 1.4. I'm sorry, 1.3. 1.3 you noted a -- how
17 many elements there were not attributable to the defendant
18 or the victim in this case?

19 A. For the non-sperm fraction item of 1.3, there
20 was a total of one DNA type present that could not have
21 been contributed by the two individuals I had standards
22 for.

23 Q. And when you say DNA type, you're talking about
24 a repeat at a single location?

25 A. Correct.

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1 Q. Does that equal a partial profile?

2 A. Technically, it could be considered a partial.

3 But it would not be one that I would be able to interpret.

4 It would not be enough information to make a comparison.

5 Q. What is some reasons, scientifically, that you
6 might get one of those numbers in a non-sperm fraction?

7 A. It could be that it is a DNA type from a third
8 individual. It could also be what we refer to as
9 technical artifacts. They are very similar in appearance
10 in the raw data to an actual peak, but they're basically
11 just a byproduct of the testing that we perform. With
12 just one extra type in each of these items, I can't tell
13 exactly what it is. I just know that these types couldn't
14 have come from the two individuals I had profiles for.

15 Q. And is there a threshold for interpretation, as
16 far as something being counted as present?

17 A. There is. The signal has to give off a certain
18 strength for us to be able to detect it and to be able to
19 interpret it. Once it falls below a certain intensity, we
20 can't be sure that it's a real DNA type, so that we don't
21 interpret it.

22 Q. And what are those thresholds?

23 A. We have a threshold of what's called seventy-
24 five relative florescent units. A relative florescent
25 unit is just how the instrument measures the intensity of

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1 the signal that's being given off by the DNA on the
2 instrument.

3 Q. And I want to ask you about these technical
4 artifacts. What are some of the hallmarks of a technical
5 artifact?

6 A. The most common artifact that we see is
7 something that's called stutter. When we make copies of
8 the STR locations that we're testing, we sometimes have
9 copies that are somewhat incomplete. So if you have a
10 fragment of DNA with eight repeat units at a given
11 location, some of the copies may only have seven repeat
12 units. You end up one repeat unit short. It gives off a
13 much weaker signal than does the actual DNA type of eight.
14 So it allows us to sometimes filter it out based on
15 percentages and based on our experience in what we see in
16 the data when we interpret.

17 Q. I'm going to point you, then, to 1.3 F on your
18 table. And that single number in the FGA column is not
19 attributable to the types of the defendant and Sharon
20 Rosenbaum. What are the types that are identified with
21 the profile of Sharon Rosenbaum at that location?

22 A. At the STR location that is commonly referred to
23 as FGA, there are four DNA types present in the item of
24 evidence. There is a 21, a 22, a 23 and a 26. In
25 comparison to Ms. Rosenbaum and Mr. Witherspoon, Ms.

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1 Rosenbaum is a 23-26, Mr. Witherspoon is a 22-23, which
2 means that that 21 that is present in the item of evidence
3 could not have been contributed by one of those two
4 individuals. But it is in what we refer to as the stutter
5 position. It's possible that that particular peak could
6 be stuttered on the 22 but is not being filtered out.
7 But, you know, it's being called a natural peak and
8 interpreted.

9 Q. And do you recall from your analysis how high
10 that peak was on that particular piece of evidence?

11 A. I can say it's between 75 and 149 relative
12 fluorescent units. That's indicated on the table. Once
13 we get to that low range, it can affect how we interpret
14 based on the weakness of the signal being given off.

15 I would have to look at my case notes to be any
16 more specific than that.

17 Q. If I showed your case notes to refresh your --
18 might that refresh your recollection?

19 A. Yes, sir.

20 [Whereupon, Mr. Finch proffers documents to the
21 witness]

22 [Whereupon, the witness reviews documents]

23 A. The 21 type at this particular location
24 registered at 86 RFUs or relative fluorescent units.

25 Q. [Mr. Finch] So in between 75 and 149 but at the

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1 lower end of that?

2 A. That's correct.

3 Q. So if I understand your testimony correctly,
4 does that have the hall -- have any of the hallmarks of
5 stutter?

6 A. Well, it is in the stutter position. It is a
7 very weak type. It is possible that it stuttered. But,
8 again, it could also be an actual DNA type. I can't
9 determine that based on the information I have, but it's
10 possible.

11 Q. And even if it was a DNA type, would you have
12 known where that single element came from?

13 A. No, I would not.

14 Q. Would you know what kind of cell it might come
15 from?

16 A. I could not determine that, no.

17 Q. Could you tell if it was male or female?

18 A. No, I cannot.

19 Q. It might be, could be, skin?

20 A. Possibly, yes, sir.

21 Q. Could be saliva?

22 A. Could be.

23 Q. Blood?

24 A. Could be.

25 Q. Absolutely no way to determine?

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1 A. That's correct.

2 Q. I want to take a look now at item 1.4, which you
3 identified as the sperm fraction. If you would explain
4 how you extract or develop a sperm fraction in the lab.

5 A. Any time we have a sample that we believe may
6 contain semen or male biological fluids, we do what we
7 call a differential extraction. It's a technique that
8 allows us to try and separate sperm cells, that would be
9 present in the semen, from any non-sperm cells. So it
10 would be any epithelial or body-surface cells that may be
11 contained in vaginal secretions or swabs collected
12 directly from the body. But it allows us to try and
13 separate female DNA profile from male DNA profile, because
14 the cleaner we can get those profiles the easier it is to
15 make a comparison with the known standards that we have.

16 Q. Now, regarding a 1.4, the male portion, if you
17 will, again, how many locations did you find DNA material
18 -- potential DNA material non-attributable to the victim
19 and the defendant in this case?

20 A. There was, again, one STR location where there
21 was one DNA type present that could not have been
22 contributed by the two known individuals in the case.

23 Q. And, again, that number is very close to a
24 profile number of one of the known contributors?

25 A. The location for this particular item is known

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1 as D3S1358, or just D3. The types of that location for
2 the sperm fraction of item 1.4 are 15, 17 and 18. For Ms.
3 Rosenbaum, the types are 15, 17 and for Mr. Witherspoon
4 the type is a 17. So the 18 that's present at that
5 location could not have been contributed by those two
6 individuals.

7 Q. And do you know the threshold at that location
8 for that individual piece of potential DNA evidence?

9 A. Again, it's between 79 and 149.

10 Would you like me to refer to the notes --

11 Q. If you could refer to your case notes to refresh
12 your recollection.

13 [Whereupon, the witness reviews documents]

14 A. The 18 type at D3 registered at 90 relative
15 fluorescent units.

16 Q. [Mr. Finch] So, again, the lower end of that 75
17 to 149 relative fluorescent units?

18 A. That's correct.

19 Q. And sometimes are these technical artifacts
20 developed in the process of creating the sperm fraction
21 and non-sperm fraction?

22 A. The technical artifacts would be created during
23 the copying or amplification process.

24 [Whereupon, State's Exhibit Number 19 is marked
25 by the court reporter]

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1 Q. [Mr. Finch] Ms. Leisy, I'm going to show you
2 now what's been marked for ID purposes only as State's
3 Exhibit 19. Can you identify that document?

4 [Whereupon, the witness reviews documents]

5 A. This is a copy of the DNA report, that I issued,
6 outlining the items that I tested and my results.

7 MR. FINCH: Your Honor, at this time the State
8 would move for admission of State's 19 into evidence.

9 THE COURT: Any objection?

10 MR. GRIMES: Can I see it again?

11 [Whereupon, Mr. Grimes reviews documents]

12 MR. GRIMES: No objection.

13 THE COURT: Marked and admitted without
14 objection.

15 [Whereupon, State's Exhibit Number 19 is
16 admitted into evidence by the Court]

17 MR. FINCH: If I could, just to make it a little
18 bit clearer for the jury to understand, you can refer
19 to either this screen or that screen in just a moment
20 when it comes up.

21 Q. [Mr. Finch] Is this the table you refer to that
22 you used for comparison?

23 A. Yes, it is.

24 Q. And the item right here, 1.1, this is the
25 profile of Sharon Rosenbaum?

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1 A. That's correct.

2 As you read left to right, those are the
3 DNA types at the 15 STR locations that I tested for
4 Ms. Rosenbaum.

5 Q. And this site 4, that's from the known buccal
6 swab of the defendant, Nathaniel Witherspoon?

7 A. That's correct.

8 Q. And then across here would be his profile?

9 A. That's correct.

10 Q. What we were talking about earlier, this is what
11 you testified to earlier as the unaccounted-for potential
12 DNA?

13 A. Correct.

14 Q. The item 1.3F?

15 A. That's correct.

16 That's the 21 type at FGA that could not have
17 been contributed by the two known individuals.

18 Q. And here on 1.4, the male portion, that's the
19 number 18 you referred to?

20 A. That's correct.

21 Q. And in all other ways, these two items match the
22 mixture of those two individuals?

23 A. That's correct.

24 They are consistent with being mixtures of those
25 two individuals.

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1 Q. You testified earlier that no two people, aside
2 from identical twins, have the same DNA profile?

3 A. Correct.

4 Q. And you also testified that item 1.3, the DNA
5 profile established from that item, which was identified
6 as vaginal swabs, matched the profile of the defendant?

7 A. That's correct.

8 The DNA profile developed from the semen on the
9 vaginal swabs does match that of Mr. Witherspoon.

10 MR. FINCH: Please answer any questions the
11 defense may have.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may proceed.

14 MR. GRIMES: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. GRIMES: Good morning, Ms. Leisy.

17 THE WITNESS: Good morning, sir.

18 CROSS-EXAMINATION

19 BY MR. GRIMES:

20 Q. I was a history major so I may ask you some
21 questions that may seem silly about DNA.

22 So, basically, since DNA has sort of what we
23 call bases sort of -- they're symbolized by either A, D,
24 G and C?

25 A. That's correct.

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1 Q. And those kind of go to the building of each
2 piece of DNA?

3 A. Correct.

4 Q. And a sperm cell would have three billion
5 basses; is that correct? Approximately.

6 A. Approximately. Yes, sir.

7 Q. And I wanted to ask you a little bit about the
8 DNA testing. There's basically I guess two types of DNA
9 testing that's used in forensic testing? One is the RFLP
10 method?

11 A. Well, RFLP stands for Restriction Fragment
12 Length Polymorphism.

13 That was the test that was most commonly used
14 prior to the type that we use today. I'm not familiar
15 with any forensic lab that currently use that in testing.

16 Q. And the other type is the PCR method?

17 A. Correct.

18 Q. And that's the type that SLED used?

19 A. Correct.

20 PCR stands for Polymerase Chain Reaction. That
21 is the process of copying the STR locations that we're
22 interested in testing.

23 Q. I guess sort of by layman's example of how PCR
24 could be working is like if you've got a sort of partial
25 DNA, you make copies of that; correct?

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1 A. That's correct.

2 We -- it is similar to xeroxing a piece of paper
3 that you want multiple copies of. We're making copies of
4 the fragments of DNA at the STR locations that we need to
5 test.

6 Q. And there can be problems when you're making
7 copies? There can be contamination and you have to -- SLED
8 has to take steps to avoid that; correct?

9 A. That's correct.

10 We take numerous steps to avoid any type of
11 contamination. Contamination refers to the introduction of
12 DNA to a sample from an outside source. So if I were to
13 sneeze over an item when I had it open, I could contaminate
14 it with my DNA. So we're very careful about always
15 cleaning the surfaces and instruments that we use, only
16 having one item open at one time, frequently changing our
17 rubber gloves, and being very sterile about our techniques,
18 to prevent any type of contamination.

19 Q. And sometimes the laboratories are divided into
20 areas to avoid contamination, too, sort of like the copying
21 of DNA being done in one section of the laboratory and then
22 the analysis of DNA being done in a different section?

23 A. That's correct.

24 We have specific locations that are designated
25 for DNA extraction and for the preparation of the PCR

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1 stuff, and then a separate laboratory where the actual
2 copying and DNA typing is performed, and in keeping those
3 steps separate, we can help avoid any type of
4 contamination.

5 Q. And SLED follows all those procedures; correct?

6 A. That's correct.

7 Q. And another problem of sort of DNA analysis is
8 when you have mixtures. Is that fair to say?

9 A. Having a mixture can make it more difficult to
10 interpret when you're doing comparisons. That's correct.

11 Q. It may be hard to tell -- determine how many
12 contributors there really are to make sure; is that
13 correct?

14 A. That's true.

15 We can determine the minimum number of
16 contributors but if individuals share DNA types, it can be
17 difficult for us to determine exactly how many people have
18 contributed.

19 Q. Like for example in the sharing DNA types, on the
20 D7 we see that Ms. Rosenbaum had 8 and 11 and Mr.
21 Witherspoon had an 11?

22 A. Correct.

23 Q. So you would expect to probably find an 11 in a
24 lot of these categories; correct?

25 A. That's correct.

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1 Q. And in the external swabs of 1.5, there is no 8;
2 correct?

3 A. That is correct.

4 Q. So, arguably, you could rule that out. That
5 might exclude Ms. Rosenbaum as contributing to the external
6 swab. Is that fair to say?

7 A. It would be fair to say that at that particular
8 location.

9 To exclude someone as a contributor to the entire
10 item, you have to take into consideration the entire
11 profile. But for that particular location, she does not
12 appear to have contributed.

13 Q. And so if there was a -- say a third person who
14 had 8 and 11, that wouldn't show up in there at all, would
15 it? Or it would show up but you couldn't tell if it was a
16 third person?

17 A. If there were another individual who had the same
18 DNA types at that location, I wouldn't necessarily be able
19 to distinguish which they contributed compared to which
20 Ms. Rosenbaum contributed, no.

21 Q. And talking a little bit about item 1.3F, the 21,
22 if someone that -- if that was from a third person -- you
23 said it could be from a third person?

24 A. It is a possibility, yes, sir.

25 Q. If that third person had a DNA profile of

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1 21-23, you couldn't tell that from this, could you?

2 Because Ms. Rosenbaum has 23.

3 A. That's correct.

4 An individual with types 21 and 23 at that
5 location, Ms. Rosenbaum's 23 would mask the other
6 individual's 23. It would appear that it came from the
7 same person when it could come from two.

8 Q. And the same thing with this 21-22?

9 A. That's correct.

10 Any combination of 21 and any one of the other types
11 that's present.

12 Q. And that's one -- you said that's one of the
13 problems in trying to determine mixtures is that stuff can
14 be masked by a common -- if people have common DNA at
15 certain points; correct?

16 A. That's correct.

17 Any time individuals share the same DNA type and
18 they both contribute to a mixture, it can make it more
19 difficult to interpret.

20 Q. Now, I want to ask you a little bit about I think
21 what Mr. Finch was asking you about. Sort of when you have
22 the allele, that's -- I guess the location of a specific is
23 it loci?

24 A. Allele is interchangeable with the word type.

25 The 8, 9, 10, those are all the different alleles. And the

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1 STR locations are also known as loci.

2 Q. And saying because -- under the SLED protocols,
3 if it's between 75 -- the RFU is between 75 and 140, it's
4 harder to use that for match purposes; correct?

5 A. That's correct.

6 When we see DNA types that give off that weak a
7 signal, we have to basically interpret it with caution.
8 It's not to be used for different types of statistical
9 purposes. And it can indicate that we're only seeing one
10 DNA type being contributed by that individual.

11 So it is used in some forms of interpretation but
12 because it's so weak, we have to be careful about what we
13 use it for.

14 Q. And under SLED protocols, it can be used for
15 exclusionary purposes, though; correct?

16 A. That's correct.

17 Q. Now, there are also various parentheses for other
18 areas in this case where there appears to be a match
19 between Mr. Witherspoon and Ms. Rosenbaum, such as --

20 A. That's correct.

21 Q. -- 1.4 F where 16 is in parenthesis. Is that
22 fair to say?

23 A. Yes, it is.

24 Q. But despite some of the parenthesis for either
25 Ms. Rosenbaum's DNA or Mr. Witherspoon's DNA, arguably you

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1 concluded that there was -- basically, that is Ms.
2 Rosenbaum's DNA and Mr. Witherspoon's DNA that contributed?

3 A. I'm able to determine that the types that have
4 been contributed are consistent with Ms. Rosenbaum and
5 Mr. Witherspoon. Because of the consistency between their
6 types and the types that I'm seeing in the mixture, I'm
7 comfortable saying that it's consistent with being a
8 possible mixture of the two of those individuals.

9 Q. And I had a question from some other paperwork.
10 That might just be my lack of background in genetics. But
11 you I think said you had to interpret sort of the 21 or
12 anything between -- excuse me -- you have to interpret any
13 test results between 75 and 149 with caution?

14 A. That's correct.

15 Q. Do you have your underlying paperwork?

16 A. I do.

17 Q. Do you have it page-numbered?

18 A. Yeah. I can read the page numbers fine, if that
19 makes it easier.

20 Q. I know ours may be numbered a little bit
21 different. Do you have page -- it's looks like page 130,
22 by chance?

23 A. No, sir.

24 Q. Let me see if I can show you an example of what
25 I'm talking about.

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1 [Whereupon, Mr. Grimes reviews documents]

2 MR. GRIMES: May I approach the witness, Your
3 Honor?

4 THE COURT: Uh-huh.

5 Q. [Mr. Finch] I want to show you -- I'm having
6 trouble reading it -- the L11, 12, 22. It looks like on
7 the D8 loci, at the bottom there's this -- looks like an
8 allele marked 15, an RFU of 237?

9 A. Yes, sir.

10 Q. And that's crossed out?

11 A. Yes, sir.

12 Q. Is that crossed out because that's an artifact?
13 Or some other reason?

14 A. The 15 at this particular location would have
15 been crossed out as possible stutter.

16 As I mentioned before, stutter can give us weaker
17 types that are one unit short of an actual type. For this
18 particular location, there is a very strong 16 that is over
19 2,000 RFU. The 15 would be one repeat unit short of that
20 at 15 and is a much weaker signal. And that indicates to
21 us that it's possible stutter and that it's more
22 conservative not to interpret that particular type.

23 Q. So when you did have stutter, it got crossed out
24 and never made it to the report? Is that fair to say?

25 A. We do the best we can to cross it out. It's

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1 possible that we have peaks that are high stutter. This
2 actually was a sample that was done by Ms. Gallman. She
3 crossed this out, believing it to be possible stutter.

4 Q. And you reviewed Ms. Gallman's work?

5 A. I did.

6 Q. And you're vouching for her today, essentially,
7 aren't you?

8 A. Yes, sir.

9 Q. And you're adopting it as your own, essentially?

10 A. That's correct.

11 All the work that I did has my initials, and went
12 through a review process, and that report has my signature
13 on it.

14 Q. So that 15 was crossed out and it has RFU of 237.
15 And so it's possible stutter because the 16 was a much
16 higher signal?

17 A. That's correct.

18 Q. And in your report that is in evidence, there's
19 no mention of stutter, is there?

20 A. No, there's not.

21 Once a stutter peak is crossed off, it is not
22 included in the report.

23 Q. And there's no mention of any technical artifacts
24 or anything?

25 A. That's correct.

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1 Q. And if there was something like that, that would
2 probably be in your report; correct?

3 A. Any other type of technical artifact would just
4 be crossed off in the electronic data and, again, would not
5 be reported.

6 Q. All right. Now, I want to ask you a few
7 questions about sort of limitations of DNA testing.

8 I think we can agree DNA would show if someone
9 has been somewhere or left there; correct?

10 A. It can possibly, yes.

11 Q. But it may not show when they were there?

12 A. That's true.

13 The type of testing that we perform can't
14 determine when a sample was left, just that it was left.

15 Q. And it can't show how and under what
16 circumstances it was left?

17 A. That's correct.

18 Q. So Mr. Witherspoon's DNA, you don't know if it
19 was left on October 24th, October 23rd, October 22nd?

20 A. With bodily fluids, there is a window of when a
21 sample can be deposited and still develop a profile within
22 a kit. It's typically within a couple of days, two to
23 three days, but I can't pinpoint in that time period when
24 the sample was left.

25 Q. Speaking of the window: under the federal

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1 guidelines, it's seventy-two hours; correct?

2 A. That's the most common number that you see in the
3 literature, yes, sir.

4 Q. And in some jurisdictions, studies have shown
5 that it can be extended up to ninety-six hours?

6 A. Depending on the type of testing that's done,
7 I've seen that it is possible.

8 With the type of testing that we do, I don't
9 think I've seen it must past about three days. But it is
10 possible.

11 Q. Okay. And you said you keep up with literature?

12 A. Yes, sir.

13 Q. Are you familiar with a study by Silverman and
14 Silverman in 1975?

15 A. In regards to what?

16 Q. How long sperm can be -- or DNA can be recovered
17 after a sexual assault.

18 A. I don't know that I'm familiar with that
19 particular study, no, sir.

20 Q. Are you familiar with any publications from the
21 National Center of Victims of Crime?

22 A. I may have read some studies. I would have to
23 look at them to see -- refresh my memory to see if I've
24 read those particular studies.

25 Q. If I handed you one, would that give you a chance

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1 to refresh your memory?

2 A. Yes, sir.

3 [Whereupon, Mr. Grimes proffers documents to the
4 witness]

5 Q. [Mr. Grimes] Just for your ease, the study I was
6 talking to is referenced on page 2 of that report, if you
7 have -- if you have read it before.

8 [Whereupon, the witness reviews documents]

9 A. I honestly can't say I've read a report as far
10 back as the '70s. I'm not specifically familiar with this
11 particular study.

12 Q. [Mr. Grimes] All right. Are you familiar with
13 Dr. Jack Ballentine, professor of chemistry at the
14 University of Central Florida?

15 A. Yes, sir.

16 Q. And that he believes samples can be collected as
17 long as five or six days after a sexual assault?

18 A. I'm not specifically familiar with Dr.
19 Ballentine's work on that.

20 I have some presentations that indicate that it
21 is possible to get at least partials up to five or six.
22 Again, the most commonly-accepted time frame is about
23 seventy-two hours and what we typically see.

24 Q. And you work for SLED; right?

25 A. Yes, sir.

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1 Q. And SLED prepares the sexual assault kits?

2 A. We do provide them to collecting agencies, yes,
3 sir.

4 Q. And do you -- and the sexual assault kits, they
5 go back seven days asking about sexual history to rule
6 out -- to rule out anyone else who may have contributed to
7 the --

8 A. That's correct.

9 In the incident protocol that is sent out with
10 the rape kits, they ask for any consensual sexual history
11 in the seven-day window leading up to any alleged assault.

12 Q. Because if someone had had sex, a victim, say six
13 days beforehand and then that person was attacked six days
14 later, you might get two sources of DNA and you would want
15 to rule out which one was the assailant and which one was
16 the consensual relationship; correct?

17 A. Correct.

18 It is possible that there is a consensual
19 partner, as well, in the days moving up to the attack. We
20 try to develop profiles from any consensual partner to rule
21 them out. This particular kit didn't indicate any
22 consensual sexual contact.

23 Q. And one assumption I -- the reason why sexual
24 assault kits are done is to see if someone has left DNA?
25 That can be done by ejaculation or hair samples or

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1 something else; correct? Skin samples?

2 A. Correct.

3 We look for any biological, such as semen, blood,
4 saliva. We test for hair. We sometimes test fingernail
5 scrapings. There are numerous ways that transfer can occur
6 during a sexual encounter.

7 Q. And if a person never ejaculated, there would be
8 no semen left; correct?

9 A. It is possible for us to develop DNA profiles
10 from pre-ejaculate. We would expect to see much more DNA
11 present in ejaculate.

12 Q. If someone -- never mind.

13 And if someone used the bathroom after a sexual
14 assault, that could interfere with samples, too; correct?

15 A. Any type of washing or using of the restroom
16 could wash away any biological materials that may be
17 present after an assault, yes, sir.

18 Q. And if someone -- I withdraw that question.

19 MR. GRIMES: May I have one moment, Your Honor?

20 THE COURT: Uh-huh.

21 [Whereupon, Mr. Grimes reviews documents]

22 Q. [Mr. Grimes] I want to make sure I understand --
23 my final set of questions. I want to make sure I
24 understand about your report.

25 You can't say that the other DNA type came from a

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1 third person; correct?

2 A. That's correct.

3 Q. You can't say that it came from a technical
4 artifact, either; correct?

5 A. I can't say definitively where it came from.

6 Q. But we know it's not from Mr. Witherspoon?

7 A. That's correct.

8 It is not consistent with Mr. Witherspoon's.

9 Q. We know it's not Ms. Rosenbaum?

10 A. That's correct.

11 Q. As far as you know, everyone followed SLED and
12 North Charleston protocols in obtaining DNA. So they would
13 have worn gloves and taken proper procedures; correct?

14 A. To the best of my knowledge, yes, sir.

15 Q. And those swabs came from the vagina and
16 perineum; correct?

17 A. The three sets of swabs that Ms. Gallman
18 developed male profiles from were from the vaginal area,
19 the perineum, and the external genital area.

20 Q. But nothing like around the neck or breast area
21 for saliva or anything like that?

22 A. She also tested swabs from the face and neck of
23 the victim. She was only able to develop DNA profile -- or
24 DNA types that were consistent with Ms. Rosenbaum.

25 Q. And did you receive any clothing, or do you know

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1 if Ms. Gallman received any clothing, to do DNA testing on?

2 A. Ms. Gallman's report indicates that she received
3 a cutting taken from a tee shirt and there was a pair of
4 panties that were submitted.

5 Q. Now, when you say the cutting from a tee shirt,
6 that would be -- do you know if the whole tee shirt would
7 have been examined, or parts of the tee shirt, or just the
8 place where it was cut out?

9 A. The tee shirt itself was examined by one of our
10 evidence-processing technicians, Ms. Jan Bryson. She would
11 have done preliminary screening tests on the shirt to see
12 if there were any biological materials that may be suitable
13 for testing. She took a cutting from that shirt and sent
14 that on to Ms. Gallman for further DNA testing.

15 Q. Do you happen to have a copy of her report?

16 A. Yes, sir, I do.

17 Q. Okay. Can I see that?

18 [Whereupon, the witness proffers documents to
19 Mr. Grimes]

20 Q. [Mr. Grimes] It says Ms. Bryson?

21 A. That's from Ms. Gallman.

22 Q. Do you have Ms. Bryson's report?

23 A. I believe I do.

24 [Whereupon, the witness reviews documents]

25 A. The report that indicates the testing of the tee

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1 shirt was signed by Stephanie Stanley, who was the
2 supervisor of the evidence processing department, and the
3 work was performed by Janice Bryson.

4 Q. [Mr. Grimes] So they tested -- it says results,
5 blood indicated, potential evidence collected and sent to
6 the DNA department. So was it just -- I guess I'm still a
7 little confused by that. Was it just -- was it just -- it
8 has 2.1; right?

9 A. That's correct. That was the sub-item number
10 that was given to that particular cutting. The tee shirt
11 itself is SLED item 2, and the cutting that Ms. Bryson took
12 to pass on for testing would be item 2.1.

13 Q. So like this area right here, do you know if that
14 was tested?

15 A. The fact that it's circled would indicate to me
16 that it probably was. I would have to -- I actually don't
17 know that I have specific notes that would cover whether or
18 not that one was tested.

19 Q. And if it wasn't circled, do you know if that
20 area might have been tested?

21 A. Typically, they would circle any item that they
22 tested. I can't say for sure -- for certain whether or not
23 it was.

24 Q. Okay. And do you know if like if they tested
25 like under the arms for sweat or hair samples?

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1 A. They would have tested for blood and semen.

2 They don't typically test for saliva and for
3 sweat and things like that. They wouldn't process that to
4 send it on for further testing. It most likely would have
5 just been tested for blood and semen.

6 Q. Do you know if the panties were tested?

7 A. The panties were not tested.

8 Q. And as far as saying -- it's important, once you
9 recover I guess biological material, for it to be dried; is
10 that correct?

11 A. That's correct.

12 It is more stable and will remain in a state that
13 we can test it for a longer period of time if it's dried
14 prior to storage.

15 Q. So once something -- so dried stains, once
16 they're dried they become stable and they can be tested
17 over time?

18 A. They can be suitable for testing for up to
19 several decades, if they're properly stored and in good
20 condition when they're collected.

21 Q. Okay. Did you receive any cuttings from
22 Ms. Rosenbaum's bed or sheets?

23 A. Not that I recall, no, I did not.

24 MR. GRIMES: May I have one moment, Your Honor?

25 THE COURT: Uh-huh.

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1 MR. GRIMES: Thank you.

2 [Whereupon, Mr. Grimes and Ms. Parnell confer]

3 MR. GRIMES: Just ask you one last question --

4 THE WITNESS: Certainly.

5 MR. GRIMES: -- to clarify something else that
6 you just spoke on.

7 Q. [Mr. Grimes] The other DNA type was found in
8 swabs 1.3 and 1.5, the vaginal perineum. That could be
9 from a third person; correct?

10 A. It is possible that it's from a third
11 contributor, yes, sir.

12 MR. GRIMES: Thank you, Your Honor. I have no
13 further questions.

14 THE COURT: Any redirect?

15 MR. FINCH: Yes, Your Honor.

16 THE COURT: You may proceed.

17 REDIRECT EXAMINATION

18 BY MR. FINCH:

19 Q. I'm going to try to, if we can, summarize a few
20 of these items just for the jury, to clarify that we have
21 odd numbers there.

22 Mr. Grimes asked you about the sexual assault kit
23 that SLED puts together and then sends to different units
24 around the state. Within that kit are swabs; correct?

25 A. Correct.

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1 Q. And when you receive those swabs, either you or
2 someone else breaks them into subcategories from the kit?

3 A. Correct.

4 Each individual items will be given a sub item.

5 Q. And in this case you had sub items 1.3, 1.4 and
6 1.5?

7 A. Yes, sir.

8 Q. And what was -- 1.3 related to what?

9 A. SLED item 1.3 was used to identify the vaginal
10 swabs collected from the sexual assault kit.

11 Q. And from your experience, those come from
12 internal swab?

13 A. That's my understanding of how it's collected,
14 yes, sir.

15 Q. And from the internal swabs, the sperm and semen
16 matched the defendant; correct?

17 A. That's correct.

18 The DNA profile from the semen on that item does
19 match the profile of Mr. Witherspoon.

20 Q. And 1.5 is external genitalia; correct?

21 A. Yes, sir.

22 Q. And that also includes areas of the genitals and
23 the labia minora and majora; correct?

24 A. That's my understanding, yes.

25 Q. And the sperm on that item matched the defendant?

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1 A. Correct.

2 Again, the DNA profile developed from the semen
3 on the external genital swabs does match that of Mr.
4 Witherspoon.

5 Q. Mr. Grimes asked you about time frames, seventy-
6 two hours, ninety-six hours, things of that nature. Is it
7 reasonable to expect that if a DNA -- any DNA was left from
8 any source, that if that area was washed, wiped, that in
9 the course of time that that would diminish the quantity of
10 DNA and the quality?

11 A. I would say it's fair to say that any type of
12 washing, using of the restroom, any type of wiping, would
13 wash away or wipe away potential biological material that
14 was left.

15 Q. And any DNA that was deposited after that would
16 likely set off a stronger signal than that which would have
17 been there for seventy-two hours subject to washing and
18 wiping; is that correct?

19 A. That would depend on how much biological material
20 was left. Some people may have a higher concentration of
21 sperm cells in their semen. There's a lot, you know, that
22 would go into quantifying how much stronger a signal would
23 be on a more recently deposited sample.

24 Q. And you went over some of the items that were
25 tested. And SLED had a protocol for what items it tests,

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1 as far as in a sexual assault kit?

2 A. As far as what we test first in the kit, we go
3 largely by the information that we receive in the incident
4 report and the submission paperwork. We typically, for a
5 case like this, would start with the vaginal and genital
6 swabs looking for semen. We may look for saliva. But
7 typically we start with what we consider to be the most
8 probative, meaning what items are most likely to provide us
9 with an informative link between two people, and most
10 commonly we start with the vaginal and genital swabs.

11 Q. And in your reading of this file, you understand
12 that the underwear was not tested. Can you tell us why?

13 A. When the underwear was submitted, we had already
14 developed -- Ms. Gallman had developed male DNA profiles
15 from the swabs collected from the sexual assault kit.
16 Because we already had male profiles and because the
17 incident report indicated that those panties were not put
18 back on after the alleged assault happened, I didn't
19 believe that it was important to test that particular item
20 at that time, as I already had a male profile to compare
21 to.

22 Q. So the most probative evidence matches the DNA
23 from the defendant?

24 MR. GRIMES: Objection.

25 THE COURT: Basis?

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1 MR. GRIMES: Calls for a legal conclusion. It's
2 probative.

3 THE COURT: You need to rephrase the question.
4 But it doesn't call for a legal conclusion. It's just
5 convoluted. Rephrase the question.

6 Q. [Mr. Finch] Semen in and around the vagina
7 matched the defendant; correct?

8 A. The profile from that semen does match that of
9 the defendant, yes, sir.

10 Q. And no other profile?

11 A. No, sir.

12 MR. FINCH: No further questions, Your Honor.

13 THE COURT: Any objection to this witness being
14 excused? From the State?

15 MR. FINCH: No, Your Honor.

16 THE COURT: From the defense?

17 MR. GRIMES: No, ma'am.

18 THE COURT: Ma'am, you're excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 [Whereupon, Ms. Leisy is excused and exits the
22 witness stand]

23 THE COURT: The State may proceed.

24 MR. FINCH: Your Honor, at this time the State
25 rests.

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1 THE COURT: Mr. Foreman, ladies and gentlemen,
2 the State has rested their case. There are some
3 matters of law I need to take up with them.

4 During the break, please do not discuss the case.
5 And please leave your notepads in your seats. We
6 appreciate your patience in advance.

7 [Whereupon, the jury exits the courtroom at 10:49
8 a.m.]

9 THE COURT: You may be seated.

10 MR. GRIMES: Your Honor, Mr. Witherspoon, I think
11 he takes a diuretic.

12 THE COURT: He needs to go to the restroom?
13 Yeah, he can go to the restroom.

14 We'll be at ease for a moment.

15 MR. GRIMES: Thank you.

16 THE COURT: You're welcome.

17 [Whereupon, a recess is taken from 10:49 a.m. to
18 11:04 a.m.]

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1 THE COURT: And, sir, do you wish to testify or
2 do you wish not to testify?

3 MR. WITHERSPOON: I wish not to testify.

4 THE COURT: Okay. Sir, you may take your seat.
5 [Whereupon, Mr. Witherspoon complies]

6 THE COURT: Is the State ready to -- I mean, is
7 the defense ready to proceed?

8 MR. GRIMES: Yes, Your Honor.

9 THE COURT: Okay. Please get the jury.
10 [Whereupon, the Court reviews documents]

11 THE COURT: Are any of these witnesses going to
12 be dealing with the Rape Shield Statute?

13 MR. GRIMES: Perhaps Ms. Stiles and Derrick
14 Felder.

15 THE COURT: Which one are you calling first?
16 Which witness are you calling right now?

17 MR. GRIMES: Mr. Samuels.

18 THE COURT: Mr. Samuels? I have a Samuel Clary.

19 MR. GRIMES: I think I've got it wrong. It's
20 Clary Samuels.

21 THE COURT: Okay. And then who are you calling
22 after that?

23 MR. GRIMES: Ms. Stiles.

24 THE COURT: And what would the nature of Ms.

25 Stiles testimony be that would have anything to do with

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1 the Rape Shield Statute?

2 MR. GRIMES: That Ms. Rosenbaum trades sex for
3 drugs with various people. We believe that would also
4 go to impeachment, since she's testified on direct that
5 she got her drugs just for letting people stay there
6 and giving them a place to smoke.

7 THE COURT: I'll have to take that up in-camera
8 before you elicit any of that before the jury.

9 [Whereupon, the jury enters the courtroom at
10 11:22 a.m.]

11 THE COURT: You may be seated.

12 THE BAILIFF: All present.

13 THE COURT: Thank you.

14 Ladies and gentlemen, we appreciate your
15 patience. We are now going to resume the trial.

16 The defense may proceed.

17 MR. GRIMES: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MR. GRIMES: At this time we would call Clary
20 Samuels.

21 THE CLERK OF COURT: This way, sir.

22 [Whereupon, Mr. Samuels comes forward]

23 THE CLERK OF COURT: Place your left hand on the
24 Bible, raise your right hand.

25 [Whereupon, Mr. Samuels is duly sworn by the

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1 clerk of court as follows: do you swear or affirm that
2 your testimony will be the truth, the whole truth, and
3 nothing but the truth, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Be seated.

6 [Whereupon, Mr. Samuels takes the witness stand]

7 THE CLERK OF COURT: Sir, I need you to speak
8 into this mike.

9 Please state your full name and then spell your
10 last name.

11 THE WITNESS: Okay. My name is Clary L. Samuels.
12 S-A-M-U-E-L-S.

13 THE COURT: You may proceed.

14 MR. GRIMES: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 MR. GRIMES: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. GRIMES: It's still morning. Good morning,
19 Mr. Samuels.

20 THE WITNESS: Good morning.

21 MR. GRIMES: How are you doing today?

22 THE WITNESS: Doing fine, sir.

23 - - -

24 - - -

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1 CLARY L. SAMUEL,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. GRIMES:

6 Q. Where do you have to be this afternoon?

7 A. Orlando, Florida, to a graduation. International
8 Seminary.

9 Q. And what's the graduation for? If you could tell
10 the jury a little bit about that.

11 A. I'm one of the school professors for the
12 International Seminary out of Florida. We go down there
13 every year for graduation. I do a school here in
14 Charleston, and in June every year we go to Florida to
15 graduate. And so that's where I'll be going when I leave
16 here.

17 MR. GRIMES: I know we're going to be cutting it
18 tight. It's at least a six-hour drive down there.

19 THE WITNESS: Seven and a half, really.

20 MR. GRIMES: I don't think I can get you out of
21 here that fast.

22 Q. [Mr. Grimes] I want to ask you a few questions
23 about your background, Mr. Samuels.

24 A. Uh-huh.

25 Q. Do you know Nathaniel?

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1 A. Yes, I do.

2 Q. How do you know him?

3 A. He's my brother-in-law.

4 Q. And how long have you known Nathaniel for?

5 A. Since 1971 when I married his sister.

6 Q. Okay. And tell the jury how old you are.

7 A. I'm sixty-five years old. I'm sixty five.

8 Q. And apart from teaching, are you working anywhere
9 else now?

10 A. No.

11 I'm a full-time pastor. I'm a full-time pastor
12 for twenty-six years.

13 Q. And where were you born at?

14 A. I was born in Summerville.

15 Q. And did you play under Coach McKissick out there?

16 A. No.

17 I played for Coach -- a guy named Jimmy Green,
18 who was an ex-Forty-Niner running back. I played for him
19 in the '60s.

20 Q. Is that when they had Austin kind of separated
21 from Summerville?

22 A. They did.

23 Q. And after high school, what kind of work did you
24 do?

25 A. I left there and went to Philadelphia,

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1 Pennsylvania, and then I went in the military.

2 Q. And what branch of the military were you in?

3 A. I was army.

4 Q. How long were you in the army for?

5 A. Three years.

6 Q. And what were your duties in the army?

7 A. I was a parts specialists. I work in the
8 delivery part for aircraftmen. Those are the things I did.

9 Q. Okay. And after you left the army, what kind of
10 work did you do?

11 A. I came back and went to college. Went to --

12 Q. Where did you go to college at?

13 A. I went to Marks College, and I went to Benedict
14 College, and I'm a graduate of Voorhees College in
15 organizational management.

16 Q. And what did you graduate with?

17 A. A bachelor of organizational management.

18 Q. After you graduated from college, what kind --
19 did you get -- where did you go to work at?

20 A. GE, in Ladson. General Electric. I worked there
21 fourteen and a half years.

22 Q. Okay. And what were you doing up at GE?

23 A. I was --

24 MR. FINCH: Your Honor --

25 A. -- an overhead crane operation.

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1 MR. FINCH: -- I'm going to object to the
2 relevance of this.

3 THE COURT: Approach.

4 [Whereupon, an off-the-record bench conference is
5 held]

6 THE COURT: You may proceed.

7 Q. [Mr. Grimes] And after you left GE, what kind of
8 work did you do?

9 A. I left GE, then I went to the naval shipyard. I
10 worked there for a while until they closed.

11 Q. Okay. And just to try to speed this up a little
12 bit: did you work at a bookstore after that?

13 A. I was the owner of a bookstore. I used to own
14 Word of Life Christian bookstore. Word of Life Christian
15 bookstore.

16 Q. And when did you start becoming a full-time
17 instructor at a seminary?

18 A. I started back in 1999. I was pastoring a church
19 on Rivers Avenue, Pilgrim Baptist Church, and I started a
20 school there. I started a school from out of Florida
21 there.

22 Q. Now I want to ask you a few questions about
23 Nathaniel. Okay? Do you know if he's ever been involved
24 in drugs?

25 A. I've never seen Nate use drugs.

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1 And he had a high respect for me. But I never
2 seen him use.

3 Q. But is it your belief that he has used drugs?

4 A. I believe he did, but I never seen him use drugs.

5 Q. I understand that.

6 And do you know when that -- when you started
7 believing that he may have started using drugs?

8 A. I've known Nate forty years. And we worked
9 together. Nate helped me do a lot of work things together.
10 Nate was just someone I -- you know, I talked to him and we
11 talked a lot of things, but it never seems to me that he
12 was out of contact with reality. Nate never felt -- I
13 never felt that with Nate.

14 But, you know, I'm a Vietnam veteran so I know
15 what drugs do to you, so -- but Nate was just somebody that
16 we could talk a lot of things. So I never known him to be
17 a person -- you know, some people act different when they
18 on drugs and they act always indifferent. But he never act
19 that way with me.

20 Q. Do you know if anyone ever tried to get him help
21 for drug use?

22 A. No, sir.

23 MR. FINCH: Objection. Relevance.

24 THE COURT: Approach.

25 [Whereupon, an off-the-record bench conference is

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1 held]

2 Q. [Mr. Grimes] Do you know Ms. Rosenbaum?

3 A. Pardon me?

4 Q. Do you know Ms. Rosenbaum?

5 A. No, I don't.

6 Q. Have you ever seen Nathaniel with her?

7 A. Pardon me?

8 Q. Have you ever seen Nathaniel with her?

9 A. Never did.

10 Q. And how long have you known Nathaniel?

11 A. Since 1971.

12 Q. And in your opinion, is he the type of person who
13 would commit a sexual assault on --

14 MR. FINCH: Objection, Your Honor.

15 [Whereupon, an off-the-record bench conference is
16 held]

17 THE COURT: Objection sustained. Form of the
18 question.

19 Rephrase.

20 MR. GRIMES: May I have one moment, Your Honor?

21 THE COURT: Uh-huh.

22 [Whereupon, Mr. Grimes reviews documents]

23 MR. GRIMES: May we approach again?

24 THE COURT: Uh-huh.

25 MR. GRIMES: Thank you.

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1 [Whereupon, an off-the-record bench conference is
2 held]

3 THE COURT: You may proceed.

4 Q. [Mr. Grimes] Based upon your knowledge of
5 Nathaniel, is he a violent person?

6 A. No, sir, he's not.

7 Q. Is he the type of person who would rape a woman?

8 MR. FINCH: Objection, Your Honor.

9 THE COURT: Please approach.

10 [Whereupon, an off-the-record bench conference is
11 held]

12 Q. [Mr. Grimes] Please tell the jury what type of
13 person Nathaniel is.

14 A. Since I met Nate in '71 -- Nate had some other
15 brothers. Nate used to help me do a lot of things, move
16 cars. We would talk a lot. Matter of fact, me and Nate
17 play on a baseball team together. Nate is a great pitcher.
18 And we spent a lot of time together. Nate served with me
19 under the ministry at the Pilgrim Baptist Church, as well
20 as the Victory Baptist Church. Nate sang in the choir,
21 Nate worked with my trustee ministry, he did a lot of good
22 things around the church. And, of course, he would help me
23 with a lot of things that we do. Nate is a person that
24 I've learned to love as not only as a brother-in-law, I
25 learned to love Nate as a person just who he is. And Nate

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1 know the Bible. We sit in Bible class together in Bible
2 School. Nate know the Bible.

3 So I've known Nate for all these years. I've
4 never known him to do any real terrible things. I know
5 y'all have -- they have what they have on Nate was
6 reckless. But Nate is a person that I know for a fact that
7 I can still say this for a fact, that Nate would not
8 intentionally -- Nate don't have to -- rape anybody. I
9 know --

10 MR. FINCH: Objection, Your Honor.

11 THE COURT: Overruled.

12 Q. [Mr. Grimes] And you said that he may -- that he
13 hadn't done any terrible things but he might do some other
14 smaller things. What kind of smaller things might he get
15 in trouble for?

16 A. Well, I'm sure they have Nate record. Nate does
17 some small things.

18 I know some -- you know, I help Nate got a job to
19 work. Because I do this for anybody from the church, I
20 help them get jobs, get employed. Sometime when the job
21 end, they do some small things.

22 So the only thing I've known, Nate got in some
23 small problem with selling some things and things of that.
24 And, you know, nothing terribly bad but just misdemeanor
25 things that he got into. And I know he did. I know he

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1 did. And we talk about those things. I talk about those
2 things with Nate all the time.

3 Matter of fact, Nate stay with me. I let Nate
4 -- I let Nate come and live in my house and I treat him as
5 a brother. And when I say he's more than a brother-in-law
6 to me, he's like my brother. And I only had one brother.
7 And I treat him like that.

8 MR. GRIMES: All right. Thank you. Please
9 answer any questions Mr. Finch may have for you.

10 THE COURT: You may proceed.

11 MR. FINCH: Your Honor, may we approach?

12 THE COURT: You may.

13 [Whereupon, an off-the-record bench conference is
14 held]

15 THE COURT: Mr. Foreman, ladies and gentlemen, I
16 have a brief matter of law to take up with the
17 attorneys.

18 During this break, please do not discuss the case
19 and please leave your notepads in your seats. We
20 appreciate your patience.

21 [Whereupon, the jury exits the courtroom at 11:39
22 a.m.]

23 THE COURT: What is it that you'll be seeking to
24 ask him, Mr. Finch, and what is it that you contend
25 that the door has been opened to?

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1 THE COURT: You may be seated.

2 Ladies and gentlemen, we appreciate your
3 patience. We now are going to resume with the cross-
4 examination of the witness.

5 Mr. Finch, you may proceed.

6 MR. FINCH: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MR. FINCH: Good afternoon, Mr. Samuels. Just a
9 few brief questions.

10 CROSS-EXAMINATION

11 BY MR. FINCH:

12 Q. You testified earlier that -- in response to
13 Mr. Grimes' question, that you didn't perceive or
14 understand Mr. Witherspoon to be a violent person; is that
15 correct?

16 A. That's correct.

17 Q. And are you then aware of his conviction for
18 pointing and presenting a firearm?

19 A. No, I don't.

20 Q. And would that change -- would that knowledge
21 change your opinion of him as a violent person?

22 A. No, it wouldn't. No, I wouldn't. I mean, people
23 -- no, it wouldn't. I've known Nate forty-two years. No,
24 it wouldn't.

25 Q. Let's talk about your knowledge of Nate for

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1 forty-two years, because you refer to him as like a
2 brother; correct?

3 A. That's correct.

4 Q. And you have one brother, but you feel like you
5 have a brotherly relationship with the defendant?

6 A. We and my -- Nate and myself and his other
7 brothers, his deceased brothers, all of them, we all got
8 along.

9 Q. And you testified, also, that you and the
10 defendant both know the Bible?

11 A. Pardon me?

12 Q. You and the defendant both know the Bible?

13 A. Well, I'm professor of a school. I should know
14 the Bible.

15 Q. So you're familiar with the concept of being ones
16 brother's keeper; am I correct?

17 A. Yes, I do.

18 Q. Okay. But you're not your brother's keeper, are
19 you?

20 A. Am I? Yes, I am.

21 Q. Are you responsible for all of his acts? Is that
22 what you're telling the Court?

23 A. When I met Nate, I know him as a good brother.
24 And the times spent together, we got along as brothers,
25 even though he my brother-in-law.

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1 Q. But you don't know what goes on inside his head,
2 do you?

3 A. Sir, you know, I mean, Mr. Attorney, I'm not
4 going to have ESP. I don't know what goes in his head. I
5 really don't.

6 Q. And you don't know what he may be capable of at
7 any point in time, do you?

8 A. I spent a lot of time around Nate. When you
9 spend a lot of time around a person, you get to know that
10 person quite well. Quite well. I know Nate quite well.

11 Q. But you don't know him one hundred percent, do
12 you?

13 A. I know him as a man that would do anything for
14 you and I know he's a person that he's got a good heart for
15 people. I know that.

16 Q. If you would please answer the question. You
17 don't know him a hundred percent, do you?

18 A. Know him a hundred percent? What's a hundred
19 percent? What you call a hundred percent?

20 Q. You would know every action that he would do at
21 any point in time and every action that he has done at
22 every point in time.

23 A. Well, I don't spend all my time with Brother
24 Witherspoon. I have twenty-five other churches that I'm
25 pastoring, that I moderate over, so I have a lot of things

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1 I got to do so --

2 Q. I understand that. I'm just asking a yes or no
3 question.

4 A. Yeah.

5 Q. You can't know what he does a hundred percent of
6 the time?

7 A. I can't know what he do because he don't be in my
8 presence all the time. That's for anybody. He don't be in
9 my presence all the time.

10 Q. And you weren't at [REDACTED]
11 [REDACTED] on October 24th, 2011, were you?

12 A. Of course not. I wasn't there.

13 MR. FINCH: Thank you very much.

14 THE COURT: Any redirect of the witness?

15 MR. GRIMES: No, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused? From the State?

18 MR. FINCH: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GRIMES: No, Your Honor.

21 THE COURT: Sir, you are excused.

22 THE WITNESS: Thank you so much.

23 THE COURT: You're welcome, sir.

24 [Whereupon, Mr. Samuels is excused and exits the
25 witness stand]

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1 THE COURT: You may proceed.

2 MR. GRIMES: Your Honor, I think we may have a
3 matter of law on the State's motion.

4 THE COURT: Ladies and gentlemen, again, we
5 appreciate your patience. I have a brief matter of law
6 to take up with the attorneys.

7 During the break, please do not discuss the case.
8 And please leave your notepads in your seat.

9 Your lunch might be arriving shortly. We'll see.
10 We asked that they deliver it at 12:30 so we'll -- if
11 it comes while you're waiting, they'll bring it in to
12 you.

13 If you would go with the bailiffs, please.

14 [Whereupon, the jury exits the courtroom at
15 12:24 p.m.]

16 THE COURT: You may be seated.

17 Who is your next witness?

18 MR. GRIMES: Tammy Stiles.

19 THE COURT: Is that -- and tell me what it is
20 that you --

21 MR. GRIMES: We expect her to testify that
22 Ms. Rosenbaum would trade sex for drugs with
23 Mr. Witherspoon and other men.

24 THE COURT: With the defendant?

25 MR. GRIMES: Yes, ma'am.

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1 the jury room and then we're going to break for lunch.

2 The State may call it's next -- I mean, the
3 defense, I'm sorry, may call it's next witness.

4 MS. PARNELL: Thank you, Your Honor.

5 THE COURT: You need to go ahead and call the
6 witness.

7 [Whereupon, Ms. Stiles is duly sworn by the clerk
8 of court as follows: do you swear or affirm that your
9 testimony be the truth --

10 MS. PARNELL: The defense calls Ms. Tammy Stiles.

11 THE CLERK OF COURT: -- the whole truth and
12 nothing but the truth, so help you God]

13 THE WITNESS: Yes, I do.

14 THE CLERK OF COURT: Be seated.

15 [Whereupon, Ms. Stiles takes the witness stand]

16 THE CLERK OF COURT: Speak into the microphone.

17 State your full name and spell your last name for
18 the record.

19 THE WITNESS: Tammy Stiles. S-T-I-L-E-S.

20 THE COURT: You may proceed.

21 MS. PARNELL: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 MS. PARNELL: Thank you, Ms. Stiles.

24 - - -

25 - - -

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TAMMY STILES,

Having Been First Duly Sworn,

was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. PARNELL:

Q. Can you tell us: how old are you today?

A. I'm forty-four.

Q. And where do you live?

A. I live at [REDACTED].

Q. And in what part of Charleston is that located?

A. It's in the [REDACTED], naval base area.

Q. And approximately how many years have you lived
in North Charleston?

A. Just about all my life.

Q. And to address something obvious here, have you
been arrested for an offense?

A. For a what offense?

Q. Are you currently in jail, Ms. Stiles?

A. Yes, ma'am, I am.

Q. And I don't need details, but were you arrested
for trespassing?

A. Yes, ma'am.

Q. Now, I would like to ask you about some current
and past friends that you had.

First, I would like to ask you if you remember a

MIA PERRON, CVR-CM-M

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1 man named Nathaniel Witherspoon.

2 A. Yes, I do.

3 Q. Is he a current friend of yours?

4 A. Yes. Yes, ma'am.

5 Q. And is he the gentleman sitting over here in the
6 courtroom --

7 A. Yes, he is.

8 Q. -- in the brown suit?

9 A. Yes, he is.

10 Q. And how long have you known Mr. Witherspoon?

11 A. Well over twenty years.

12 Q. How did you meet Mr. Witherspoon?

13 A. He saved my life.

14 Q. Do you know a woman named Sharon Rosenbaum?

15 A. Yes.

16 Q. Okay. Would you describe her as a friend or
17 acquaintance?

18 A. Just an acquaintance.

19 Q. And how many years have you known Ms. Rosenbaum?

20 A. Five, six years at the longest.

21 Q. And I don't want you to point, but do you see her
22 in this courtroom today?

23 A. Yes, I do.

24 Q. Have you ever been to an apartment of hers that's
25 near Gas Light Square?

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1 A. Yes, I have.

2 Q. Can you describe for us generally where that
3 apartment is located?

4 A. On Rivers Avenue there is an Alex Coin Laundry,
5 used to be Alex's Restaurant. If you go behind there,
6 you'll come to a stop sign. You make a right and then you
7 make an immediate left. It's a two-story apartment
8 building. Behind the two-story apartment building sat two
9 trailers and then a -- like a carport, but it was two
10 apartments, a flat apartment building. And if you walked
11 up in it, in the direction I'm sitting her apartment was on
12 the left.

13 Q. Would that apartment be a one-story building or a
14 two-story building?

15 A. One story.

16 Q. Have you been to that apartment in the past five
17 years?

18 A. Yes.

19 Q. About how often would you visit that apartment?

20 A. Two or three times a week.

21 Q. Would Ms. Rosenbaum be in the apartment when you
22 were there?

23 A. Yes, ma'am.

24 Q. Were there also other people present?

25 A. Yes, ma'am.

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1 Q. Did you ever see Mr. Witherspoon in that
2 apartment?

3 A. Just about every time I went there.

4 Q. Who would open the door for you when you went to
5 that apartment?

6 A. Nathaniel would.

7 Q. I'm sorry. Can you repeat that?

8 A. Mr. Witherspoon would open the door, if they
9 weren't out on the patio waiting.

10 Q. And getting back to Ms. Rosenbaum and Mr.
11 Witherspoon, can you describe briefly, to your knowledge,
12 what was the kind of relationship between Ms. Rosenbaum and
13 Mr. Witherspoon?

14 A. In my opinion, I thought they were a couple. I
15 didn't know. But then after having conversations with her,
16 it was just like --

17 Q. Were they having a sexual relationship?

18 A. Yeah, with favors for one to the other.

19 Q. And do you have -- have you had any conversations
20 with Ms. Rosenbaum about the relationship between her and
21 Mr. Witherspoon?

22 A. That's how I knew that they were having sexual
23 contact with each other.

24 Q. So in those conversations, she has told you that
25 she's had sex with Mr. Witherspoon?

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1 A. Yeah. That's what us women do when we're sitting
2 around --

3 Q. To your knowledge, Ms. Rosenbaum does know Mr.
4 Witherspoon?

5 A. Yes, she does.

6 Q. And you are also are familiar with Ms. Rosenbaum?

7 A. Yes.

8 MS. PARNELL: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 [Whereupon, Ms. Parnell and Mr. Grimes confer]

11 MS. PARNELL: That's all the questions I have for
12 this witness. Thank you.

13 THE COURT: Any questions for -- I'm sorry. Any
14 questions for the witness?

15 MR. FINCH: Yes, Your Honor.

16 THE COURT: You may proceed.

17 MR. FINCH: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. FINCH: Good afternoon, Ms. Stiles.

21 CROSS-EXAMINATION

22 BY MR. FINCH:

23 Q. Nathaniel Witherspoon saved your life. Is that
24 your testimony?

25 A. Yes, he did.

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1 Q. And so you owe a great debt to that man?

2 A. I don't owe him nothing.

3 Q. You don't owe him your life?

4 A. I don't own him anything. He saved my life out
5 of gratitude of his own heart.

6 Q. But you feel --

7 A. I didn't --

8 Q. -- you feel some responsibility --

9 A. I don't have no responsibility to what's going on
10 here today. I just feel like it's right for me to stand up
11 and tell what I know. No more than that.

12 Q. So you want to do the right thing by righting a
13 wrong? Is that why you're here?

14 A. Excuse me?

15 Q. You would like to right a wrong? Is that the
16 reason you're here?

17 A. I would do what?

18 Q. You would like to right or correct a wrong? Is
19 that why you're here?

20 A. I don't understand what you're saying.

21 MR. FINCH: I'll withdraw the question.

22 A. I'm not trying to correct anything. I'm just
23 telling the truth.

24 Q. [Mr. Finch] Let me ask you this. How long have
25 you known that Nathaniel Witherspoon was incarcerated with

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1 this charge?

2 A. I just found out just the other day how long he's
3 been in here for this charge.

4 Q. And have you been out and about in North
5 Charleston for the last eighteen months, two years, or have
6 you been incarcerated?

7 A. I've been out and about.

8 Q. You used to stop by -- by your testimony, you
9 stopped by every couple of weeks?

10 A. No. I stopped by --

11 Q. I mean, every couple of days?

12 A. Two or three times a day. But after the dope
13 dealer, who I used to go there to see on -- who I
14 originally needed to go there to see died, I just stopped
15 going.

16 Q. So you stopped going -- he died when? In 2005?
17 2001? When did he die?

18 A. He's only been dead about three years now.

19 Q. Three years.

20 So you stopped going to that house three years
21 ago?

22 A. Yeah.

23 Q. Okay. And this event took place less than two
24 years ago, October 24th, 2011.

25 A. Uh-huh.

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1 Q. Okay. So you weren't at that house at this time.
2 In fact, you weren't at that house on October 24th, 2011,
3 were you?

4 A. I don't remember dates or anything of that
5 nature. I know that I haven't been back to that house
6 since L died.

7 Q. And that was over three years ago?

8 A. [No response]

9 MR. FINCH: No further questions, Your Honor.

10 THE COURT: Any redirect of the witness?

11 MS. PARNELL: Nothing further, Your Honor.

12 THE COURT: Any exception to the witness being
13 excused? From the State?

14 MR. FINCH: No, Your Honor.

15 THE COURT: From the defense?

16 MR. GRIMES: No, Your Honor.

17 THE COURT: Ma'am, you are excused.

18 [Whereupon, Ms. Stiles is excused and exits the
19 witness stand]

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 we're going to take advantage of this break in
22 testimony to take our lunch recess.

23 During this break, please do not discuss the case
24 among yourselves. You're going to leave your notepads
25 in your seats.

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1 already starting to rain outside. So I just wanted to
2 put you-all at ease to know that I'm monitoring the
3 situation. And it is -- and I've shared with the
4 lawyers it's my intention, if it's going to be a day
5 like it was yesterday, that y'all are going to get
6 ahead of the curve because I'm not going to have y'all
7 sitting in traffic like that again. I think everybody
8 got the weather advisory at the same time yesterday and
9 everybody tried to get out of downtown and everybody
10 that normally takes East Bay Street, Meeting Street,
11 and all that, hoped on Lockwood Boulevard. So I think
12 it was just a -- just pray that we don't have any
13 hurricane warnings any time soon. We'll all be sitting
14 on the interstate like the last time.

15 But I just wanted you-all to know that I'm
16 mindful of the weather and I would rather err on the
17 side of caution and be a little alarmist than to under-
18 react to any potential weather hazards. So I just
19 wanted you-all to know I'm monitoring the situation.

20 We are now going to resume with the defense case.

21 Mr. Grimes, you may proceed when you're ready and
22 call your next witness.

23 MR. GRIMES: We call Derrick Felder.

24 THE COURT: Please swear the witness.

25 THE CLERK OF COURT: Put your left hand on the

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1 Bible and raise your right hand.

2 [Whereupon, Mr. Felder is duly sworn by the clerk
3 of court as follows: do you swear or affirm that your
4 testimony will be the truth, the whole truth, and
5 nothing but the truth, so help you God]

6 THE WITNESS: Yes, sir.

7 THE CLERK OF COURT: Be seated.

8 [Whereupon, Mr. Felder takes the witness stand]

9 THE CLERK OF COURT: Mr. Felder, you need to
10 speak into this mike. You need to be kind of close to
11 it.

12 State your full name and then spell your last
13 name for the record.

14 MR. GRIMES: Would you state your first name?

15 THE WITNESS: Derrick.

16 THE COURT: Sir, if you would state your full
17 name for the record.

18 THE WITNESS: Derrick Felder.

19 THE COURT: And spell your last name, sir,
20 please.

21 THE WITNESS: Derrick Lamont Felder.

22 THE COURT: And spell --

23 THE WITNESS: F-E-L-D-E-R.

24 THE COURT: Thank you, sir.

25 You may proceed.

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1 MR. GRIMES: Good afternoon, Mr. Felder.

2 THE WITNESS: Sir?

3 MR. GRIMES: I said, good afternoon.

4 THE WITNESS: Good afternoon, sir.

5 MR. GRIMES: I appreciate you coming down today.
6 I know it was probably a little inconvenient to have to
7 sit here all day.

8 - - - - -

9 DERRICK FELDER,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. GRIMES:

14 Q. Obviously, you're at the local jail now?

15 A. Yes, sir.

16 Q. And I don't want to ask you anything about the
17 details of your charges. But just for the juries
18 information, you're in jail on a burglary charge?

19 A. Yes, sir.

20 Q. And how old are you?

21 A. Thirty-nine.

22 Q. And where are you from?

23 A. Charleston, South Carolina.

24 Q. And how long have you lived in Charleston?

25 A. All my life.

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1 Q. And I want to ask you a few questions about some
2 of the people involved in this case. Okay?

3 A. [No response]

4 Q. Do you know a Nathaniel Witherspoon?

5 A. Yes, sir.

6 Q. And do you see him in the courtroom today?

7 A. Yes, sir.

8 Q. And where is he at?

9 A. Right there [indicates] to the left.

10 MR. GRIMES: Mr. Witherspoon, will you stand up?

11 [Whereupon, Mr. Witherspoon complies]

12 Q. [Mr. Grimes] Is that who you're referring to?

13 A. Yes, sir.

14 Q. And how long have you known Nathaniel?

15 A. All my life.

16 Q. And when did you first meet him? Do you
17 remember?

18 A. A little boy.

19 Q. Little boy?

20 A. Yeah. Little boy.

21 Q. And are you related to him, or was it just sort
22 of neighbors, or you lived in the same neighborhood?

23 A. Well, he lived like across from me.

24 Q. Okay.

25 A. Yeah.

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1 Q. And how do you describe your relationship with
2 him? Are you --

3 A. You know, like --

4 Q. -- best friends, acquaintances?

5 A. Right. You know, I don't be in his presence like
6 in the street. But, you know, every blue moon we be
7 together, you know.

8 Q. And if you could speak a little bit louder so all
9 of us --

10 A. I said every blue moon we be together, you know,
11 because he work at the phone company, a wireless place, and
12 I usually take my phone in sometime, you know. And, you
13 know, like if I be on the street, you know, I see him.

14 Q. All right. Now, I want to ask you do you know a
15 Sharon Rosenbaum?

16 A. Yes, sir.

17 Q. And do you see her in the courtroom today?

18 A. Right there [indicates].

19 Q. Okay. In the front row?

20 A. Yes, ma'am. Yes, sir.

21 Q. And how long have you known her?

22 A. For about four or five years, something around
23 there.

24 Q. Do you know where she lives at?

25 A. Yes.

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1 Q. Where is that at?

2 A. Behind -- off of Rivers behind the Alex's
3 laundromat.

4 Q. Is that close to where Mr. Witherspoon sells
5 phones at?

6 A. Yeah.

7 Q. Okay. And have you ever been to her house?

8 A. Yes. I done been to her house numerous times.

9 Q. And what would you go there for?

10 A. Sex. Do drugs.

11 MR. FINCH: Objection, Your Honor.

12 THE COURT: Please approach.

13 [Whereupon, an off-the-record bench conference is
14 held]

15 THE COURT: You may proceed.

16 MR. GRIMES: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 Q. [Mr. Grimes] And while you were at her house,
19 have you ever seen Mr. Witherspoon there?

20 A. I seen Mr. Witherspoon there a few times. A few
21 times I've seen him there.

22 Q. And do you know if he knew Ms. Rosenbaum?

23 A. Yes.

24 Q. Any doubt in your mind about that?

25 A. He do. They do drugs together.

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1 MR. GRIMES: All right. I don't have any other
2 questions for you.

3 THE WITNESS: Yes, sir.

4 MR. GRIMES: Please answer any questions that Mr.
5 Finch may have. Thank you.

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Finch, you may proceed.

8 MR. FINCH: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. FINCH: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 [Whereupon, Mr. Finch reviews documents]

13 CROSS-EXAMINATION

14 BY MR. FINCH:

15 Q. Mr. Felder, I don't want to ask you about your
16 current charges. But you do have some other convictions on
17 your record; is that correct?

18 A. Yes, sir.

19 Q. And, in fact, you have convictions for false
20 information to police on your record?

21 A. Yes, sir.

22 Q. It's actually lying to police?

23 A. Uh-huh.

24 Q. And you weren't at Ms. Rosenbaum's house the
25 night of --

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1 A. Excuse me. What that got to do with this case?

2 THE COURT: Sir, I need you to answer the
3 questions yes or no, and then you may explain your
4 answer.

5 THE WITNESS: Yes, sir [sic].

6 Q. [Mr. Finch] You weren't at Ms. Rosenbaum's house
7 the early-morning hours of October 24th, 2011, were you?

8 A. No, sir.

9 MR. FINCH: I have no further questions, Your
10 Honor.

11 THE COURT: Any redirect?

12 MR. GRIMES: No, Your Honor.

13 THE COURT: Any objection to the witness being
14 excused? From the State?

15 MR. FINCH: No, Your Honor.

16 THE COURT: From the defense?

17 MR. GRIMES: No, Your Honor.

18 THE COURT: Sir, you are excused.

19 [Whereupon, Mr. Felder is excused and exits the
20 witness stand]

21 THE COURT: You may call your next witness.

22 MR. GRIMES: We would call Joseph Mazyck.

23 THE COURT: Is it Joseph or Stanley?

24 MR. GRIMES: Joseph Stanley.

25 THE CLERK OF COURT: This way, sir. Up here.

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1 [Whereupon, Mr. Mazyck comes forward]

2 THE CLERK OF COURT: I'm going to swear you in.
3 Please put your left hand on the Bible and raise your
4 right hand.

5 [Whereupon, Mr. Mazyck is duly sworn by the clerk
6 of court as follows: do you swear or affirm that your
7 testimony will be the truth, the whole truth, and
8 nothing but the truth, so help you God]

9 THE WITNESS: Yes, sir.

10 THE CLERK OF COURT: Be seated.

11 [Whereupon, Mr. Mazyck takes the witness stand]

12 THE CLERK OF COURT: I need you to speak into
13 this mike. You need to get kind of close to it.

14 And say your full name and then spell your last
15 name for the record.

16 THE WITNESS: Joseph Stanly Mazyck.

17 M-A-Z-Y-C-K.

18 THE COURT: You may proceed.

19 MR. GRIMES: Good afternoon, Mr. Mazyck.

20 THE WITNESS: Good afternoon, sir.

21 MR. GRIMES: How are you doing today?

22 THE WITNESS: Fine. You, sir?

23 MR. GRIMES: Not too bad.

24 - - -

25 - - -

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1 JOSEPH STANLEY MAZYCK,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. GRIMES:

6 Q. I'm going to ask you a few questions about your
7 background. Okay?

8 A. Yes, sir.

9 Q. Will you tell the jury how old you are?

10 A. Fifty-four.

11 Q. And where are you from?

12 A. Originally from Holly Hill, South Carolina. Been
13 in Charleston most of my life.

14 Q. And what kind of work do you do?

15 A. I'm a mechanic by art. I build cars for a
16 living.

17 Q. Now, I want to ask you a few questions about some
18 of the people in this case. Okay?

19 A. Yes, sir.

20 Q. Do you know a Nathaniel Witherspoon?

21 A. Yes, I do.

22 Q. And how long have you known him?

23 A. A good twenty-two, twenty-four years.

24 Q. And do you see him in the courtroom today?

25 A. Yes, sir.

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1 Q. And where is he sitting at?

2 A. [Indicates]

3 Q. Is that Mr. Witherspoon there?

4 A. Yes, sir.

5 Q. If you can explain to the jury what kind of
6 relationship you have with Mr. Witherspoon.

7 A. We played ball together. We basically sort of
8 came up together. He's a couple of years older than me but
9 he's -- he got a -- his daughter mother came up in the
10 Park, the same area that I lived in so we became pretty
11 good friends. He was a part of my wedding when I got
12 married, you know. Had the reception for me.

13 Q. And do you know a lady named Sharon Rosenbaum?

14 A. Yes, I do.

15 Q. And do you see her in the courtroom today?

16 A. No.

17 Q. If I direct your attention to the front row over
18 here, would that --

19 A. Oh. Yeah. Yes, I do.

20 Q. And which person is she?

21 A. Huh?

22 Q. Which person is she in that front row?

23 A. Front row, second in the middle, with the white
24 on.

25 Q. And do you know where Ms. Rosenbaum lives at?

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1 A. Yes. At the time, behind Alex off of Rivers
2 Avenue.

3 Q. All right. And can you explain to the jury what
4 kind of relationship you have with Ms. Rosenbaum?

5 A. We were good friends. You know, she was a person
6 that I could come and talk to. You know, she did a little
7 palm-reading thing, you know, that type of nature.

8 Q. Is she pretty good at reading your palms?

9 A. She told me some pretty interesting things at one
10 point in my life.

11 Q. And have you ever seen Nathaniel over at her
12 house?

13 A. Yes. I have sort of seen him over there. I came
14 over there with a friend of ours, Nathaniel Gerald Cooper,
15 and came in, you know, and they was in there, you know.
16 Yes, sir.

17 Q. Do you know if they were -- Ms. Rosenbaum and Mr.
18 Witherspoon were good friends or just acquaintances?

19 A. I figure acquaintances, you know. I -- You know,
20 I just saw him over there maybe twice, maybe. But once for
21 sure.

22 Q. Okay. And how often did you go to her place?

23 A. Well, like every blue moon. Once a couple of
24 weeks or so, you know. A month or so.

25 Q. But do you have any doubt in your mind that she

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1 knew Mr. Witherspoon?

2 A. I would really presume that she does if he was in
3 there, you know what I'm saying, with her at the time we
4 came over there, you know what I'm saying. It wasn't no
5 altercation or none of that. You know, he was inside. Saw
6 him in the house.

7 MR. GRIMES: Well, I don't have any further
8 questions for you. Please answer any questions Mr.
9 Finch may have for you.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Finch, you may proceed.

12 MR. FINCH: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 CROSS-EXAMINATION

15 BY MR. FINCH:

16 Q. Mr. Mazyck --

17 A. Yes, sir.

18 Q. -- you weren't over at Sharon Rosenbaum's house
19 the early-morning hours of December -- or, I'm sorry --
20 October 24th, 2011, were you?

21 A. I couldn't say, sir.

22 Q. Okay. So you don't know -- you have no knowledge
23 of what happened over there at that time?

24 A. No, sir.

25 MR. FINCH: Okay. Thank you. No further

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1 questions, Your Honor.

2 THE COURT: Any redirect of the witness?

3 MR. GRIMES: No, Your Honor.

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

6 MR. FINCH: No, Your Honor.

7 THE COURT: From the defense?

8 MR. GRIMES: No, Your Honor.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: Thank you, ma'am.

11 THE COURT: You're welcome.

12 [Whereupon, Mr. Mazyck is excused and exits the
13 witness stand]

14 THE COURT: The defense may proceed.

15 MR. GRIMES: May we have one moment, Your Honor?

16 THE COURT: Yes.

17 [Whereupon, Mr. Grimes and Ms. Parnell confer]

18 [Whereupon, Mr. Grimes and Mr. Witherspoon
19 confer]

20 MR. GRIMES: Your Honor, at this time the
21 defendant would rest.

22 THE COURT: Okay. We'll reserve motions.

23 Does the State have any rebuttal testimony?

24 MR. FINCH: No, Your Honor.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

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1 MR. FINCH: No, Your Honor.

2 THE COURT: Now, based on my estimate, it's going
3 to take us about --

4 Well, y'all never gave me any requests to charge.
5 Are there any requests to charge?

6 MR. FINCH: From the State, just the standard
7 language from criminal sexual conduct first degree. We
8 believe that the --

9 THE COURT: No. I meant is there anything in
10 writing you want to give me.

11 MR. FINCH: I just had these -- printed these two
12 out.

13 THE COURT: Did you have any requests to charge,
14 Mr. Grimes?

15 MR. GRIMES: I didn't have any printed out --

16 THE COURT: Okay. Then we'll deal with it.

17 [Whereupon, Mr. Finch proffers documents to the
18 Court]

19 MR. FINCH: Up in the right-hand, there's some
20 notations as to which sections the State feels applies
21 for CSC first --

22 THE COURT: I think, conservatively, the charge
23 conference is probably going to take us fifteen
24 minutes, which takes us to about 3:15. Then you-all
25 are going to need a break to refresh yourselves and get

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1 ready for closing arguments. If I take the State at
2 its word, that would then put us at about -- that would
3 take us to 3:40. And then Mr. Grimes, if I take --
4 keep him at his word, it's going to be about 4:00,
5 4:15. Then if we take another break -- by the time we
6 get to --

7 The whole point of why I'm going through this
8 exercise, by the time the jury would actually get it,
9 it would be five o'clock. That means then I would have
10 to order them dinner, and the option is pizza, which
11 for a lot of people now who have issues with -- dietary
12 issues can't eat pizza.

13 So I don't know that we really -- I think we
14 should just go ahead and take our time and have charge
15 conference, have you-all go back over the exhibits, get
16 ready to -- test any technology you need for your
17 closing arguments, and have closing argument and charge
18 in the morning at 9:30.

19 Is there any exception from the State?

20 MR. FINCH: No, Your Honor.

21 THE COURT: From the defense?

22 MR. GRIMES: No, Your Honor.

23 THE COURT: Please bring in the jury for me,
24 Mr. Robinson.

25 [Off the record momentarily]

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1 [Whereupon, the jury enters the courtroom at
2 2:59 p.m.]

3 THE COURT: Ladies and gentlemen, we still have
4 some matters of law that we need to work through that
5 probably will take us, conservatively, another fifteen
6 or twenty minutes. The closing arguments, in and of
7 themselves, will take a little over an hour and the
8 Court's instructions will take probably twenty to
9 thirty minutes. So, really, by the time we did
10 everything, you-all would not start deliberating until
11 probably a little after 5:00 or close to 5:00, and I
12 just don't think that's prudent because you-all have
13 responsibilities and obligations and no one can time
14 how long deliberations will take. So I don't want you-
15 all to feel that you're being held hostage at the
16 courthouse during that process.

17 So we're going to start fresh in the morning at
18 9:45. One of the lawyers has an appointment in the
19 morning and we don't want you-all waiting in the event
20 that that appointment takes longer than we anticipate.
21 So we'll resume in the morning at 9:45.

22 During the break, it is absolutely essential that
23 you have no discussion about this case among yourselves
24 or with anyone else. I know it might seem innocent to
25 have a passing conversation about what you've heard,

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1 but to do that requires you to process the information
2 that you've heard and to draw conclusions based upon it
3 -- and that, by it's nature, is deliberations -- and
4 you can only do that once you've heard all of the
5 arguments and the Court's instructions on the law, and
6 then you're only allowed to do that among your twelve
7 in the jury room. So I would ask that you strictly
8 abide by those instructions.

9 Also, please do out watch, read, or listen to any
10 media accounts. And please don't do any independent
11 research on the internet, as well as posting any
12 comments about your jury service on any social
13 networking sites.

14 In the morning you'll come directly to your jury
15 room, and at that time we'll promptly begin -- I mean,
16 closing arguments and instruction at 9:45.

17 I hope that y'all have a great evening. Be safe.
18 Leave your notepads in your seats for us. We'll see
19 you in the morning at 9:45.

20 [Whereupon, the jury exits the courtroom at
21 3:01 p.m.]

22 - - -

23 - - -

24 - - -

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CHARGE CONFERENCE

1
2 THE COURT: I will give the jury a general
3 instruction regarding their responsibility and my
4 responsibility, how they are to judge witness
5 credibility and believability.

6 Give them a general instruction on expert witness
7 testimony.

8 And I will give them a general instruction
9 regarding the defendant's good character and/or
10 reputation.

11 Now, were there -- and I'm trying to remember.
12 There were some passing references to a statement but
13 portions of his statement were never introduced;
14 correct?

15 MR. FINCH: That's correct, Your Honor.

16 THE COURT: I will give a general instruction,
17 also, on the prior record of a witness, that it is to
18 only be used for credibility purposes as to whether or
19 not the jury believes or doesn't believe the witness'
20 testimony.

21 I'll give a general instruction on direct and
22 circumstantial evidence from State v. Gripon, as well
23 as a general instruction on the charge, the arrest, and
24 the indictment not being evidence, as well as on the
25 presumption of innocence.

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1 I'll charge Victor v. Nebraska on reasonable
2 doubt.

3 And I will also give a general instruction
4 regarding the fact that the defendant did not testify.
5 And I think we all know, generally, what that
6 instruction is.

7 I will then instruct on the elements of criminal
8 sexual conduct in the first degree from 16-3-652; I
9 will only instruct the first two subsections of the
10 statute which deal with aggravated force or being
11 submitted to a battery while the victim of a burglary.
12 The remainder of the statute is inapplicable; I will
13 also instruct, pursuant to 16-3-657, that the testimony
14 of a victim need not be corroborated; as well as 16-3-
15 651, which defines a victim to mean the person alleging
16 to have been subjected to CSC.

17 And I assume that the defense is resting on the
18 defense of consent, so I have included that in my
19 instruction.

20 I will then instruct the elements of burglary in
21 the first degree from 16-11-311, which would include
22 subsection 1, when entering, while in the dwelling, or
23 when fleeing. Well, actually, let me think here.
24 Actually, the subsections of that statute that would be
25 applicable would be when entering while in the dwelling

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1 or when fleeing. The defendant or an accomplice caused
2 physical injury to anyone not participating in the
3 crime when entering, while in the dwelling, or when
4 fleeing. The defendant or an accomplice used or
5 threatened to use a dangerous object. And subsection
6 6, which is the nighttime element.

7 I will then instruct on multiple indictments,
8 which is that the defendant can be -- that each
9 indictment is separate, that they are to make a
10 decision on each indictment uninfluenced, and that they
11 are to consider the elements of each charge and
12 determine if the State has established the elements of
13 each charge beyond a reasonable doubt and that they
14 will have to write a separate verdict on each offense.

15 I will then give them some general instructions
16 about being fair and impartial, and then instruct on
17 the form of the verdict.

18 Are there any exceptions to the charge as
19 proposed? From the State?

20 MR. FINCH: The State would object to the
21 inclusion of the defense of consent because there's
22 been no evidence that there was a consensual encounter
23 on the night that was alleged, 10/24/2011. All of the
24 allegations or the assertions of any consensual
25 relationship were, at best, remote to this event.

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1 THE COURT: Would the defense like to respond?

2 MR. GRIMES: We were a little bit concerned about
3 the consent --

4 THE COURT: I just threw it in there because of
5 the way you postured your case, but I really don't
6 think there's any evidence of consent.

7 MR. GRIMES: We're not saying there was any
8 consent on that day. And that was to be my concern, is
9 there --

10 THE COURT: Well, there were two -- the only
11 reason you were allowed to offer the other evidence was
12 impeachment of Ms. Rosenbaum on her statement that she
13 did not know Mr. --

14 MR. GRIMES: Witherspoon.

15 THE COURT: -- Witherspoon. But there's no
16 testimony in the record on consent. And I think to
17 establish -- well, you don't have any burden. The
18 State has to disprove consent.

19 But there has to be some evidence that the
20 encounter on that evening was consensual. There's some
21 testimony that there were other times when there may
22 have been consensual contact between them, but there is
23 no evidence in the record at this point that there was
24 a consensual encounter on the date of this alleged
25 incident, which is October 24th, 2011.

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1 So I assume that there's no exception to consent
2 not being instructed?

3 MR. GRIMES: I guess that was my concern.

4 I don't believe -- I was kind of -- going to ask
5 you -- see how the charge is going to be read --

6 THE COURT: I can't hear you.

7 MR. GRIMES: I was -- I wanted to inquire of the
8 Court if we could hear what the consent -- the proposed
9 consent charge was.

10 THE COURT: Well, it would be that you've raised
11 the consent, the defense of consent. But you really
12 haven't raised it. I don't think there's any testimony
13 in the record of consent.

14 MR. GRIMES: We're not saying this was -- on
15 October the 24th there was any --

16 THE COURT: I think you would have to, for that
17 instruction to be applicable, because consent means
18 that on this particular date the sex was consensual.

19 MR. GRIMES: Then we wouldn't want a consent
20 charge.

21 THE COURT: Okay.

22 All right. Any other exceptions from the State?

23 MR. FINCH: No, Your Honor.

24 THE COURT: Any exceptions to the charge as
25 proposed? From the defense?

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1 MR. GRIMES: I'm not sure -- I have I know one
2 exception and a couple of brief clarifications.

3 THE COURT: Sure.

4 I need to make sure that all the jurors are
5 gone.

6 THE BAILIFF: They're gone.

7 THE COURT: All right. Yeah.

8 MR. GRIMES: On your credibility charge, does
9 that include -- you're talking about impeachment and
10 witnesses being contradicted by others?

11 THE COURT: I thought about including the prior
12 inconsistent statement instruction, which is -- it's
13 the boilerplate credibility instruction.

14 MR. GRIMES: We wanted --

15 THE COURT: I don't know that it's necessary
16 because, really, my general instructions talk about
17 that. It talks about people basically looking at the
18 totality of a witness' testimony, whether it was
19 consistent or inconsistent, you know, how did they know
20 to come -- how did they come to know the facts that
21 they testified to, is there any bias or prejudice, that
22 you can disregard some of it, believe all of it,
23 believe none of it. So I don't -- I'll think about it
24 over the evening.

25 MR. GRIMES: Well, one reason we were concerned,

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1 we added sort of the example of using drugs. And she
2 told the SANE nurse no, she didn't, and she had.

3 THE COURT: I don't think she ever told the SANE
4 nurse she didn't have drugs. She told the SANE nurse
5 she didn't have alcohol.

6 And in most people's minds, for whatever reason,
7 societally, we don't put alcohol in the category of
8 drugs. But it's an intoxicant. It's a suppressant to
9 your system, a depressant to your system. So it really
10 is a drug, even though we don't -- because it's legal,
11 we don't classify it that way.

12 She told the SANE nurse she had drugs. She
13 didn't tell the SANE nurse she had alcohol, as I recall
14 the testimony. But I might be wrong.

15 MR. GRIMES: Well, remember I asked -- I asked
16 her about the toxicology screen and I said but the
17 reason you didn't do one is because she told you she
18 didn't have any -- she didn't use any drugs.

19 THE COURT: I would have to go back and look at
20 it.

21 MR. FINCH: I recall the testimony on that was
22 because they don't do -- unless they consider it a
23 drug-facilitated sexual assault. It's different than
24 drugs, recreational drugs, being used.

25 I also recall Ms. Rosenbaum telling Mr. Grimes

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1 that she did not have alcohol --

2 THE COURT: Yeah. That's -- but she told -- she
3 told everybody that she had had -- been getting high.

4 MR. GRIMES: The question, the initial question,
5 I asked was and you told them you didn't use alcohol
6 and drugs --

7 THE COURT: No, that wasn't your question. You
8 said, she told you you [phonetic] didn't use drugs, and
9 you lumped alcohol and drugs together. And then at the
10 next question you clarified it and she said she told
11 her she didn't use alcohol but she did disclose to her
12 that she used drugs. That's what me and my clerk's
13 notes reflect. But I'll rely on the transcript, and
14 I'll go back and listen to it. I'm not going to rely
15 on my recollection or yours. But it stuck out in my
16 mind because I remember thinking most people don't
17 consider alcohol a drug.

18 And the way you couched the question was really a
19 little misleading because you should have asked whether
20 she disclosed alcohol and whether she disclosed --
21 should have broken drugs down into opiates or whatever
22 else, THC, or whatever else she may have disclosed or
23 that she had had -- or didn't disclose she had.

24 MR. GRIMES: Well, I apologize if I wasn't clear.

25 But I know I tried to, you know, refresh her

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1 recollection and -- that way and so that's why I asked
2 the SANE nurse. And but the defense said it was --
3 that's what she testified to on direct, but on --

4 THE COURT: You're saying that the victim in this
5 case denied that she had told folks she had used drugs
6 that night?

7 MR. GRIMES: Yes, ma'am. Initially. She didn't
8 tell the SANE nurse that.

9 THE COURT: That's not the SANE nurse's
10 testimony. But I'll go back and look at it. But
11 that's not my or my law clerk's recollection of the
12 testimony.

13 But I remember you distinctly asked her the
14 question, and I'm paraphrasing it, did she disclose to
15 you she had drugs on that evening. And then you asked
16 about alcohol. And then you broke it down into
17 categories. But your original question presumed that
18 alcohol was included in the drug category. She denied
19 telling this individual that she had had alcohol, but
20 she did not deny that she had told her that she -- and
21 just sort of mixing both people's testimony. Ms.
22 Rosenbaum said she told them all she had had drugs that
23 night. Or maybe not. I don't know. I'll have to go
24 back and listen to it. I don't want to rely on my
25 memory.

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1 MR. GRIMES: And I guess my notes could be wrong,
2 too. But that was my understanding.

3 As to prior record -- I noticed he didn't say
4 anything about his prior of the defendant, and it came
5 out that he did have the conviction for a pointing and
6 presenting. We would like a charge on that, that they
7 can't use that against him.

8 THE COURT: Well, I would only instruct that if
9 it was a credibility issue for him. But it's not a
10 credibility -- it was a credibility -- it wasn't
11 offered for its truth, it was offered to impeach the
12 knowledge of the witness, who said he had good
13 character.

14 MR. GRIMES: Well, I think there should be some
15 type of limiting instruction that they can't use that
16 to --

17 THE COURT: The only limiting instruction --

18 MR. GRIMES: -- say he's a bad person.

19 THE COURT: -- that you use it on is his
20 credibility. He didn't testify.

21 MR. GRIMES: Well, I --

22 THE COURT: The only limiting instructions is
23 either a Lyle instruction, which it's not a prior bad
24 act or a conviction that goes to any of those Lyle
25 factors, or you can only use it for purposes of

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1 considering his credibility and whether or not to
2 believe him, but for no other purpose. He didn't
3 testify, so there's nothing to believe or not to
4 believe about him.

5 MR. GRIMES: Well, I think that -- we would ask
6 for some type of charge like if you heard the defendant
7 has a prior conviction for pointing and presenting or
8 has a prior conviction, you cannot use that as evidence
9 of guilt.

10 THE COURT: I might consider something like that.
11 I'll think about -- I'll think about how I can craft
12 that.

13 MR. GRIMES: We believe that -- I think the
14 charge under 657, the victim's testimony does not need
15 to be corroborated, is a comment upon the facts.

16 THE COURT: You find me some case law that says
17 that and I'll be glad to consider it.

18 But the case law, the legislature has decided in
19 its province that a CSC victim's testimony does not
20 have to be corroborated. And that is the law --

21 MR. GRIMES: -- authority --

22 THE COURT: -- and that is the statute -- --

23 MR. GRIMES: My authority -- I understand.

24 THE COURT: Yeah.

25 MR. GRIMES: It's kind of proffer-wise and you --

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1 kind of helps -- and we're trying to preserve that.

2 THE COURT: Well, knock yourself out. I'm a
3 strict constructionist. I take my marching orders from
4 what the law says. I don't make the law, I just
5 interpret it.

6 MR. GRIMES: And I think it's argued -- it's sort
7 of under Bowen, that the gun -- it's kind of
8 interesting to me, you can draw an inference of malice
9 from the use of a gun in and of itself.

10 THE COURT: I don't think anybody has ever made
11 -- filed any -- and many cases have come before the
12 Court about invalidating that statute.

13 MR. GRIMES: Well, I think -- the only authority
14 I have is Justice Pleicones' dissent, so maybe one day
15 it'll --

16 THE COURT: A dissent about this statute?

17 MR. GRIMES: Yes, ma'am.

18 THE COURT: In what case?

19 MR. GRIMES: I don't remember the name of the
20 case. I do remember he dissented.

21 THE COURT: About this particular statute? About
22 the --

23 MR. GRIMES: Yeah. I think --

24 THE COURT: -- the victim's testimony not -- that
25 would have stuck out in my mind.

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1 MR. GRIMES: I believe -- I can try to find it
2 tonight if you --

3 THE COURT: I would like you to because I -- that
4 would have stuck out for me. I might not have
5 remembered the case name but I would have kind of
6 remembered -- yeah. Not that it's not precedential in
7 any way, but statutes --

8 MR. GRIMES: Well, maybe one day it'll get --

9 THE COURT: -- the statute stands and it's -- the
10 legislature said the testimony does not have to be
11 corroborated. But that doesn't matter. You can still
12 argue that -- there are other -- I would assume that
13 your argument isn't going to rest on that in closing.

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: Well, really, frankly, it's
16 corroborated by DNA. It's corroborated by other
17 things. You can argue -- I don't think you can argue
18 that it's uncorroborated. I think you can argue that
19 certain aspects of it are uncorroborated, that being
20 force or whatever else. Well, you -- I don't know that
21 it's a corroboration or a credibility argument. I
22 think it's more of a credibility argument where you're
23 arguing that the jury should not believe her. That's
24 not the same as corroboration. Apples and oranges.

25 MR. GRIMES: Well, if it's not an issue, then it

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1 should be charged.

2 THE COURT: It's not an issue, it's a matter of
3 black-letter precedent. It is a statute that has been
4 passed by the legislature. It is the current and
5 prevailing law. It has not been changed, to my
6 knowledge.

7 MR. GRIMES: You did say knock myself out. I
8 was --

9 THE COURT: Yeah, knock yourself out. That meant
10 in your argument. That didn't mean in straining the
11 credulity of this Court. You need to argue things in
12 good faith.

13 MR. GRIMES: And we would also request a lesser
14 included charge of assault and battery first degree for
15 the CSC charge. I don't believe under the Blockburger
16 [phonetic] test it would be -- I know according to --

17 THE COURT: I think there are several things that
18 are lesser includedd. If you'll give me one second,
19 I'll tell you exactly what the lesser includeds of CSC
20 first are, if I can find my chart right quickly.

21 [Whereupon, the Court reviews documents]

22 THE COURT: The lesser included, the CSC in the
23 first degree or CSC second. CSC third is not. CSC
24 with a minor second is not. ABHAN is, and assault of a
25 high and aggravated nature is, as well as attempt of

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1 criminal sexual conduct in the first degree, as well as
2 simple assault and battery. But I think in order to
3 justify an instruction of a lesser included on simple
4 assault and battery, there would be no evidence -- I
5 think you strain it a little bit when there's
6 biologicals left behind when you say that -- because a
7 simple assault, an assault is when I threaten to hit
8 you, a battery is when I follow through and do it. I
9 have to think about that.

10 What's the State's position on that request?

11 MR. FINCH: The State's position is that -- and
12 I'm blank on the case, but there was the case where
13 they separated the ABHAN from the sexual assault. My
14 understanding of the defense here is that this was --
15 the DNA evidence is residual to a consensual encounter
16 days previous. I don't think you can argue, I wasn't
17 there that night, if I -- if you find I was there, I
18 just beat her up. And that may be assault and battery
19 first. It doesn't really fit with the facts in this
20 case where you can separate --

21 THE COURT: Which, you know -- which, you know,
22 raises a very interesting issue because, you know,
23 we've had OMNIBUS since the last cases. And the case
24 law says simple assault and battery is a lesser
25 included. I don't know that there's been a -- is the

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1 assault and battery first in the OMNIBUS thing -- in
2 the OMNIBUS Statute the same as common-law simple
3 assault and battery?

4 MR. GRIMES: No, ma'am.

5 MR. FINCH: No, it's not. It's --

6 THE COURT: That's an interesting question that I
7 didn't think about until just now.

8 MR. GRIMES: Our position was assault and battery
9 first degree is similar to the old ABHAN.

10 THE COURT: Say that one more time.

11 MR. GRIMES: Is similar to the old ABHAN charge
12 that was --

13 THE COURT: The assault and battery first is?

14 MR. GRIMES: Yes, ma'am.

15 MR. FINCH: I know that OMNIBUS, they list in the
16 assault and battery specifically what they are lesser
17 includeds to. I do not recall that A&B first is a
18 lesser included of CSC first, however. They do trickle
19 down from ABHAN to A&B first and second --

20 THE COURT: So are you -- I guess I need to be
21 clear exactly what it is you're asking, Mr. Grimes.
22 Are you asking that the Court instruct assault and
23 battery of a high and aggravated nature as a lesser
24 included of CSC first?

25 MR. GRIMES: No, ma'am.

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1 THE COURT: You're asking me to charge the new
2 statute?

3 MR. GRIMES: Yes, ma'am.

4 THE COURT: I would have to look at the elements
5 test to see if that would -- if it would apply to the
6 elements.

7 MR. GRIMES: I think I would probably acknowledge
8 that under the elements test, Blockburger probably
9 would not apply.

10 THE COURT: Then I think that's what we're bound
11 by when a statute articulates elements. And it's not
12 like common law where they sort of -- and that's really
13 one of the ideas behind OMNIBUS is to codify things and
14 make things that were in the common law very unclear
15 more clear. You know, we have a lot of common law
16 offenses that they sort of cobbled together to make
17 them fit as lesser included offenses but, truly, under
18 the Blockburger test, they're not. And so with the new
19 statute, I would have to look at the elements and the
20 language of that statute to see if truly it's a lesser
21 included of CSC first, especially where it hasn't been
22 tested by case law.

23 MR. GRIMES: Thank you, Your Honor.

24 I guess also to clarify our position, that if the
25 new ABHAN would be considered a lesser included of CSC

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1 first, then because assault and battery in the first
2 degree is a lesser included of the new ABHAN, then it
3 would follow that would be a lesser included charge.

4 THE COURT: I don't know. I would have to look
5 at the elements test. I don't think I could just sort
6 of do that. I think I have to look at the elements.
7 And, you know, under the elements test the greater
8 offense has to include all of the elements of the
9 lesser offense.

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: So I would have to -- I would have to
12 look at that and see exactly -- I would hate to have to
13 do a flowchart. Boy, you're putting me to a lot of
14 work today. I'm just kidding. I need to do it anyway
15 probably to update my chart.

16 OMNIBUS is so long that every time I read it, I
17 read it when I need it and then I forget. It's just
18 too much to try to remember all at -- I don't know
19 anybody that physically is capable of remembering
20 everything that's in that statute. If they do, they
21 get my applause.

22 [Whereupon, the Court reviews documents]

23 THE COURT: Because it's my recollection that
24 OMNIBUS specifies what are the lesser included
25 offenses, don't they, or most of them?

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1 MR. GRIMES: I think it does for the assault
2 charges, ABHAN --

3 THE COURT: I think it might --

4 MR. GRIMES: -- and ABHAN -- assault and battery
5 first, assault and battery second.

6 THE COURT: Yeah. I can't pretend I remember, so
7 we're going to look and see right quick.

8 Other than dealing with this CSC issue, are there
9 any other exceptions to the charge as proposed, from
10 the defense, while me and my clerk are looking up these
11 statutes?

12 MR. GRIMES: No, ma'am.

13 THE COURT: Okay. Give me one moment.

14 [Whereupon, the Court reviews documents]

15 THE COURT: And you know what else I neglected to
16 mention? And I meant to include the -- identity will
17 be included in the instruction, as well, which is that
18 the State must prove identity beyond a reasonable
19 doubt, a general instruction on identity as the
20 defendant as the person who committed the offense.

21 MR. GRIMES: Thank you, Your Honor.

22 THE COURT: And I had that in here but I just
23 forgot to mention it.

24 [Whereupon, the Court reviews documents]

25 THE COURT: Under the statute, assault and

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1 battery of a high and aggravated nature -- well,
2 actually, let's see here. No. I'm looking at -- I'm
3 sorry. Strike that, because that refers to something
4 else.

5 (C)(1): a person commits the offense -- and I'm
6 referring to 16-3-600, which is article 7, assault and
7 CSC, assault and battery, which is (c)(1): a person
8 commits the offense of assault and battery in the first
9 degree if the person unlawfully injures another person
10 and the act involves non-consensual touching of the
11 private parts of a person, either above -- either under
12 or above clothing, with lewd and lascivious intent --

13 [Whereupon, the Court reviews documents]

14 THE COURT: -- or occurred during the commission
15 of a robbery, burglary, kidnaping, or theft, or offers
16 or attempts to injure another person with the present
17 ability to do so and the act is accomplished by means
18 likely to produce death or great bodily injury or
19 occurred during the commission of a robbery, burglary,
20 kidnaping or theft.

21 I think we all would agree that this includes
22 elements that are not elements of the greater offense;
23 correct?

24 MR. FINCH: Correct, Your Honor.

25 MR. GRIMES: I take the position that --

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1 THE COURT: Well, do you want me to take them one
2 at a time?

3 MR. GRIMES: -- it is simple --

4 THE COURT: A person commits the offense of
5 assault and battery in the first degree if a person
6 unlawfully injures another person. That's one of the
7 elements.

8 Involves non-consensual touching of the private
9 parts of a person, either under or above clothing, with
10 lewd and lascivious intent. That, arguably, could be
11 one of the elements.

12 Or occurred during the commission of a robbery,
13 burglary, kidnaping or theft. Which is they injure a
14 person during this -- during one of these acts, which,
15 arguably, could be considered a part of the greater
16 offense.

17 Or subsection b: offers or attempts to injure
18 another person with the present ability to do so and
19 the act is accomplished by means likely to produce
20 death or great bodily injury. Well, when you go to the
21 top of the statute to those definitions, nothing that
22 happened in this case would produce death. And great
23 bodily injury, as defined by the statute, would not be
24 within this case. Great bodily injury under the
25 statute means bodily injury which causes substantial

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1 risk of death or which causes serious permanent
2 disfigurement or protracted loss of impairment of the
3 function of a bodily member or organ. And I don't
4 think any of the evidence in this case rises to that
5 level.

6 MR. GRIMES: I don't -- for the section (c)(1)(a)
7 -- sub (a)(1) --

8 THE COURT: Well, under the Blockburger test, I
9 don't get to pick and choose which of the elements
10 under the statute meet -- in order for it to be a
11 lesser included, all of the elements of the lessers has
12 to be included in the greater offense. This has
13 elements that are not in the greater offense.

14 MR. GRIMES: I think the problem with this
15 statute is you can commit assault and battery first
16 degree in one of several ways --

17 THE COURT: Uh-huh. But it still doesn't change
18 the Blockburger test.

19 MR. GRIMES: Well, one of those ways you can
20 commit assault and battery first degree falls within
21 the CSC first --

22 THE COURT: It does, arguably so. But the rest
23 of the statute doesn't, and I don't think I can charge
24 one part of the statute and not charge the other.

25 MR. GRIMES: Well, I believe you can. Like for

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1 example, in a burglary case if a person has two or more
2 prior convictions, you don't charge two or more prior
3 convictions --

4 THE COURT: Not unless, factually, they apply.

5 MR. GRIMES: And this is similar in this case.
6 Factually, this stuff doesn't apply except for that one
7 section. And that's why we believe it would be a
8 lesser included.

9 THE COURT: The other concern that I have,
10 factually, is I don't think there's any evidence -- the
11 problem with this case is either the sex was consensual
12 really or it wasn't. There is no evidence in this case
13 that there was not sexual intercourse. His DNA is
14 there.

15 MR. GRIMES: The question is when was the sexual
16 intercourse. Was it that day or was it previous?

17 THE COURT: Yeah. Arguably, it could be up to
18 seventy-two hours.

19 MR. GRIMES: Yes, ma'am.

20 THE COURT: I think a strange credulity. I was
21 sitting here thinking to myself, I don't know any
22 science -- I think it would surprise some scientists to
23 thin that semen could live for seven days. I really
24 do.

25 MR. GRIMES: Well, we have studies that -- well,

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1 it doesn't have to be living. You could find it and --

2 THE COURT: That it would still be there -- I
3 don't know any person that practices any level of
4 hygiene where it would still be present in their body.
5 You would have to almost be, what, laying still,
6 comatose, and have not have done anything to your body
7 for seven days.

8 MR. GRIMES: Well, we have some information.

9 THE COURT: Yeah, well.

10 MR. GRIMES: My suggestion, in this case it could
11 apply.

12 THE COURT: Well, I don't think there's any
13 evidence to support that in this case.

14 I'll have to think about it over the evening.
15 Normally, we would charge assault and battery of a high
16 and aggravated nature as a lesser included of CSC
17 first. And the elements of assault and battery --

18 [Whereupon, the Court reviews documents]

19 THE COURT: Bear with me just one second.

20 [Whereupon, the Court reviews documents]

21 THE COURT: Yeah. Assault and battery of a high
22 and aggravated nature is the unlawful act of violent
23 injury to the person of another accompanied by
24 circumstances of aggravation. And then usually
25 included within the circumstances of aggravation are

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1 use of a deadly weapon, the intent to commit a felony,
2 the infliction of serious bodily injury, a great
3 disparity between the ages or physical conditions of
4 the parties, a difference in the genders of the
5 parties, the taking of indecent liberties or
6 familiarities with a female through the use of force, a
7 purposeful infliction of shame and disgrace and the
8 resistance of lawful authorities.

9 And I don't know how much different that really
10 is in this, except that the statute is more specific
11 about non-consensual touching.

12 Is the State opposed to the instruction of
13 assault and battery first because it feels it's not
14 factually supported by the record or because it takes
15 the position that it is not a lesser included offense?

16 MR. FINCH: Both, Your Honor.

17 THE COURT: And what is your posture? What is
18 your contention that it's not a lesser included
19 offense?

20 MR. FINCH: Well, assault and battery first
21 requires an injury, first and foremost. It starts
22 right off in the statute that that requires an injury,
23 whereas criminal sexual conduct in the first degree
24 does not require an injury.

25 So even just -- even parcing the --

1 THE COURT: Are you saying -- are you saying that
2 a sexual assault isn't an injury? The forcible
3 touching of someone is not an injury?

4 MR. FINCH: I don't think necessarily, unless
5 they're just contemplating a psychic or a psychological
6 injury, an emotional injury. I think --

7 THE COURT: If somebody intrudes in your body,
8 that's an injury, isn't it?

9 MR. FINCH: Well, if that's an injury --

10 THE COURT: I don't think -- I don't think
11 they're talking about -- I don't -- emotionally hurting
12 somebody's feelings, that is never a criminal offense.

13 MR. FINCH: Well, that's --

14 THE COURT: That's barely a civil offense. This
15 says injures another person. I think you can -- I
16 think it contemplates the broad parameters of injury.
17 And when you say there's -- a sexual battery is an
18 injury. That's the non-consensual touching, the
19 forcible entry into somebody's -- any orifice of
20 someone's body.

21 MR. FINCH: Well, the force only has to be so
22 much to be that simple penetration. It doesn't have to
23 be any great force. It doesn't have to bleed, it
24 doesn't have to break the skin, it doesn't have to
25 create any cut to the flesh, it doesn't have to leave a

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1 bruise.

2 THE COURT: But in this case you have injuries to
3 her body.

4 MR. GRIMES: Well, the State would still be
5 required to prove an injury and at that point we would
6 just be relying on the injury that she felt and not --

7 THE COURT: You've got pictures of injuries. So
8 what are you talking about?

9 MR. FINCH: No. I'm saying that the criminal
10 sexual conduct does not require an injury. It's not --
11 in that statute it's just a sexual battery, which is an
12 intrusion. It's not laid out as an injury. Whereas
13 assault and battery first requires an injury. Where we
14 do have the injury for that, it's not factually
15 supported in the record that there was any separation
16 between the injuries and the circumstances of
17 aggravation that produced the CSC first, that being the
18 use of aggravated force and during the commission of a
19 burglary.

20 It's the State's position that this was -- if
21 there was some evidence in the record, if there's any
22 testimony, that there was consensual intercourse
23 directly before, unattached to the assault, which has
24 not been testified to anyone, particularly the victim,
25 who does not have to be corroborated, then that might

1 be applicable. But in this case there's simply nothing
2 in the record that supports that.

3 THE COURT: I think your whole line of
4 questioning of the victim was that she was injured.
5 Otherwise, you wouldn't have shown the pictures.
6 That's evidence of something forcible where she was
7 injured. She had bruises, she had contusions to her
8 neck, and you wouldn't have taken pictures of them if
9 you didn't want to show she was injured and that there
10 was some forcible nature of what she claims happened to
11 her.

12 MR. FINCH: I understand that. And that goes to
13 the aggravated nature of the CSC first.

14 However, the statutory language doesn't
15 contemplate an injury as necessary -- as necessary for
16 a CSC first, thereby adding the element not making AB
17 first a lesser included. It has an element that does
18 not exist in the statutory language of the CSC first.
19 Well, it certainly could, an injury could, be proof of
20 this aggravated circumstances. It's not necessary.

21 And I think that if -- as the OMNIBUS -- they --
22 the legislature was very specific about laying out
23 what's a lesser included or not. A&B first is a lesser
24 included of ABHAN. A&B second is a lesser included of
25 A&B first. And while not all of those elements are

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1 tied together statutorily, they make it lesser
2 included. And they have every opportunity to make A&B
3 first a lesser included of CSC first. At that time,
4 they could have followed the prior case law that tied
5 the ABHAN to A&B first -- I'm sorry -- CSC first.

6 THE COURT: Well, it's just strange to me that
7 they have them listed under the same code. It says
8 assault and criminal sexual conduct, which indicates
9 some statutory framework, or they wouldn't have put
10 them all in the same statutory section.

11 MR. FINCH: I agree. At that point in time, they
12 could have tied the two together very neatly with -- by
13 saying A&B first is a lesser included of these things
14 and made it statutory. It's not in the statute. It's
15 our position that it is not a lesser included.

16 But, actually, the idea that this assault
17 happened separate of the sexual assault flies in the
18 face of the defense's at least proffered defense or
19 argument.

20 THE COURT: Yeah. I have to see if it meets the
21 elements of the test because I -- would the State be
22 adverse to a lesser included of what we normally
23 instruct, which is assault and battery of a high and
24 aggravated nature?

25 MR. FINCH: I think that has been abandoned by --

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1 unless it's a statutory assault and battery of a high
2 and aggravated nature --

3 THE COURT: Yeah, it's abandoned.

4 MR. FINCH: -- I think it's been abandoned since
5 OMNIBUS.

6 THE COURT: Yeah.

7 MR. FINCH: So, yes.

8 THE COURT: All right. Is there anything further
9 before we adjourn for the evening? From the State?

10 MR. FINCH: No, Your Honor.

11 THE COURT: From the defense?

12 MR. GRIMES: No, Your Honor.

13 THE COURT: Okay. I need to think about these
14 things. We'll resume in the morning at 9:45.

15 MR. FINCH: Thank you very much, Your Honor.

16 THE COURT: You're welcome.

17 MR. FINCH: Would you like -- would you like us
18 to look over the exhibits again?

19 THE COURT: Yeah. Could y'all make sure all of
20 the evidence is in place so we don't have to spend time
21 doing that in the morning?

22 MR. FINCH: Yes, ma'am.

23 [Whereupon, Court's Exhibit Number 2 is marked by
24 the court reporter]

25 [JURY TRIAL ADJOURNS AT 4:00 P.M.]

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PROCEEDINGS

1
2 THE COURT: Y'all looked all through all the
3 evidence; correct?

4 MR. FINCH: That's correct, Your Honor.

5 MR. GRIMES: Yes, ma'am.

6 THE COURT: And it's all in place; correct?

7 MR. GRIMES: Yes, ma'am.

8 MR. FINCH: Yes, ma'am.

9 THE COURT: Mia, that's accurate?

10 THE COURT REPORTER: Yes, ma'am.

11 THE COURT: Thank you, ma'am.

12 Based on the defense's request, I have crafted
13 an instruction, a limiting instruction, dealing with
14 the mention of the pointing and presenting that will
15 simply state: you have heard evidence that the
16 defendant was convicted of a crime other than the one
17 for which he is on trial. You must not consider the
18 defendant's prior record as any evidence of the
19 defendant's guilt of the charge we are trying today.

20 Is there any exception to that instruction?

21 From the State?

22 MR. FINCH: No, Your Honor.

23 THE COURT: From the defense?

24 MR. GRIMES: No, Your Honor.

25 [Whereupon, the Court reviews documents]

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1 THE COURT: The defense also requested that the
2 Court instruct assault and battery first, which is 16-
3 3-600, as a lesser included offense of criminal sexual
4 conduct in the first degree, code section 16-3-652.
5 Over the evening, I studied the matter and I concluded
6 that assault and battery first degree is not a lesser
7 included offense of criminal sexual conduct in the
8 first degree. While assault and battery of a high and
9 aggravated nature, as well as assault of a high and
10 aggravated nature, and simple assault, were lesser
11 included offenses pursuant to case law prior to the
12 adoption of the OMNIBUS Crime Act, which was in June
13 of 2010, I believe -- yeah. June 2nd, 2010. Prior to
14 that enactment, there were certain common-law offenses
15 that case law provided were lesser included offenses
16 of criminal sexual conduct in the first degree. With
17 the passage of OMNIBUS, the Court has to rely, then,
18 on the statutory codification of those offenses, that
19 being assault and battery of the first degree, and the
20 elements of those offenses.

21 In considering whether an offense is a lesser
22 included offense, the Court must look at the test for
23 determining whether a charge is a lesser included
24 offense. The Court must determine if the proposed
25 charge is legally a lesser included offense and if an

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1 indictment will sustain a conviction for a lesser
2 included offense if the lesser offense is included
3 within the greater-charged offense. The test for
4 determining when a crime is a lesser included offense
5 of the crime charged is whether the greater offense
6 includes all of the elements of the lesser offense.
7 If the lesser offense includes an element not included
8 in the greater offense, then the lesser offense is not
9 included in the greater offense.

10 Looking at the elements test, which is the test
11 the Court is required to apply, there actually are no
12 elements of the lessor offense included in the greater
13 offense, that being 16-3-600 -- 16-3-652 does not
14 include any of the elements in 16-3-600. There is a
15 reference to a non-consensual touching, which is
16 (a)(1); however, that language mimics a lewd act, not
17 criminal sexual conduct in the first degree. The only
18 element that they have in common is: occurred during
19 the commission of a robbery, burglary, kidnaping or
20 theft. Other than that, 16-3-652 is devoid of any of
21 the elements of 16-3-600.

22 Based on the elements test, which is what the
23 Court is bound to apply, it does not meet that test
24 and therefore is not a lesser included offense.

25 If the parties could approach, please, to look

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1 at the verdict forms.

2 [Whereupon, counsel review documents]

3 THE COURT: Are there any exceptions to the form
4 of the verdict? From the State?

5 MR. FINCH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GRIMES: No, Your Honor.

8 THE COURT: Thank you, sirs and ma'ams.

9 Is the State and defense ready for closing
10 argument?

11 MR. FINCH: We are, Your Honor. And,
12 additionally, I don't know if I answered it fully for
13 the Court yesterday but --

14 THE COURT: I'm going to get to that.

15 Is the defense ready to proceed with closing
16 argument?

17 MR. GRIMES: Yes, Your Honor.

18 THE COURT: Is the State going to open and
19 close, or waive opening?

20 MR. FINCH: Open and close, Your Honor.

21 THE COURT: Okay.

22 MR. FINCH: Ms. Riddle will be handing the
23 opening.

24 THE COURT: Okay. Yes, sir?

25 MR. GRIMES: If we could just -- one thing we

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1 10:15 a.m.]

2 THE COURT: You may be seated.

3 I also meant to state for the record that I do
4 not believe, based on the facts presented in this
5 case, that a lesser included offense of assault and
6 battery in the first degree is factually supported.

7 But I also need to powder my nose -- and I
8 apologize, and I appreciate y'all accommodating me --
9 because I know we're going to be here for a minute.

10 [Whereupon, a recess is taken from 10:15 a.m. to
11 10:21 a.m.]

12 THE COURT: It seems that six members of the
13 jury needed to do the same thing, so that actually was
14 fortuitist.

15 [Off the record momentarily]

16 MR. GRIMES: Your Honor?

17 THE COURT: Yes, sir?

18 MR. GRIMES: May I -- just one more additional
19 matter for the record if --

20 THE COURT: I don't -- I'm not entertaining any
21 further argument. I heard argument extensively
22 yesterday.

23 MR. GRIMES: I understand that.

24 THE COURT: Yeah. If it's something new I'll be
25 glad to entertain it, but if it's rehashing what we've

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1 already discussed --

2 MR. GRIMES: It's not rehashing. The case that
3 I referred to yesterday that was Justice Pleicones'
4 dissent.

5 THE COURT: Yeah. What was that?

6 MR. GRIMES: State v. Rayfield.

7 THE COURT: Oh. I remember that.

8 MR. GRIMES: I have a copy of that if the
9 Court --

10 THE COURT: No. I can look it up. That does
11 stick out to me, now that you said that name.

12 [Whereupon, the jury enters the courtroom at
13 10:22 a.m.]

14 THE BAILIFF: All jurors present, Your Honor.

15 THE COURT: You may be seated.

16 Ladies and gentlemen, both the State and the
17 defense have rested their case. The next part of the
18 process is closing arguments and the Court's
19 instructions. You will hear from the State, followed
20 by the defense, and then you will again hear closing
21 argument from the State. The party with the burden of
22 proof under our rules, whether civil or criminal,
23 always gets the last say so they get to do what we
24 call open and close in argue after which, again, you
25 will hear the Court's instructions.

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1 I would ask that you give the attorneys your
2 undivided attention.

3 The State may proceed.

4 MS. RIDDLE: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MS. RIDDLE: May it please the Court.

7 THE COURT: Yes, ma'am

8 - - - - -

9 CLOSING STATEMENT

10 MS. RIDDLE: Ladies and gentlemen, we are at the
11 end of this case and I want to thank you for your time
12 and your patience.

13 In a moment, Mr. Grimes and Mr. Finch are going
14 to talk to you about the facts of the case and then
15 the judge will instruct you on the law. And you must
16 take the law as the judge instructs you. I'm just
17 giving you an introduction.

18 The defendant is charged with two crimes,
19 criminal sexual conduct in the first degree and
20 burglary in the first degree. Let's look at criminal
21 sexual conduct in the first degree first. It has
22 several elements the State must prove. The first
23 element is the defendant engaged in a sexual battery
24 with the victim. A sexual battery is any intrusion,
25 however slight, of any part of a person's body into

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1 the genital or anal opening of another person's body.
2 When a man puts his penis into a woman's vagina,
3 that's sexual battery.

4 The second element includes one of the
5 following. The State must prove the defendant used
6 aggravated force to accomplish the sexual battery.
7 Aggravated force means the use of physical force or
8 physical violence of a high and aggravated nature to
9 overcome the victim. Aggravated force includes the
10 threat of use of a deadly weapon. Alternatively, the
11 State has to prove the victim submitted to sexual
12 battery while the victim was also the victim of
13 forcible confinement, kidnaping, robbery, extortion,
14 burglary, house-breaking, or any other similar act or
15 offense.

16 Now, let's look at burglary in the first degree.
17 Again, there are several elements the State must
18 prove. The first element is the defendant entered a
19 dwelling without consent. A dwelling is any building
20 which a person ordinarily sleeps. Also, the State
21 does not have to prove that force was used to gain
22 entry. And a person enters a building by using
23 deception to get consent to enter. This is also entry
24 without consent. The second element is the defendant
25 intended to commit a crime therein at the time of

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1 entry. And then the State must prove one of the
2 following: when entering or while in the dwelling,
3 the defendant was armed with a deadly weapon -- and a
4 knife is a deadly weapon -- or when entering or while
5 in the dwelling, the defendant used or threatens the
6 use of a deadly weapon; or the defendant entered the
7 dwelling in the nighttime. And the nighttime is the
8 period between sunset and sunrise during which there's
9 not enough daylight to recognize a person's face.

10 Thank you, Your Honor.

11 THE COURT: You may proceed. You may proceed.
12 I'm sorry. I didn't mean to look at Mr. Finch. You
13 may proceed.

14 MR. GRIMES: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 - - - - -

17 CLOSING ARGUMENT

18 MR. GRIMES: Good morning.

19 What happened to Nathaniel is hard on
20 Nathaniel's family. We're asking you to find
21 Nathaniel innocent of these charges because the
22 evidence in this case shows that he had a consensual
23 sexual relationship with Ms. Rosenbaum, that that
24 relationship involved trading sex for drugs, and that
25 his DNA was found because he had had sex with Ms.

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1 Rosenbaum within at least three to five days before
2 she was attacked October 24th, 2011.

3 As Ms. Parnell noted in her opening, we don't
4 dispute that a bad thing happened to Ms. Rosenbaum on
5 October the 24th. She seems to be a very nice lady.
6 She's a mother, grandmother, and a great-grandmother
7 to great-grandchildren. She's just a few years
8 younger than my own mother. She wears glasses, or
9 used to wear glasses, like my mom wears glasses. And
10 when you hear sort of initially the facts of this
11 case, it pulls at you. Say, how can someone do
12 something like this to somebody.

13 Now, if my mom had been addicted to crack and
14 let all sorts of people come over there and smoke
15 crack, who knows what else was going on, I would do
16 whatever I could to get her out of that situation. My
17 brother would, too. If my mom had been sexually and
18 physically assaulted, we would be at the ER, helping
19 her in any way we could. And then if there was a
20 trial on the case, we would be back there with her
21 supporting her.

22 This has got to be very stressful and hard on
23 someone to go through a trial, regardless of what side
24 you're on. And I know it's natural to feel sorry and
25 sympathy for Ms. Rosenbaum. Sympathy is not evidence.

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1 And it's certainly is not in evidence that Nathaniel
2 attacked her or assaulted her on October 24th of 2011.

3 Now, my old boss -- he may have gotten this from
4 President Regan -- had a saying, trust but verify.
5 And when the twelve of you go back to your jury room
6 and you're deliberating about the case, you need to be
7 able to verify Ms. Rosenbaum's testimony beyond a
8 reasonable doubt. You need to believe her story of
9 what happened. And we know she started out telling us
10 what happened. And she's mentioned Ms. Combs, went
11 over there to call 911. Ms. Combs believed her. And
12 who's not to believe her? You've heard her testimony.
13 Ms. Combs sounds very credible. Said she was
14 suffering the effects of being injured, being
15 assaulted.

16 And remember Detective Farman. She gets
17 assigned to the case, goes to the hospital, interviews
18 Ms. Rosenbaum, goes to her house, talks to her some
19 more, and they kind of join hands of sympathy. And
20 she believes her, obviously. She takes out the arrest
21 warrants against Nathaniel and then when they're
22 together they come to the prosecutor. The prosecutor
23 obviously believes her. He put Nathaniel on trial.
24 Wants to send him away. He'll tell you he wants you
25 to find him guilty. And now they're going to be

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1 asking you to join Ms. Rosenbaum and Detective Farman,
2 to believe her story and believe it beyond a
3 reasonable doubt. But before you join their team, you
4 need to ask yourselves some questions about her story,
5 her testimony. You need to verify whether she was
6 telling you the truth.

7 The one thing that kind of jumped out at me is
8 what exactly was she doing when she heard the noise at
9 the door. Mr. Finch in his opening statement, has
10 worked on this case for a little over a year, said
11 that she was sleeping. Ms. Rosenbaum testified on the
12 jury [sic] stand and she said she was watching a
13 movie. Maybe she was doing something else. Maybe she
14 was recovering from something else by watching a
15 movie.

16 The second question I had is where were her
17 glasses. That's kind of why I asked her the question
18 when you got up, did you go straight to the door or
19 did you do anything in between like get a cup of
20 coffee or anything. She said she went straight to the
21 door. Well, if her vision is as bad as she said it
22 was, how are you watching a movie without your glasses
23 on? And she never took her glasses off. There's no
24 testimony about that. And she's from here -- from
25 that chair to here, talking to the person for at least

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1 I would say ten seconds, maybe more. You could at
2 least tell if that person was black or white, tall or
3 short.

4 But initially, when she talked to the responding
5 officer, she gave no description. She could not even
6 tell if he was black or white. When she talked with
7 Officer Farman, she said, well, it was a light-skinned
8 black male -- to be Nathaniel. Or perhaps a dark-
9 skinned white male, maybe like an Italian. And,
10 obviously, Nathaniel is not --

11 So I'm not sure if she had her glasses on or
12 not, but it seems common sense that she would have had
13 her glasses on if she was watching a movie. And if
14 she wasn't watching a movie, maybe she didn't have
15 them on. But there's no -- I didn't see any pictures
16 of any glasses sort of on the shelf or anything, from
17 what I saw. Maybe I overlooked it. I don't recall
18 anything like that.

19 The third question is why would the police not
20 believe her description of the person, of a light-
21 skinned black male or a dark-skinned white male?
22 Doesn't that rule out Nathaniel by itself? And
23 another question is why isn't there a better
24 description of at least the race of the person?

25 Now, Ms. Rosenbaum did not give a lot of details

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1 about the assault. Didn't remember what the person
2 was wearing, but she did remember a shirt come off,
3 tee shirt here. Well, if you take my shirt off -- I'm
4 not going to scare anyone, so I won't; I'll promise
5 not to do that -- you know, you're obviously going to
6 see a very white chest. And if it was a black male,
7 you would see a black chest. And if he was running
8 away or walking out, you would see his back.

9 I don't recall any testimony about his wearing a
10 jacket. There was some testimony about clothing, said
11 maybe it was a hat, a bennie hat, a shirt, said he was
12 wearing pants. Well, if you have someone walking out
13 during a struggle, you're taking off the shirt, you're
14 going to see what kind of color the person was, at
15 least from that -- and then when she talked about the
16 hands and fist, first she said, well, I didn't see his
17 hands and fist. Then later on I think she said she
18 did. I don't recall any testimony about the person
19 wearing gloves.

20 The next question I had was did she let the
21 person in the house. One reason I thought -- it just
22 kind of jumped out at me during the State's case --
23 called Sargent Reynolds, the head of the crime scene.
24 And you remember Ms. Parnell was asking about
25 fingerprints, fingerprinted the doors. Well, kind of

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1 were bad surfaces there so we didn't fingerprint the
2 door. And asked about touch DNA. How come you didn't
3 try to get any touch DNA. And he said something that
4 looked very -- like the person had been let in.

5 And another question I had about Ms. Rosenbaum's
6 story was how come she's able to remember some details
7 but not some of the important ones? Talks about
8 knocking down a bicycle, pulling down the curtains,
9 shirt coming off. But a sexual assault is going to be
10 very traumatic and certainly people want to sort of
11 block that memory out. You remember -- I think it's
12 natural you would remember certain details about how
13 you were assaulted, because you have to give that
14 information to the police. For example, was the
15 person wearing a condom? That would be important
16 information to know so you could find out if there was
17 DNA evidence left by the defendant. Did the person
18 ejaculate? Was there actual penetration? We've heard
19 a lot of testimony about a very violent assault.
20 We've seen pictures. There was never any actual
21 testimony that the person penetrated her. She said,
22 he raped me. Now, who knows how people use the term
23 rape. A lot of people say, well, sexual intercourse
24 may mean different things to other people, such as
25 kissing, fondling or something else.

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1 And then we have the SANE nurse, said there was
2 no injuries to the vaginal area. No redness. She was
3 examined shortly after the assault. I think if you
4 have this sort of violent struggle, if you're being
5 sexually assaulted, wouldn't there be tears? The
6 nurse explained the body is designed to have children,
7 so you wouldn't have any tears there. But there ought
8 to be certain -- some type of signs of redness, slight
9 abrasions, bruises.

10 And another question I had is how come she
11 didn't cooperate fully with the police? At the time
12 she reported the incident, they really had no leads as
13 to who the assailant was. He could be out there doing
14 it to anyone else. All they initially knew was that
15 it was a male, it was either a light-skinned black
16 male or a dark-skinned white male. And when they're
17 trying to develop a list of suspects, people who
18 may -- or witnesses, she wouldn't tell them who the
19 names of people who come to her house were. The only
20 person she gave the name of was New York. Well, what
21 does New York look like? You know, he could be
22 eliminated because she didn't recognize the voice.
23 Well, what about the other people come there? What
24 did they look like? And one thing I thought was
25 interesting, she gave the name Cooper. And she hadn't

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1 told that to the police before. It's paperwork. She
2 hasn't talked to me. And how do I know the nickname
3 Cooper? I said, oh, it's Super Cooper. It's because
4 Mr. Cooper introduced Nathaniel to her.

5 Why wouldn't she tell the nurse about the drug
6 use? I imagine maybe it's embarrassing to talk about
7 it. You don't want to be labeled, going to the ER,
8 and say, well, she got what she deserved, she was on
9 crack. No one is saying that. But probably one
10 reason why, probably she just didn't want to
11 cooperate.

12 One of the biggest questions I had is did she
13 tell police about anything about a DNA type that's not
14 attributable to either her or Nathaniel? It was found
15 in her vaginal swabs and swabs from the perineum.
16 Where did that DNA come from?

17 Now, we've heard at least one big conflicting
18 testimony. Ms. Rosenbaum testified she didn't know
19 Nathaniel, had never seen him before. And we called
20 three witnesses who testified that Nathaniel has been
21 there, been a guest at her house. One witness said
22 that they had a sexual relationship. Now, there may
23 be lots of reasons why she didn't want to talk and say
24 that she knew Nathaniel or had a relationship with
25 Nathaniel. You could say it's very embarrassing to

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1 admit that you're using crack or on crack. Even more
2 embarrassing to admit that you traded sex for drugs.
3 If you go back in history, how people viewed people
4 who traded sex for money, drugs, other items, she's
5 the one with the scarlet letter around her neck.

6 And maybe she just, for whatever reasons, just
7 doesn't want to say it's Nathaniel. A lot of times
8 people don't want to prosecute sexual assaults for a
9 variety of reasons, so they have trouble doing that.
10 Maybe sort of a statutory rape where the girl's
11 fifteen and the guy's seventeen. Sometimes you've got
12 extreme cases where it's maybe an uncle and a niece
13 and they don't want the family broken up. Other
14 times, the victims, true victims, feel like they're
15 being put on trial. And Mr. Finch may argue that it's
16 Nathaniel going to trail and not Ms. Rosenbaum and
17 that we're trying to put her on trial. Well, he's
18 wrong. We're not trying to put her on trial. The
19 State has the burden to persuade you beyond a
20 reasonable doubt. And it's Nathaniel's constitutional
21 right to have a trial to face his accuser and for his
22 accuser to present credible evidence that he committed
23 a crime. And we did have to ask her some difficult
24 questions and make some, quite frankly, disparaging
25 remarks about maybe her lifestyle. The only reason

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1 those remarks are being made is because she's chose to
2 live that lifestyle.

3 Now, Mr. Finch may make a big deal about some of
4 our witnesses. Obviously, two were from the jail.
5 And a lot of them are not that bad. I mean,
6 ordinarily, I don't think I would rely upon a witness
7 from the jail. Trying to save someone's freedom. If
8 this is a civil case, we weren't talking about a
9 business deal. You can ask if you think those
10 witnesses to be credible. If we're talking about a
11 crack deal, those witnesses are probably the experts
12 on how crack deals go down and that lifestyle. And
13 it's just like when the police investigate drug rings,
14 they get informants and they bring those people to
15 trial. And that's who you have to bring to trial if
16 you're going to break up a drug ring or if you have a
17 case involving drugs.

18 But if -- you know, Ms. Stiles testified that
19 Nathaniel saved her life. Mr. Finch made sort of a
20 big deal about it, said, oh, he saved her life. Well,
21 if she wanted to get up here and lie for Nathaniel,
22 she could have very easily have said, he was with me
23 on October 24th, we were smoking crack or we were
24 doing this. She didn't do that. She came in and told
25 you what she knew to the best of her ability. Her

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1 time frames may be off. But she knew that that place
2 where she -- Ms. Rosenbaum lived at. And her
3 testimony was corroborated at least by two other
4 witnesses. And Mr. Felder, he certainly seemed to
5 have a little attitude. He didn't want to be here.
6 But his testimony was the same as hers.

7 And then Mr. Mazyck, he wasn't from the jail.
8 He's known Nathaniel for a long time. They have a
9 close relationship. He did not come in and exaggerate
10 anything. He said he had only been to Ms. Rosenbaum's
11 house two times [phonetic] and just had some palm-
12 reading done. He didn't say anything disparaging
13 about her. No ax to grind against her. And,
14 significantly, there's one person he mentioned that he
15 also saw over there, and that was Cooper. Now, if you
16 noticed during the trial, witnesses have been coming
17 from the outside. That's because they're sequestered.
18 They're not allowed to hear testimony. We're not
19 allowed to talk to them about testimony. So he knew
20 that only because he had been there.

21 And, finally, the State would like to believe
22 they were lying, that they had never been to her
23 house. They could have put up what we call reply
24 testimony. I know Ms. Rosenbaum in her direct -- on
25 cross said she didn't know these witnesses when I

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1 asked her about them. Well, Ms. Combs is a very
2 credible witness. Could have called to her and said,
3 look, have you ever -- you live right next door or
4 close to Ms. Rosenbaum, have you ever seen Ms. Stiles
5 before, ever seen Nathaniel there before. They didn't
6 do that. And if she had seen him before, don't you
7 think they would have called her up there?

8 Now, the State is probably going to make a big
9 deal about DNA. And saying -- let me get the numbers
10 right. They make a big deal about 1 in 320
11 quadrillion. Kind of reminds me of that commercial
12 that -- it's either a phone salesman or an insurance
13 salesman talking with the small kids about what the
14 biggest number is. If you take that 300 quadrillion
15 and square it or add infinity to it, it doesn't change
16 our position. We've acknowledged from the beginning
17 that Nathaniel's DNA was there because he's had prior
18 sex with her. The dispute is when was the DNA left.
19 Was it left on October 24th at 5:30 or 6:30 in the
20 morning -- and that was a Monday morning -- or was it
21 maybe left on Sunday, October 23rd, Saturday, October
22 22nd, Friday night, October the 21st. And that's the
23 federal guidelines, three days. SLED's protocol goes
24 back seven days. That's their protocol. It's not
25 like we brought in a hired gun and said, oh, you can

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1 go back twenty-one days. Their witnesses said three
2 days, we have set days. So anytime in that time
3 frame, Nathaniel could have had sex with her and left
4 his DNA there and it would be found.

5 And then the dispute about the other types of
6 DNA. Kind of -- you may ask -- be like reporters.
7 Ask yourself who, when, what, how it got there. The
8 State may argue it's what they call a technical
9 artifact or a stutter. Well, we know it's not a
10 stutter. When I asked about the other allele that
11 wasn't listed, Ms. Leisy said, well, that's a stutter
12 so we marked that out. She said, well, all the other
13 stutters had been already marked out. So they made
14 out the report. And you'll have the report back
15 there. It makes no mention of a stutter in the
16 report. Undeniably, there's a third type of DNA
17 there. It's not some false positive or anything in
18 the lab.

19 They might argue, well, it's contamination or
20 something. Well, that's -- their stipulation said
21 SLED protocol was followed, North Charleston Police
22 Department protocol was followed. And Ms. Parnell
23 asked about the North Charleston protocol, and they're
24 careful and they have policies to avoid contamination.
25 We know that was followed.

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1 I asked Ms. Leisy about some procedures they
2 have to avoid contamination. They may do the PCR
3 copying in one section and do the analysis in another
4 to avoid that, wearing gloves, avoiding sneezes,
5 anything like that. We know it's not contamination.
6 And that's -- it seems to come from a third person.

7 And how do we know that DNA did not come from
8 the assailant? The assailant didn't ejaculate in her,
9 Ms. Rosenbaum. Just brushed against her and it might
10 be touch DNA that's left there. That might be why
11 it's weaker than Mr. Witherspoon's.

12 Now, I also want to talk about the police
13 investigation in this case. Detective Farman was
14 quite candid, said people deserve a full and fair
15 investigation. You don't want the innocent to go to
16 jail while the guilty person is out there roaming
17 around doing something else. In their opening, the
18 State talked about CSI. And I kind -- wish this was
19 like CSI. We've got -- Detective Farman testified she
20 used to be in special victims unit, and we had DNA
21 testing, and we got DNA tested and they got 1 in 300
22 quadrillion. I wish this really was like CSI, and
23 then we would have had a complete, full investigation.
24 And Mr. Witherspoon probably wouldn't be here, if that
25 was the case.

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1 Well, we know Mr. Witherspoon gave a statement.
2 to Detective Terry that was recorded. I was asking
3 Detective Farman, do you -- any type of consent
4 argument of defense. She said, no, this couldn't be
5 consent, she got beat up. Now, if that tape had any
6 incriminating evidence, don't you think the prosecutor
7 would have played it? So ask yourselves why they
8 didn't play the tape, why they didn't give you all the
9 information you would want. They didn't even call
10 Detective Terry to the witness stand. And how come
11 Detective Farman never really investigated to find out
12 whose DNA that was on that report? And how can you
13 eliminate someone as a -- without knowing who they
14 are?

15 And the sweatshirt or tee shirt, there was some
16 testing done on it. I think it was a little bit
17 unclear at first how much testing. It sounded like
18 just anything that was cut out or circled was tested.
19 Well, if someone is wearing a tee shirt -- I have to
20 do my own laundry. I'm always leaving neck stains
21 back here. Why don't you just take a buccal swab, run
22 it through there and test it, and then take another
23 buccal swab and maybe test under the armpits? And if
24 the person has chest hair, take a buccal swab, test
25 around the chest area and see if you can get some DNA.

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1 I mean, we have the technology. The State pays a lot
2 of money to keep DNA and fund DNA labs. That
3 technology proves. So why not do it? Does it cost
4 too much money to do it? Are they just too lazy to do
5 it? Is it assuming that Nathaniel is guilty and they
6 have their man and there's no need to do it? I don't
7 know why. Maybe the prosecutor can explain that to
8 you, why they didn't do that.

9 And why not check for touch DNA on the door or
10 the panties or anyplace else in the bedroom he may
11 have touched? If there is a struggle, he probably
12 touched more than just her. Stuff, it sounds like, is
13 being knocked over. And as the police said, you know,
14 they couldn't tell kind of what had been knocked over
15 and what hadn't been because the place was just in a
16 general state of disarray. If they had -- if Ms.
17 Rosenbaum had cooperated, given a full account of
18 everything, they could have gone back there and tried
19 some of that stuff.

20 And the State has made a big deal about the
21 phone. Is there any evidence that he was using it
22 before October 24th? Did the State get the phone
23 records? People that Nathaniel was calling, did they
24 call any of them and say, no, I did not get any calls
25 on the 23rd or the 22nd, I only got one the 24th?

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1 That would be very easy to do. And we're not asking
2 them to be like the NSA and go pull everyone's
3 records, but they could certainly get her phone
4 records and see who -- what numbers are being called
5 and when they had being called. And what about if she
6 had been calling him before October 24th? Why not
7 check the records to see that, to see if she said --
8 ever called Nathaniel, Nathaniel can come over, I need
9 some drugs, Nathaniel, do you want to meet over here,
10 any calls to Nathaniel at his phones. They didn't do
11 anything like that.

12 And what about the people who were milling
13 around, Ms. Combs sort of talks about, at night? Did
14 they see or hear anything? Now, I know when I was
15 working on my closing last night, I was talking to Ms.
16 Parnell about it. And our notes were a little bit
17 different as to whether Ms. Rosenbaum was yelling and
18 hollering during the assault. My notes said she had
19 until he threatened her with the knife. Ms. Parnell's
20 notes didn't say anything about it. But you have your
21 own notes. Obviously, defer to your recollection. If
22 you need an official transcript, you can't get the
23 transcript. It can't be prepared that fast. But
24 testimony can be played back to you if you need that.
25 But did anyone hear anything, see anything, see a guy

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1 walking out with a tee shirt on, with a phone? And if
2 he just raped somebody and stole her phone, why would
3 you put your name in the phone? Now, if you got the
4 phone for the exchange for drugs or collateral for
5 drugs or something, maybe you'd put the name in the
6 phone.

7 Before I finish, I just want to talk a little
8 bit about the law. As Judge Jefferson would tell you,
9 the State has to convince each and every one of you
10 beyond a reasonable doubt that Nathaniel is guilty of
11 criminal sexual conduct and burglary. They don't have
12 to convince you beyond all doubt. The only way you
13 can say beyond all doubt is if you were there and
14 witnessed it. Well, if you were there and witnessed
15 it, you would be on the witness stand, you wouldn't be
16 in the jury box. And each of you must be firmly
17 convinced that Nathaniel is guilty before you can
18 return a verdict of that. Now, it seemed to me
19 probably two key witnesses in the case: Ms. Rosenbaum
20 and Nathaniel. Well, we haven't heard from Nathaniel.
21 Now, that's our advice to him. It's simple. We don't
22 believe the State has proven his case beyond a
23 reasonable doubt. Ms. Rosenbaum, in our opinion, did
24 not come across as a credible witness. In addition,
25 he had already given a statement to the police. His

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1 side of it is out there. The State just chose not to
2 share it. And given the delay in DNA testing, there's
3 lots of stuff we couldn't fix because the police
4 inactions, it's kind of lost evidence, like people who
5 were milling around. We never heard their names. If
6 we ever did get their names, who knows what their
7 memories would have been like six months after. Ms.
8 Combs testified it's not the best place to be around.
9 And Sargent Lawless, you know, the only reason he
10 found the phone is he was investigating a shooting
11 right around there. For example, we wanted the
12 bedroom sheets tested. We can't really get them
13 tested six months later. And we don't know if the
14 same sheets would have been there.

15 And then more -- most importantly, Judge
16 Jefferson will tell you that Nathaniel has a right to
17 remain silent and that it cannot be held against him.
18 And, remember, we rely upon you to follow the Court's
19 instructions on that. I know when I was in law
20 school, you know, we would talk about like search and
21 seizure and say, well, the police found drugs, how
22 come it's not admissible. People would say, well, a
23 criminal shouldn't get off because of a technicality.
24 The professor would always say, well, the constitution
25 is not a technicality, because the --

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1 Now, during this trial you've heard a lot about
2 crack cocaine and you can see how you can take
3 otherwise good people and make them do stuff they are
4 ashamed of. And be the first to mention Nathaniel has
5 used extremely poor judgment in some of his lifestyle
6 choices. And if we were on trial for soliciting
7 prostitution, using drugs, I'll be the first one to
8 tell you he's been into that. But he's not on trial
9 for that. He's on trial for something much more
10 serious: burglary in the first degree and criminal
11 sexual conduct in the first degree. It's kind of the
12 worse case you can imagine, a home invasion followed
13 by a rape.

14 And just because someone uses crack doesn't
15 necessarily make them a liar. I'm not saying that.
16 But it certainly may affect their ability to remember
17 or perceive events, a desire to avoid certain labels,
18 sort of hide some of that parts of their life from
19 other people. That's probably just general human
20 nature.

21 And I imagine that at the end of Mr. Finch's
22 argument, he's going to ask you to end this nightmare
23 for Ms. Rosenbaum by finding Nathaniel guilty. If you
24 do that, you're going to create a nightmare for
25 Nathaniel's family, for him, for two attorneys who

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1 tried to do everything they can to prevent an innocent
2 man from going to prison. And that's why we urge you
3 to do the right thing and find Nathaniel innocent of
4 these charges. Thank you.

5 THE COURT: The State may proceed.

6 MR. FINCH: Thank you, Your Honor. May it
7 please the Court.

8 THE COURT: Yes, sir.

9 - - - - -

10 CLOSING ARGUMENT

11 MR. FINCH: I'm going to give Mr. Grimes some
12 credit. He just told you that he and Ms. Parnell are
13 doing everything they can to help their client.
14 That's absolutely true. He's doing everything he can.
15 He's going to take every single little bit of this
16 case and try to twist it just a little bit away from
17 the truth in his representation of the facts, his
18 interpretation of the facts. Keep in mind, at the
19 beginning of this trial the judge told you argument,
20 what I say, what Mr. Grimes say, certainly is not
21 evidence in this case. And there's a reason why.
22 Because we're giving you a perception of the evidence,
23 what the evidence should tend to show and tell you.
24 Well, Mr. Grimes certainly did a number on that.

25 MR. GRIMES: Objection.

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1 THE COURT: Basis?

2 MR. GRIMES: A comment upon a right to counsel.

3 THE COURT: Overruled.

4 MR. FINCH: Before I get into what I would
5 consider my prepared remarks, I'm going to go through
6 a couple of things right off the bat that Mr. Grimes
7 presented to you. He said a bad thing happened to Ms.
8 Rosenbaum that day. Bad thing. Bad things are flat
9 tires. Bad things are can't find the keys. Ms.
10 Rosenbaum was raped. Her house was broken into. She
11 was assaulted. She was threatened with the use of a
12 knife. Strangled, and then raped in her home. It's
13 not just a bad thing.

14 There's a lot of little details that Mr. Grimes
15 wanted to touch on saying, well, did she have glasses
16 on or didn't she have glasses on. Well, if you
17 remember, Ms. Rosenbaum said she didn't have her
18 glasses on. She's legally blind. That explains why.
19 Not only because it's dark outside -- why she couldn't
20 recognize who's at the door. She also told you she
21 recognized New York's voice. She didn't say, I had --
22 it's definitely this person or that person. She
23 didn't know. She didn't see.

24 It's probably better to just go one thing at a
25 time, slowly. Let me start, because Ms. Riddle told

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1 you quite a while ago about the elements of the crime.
2 Let me just quickly review those so that I can then
3 insert the facts and how we, the State, will meet the
4 burden beyond a reasonable doubt that Nathaniel
5 Witherspoon is guilty of burglary first and criminal
6 sexual conduct in the first degree.

7 Entering a dwelling, that's a -- without
8 consent. Now, it includes trick or artifice. But we
9 don't even necessarily need that. He presumed or
10 pretended to need a phone. But she didn't say he
11 could come in. The screen door wasn't open. She
12 turned around to get the phone. Do the good deed.
13 She had to pay for it that way.

14 Without consent. With the intent to commit a
15 crime later. How do we know he hadn't planned when he
16 entered to commit a crime? He went straight for her
17 throat [indicates] and then took her to the ground.
18 Look at the pictures. The pictures go back with you.
19 If there's any doubt as to where his hand went, look
20 at the pictures. Then look at that picture. Right
21 over her mouth. Why didn't anybody hear any hollering
22 or screaming? Call it whatever you want. His hand
23 was over her mouth, right after he strangled her and
24 then took her to the ground and told her he had a
25 knife. At that point, she stopped fighting.

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1 Now, you can try to judge Ms. Rosenbaum for her
2 lifestyle. You can try to judge her for the company
3 she kept. You can try to judge her for a lot of
4 things. She made a choice between screaming and
5 fighting somebody who came into her house, that she
6 didn't know, or didn't know who it was at that point
7 because they came up from behind, to not fight and not
8 resist. And that could be characterized -- or tried
9 to be characterized as there's not enough injury to
10 her vagina? There's not enough injury here? Look at
11 the pictures.

12 And it happened at night. That's another
13 element. You can pick any of those elements. The
14 judge will instruct you on that.

15 Criminal sexual conduct first, sexual battery,
16 intrusion into her body without her consent and while
17 using aggravated force, strangling her, taking her to
18 the ground. Or while she's the victim of a burglary.
19 And then you go back to that checklist, was there a
20 burglary. And there certainly was in this case.

21 Now, let's go through the elements here -- I
22 mean, the story, the facts. Ms. Rosenbaum had a
23 friend over, a friend she recognized, New York. She
24 smoked crack. She told everybody she smoked crack.
25 She told the police she smoked crack. She didn't want

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1 to hide anything. She didn't not cooperate with
2 police. She told them clearly, I don't know who it
3 was, it could have been a friend of a friend. How
4 right she turned out to be, if you believe the defense
5 witnesses. And I'm going to get to that. There's no
6 reason to discount the defense witnesses wholesale.
7 But you can filter their testimony, and you should.
8 It's feasible to do so.

9 But Ms. Rosenbaum was right. If you believe
10 Stanley Mazyck, then that person did go over to her
11 house one time, maybe two times. A friend of a
12 friend. A friend of Cooper. So he knew who lived in
13 that house. He knew the condition she was in. He
14 knew that she was a crack user. And maybe he counted
15 on that fact to think nobody would care, or she
16 wouldn't tell the police, that this wouldn't matter to
17 anybody. But it does, because it should.

18 She was in her house alone when she was
19 attacked. And the first thing she did, she ran to her
20 neighbor. That person wanted to use the phone. They
21 came in, took what they wanted, and then took her
22 phone. She didn't have her lifeline. Keep in mind
23 that phone was her lifeline. She testified to that.
24 She lives alone. She has since her roommate died.
25 That is her connection to the world and she's going to

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1 keep a pretty good track of where that thing goes.

2 She runs to her neighbor's, Ms. Combs's, house.

3 Ms. Combs calls 911. She see Ms. Rosenbaum pass out

4 right in front of her. She tries to revive her and

5 gets her in the house. They take her by ambulance.

6 They do x-rays, MRIs, at the hospital because she's

7 seriously injured. And then she has a rape kit done,

8 and it's collected, sent off to SLED.

9 While that's happening, that's when we find the
10 phone. That's when the phone was found. And the
11 police, they didn't have to do anything special. They
12 flip open the phone. There's Nathaniel's name.

13 Nathaniel Witherspoon. Nathaniel Witherspoon. So
14 they called, or they tried. The service is
15 disconnected because Nathaniel Witherspoon took that
16 phone and when it wasn't any use to him anymore, he
17 discarded it, threw it to the side, that's all he
18 wanted, just like he did with Ms. Rosenbaum. Took
19 what he wanted and discarded it.

20 They contacted people that had been called from
21 that phone and developed this man as a suspect from
22 the contacts that were made through that phone, people
23 called. Then they checked to see is there going to be
24 any DNA off of there or do we need to do further
25 investigation? Will we need to get a swab,

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1 essentially? No, he's in the system, let's wait. So
2 they did. And back comes a match to Mr. Witherspoon.
3 Not a match to DNA or DNA from a crack pipe, DNA from
4 a soda can, but DNA from semen inside Ms. Rosenbaum.
5 If nothing else, that would get you to the element of
6 intrusion into her body.

7 DNA that when it's being analyzed can be broken
8 into parts, and that process breaks it into a -- what
9 they determine M or an F, male or a female. They call
10 it semen or sperm fraction. You'll be able to look at
11 the report. But I'm not going to make a big deal
12 about 320 quadrillion. I appreciate Mr. Grimes
13 prognostication; however, what I am going to make a
14 big deal about is there was no other profile. There
15 wasn't a partial profile. There was one number, one
16 allele. Not enough for interpretation, not enough to
17 be called anything, but just that DNA material.

18 And Mr. Grimes said that that's not stutter
19 because something else named -- called stutter was
20 crossed out and that wasn't crossed out. You heard
21 Catherine Leisy testified it could be stutter, it
22 could be a technical artifact. We don't know what it
23 is. It could be the result of breaking that DNA
24 material into two parts. That happens. And she said
25 the hallmark of that is if the number is very close to

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1 one of the numbers in the known DNA. Take a look at
2 it. It's one number off, at a very low threshold of
3 readings.

4 I asked her specifically was there any other
5 profile or any other DNA material from the male
6 fraction taken from inside Ms. Rosenbaum or from the
7 external genitals of Ms. Rosenbaum. The answer was
8 no, no other profile, it matches the defendant.

9 The defense has a theory in this case: this DNA
10 doesn't really leave you a lot of options, other than
11 to say it's consensual sex. When a DNA match is as
12 strong as this, you can't say it wasn't there. So
13 it's consensual. But to believe this theory that the
14 defendant had consensual sex up to a week prior, and
15 then --

16 Well, let's go back. I'll paint the picture.
17 To believe the defense's theory, you would have to
18 believe that Ms. Rosenbaum had consensual sex with the
19 defendant and at the same time handed over her phone,
20 her lifeline, said, there, take my phone. For what?
21 Drugs? Was the crack that good that this time it
22 wasn't a sex-for-drugs trade or a phone-for-drugs
23 trade, or anything else, a smoke-in-my-house trade,
24 it's everything, you get it all, take it with you, and
25 then randomly gets attacked by somebody else, all the

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1 while Mr. Witherspoon hasn't been back to visit,
2 doesn't know anything about it? But then she says,
3 I've been assaulted; let me turn this into a sexual
4 assault; I'll tell my neighbor I was raped and I hope
5 that Nathaniel's DNA is still in me so I can pin it on
6 him. Because when the police said, do we have a
7 suspect, she said, don't know.

8 There's been no evidence of any grudge, any
9 break from whatever purported relationship these two
10 people had that would cause Ms. Rosenbaum to create
11 this entire fantasy of a defense. There's absolutely
12 no evidence that Ms. Rosenbaum had it out for
13 Nathaniel Witherspoon. None.

14 And I know Mr. Grimes said I'll probably try to
15 besmirch their witnesses. No. But I want to point
16 out a couple of important things. And I'll just take
17 them in order, and I'll go quickly.

18 The first man we saw up there, Clary Samuels. I
19 think you can believe Clary Samuels. I do. He seemed
20 like a good, honorable man, and he said what was in
21 his heart and he said what he meant and he said what
22 he felt. But he doesn't know Nathaniel. He doesn't
23 know what happened then and there. And you know what?
24 He has a good, Christian heart and he believes the
25 best in Nathaniel. And we're not -- I have no

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1 argument with his testimony. But we're not trying Mr.
2 Witherspoon on what Mr. Samuels believes in his heart,
3 or what he hopes for Nathaniel. We're not trying him
4 on that. We're trying him on his actions, what he's
5 done to others and what can be proved forensically.

6 And then Tammy Stiles was in here. And at first
7 when Ms. Stiles is testifying, I thought Ms. Parnell
8 was being polite. Maybe I'm still a little naive, but
9 I said -- when she said, I don't want you to point but
10 do you see Ms. Rosenbaum here, she said yeah. And I
11 didn't think anything of it until they asked Derrick
12 Felder to point and then they asked Mr. Mazyck to
13 point.

14 What I thought was interesting is Mr. Mazyck
15 stood up, looked around, looked around, looked around.
16 At first he looked from his seat. Then he stood up to
17 get a better view. And then Mr. Grimes stood right
18 here and said to focus his attention on the front row.
19 He had trouble finding Ms. Rosenbaum. Is it that
20 inconceivable that his testimony, Mr. Mazyck's
21 testimony, is absolutely true? And I don't see any
22 reason to discount that, either. If he said, yeah,
23 Nathaniel was there one time; he came over with Super
24 Cooper, and he knows Ms. Rosenbaum but he couldn't
25 find her in a room, is it so unbelievable, then, to

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1 think that if you go ahead and believe Mr. Mazyck --
2 and why wouldn't you? Said he was there one time.
3 You're going to remember one time somebody's in your
4 house, when people come and go in your house because
5 that's your lifestyle? Years previously? That's not
6 farfetched for her to say, I don't know him, some dude
7 came over with another dude one time. And she did say
8 a friend of a friend.

9 What was interesting, going back to Ms. Stiles,
10 is she's telling us, I know what happened, I know this
11 relationship, and I know this and I know this, except
12 I haven't been there in four years. Two and a half
13 years before this incident happened. She's not real
14 good with dates. That's fine. But it's indisputable
15 when her friend L, the reason other people came to the
16 house, the reason she testified to that people came to
17 the house, is the ex-roommate was the guy who sold the
18 drugs. She's not going, once the drugs weren't for
19 sale. She had been there every two or three days, and
20 it stopped. Because, guess what? The drug dealer was
21 dead. So she doesn't have any real information for us
22 about what may or may not have happened four years
23 ago. And she certainly said she didn't know what
24 happened that day.

25 And then you have Mr. Felder, who didn't want to

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1 be here, clearly. And I don't know what he really
2 added to the proceedings, but he was here. But you
3 can take something from the defense's witnesses,
4 certainly. Mr. Mazyck put the defendant there, which
5 also helps us understand why would he pick that house?
6 Why would he go down this road, not too far off the
7 road? You heard descriptions of where it is. Near
8 where he works. Because he knew Ms. Rosenbaum and he
9 knew she was alone and he had to know that her
10 eyesight was starting to fail because at the time that
11 this incident happened, she was legally blind with
12 cataracts.

13 I want to talk to you about the State's burden
14 of proof: it's proof which -- beyond a reasonable
15 doubt. That's a high burden. And the judge will
16 instruct you on what that burden is and really what it
17 isn't. But it's not proof beyond all doubt. It
18 seemed to be what Mr. Grimes was asking you for with
19 all those tiny little things that don't really add up
20 to much, that that would be all doubt. Did she have
21 her glasses on or not? It's a belief that leaves you
22 firmly convinced. So you'll have to weigh the
23 evidence in this case versus a hypothetical fantasy
24 and see what leaves you firmly convinced. Does it
25 make sense that Ms. Rosenbaum would have consensual

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1 sex with somebody for years and years and years and
2 have some sort of exchange relationship and then after
3 she's raped they come up a suspect? No. Say, well,
4 wait, that's my buddy, that's my friend, you've got
5 the wrong guy, just let it roll along like that? Ms.
6 Rosenbaum didn't not want to prosecute. She was here,
7 and she cooperated fully. If you want to have a
8 grudge for her not throwing her friends under the bus
9 because they smoke crack with her? Come on. That's
10 small potatoes.

11 She moved in with her neighbor. She lived alone
12 for years and years and now she lives across the way
13 with her neighbor. Not independent anymore. Do you
14 think she would do that if she thought that the person
15 who attacked her is still out there somewhere? That
16 she cares so little for somebody that she would just
17 let them get prosecuted for something they didn't do
18 just because, oh, well, that's what the police want to
19 do? She doesn't seem like a person that just is going
20 to roll with what the police want to do.

21 To believe that Ms. Rosenbaum just disregards
22 anything like that, and to believe that she made some
23 exchange, completely forgot about it and then just let
24 this facade roll on, it's not -- it's not even
25 reasonable. To get reasonable doubt, that's not

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1 realistic.

2 The judge is going to talk to you about what it
3 means to find somebody guilty beyond a reasonable
4 doubt and they're going to address -- she's going to
5 address hesitation: that which would cause someone to
6 hesitate to act. And I would encourage you that
7 hesitation is completely different than deliberation.
8 The fact that you may not go right outside the door
9 and turn right back around and say, we've made up our
10 minds, that is not hesitation, that's deliberation.
11 That's the weighing of facts, taking the story that
12 you heard -- the story -- from the defense, and the
13 facts and evidence and testimony as presented in this
14 courtroom, and weighing those things together and
15 deciding which one makes sense, which one do I
16 believe, which one is the truth.

17 And we can't know everything. We weren't there.
18 We had a whole parade of witnesses who weren't there.
19 Ms. Rosenbaum was there; the defendant was there. How
20 do we know? He left his DNA and he took her phone.
21 Took her phone and he took from her whatever he
22 wanted.

23 It's time to give something back. Give Ms.
24 Rosenbaum justice, give Charleston County justice.
25 Find the defendant guilty of burglary in the first

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1 degree, criminal sexual conduct in the first degree.

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 we're going to take advantage of this break and take a
4 brief restroom break.

5 During the break, please do not discuss the
6 case. And please leave your notepads in your seats.
7 As soon as you're done using the restroom, please let
8 the bailiffs know and then we'll resume with the
9 Court's instructions.

10 [Whereupon, the jury exits the courtroom at
11 11:30 a.m.]

12 THE COURT: You may be seated.

13 We should be out about five minutes. And for
14 purposes of the gallery, when the jury is going in and
15 out of the courtroom, there should be no movement. If
16 anybody moves in the future, they will be fined.

17 [Whereupon, a recess is taken from 11:31 a.m. to
18 11:44 a.m.]

19 THE COURT: Be seated.

20 I am going to give an additional instruction
21 regarding punishment because there was reference to
22 that in closing argument and it needs to be addressed
23 that that is not appropriate for the jury to consider.

24 Any exception from the State?

25 MR. FINCH: No, Your Honor.

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1 THE COURT: From the defense?

2 MR. GRIMES: No, Your Honor.

3 THE COURT: All right. As soon as they come to
4 the door, go ahead and bring them in.

5 THE BAILIFF: They are here.

6 THE COURT: Bring them on in.

7 [Whereupon, the jury enters the courtroom at
8 11:45 a.m.]

9 THE BAILIFF: All jurors are present, Your
10 Honor.

11 THE COURT: You may be seated.

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CHARGE OF THE COURT

THE COURT: During this trial, ladies and gentlemen, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case. I also have the duty to rule upon or pass upon the admissibility of evidence offered during this trial. You are to consider only the competent evidence that you have heard from the lips of the sworn witnesses and the other evidence that has been introduced in considering a verdict in this case, and any stipulations which have been made into the record by the attorneys. And as I've previously explained, a stipulation is a legal term that means an agreement between the attorneys, and a stipulation does not require any further proof.

I have the additional duty to charge or instruct you on the law applicable to this case. As the presiding judge, I'm the sole judge of the law of this case and it is your duty as jurors to accept and apply the law as I now state it to you. If you have a preconceived idea as to what the law is or what the law ought to be in a case, or in this case, and it should not agree with what I now tell you the law is, you are obligated, under the oath which you have taken, to abandon this preconception on your part because you are sworn to accept the law and

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1 apply the law precisely as I now state it to you.

2 In every case tried in this Court before a jury,
3 the jury becomes the sole and exclusive judges of the
4 facts in a case. You, the jury, are the judges of the
5 facts in this case. This Court is the judge of the law.
6 The constitution of our state has declared that a trial
7 judge shall not intimate, state, comment upon, or make any
8 statement to a trial jury about the facts in a case.
9 Since you, the jury, are the sole judges of the facts in
10 this case, you are not to infer anything that I've said
11 during the progress of this trial, in ruling upon the
12 admissibility of evidence or otherwise, or anything that I
13 now state to you during the course of this instruction,
14 that I have any opinion about the facts in this case. The
15 law does not allow me to have an opinion about the facts
16 in this case. This is a matter solely for you, the jury,
17 to determine.

18 As jurors, then, it is your duty, as I have
19 instructed, to determine the effect, the value, the weight
20 and the truth of the evidence presented during this trial.

21 Necessarily, you must assess the credibility of
22 witnesses who have testified. Credibility is simply a
23 legalistic term meaning believability. It becomes your
24 duty as jurors to analyze and to evaluate the evidence and
25 determine that evidence which convinces you of its truth.

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1 Some of the things you may consider as you decide whether
2 or not to believe a witness' testimony about a particular
3 matter include: what was the manner and appearance of the
4 witness who testified; was he or straightforward or
5 hesitant in answering; was the testimony of the witness
6 consistent or inconsistent; how did the witness come to
7 know the facts that he or she testified to or what was her
8 or his ability to know these facts; is there some reason a
9 witness would want to give testimony which would help or
10 hurt one side of the other, in other words, was the
11 witness biased or prejudiced; and was the testimony of a
12 witness strengthened or weakened by other testimony or
13 evidence. Also, in evaluating the testimony of the
14 witnesses, you may believe one witness as against several
15 witnesses or several witnesses as against one witness.
16 You may believe a part of the testimony of a witness and
17 reject the remaining part of the testimony of that same
18 witness. If you have a good and sound reason, you may
19 believe the testimony of a witness in its entirety or
20 reject the testimony of a witness in its entirety. You
21 may consider the demeanor of a witness from the witness
22 stand. You can believe as much or as little of each
23 witness' testimony as you think proper. Throughout this
24 process, ladies and gentlemen, you have but one objective:
25 to seek the truth, regardless of its source.

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1 Our rules of evidence ordinarily do not permit
2 witnesses to testify to opinions or conclusions. An
3 exception to this rule exists for witnesses we call expert
4 witnesses. A witness who by their education, training and
5 experience has become an expert in some art, science or
6 profession or calling, may state an opinion as to relevant
7 and material matters in which the witness claims to be an
8 expert and may also state the reasons for that opinion.
9 You should consider any expert opinion received in this
10 case like any other evidence. Give it the weight you
11 think it deserves. If you decide that the opinion of an
12 expert witness is not based on sufficient education or
13 experience, or if you conclude that the reasons given in
14 support of the opinion are not sound, or that the opinion
15 is outweighed by other evidence, you may disregard the
16 opinion entirely. An expert witness' testimony is to be
17 given no greater weight than that of other witnesses
18 simply because the witness is an expert. Further, you are
19 not required to accept an expert's opinion, even though it
20 is not contradicted.

21 Ladies and gentlemen, the defendant has
22 presented evidence of his good reputation and character to
23 show that it would be inconsistent with the defendant
24 committing the crime. The weight you give to that
25 testimony, like all other testimony in the case, is for

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1 you to decide in your good judgment. You may consider
2 testimony of the defendant's good character, along with
3 all the other evidence, in deciding whether or not the
4 defendant committed the crime.

5 You've also heard evidence that the defendant
6 was convicted of a crime other than the one for which the
7 defendant is now on trial. I instruct you that you must
8 not consider the defendant's prior record as any evidence
9 of the defendant's guilt of the charge we are trying
10 today.

11 I further instruct you that a person who has a
12 past criminal record is competent to testify during a
13 trial. A past record does not affect the ability of that
14 witness to testify. A past record may only be considered
15 by you, if at all, in determining the witness'
16 believability. Remember, you are the sole judges of the
17 facts in this case and of the believability of any and all
18 of the witnesses.

19 Ladies and gentlemen, there are two types of
20 evidence which are presented during a trial: direct
21 evidence and circumstantial evidence. Direct evidence is
22 the testimony of a person who asserts or claims to have
23 actual knowledge of a fact, such as an eyewitness.
24 Circumstantial evidence is proof of a chain of facts and
25 circumstances indicating the existence of a fact. The law

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1 makes absolutely no distinction between the weight or
2 value to be given to either direct or circumstantial
3 evidence, nor is a greater degree of certainty required of
4 circumstantial evidence than of direct evidence. You
5 should weigh all of the evidence in this case. After
6 weighing all of the evidence if you're not convinced of
7 the guilt of the defendant beyond a reasonable doubt, you
8 must find the defendant not guilty. Conversely, if you
9 are convinced of the guilt of the defendant beyond a
10 reasonable doubt, then you must find him guilty.

11 I instruct you, ladies and gentlemen, that the
12 fact that the defendant was arrested, charged, and
13 indicted is not evidence in this case and cannot be
14 considered by you as evidence of guilt in this case, nor
15 does it create any presumption or inference of guilt.
16 This documentation, ladies and gentlemen, are simply the
17 formal written instruments or documents which contain the
18 charge or charges made against the defendant. They serve
19 as the formal documents by which the case is processed or
20 brought into this court.

21 The defendant has pled not guilty to the
22 indictments and that plea casts the burden on the State to
23 prove the defendant guilty because a person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself innocent.

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1 I instruct you that it is a cardinal, an
2 important, rule of the law of evidence that the defendant
3 in a criminal trial, no matter what the seriousness of the
4 charge or charges made against him may be, will always be
5 presumed to be innocent of the crime for which he is
6 indicted unless his guilt has been proven by evidence
7 satisfying you of that guilt beyond a reasonable doubt.
8 This presumption of innocence does not cease when you
9 retire to deliberate but it accompanies the defendant from
10 the time of his appearance throughout the trial until you
11 reach a verdict in this case. Our Supreme Court has said
12 that the presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the defendant
14 and it remains with him and assigns him to that class, the
15 innocent, until that presumptive robe of righteousness has
16 been stripped from his person by evidence satisfying you
17 of that guilt beyond a reasonable doubt.

18 Mr. Foreman and ladies and gentlemen, the
19 presumption of innocence is not mere legal theory. It is
20 not just a legal phrase. It is a substantial right to
21 which every defendant is entitled unless you, the jury,
22 are satisfied from the evidence of his guilt beyond a
23 reasonable doubt.

24 The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of you

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1 may have served as jurors in civil cases where you were
2 told that it is only necessary to prove that the fact --
3 only necessary to prove that a fact is more likely true
4 than not true. In criminal cases, the State's proof must
5 be more powerful than that. It must be beyond a
6 reasonable doubt. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the defendant's
8 guilt. There are very few things in this world that we
9 know with absolute certainty and in criminal cases the law
10 does not require proof that overcomes every possible
11 doubt. If based on your consideration of the evidence you
12 are firmly convinced that the defendant is guilty of the
13 crime charged, you must find him guilty. If on the other
14 hand you think there is a real possibility that he is not
15 guilty, you must give him the benefit of that doubt and
16 find him not guilty.

17 I instruct you and emphasize that the fact that
18 the defendant did not testify is not a factor to be
19 considered by you in any manner whatsoever in your
20 deliberation and in your consideration on the question of
21 the guilt or innocence of the defendant. It must not be
22 considered by you in any manner whatsoever. A defendant
23 has the constitutional right to remain silent and the
24 assertion of this right must not be considered by you in
25 your deliberations. I repeat, under your oath you are to

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1 draw no conclusion whatsoever from the fact that the
2 defendant in this case did not testify. The fact that the
3 defendant did not testify should not be discussed in any
4 manner whatsoever in the jury room. The burden of proof,
5 as I've stated to you, is on the State. The defendant is
6 not required to prove his innocence. The burden of proof
7 remains on the State to prove guilt beyond a reasonable
8 doubt.

9 An issue in this case is the identification of
10 the defendant as the person who committed the crime
11 charged. The State has the burden of proving identity
12 beyond a reasonable doubt. You must be satisfied beyond a
13 reasonable doubt of the accuracy of the identification of
14 the defendant before you may convict the defendant.
15 Identification testimony is an expression of belief or
16 impression by a witness. You must determine the accuracy
17 of the identification of the defendant. You must consider
18 the believability of each identification witness in the
19 same manner as any other witness. You may consider
20 whether the witness had an adequate opportunity to observe
21 the offender at the time of the offense. This will be
22 affected by things like how long or short a time was
23 available, how far or close the witness was, the lighting
24 conditions, and whether the witness had the chance to see
25 or know the person in the past.

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1 Once again, I instruct you the burden of proof
2 on the State extends to every element of the crime charged
3 and this specifically includes the burden of proving
4 beyond a reasonable doubt the identity of the defendant as
5 the person who committed the crime. If after examining
6 the testimony you have a reasonable doubt as to the
7 accuracy of the identification, you must find the
8 defendant not guilty.

9 The defendant is charged with criminal sexual
10 conduct in the first degree. The first element which the
11 State must prove beyond a reasonable doubt is that the
12 defendant engaged in a sexual battery with the victim. A
13 sexual battery is sexual intercourse, cunnilingus,
14 fellatio, anal intercourse, or any intrusion however
15 slight of any part of a person's body or of any object
16 into the genital or anal openings of another person's body
17 except when the intrusion is accomplished for medically
18 recognized treatment or diagnostic purposes. If you find
19 that the State has not shown beyond a reasonable doubt
20 that a sexual battery occurred, you would stop
21 deliberating and your verdict would have to be not guilty.
22 If you find that a sexual battery did occur, you must then
23 decide whether the State has proven beyond a reasonable
24 doubt that one or more of the following circumstances:
25 the defendant used aggravated force to accomplish the

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1 sexual battery. Aggravated force means the use of
2 physical force or physical violence of a high and
3 aggravated nature to overcome the victim. This includes
4 the threat of using a deadly weapon. That the victim
5 submitted to sexual battery while the victim was also the
6 victim of forcible confinement, kidnaping, robbery,
7 extortion, burglary, housebreaking or any other similar
8 act or offense.

9 I instruct you, ladies and gentlemen, that code
10 section 16-3-651 -- 16-3-657, I apologize, provides that
11 the testimony of the victim need not be corroborated. I
12 instruct you that code section 16-3-651 defines victim to
13 mean the person alleging to have been subjected to
14 criminal sexual conduct.

15 The defendant is charged with first degree
16 burglary. The State must first prove beyond a reasonable
17 doubt that the defendant entered a dwelling without
18 consent. A dwelling is any building or portion of a
19 building in which a person ordinarily sleeps. A building
20 constructed as a dwelling that has never been occupied
21 cannot be considered a dwelling for purposes of burglary,
22 but a building is a dwelling even if the residents are
23 temporarily absent from the building. In order to prove
24 that the defendant entered the dwelling, the State does
25 not have to show that the defendant's entire body entered

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1 the dwelling. The smallest entry is sufficient. It may
2 be any part of the body, such as a hand or a foot or even
3 an instrument such as a hook or other instrument. In
4 addition, the State does not have to prove that force was
5 used to gain entry. If a person enters a building by
6 using deception, artifice, trick or misrepresentation to
7 gain consent to enter, this is an entry without consent.
8 Next, the State must prove beyond a reasonable doubt that
9 the defendant intended to commit a crime, either a felony
10 or a misdemeanor, at the time of the entry. The mere
11 entry into a dwelling without consent is not burglary. If
12 the intent to commit a crime is formed after the entry, it
13 is not burglary. On the other hand, if the defendant
14 intended to commit a crime at the time of the entry, it is
15 a burglary even if the intent was abandoned after the
16 entry. It does not matter that the intended crime was not
17 completed. Intent may be shown by acts and conduct of the
18 defendant and other circumstances from which you may
19 naturally and reasonably infer intent. Finally, the State
20 must prove beyond a reasonable doubt that when entering,
21 while in the dwelling, or when fleeing, the defendant or
22 an accomplice caused physical injury to anyone not
23 participating in the crime, or when entering, while in the
24 dwelling, or when fleeing, the defendant or an accomplice
25 used or threatened to use a dangerous object, or the

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1 defendant entered or remained in the dwelling in the night
2 time. Night time is the period between sunset and sunrise
3 during which there is not enough daylight to recognize a
4 person's face except by artificial light or moonlight.

5 The indictments in this case allege several
6 different offenses against the defendant. The charges
7 are, on indictment 2012-3192, burglary first degree, and
8 3191, criminal sexual conduct first degree. Each
9 indictment charges a separate and distinct offense. You
10 must decide each indictment separately on the evidence and
11 the law applicable to it, uninfluenced by your decision as
12 to any other indictment. The defendant may be convicted
13 or acquitted on any or all of the offenses charged. You
14 will be asked to write a separate verdict of guilty or not
15 guilty for each indictment.

16 Ladies and gentlemen, you have heard references
17 in closing argument of potential penalty regarding this
18 offense. In determining the guilt or innocence of the
19 defendant, you cannot consider any possible penalty for
20 any particular crime. The punishment for the crime is a
21 matter for the Court to determine and should never be
22 considered by you in any manner whatsoever in arriving at
23 a fair and impartial verdict as to the guilt or innocence
24 of the defendant.

25 You have been selected as fair and impartial

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1 jurors, sworn to impartially try the facts of this case.
2 You should not be influenced by opinions or expressions of
3 opinions, if any, which you may have heard outside of the
4 evidence of this case but you are to decide this case
5 according to the sworn testimony that you have heard,
6 along with the other evidence.

7 There are two potential verdicts for each
8 charge. You don't have to try to write this down because
9 the verdict forms go into the jury room with you. There
10 is no significance whatsoever to the order in which I
11 state the potential verdicts. It is simply that one must
12 be stated first. And they are as follows: as to
13 indictment 2012-GS-10-3191, we, the jury, by unanimous
14 consent, find the defendant guilty of criminal sexual
15 conduct first degree, or not guilty. And as to indictment
16 2012-GS-10-3192, we, the jury, by unanimous consent, find
17 the defendant guilty of burglary in the first degree, or
18 not guilty. Again, there's absolutely no significance
19 whatsoever to the order in which I've stated these
20 potential verdicts.

21 Ladies and gentlemen, your verdict must be a
22 unanimous one, which means that all twelve of you must
23 agree in order to reach a unanimous verdict.

24 Mr. Foreman, once the jury has reached a verdict
25 it is your responsibility to fill out the verdict forms,

State v. Witherspoon
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1 to sign and date the forms, and knock on the door and
2 advise the bailiffs that the jury has reached a verdict.
3 Also, if the jury has any questions during deliberations,
4 it is your responsibility to write out those questions
5 and, again, follow the same procedure.

6 Ladies and gentlemen, I'm going to send you to
7 your jury room but please do not yet begin your
8 deliberations. I have some matters of law that I need to
9 take up with the attorneys that may require additional
10 instruction or clarification of an instruction. However,
11 if there is no further instruction, we will send in the
12 evidence, your notepads and the verdict forms, and at that
13 time we will excuse the alternates and you will be allowed
14 to begin your deliberations in this case.

15 I will tell you in advance that if you have any
16 questions during deliberations, please know that there
17 will be a delay in our response because there is a
18 procedure that we have to follow in answering your
19 questions. So please know that if you have a question,
20 you're not being ignored, we're simply -- that there will
21 be a delay, that we're following that procedure.

22 Again, do not yet begin your deliberations.
23 Please leave your notepads in your seats. And if you
24 would go with the bailiffs, please.

25 You know what? Could y'all stay with me one

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1 more second. I completely forgot to do something. Y'all
2 can take your seats. During our first restroom break --
3 you can take your seats for one second.

4 I gave instructions on every evening that you
5 are not to allow yourselves to be exposed to any media
6 coverage about this case. I need to ensure that none of
7 you had any exposure on last night. If there is any
8 member of the panel who read, watched, or listened to any
9 media account about this case, whether it be television,
10 radio, newspaper, or internet, please raise your right
11 hand.

12 Let the record reflect that all answered no.

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

14 [Whereupon, the jury exits the courtroom at
15 12:06 p.m.]

16 THE COURT: You may be seated.

17 Are there any exceptions to the charge, other
18 than those that have already been articulated in
19 charge conference? From the State?

20 MR. FINCH: No, Your Honor.

21 THE COURT: From the defense?

22 MR. GRIMES: Nothing that hasn't been discussed.

23 THE COURT: Okay. Now, I need you-all to -- I
24 think out of an abundance of caution I need to bring
25 in the juror that has the time constraints and make

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1 sure we're not going to have any issues with her,
2 before we begin deliberations, in the event that we
3 need to substitute her with an alternate before we
4 excuse those alternates.

5 Is there any exception from the State?

6 MR. FINCH: No, Your Honor.

7 THE COURT: From the defense?

8 MR. GRIMES: No, Your Honor.

9 [Off the record momentarily]

10 THE COURT: Could you get Number 247 for me,
11 please.

12 She had hoped that she would be out of here by
13 noon today and I need to -- she has to go to Savannah
14 to take a test. Her mother is driving her. I want to
15 make sure that she has not had any changes over the
16 evening that we need to address.

17 [Off the record momentarily]

18 [Whereupon, Ms. Smalls, juror number 247, enters
19 the courtroom at 12:09 p.m.]

20 THE COURT: You can be seated.

21 Ms. Smalls, how are you?

22 MS. SMALLS: All right.

23 THE COURT: I understand that you have to go
24 take a test in Savannah tomorrow morning?

25 MS. SMALLS: Yes. It's a --

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VERDICT

1
2 THE COURT: The jury has reached a verdict. Is
3 there anything before we proceed in receiving the
4 verdict? From the State?

5 MR. FINCH: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GRIMES: No, Your Honor.

8 THE COURT: Okay. Please get the jury for me,
9 Mr. Suttler.

10 [Off the record momentarily]

11 [Whereupon, the jury enters the courtroom at
12 2:04 p.m.]

13 THE COURT: You may be seated.

14 Mr. Foreman, is it correct that the jury has
15 reached a verdict?

16 THE FOREMAN: Yes, Your Honor.

17 THE COURT: If you would give the verdict forms
18 to the bailiff for me, please.

19 [Whereupon, the foreperson proffers documents to
20 the bailiff. The bailiff proffers documents to the
21 Court]

22 THE COURT: Thank you.

23 [Whereupon, the Court reviews documents]

24 THE COURT: Mr. Clerk, if you would --

25 Sir, if you would stand for publication of the

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1 verdict.

2 [Whereupon, Mr. Witherspoon complies]

3 THE COURT: Thank you, sir.

4 [Whereupon, the Court proffers documents to the
5 clerk of court]

6 THE CLERK OF COURT: Thank you, Your Honor.

7 THE COURT: Thank you, sir. You may proceed
8 when you're ready.

9 THE CLERK OF COURT: The verdict forms in the
10 matter of the State of South Carolina versus Nathaniel
11 Witherspoon, defendant. As to indictment number 2012-
12 GS-10-3191, we, the jury, by unanimous consent find
13 the defendant guilty of criminal sexual conduct first
14 degree. Signed by the foreperson of the jury on June
15 21st, 2013.

16 Ladies and gentlemen of the jury, if this was
17 your verdict, please raise your right hand.

18 [Whereupon, jurors comply]

19 THE CLERK OF COURT: Thank you. Please let the
20 record reflect that all twelve jurors raised their
21 right hand.

22 As to indictment number 2012-GS-10-3192: we,
23 the jury, by unanimous consent find the defendant
24 guilty of burglary in the first degree. Signed by the
25 foreperson of the jury on June 21st, 2013.

State v. Witherspoon
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June 21, 2013

1 Ladies and gentlemen of the jury, if this was
2 your verdict, please raise your right hand.

3 [Whereupon, jurors comply]

4 THE CLERK OF COURT: Thank you.

5 Please let the record reflect that all twelve
6 jurors raised their right hand.

7 THE COURT: You may be seated.

8 [Whereupon, Mr. Witherspoon complies]

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Jury Trial - Volume 3 of 3
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SENTENCING

THE COURT: It is my understanding -- do we need to add anything to the record that was already provided to the Court pretrial, which is --

And you-all can correct me if I'm inaccurate. He had two counts of DUS second, another count of DUS second, a petit larceny, seven counts of fraudulent check and then two counts of fraudulent check, possession of crack, DUS, criminal domestic violence, pointing and presenting, solicitation, false information, drug paraphernalia, financial transaction card fraud, breach of trust with fraudulent intent, driving under suspension, drug paraphernalia, grand larceny, possession of a stolen motor vehicle, trespass, five counts of fraudulent check, trespass, criminal domestic violence, drug paraphernalia, petit larceny, signature under false pretenses, trespass, and property crime enhancement, and shoplifting.

Is that his accurate record?

MR. FINCH: That is correct, Your Honor.

THE COURT: Is that accurate, Mr. Grimes?

MR. GRIMES: Yes, Your Honor.

THE COURT: Okay. I'll be glad to hear from the State in regard to sentence.

MR. FINCH: Your Honor, I just spoke briefly

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1 with Sharon Rosenbaum, the victim in this case. She
2 has indicated to me that she does not wish to address
3 the Court at this time, although she knows it is her
4 right. She conveyed to me her pleasure, obviously,
5 with the verdict and her satisfaction and the hope
6 that she or anyone else will not be harmed by this
7 individual again.

8 As far as the State's position on sentencing
9 you're aware, in our pretrial discussions, of offers
10 made to this defendant. The State would --

11 THE COURT: Remind me what that was. Was it a
12 maximum of fifteen? Was that what it was?

13 MR. FINCH: It was a fifteen, that being the
14 minimum on burglary. So it was fifteen concurrent on
15 both charges.

16 It's the State's position we would seek -- we
17 seek a higher sentence than that, something in the
18 twenty-plus range.

19 THE COURT: Now, are you asking that his
20 sentence be enhanced because he exercised his right to
21 a trial? And you know that is prohibited by the South
22 Carolina precedent. You can't punish somebody for
23 having a jury trial. It's their constitutional right.

24 MR. FINCH: That is not -- that is not the
25 reason, Your Honor.

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1 THE COURT: Okay. Then articulate for me what
2 the reasons are.

3 MR. FINCH: The reason was as this case became
4 -- as we got farther into the development of the case,
5 and the discussions and meetings with our victim, the
6 egregiousness of this offense came to light and the --
7 we seek an appropriate punishment for that. It's not
8 to punish him for exercising his right to go to trial.
9 It is more in line with as we developed the case post
10 plea offer on initial lead through the prosecution.

11 THE COURT: Mr. Grimes?

12 MR. GRIMES: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 MR. GRIMES: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. GRIMES: As you know, Mr. Witherspoon is
17 fifty-eight years old. He's looking at a minimum
18 sentence of fifteen years, an eighty-five percent
19 sentence. And as a now convicted sex offender, he
20 suffers collateral consequences. He has to register
21 as a sex offender, if he is released. He'll then
22 probably be processed through the sexual violent
23 predator --

24 THE COURT: Well, he will be. Yeah. He'll have
25 to go through the multi-disciplinary team once he

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1 reaches within a year of his max-out date.

2 MR. GRIMES: And if he -- I've never seen any
3 type of psychological problems with Mr. Witherspoon,
4 never noticed anything, so I think he would probably
5 make it through that. I've done a few of those cases
6 before. But if for some reason he wasn't, then he
7 would be confined. And we can't really say what's
8 going to happen on that.

9 I do know his -- you heard from his brother-in-
10 law during the trial, sort of the kind of person he
11 is. He does have a good family support. I've been
12 actively e-mail --

13 His brother is here today and his daughter,
14 Alexis, is here, and at the appropriate time they
15 would like to address the Court.

16 Mr. Witherspoon is kind of -- it's a hard case
17 for me to understand how he got here. He seems to
18 come from such a really good family. He served in the
19 United States Army for about two years, then went to
20 the marines for two years, was in Okinawa. I think he
21 suffered maybe an accident there and lost a part of
22 one of his fingers.

23 When he came back -- talking to his family,
24 talking to him, something happened in the service and
25 he started using drugs. And I think that, combined

1 against a loss to his family, loss of two brothers
2 apparently in that time frame, cancer, David, and I
3 believe Alvin, and somehow he got involved in drugs.
4 I know while involved, he was still trying to further
5 his education. He was going to Trident Technical
6 College it looks like car mechanics. He also went to
7 DeVry Business College in marketing and managing. Was
8 a manager at Citadel Mall after that. Was with one of
9 his sisters in Atlanta. He was over there helping
10 her.

11 I know he talked about getting into the
12 ministry. I think that's probably the influence by
13 his brother-in-law. I know he said he's been in --
14 while he's been in jail, he's been sort of talking to
15 other clients, young clients. And I've had several
16 clients, you know, talk to me about him, saying, oh,
17 you represented Spoon, yeah, he's a good guy, he's
18 taught me this, and he's kind of said, you know, be
19 patient, you know, things happen.

20 THE COURT: How long has he been in jail pre-
21 detention?

22 MR. GRIMES: I believe he was arrested on March
23 9th, 2012. That's about fifteen months, Your Honor.

24 THE COURT: What was his bond set at? I'm
25 curious.

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1 MR. GRIMES: His bond I believe was about
2 100,000.

3 We did have a -- move for a bond reduction in
4 front of Judge Hughston and that was denied.

5 This case has been on the docket a couple of
6 times and it's got bumped one way or the other. So
7 it's -- once he was arrested, I think relatively a
8 fast-moving case, some of the other cases on the
9 docket.

10 And you heard his record. I mean, it's --
11 arguably, there's a couple of things that are violent
12 on there. There are the CDVs, pointing and
13 presenting, but a lot of it's sort of drug-related
14 crimes, bad checks, stealing, shoplifting,
15 paraphernalia, soliciting, basically prostitution.
16 So, you know, nothing extremely violent on there. It
17 just seems to be so out of character.

18 And listening to the interrogation, while he was
19 taking Terry, maybe he -- like, well, you were just so
20 high on crack that night or that morning that you just
21 didn't know what you were doing and this happened.
22 And that's probably the only, you know, rational
23 explanation I can see for what happened here.

24 You know, I can't see any malice that he would
25 have had towards Ms. Rosenbaum. You know, even if you

1 believe everything he was saying and his witnesses
2 were saying about him going there and sort of
3 exchanging stuff -- which is still no malice. There's
4 no reason for him to do anything.

5 Perhaps it was some type of, you know -- when I
6 first got the case I was like, well, this sure wasn't
7 like a drug deal that went bad, you guys are arguing
8 over it, and came in, and then they got into a fight.
9 You know, we've seen those type of cases. And he
10 denied that, you know, getting into a quarrel, you
11 know, a defense like that.

12 But I think, you know, a fifteen-year sentence
13 is -- you know, he's fifty-eight. He would get out
14 probably when he maxed out, then that would be sixty-
15 nine, seventy, in that age range. I don't think he
16 would be a threat to anyone at that age.

17 And it's the State's position that now they're
18 offering a -- they want a higher sentence because of
19 the egregiousness that they developed after the plea.
20 Well, I don't think there was an investigation done
21 after the plea occurred, or basically after his
22 arrest. They would have known how egregious the case
23 was from the beginning. So take that for what it's
24 worth, that explanation.

25 I do believe his brother would like to address

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1 the Court at this time, Your Honor.

2 THE COURT: Sure. I'll be glad to hear from
3 him.

4 Sir, if you would state your full name for the
5 record. And speak loudly so the court reporter can
6 hear you.

7 MR. JAMES WITHERSPOON: Yes, ma'am.

8 THE COURT: Yes, sir.

9 MR. JAMES WITHERSPOON: My name is James
10 Witherspoon.

11 THE COURT: Yes, sir.

12 MR. JAMES WITHERSPOON: I am Nathaniel's
13 brother.

14 THE COURT: Yes, sir.

15 MR. JAMES WITHERSPOON: Because of -- I am a
16 veteran of Vietnam. I also retired from United Parcel
17 Service with thirty years of service. And I love
18 Nathaniel. He went in the army at a certain age and
19 came out of the army and went in the marine corps.
20 And I think he served his country well. And I ask for
21 leniency, please.

22 THE COURT: Thank you, sir.

23 MR. GRIMES: I believe his daughter, Alexis
24 Witherspoon --

25 THE COURT: Sure.

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1 MR. GRIMES: -- would like to address the Court,
2 Your Honor.

3 THE COURT: Yes, ma'am?

4 MS. ALEXIS WITHERSPOON: My name is Alexis. I'm
5 his daughter.

6 THE COURT: What is your last name, ma'am?

7 MS. ALEXIS WITHERSPOON: Witherspoon.

8 THE COURT: Yes, ma'am.

9 MS. ALEXIS WITHERSPOON: And I'm a nurse. And I
10 just ask for leniency. I've known my father for all
11 my life, and, yes, he's been addicted to drugs for a
12 long time, since I've been little, but not ever has he
13 ever been harmful or violent or anything like that
14 towards us. He would always run from us and we
15 wouldn't see him like that. So I would just ask for
16 leniency and mercy. Thank you.

17 THE COURT: You're welcome, ma'am.

18 Anything further, Mr. Grimes?

19 MR. GRIMES: No, Your Honor.

20 THE COURT: Does your client wish to state
21 anything for the record?

22 MR. GRIMES: I don't believe so, Your Honor.

23 THE COURT: Sir, is there anything you would
24 like to state for the record on your own behalf?

25 MR. WITHERSPOON: No.

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1 THE COURT: Anything further from the State?

2 MR. FINCH: No, ma'am.

3 THE COURT: Okay. And just so that I'm correct,
4 on criminal sexual conduct first degree, the maximum
5 penalty is thirty years; is that correct?

6 MR. FINCH: That's correct, Your Honor.

7 THE COURT: It is also classified as most
8 serious and violent, which means he'll have to serve
9 it at eighty-five percent and he gets a strike, as
10 well; correct?

11 MR. FINCH: That's correct, Your Honor.

12 MR. GRIMES: Yes, Your Honor.

13 THE COURT: And on the burglary in the first
14 degree, the minimum is fifteen years, no portion of
15 which can be suspended or probation given and the
16 maximum is life; is that correct?

17 MR. FINCH: That's correct, Your Honor.

18 [Whereupon, the Court reviews documents]

19 THE COURT: Sir, if you would stand for
20 sentencing.

21 [Whereupon, Mr. Witherspoon complies]

22 THE COURT: Sir, having been found guilty on the
23 offenses of both -- on indictment 2012-GS-10-3191,
24 which is criminal sexual conduct in the first degree,
25 and 2012-GS-10-3192, which is burglary in the first

1 degree, the Court finds it appropriate that you be
2 sentenced to the State Department of Corrections for a
3 period of eighteen years on both of these offenses.
4 You'll get credit for any time that you've served, to
5 be calculated and applied by the Department of
6 Corrections if that -- well, they will apply it. I
7 guess you'll meet with a counselor once you arrive at
8 R&E and they will explain to you any of your good-time
9 credits.

10 Now, do I need to order any alcohol or drug
11 treatment for him, Mr. Grimes, if it is available, the
12 ATU?

13 MR. GRIMES: I would imagine drug treatment,
14 Your Honor.

15 THE COURT: Sir, I have ordered the ATU Unit, if
16 it is available to you.

17 Thank you-all very much.

18 MR. GRIMES: And those are concurrent?

19 THE COURT: They are concurrent with one
20 another, yes.

21 MR. FINCH: Thank you, Your Honor.

22 THE COURT: You're welcome. Y'all have a good
23 weekend. Thank you-all very much.

24 [JURY TRIAL ADJOURNS AT 2:28 P.M.]
25 - - -

FCH20120301952

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011039667

ARREST WARRANT NUMBER

M727556

DATE OF ARREST

March 9, 2012

ACTION OF GRAND JURY

TRUE BILL*Lois L. Smith*
Foreperson of Grand JuryDate: *6/21/12*

VERDICT

*Guilty**Ch. H. H.* *6/21/12*
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2012GS1003191

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

VS.

NATHANIEL WITHERSPOON a/k/a

NATHANIEL LEE WITHERSPOON

DOB: 1954-07-05

B/M

Indictment for

Criminal Sexual Conduct - 1st Degree

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct - 1st Degree

That in Charleston County, South Carolina, on or about 2011-10-24, the Defendant, NATHANIEL WITHERSPOON a/k/a NATHANIEL LEE WITHERSPOON, did commit a sexual battery upon the victim, Sharon Rosenbaum, without her consent, and with the use of aggravated force, and/or while the victim was also the victim of a burglary, to wit: the defendant did forcibly penetrate the victim vaginally; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Nathaniel Witherspoon

AKA:

Race: BLACK Sex: M Age: 58DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC00464409*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Criminal Sexual Conduct - 1st Degree

INDICTMENT/CASE#: 2012GS1003191A/W#: M727556Date of Offense: 10/24/2011S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES

Finch, Timmy78223
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years;
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-3192

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 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 (07.5 %))

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prnh)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$12

\$

\$500

\$

\$25

\$

\$50

\$

\$5

\$

\$ 133.90

 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: data if available

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: SUSAN

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2123Sentence Date: 6/2/13

350
FCH20120301952

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2011039667

ARREST WARRANT NUMBER

M727557

DATE OF ARREST

March 9, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 12 2012

VERDICT

Guilty

Foreperson of Petit Jury

INDICT

Date:

6-21-13

DOCKET NO. 2012GS1003192

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

NATHANIEL WITHERSPOON

DOB: 1954-07-05

B/M

Indictment for

Burglary - 1st Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Burglary - 1st Degree

That in Charleston County, South Carolina, on or about October 24, 2011, the Defendant NATHANIEL WITHERSPOON, did enter the dwelling of Sharon Rosenbaum, located at [REDACTED], without consent and with the intent to commit a crime therein. That, in addition, the defendant was armed with a deadly weapon; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


TIMMY FINCH
ASSISTANT SOLICITOR

352

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

STATE VS.

Nathaniel Witherspoon

AKA:

Race: BLACK Sex: M Age: 58

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: SC00464409

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1003192

A/W#: M727557

Date of Offense: 10/24/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Finch, Timmy

78223
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012-GS-10-3191
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ca

\$5

\$

\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Att if available.☐ Appointed PD or appointed other counsel.§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

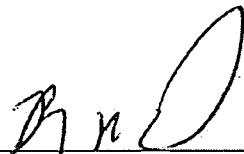
2128

6/21/13

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 22nd, 2015



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT