

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

S.C. SUPREME COURT

GEORGE SALISBURY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001289

APPENDIX

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PAGES 1-500

INDEX

INDEX	i
TRANSCRIPT OF PROCEEDINGS DATED JANUARY 14, 2009	1
TRANSCRIPT OF PROCEEDINGS DATED JANUARY 15, 2009	23
TRIAL TRANSCRIPT DATED JANUARY 26-29, 2009.....	48
APPLICATION FOR POST-CONVICTION RELIEF FILED JANUARY 25, 2013	674
RETURN DATED OCTOBER 10, 2013	691
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 18, 2015	698
EXHIBITS INDEX.....	761
APPLICANT'S EXHIBIT NO. 1	762
APPLICANT'S EXHIBIT NO. 2	764
APPLICANT'S EXHIBIT NO. 3	765
ORDER OF DISMISSAL FILED MAY 19, 2016	766
FINAL BRIEF OF APPELLANT	781
COURT OF APPEALS OPINION NO. 2012-UP-214.....	795

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
DOCKET NO. 2008-GS-08-1074,
1687, 1688

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

January 14, 2009
Moncks Corner, South Carolina

GEORGE SALISBURY,

Defendant.

BEFORE:

THE HONORABLE KRISTI LEA HARRINGTON, Judge

APPEARANCES:

ANNE WILLIAMS, ESQ.
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CHAD SHELTON, ESQ.
ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

1 THE COURT: All right.
2 We have Mr. Shelton's motions
3 to compel and a motion for a
4 continuance.

5 Miss Williams.

6 MS. WILLIAMS: Thank
7 you, your Honor. If I could
8 just address Mr. Shelton's
9 motion for a continuance.
10 With regard to the indictments
11 all three charges against
12 George Salisbury were indicted
13 on September ninth. That is
14 the CSC first, assault on a
15 corrections officer, and
16 hostage-taking.

17 We have a letter that
18 went out to Mr. Shelton dated
19 the ninth, sent on the tenth,
20 and we show that all three
21 indictments went out on
22 September tenth. All of them
23 were marked "Rule five" and he
24 told me on January fifth that
25 he only one indictment for CSC

1 first. I resent them on
2 January fifth.

3 In addition to that,
4 the letters that he speaks of
5 were, were made available to
6 him on January fifth, at which
7 time I told him we were going
8 to have a handwriting expert
9 look at the letters. There's
10 not going to be any additional
11 discovery from the expert.
12 There's going to be one line
13 that says that he can
14 authenticate that this is
15 George Salisbury's
16 handwriting.

17 So at this point,
18 since January fifth, Mr.
19 Shelton has had everything he
20 needs to get his own expert to
21 determine whether his expert
22 will say the letters are
23 indeed Mr. Salisbury's
24 handwriting. The name of that
25 expert, is from SLED. His

1 name is Scott Warsham, and
2 that's what he tells me. That
3 it's not going to be anything
4 technical. It will be one
5 line that says that he can
6 authenticate the letters.

7 With regard to Agent
8 China's (phonetic) SLED
9 report, everything in Agent
10 China's SLED report except
11 three pieces of paper, two of
12 which have to do with chain of
13 custody, there's one which is
14 just an outline of what's in
15 the report, were given to Mr.
16 Shelton back on December
17 sixteenth. Just never gave us
18 the bound copy of her report.

19 I've gone through the
20 report page-by-page and
21 checked it with everything
22 that was sent previously. And
23 I think Mr. Shelton will see
24 there's nothing new in there.
25 She never provided a bound

1 copy that SLED usually
2 provides with her summary that
3 shows, it sort of identifies
4 like a table of contents,
5 everything that's in there.
6 And, as I said, the only thing
7 new is her summary in the
8 beginning and three pieces of
9 paper that have to do with
10 chain of evidence. There's
11 nothing new there.

12 With regard -- even
13 if Mr. Shelton had not read
14 the indictment until January
15 fifth, there's no new
16 discovery with regard to the
17 other charges. It's all the
18 same file. But again, we
19 maintain that, that we did
20 send that out on September
21 tenth, 2008.

22 With regard to the
23 other materials, the victim's
24 employment records and
25 personnel records, we have

1 received them under seal. Mr.
2 Hart is here because when it
3 came into the office it was
4 sealed. He unsealed it just
5 to see if it was the report of
6 this case because we had
7 several things coming in from
8 SCDC. He's prepared to put on
9 the record that all did was
10 open it, identify that it was
11 Sarah Adams's records and then
12 reseal it, and we're prepared
13 to turn those over to the
14 Court and have the Court
15 examine them pursuant to what
16 we think is the proper
17 procedure under South Carolina
18 law. We maintain that there
19 is nothing exculpatory or
20 material to the case in those
21 records, but should the Court
22 determine that defense has
23 made a critical case that
24 there might be something in
25 them we have no problem with

1 the Court examining examining
2 them, turning over what the
3 Court feels is appropriate.

4 Your Honor, just,
5 too, for the record, the
6 original trial notice went out
7 October twenty-first, setting
8 the trial for January
9 twenty-sixth, and the State,
10 most of our witnesses in this
11 case are incarcerated at
12 MacDougall and our concern is
13 that should some of these
14 people be released it would be
15 very difficult for us to find
16 them afterwards. Some of them
17 are not going to be on parole
18 and we already are having
19 trouble finding one person
20 already, so we're speaking
21 from experience when we say
22 that the victim's case might
23 be compromised by not being
24 able to find these witnesses.

25 THE COURT: Mr.

1 Shelton, did you receive trial
2 notice October twenty-first?

3 MR. SHELTON: Your
4 Honor, I received the trial
5 notice October twenty-first.
6 At that trial notice, the one
7 that's marked October
8 twenty-second is when our, our
9 office actually received, but
10 all it has as charges is
11 criminal sexual conduct in the
12 first degree.

13 In addition, your
14 Honor, to go further into the
15 fact that I didn't have notice
16 about the, the other
17 indictments. I was just given
18 an amended life without parole
19 notice just yesterday that,
20 that added on to there the
21 hostage-taking because that is
22 also considered most serious.
23 And then also with the part of
24 life without parole, and
25 that's not even considered in.

1 the October twenty-first
2 letter. The, the
3 hostage-taking is not
4 considered as far as life
5 without parole in her notice,
6 so I got an amended one
7 yesterday. I would have -- I
8 had no knowledge of it and I'm
9 surprised the Solicitor, she
10 had knowledge of it in
11 September and she didn't put
12 that in that, in that trial
13 notice for October
14 twenty-first. She had notice
15 of the direct indictments,
16 your Honor.

17 In addition, since
18 October twenty-first we've had
19 five, five terms of court,
20 including this one. And I was
21 up for trial on one of those
22 terms of court, your Honor.
23 That also, that also includes
24 the holidays for Thanksgiving
25 and Christmas where there was

1 no court at that time, your
2 Honor, so there just was not
3 enough time to prepare and to
4 adequate, adequately
5 investigate this case, your
6 Honor.

7 THE COURT: Mr.
8 Shelton, when did you file
9 your Rule five notice?

10 MR. SHELTON: It was a
11 Brady motion --

12 MS. WILLIAMS: October
13 twenty-seventh.

14 MR. SHELTON: October
15 twenty-seventh.

16 THE COURT: And when
17 did you receive the State's
18 response?

19 MR. SHELTON: Well, I
20 had been receiving Rule -- the
21 case started off, there was a
22 preliminary hearing scheduled
23 in June and I believe the
24 Solicitor's Office contacted
25 our office to talk about a

1 preliminary hearing and to see
2 if the defendant was, would be
3 willing to waive it because he
4 was being transferred down.
5 At that point, that's when I
6 did talk to him about the
7 preliminary hearing phase and
8 so at that point we received
9 some, some discovery materials
10 in early June, then
11 subsequently we've been
12 getting little bits of
13 discovery since then.

14 THE COURT: Mr.
15 Shelton, did you represent Mr.
16 Salisbury at the preliminary
17 hearing?

18 MR. SHELTON: He waived
19 the preliminary hearing, your
20 Honor.

21 THE COURT: Were you
22 present?

23 MR. SHELTON: I was, I
24 was the one that, that talked
25 to him before the preliminary

1 hearing, to explain the
2 preliminary hearing phase and
3 it was his decision to waive
4 the preliminary hearing before
5 we went to court, your Honor.

6 **THE COURT:** And, Mr.
7 Shelton, which, what charges
8 was Mr. Salisbury facing at
9 the preliminary hearing?

10 **MR. SHELTON:** Criminal
11 sexual conduct in the first
12 degree.

13 **THE COURT:** And that
14 was the only one that he was
15 facing?

16 **MR. SHELTON:** That was
17 the only one. It was not
18 until, I found out two weeks
19 ago that it was a direct
20 indictment in September with
21 the other charges in the case
22 that he's facing.

23 **THE COURT:** Miss
24 Williams, you directly
25 indicted him on the two

1 additional charges?

2 MS. WILLIAMS: At the
3 same time that he's indicted
4 on the charge, the CSC first,
5 he was also indicted directly
6 for the other two charges, and
7 that was on September ninth.
8 And, your Honor, again we
9 maintain that he did get
10 notice of that. But it is
11 true that the State left off
12 that on the trial notice back
13 in October it only said CSC
14 first and on the LWOP notice
15 of the same date it only said
16 CSC first. But we, but we
17 sent him, we had discussed all
18 three charges all along but we
19 sent him new notices well
20 within the ten days that's
21 required by the statute. He's
22 had ten days' notice for, for
23 all three charges and again,
24 there's no new discovery. All
25 three charges have been there

1 since September ninth.
2 There's no new information so
3 there's no surprise and he's
4 had more than ten days'
5 notice, formal notice,
6 although we would assert that
7 he's known about all three
8 charges well before the ten
9 days.

10 I filed the amended
11 LWOP, life without parole
12 notice because I recognize
13 that there was an error in
14 that they only put the one
15 indictment number on the top
16 rather than both, and he's
17 actually eligible, actually
18 eligible for life without
19 parole on the hostage-taking
20 as well.

21 THE COURT: Mr.
22 Shelton, can you explain to
23 the Court how you would be
24 prejudiced by not -- Miss
25 Williams, all three

1 indictments arise out of the
2 same date and occurrence. Is
3 that correct?

4 MS. WILLIAMS: The same
5 discovery. Same date.
6 There's nothing new and
7 nothing supplemental about any
8 of the charges and that's why
9 they were all sent to the
10 grand jury at the same time.

11 THE COURT: Mr.
12 Shelton, how are you
13 prejudiced by not having --
14 the State indicates that it
15 did provide you a copy of the
16 indictments in its Rule five
17 but assuming that you did not
18 receive, how are you
19 prejudiced in preparing your
20 defense?

21 MR. SHELTON: Your
22 Honor, I admit that this is
23 all based off the same facts,
24 however there are -- there is
25 new law that I do have to

1 research and go through in
2 addition to doing the
3 investigation in this case.
4 There's, there's not going to
5 be time in the week and a half
6 to do that before trial
7 starts. So that's how I'd be
8 prejudiced. I wouldn't be
9 prepared, adequately prepared
10 for this case.

11 In addition to my
12 case load which, which
13 fluctuates from around a
14 hundred cases at any given
15 time, your Honor, I, I just
16 wouldn't have, have the
17 ability to prepare for those
18 cases that come before the
19 Court and, and get ready for
20 trial on this case. And I do
21 have -- I have received, I did
22 receive discovery on September
23 ninth that's dated September
24 ninth and there's no
25 indictments in this discovery

1 and it, and it says charges:
2 Criminal sexual conduct in the
3 first degree on the cover
4 page. It doesn't have
5 anything else as far as the
6 other two charges and I, I
7 never received anything that
8 said anything more than
9 criminal sexual conduct in the
10 first degree until I discussed
11 this with the solicitor on
12 January sixth.

13 MS. WILLIAMS: Your
14 Honor, may I respond?

15 THE COURT: You may.

16 MS. WILLIAMS: Even if
17 Mr. Shelton is saying that he
18 didn't receive those, we think
19 that the indictments back on
20 September tenth, we resent the
21 indictments January sixth.
22 That's twenty days before
23 trial and there's no new
24 discovery. So if it's just
25 the law he needed to research,

1 you know, he got it again on,
2 on January sixth.

3 THE COURT: Mr.
4 Shelton, what's your position
5 as to the Court reviewing in
6 camera the victim's records?

7 MR. SHELTON: Your
8 Honor, my, my position is that
9 I, I should have the ability
10 to look at those records. I'm
11 not asking, I'm not asking to
12 make copies of those records
13 at this time. I would just
14 like to review those records
15 to see if there is anything
16 exculpatory and I would rather
17 the Court not, not do my case
18 for me and give my defense. I
19 would rather myself be able
20 to, myself along with
21 discussing the case with my
22 client to present my defense
23 at trial, your Honor, and if
24 there is exculpatory
25 information in there that I

1 might be able to, to get from
2 there. If, if not, then
3 there's not. But I would like
4 to make that decision as
5 defense counsel.

6 **THE COURT:** Miss
7 Williams, did you provide
8 copies of the cases that you
9 provided to the Court to Mr.
10 Shelton?

11 **MS. WILLIAMS:** I did,
12 your Honor. And we would just
13 point the Court to Bryant
14 which goes out of its way to
15 clarify Court intervention or
16 procedure to be followed by
17 defendant seeks production of
18 evidence undisclosed by the
19 State. In that case the Court
20 cites United States versus
21 Ritchie, and I've outlined the
22 argument in my response to
23 defense counsel's motion.

24 **THE COURT:** Mr.
25 Shelton, did you have time to

1 review this, these cases in
2 the response?

3 MR. SHELTON: I have
4 not, your Honor.

5 THE COURT: Neither did
6 the Court, Miss Williams. I
7 heard argument. Is there
8 anything additional, Mr.
9 Shelton?

10 MR. SHELTON: Not right
11 now, your Honor.

12 THE COURT: Court's
13 going to take time to review
14 your response to the motion as
15 well as review State v. Bryant
16 that you provided. And I will
17 have my ruling to you by
18 tomorrow.

19 MS. WILLIAMS: Thank
20 you, your Honor.

21 THE COURT: Mr. Hart,
22 if you will provide my clerk
23 the records and I will
24 maintain the records. I will
25 not review the records until I

1 have indicated to both parties
2 what my ruling is, but that
3 will -- I will maintain
4 custody of those records.
5 Thank you.

6 MR. SHELTON: Your
7 Honor --

8 THE COURT: Yes?

9 MR. SHELTON: Briefly.
10 I'm sorry. I did put in the
11 motion to compel specifics as
12 you asked, your Honor, to our
13 conference, your Honor, so, in
14 the motion to compel.

15 THE COURT: All right.
16 Thank you.

17 (Whereupon, the
18 matter is concluded.)

19

20

21

22

23

24

25

CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Berkeley County, South Carolina on the 14th day of January, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATED: August 27, 2010

Heather Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF GENERAL SESSIONS
DOCKET NO. 2008-GS-08-1074,
1687, 1688

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

January 15, 2009
Moncks Corner, South Carolina

GEORGE SALISBURY,

Defendant.

BEFORE:

THE HONORABLE KRISTI LEA HARRINGTON, Judge

APPEARANCES:

ANNE WILLIAMS, ESQ.
ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CHAD SHELTON, ESQ.
ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

1
2 (The following is the
3 conclusion of the matter first
4 heard on January 14, 2009.)

5 THE COURT: Mr.
6 Shelton, I understand you have
7 a response?

8 MR. SHELTON: Yes, your
9 Honor. For the record, we're
10 back on the record for George
11 Salisbury.

12 They -- specifically
13 the cases that the solicitor
14 cites to, State v. Bryant,
15 State v. Nicholson, and
16 Pennsylvania v. Ritchie, it's
17 my response that they, they,
18 this case is distinguished
19 from those. State v. Bryant
20 was a, a handwritten statement
21 from the C. I. They, the
22 State had prevented or had
23 presented to the defense
24 counsel the typewritten
25 statement. So they Court,

1 while they gave a, a rule
2 their decision also came down
3 to cumulative evidence because
4 it was already, already
5 provided to them.

6 State v. Nicholson
7 and Pennsylvania v. Ritchie,
8 the United States Supreme
9 Court decision deal with
10 doctor and client
11 confidentiality. This is a
12 completely different type of
13 situation. These are
14 employment records that have
15 no confidentiality whatsoever
16 associated with them.

17 In addition, the
18 Court in State v. Nicholson
19 and Pennsylvania v. Ritchie
20 mentioned that these objects
21 were under -- whether they're
22 under the State's control or
23 not. Here these are not
24 regular employment records.
25 These are State employment

1 records. These are
2 specifically under the State
3 control and, therefore, I
4 believe with the seriousness
5 of the punishment that is
6 facing my client, Mr.
7 Salisbury, and the State's
8 burden of proof, I believe
9 that those should be presented
10 to defense counsel.

11 THE COURT: Mr.
12 Shelton, it's your position
13 that these records were under
14 the State's, meaning the
15 Solicitor's Office's
16 possession and control?

17 MR. SHELTON: The
18 State's, the State as a whole,
19 your Honor.

20 THE COURT: The
21 Solicitor's Office possession
22 and control, Mr. Shelton?

23 MR. SHELTON: Yes. The
24 Solicitor's Office who
25 represents the State. Yes,

1 your Honor. It's under their
2 control and --

3 THE COURT: And, Mr.
4 Shelton, what is it that may
5 be contained in these records?

6 MR. SHELTON: Your
7 Honor, I have, I have no idea
8 what can be contained in those
9 records. I can base it off of
10 what my client has told me or
11 suspected. However, I, I
12 really have no idea. There
13 could be information, there
14 could be information
15 concerning prior bad acts by
16 the, by the correctional
17 officer. There could be
18 reasons -- it's my
19 understanding that she got
20 transferred. She was
21 transferred throughout the
22 jail. I don't know if that's
23 true or not because I haven't
24 seen the correctional -- the,
25 the employment records, but

1 for reasons that -- that,
2 those reasons and so those are
3 the type of -- that's the type
4 of information I, I would ask
5 to see. I, and to go through
6 those, that information to see
7 if that is, if that is there,
8 and it also affects my, my
9 ability to, what I can argue,
10 what I can't, what type of
11 questions I can ask the
12 correctional officer on the
13 stand because she is the
14 victim, so everything, if I,
15 if I saw this information
16 there may be a way that I can,
17 I would have no knowledge -- I
18 would have direct -- no
19 knowledge of, of information
20 that's, if it's not in there
21 so I can't ask the question to
22 the correctional officer on
23 the stand.

24 THE COURT: Miss
25 Williams, can you provide the

1 Court a short, concise
2 non-argument to the statement
3 of the facts?

4 MS. WILLIAMS: Of the
5 case?

6 THE COURT: Yes.

7 MS. WILLIAMS: Yes,
8 your Honor. On January
9 eighteenth, 2008 Sarah Adams,
10 who is a corrections officer,
11 she actually was 2007
12 Corrections Officer of the
13 Year from MacDougall, was
14 working her regular shift.
15 Actually she used to work in a
16 different unit but because
17 someone had called in sick she
18 had worked both the sixteenth
19 and seventeenth in Magnolia
20 Unit. It is a unit that has
21 ninety-one inmates and she did
22 her lock-down at ten o'clock.
23 Everyone's supposed to be --
24 lights out, everybody's
25 supposed to be in their bunks.

1 This particular unit does not
2 have closed cells. It's like
3 cubicles.

4 At that time, after
5 the lights went out, the
6 defendant walked into the
7 guard area -- it's a
8 glassed-in booth and on one
9 side is half of the units and
10 on the other side is the other
11 half of the units -- and the
12 victim alleges that he had a
13 shank, that he forced her into
14 the bathroom, ordered her to
15 take her clothing off, and
16 then sexually assaulted her.

17 Statements from the
18 inmates that were in the unit
19 are that, and they gave
20 written statements that they
21 heard her screaming for help,
22 that they broke the window,
23 the glass into the booth where
24 she worked, that they came
25 into the bathroom, broke the

1 bathroom door off of the
2 frame, that they took their
3 own clothes off, gave them to
4 the guard and then carried her
5 to safety in the television
6 room where they guarded her
7 until they could knock the
8 phone off and get someone else
9 to get in there and help them.

10 At that point she was
11 turned over to authorities and
12 Mr. Salisbury was -- had a
13 physical altercation with some
14 of those inmates and both of
15 them were transported to -- by
16 E. M. S.

17 THE COURT: All right.
18 Mr. Shelton, Mr. Shelton
19 anything further as to the
20 disclosure of the records
21 obtained by the Solicitor's
22 Office from the Department of
23 Corrections?

24 MR. SHELTON: No, your
25 Honor. Just that to reiterate

1 that if affects my ability to
2 question the witness's credi-
3 bility and to impeach the
4 correctional officer on the
5 stand.

6 **THE COURT:** Based upon
7 your arguments, Mr. Shelton,
8 on behalf of your client the
9 Court reviewed the packet of
10 material that was given by the
11 Solicitor's Office and I will
12 mark it as Court's exhibit
13 number one with reference to
14 this case.

15 (Whereupon, the
16 records previously referred to
17 are received and marked as
18 Court's Exhibit No. 1 for
19 purposes of the hearing.)

20 **THE COURT:** My
21 understanding is that the
22 procedure that this Court will
23 follow is that I will seal the
24 records back up and these will
25 be, the records will be

1 maintained as a part of the,
2 of the record in this case.
3 Based upon my review of the
4 records, of the video, her
5 name at the time was Sarah
6 Adams. Is that correct?

7 MS. WILLIAMS: Yes,
8 your Honor.

9 THE COURT: There is --
10 and the reason why I inquire
11 is because there's substantial
12 -- the records trace her
13 marriage, her name change and
14 all of that through,
15 throughout the records. I
16 wanted to make sure that the
17 name is clear. So I will seal
18 this and make this Court's
19 exhibit number one.

20 Based upon my review
21 of the records it's clear that
22 while the State Department of
23 Corrections is a branch of the
24 State, the Solicitor's Office
25 had to file a subpoena. This

1 subpoena was delivered and the
2 Solicitor's Office, as a
3 matter of fact, had to make
4 reimbursable to the Department
5 of Corrections copies or the
6 amount of the copies that were
7 provided. As that may be, the
8 Court found nothing relevant
9 in the review of the
10 employment records that would
11 be material to this case. The
12 majority of, I believe, Mr. --
13 I'm going to use your
14 description. I believe you
15 said this was an employment
16 injury.

17 MR. SHELTON: Yes, your
18 Honor.

19 THE COURT: In
20 comparison to the other. In
21 my review of the material that
22 was presented, there is page
23 after page after page of
24 employment, check-in,
25 check-out, leave and

1 attendance reports. Her
2 W-2's, the request for leave
3 pursuant to this incident as
4 well as her certification, the
5 personnel status forms, as
6 well as a copy of the
7 certificate of the MacDougall
8 Officer of the Year for 2007.

9 Based upon my review
10 and counsels's arguments, I am
11 declining to turn over the
12 victim's employment record. I
13 do not feel that they are
14 material or relevant, that
15 there is nothing that is
16 exculpatory contained in this,
17 in the packet as presented by
18 the State.

19 Anything further
20 regarding that matter, Mr.
21 Shelton?

22 MR. SHELTON: Your
23 Honor, I would ask for
24 purposes of the record how
25 long it took for you to review

1 the materials?

2 THE COURT: It took me
3 approximately -- at least
4 thirty minutes it took to
5 review them, the exhibit
6 that's known as Court's
7 exhibit number one. Anything
8 further regarding that, that
9 matter?

10 MR. SHELTON: I would,
11 I would ask that if something
12 does become relevant while the
13 questioning takes place that
14 the Court presents that to the
15 defense, that there may be
16 something relevant as far as
17 exculpatory or, while
18 testimony is going on since I
19 have --

20 THE COURT: I note that
21 request for the record, Mr.
22 Shelton.

23 MR. SHELTON: Thank
24 you.

25 THE COURT: You have

1 also requested a continuance
2 to, to your motion filed on
3 the fourteenth, January
4 fourteenth.

5 MR. SHELTON: Yes.

6 THE COURT: Correct,
7 Mr. Shelton?

8 MR. SHELTON: Yes, your
9 Honor.

10 THE COURT: And the
11 basis for that motion for a
12 continuance is the fact that
13 you did not receive the two
14 direct indictments, the
15 assault on the corrections
16 officer as well as the
17 hostage-taking, that you did
18 not receive Detective Shanda's
19 report until December
20 sixteenth. Is that correct?

21 MR. SHELTON: December
22 twelfth, your Honor.

23 THE COURT: December
24 twelfth.

25 MR. SHELTON: I did not

1 receive the report until
2 December twelfth.

3 THE COURT: And that
4 you are still awaiting a
5 handwriting expert. Is that
6 correct?

7 MS. WILLIAMS: Actually
8 it was made available to him
9 today. It's one line that
10 says these notes were authored
11 by George Salisbury.

12 THE COURT: And, Miss
13 Williams, just for the record
14 you provided also the
15 documents that the SLED
16 analyst reviewed in making the
17 report?

18 MS. WILLIAMS: January
19 fifth.

20 THE COURT: Is that
21 correct, Mr. Shelton? You
22 were provided copies of the
23 document that the SLED
24 handwriting expert reviewed in
25 order to make his report?

1 MR. SHELTON: I have
2 not been provided those
3 copies, however the Solicitor
4 has informed me that -- oh,
5 the documents. Yes. I'm
6 sorry. January twelfth, your
7 Honor.

8 MS. WILLIAMS: January
9 fifth. I have the note right
10 here. We, we called his
11 office and said they were
12 available for him to look at
13 as of January fifth, and then
14 when he didn't come we made
15 copies of them and delivered
16 them to him on January seventh
17 -- I'm sorry. January
18 thirteenth, but they were
19 available to him in our office
20 as of January fifth.

21 THE COURT: Mr.
22 Shelton, I'll be happy to hear
23 from you, just briefly,
24 regarding your request for a
25 motion for a continuance.

1 MR. SHELTON: Yes.
2 Your Honor, due to the, the
3 serious nature of these
4 charges that the, the
5 punishment for the criminal
6 sexual conduct in the first
7 degree is life without parole
8 because he had a previous most
9 serious charge. In addition,
10 in addition to just receiving
11 notice January fifth of
12 another charge that is also,
13 if he's found guilty of,
14 considered most serious and
15 life without parole, and my,
16 my inability to, to be able to
17 adequately prepare for this
18 case, because of invest --
19 investigation issues, your
20 Honor. I do have an
21 investigator now but I -- for
22 those reasons and only having
23 the case for six months, I, I
24 have not had adequate time to
25 prepare and investigate this

1 case, your Honor. And due to
2 the serious nature of these
3 charges I would ask for the
4 continuance. Now, now my case
5 load fluctuates, but it, it
6 does, it is in a high category
7 and I, I believe that this
8 would prejudice my, my
9 defendant based off, based off
10 the fact that he's facing life
11 without parole if found
12 guilty. It would also
13 prejudice myself, these, these
14 new charges because now if I,
15 my strategy has, has to, may
16 change when it comes to trial
17 because, because of these new
18 charges, and if he's found
19 guilty of the hostage-taking
20 and that's, that's also a most
21 serious and life without
22 parole.

23 THE COURT: Mr.
24 Shelton, how much time do you
25 feel would be adequate?

1 MR. SHELTON: I, I
2 could, could be prepared by
3 March, your Honor. I would
4 request the end of March.

5 THE COURT: Mr., Mr.
6 Shelton, what additional
7 investigation or preparation
8 would you need?

9 MR. SHELTON: I have to
10 go over that with my
11 investigators. They will be
12 working on finding the, the
13 witness that is no longer in
14 MacDougall. I also have to go
15 to MacDougall and interview
16 the clients there. I also
17 could possibly have a couple
18 witnesses that I -- right now
19 I only know nicknames that I
20 might be able to find.

21 THE COURT: Mr.
22 Shelton, is that, the last
23 request that you have is a
24 request for a continuance,
25 that the only other basis that

1 I've not dealt with was the
2 continuance?

3 MR. SHELTON: Yes, your
4 Honor.

5 THE COURT: Mr.
6 Shelton, at this time I deny
7 your request for a
8 continuance. However, if you
9 feel that based upon, if
10 you -- once you have your
11 experts, should you have an
12 expert review the handwriting
13 analysis that was just made
14 available to you today, which
15 is January fifteenth, if you
16 need additional time for an
17 expert based upon that, I will
18 be more than happy to hear
19 from you regarding that
20 matter. I will be, of course,
21 in Berkeley next week. I
22 considered the fact that you
23 had represented at a
24 preliminary hearing Mr.
25 Singleton (sic) back in June

1 of '08, that you were given a
2 trial notice in October, on
3 October twenty-first, although
4 you did indicate that the two
5 charges were directly indicted
6 and you did not have notice of
7 those two charges, I did take
8 into consideration that, that
9 the victim of the CSC first
10 was a correctional officer and
11 you did know at that time that
12 your client was in custody at
13 MacDougall. They, the, the
14 two indictments that you did
15 not, were not aware of, that
16 you indicated to the Court
17 that you were not aware of,
18 they do arise, according to
19 the State, out of the same
20 facts that the CSC first does
21 arise out of. At this time I
22 am again denying your request
23 for a continuance.

24 Miss Williams, have
25 you provided everything in

1 your file that is discoverable
2 to Mr. Shelton?

3 MS. WILLIAMS: Yes,
4 your Honor.

5 THE COURT: Mr.
6 Shelton, do you -- is there
7 anything additional that you
8 need from the State or that
9 you, in your belief other than
10 the records that I've already
11 ruled on regarding this
12 matter?

13 MR. SHELTON: Not that
14 I'm aware at this time, your
15 Honor. I still have not had
16 the ability to go through the,
17 through the new records that
18 were provided to me on, on
19 Monday due to court being,
20 going, going on, your Honor.
21 I, I really have no idea
22 what's in those reports. I,
23 if I come across anything I
24 will file the appropriate
25 motion.

1 MR. SHELTON: Thank
2 you, Mr. Shelton. I'll be
3 happy to hear from you. And
4 will be here next week. Again
5 I will have a court reporter
6 and be in chambers if needed
7 to address any additional
8 matters.

9 Is there anything
10 further from the State?

11 MS. WILLIAMS: Nothing,
12 your Honor.

13 (Whereupon, this
14 matter was concluded.)

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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Berkeley County, South Carolina on the 15th day of January, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATED: August 27, 2010

Heather Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

COURT OF GENERAL SESSIONS

08-GS-08-1074

08-GS-08-1687

08-GS-08-1688

ORIGINAL

THE STATE)

PLAINTIFF)

VS.)

TRANSCRIPT OF RECORD

GEORGE SALISBURY)

DEFENDANT)

JANUARY 26TH - 29TH, 2009
MONCKS CORNER, SC

B E F O R E:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

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

ANN WILLIAMS, ESQUIRE
BRYAN ALFARO, ESQUIRE
ASSISTANT SOLICITORS

PATRICIA KENNEDY, ESQUIRE
CHAD SHELTON, ESQUIRE
ASSISTANT PUBLIC DEFENDERS

VIVIAN CROSS
SHARON JONES
OFFICIAL COURT REPORTERS

INDEX

OPENING STATEMENTS BY MS. WILLIAMS	172			
OPENING STATEMENTS BY MR. SHELTON	174			
WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
CLARKE M. POWELL				
BY MR. ALFARO	132		149	
BY MR. SHELTON		143		
RUFUS MINCEY				
BY MS. WILLIAMS	177		200	
BY MR. SHELTON		191		
DAVID A. BENTON				
BY MS. WILLIAMS	204			
BY MR. SHELTON		207		
DEVIN G. GADSON				
BY MS. WILLIAMS	211			
BY MR. SHELTON		214		
SARA ADAMS				
BY MS. WILLIAMS	216		260	
BY MS. KENNEDY		236		
WILLIAM SUMPTER				
BY MS. WILLIAMS	263			
BY MR. SHELTON		269		
JAMES WILLIAMS				
BY MR. ALFARO	278			
BY MR. SHELTON		280		
JOHNNY EVANS, JR.				
BY MR. ALFARO	295			
BY MR. SHELTON		305		

INDEX

(CONT.)

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
FAYE LEBOEUF				
BY MR. WILLIAMS	311		324	
BY MS. KENNEDY		317		
JONATHAN BAXTER				
BY MS. WILLIAMS	325			
BY MR. SHELTON		331		
WILLIE STAGGERS				
BY MS. WILLIAMS	345			
BY MS. KENNEDY		358		
JEFFERSON WALDROP, JR.				
BY MS. WILLIAMS	402			
BY MR. SHELTON		407		
DR. ROBERT BABE, III				
BY MS. WILLIAMS	415			
BY MS. KENNEDY		417		
TONYA F. MCCANTS				
BY MS. WILLIAMS	424		429	
BY MS. KENNEDY		427		430
LINDA DEAN				
BY MS. WILLIAMS	461			
BY MS. KENNEDY		463		
SCOTT WORSHAM				
BY MS. WILLIAMS	467			
BY MS. KENNEDY		508		
CLARKE POWELL				
BY MR. ALFARO	523		556	
BY MS. KENNEDY		539		

INDEX

(CONT.)

CLOSING ARGUMENTS BY MS. WILLIAMS.	569
CLOSING ARGUMENTS BY MS. KENNEDY	577
JURY CHARGE	586
VERDICT	609

E X H I B I T S

STATE'S EXHIBITS:

	ID.	EVD.
1-A VICTIM'S SHIRT		263
1-B INMATE PANTS	276	
2 DIAGRAM OF PRISON	180	181
3 PACKAGE WITH SHANK		232
4 ONE PHOTO	201	202
5 ONE PHOTO		231
6 ONE PHOTO		231
7 ONE PHOTO		231
8 ONE PHOTO		231
9 ONE PHOTO		231
10 ONE PHOTO		231
11 ONE PHOTO		231
12 ONE PHOTO		231
13 ONE PHOTO		231
14 ONE PHOTO		231
15 ONE PHOTO		231
16 ONE PHOTO		231
17 ONE PHOTO		231
18 ONE PHOTO		231
19 ONE PHOTO		231
20 VICTIM'S CLOTHING	278	263
21 INMATE JOB SCHOOL ASSIGNMENT	277	
22 CLASSIFICATION WAIVER	277	
23 CLASSIFICATION WAIVER 8-20-07	277	463
24 INMATE JOB/SCHOOL ASSIGNMENT	277	
25 GEORGE SALISBURY WRITINGS	277	
26 GEORGE SALISBURY WRITINGS 11/15/07	277	
27 GEORGE SALISBURY WRITINGS UNDATED	277	496
28 ONE PHOTO	301	302
29 ONE PHOTO	301	302
30 ENVELOPE	303	
31 EMPTY MANILA ENVELOPE	475	
32 WAIVER RIGHTS (ALSO COURT'S 1)		529

DEFENDANT'S EXHIBITS

1 INCIDENT REPORT	281
2 USE OF FORCE	283

COURT'S EXHIBITS

1 JACKSON V. DENNO	136	150
2 JURY NOTE/JUDGE'S ANSWER		609

STATE VERSUS GEORGE SALISBURY
JURY SELECTIONP R O C E E D I N G S

(JANUARY 26, 2009 - 4:02 P.M.)

(CASE NUMBER 08-GS-08-1074/1687/1688)

(DAY 1 OF TRIAL)

THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, WE
ARE ABOUT TO BEGIN THE TRIAL OF THE CASE OF THE STATE VERSUS
GEORGE SALISBURY.

MR. SHELTON, IF YOU WILL PLEASE STAND AND INTRODUCE YOUR
CLIENT?

(WHEREUPON, CHAD SHELTON, PATRICIA KENNEDY, AND GEORGE
SALISBURY STOOD AND PRESENTED THEMSELVES TO THE JURY.)

MR. SHELTON: MY NAME IS CHAD SHELTON. UM -- MY
CLIENT'S GEORGE SALISBURY.

WITH ME IS PATRICIA KENNEDY.

UM, AND THERE'S ALSO SOME PEOPLE IN OUR OFFICE THAT
MAY BE AROUND; DAVID SCHWACKE, DEBBIE LITTLEJOHN, AND
KESHIA WHITE.

THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, IS
THERE ANY MEMBER OF THE PANEL THAT'S RELATED BY BLOOD,
MARRIAGE, CLOSE PERSONAL FRIEND, HAVE ANY BUSINESS OR
PROFESSIONAL DEALINGS WITH MR. SALISBURY? IF SO, PLEASE
STAND.

(NO RESPONSE FROM THE JURY PANEL.)

THE COURT: THANK YOU, THERE ARE NONE. ARE THERE ANY
MEMBERS OF THE JURY PANEL RELATED BY BLOOD, MARRIAGE, CLOSE

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 PERSONAL FRIEND, HAVE ANY SOCIAL OR BUSINESS DEALINGS WITH
2 EITHER MS. KENNEDY OF THE PUBLIC DEFENDER'S OFFICE OR
3 MR. SHELTON OF THE PUBLIC DEFENDER'S OFFICE? IF SO, PLEASE
4 STAND.

5 THANK YOU, THERE -- YES, SIR?

6 MR. HULST: UH -- YOUR HONOR, UH, I'M A LAWYER IN MONCK'S
7 CORNER, SO I HAVE SOME BUSINESS DEALINGS OCCASIONALLY WITH
8 MS. KENNEDY.

9 THE COURT: ALL RIGHT. AND, MR. HULST, IS THERE
10 ANYTHING ABOUT YOUR BUSINESS DEALINGS WITH EITHER MR. SHELTON
11 OR MS. KENNEDY, OR ANYONE IN THE PUBLIC DEFENDER'S OFFICE,
12 THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
13 JUROR IN THIS CASE?

14 MR. HULST: NO, MA'AM.

15 THE COURT: ALL RIGHT; THANK YOU. AND YOU ARE JUROR
16 NUMBER?

17 MR. HULST: SIXTY-FOUR.

18 THE COURT: SIXTY-FOUR; THANK YOU. IS THERE ANYONE
19 ELSE?

20 (NO FURTHER RESPONSE FROM JURY PANEL.)

21 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL THAT
22 HAS EVER BEEN REPRESENTED BY THE PUBLIC DEFENDER'S OFFICE,
23 EITHER HERE IN, UH, BERKELEY COUNTY OR IN CHARLESTON COUNTY?
24 IF SO, PLEASE STAND.

25 (WHEREUPON, JUROR 64 STOOD BUT WAS UNNOTICED BY

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT.)

2 THE COURT: THANK YOU; THERE ARE NONE.

3 MS. RHOTON: YO0000UR HONOR.

4 DEPUTY: ONE HERE, YOUR HONOR.

5 THE COURT: OH, I'M SORRY.

6 MS. RHOTON: UM -- AT THE TIME OF MY DIVORCE, UM,

7 MICHAEL BROWN, WHO WAS WORKING WITH THE PUBLIC DEFENDER'S

8 OFFICE BUT HAD CONTINUED WITH MY DIVORCE.

9 THE COURT: IS THERE ANYTHING ABOUT MICHAEL BROWN, WHO
10 USED TO BE WITH THE PUBLIC DEFENDER'S OFFICE, BEING, UH, YOUR
11 ATTORNEY THAT WOULD AFFECT YOUR ABILITY TO BE A FAIR AND
12 IMPARTIAL JUROR IN THIS CASE?

13 MS. RHOTON: NO, MA'AM.

14 THE COURT: ALL RIGHT; THANK YOU. MS. WILLIAMS, IF YOU
15 WILL PLEASE STAND, INTRODUCE YOURSELF AND ANY PERSONS THAT
16 WILL BE SEATED AT YOUR TABLE?

17 MS. WILLIAMS: THANK YOU, YOUR HONOR.

18 COURT REPORTER: COULD WE GET HER NUMBER, YOUR HONOR?

19 (WHEREUPON, ANN WILLIAMS, BRYAN ALFARO, MERV POWELL,
20 CHARLES HARP, AND ALLEN MASTANTUNO STOOD AND PRESENTED
21 THEMSELVES TO THE JURY.)

22 MS. WILLIAMS: MY NAME IS ANN WILLIAMS, I'M AN ASSISTANT
23 SOLICITOR WITH THE BERKELEY COUNTY SOLICITOR'S OFFICE.

24 THIS IS BRYAN ALFARO, HE'S THE DEPUTY SOLICITOR IN OUR
25 OFFICE.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 WE BOTH WORK FOR SCARLETT WILSON, WHO'S THE ELECTED
2 SOLICITOR, AND SHE IS OVER THE NINTH CIRCUIT WHICH
3 ENCOMPASSES CHARLESTON AND BERKELEY COUNTIES.

4 UM -- THIS IS MERV POWELL, WHO IS THE INVESTIGATOR FOR
5 THE PEOPLE AT THE PRISON.

6 THIS IS CHARLES HARP, WHO IS THE INVESTIGATOR FOR THE
7 SOLICITOR'S OFFICE.

8 AND, ALLEN MASTANTUNO, WHO IS ANOTHER ASSISTANT
9 SOLICITOR IN OUR OFFICE.

10 THE COURT: THANK YOU -- THANK YOU, MS. WILLIAMS. IS
11 THERE ANY PERSON RELATED BY BLOOD, MARRIAGE, CLOSE PERSONAL
12 FRIEND, HAVE A -- ANY BUSINESS OR SOCIAL DEALINGS WITH EITHER
13 MS. WILLIAMS OR MR. ALFARO? IF SO, PLEASE STAND.

14 (NO RESPONSE FROM THE JURY PANEL.)

15 THE COURT: THANK YOU, THERE ARE NONE. IS THERE ANY
16 MEMBER OF THE JURY PANEL RELATED BY BLOOD, MARRIAGE, CLOSE
17 PERSONAL FRIENDS, UH, WITH ANYONE THAT WORKS WITHIN THE
18 SOLICITOR'S OFFICE IN EITHER CHARLESTON OR BERKELEY COUNTY?
19 IF SO, PLEASE STAND.

20 (NO RESPONSE FROM THE JURY PANEL.)

21 THE COURT: THANK YOU, THERE ARE NONE.

22 MR. HULST: UH -- MA'AM?

23 THE COURT: OH -- YES?

24 MR. HULST: I THINK -- AGAIN---

25 THE COURT: ALL RIGHT, MR. -- MR. HULST, UH, JUROR NUMBER

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 SIXTY-FOUR, IS THERE ANYTHING ABOUT YOU, UH, BEING AN ATTORNEY
2 AND WORKING WITH THE ATTORNEYS IN THE SOLICITOR'S OFFICE IN
3 CHARLESTON AND BERKELEY COUNTY THAT WOULD AFFECT YOUR ABILITY
4 TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

5 MR. HULST: NO, MA'AM.

6 THE COURT: THANK YOU. YES, MA'AM; YOUR JUROR NUMBER AND
7 NAME?

8 MS. WILLS: UH -- NUMBER ONE-SIXTY-EIGHT.

9 THE COURT: AND YOUR NAME?

10 MS. WILLS: MARY WILLS.

11 THE COURT: OKAY; AND, UM, YOU HAVE HAD SOCIAL, BUSINESS,
12 OR PROFESSIONAL DEALINGS WITH SOMEONE IN THE SOLICITOR'S
13 OFFICE?

14 MS. WILLS: UH -- YES, QUITE A FEW TIMES.

15 THE COURT: I'M HAVING A HARD TIME HEARING YOU, SO I KNOW
16 MY COURT REPORTER CAN'T HEAR YOU EITHER. I NEED YOU TO SPEAK
17 UP, MS. WILLS.

18 MS. WILLS: YES; ONE OF THE ASSOCIATES -- OFFICER HARP --
19 I, UH, KNOW HIM.

20 THE COURT: ONE OF THE -- YOU KNOW MR. HARP, ONE OF THE
21 INVESTIGATORS?

22 MS. WILLS: YES.

23 THE COURT: ALL RIGHT; AND, UH, IS THERE ANYTHING ABOUT
24 YOUR RELATIONSHIP WITH MR. HARP THAT WOULD AFFECT YOUR ABILITY
25 TO BE FAIR AND IMPARTIAL IN THIS TRIAL?

1 MS. WILLS: NO.

2 THE COURT: ALL RIGHT; THANK YOU. YES, MA'AM, YOUR JUROR
3 NUMBER AND NAME?

4 MS. RHOTON: ONE-TWENTY, AND IT'S ANDRA RHOTON. AND WE
5 AT TRIDENT LITERACY USE A LOT OF THE, UM, COMMUNITY SERVICE
6 PEOPLE THAT ARE SENT TO US THROUGH THE CHARLESTON COUNTY.

7 THE COURT: AND IS THERE ANYTHING ABOUT YOUR, UH,
8 RELATIONSHIP WITH THE -- WITH CHARLESTON COUNTY, UH, WORKING
9 THROUGH TRIDENT LITERACY, THAT WOULD AFFECT YOUR ABILITY TO BE
10 FAIR AND IMPARTIAL IN THIS TRIAL?

11 MS. RHOTON: NO, MA'AM.

12 THE COURT: ALL RIGHT. YOUR JUROR NUMBER ONE MORE TIME?

13 MS. RHOTON: I'M SORRY, ONE-TWENTY.

14 THE COURT: THANK YOU, MS. RHOTON.

15 (NO FURTHER RESPONSE FROM JURY PANEL.)

16 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL RELATED
17 BY BLOOD, MARRIAGE, CLOSE PERSONAL FRIEND, UH, OF YOURS THAT
18 HAS BEEN A -- EVER BEEN EMPLOYED BY THE SOUTH CAROLINA
19 DEPARTMENT OF CORRECTIONS; STATE LAW ENFORCEMENT DIVISION? IF
20 SO, PLEASE STAND. YES, SIR?

21 MR. JERNIGAN: UH -- MY NAME IS MIKE JERNIGAN, JUROR
22 NUMBER SEVENTY-THREE.

23 MY MOTHER, UH, RETIRED FROM, UH, SOUTH CAROLINA
24 DEPARTMENT OF CORRECTIONS.

25 THE COURT: AND WHAT DID SHE DO IN SOUTH CAROLINA

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 DEPARTMENT OF CORRECTIONS?

2 MR. JERNIGAN: SHE WORKED IN AN ADMINISTRATIVE AREA.

3 THE COURT: AND HOW LONG HAS SHE BEEN RETIRED?

4 MR. JERNIGAN: I WOULD SAY ABOUT FIFTEEN YEARS.

5 THE COURT: ALL RIGHT; IS THERE ANYTHING ABOUT YOUR

6 MOTHER WORKING FOR THE DEPARTMENT OF CORRECTIONS THAT WOULD

7 AFFECT YOUR ABILITY IN THIS PARTICULAR CASE?

8 MR. JERNIGAN: NO, MA'AM.

9 THE COURT: ALL RIGHT; AND, MR. JERNIGAN, YOU ARE JUROR
10 SEVENTY-THREE?

11 MR. JERNIGAN: THAT IS CORRECT.

12 THE COURT: THANK YOU. YES, MA'AM?

13 MS. VEASEY: UM -- I'M JUROR NUMBER ONE-FIFTY-FOUR, AND
14 MY HUSBAND HAS WORKED FOR THE BERKELEY COUNTY SHERIFF'S
15 DEPARTMENT, ALONG WITH HANAHAN, AND WORKS ALSO IN CHARLESTON
16 COUNTY SHERIFF'S DEPARTMENT.

17 THE COURT: MA'AM, WHAT IS YOUR -- WHAT IS YOUR NAME?

18 MS. VEASEY: IT'S VEASEY -- JILLELLEN VEASEY.

19 THE COURT: IS THERE ANYTHING ABOUT YOUR HUSBAND WORKING
20 IN LAW ENFORCEMENT THAT WOULD AFFECT YOUR ABILITY TO BE FAIR
21 AND IMPARTIAL IN THIS TRIAL?

22 MS. VEASEY: (NOD.)

23 THE COURT: I NEED YOU TO SPEAK UP.

24 MS. VEASEY: I'M SORRY; NO.

25 THE COURT: ALL RIGHT, THANK YOU.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MS. KENNEDY: YOUR HONOR, MAY -- WOULD YOU BE KIND ENOUGH
2 TO INQUIRE AS TO IN WHAT CAPACITY HE'S WORKED FOR THESE
3 DIFFERENT AGENCIES?

4 THE COURT: I WILL. UH -- MA'AM, IF YOU'LL PLEASE STAND?
5 YOU STATED YOUR HUSBAND -- IS THAT CORRECT -- WAS LAW
6 ENFORCEMENT WITH BERKELEY COUNTY?

7 MS. VEASEY: YES, MA'AM; HE WORKED FOR, UH -- HE WAS THE
8 CANINE OFFICER FOR BERKELEY COUNTY.

9 BEFORE THAT HE WAS A PATROLMAN.

10 HE LEFT BERKELEY COUNTY AND STARTED THE CANINE UNIT FOR
11 THE CITY OF HANAHAN.

12 UH -- LEFT THE CITY OF HANAHAN, UM, AND THEN WENT
13 OVERSEAS FOR A YEAR BECAUSE HE STARTED A CANINE UNIT IN IRAQ.

14 THE COURT: ALL RIGHT; AND IS HE CURRENTLY STILL IN IRAQ?

15 MS. VEASEY: NO, MA'AM.

16 THE COURT: AND, UH, HOW LONG AGO DID HE LEAVE BERKELEY
17 COUNTY, IF YOU RECALL?

18 MS. VEASEY: UM -- I BELIEVE IT WAS SIX YEARS AGO.

19 THE COURT: ALL RIGHT; THANK YOU. THANK YOU, MS. VEASEY.

20 MS. VEASEY: UH-HUH.

21 THE COURT: YES, SIR?

22 MR. DUPREE: I USED TO WORK WITH THE DEPARTMENT OF
23 CORRECTIONS. I DON'T KNOW IF YOU ASKED THAT QUESTION OR IF WE
24 HAD IT BEFORE?

25 THE COURT: I DID, SIR; AND YOUR JUROR NUMBER AND NAME?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MR. DUPREE: FORTY-THREE (SIC/JUROR NUMBER WAS ACTUALLY
2 THIRTY-FOUR), ALEXANDER DUPREE.

3 THE COURT: ALL RIGHT; MR. DUPREE, WHAT DID YOU DO WITH
4 THE DEPARTMENT OF CORRECTIONS?

5 MR. DUPREE: I WORKED FOR THE -- I WAS A CORRECTION
6 OFFICER AT LIEBER.

7 THE COURT: ALL RIGHT; AND HOW LONG AGO WAS THAT, SIR?

8 MR. DUPREE: NINETY -- UH, '87 TO '90.

9 THE COURT: ALL RIGHT; IS THERE ANYTHING ABOUT THAT THAT
10 WOULD AFFECT YOUR ABILITY TO LISTEN TO THE FACTS AS PRESENTED
11 BY THE STATE AND BY THE DEFENDANT AND GIVE BOTH SIDES A FAIR
12 AND IMPARTIAL TRIAL?

13 MR. DUPREE: (NOD.)

14 THE COURT: I CAN'T -- I CAN'T HEAR YOU.

15 MR. DUPREE: NO, MA'AM.

16 THE COURT: THANK YOU; AND YOUR JUROR NUMBER AND NAME?

17 MR. DUPREE: FORTY-THREE (SIC/JUROR NUMBER WAS ACTUALLY
18 THIRTY-FOUR), ALEXANDER DUPREE.

19 THE COURT: THANK YOU, MR. DUPREE.

20 (NO FURTHER RESPONSE FROM JURY PANEL.)

21 THE COURT: LADIES AND GENTLEMEN, MR. SALISBURY HAS
22 BEEN INDICTED FOR -- AND I WILL EXPLAIN, UH, THE LEGAL TERMS
23 IF YOU ARE SELECTED TO SIT ON THE JURY -- BUT, MR. DU- --
24 MR. SALISBURY HAS BEEN CHARGED AND INDICTED FOR CRIMINAL
25 SEXUAL CONDUCT IN THE FIRST DEGREE; ASSAULT ON A CORRECTIONAL

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 OFFICER; AND TAKING OF A HOSTAGE BY AN INMATE.

2 MR. SALISBURY HAS PLED NOT GUILTY TO EACH OF THESE
3 INDICTMENTS.

4 AN INDICTMENT IS JUST MERELY THE CHARGING -- THE WRITTEN
5 DOCUMENT THAT BRINGS MR. SALISBURY IN COURT HERE TODAY.

6 THE STATE ALLEGES THAT, ON OR ABOUT JANUARY 18TH OF 2008,
7 THAT MR. SALISBURY DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL
8 CONDUCT.

9 HAS ANY MEMBER OF THE JURY PANEL HEARD, UH, SEEN ANY NEWS
10 ACCOUNTS, READ -- EITHER IN THE NEWSPAPERS OR TELEVISION --
11 ANY ACCOUNTS OF THIS INCIDENT? IF SO, PLEASE STAND.

12 (NO RESPONSE FROM THE JURY PANEL.)

13 THE COURT: THANK YOU; THERE ARE NONE. I'M NOW GOING TO
14 CALL A LIST OF WITNESSES THAT MAY BE CALLED TO TESTIFY.

15 IF ANY OF YOU ARE RELATED BY BLOOD, MARRIAGE, CLOSE
16 PERSONAL FRIENDS, HAVE ANY SOCIAL, BUSINESS, OR PROFESSIONAL
17 RELATIONSHIPS WITH ANY OF THESE INDIVIDUALS, PLEASE STAND AS I
18 CALL THEIR NAME.

19 MAJOR RUFUS MINCEY WITH THE SOUTH CAROLINA DEPARTMENT OF
20 CORRECTIONS?

21 (NO RESPONSE FROM THE JURY PANEL.)

22 THE COURT: OFFICER DEVIN GADSON WITH THE SOUTH CAROLINA
23 DEPARTMENT OF CORRECTIONS?

24 (NO RESPONSE FROM THE JURY PANEL.)

25 THE COURT: DAVID BENTON WITH THE SOUTH CAROLINA

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 DEPARTMENT OF CORRECTIONS?

2 (NO RESPONSE FROM THE JURY PANEL.)

3 THE COURT: SARA ADAMS?

4 (NO RESPONSE FROM THE JURY PANEL.)

5 THE COURT: SERGEANT SUMPTER?

6 (NO RESPONSE FROM THE JURY PANEL.)

7 THE COURT: SERGEANT WILLIAMS?

8 (NO RESPONSE FROM THE JURY PANEL.)

9 THE COURT: LIEUTENANT BAXTER? ALL WITH THE SOUTH
10 CAROLINA DEPARTMENT OF CORRECTIONS.

11 (NO RESPONSE FROM THE JURY PANEL.)

12 MS. KENNEDY: YOUR HONOR, I WOULDN'T INTERRUPT, BUT I
13 THINK IT WOULD BE HELPFUL IF THE JURORS -- UH, POTENTIAL
14 JURORS -- HAD THEIR FIRST NAMES SO THAT WE CAN MAKE SURE,
15 UH -- UH, BECAUSE IT'S, UH, JAMES WILLIAMS.

16 UH -- IF THAT INFORMATION COULD BE PROVIDED ALSO, I THINK
17 IT WOULD BE HELPFUL.

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
19 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
20 THE JURY PANEL, OFF THE RECORD.)

21 (WHEREUPON, COURT RESUMED.)

22 THE COURT: MS. WILLIAMS, DO YOU HAVE THE FIRST NAMES OF
23 SERGEANT SUMPTER, SERGEANT WILLIAMS, AND LIEUTENANT BAXTER?

24 MS. WILLIAMS: YES, YOUR HONOR. THE COURT'S INDULGENCE
25 FOR JUST A SECOND, I THINK I MIGHT -- I HAVE A LIST OF THE

1 FIRST NAMES.

2 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
3 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
4 THE JURY PANEL, OFF THE RECORD.)

5 (WHEREUPON, COURT RESUMED.)

6 MS. WILLIAMS: IT IS WILLIAM SUMPTER AND JAMES WILLIAMS.

7 THE COURT: AND BAXTER?

8 MS. WILLIAMS: JONATHAN.

9 THE COURT: SERGEANT WILLIAM SUMPTER, SERGEANT JAMES
10 WILLIAMS, LIEUTENANT JONATHAN BAXTER?

11 (NO RESPONSE FROM THE JURY PANEL.)

12 THE COURT: J. J. EVANS, VICKI HOLMAN; BOTH WITH THE
13 STATE LAW ENFORCEMENT DIVISION -- DIVISION?

14 (NO RESPONSE FROM THE JURY PANEL.)

15 THE COURT: FAYE LEBOEUF WITH THE MEDICAL UNIVERSITY OF
16 SOUTH CAROLINA?

17 (NO RESPONSE FROM THE JURY PANEL.)

18 THE COURT: LINDSAY THOMPSON?

19 (NO RESPONSE FROM THE JURY PANEL.)

20 THE COURT: AMY STEPHENS?

21 (NO RESPONSE FROM THE JURY PANEL.)

22 THE COURT: SELENA KINARD?

23 (NO RESPONSE FROM THE JURY PANEL.)

24 THE COURT: DORIS YARBOUGH?

25 (NO RESPONSE FROM THE JURY PANEL.)

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT: SHEREE BROWN?

2 (NO RESPONSE FROM THE JURY PANEL.)

3 THE COURT: BRANDON WILLIAMS?

4 (NO RESPONSE FROM THE JURY PANEL.)

5 THE COURT: BRANDON LANDRUM -- ALL WITH THE STATE LAW

6 ENFORCEMENT DIVISION?

7 (NO RESPONSE FROM THE JURY PANEL.)

8 THE COURT: DAVID DARDEN?

9 (NO RESPONSE FROM THE JURY PANEL.)

10 THE COURT: WILLIE STAGGERS?

11 (NO RESPONSE FROM THE JURY PANEL.)

12 THE COURT: TYRONE OLIVER?

13 (NO RESPONSE FROM THE JURY PANEL.)

14 THE COURT: JEFFERSON WALDRUP?

15 (NO RESPONSE FROM THE JURY PANEL.)

16 THE COURT: CHRISTOPHER SIMMONS?

17 (NO RESPONSE FROM THE JURY PANEL.)

18 THE COURT: LINDA DEAN WITH THE SOUTH CAROLINA DEPARTMENT

19 OF CORRECTIONS?

20 (NO RESPONSE FROM THE JURY PANEL.)

21 THE COURT: SCOTT WORSHAM, STATE LAW ENFORCEMENT

22 DIVISION?

23 (NO RESPONSE FROM THE JURY PANEL.)

24 THE COURT: TONYA MCCANTS?

25 (NO RESPONSE FROM THE JURY PANEL.)

1 THE COURT: DOCTOR BABB?

2 (NO RESPONSE FROM THE JURY PANEL.)

3 THE COURT: MERV POWELL WITH SOUTH CAROLINA DEPARTMENT OF
4 CORRECTIONS?

5 (NO RESPONSE FROM THE JURY PANEL.)

6 THE COURT: AND AGENT CHINA---

7 MS. WILLIAMS: MICHELLE CHINA.

8 THE COURT: ---MICHELLE CHINA WITH STATE LAW ENFORCEMENT
9 DIVISION?

10 (NO RESPONSE FROM THE JURY PANEL.)

11 THE COURT: ANY PERSONS OF THE JURY POOL RELATED BY
12 BLOOD, MARRIAGE, CLOSE PERSONAL FRIEND, HAVE ANY BUSINESS,
13 PERSONAL, PROFESSIONAL RELATIONSHIPS WITH ANY OF THESE
14 INDIVIDUALS? PLEASE STAND.

15 MR. SHELTON: DOCTOR BABB -- HIS FIRST NAME, YOUR HONOR?

16 MS. MIDDLETON: JUROR NUMBER NINETY-SIX, SHEILA
17 MIDDLETON. I RECOGNIZE THE NAME JAMES WILLIAMS AND LINDA
18 DEAN.

19 THE COURT: YOU RECOGNIZE THE NAME JAMES WILLIAMS AND
20 LINDA DEAN?

21 MS. MIDDLETON: YES, MA'AM.

22 THE COURT: AND BOTH OF THOSE INDIVIDUALS WORK FOR THE
23 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

24 MS. MIDDLETON: I BELIEVE THEY DO.

25 THE COURT: ALL RIGHT. WHAT IS YOUR RELATIONSHIP WITH

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MR. -- OR, EXCUSE ME, SERGEANT WILLIAMS AND MS. DEAN?

2 MS. MIDDLETON: UM -- PROFESSIONAL.

3 THE COURT: AND REMIND -- YOUR JUROR NUMBER AND NAME?

4 MS. MIDDLETON: NINETY-SIX; SHEILA W. MIDDLETON.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
6 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
7 THE JURY PANEL, OFF THE RECORD.)

8 (WHEREUPON, COURT RESUMED.)

9 THE COURT: MS. MIDDLETON, RE- -- REMIND ME WHAT TYPE OF
10 WORK YOU DO?

11 MS. MIDDLETON: I'M THE OFFICE MANAGER AT FAMILY
12 PRACTICE.

13 THE COURT: ALL RIGHT; IS THERE ANYTHING ABOUT YOUR
14 RELATIONSHIP, UH, WITH SERGEANT WILLIAMS AND LINDA DEAN THAT
15 WILL AFFECT YOUR ABILITY TO LISTEN TO THE FACTS AS PRESENTED
16 AND GIVE BOTH SIDES A FAIR AND IMPARTIAL TRIAL?

17 MS. MIDDLETON: NO, MA'AM.

18 THE COURT: ALL RIGHT; THANK YOU. MS. WILLIAMS, DOCTOR
19 BABBS' FIRST NAME?

20 MS. WILLIAMS: ROBERT.

21 THE COURT: DOCTOR BABB, OF THE SOUTH CAROLINA DEPARTMENT
22 OF CORRECTIONS, FIRST NAME IS ROBERT -- DOCTOR ROBERT BABB.

23 IS THERE ANYONE ELSE RELATED BY BLOOD, MARRIAGE, CLOSE
24 PERSONAL FRIENDS TO ANY OF THOSE INDIVIDUALS THAT I JUST
25 CALLED?

1 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

2 THE COURT: THANK YOU, THERE ARE NONE. ARE THERE ANY
3 MEMBERS OF THE JURY PANEL EMPLOYED BY, OR DO YOU HAVE A CLOSE
4 PERSONAL FRIEND OR FAMILY MEMBER EMPLOYED BY THE MEDICAL
5 UNIVERSITY OF SOUTH CAROLINA? IF SO, PLEASE STAND.

6 (NO RESPONSE FROM THE JURY PANEL.)

7 THE COURT: THANK YOU, THERE ARE NONE. WERE ANY MEMBERS
8 OF THE JURY PANEL A MEMBER OF THE GRAND JURY WHICH FOUND THE
9 INDICTMENT IN THIS CASE? IF SO, PLEASE STAND.

10 (NO RESPONSE FROM THE JURY PANEL.)

11 THE COURT: THANK YOU, THERE ARE NONE. HAS ANY MEMBER OF
12 THE JURY PANEL EXPRESSED OR FORMED ANY OPINION ABOUT THIS CASE
13 AS TO THE GUILT OR INNOCENCE OF MR. SALISBURY? IF SO, PLEASE
14 STAND.

15 (NO RESPONSE FROM THE JURY PANEL.)

16 THE COURT: THANK YOU, THERE ARE NONE. IS ANY MEMBER OF
17 THE JURY PANEL INVOLVED IN LAW ENFORCEMENT OR EMPLOYED BY LAW
18 ENFORCE- -- A LAW ENFORCEMENT AGENCY?

19 (NO RESPONSE FROM THE JURY PANEL.)

20 THE COURT: THANK YOU, THERE ARE NONE. IS THERE ANY
21 MEMBER OF THE JURY PANEL THAT BELONGS TO OR CONTRIBUTES TO ANY
22 CIVIC GROUP, SUCH AS MOTHERS AGAINST DRIVING (SIC), PEOPLE
23 AGAINST RAPE, OR PAR- -- PARENTS EMPOWERED TO SAVE TEENS? IF
24 SO, PLEASE STAND.

25 MR. YATES: UM---

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT: YES, SIR?

2 MR. YATES: ---I'M A GUIDANCE COUNSELOR AT THE ACADEMIC
3 MAGNET AND I SPONSOR THE CITIZENS AGAINST DESTRUCTIVE
4 DECISIONS, WHICH IS A PART OF ALL THAT.

5 THE COURT: IS THERE ANYTHING ABOUT YOU SPONSORING THAT
6 GROUP---

7 MR. YATES: NO, MA'AM.

8 THE COURT: ---THAT WOULD AFFECT YOUR ABILITY TO BE FAIR
9 AN IMPARTIAL?

10 MR. YATES: NO.

11 THE COURT: YOUR JUROR NUMBER AND NAME?

12 MR. YATES: JAMES YATES, ONE-SEVENTY-THREE.

13 THE COURT: THANK YOU, MR. YATES.

14 (NO FURTHER RESPONSE FROM THE JURY PANEL.)

15 THE COURT: LADIES AND GENTLEMEN, I'M GONNA ASK A SERIES
16 OF QUESTIONS. AND IF YOU NEED TO RESPOND TO THESE QUESTIONS,
17 I ASK THAT YOU COME FORWARD AND SPEAK WITH ME PRIVATELY
18 CONCERNING THESE -- YOUR ANSWERS.

19 HAVE YOU OR SOMEONE CLOSE TO YOU -- A CLOSE FAMILY
20 MEMBER, A CLOSE PERSONAL FRIEND -- BEEN THE VICTIM OF SEXUAL
21 ASSAULT?

22 HAVE YOU OR SOMEONE CLOSE TO YOU EVER BEEN ACCUSED OF
23 SEXUAL MISCONDUCT?

24 HAVE YOU RECEIVED ANY SPECIAL EDUCATION OR TRAINING IN
25 THE SUBJECT OF SEXUAL ASSAULT OR SEXUAL ABUSE?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 AND FINALLY, HAVE YOU, IN THE RECENT PAST, READ ANY
2 MATERIALS OR MAGAZINE ARTICLES, OR WATCHED ANY MOVIES, VIDEOS,
3 OR TELEVISION BROADCASTS DEALING WITH THE SUBJECT OF SEXUAL
4 ASSAULT?

5 IF THESE QUESTIONS APPLY TO YOU AND YOU NEED TO SPEAK
6 WITH ME CONCERNING THESE ANSWERS, PLEASE COME FORWARD AT THIS
7 TIME.

8 (WHEREUPON, THE FOLLOWING JURORS APPROACHED THE BENCH AND
9 CONVERSED IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
10 HEARING OF THE JURY PANEL. COUNSEL WAS ALSO PRESENT AT THE
11 BENCH.)

12 THE COURT: YES, SIR?

13 BAILIFF: NUMBER EIGHTY-SIX, JAMES LEONTI.

14 (WHEREUPON, JAMES L. LEONTI, JUROR NUMBER 86, CAME
15 FORWARD.)

16 THE COURT: YES, SIR?

17 MR. LEONTI: MY WIFE IS A VICTIM.

18 THE COURT: IS THERE ANYTHING ABOUT THAT THAT WOULD CAUSE
19 YOU---

20 MS. WILLIAMS: I DIDN'T HEAR THAT; I'M SO SORRY.

21 THE COURT: OKAY, I'M -- LET ME INQUIRE AND THEN I WILL
22 SHARE THAT AGAIN WITH YOU ALL.

23 IS THERE ANYTHING ABOUT THAT THAT'S GOING TO AFFECT YOUR
24 ABILITY TO BE FAIR AND IMPARTIAL IN THIS TRIAL?

25 MR. LEONTI: I HAVE PRETTY STRONG FEELINGS ABOUT IT.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT: WOULD YOU BE ABLE TO LISTEN TO THE FACTS AS
2 PRESENTED IN THIS CASE AND GIVE BOTH THE STATE AND THE
3 DEFENDANT A FAIR AND IMPARTIAL TRIAL?

4 MR. LEONTI: I HOPE SO.

5 THE COURT: OKAY, I'M GONNA ASK YOU ONE MORE TIME, ALL
6 RIGHT?

7 CAN YOU LISTEN TO THE FACTS AS PRESENTED IN THIS
8 PARTICULAR CASE AND GIVE THE -- BOTH THE STATE AND THE
9 DEFENDANT A FAIR AND IMPARTIAL TRIAL, APPLYING THE FACTS AS
10 YOU HEAR THEM TO THE LAW AS I GIVE IT YOU?

11 MR. LEONTI: I SHOULD BE ABLE TO, YES.

12 THE COURT: OKAY; ALL RIGHT. UH -- MS. KENNEDY,
13 MS. WILLIAMS, HIS WIFE WAS THE VICTIM OF A SEXUAL ASSAULT.

14 MS. KENNEDY: HOW MANY -- MAY I INQUIRE HOW RECENTLY?

15 MR. LEONTI: UH -- IT WAS BEFORE WE MET, SO, UH, SHE WAS
16 STILL A TEENAGER. PROBABLY FIFTEEN YEARS OR SO.

17 THE COURT: ALL RIGHT; THANK YOU, SIR. YOUR JUROR NUMBER
18 AND NAME?

19 MR. LEONTI: EIGHTY-SIX; JAMES LEONTI.

20 THE COURT: ALL RIGHT; THANK YOU, MR. LEONTI.

21 MR. LEONTI: OKAY.

22 (WHEREUPON, JAMES L. LEONTI, JUROR NUMBER 86, RETURNED TO
23 HIS SEAT.)

24 BAILIFF: NUMBER ONE-FORTY-SEVEN, CHARLES STERRETT.

25 (WHEREUPON, CHARLES M. STERRETT, JUROR NUMBER 147, CAME

1 FORWARD.)

2 THE COURT: YES, MR. STERRETT?

3 MR. STERRETT: MY BROTHER WAS CONVICTED OF A SEXUAL
4 ASSAULT.

5 THE COURT: AND HOW LONG AGO WAS THAT, SIR?

6 MR. STERRETT: ABOUT -- IT WAS IN THAT TIME I WAS GONE,
7 SO IT WAS ABOUT THIRTEEN TO FIFTEEN YEARS.

8 THE COURT: UH-HUH, AND WAS THAT HERE IN BERKELEY COUNTY?

9 MR. STERRETT: YES, IT WAS.

10 THE COURT: AND WHO -- HE WAS PROSECUTED BY THE
11 SOLICITOR'S OFFICE?

12 MR. STERRETT: YES, MA'AM.

13 THE COURT: AND DO YOU REMEMBER THE PROSECUTOR'S NAME?

14 MR. STERRETT: NO MA'AM---

15 THE COURT: DO YOU---

16 MR. STERRETT: ---I WAS ON -- I WAS OVERSEAS.

17 THE COURT: ---ALL RIGHT; AND DO YOU REMEMBER WHO
18 REPRESENTED YOUR BROTHER?

19 MR. STERRETT: UH -- THE PUBLIC DEFENDER.

20 THE COURT: ALL RIGHT; AND SO THAT WAS ABOUT THIRTEEN TO
21 FIFTEEN YEARS AGO?

22 MR. STERRETT: UH-HUH.

23 THE COURT: IS THERE ANYTHING ABOUT, UH, YOUR BROTHER
24 BEING CONVICTED THAT WOULD AFFECT YOUR ABILITY TO LISTEN TO
25 THE FACTS IN THIS CASE AND APPLY THE LAW AS I GIVE IT AND

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 RENDER A FAIR AND IMPARTIAL VERDICT?

2 MR. STERRETT: YES, MA'AM; IN CONSIDERATION OF MY
3 BROTHER. I DON'T AGREE WITH WHAT MY BROTHER DID.

4 THE COURT: ALL RIGHT; YOUR JUROR NUMBER?

5 MR. STERRETT: ONE-FORTY-SEVEN.

6 THE COURT: OKAY; ONE-FORTY-SEVEN WILL BE EXCUSED FROM
7 THE TRIAL OF THIS CASE.

8 GOOD LUCK TO YOU, SIR.

9 MR. STERRETT: THANK YOU.

10 THE COURT: YOU'LL NEED TO CALL BACK AFTER SEVEN TONIGHT;
11 THANK YOU.

12 (WHEREUPON, CHARLES M. STERRETT, JUROR NUMBER 147, WAS
13 EXCUSED FROM THE TRIAL OF THIS CASE AND RETURNED TO HIS SEAT.)

14 BAILIFF: NUMBER ONE-FIFTY-FOUR, JILLELLEN VEASEY.

15 (WHEREUPON, JILLELLEN VEASEY, JUROR NUMBER 154, CAME
16 FORWARD.)

17 MS. VEASEY: (INAUDIBLE.)

18 COURT REPORTER: I CAN'T HEAR HER.

19 MS. VEASEY: OKAY; I WAS GROPED WHEN I WAS TWELVE.
20 AND THE ONLY OTHER ISSUE (INAUDIBLE).

21 COURT REPORTER: I'M SORRY, YOUR HONOR, I CAN'T -- I
22 CAN'T HEAR HER.

23 MS. VEASEY: UM -- ASSAULTING A POLICE OFFICER ON
24 CHARGES? I HAVE A SERIOUS ISSUE WITH THAT, SEEING THAT MY
25 HUSBAND WAS ASSAULTED WHEN WAS A POLICE OFFICER AND WENT TO

1 THE HOSPITAL.

2 THE COURT: UH -- DO YOU THINK THAT THOSE THINGS WILL
3 AFFECT YOUR ABILITY TO LISTEN TO THE FACTS IN THIS CASE AND
4 APPLY THE LAW AS I INSTRUCT YOU AND RENDER A FAIR AND
5 IMPARTIAL VERDICT?

6 MS. VEASEY: THE POLICE OFFICER PART. I DON'T THINK I'D
7 HAVE A PROBLEM WITH -- WITH BEING MOLESTED WHEN -- AS A CHILD.
8 AND THERE ARE SOME -- YEAH, I DON'T THINK I COULD GIVE
9 THEM AN IMPARTIAL.

10 THE COURT: ALL RIGHT; YOUR JUROR NUMBER, PLEASE?

11 MS. VEASEY: ONE-FIFTY-FOUR.

12 THE COURT: OKAY; HAVE YOU BEEN TRANSFERRED BEFORE?

13 MS. VEASEY: NO, I'VE NEVER BEEN TRANSFERRED BEFORE.

14 THE COURT: OKAY; JUROR ONE-FIFTY-FOUR, UH, IS EXCUSED
15 FROM THE TRIAL OF THIS CASE. YOU'LL NEED TO CALL BACK AFTER
16 SEVEN. THANK YOU.

17 (WHEREUPON, JILLELLEN VEASEY, JUROR NUMBER 154, WAS
18 EXCUSED FROM THE TRIAL OF THIS CASE AND RETURNED TO HER SEAT.)

19 BAILIFF: NUMBER ONE-TWENTY, ANDRA RHOTON.

20 (WHEREUPON, ANDRA P. RHOTON, JUROR NUMBER 120, CAME
21 FORWARD.)

22 THE COURT: YES, MA'AM?

23 MS. RHOTON: HI; UH -- YES, MA'AM. UM -- AS PART OF MY
24 DIVORCE, UM, MY HUSBAND MOLESTED MY DAUGHTER.

25 THE COURT: MOLESTED YOUR DAUGHTER WHEN SHE WAS A CHILD?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MS. RHOTON: YES, MA'AM. AND ALSO, MY, UH, SISTER'S
2 DAUGHTER WAS MOLESTED BY HER STEPFATHER.

3 THE COURT: OKAY; IS THERE ANYTHING ABOUT THOSE TWO
4 INCIDENTS THAT AFFECT YOUR ABILITY TO LISTEN TO THE FACTS IN
5 THIS CASE, APPLY THE LAW AS I INSTRUCT YOU, AND GIVE BOTH
6 SIDES A FAIR AND IMPARTIAL JUR- -- UH, VERDICT?

7 MS. RHOTON: I THINK I'M A PRETTY REASONABLE PERSON; I
8 THINK I COULD DO THAT.

9 THE COURT: UM -- I NEED A DEFINITIVE.

10 MS. RHOTON: YES, MA'AM.

11 THE COURT: ALL RIGHT; SO YOU CAN LISTEN TO THE FACTS
12 THAT APPLY TO THIS CASE---

13 MS. RHOTON: YES.

14 THE COURT: ---AND GIVE BOTH SIDES A FAIR AND IMPARTIAL
15 VERDICT?

16 MS. RHOTON: YES, MA'AM.

17 THE COURT: AND YOU JUROR NUMBER ONE MORE TIME,

18 MS. RHOTON?

19 MS: RHOTON: ONE-TWENTY.

20 THE COURT: ONE-TWENTY WILL REMAIN; THANK YOU.

21 (WHEREUPON, ANDRA P. RHOTON, JUROR NUMBER 120, RETURNED
22 TO HER SEAT.)

23 BAILIFF: NUMBER ONE-SEVENTY-THREE, JAMES G. YATES.

24 (WHEREUPON, JAMES G. YATES, JUROR NUMBER 173, CAME
25 FORWARD.)

1 THE COURT: YES, MR. YATES?

2 MR. YATES: UH -- I WAS A GUIDANCE COUNSELOR. I'VE BEEN
3 TRAINED IN -- IN, UH, CHILD SEXUAL ABUSE -- IDENTIFICATION OF
4 SEXUAL ABUSE ON ONE OCCASION.

5 I'VE JUST -- I'VE WORKED WITH TWO STUDENTS WHOSE MOTHER
6 WAS RAPED.

7 THE COURT: OKAY; UM, IS THERE ANYTHING ABOUT THOSE
8 INCIDENTS THAT WILL AFFECT YOUR ABILITY TO LISTEN TO THE FACTS
9 IN THIS CASE AND GIVE BOTH THE DEFENDANT AND THE STATE A FAIR
10 AND IMPARTIAL TRIAL?

11 MR. YATES: NO, MA'AM.

12 THE COURT: ALL RIGHT; THANK YOU.

13 MS. KENNEDY: YOUR -- YOUR HONOR?

14 THE COURT: YES?

15 MS. KENNEDY: WHILE -- WHILE HE'S HERE, HE'S THE GUIDANCE
16 COUNSELOR AT ACADEMIC MAGNET.

17 MS. WILLIAMS: THAT'S MY KIDS' SCHOOL. I JUST DON'T
18 THINK HE KNOWS THEM.

19 MS. KENNEDY: I'D JUST LIKE TO ADDRESS THAT ISSUE WHILE
20 HE'S HERE.

21 THE COURT: ALL RIGHT. UM -- IT'S BEEN BROUGHT TO MY
22 ATTENTION -- I'VE ALREADY ASKED SEVERAL TIMES WHETHER, UH, IF
23 YOU KNOW ANY OF THE PARTIES INVOLVED OR, UH, ANYONE EMPLOYED
24 BY THE, UH, SOLICITOR'S OFFICE.

25 DO YOU KNOW ANY -- ANY OF THE INDIVIDUALS HERE TODAY?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 ANY OF THE ATTORNEYS?

2 MR. YATES: I DON'T BELIEVE SO.

3 THE COURT: ALL RIGHT. UH -- MS. WILLIAMS' CHILDREN GOES
4 TO, UH, YOUR -- YOUR SCHOOL, IS THAT CORRECT?

5 MS. WILLIAMS: WE HAVE A DIFFERENT LAST NAME, BUT THEY
6 DO -- THEY GO TO SCHOOL THERE.

7 THE COURT: OKAY.

8 MR. YATES: OKAY.

9 THE COURT: OKAY----

10 MR. WILLIAMS: BUT, WE DON'T KNOW EACH OTHER.

11 MR. YATES: NO.

12 THE COURT: ---ALL RIGHT; DOES THAT SATISFY YOU,

13 MS. KENNEDY?

14 MR. KENNEDY: UM -- IT DOES, THOROUGHLY. BUT, I HAD TO
15 ADDRESS THE ISSUE.

16 THE COURT: OKAY, UM -- WELL, OKAY. THANK YOU,

17 MR. YATES---

18 MR. YATES: I'M SORRY.

19 THE COURT: ---THANK YOU.

20 MR. YATES: IT'S NICE TO MEET YOU, MS. WILLIAMS.

21 (WHEREUPON, JAMES G. YATES, JUROR NUMBER 173, RETURNED TO
22 HIS SEAT.)

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
24 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
25 THE JURY PANEL, OFF THE RECORD.)

1 (WHEREUPON, COURT RESUMED.)

2 THE COURT: NEXT?

3 BAILIFF: NUMBER THIRTY-FOUR, ALEX DUPREE.

4 (WHEREUPON, ALEX DUPREE, JUROR NUMBER 34, CAME FORWARD.)

5 THE COURT: YES, SIR?

6 MR. DUPREE: (INAUDIBLE.)

7 COURT REPORTER: I'M SORRY, YOUR HONOR, THERE'S TOO MUCH
8 COMMOTION; I CAN'T HEAR.

9 THE COURT: OKAY. I'M GOING TO NEED YOU TO, UH -- FIRST
10 OF ALL, I NEED EVERYBODY TO BE VERY QUIET SO THAT MY COURT
11 REPORTER CAN TAKE EVERYTHING DOWN.

12 I'M GONNA NEED YOU TO SPEAK UP JUST A LITTLE BIT SO THAT
13 SHE CAN WRITE DOWN EVERYTHING THAT YOU SAY.

14 MR. DUPREE: I AM WHAT'S CALLED A MINISTER. LAST YEAR I
15 DID A LOT OF PERSONAL STUDIES OF THE CRIMINAL TYPE SITUATIONS.
16 I DID IT; I'M A ONE-ON-ONE TYPE MINISTER. SINCE THEY DON'T
17 KNOW, I DID A LOT OF STUDIES AND DID A LOT OF -- MORE THAN
18 MOST PEOPLE DO.

19 UH -- I HAVEN'T GOT A DEGREE IN IT, BUT I DO STUDY IT
20 MORE THAN THE AVERAGE PERSON.

21 THE COURT: ALL RIGHT. AND SIR -- MR. DUPREE, WHEN YOU
22 SAY THAT YOU'RE STUDYING IT, WHAT ARE YOU TALKING ABOUT
23 STUDYING?

24 MR. DUPREE: I -- I DO A LOT OF IN-DEPTH STUDIES ON
25 SEXUAL CRIMINAL STUFF; KEEP ABREAST OF EVERYTHING; A LOT OF

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 DIFFERENT PROGRAMS.

2 THE COURT: ALL RIGHT; AND IS THERE ANYTHING ABOUT THAT
3 SPECIALIZED STUDY THAT YOU DO THAT WILL AFFECT YOUR ABILITY TO
4 LISTEN TO THE FACTS AS PRESENTED AND GIVE BOTH THE DEFENDANT
5 AND THE STATE A FAIR AND IMPARTIAL TRIAL?

6 MR. DUPREE: I DON'T THINK SO.

7 THE COURT: OKAY. I KNOW THAT THAT'S JUST A COMMON
8 USEFUL COLLOQUIALISM OR IT'S A PATTERN OF SPEECH; I NEED A
9 DEFINITIVE ANSWER.

10 WILL YOU BE ABLE TO LISTEN TO THE FACTS AS PRESENTED,
11 APPLY THE LAW AS I INSTRUCT YOU, AND GIVE A VERDICT THAT IS
12 FAIR AND IMPARTIAL, BASED ON THE FACTS?

13 MR. DUPREE: OH; YES, I WILL

14 THE COURT: ALL RIGHT; THANK YOU.

15 MR. DUPREE: YOU'RE WELCOME.

16 THE COURT: YOUR JUROR NUMBER, MR. DUPREE?

17 MR. DUPREE: UH -- THIRTY-FOUR.

18 THE COURT: THIRTY-FOUR; THIRTY-FOUR WILL REMAIN.

19 (WHEREUPON, ALEX DUPREE, JUROR NUMBER 34, RETURNED TO HIS
20 SEAT.)

21 BAILIFF: NUMBER ONE-0-SEVEN, LINDSAY NUNGESSER.

22 (WHEREUPON, LINDSAY D. NUNGESSER, JUROR NUMBER 107, CAME
23 FORWARD.)

24 THE COURT: YES, MA'AM?

25 MS. NUNGESSER: HI. ABOUT TWO-AND-A-HALF YEARS AGO I

1 HAVE A FRIEND WHO WAS RAPED AND MURDERED.

2 UM -- AND SINCE THEN I'VE READ UP ON DIFFERENT, UM, ACTS
3 AND REGULATIONS ABOUT SEXUAL ASSAULT AND KEEPING CRIMINALS IN
4 JAIL TO SERVE THEIR FULL TIME.

5 THE COURT: OKAY. UM -- FIRST OF ALL, WHERE WAS YOUR
6 FRIEND RAPED AND MURDERED?

7 MS. NUNGESSER: UM -- UP IN CLEMSON.

8 THE COURT: OKAY; AND, UM, WILL THAT AF- -- AFFECT YOUR
9 ABILITY TO LISTEN TO THE FACTS AS PRESENTED AND GIVE BOTH
10 SIDES A FAIR AND IMPARTIAL TRIAL?

11 MS. NUNGESSER: NO.

12 THE COURT: AND IS THERE ANYTHING ABOUT YOUR SPECIALIZED
13 STUDY THAT YOU HAVE UNDERTAKEN THAT WILL AFFECT YOUR ABILITY
14 TO LISTEN TO THE FACTS AS PRESENTED?

15 MS. NUNGESSER: NO.

16 THE COURT: YOU'LL BE ABLE TO LISTEN TO THE FACTS IN THIS
17 PARTICULAR CASE AND APPLY THE LAW AS I GIVE -- AS I GIVE IT TO
18 YOU AND REACH A FAIR AND IMPARTIAL VERDICT?

19 MS. NUNGESSER: UH-HUH.

20 THE COURT: ALL RIGHT; THANK YOU. AND YOUR NUMBER AND
21 NAME?

22 MS. NUNGESSER: ONE-0-SEVEN, LINDSAY NUNGESSER.

23 THE COURT: ONE-0-SEVEN WILL REMAIN.

24 (WHEREUPON, LINDSAY D. NUNGESSER, JUROR NUMBER 107,
25 RETURNED TO HER SEAT.)

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 BAILIFF: NUMBER SEVENTY-THREE, J. MICHAEL JERNIGAN.

2 (WHEREUPON, J. MICHAEL JERNIGAN, JUROR NUMBER 73, CAME
3 FORWARD.)

4 MR. JERNIGAN: HI, YOUR HONOR.

5 THE COURT: HI, MR. JERNIGAN.

6 MR. JERNIGAN: I'M A MEMBER OF THE NATIONAL EXCHANGE
7 CLUB, WHICH IS A SERVICE ORGANIZATION COMMITTED TO THE
8 PREVENTION OF CHILD ABUSE.

9 AND MY, UH, MY BROTHER WAS SEXUALLY ABUSED AS A -- AS A
10 CHILD.

11 THE COURT: OKAY; IS THERE ANYTHING ABOUT YOU BELONGING
12 TO THE EXCHANGE CLUB THAT WILL AFFECT YOUR ABILITY TO LISTEN
13 TO THE FACTS AS PRESENTED?

14 MR. JERNIGAN: NO, MA'AM.

15 THE COURT: IS THERE ANYTHING ABOUT THE ABUSE OF YOUR
16 BROTHER THAT WILL AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL
17 IN THIS PARTICULAR TRIAL?

18 MR. JERNIGAN: NO, MA'AM.

19 THE COURT: YOU CAN LISTEN TO THE FACTS AS PRESENTED,
20 APPLY THE LAW AS I INSTRUCT YOU, AND RENDER A VERDICT THAT IS
21 TRUST (SIC) -- TRUE AND JUST?

22 MR. JERNIGAN: I CAN.

23 THE COURT: ALL RIGHT; THANK YOU, SIR.

24 (WHEREUPON, J. MICHAEL JERNIGAN, JUROR NUMBER 73,
25 RETURNED TO HIS SEAT.)

1 BAILIFF: NUMBER FIVE, CAITHLIN AMBROSE.

2 (WHEREUPON, CAITHLIN N. AMBROSE, JUROR NUMBER 5, CAME
3 FORWARD.)

4 MS. AMBROSE: I WAS SEXUALLY---

5 THE COURT: OKAY, SHE'S GOT TO TAKE DOWN EVERYTHING YOU
6 SAY; YOU'VE GOT TO SPEAK UP JUST A LITTLE BIT LOUDER, OKAY?

7 MS. AMBROSE: WHAT DO I NEED TO SAY?

8 THE COURT: JUST WHATEVER YOU NEEDED TO TELL US.

9 MS. AMBROSE: I WAS SEXUALLY MOLESTED WHEN I WAS YOUNGER
10 AND WENT THROUGH COUNSELING, BUT EVERYTHING'S FINE NOW.

11 THE COURT: ALL RIGHT; UH, WAS THAT HERE IN -- IN
12 BERKELEY COUNTY?

13 MS. AMBROSE: UH-HUH.

14 THE COURT: AND WAS THE INDIVIDUAL PROSECUTED?

15 MS. AMBROSE: I DON'T REMEMBER IF HE WAS OR NOT.

16 THE COURT: AND HOW LONG AGO WAS THIS?

17 MS. AMBROSE: I WAS LIKE SEVEN, SO IT WAS OVER TEN YEARS
18 AGO.

19 THE COURT: AND WAS THIS A RELATIVE?

20 MS. AMBROSE: YES.

21 THE COURT: OKAY; AND, UH -- AND YOU DON'T REMEMBER IF
22 THE CASE WAS PROSECUTED?

23 MS. AMBROSE: UM -- I MEAN, I DON'T -- HE WENT TO LIKE
24 CHARTER AND STUFF LIKE THAT.

25 THE COURT: ALL RIGHT. AND IS THERE ANYTHING ABOUT --

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 WILL THAT INCIDENT AFFECT YOUR ABILITY TO BE FAIR AND
2 IMPARTIAL IN THIS CASE?

3 MS. AMBROSE: NO.

4 THE COURT: WILL YOU BE ABLE TO LISTEN TO THE FACTS AS
5 PRESENTED AND APPLY THE LAW AS I INSTRUCT YOU ON IT, AND
6 RENDER A VERDICT THAT YOU FEEL IS TRUE AND JUST?

7 MS. AMBROSE: YES, MA'AM.

8 THE COURT: AND YOU CAN BE FAIR AND IMPARTIAL IN THIS
9 CASE?

10 MS. AMBROSE: YES, MA'AM.

11 THE COURT: YOUR JUROR NUMBER AND NAME?

12 MS. AMBROSE: FIVE; CAITHLIN AMBROSE.

13 THE COURT: OKAY; JUROR FIVE WILL REMAIN. THANK YOU,
14 MS. AMBROSE.

15 (WHEREUPON, CAITHLIN N. AMBROSE, JUROR NUMBER 5, RETURNED
16 TO HER SEAT.)

17 BAILIFF: NUMBER FOURTEEN, GLENDA C. BOLT.

18 (WHEREUPON, GLENDA C. BOLT, JUROR NUMBER 14, CAME
19 FORWARD.)

20 THE COURT: YES, MA'AM?

21 MS. BOLT: I JUST -- I HAD A BROTHER ACCUSED OF SEXUAL
22 (SIC) ASSAULTING A LITTLE GIRL ABOUT TWO YEARS AGO. SO, I
23 DIDN'T KNOW IF THAT WAS IT.

24 THE COURT: YES, MA'AM; AND I APPRECIATE YOU, UH, COMING
25 FORWARD. UH -- WAS IT---

1 MS. BOLT: HE WAS FOUND NOT GUILTY, SO...

2 THE COURT: OKAY; WAS THAT HERE IN CHARLESTON OR
3 BERKELEY?

4 MS. BOLT: IT WAS IN CHARLESTON.

5 THE COURT: ALL RIGHT. AND, UH, WAS THAT PROSECUTED BY
6 THE SOLICITOR'S OFFICE IN CHARLESTON?

7 MS. BOLT: YEAH. AND HE WAS JUST CHARGED WITH ASSAULT.
8 SO...

9 THE COURT: OKAY; AND DID HE HAVE AN ATTORNEY?

10 MS. BOLT: YEAH, I BELIEVE SO.

11 THE COURT: IS THERE ANYTHING ABOUT THAT INCIDENT THAT
12 WOULD AFFECT YOUR ABILITY TO RENDER A FAIR AND IMPARTIAL
13 VERDICT IN THIS CASE?

14 MS. BOLT: NO.

15 THE COURT: YOU CAN LISTEN TO FACTS AS PRESENTED IN THIS
16 CASE, APPLY THE LAW AS I GIVE IT, AND RENDER A VERDICT THAT
17 YOU FEEL IS TRUE AND JUST, BEING FAIR AND IMPARTIAL?

18 MS. BOLT: YES.

19 THE COURT: OKAY; THANK YOU.

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
21 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
22 THE JURY PANEL, OFF THE RECORD.)

23 (WHEREUPON, COURT RESUMED.)

24 THE COURT: ONE SECOND -- GRAB HER.

25 DEPUTY: MA'AM---

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
2 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
3 THE JURY PANEL, OFF THE RECORD.)

4 (WHEREUPON, COURT RESUMED.)

5 DEPUTY: ---MA'AM.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
7 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
8 THE JURY PANEL, OFF THE RECORD.)

9 (WHEREUPON, COURT RESUMED.)

10 THE COURT: IS THERE ANY -- DO YOU HAVE ANY RELATIONSHIP,
11 UH, WITH THE PUBLIC DEFENDER'S OFFICE, EITHER IN CHARLESTON OR
12 BERKELEY COUNTY?

13 MS. BOLT: I DON'T.

14 THE COURT: ALL RIGHT. DO YOU HAVE ANY FAMILY MEMBERS OR
15 CLOSE PERSONAL FRIENDS THAT -- THAT HAVE, OTHER THAN YOUR
16 BROTHER, UH, IN CHARLESTON OR BERKELEY COUNTY?

17 MS. BOLT: NOT AS NO PUBLIC DEFENDER.

18 THE COURT: ALL RIGHT. UM -- OKAY; THANK YOU.

19 (WHEREUPON, GLENDA C. BOLT, JUROR NUMBER 14, RETURNED TO
20 HER SEAT.)

21 BAILIFF: NUMBER THIRTY-SIX, GLEN FAUGHENDER.

22 (WHEREUPON, GLEN O. FAUGHENDER, JUROR NUMBER 36, CAME
23 FORWARD.)

24 THE COURT: HI.

25 MR. FAUGHENDER: HI; MY DAUGHTER WAS RAPED AS A TEENAGER

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 BY A NEIGHBORHOOD KID, AND I -- I'VE GOT STRONG FEELINGS ABOUT
2 THAT.

3 THE COURT: OKAY; UH, WAS THAT HERE IN BERKELEY COUNTY?

4 MR. FAUGHENDER: YES, MA'AM.

5 THE COURT: AND HOW LONG AGO WAS IT?

6 MR. FAUGHENDER: UH -- IT WAS WHEN SHE WAS A TEENAGER;
7 PROBABLY TWENTY YEARS AGO.

8 THE COURT: OKAY; AND HOW OLD WAS YOUR DAUGHTER?

9 MR. FAUGHENDER: SHE -- ABOUT SIXTEEN.

10 THE COURT: OKAY; AND WAS THE INDIVIDUAL PROSECUTED?

11 MR. FAUGHENDER: NO, MA'AM.

12 THE COURT: DID YOU CALL THE POLICE?

13 MR. FAUGHENDER: I WAS OVERSEAS AT THE TIME.

14 THE COURT: ALL RIGHT. AND WAS THERE ANYTHING ABOUT THAT
15 THAT WILL AFFECT YOUR ABILITY TO LISTEN TO THE FACTS AS
16 PRESENTED IN THIS CASE, AND -- AND THE LAW THAT I GIVE TO YOU,
17 APPLY THAT LAW AND RENDER A FAIR AND IMPARTIAL VERDICT?

18 MR. FAUGHENDER: I DON'T KNOW, TO BE HONEST WITH YOU.

19 THE COURT: OKAY; UH -- AND YOUR JUROR NUMBER?

20 MR. FAUGHENDER: THIRTY-SIX.

21 THE COURT: OKAY; JUROR THIRTY-SIX WILL BE EXCUSED FROM
22 THE TRIAL OF THIS CASE.

23 THANK YOU, SIR; YOU'RE FREE TO -- FREE TO GO FOR TODAY,
24 OKAY? YOU'LL NEED TO CALL BACK AFTER SEVEN.

25 MR. FAUGHENDER: AFTER SEVEN TONIGHT?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT: YES, SIR.

2 MR. FAUGHENDER: OKAY; ALL RIGHT.

3 (WHEREUPON, GLEN O. FAUGHENDER, JUROR NUMBER 36, WAS
4 EXCUSED FROM THE TRIAL OF THIS CASE AND RETURNED TO HIS SEAT.)

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
6 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
7 THE JURY PANEL, OFF THE RECORD.)

8 (WHEREUPON, ATTORNEYS RETURNED TO THEIR TABLES.)

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
10 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
11 HEARING OF THE JURY PANEL, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 (WHEREUPON, AUDIO TO ENTIRE JURY PANEL RESUMED.)

14 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, DOES
15 ANY MEMBER OF THE JURY PANEL KNOW OF -- OR A REASON WHY YOU
16 COULD NOT GIVE THE -- BOTH, UH, THE STATE AND THE DEFENDANT A
17 FAIR AND IMPARTIAL TRIAL AT THIS TIME, UH, BASED UPON
18 SOMETHING THAT PERHAPS THE COURT HAS SAID OR SOMETHING THAT
19 HAS HAPPENED THAT YOU FEEL THAT YOU HAVE JUST A BIAS OR
20 PREJUDICE, UH, IN CONNECTION WITH THIS CASE OR WITH ANY OF THE
21 PARTIES INVOLVED AND YOU JUST CANNOT SIT AND LISTEN TO THE
22 FACTS, APPLY THE LAW AS I INSTRUCT YOU ON THAT LAW, AND RENDER
23 A VERDICT THAT YOU FEEL TO BE TRUE AND -- AND JUST, FAIR, AND
24 IMPARTIAL?

25 OR, IF THERE'S JUST SOMETHING, UH, WHILE YOU WERE TAKING

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 YOUR COMFORT BREAK AND YOU CHECKED YOUR MESSAGES, AND, UH,
2 YOUR BEST FRIEND HAS SUPER BOWL TICKETS AND YOU-ALL ARE GONNA
3 BE LEAVING, UH, THURSDAY, AND YOU THINK THAT YOU WILL NOT BE
4 ABLE TO SIT AND LISTEN, UH, TO THE FACTS AS PRESENTED, UH,
5 YOU'LL BE THINKING ABOUT OTHER THINGS, THEN I -- I THINK THE
6 STEELERS ARE PLAYING, IS THAT RIGHT?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
8 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
9 THE JURY PANEL, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 THE COURT: OKAY; YOU'LL BE THINKING ABOUT THE STEELERS
12 AND, UH, NOT BE CONCENTRATING ON WHAT IS GOING ON HERE TODAY,
13 THAT YOU JUST FEEL THAT THAT IS GOING TO BE AN EXTREME
14 HARDSHIP, UH, FOR WHATEVER REASON.

15 OR, YOU REMEMBER THAT YOU HAVE A DOCTOR'S APPOINTMENT,
16 UH, THAT YOU HAD FORGOTTEN ABOUT.

17 FOR WHATEVER REASON, UH, THIS IS THE TIME TO COME FORWARD
18 IF YOU FEEL THAT YOU CANNOT LISTEN TO THE FACTS AS PRESENTED
19 BY THE STATE, UH, AS PRESENTED BY THE WITNESS STAND, LISTEN TO
20 THE LAW AS I INSTRUCT YOU, AND RENDER A FAIR AND IMPARTIAL
21 VERDICT IN THIS CASE.

22 NOW IS THE TIME TO COME FORWARD AND TELL ME ABOUT THOSE
23 SUPER BOWL TICKETS OR ANYTHING ELSE.

24 (NO RESPONSE FROM THE JURY PANEL.)

25 THE COURT: ALL RIGHT; THANK YOU, THERE ARE NONE. ANY

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 ADDITIONAL QUESTIONS FROM THE STATE?

2 MS. WILLIAMS: NO, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE

5 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF

6 THE JURY PANEL, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MR. SHELTON: UH -- NOT AT THIS TIME, YOUR HONOR.

9 THE COURT: ALL RIGHT. ANY OBJECTIONS TO THE COURT
10 DRAWING THE JURY FROM THE STATE?

11 MS. WILLIAMS: NOT FROM THE STATE, YOUR HONOR.

12 MR. SHELTON: NO, YOUR HONOR.

13 THE COURT: FROM THE DEFENDANT? DO YOU NEED A FEW
14 MOMENTS?

15 MS. WILLIAMS: THE STATE IS READY, YOUR HONOR.

16 MR. SHELTON: A COUPLE MOMENTS, YOUR HONOR.

17 THE COURT: ALL RIGHT; WE'LL BE AT EASE FOR A FEW
18 MOMENTS.

19 IF YOU'LL GO AHEAD AND PREPARE A LIST?

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
21 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
22 THE JURY PANEL, OFF THE RECORD.)

23 (WHEREUPON, COURT RESUMED.)

24 THE COURT: MR. SHELTON, MS. WILLIAMS, PLEASE APPROACH.

25 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
2 HEARING OF THE JURY PANEL, OFF THE RECORD.)

3 (WHEREUPON, COURT RESUMED.)

4 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, JUST SO YOU
5 KNOW, WE GOT A NEW, EFFICIENT, COMPUTER GENERATED SYSTEM SO
6 THAT WE CAN SAVE EVERYBODY TIME. SO THAT'S WHAT WE'RE DOING.

7 SO, THIS IS OUR FIRST WEEK OF USING IT, JUST SO YOU
8 WONDER -- IF YOU'RE WONDERING WHAT WE'RE DOING UP HERE.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
10 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
11 THE JURY PANEL, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 **THE COURT:** THOSE OF YOU WHO NEED TO STAND UP, OR
14 STRETCH, OR WIGGLE ABOUT, FEEL FREE TO DO SO.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
16 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
17 THE JURY PANEL, OFF THE RECORD.)

18 (WHEREUPON, COURT RESUMED.)

19 **MS. WILLIAMS:** MAY WE APPROACH?

20 **THE COURT:** YOU MAY.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
22 CONFERENCE IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE
23 HEARING OF THE JURY PANEL, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, YOU MAY BE

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 EXCUSED FOR ABOUT FIVE MINUTES; THANK YOU.

2 (WHEREUPON, COURT RECESSED.)

3 (WHEREUPON, COURT RESUMED.)

4 THE COURT: IS THE STATE READY TO PROCEED?

5 MS. WILLIAMS: THE STATE IS READY, YOUR HONOR.

6 THE COURT: IS THE DEFENSE READY TO PROCEED?

7 MR. SHELTON: I'M SORRY, YOUR HONOR, I MIGHT NEED A
8 COUPLE -- A COUPLE MINUTES WITH THIS NEW ONE.

9 THE COURT: YES, SIR, MR. SHELTON.

10 MR. SHELTON: THANK YOU.

11 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
12 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
13 THE JURY PANEL, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 MR. SHELTON: WE'RE READY, YOUR HONOR.

16 THE COURT: ALL RIGHT; MADAME CLERK?

17 CLERK: LADIES AND GENTLEMEN OF THE JURY PANEL, WHEN I
18 CALL YOUR NAME, PLEASE COME FORTH AND BRING YOUR PERSONAL
19 BELONGINGS WITH YOU.

20 IF I SAY, SEAT THE JUROR, PLEASE HAVE A SEAT IN THE JURY
21 BOX TO MY RIGHT.

22 IF I SAY, EXCUSE THE JUROR, PLEASE RETURN TO YOUR
23 ORIGINAL SEAT.

24 JUROR FOURTEEN, GLENDA C. BOLT.

25 (WHEREUPON, GLENDA C. BOLT, JUROR NUMBER 14, CAME

1 FORWARD.)

2 CLERK: WHAT SAYETH THE STATE?

3 MS. WILLIAMS: PLEASE EXCUSE THE JUROR.

4 CLERK: EXCUSE THE JUROR.

5 (WHEREUPON, GLENDA C. BOLT, JUROR NUMBER 14, RETURNED TO

6 HER SEAT.)

7 CLERK: JUROR ONE-SIXTY-EIGHT, MARY F. WILLS.

8 (WHEREUPON, MARY F. WILLS, JUROR NUMBER 168, CAME

9 FORWARD.)

10 CLERK: WHAT SAYETH THE STATE?

11 MS. WILLIAMS: PLEASE SEAT THE JUROR.

12 CLERK: WHAT SAYETH THE DEFENSE?

13 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

14 CLERK: EXCUSE THE JUROR.

15 (WHEREUPON, MARY F. WILLS, JUROR NUMBER 168, RETURNED TO

16 HER SEAT.)

17 CLERK: JUROR ONE-TWENTY-SIX, RONALD D. ROMACK, JUNIOR.

18 (WHEREUPON, RONALD D. ROMACK, JR., JUROR NUMBER 126, CAME

19 FORWARD.)

20 CLERK: WHAT SAYETH THE STATE?

21 MS. WILLIAMS: PLEASE EXCUSE THE JUROR.

22 CLERK: EXCUSE THE JUROR.

23 (WHEREUPON, RONALD D. ROMACK, JR., JUROR NUMBER 126,

24 RETURNED TO HIS SEAT.)

25 CLERK: JUROR ONE-0-ONE, DAVID C. MYERS, THE SECOND.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, DAVID C. MYERS, II, JUROR NUMBER 101, CAME
2 FORWARD.)

3 CLERK: WHAT SAYETH THE STATE?

4 MS. WILLIAMS: PLEASE SEAT THE JUROR.

5 CLERK: WHAT SAYETH THE DEFENSE?

6 MR. SHELTON: PLEASE SEAT THE JUROR.

7 CLERK: SEAT THE JUROR.

8 (WHEREUPON, DAVID C. MYERS, II, JUROR NUMBER 101, WAS
9 SEATED IN THE JURY BOX.)

10 CLERK: JUROR THIRTY-FOUR ALEX DUPREE.

11 (WHEREUPON, ALEX DUPREE, JUROR NUMBER 34, CAME FORWARD.)

12 CLERK: WHAT SAYETH THE STATE?

13 MS. WILLIAMS: PLEASE SEAT THE JUROR.

14 CLERK: WHAT SAYETH THE DEFENSE?

15 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

16 CLERK: EXCUSE THE JUROR.

17 (WHEREUPON, ALEX DUPREE, JUROR NUMBER 34, RETURNED TO HIS
18 SEAT.)

19 CLERK: JUROR ONE-TWENTY-SEVEN, DEBORAH R. ROYAL.

20 (WHEREUPON, DEBORAH R. ROYAL, JUROR NUMBER 127, CAME
21 FORWARD.)

22 CLERK: WHAT SAYETH THE STATE?

23 MS. WILLIAMS: PLEASE SEAT THE JUROR.

24 CLERK: WHAT SAYETH THE DEFENSE?

25 MR. SHELTON: PLEASE SEAT THE JUROR.

1 CLERK: SEAT THE JUROR.

2 (WHEREUPON, DEBORAH R. ROYAL, JUROR NUMBER 127, WAS
3 SEATED IN THE JURY BOX.)

4 CLERK: JUROR SIXTY-FOUR, JARY J. HULST.

5 (WHEREUPON, JARY J. HULST, JUROR NUMBER 64, CAME
6 FORWARD.)

7 CLERK: WHAT SAYETH THE STATE?

8 MS. WILLIAMS: PLEASE EXCUSE THE JUROR.

9 CLERK: EXCUSE THE JUROR.

10 (WHEREUPON, JARY J. HULST, JUROR NUMBER 64, RETURNED TO
11 HIS SEAT.)

12 CLERK: JUROR NUMBER SEVENTY-SIX, SUSAN G. JOHNSON.

13 (WHEREUPON, SUSAN G. JOHNSON, JUROR NUMBER 76, CAME
14 FORWARD.)

15 CLERK: WHAT SAYETH THE STATE?

16 MS. WILLIAMS: PLEASE SEAT THE JUROR.

17 CLERK: WHAT SAYETH THE DEFENSE?

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
19 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
20 THE JURY PANEL, OFF THE RECORD.)

21 (WHEREUPON, COURT RESUMED.)

22 MR. SHELTON: PLEASE SEAT THE JUROR.

23 CLERK: SEAT THE JUROR.

24 (WHEREUPON, SUSAN G. JOHNSON, JUROR NUMBER 76, WAS SEATED
25 IN THE JURY BOX.)

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 **CLERK:** JUROR ONE-0-FOUR, CYNTHIA J. NELSON.

2 (WHEREUPON, CYNTHIA J. NELSON, JUROR NUMBER 104, CAME
3 FORWARD.)

4 **CLERK:** WHAT SAYETH THE STATE?

5 **MS. WILLIAMS:** PLEASE SEAT THE JUROR.

6 **CLERK:** WHAT SAYETH THE DEFENSE?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
8 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
9 THE JURY PANEL, OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 **MR. SHELTON:** PLEASE SEAT THE JUROR.

12 **CLERK:** SEAT THE JUROR.

13 (WHEREUPON, CYNTHIA J. NELSON, JUROR NUMBER 104, WAS
14 SEATED IN THE JURY BOX.)

15 **CLERK:** JUROR SEVENTY-THREE, J. MICHAEL JERNIGAN.

16 (WHEREUPON, J. MICHAEL JERNIGAN, JUROR NUMBER 73, CAME
17 FORWARD.)

18 **CLERK:** WHAT SAYETH THE STATE?

19 **MS. WILLIAMS:** PLEASE SEAT THE JUROR.

20 **CLERK:** WHAT SAYETH THE DEFENSE?

21 **MR. SHELTON:** PLEASE EXCUSE THIS JUROR.

22 **CLERK:** EXCUSE THE JUROR.

23 (WHEREUPON, J. MICHAEL JERNIGAN, JUROR NUMBER 73,
24 RETURNED TO HIS SEAT.)

25 **CLERK:** JUROR ONE-0-NINE, TRACY L. PATRICK.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, TRACY L. PATRICK, JUROR NUMBER 109, CAME
2 FORWARD.)

3 CLERK: WHAT SAYETH THE STATE?

4 MS. WILLIAMS: PLEASE SEAT THE JUROR.

5 CLERK: WHAT SAYETH THE DEFENSE?

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
7 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
8 THE JURY PANEL, OFF THE RECORD.)

9 (WHEREUPON, COURT RESUMED.)

10 MR. SHELTON: PLEASE SEAT THIS JUROR.

11 CLERK: SEAT THE JUROR.

12 (WHEREUPON, TRACY L. PATRICK, JUROR NUMBER 109, WAS
13 SEATED IN THE JURY BOX.)

14 CLERK: JUROR EIGHTY-TWO, KATHRYN A. KONTRAS.

15 (WHEREUPON, KATHRYN A. KONTRAS, JUROR NUMBER 82, CAME
16 FORWARD.)

17 CLERK: WHAT SAYETH THE STATE?

18 MS. WILLIAMS: PLEASE SEAT THE JUROR.

19 CLERK: WHAT SAYETH THE DEFENSE?

20 MR. SHELTON: BEG THE COURT'S INDULGENCE.

21 THE COURT: YES, SIR.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
23 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
24 THE JURY PANEL, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

2 CLERK: EXCUSE THE JUROR.

3 (WHEREUPON, KATHRYN A. KONTRAS, JUROR NUMBER 82, RETURNED
4 TO HER SEAT.)

5 CLERK: JUROR TWENTY-SIX, CYNTHIA P. DAHLMAN.

6 (WHEREUPON, CYNTHIA P. DAHLMAN, JUROR NUMBER 26, CAME
7 FORWARD.)

8 CLERK: WHAT SAYETH THE STATE?

9 MS. WILLIAMS: PLEASE SEAT THE JUROR.

10 CLERK: WHAT SAYETH THE DEFENSE?

11 MR. SHELTON: PLEASE SEAT THIS JUROR.

12 CLERK: SEAT THE JUROR.

13 (WHEREUPON, CYNTHIA P. DAHLMAN, JUROR NUMBER 26, WAS
14 SEATED IN THE JURY BOX.)

15 CLERK: JUROR ONE-SEVENTY-THREE, JAMES G. YATES.

16 (WHEREUPON, JAMES G. YATES, JUROR NUMBER 173, CAME
17 FORWARD.)

18 CLERK: WHAT SAYETH THE STATE?

19 MS. WILLIAMS: PLEASE SEAT THE JUROR.

20 CLERK: WHAT SAYETH THE DEFENSE?

21 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

22 CLERK: EXCUSE THE JUROR.

23 (WHEREUPON, JAMES G. YATES, JUROR NUMBER 173, RETURNED TO
24 HIS SEAT.)

25 CLERK: JUROR ONE-THIRTEEN, TASHA L. PITTMAN.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, TASHA L. PITTMAN, JUROR NUMBER 113, CAME
2 FORWARD.)

3 CLERK: WHAT SAYETH THE STATE?

4 MS. WILLIAMS: PLEASE SEAT THE JUROR.

5 CLERK: WHAT SAYETH THE DEFENSE?

6 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

7 CLERK: EXCUSE THE JUROR.

8 (WHEREUPON, TASHA L. PITTMAN, JUROR NUMBER 113, RETURNED
9 TO HER SEAT.)

10 CLERK: JUROR ONE-FIFTY-NINE, JOHN B. WADE.

11 (WHEREUPON, JOHN B. WADE, JUROR NUMBER 159, CAME
12 FORWARD.)

13 CLERK: WHAT SAYETH THE STATE?

14 MS. WILLIAMS: PLEASE SEAT THE JUROR.

15 CLERK: WHAT SAYETH THE DEFENSE?

16 MR. SHELTON: PLEASE SEAT THIS JUROR.

17 CLERK: SEAT THE JUROR.

18 (WHEREUPON, JOHN B. WADE, JUROR NUMBER 159, WAS SEATED IN
19 THE JURY BOX.)

20 CLERK: JUROR ONE-THIRTY-SIX, ADAM W. SHEELER.

21 (WHEREUPON, ADAM W. SHEELER, JUROR NUMBER 136, CAME
22 FORWARD.)

23 CLERK: WHAT SAYETH THE STATE?

24 MS. WILLIAMS: PLEASE SEAT THE JUROR.

25 CLERK: WHAT SAYETH THE DEFENSE?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 MR. SHELTON: PLEASE SEAT THIS JUROR.

2 CLERK: SEAT THE JUROR.

3 (WHEREUPON, ADAM W. SHEELER, JUROR NUMBER 136, WAS SEATED
4 IN THE JURY BOX.)

5 CLERK: JUROR ONE-0-SEVEN, LINDSAY D. NUNGESSER.

6 (WHEREUPON, LINDSAY D. NUNGESSER, JUROR NUMBER 107, CAME
7 FORWARD.)

8 CLERK: WHAT SAYETH THE STATE?

9 MS. WILLIAMS: PLEASE SEAT THE JUROR.

10 CLERK: WHAT SAYETH THE DEFENSE?

11 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

12 CLERK: EXCUSE THE JUROR.

13 (WHEREUPON, LINDSAY D. NUNGESSER, JUROR NUMBER 107,
14 RETURNED TO HER SEAT.)

15 CLERK: JUROR FORTY, PATRICK L. FOURNIER.

16 (WHEREUPON, PATRICK L. FOURNIER, JUROR NUMBER 40, CAME
17 FORWARD.)

18 CLERK: WHAT SAYETH THE STATE?

19 MS. WILLIAMS: PLEASE SEAT THE JUROR.

20 CLERK: WHAT SAYETH THE DEFENSE?

21 MR. SHELTON: PLEASE SEAT THIS JUROR.

22 CLERK: SEAT THE JUROR.

23 (WHEREUPON, PATRICK L. FOURNIER, JUROR NUMBER 40, WAS
24 SEATED IN THE JURY BOX.)

25 CLERK: JUROR EIGHTY-SIX, JAMES L. LEONTI.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, JAMES L. LEONTI, JUROR NUMBER 86, CAME

2 FORWARD.)

3 CLERK: WHAT SAYETH THE STATE?

4 MS. WILLIAMS: PLEASE SEAT THE JUROR.

5 CLERK: WHAT SAYETH THE DEFENSE?

6 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

7 CLERK: EXCUSE THE JUROR.

8 (WHEREUPON, JAMES L. LEONTI, JUROR NUMBER 86, RETURNED TO

9 HIS SEAT.)

10 CLERK: JUROR ONE-FIFTY, SHIRLEY G. THOMPSON.

11 (WHEREUPON, SHIRLEY G. THOMPSON, JUROR NUMBER 150, CAME

12 FORWARD.)

13 CLERK: WHAT SAYETH THE STATE?

14 MS. WILLIAMS: PLEASE SEAT THE JUROR.

15 CLERK: WHAT SAYETH THE DEFENSE?

16 MR. SHELTON: PLEASE SEAT THIS JUROR.

17 CLERK: SEAT THE JUROR.

18 (WHEREUPON, SHIRLEY G. THOMPSON, JUROR NUMBER 150, WAS

19 SEATED IN THE JURY BOX.)

20 CLERK: JUROR ONE-TWENTY-FOUR, BERNARD RIVERS.

21 (WHEREUPON, BERNARD RIVERS, JUROR NUMBER 124, CAME

22 FORWARD.)

23 CLERK: WHAT SAYETH THE STATE?

24 MS. WILLIAMS: PLEASE EXCUSE THE JUROR.

25 CLERK: EXCUSE THE JUROR.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 (WHEREUPON, BERNARD RIVERS, JUROR NUMBER 124, RETURNED TO
2 HIS SEAT.)

3 CLERK: THE STATE HAS FOUR STRIKES. JUROR TWENTY-THREE,
4 MARK A. COLSON.

5 (WHEREUPON, MARK A. COLSON, JUROR NUMBER 23, CAME
6 FORWARD.)

7 CLERK: WHAT SAYETH THE STATE?

8 MS. WILLIAMS: PLEASE SEAT THE JUROR.

9 CLERK: WHAT SAYETH THE DEFENSE?

10 MR. SHELTON: PLEASE SEAT THIS JUROR.

11 CLERK: SEAT THE JUROR.

12 (WHEREUPON, MARK A. COLSON, JUROR NUMBER 23, WAS SEATED
13 IN THE JURY BOX.)

14 CLERK: JUROR THIRTY-THREE, EABELY M. DRUMMOND.

15 (WHEREUPON, EABELY M. DRUMMOND, JUROR NUMBER 33, CAME
16 FORWARD.)

17 CLERK: JUROR -- WHAT SAYETH THE STATE?

18 MS. WILLIAMS: PLEASE SEAT THE JUROR.

19 CLERK: WHAT SAYETH THE DEFENSE?

20 MR. SHELTON: BEG THE COURT'S INDULGENCE.

21 THE COURT: YES, SIR.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
23 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
24 THE JURY PANEL, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

1 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

2 CLERK: EXCUSE THE JUROR.

3 (WHEREUPON, EABELY M. DRUMMOND, JUROR NUMBER 33, RETURNED
4 TO HIS SEAT.)

5 CLERK: THE DEFENSE HAS NINE STRIKES. JUROR SIXTY-FIVE,
6 WILLIAM S. HUTTO.

7 (WHEREUPON, WILLIAM S. HUTTO, JUROR NUMBER 65, CAME
8 FORWARD.)

9 CLERK: WHAT SAYETH THE STATE?

10 MS. WILLIAMS: PLEASE SEAT THE JUROR.

11 CLERK: WHAT SAYETH THE DEFENSE?

12 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

13 CLERK: EXCUSE THE JUROR.

14 (WHEREUPON, WILLIAM S. HUTTO, JUROR NUMBER 65, RETURNED
15 TO HIS SEAT.)

16 CLERK: JUROR EIGHTY-EIGHT, ROGER L. LITTLE, JUNIOR.

17 (WHEREUPON, ROGER L. LITTLE, JR., JUROR NUMBER 88, CAME
18 FORWARD.)

19 CLERK: WHAT SAYETH THE STATE?

20 MS. WILLIAMS: PLEASE SEAT THE JUROR.

21 CLERK: ANY CALLS FOR CHALLENGE FROM THE DEFENSE?

22 MR. SHELTON: NO.

23 CLERK: SEAT THE JUROR.

24 (WHEREUPON, ROGER L. LITTLE, JR., JUROR NUMBER 88, WAS
25 SEATED IN THE JURY BOX.)

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 CLERK: ALTERNATE ONE; JUROR ONE-TWENTY-FIVE, FREDDIE
2 RIVERS.

3 (WHEREUPON, FREDDIE RIVERS, JUROR NUMBER 125, CAME
4 FORWARD.)

5 CLERK: WHAT SAYETH THE STATE?

6 MS. WILLIAMS: PLEASE SEAT THE JUROR.

7 CLERK: WHAT SAYETH THE DEFENSE?

8 MR. SHELTON: PLEASE SEAT THIS JUROR.

9 CLERK: SEAT THE JUROR.

10 (WHEREUPON, FREDDIE RIVERS, JUROR NUMBER 125, WAS SEATED
11 IN THE JURY BOX.)

12 CLERK: SECOND ALTERNATE; JUROR NINETY-FOUR, JONMICHAEL
13 MCCRANN.

14 (WHEREUPON, JONMICHAEL MCCRANN, JUROR NUMBER 94, CAME
15 FORWARD.)

16 CLERK: WHAT SAYETH THE STATE?

17 MS. WILLIAMS: PLEASE SEAT THE JUROR.

18 CLERK: WHAT SAYETH THE DEFENSE?

19 MR. SHELTON: PLEASE EXCUSE THIS JUROR.

20 CLERK: EXCUSE THE JUROR.

21 (WHEREUPON, JONMICHAEL MCCRANN, JUROR NUMBER 94, RETURNED
22 TO HIS SEAT.)

23 CLERK: JUROR SIX -- NUMBER SEVEN, ALEXANDER S. ARCHER.

24 (WHEREUPON, ALEXANDER S. ARCHER, JUROR NUMBER 7, CAME
25 FORWARD.)

1 CLERK: WHAT SAYETH THE STATE?

2 MS. WILLIAMS: PLEASE SEAT THE JUROR.

3 CLERK: WHAT SAYETH THE DEFENSE?

4 MR. SHELTON: PLEASE SEAT THIS JUROR.

5 CLERK: SEAT THE JUROR.

6 (WHEREUPON, ALEXANDER S. ARCHER, JUROR NUMBER 7, WAS
7 SEATED IN THE JURY BOX.)

8 THE COURT: ANY MOTIONS OR EXCEPTIONS PERTAINING TO THE
9 JURY SELECTION PROCESS OR TO THE SELECTED JURY FROM THE STATE?

10 MS. WILLIAMS: NONE FROM THE STATE, YOUR HONOR.

11 THE COURT: FROM THE DEFENSE?

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
13 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
14 THE JURY PANEL, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 MR. SHELTON: NONE FROM THE DEFENSE, YOUR HONOR.

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY, YOU'RE
18 GONNA BE ESCORTED INTO YOUR JURY ROOM. UH -- IF YOU WILL
19 FOLLOW THE BAILIFF, AND THEN I WILL, UH, RECEIVE YOU BACK INTO
20 THE COURTROOM AND GIVE YOU FURTHER INSTRUCTIONS.

21 (WHEREUPON, JURY LEFT THE COURTROOM AT 5:28 P.M.)

22 THE COURT: THANK YOU; PLEASE BE SEATED. WE ARE NOW
23 OUTSIDE OF THE PRESENCE OF THE JURY.

24 ARE THERE ANY BATSON MOTIONS OR ANY OTHER MOTIONS OR
25 MATTERS PERTAINING TO THIS JURY SELECTION PROCESS?

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 FROM THE STATE?

2 MS. WILLIAMS: NONE FROM THE STATE, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
5 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
6 THE JURY PANEL, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MR. SHELTON: NONE, YOUR HONOR.

9 THE COURT: ANY OBJECTION TO RELEASING THE REMAINING JURY
10 POOL?

11 FROM THE STATE?

12 MS. WILLIAMS: NONE FROM THE STATE.

13 THE COURT: FROM THE DEFENSE?

14 MR. SHELTON: NONE, YOUR HONOR.

15 THE COURT: LADIES AND GENTLEMEN OF THE JURY POOL, YOU
16 HAVE NOT BEEN SELECTED FOR THE TRIAL OF THIS CASE.

17 I WILL, UH, NEED YOU TO CALL THE NUMBER THAT YOU HAVE ON
18 YOUR CARD...

19 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE
20 IN THE PRESENCE OF THE JURY PANEL BUT OUTSIDE THE HEARING OF
21 THE JURY PANEL, OFF THE RECORD.)

22 (WHEREUPON, COURT RESUMED.)

23 THE COURT: IF YOU NEED ANY ADDITIONAL CARDS, PLEASE SEE
24 THE BAILIFF, MR. CURRY, ON YOUR WAY OUT. MR. HUTTO, UH, HAS
25 THE CARDS WITH THE NUMBERS, UH, FOR YOU TO CALL.

1 YOU WILL NEED TO CALL BACK AFTER SEVEN P.M. TONIGHT. IT
2 IS IMPORTANT THAT YOU CALL BACK AFTER SEVEN, NOT BEFORE SEVEN,
3 BECAUSE THE MESSAGE WILL BE DIFFERENT.

4 YOU WILL BE GIVEN FURTHER INSTRUCTIONS REGARDING YOUR
5 JURY SERVICE FOR THE REMAINDER OF THE WEEK.

6 IT WAS A PLEASURE MEETING EACH OF YOU; THANK YOU FOR
7 BEING IN MY COURTROOM HERE TODAY.

8 I KNOW YOU DIDN'T HAVE A WHOLE LOT OF CHOICE OF WHETHER
9 OR NOT YOU COULD SHOW UP, BUT I DO APPRECIATE YOUR SERVICE TO
10 BERKELEY COUNTY.

11 THANK YOU, AND HAVE A GOOD EVENING.

12 (WHEREUPON, BALANCE OF JURY PANEL WAS RELEASED FOR THE
13 EVENING AND LEFT THE COURTROOM AT 5:30 P.M.)

14 **THE COURT:** I AM GOING TO BRING THE, UH -- BRING THE JURY
15 IN. I'M NOT GOING TO SWEAR THE JURY TONIGHT.

16 I'M GOING TO TELL THE JURY THAT THEY NEED TO CALL BACK
17 AFTER SEVEN; THEY WILL BE GIVEN INSTRUCTIONS AT THAT POINT.

18 THEY'RE GOING TO BE ENTITLED JURY PANEL NUMBER ONE, AND,
19 UH, DETERMINE A -- DETERMINATIVE OF MY DECISION ON THE TWO
20 MOTIONS IN FRONT OF US HERE THIS AFTERNOON, UH, THAT WILL BE
21 DEPENDENT ON WHAT TIME THEY COME BACK TOMORROW.

22 ANY OBJECTIONS FROM THE STATE?

23 **MS. WILLIAMS:** NONE FROM THE STATE, YOUR HONOR.

24 **THE COURT:** FROM THE DEFENSE?

25 **MR. SHELTON:** NONE, YOUR HONOR.

STATE VERSUS GEORGE SALISBURY
JURY SELECTION

1 THE COURT: ALL RIGHT; PLEASE BRING IN THE JURY. PLEASE
2 RISE FOR THE JURY.

3 (WHEREUPON, JURY ENTERED THE COURTROOM AT 5:34 P.M.)

4 THE COURT: IF YOU'LL BE SEATED? (AFTER PAUSE) ARE YOU
5 MS. ROYAL?

6 MS. ROYAL: YES.

7 THE COURT: YOU HAVE BEEN SELECTED AS THE FOREPERSON OF
8 THIS JURY.

9 MR. RIVERS AND MR. ARCHER, YOU ARE OUR TWO ALTERNATES,
10 AND YOU WILL REMAIN -- YOU TWO CAN SWITCH THOSE SEATS, BUT I
11 NEED TO KNOW THAT YOU'RE BOTH RIGHT THERE IN THOSE TWO SEATS
12 ON THE END. AS ALTERNATES, THOSE ARE YOUR DESIGNATE- --
13 DESIGNATED SEATS.

14 AND MS. ROYAL, AS -- AS FOREPERSON, THAT IS YOUR
15 DESIGNATED SEAT.

16 THE REMAINDER OF YOU MAY SIT, UH, WHEREVER YOU CHOOSE.

17 I JUST WANTED TO GIVE YOU A LITTLE INSTRUCTION, UH, THIS
18 EVENING. THERE ARE SOME MATTERS THAT, UH, WE ARE GOING TO
19 TAKE CARE OF THIS EVENING, UH, OUTSIDE OF YOUR PRESENCE. AND
20 IT IS ALWAYS OUR FIRST AND FOREMOST CONCERN, UH, THAT WE MAKE
21 EFFICIENT USE OF YOUR TIME.

22 AND DUE TO THE LATENESS OF THE HOUR, I'M GOING TO EXCUSE
23 YOU, UH, FOR THE EVENING.

24 UH -- YOU ARE CONSIDERED JURY PANEL NUMBER ONE. YOU WILL
25 BE GIVEN A NUMBER TO CALL. THERE IS GOING TO BE TWO MESSAGES,

1 BUT YOU ARE JURY PANEL NUMBER ONE.

2 YOU WILL BE GIVEN INSTRUCTIONS -- THE MESSAGE WILL CHANGE
3 AFTER SEVEN P.M. TONIGHT ON WHAT TIME YOU WILL NEED TO REPORT
4 BACK IN THE MORNING. OR, TOMORROW -- REPORT BACK TOMORROW.

5 AGAIN, SO THAT YOU'RE NOT WAITING HERE THIS EVENING OR
6 WAITING IN THE MORNING, WHILE I HAVE MATTERS UNRELATED TO THIS
7 PARTICULAR CASE TO TAKE CARE OF AS WELL.

8 SO, YOU ARE RELIEVED FOR THE EVENING. YOU, UH, WILL
9 RECEIVE YOUR INSTRUCTIONS ONCE YOU CALL BACK AFTER SEVEN AND
10 GET THE INSTRUCTIONS FOR JURY PANEL NUMBER ONE.

11 AGAIN, THANK YOU FOR YOUR SERVICE TO BERKELEY COUNTY; AND
12 I LOOK FORWARD TO HAVING YOU BACK IN THE COURTROOM TOMORROW.

13 PLEASE RISE FOR THE JURY.

14 (WHEREUPON, JURY WAS RELEASED FOR THE EVENING AND LEFT
15 THE COURTROOM AT 5:36 P.M.)

16

17

18

19

20 (BALANCE OF PAGE INTENTIONALLY BLANK.)

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1 **THE COURT:** THANK YOU. YOU MAY BE SEATED. MR.
2 ALFARO, DO YOU NEED TO BE EXCUSED?

3 **MR. ALFARO:** I'LL SLIDE OUT.

4 **THE COURT:** ALL RIGHT. ARE WE PREPARED TO GO
5 FORWARD ON OUR MOTIONS OR DO Y'ALL NEED A SHORT RECESS?

6 **MS. KENNEDY:** YOUR HONOR, JUST A BRIEF RECESS, BUT
7 IF WE COULD ADDRESS THE ISSUE OF THE VICTIM'S PRESENCE, I
8 WOULD APPRECIATE IT.

9 **THE COURT:** MS. KENNEDY, I HAVE REVIEWED THE
10 VICTIM'S RIGHTS ACT. IT DOES NOT APPEAR THAT THE VICTIM'S
11 RIGHTS ACT ALLOWS THE COURT TO SEQUESTER HER FROM ANY OF
12 THE PROCEEDINGS.

13 **MS. KENNEDY:** YOUR HONOR, IF I MAY, I -- I DON'T --
14 AND I READ IT VERY CURSORY, BUT CODE SECTION 16-3-1515
15 SUBSECTION (C) SAYS THAT THE VICTIM SHOULD BE PRESENT
16 DURING PLEA, TRIAL OR SENTENCING. I TAKE THE POSITION
17 THAT THE TRIAL DOESN'T START UNTIL THE JURY IS ACTUALLY
18 SWORN.

19 AND, YOUR HONOR, THE ISSUE CONCERNING THE
20 VICTIM'S PRESENCE DURING THIS MOTION HAS TO DO WITH --
21 PART OF IT HAS TO DO WITH HER TESTIMONY OR HER ANTICIPATED
22 TESTIMONY AND ISSUES RELATED TO IT. AND IT'S VITAL FOR
23 OUR -- OUR CLIENT'S RIGHTS THAT THAT TESTIMONY NOT BE
24 TAINTED IN ANY WAY, OR EVEN THE SUGGESTION OF BEING
25 TAINTED. I'M NOT -- I'M NOT SAYING THAT THAT'S WHAT WILL

1 HAPPEN, BUT IF I ARGUE MY MOTION IN RELATION TO HER -- --
2 HER STATEMENT, THEN SHE CAN ANTICIPATE MY CROSS
3 EXAMINATION, THE STATE CAN ANTICIPATE MY CROSS
4 EXAMINATION.

5 **THE COURT:** THE STATE'S POSITION?

6 **MS. WILLIAMS:** YOUR HONOR, WE JUST TAKE THE
7 POSITION THAT THIS IS PART OF THE TRIAL AND SHE SHOULD BE
8 ALLOWED TO STAY FOR THE WHOLE PROCEEDING. I HAVE A COPY
9 OF THE DEFENSE'S MOTION. I DON'T SEE WHERE IT HAS
10 ANYTHING TO DO WITH THE VICTIM'S STATEMENT. I UNDERSTAND
11 THAT SHE CAN ARGUE OTHER THINGS, BUT.

12 **MS. KENNEDY:** YOUR HONOR, IF I MAY?

13 **THE COURT:** YES.

14 **MS. KENNEDY:** THE MOTION GOES TO THE ISSUE OF THE
15 PRODUCTION OF DOCUMENTS, WHICH DIRECTLY RELATES TO THE
16 INFORMATION THAT WE HAVE CONCERNING THE VICTIM'S
17 STATEMENTS. IT'S JUST NOT, YOU KNOW, ANYTHING TO DO WITH
18 THE VICTIM. AND I -- IT'S -- ONE OF THE PROBLEMS WITH --
19 WITH -- THE MAJOR PROBLEM, WHICH GIVES RISE TO THE MOTION,
20 IS THE INSUFFICIENCY OF THE INFORMATION THAT WE WERE
21 PROVIDED WITH TO PREPARE FOR TRIAL.

22 EVERYTHING IS IN THE CONTROL OF THE STATE. AND
23 THE POSTURE OF THIS CASE AT PRESENT GIVES THE STATE THE
24 POWER TO DIRECT OUR CASE. WE HAVE A RIGHT TO BE HEARD ON
25 MOTIONS AT A PRETRIAL THAT HAVE NOTHING TO DO WITH THE

1 ACTUAL TRIAL OF THE CASE. AND WE -- WE WILL HAVE A MOTION
2 FOR SEQUESTRATION, YOUR HONOR. I THINK THAT'S
3 APPROPRIATE. AND, AGAIN, IT GOES BACK TO HER TESTIMONY
4 AND WHAT CAN BE ANTICIPATED BY HER AND OTHER WITNESSES,
5 QUITE FRANKLY, BASED ON WHAT I CAN ARGUE.

6 IF THE COURT CAN PROVIDE ME -- OBVIOUSLY, I'LL --
7 I'LL DEFER TO THE COURT'S WISHES. IF THERE -- IF THERE IS
8 SOMETHING THAT I'M NOT SEEING IN THE VICTIM'S BILL OF
9 RIGHTS. ALL I HAVE SEEN---

10 **THE COURT:** DO YOU HAVE A COPY OF THE VICTIM'S BILL
11 OF RIGHTS?

12 **MS. WILLIAMS:** I'M SORRY. I HAVE A COPY
13 DOWNSTAIRS. I DID NOT BRING ONE UP HERE, BUT I'LL BE HAPPY
14 TO GET ONE. AND I APOLOGIZE TO THE COURT.

15 **MS. KENNEDY:** BUT, YOUR HONOR, EVEN WITH THAT, I
16 MEAN THE STATUTE IS CONTROLLING. THE LAW TAKES PRECEDENCE
17 OVER ---

18 **THE COURT:** AND WHAT STATUTE ARE YOU REFERRING TO?

19 **MS. KENNEDY:** YOUR HONOR, I AM REFERRING TO THE
20 --16- -- TITLE 16-3-1515, SECTION (C), CAPITAL LETTER C.
21 THE VICTIM WHO WISHES TO BE PRESENT FOR ANY PLEA, TRIAL OR
22 SENTENCING MUST NOTIFY THE PROSECUTING AGENCY. AND IT
23 SAYS IT HAS TO BE DONE IN WRITING. BUT THERE IS NOTHING
24 IN THERE, YOU KNOW, STATUTORY THAT SAYS -- THAT I'M AWARE
25 OF THAT -- THAT PROVIDES HER WITH -- OR ANY VICTIM AT THIS

1 JUNCTURE, THE ABILITY TO STAY WHILE I ARGUE A MOTION THAT
2 AFFECTS HER TESTIMONY.

3 MS. WILLIAMS: YOUR HONOR, COULD WE HAVE JUST A
4 MOMENT? I'M NOT EVEN REALLY SURE IF THIS IS THAT HUGE OF
5 AN ISSUE. WE MIGHT BE ABLE TO RESOLVE THIS.

6 THE COURT: ALL RIGHT. WHILE WE'RE ON BREAK, MS.
7 WILLIAMS AND MS. KENNEDY, THE COURT IS LOOKING AT
8 16-3-1550 (B).

9 MS. KENNEDY: 1550.

10 THE COURT: B. WE'LL TAKE A 10 MINUTE BREAK AND BE
11 READY TO ARGUE WHAT YOU MENTIONED.

12 (WHEREUPON, COURT RECESSED AT 5:42 P.M.)

13 (WHEREUPON, COURT RESUMED AT 5:52 P.M.)

14 MS. KENNEDY: YOUR HONOR, IF I MAY?

15 THE COURT: YES.

16 MS. KENNEDY: JUST AFTER THE ISSUE WITH THE -- OF
17 THE VICTIM, THE -- THE SECTION AND CODE SECTION THAT THE
18 COURT CITED MAKES REFERENCE TO SEQUESTRATION FROM A
19 PROCEEDING ADJUDICATING AN OFFENSE, IF THAT WAS THE RIGHT
20 ONE, 16-3-1550 B?

21 THE COURT: YES.

22 MS. KENNEDY: WELL, I WOULD SUBMIT TO THE COURT
23 THAT A PRETRIAL MOTION IS NOT AN ADJUDICATION. MY
24 UNDERSTANDING OF AN ADJUDICATION IS THAT IT'S A PLEA OR A
25 TRIAL. THIS IS A PRETRIAL MOTION. AND I WOULD REITERATE

1 MY PRIOR -- THERE IS NOTHING THAT I CAN SEE, YOUR HONOR,
2 THAT ALLOWS HER TO BE PRESENT OR REQUIRES HER TO BE
3 PRESENT, SO SHE CAN -- SHE CAN PETITION TO BE PRESENT FOR
4 A PLEA OR A TRIAL. AGAIN, THE CODE SECTION THAT THE COURT
5 MENTIONED SAID "MUST NOT" AND NOT SHALL, BUT "MUST NOT BE
6 SEQUESTERED FROM A PROCEEDING ADJUDICATING AN OFFENSE OF
7 WHICH HE WAS A VICTIM". THIS IS NOT AN ADJUDICATION.

8 MS. WILLIAMS: YOUR HONOR, IT CLEARLY SAYS A
9 PROCEEDING. ADJUDICATING AN OFFENSE IS JUST DESCRIBING
10 THAT WE'RE ADJUDICATING AN OFFENSE. THAT'S WHAT THIS IS
11 ABOUT, THAT THIS IS AN OFFENSE BEFORE THE COURT. IF IT
12 MEANT TO SAY TRIAL, IT WOULD HAVE SAID TRIAL. INSTEAD IT
13 SAID A PROCEEDING. THIS IS A PROCEEDING IN THE COURSE OF
14 THIS COMPLETE ADJUDICATION.

15 THIS VICTIM HAS WAITED A YEAR FOR THIS TO COME TO
16 TRIAL. IT'S VERY IMPORTANT FOR HER. SHE WANTS TO BE HERE
17 FOR EACH PROCEEDING. AND WE WOULD JUST RESPECTFULLY
18 REQUEST THAT SHE BE ALLOWED TO REMAIN.

19 MS. KENNEDY: YOUR HONOR, IF I MAY RESPOND?

20 THE COURT: YES, MA'AM.

21 MS. KENNEDY: AN ADJUDICATION ACCORDING TO THE
22 BLACK LETTER OF THE LAW, A LAW DICTIONARY MEANS A JUDGMENT
23 BASED ON EVIDENCE. THIS IS ARGUMENT. AND MY
24 UNDERSTANDING OF THE LAW IN TERMS OF THE DEFINITION --
25 AGAIN, THE DEFINITION OF ADJUDICATION IS A PLEA OR A

1 TRIAL, A FINAL DISPOSITION.

2 AND, AGAIN, THE ISSUE GOES TO THE TAINT OF THE
3 TESTIMONY. OUR CLIENT -- AND I'M NOT TRYING TO MINIMIZE
4 IN ANY WAY THE VICTIM'S RIGHTS HERE. WHAT I'M TRYING TO
5 DO IS PRESERVE OUR CLIENT'S CONSTITUTIONAL RIGHTS TO A
6 FAIR TRIAL.

7 AND IF WHAT I SAY TODAY IN TERMS OF ARGUMENT
8 ALLOWS PEOPLE -- ANYONE TO MODIFY THEIR TESTIMONY
9 ACCORDINGLY BECAUSE OF WHAT I'M ARGUING, THEN MY CLIENT
10 DOESN'T HAVE A FAIR TRIAL BECAUSE I'M NOT SUFFICIENTLY --
11 HIS RIGHT OF CONFRONTATION IS NOT PROTECTED.

12 **THE COURT:** I'M GOING TO GRANT YOUR MOTION TO
13 SEQUESTER THE VICTIM FOR THE PURPOSES OF THIS HEARING
14 ONLY, MS. KENNEDY.

15 **MS. KENNEDY:** THANK YOU, YOUR HONOR.

16 **THE COURT:** SO PLEASE ADVISE YOUR VICTIM. AND, MS.
17 KENNEDY, JUST FOR THE RECORD SO WE'RE CLEAR, YOU DO FEEL
18 THAT THIS SECTION THAT I CITED DOES -- WILL ALLOW HER TO
19 REMAIN IN THE COURTROOM THROUGHOUT THE TRIAL?

20 **MS. KENNEDY:** YOUR HONOR, CAN I -- CAN I HAVE AN
21 OPPORTUNITY TO THINK ABOUT THAT BECAUSE WE DON'T KNOW
22 ANYTHING ABOUT THE ORDER OF THE WITNESSES. MY INITIAL
23 RESPONSE WOULD BE THAT -- THAT -- IT SAYS "MUST NOT", IT
24 DOESN'T SAY SHALL NOT. AND DEPENDING ON HOW THIS MOTION
25 UNFOLDS, I -- I'D JUST LIKE TO QUALIFY -- BE ABLE TO

1 QUALIFY MY RESPONSE.

2 THE COURT: ALL RIGHT. I'LL ALLOW YOU TO ADDRESS
3 THAT AT A LATER TIME.

4 MS. KENNEDY: THANK YOU, YOUR HONOR.

5 THE COURT: MS. WILLIAMS, I NOTICED THAT YOUR
6 VICTIM DID HAVE A SUPPORT PERSONNEL, IS THAT INDIVIDUAL
7 THAT ESCORTED HER IN PLANNING ON TESTIFYING?

8 MS. WILLIAMS: HE IS. SHE IS GOING TO HAVE HER
9 SISTER HERE TOMORROW.

10 THE COURT: HE IS GOING TO TESTIFY IS THAT WHAT YOU
11 SAID?

12 MS. WILLIAMS: YES.

13 THE COURT: I'M SORRY. I DID NOT UNDERSTAND YOU.

14 MS. WILLIAMS: YES, YOUR HONOR.

15 THE COURT: AND THE REASON FOR MY INQUIRY WAS THAT
16 HE COULD HAVE -- BUT I DID NOT KNOW WHETHER OR NOT HE WAS
17 GOING TO TESTIFY, THAT HE COULD HAVE STAYED IN AND SO---

18 MS. WILLIAMS: YES, YOUR HONOR. THAT IS DAVID
19 BENTON. HE IS ON THE LIST.

20 THE COURT: ALL RIGHT. OKAY. MS. KENNEDY, I'LL BE
21 HAPPY TO HEAR FROM YOU REGARDING -- YOU FILED TWO MOTIONS?

22 MS. KENNEDY: YES, YOUR HONOR, AND ONE MEMORANDUM.
23 AND I'LL ADDRESS IT HOWEVER THE COURT WISHES BECAUSE THEY
24 SORT OF GO HAND IN HAND AND MAY BE ABLE TO -- I MAY BE
25 ABLE TO ARGUE THEM BOTH SIMULTANEOUSLY IF THE COURT

1 DOESN'T OBJECT.

2 YOUR HONOR, AS STATED IN OUR MOTION, THIS
3 INCIDENT OCCURRED ON JANUARY THE 18TH OF 2007. THE
4 DEFENDANT WAS ARRESTED AND CHARGED WITH THIS OFFENSE ON
5 MARCH THE 6TH. WE RECEIVED NOTICE THAT THIS CASE WOULD BE
6 CALLED ON OCTOBER 22ND, AS DID OUR CLIENT, MR. SALISBURY,
7 THAT THIS CASE WOULD BE PUT ON THE TRIAL DOCKET FOR
8 JANUARY THE 26TH -- I'M SORRY -- ON OCTOBER 22ND, THE CASE
9 WOULD BE PUT ON THE TRIAL DOCKET FOR THIS WEEK.

10 AT THAT POINT IN TIME, YOUR HONOR, WE FILED A
11 BRADY MOTION ASKING FOR PARTICULAR THINGS, ONE OF WHICH IT
12 WAS A COPY OF THE INVESTIGATIVE NOTES AND THINGS BECAUSE
13 THERE ARE THREE DIFFERENT POLICE AGENCIES INVOLVED IN
14 THIS. INITIALLY BERKELEY COUNTY SHERIFF'S OFFICE WAS --
15 WAS CALLED. THEY RESPONDED.

16 THEN THE INVESTIGATOR FOR THE SOUTH CAROLINA
17 DEPARTMENT OF CORRECTIONS WAS CALLED. THE INCIDENT REPORT
18 REFLECTS THAT THE INVESTIGATION WAS THEN TURNED OVER TO
19 INVESTIGATOR MERV POWELL. AND IN MY CONVERSATIONS WITH
20 INVESTIGATOR POWELL, HE ASSERTS THAT -- WHAT I --
21 CAUTIONED ME THAT WHAT I HAD TO REMEMBER WAS THAT IT WAS
22 BASICALLY A SLED INVESTIGATION.

23 ONE OF THE THINGS THAT WE ASKED IN PARTICULAR FOR
24 WAS COPIES OF THE DISCIPLINARY RECORDS OF THE INMATES THAT
25 -- THAT THE STATE INTENDED TO CALL. AT THAT POINT IN

1 TIME, WE HAD NO IDEA WHO THEY WERE. AND YOU WILL NOTE BY
2 THE EXHIBIT THAT -- IN THE LETTER THAT I SENT, IT WAS
3 DRAFTED ON FRIDAY. IT SHOULD HAVE BEEN SUBMITTED TO MS..
4 WILLIAMS ON FRIDAY. SHE HAD ALREADY GONE, SO I FAXED IT
5 TO HER YESTERDAY AFTERNOON.

6 BUT THE ISSUE GOING BACK AND FORTH THE WHOLE TIME
7 WAS THE ISSUE OF THE WITNESS LIST AND OUR ABILITY TO
8 PREPARE THE CASE FOR TRIAL BASED ON THE FACT THAT WE
9 DIDN'T HAVE A WITNESS LIST.

10 IN SPEAKING WITH MS. WILLIAMS ON WEDNESDAY
11 AFTERNOON, SHE INDICATED THAT SHE INTENDED TO CALL AN
12 AGENT HOLMAN. SHE INDICATED THAT SHE INTENDED TO CALL TWO
13 OR THREE INMATES. SHE THEN MENTIONED THE NAME OF
14 CHRISTOPHER SIMMONS.

15 WHEN I INFORMED HER THAT I DIDN'T KNOW WHO MR.
16 SIMMONS WAS, SHE SAID WELL, HE'S THE PERSON THAT'S
17 MENTIONED IN THE VICTIM'S STATEMENT DESCRIBED AS THE
18 SKINNY BLACK MALE WHO HELPED CARRY THE VICTIM AWAY FROM
19 THE CRIME SCENE.

20 YOUR HONOR, SO IT WAS LIKE -- WELL, MR. SIMMONS
21 -- THEN THERE WAS THE SUGGESTION AT SOME POINT THAT THE
22 DEFENSE SHOULD BE ABLE TO GLEAN ALL THIS INFORMATION FROM
23 THE DISCOVERY THAT HAD BEEN PROVIDED. ONCE WE WERE ABLE
24 TO OBTAIN MR. SIMMONS' NAME, WE HAD OUR INVEST -- AN
25 INVESTIGATOR -- WE NO LONGER HAVE AN INVESTIGATOR -- ON

1 STAFF, GO TO THE PRISON ON SATURDAY, INTERVIEW MR.
2 SIMMONS. AND DURING THAT INTERVIEW, INFORMATION WAS
3 OBTAINED THAT THE WITNESSES WHO CAME FORWARD WHO WERE THE
4 INMATES -- WHO WERE INMATES WERE, IN EFFECT, REWARDED FOR
5 PROVIDING INFORMATION BECAUSE THEY WERE GIVEN LETTERS TO
6 GO INTO THEIR JACKETS, WHICH ONE CAN ONLY PRESUME WOULD BE
7 USED IN THEIR FAVOR FOR -- FOR ANY KIND OF PAROLE HEARING.

8 THAT INFORMATION IS ESSENTIAL TO THIS CASE
9 BECAUSE IT GOES TO THE ISSUE OF BIAS, IT GOES TO THE ISSUE
10 OF CREDIBILITY. THE FACT THAT WE WEREN'T GIVEN THAT
11 INFORMATION -- AND I'M NOT SUGGESTING IN ANY WAY THAT MS.
12 WILLIAMS KNEW ABOUT THAT, BUT IT GOES TO -- IF WE HAD BEEN
13 GIVEN THE INFORMATION THAT WE REQUESTED PURSUANT TO OUR
14 BRADY, WE WOULDN'T BE STANDING HERE IN FRONT OF YOU TODAY
15 ASKING FOR A MOTION TO COMPEL OR AN ORDER TO COMPEL THE
16 DISCOVERY OF CERTAIN MATERIALS AS WELL AS AN ORDER FOR
17 CONTINUANCE TO ALLOW US TO GET THOSE MATERIALS AND REVIEW
18 THEM AND PROPERLY PREPARE OUR CASE FOR TRIAL.

19 WHEN WE GOT THE WITNESS LIST ON FRIDAY AFTERNOON,
20 AS I MENTIONED TO YOUR HONOR IN CHAMBERS, IT CONTAINED THE
21 -- GOING BACK UP AND FINISH ADDRESSING THE ISSUE OF THE
22 INMATE JACKETS. WE RECEIVED SOME COMPUTERIZED NOTES THAT
23 WERE GENERATED BY WARDEN TAYLOR FROM THE DEPARTMENT OF
24 CORRECTIONS, WHICH REFLECT SOMEHOW THAT HE WAS ABLE TO GET
25 INFORMATION -- AND IT'S MEMORIALIZED IN -- IN -- WHAT HE

1 PRESENTED THAT HE HAD SOME -- AND THE DATE OF THIS IS
2 OCTOBER -- I MEAN, SORRY, JANUARY 18, 2008, THAT HE WAS
3 SOMEHOW ABLE TO GET ADDITIONAL INFORMATION FROM MS. ADAMS
4 CONCERNING THE IDENTITIES OF PEOPLE WHO SUPPOSEDLY HELPED
5 HER. THOSE BEING MR. DARDEN AND, I THINK, MR. SIMMONS.

6 MY POINT, YOUR HONOR, IS THIS: THAT THE ONLY
7 WITNESS STATEMENT THAT WAS TAKEN AT THE TIME OF THIS
8 OFFENSE WAS TAKEN BY A SLED AGENT NAMED J.J. EVANS. THAT
9 -- THAT STATEMENT COMPORTS WITH WHAT YOUR HONOR WELL
10 KNOWS, HAVING BEEN A PROSECUTOR, THAT YOU HAVE A WITNESS
11 STATEMENT. YOU HAVE A TIME THAT IT WAS TAKEN. YOU HAVE
12 THE NAME OF THE PERSON THAT WAS INTERVIEWED. AND IT'S --
13 IT'S ALL DOCUMENTED AND MEMORIALIZED SO THAT THERE CAN BE
14 NO QUESTION ABOUT THE INFORMATION THAT WAS PROVIDED.

15 WHEN WE WERE BEFORE THE COURT ON A MOTION TO
16 COMPEL TWO WEEKS AGO, AS I SAID THE ONLY INFORMATION -- OR
17 THE ONLY -- THE ONLY STATEMENT WE HAD WAS THAT OF MR.
18 OLIVER. THAT STATEMENT CONFORMS TO WHAT I UNDERSTAND AND
19 HAVE ALWAYS BEEN AWARE OF, IT'S WHAT'S REQUIRED BY THE
20 LAW.

21 WHAT WE HAVE HERE ARE THE -- IT'S A SUMMARY OF AN
22 INVESTIGATION. AND IT'S ALL COMPUTERIZED. AND THERE ARE
23 NO INVESTIGATOR'S NOTES. IT -- AND YOU START OUT, YOUR
24 HONOR, AND THERE IS LIKE -- THERE IS -- MR. --
25 INVESTIGATOR POWELL DID THREE SEPARATE -- THREE SEPARATE

1 REPORTS, DIFFERENT DATES, DIFFERENT -- THE LAST ONE BEING
2 A REPORT THAT WAS GENERATED SOME TIME IN MAY AFTER WE
3 UNDERSTAND SLED ASSUMED THE INVESTIGATION -- ASSUMED THE
4 RESPONSIBILITY FOR THE INVESTIGATION. WE RECEIVED THE
5 FULL INVESTIGATIVE FILE FROM SLED -- THE INVESTIGATIVE
6 REPORT WAS COMPILED BY AGENT MICHELLE CHINA ON JANUARY
7 7TH, 2009.

8 YOUR HONOR, WHAT WE'RE ASKING FOR IS THE
9 OPPORTUNITY TO BE ABLE TO REVIEW ALL THE INVESTIGATIVE
10 NOTES. AND THE REASON IS, AGAIN, IT GOES BACK TO THE
11 ABILITY OF THE INMATES TO COME FORWARD AFTER THE FACT.

12 WE WERE TOLD, AND I THINK IT WAS ARGUED IN THE
13 PRIOR MOTION, THAT THESE INMATES CAME FORWARD ON THEIR OWN
14 AND OFFERED INFORMATION. THE FEW INTERVIEWS THAT WE WERE
15 ABLE TO DO LAST WEEK WHEN WE ASKED ABOUT -- AND THAT WOULD
16 HAVE BEEN WEDNESDAY AND THURSDAY, AND OUR INVESTIGATOR ON
17 SATURDAY -- THE PEOPLE THAT WE TALKED TO SAID THEY DON'T
18 KNOW HOW THEY GOT THEIR NAMES. THEY WERE JUST CALLED
19 FORWARD. AND SO IT GOES TO THE INTEGRITY OF THE
20 INVESTIGATION. AND IT GOES TO OUR ABILITY TO EFFECTIVELY
21 CROSS EXAM THESE SO-CALLED WITNESSES WHO CAME FORWARD AND
22 OFFERED INFORMATION. THE -- AS I SAID THE ONLY WITNESS
23 STATEMENT THAT WE HAVE IS NOW FROM A WITNESS WHO
24 APPARENTLY IS NOT GOING TO BE CALLED FOR TRIAL BECAUSE HE
25 IS LIVING OUT OF STATE.

1 THE OTHER THING, YOUR HONOR, IS SIMPLY THIS:
2 THAT WE NEED THE ABILITY TO LOOK AT THAT AND SEE THE
3 INTERVIEW SHEETS AND NOTES AS CONDUCTED BY THE DIFFERENT
4 AGENTS TO SEE WHO ACTUALLY DID WHAT. FOR INSTANCE, IT --
5 ONE OF THE STATEMENTS THAT WE GOT -- WE HAVE THE VICTIM'S
6 STATEMENT. WE GOT -- PART OF IT, THE INFORMATION ABOUT
7 HER IDENTITY WAS REDACTED.

8 THE SAME THING WOULD APPLY -- WHICH I UNDERSTAND,
9 BUT SHE WAS GIVEN AN OPPORTUNITY -- THAT STATEMENT WAS
10 TAKEN THAT NIGHT. SHE WAS GIVEN AN OPPORTUNITY TO
11 SUPPLEMENT THAT STATEMENT THROUGH A -- THROUGH A
12 SUPPLEMENTAL STATEMENT. SHE WAS ALSO GIVEN THE
13 OPPORTUNITY BY INVESTIGATOR POWELL SOMETIME IN MARCH TO
14 SUPPLEMENT THAT STATEMENT, SO THAT IT COULD BE PROPERLY
15 MEMORIALIZED WITH THE NAMES OF THE INDIVIDUALS WHO ARE
16 REFLECTED IN THE REPORTS, BUT NO PLACE ELSE. BUT -- BUT
17 SHE DECLINED TO DO THAT OR THEY DECLINED TO TAKE HER
18 STATEMENT.

19 WHAT THE REPORT SAYS WAS SHE INFORMED
20 INVESTIGATOR POWELL THAT SHE HAD ALREADY GIVEN A STATEMENT
21 TO -- TO SLED AGENT CHINA. THERE IS SOME QUESTION
22 ABOUT -- AGAIN, IN TERMS OF PRODUCTION, MS. WILLIAMS
23 MENTIONED TO ME LAST WEDNESDAY THAT THE AGENT -- THE CRIME
24 SCENE AGENT, MR. PORTER, SHE DIDN'T INTEND TO CALL HIM AS
25 A WITNESS, AND MENTIONED IN PASSING THAT HE HAD BEEN

1 TERMINATED FROM SLED BECAUSE OF ISSUES RELATED TO THE
2 INTEGRITY OF ANOTHER INVESTIGATION.

3 WE -- WHEN I LEARNED THAT INFORMATION, I MADE AN
4 ATTEMPT TO CONTACT MR. PORTER, OR FORMER AGENT PORTER, WAS
5 UNABLE TO DO THAT BECAUSE I COULDN'T GET ANY COOPERATION
6 FROM ANYBODY AT SLED. NOW, ADMITTEDLY, THAT WAS LATE IN
7 THE AFTERNOON ON FRIDAY AFTER WE RECEIVED THE WITNESS
8 LIST. BUT, YOUR HONOR, THESE ARE ISSUES OF PRODUCTION.
9 AND THESE -- THESE -- THESE ISSUES GO TO THE HEART OF OUR
10 ABILITY TO PREPARE OUR CASE AND PROPERLY CROSS EXAMINE
11 WITNESSES AND PROPERLY DEVELOP A THEORY OF THE CASE.

12 WE KEEP HEARING ABOUT A JACKSON V. DENNO HEARING
13 IN THE -- THAT OUR CLIENT SUPPOSEDLY MADE STATEMENTS TO
14 INVESTIGATOR POWELL. WE HAVE, IN OUR POSSESSION, A
15 STATEMENT THAT HE -- MR. SALISBURY INITIALED. THERE IS A
16 WAIVER OF RIGHTS AT THE BOTTOM. IT WAS SIGNED, BUT THE
17 DATE IS COMPLETELY WRONG. HE -- AGENT CHINA ATTEMPTED TO
18 INTERROGATE HIM AGAIN IN MARCH. HE SIGNED A REFUSAL OF
19 HIS MIRANDA -- THE REFUSAL TO MIRANDA. HE DECLINED TO
20 GIVE A STATEMENT. AGAIN, THE ONLY INFORMATION THAT WE
21 HAVE IS THIS PRINT OUT THAT CAME FROM WHO KNOWS WHERE,
22 THAT SAID THAT HE MADE THESE INCRIMINATING STATEMENTS AT
23 SOME POINT.

24 NOW, IN REVIEWING THE DISCOVERY THAT CAME FROM
25 LIEBER, THERE ARE ADMISSIONS OR PURPORTED ADMISSIONS THAT

1 HE MADE TO A MENTAL HEALTH COUNSELOR. AND WHEN I WAS GOING
2 THROUGH THE DISCOVERY, IT WAS LIKE, OKAY, IS THIS WHERE
3 THE OTHER STUFF CAME FROM BECAUSE -- AND WE DON'T KNOW.
4 AND I -- AND I WOULD BE PREPARED TO ARGUE IN REGARD TO
5 THAT, YOUR HONOR, THAT THERE ARE HIPAA REGULATIONS THAT
6 HAVE TO BE -- BECAUSE WE CAN'T EVEN GET ANYTHING FOR OUR
7 CLIENTS FROM OVER AT THE JAIL. AND THESE ARE JUST A FEW
8 OF THE THINGS THAT WE NEED TO HAVE ACCESS TO, YOUR HONOR.
9 WE'RE NOT ASKING -- WE'RE ASKING THAT THOSE ITEMS THAT WE
10 REQUESTED IN DISCOVERY BE PROVIDED. THAT WE'RE GIVEN
11 AMPLE OPPORTUNITY TO REVIEW THAT INFORMATION SO THAT WE
12 CAN PROPERLY -- AND I EMPHASIZE PROPERLY PREPARE OUR CASE
13 FOR TRIAL.

14 BRADY IS NOT A DISCOVERY MOTION -- EXCUSE ME -- A
15 DISCOVERY MOTION. IT IS A DISCLOSURE MOTION. IT IS
16 DISCLOSURE. AND IF WE DON'T HAVE ALL THE INFORMATION THAT
17 WE -- THAT WE NEED TO PROPERLY PREPARE OUR CASE FOR TRIAL,
18 THEN OUR -- WE'RE BEING INEFFECTIVE.

19 AND, YOUR HONOR, I WOULD POINT OUT JUST --
20 JUST -- JUST BY WAY OF -- OF -- IN TERMS OF WHAT WE HAVE,
21 THERE ARE STATEMENTS THAT WERE TAKEN FROM SGT. WILLIAMS,
22 SGT. SUMPTER -- OH, ONE SET OF -- ONE -- ALL THE SAME
23 STATEMENTS BUT -- BUT -- FOR INSTANCE, MR. -- LT. BAXTER.
24 YOU'VE GOT ONE STATEMENT THAT WAS SUPPOSEDLY -- I MEAN, IT
25 WAS WRITTEN THAT HE SIGNED. THE SAME STATEMENT IS MARKED

1 CONFIDENTIAL AND THERE ARE NOTES AT THE BOTTOM. WE DON'T
2 -- AND THE SAME STATEMENT IS CONTAINED -- OR THE ONE
3 WITHOUT THE NOTES, IS CONTAINED IN AGENT CHINA'S
4 INVESTIGATIVE REPORT. WE JUST NEED THE OPPORTUNITY TO
5 REVIEW ALL OF IT. WE'RE NOT ASKING FOR, AS I SAID, AN
6 EXTENDED DELAY OF TIME. ONE OF THE ARGUMENTS THAT WAS
7 MADE IN A PRIOR MOTION FOR CONTINUANCE WAS THAT THE PEOPLE
8 IN THE DEPARTMENT OF CORRECTIONS WERE GOING TO MAX OUT.
9 WE'VE HAD THE OPPORTUNITY TO REVIEW THAT INFORMATION. THE
10 EARLIEST ONE IS GOING TO BE RELEASED, I BELIEVE, MR.
11 WALDRUP IN AUGUST OF 2009. EVERYBODY ELSE IS 2010. AND
12 THE LAST ONE IS 2014.

13 YOUR HONOR, AS I SAID, WE'RE NOT ASKING FOR THE
14 THING TO BE CONTINUED FOREVER. I WOULD SUBMIT TO YOU THAT
15 WE -- WE WOULD BE PREPARED TO GO TO TRIAL THE NEXT TERM OF
16 COURT. WE JUST NEED THE OPPORTUNITY TO REVIEW ALL THIS SO
17 THAT WE CAN FIND OUT WHAT EXACTLY HAPPENED IN TERMS OF THE
18 -- IN TERMS OF HOW ALL THESE INMATES GOT INVOLVED.

19 BECAUSE WHAT THE INVESTIGATION REVEALS IS THAT --
20 THAT THE C.O.'S WHO WERE THERE HAVE NO IDEA WHAT HAPPENED
21 BECAUSE THEY WEREN'T PRESENT. SO, WHAT WE HAVE, WE
22 BELIEVE, IS INFORMATION THAT WAS OFFERED IN EXCHANGE FOR
23 SOMETHING ELSE.

24 ONE -- ONE WITNESS THAT WE INTERVIEWED INDICATED
25 THAT HE HAD ONE OF THOSE LETTERS, THOSE FAVORABLE LETTERS,

1 PUT IN HIS JACKET AND HE ASKED THAT IT BE WITHDRAWN.
2 THERE IS -- IN THE NOTES THAT MR. TAYLOR, WARDEN TAYLOR
3 DRAFTED OR -- I DON'T KNOW -- PUT IN THE COMPUTER, IT'S --
4 IT'S -- THAT'S THE FIRST POINT THAT THOSE NAMES EVER CAME
5 UP, IT WAS AT THAT POINT AND THAT POINT ONLY. AND I WOULD
6 SUBMIT TO YOU, YOUR HONOR, THAT EVEN WHEN THOSE NAMES WERE
7 SUBMITTED, IT -- THAT -- THAT -- IF -- IT'S PROPER. WE
8 DON'T KNOW WHETHER THE PROPER STATEMENTS WERE TAKEN OR
9 NOT. WHAT WE DO KNOW, OR HAVE REASON TO BELIEVE, IS
10 THAT -- THAT THOSE LETTERS ARE IN THOSE JACKETS AND THAT'S
11 INFORMATION THAT WE NEED. AND THAT'S INFORMATION, AGAIN,
12 BECAUSE IT GOES TO THE BIAS AND CREDIBILITY ISSUE.

13 YOUR HONOR, I UNDERSTAND THE ASSISTANT
14 SOLICITOR'S POSITION ABOUT NOT HAVING TO PROVIDE A WITNESS
15 LIST. I -- I TOTALLY DISAGREE WITH IT. THERE'S NO SOUTH
16 CAROLINA LAW THAT ADDRESSES IT. BEFORE I DRAFTED THIS
17 MOTION, I CALLED THE OFFICE OF APPELLATE DEFENSE. AND
18 WHAT YOU HAVE BEFORE YOU IS WHAT THEY SUGGESTED THAT I
19 PROVIDE TO YOU IN REGARD TO OUR ABILITY TO HAVE THIS
20 INFORMATION. THE BURDEN, AS I UNDERSTAND IT, IS
21 SUBSTANTIAL PREJUDICE.

22 OUR ABILITY TO REPRESENT MR. SALISBURY HAS BEEN
23 SEVERELY COMPROMISED BY THE FACT THAT -- THAT WE DON'T
24 HAVE THIS INFORMATION. AND -- AND -- AND WE -- IN
25 ADDITION TO WHICH, YOUR HONOR, THE INFORMATION -- THE --

1 THE SOLICITOR HAS MADE REPRESENTATIONS TO THE COURT THAT
2 -- AND, AGAIN, TODAY IN THE RETURN TO THE MOTION, THAT
3 THEY HAVE COMPLETELY COMPLIED WITH BRADY. I SUBMIT TO
4 YOU, YOUR HONOR, THEY HAVEN'T, AND THEY HADN'T AT THE TIME
5 WHEN WE HAD THE LAST MOTION FOR CONTINUANCE. BECAUSE WE
6 CONTINUED TO GET INFORMATION THE 21ST, THE 22ND AND THE
7 23RD OF JANUARY WHEN THIS CASE WAS NOTICED FOR TRIAL ON
8 OCTOBER 22ND. WHEN WE'RE TOLD WE'VE GOT TO BE READY FOR
9 TRIAL, WE'VE GOT TO BE READY FOR TRIAL. WE CAN'T LET --
10 YOU KNOW, DRIBS AND DRABS -- INFORMATION COMING IN TO US
11 IN A TRICKLE DOWN EFFECT IS NOT EFFECTIVE PREPARATION.
12 AND, AGAIN, IT -- IT DENIES OUR CLIENT'S CONSTITUTIONAL
13 RIGHT OF THE RIGHT OF CONFRONTATION, THE RIGHT OF DUE
14 PROCESS, THE RIGHT TO A FULL TRIAL.

15 AND WE SEEK THE COURT'S INTERVENTION AND
16 APPROPRIATE REMEDY. WE COULD -- UNDER THE RULES, WE COULD
17 ASK THAT THE INDICTMENT BE DISMISSED. WE ARE NOT ASKING
18 FOR ANYTHING THAT DRASTIC. WHAT WE'RE ASKING FOR IS THE
19 INFORMATION AND THE TIME TO REVIEW THE INFORMATION SO THAT
20 WE CAN PROPERLY PREPARE THIS CASE.

21 THE COURT: MS. KENNEDY, EXACTLY WHAT IS IT THAT
22 YOU ARE REQUESTING THE COURT TO ASSIST YOU IN OBTAINING?

23 MS. KENNEDY: ALL RIGHT. YOUR HONOR, THE SPECIFIC
24 INFORMATION THAT WE WOULD LIKE, IT WOULD BE THE
25 INVESTIGATIVE NOTES OF MERV POWELL THAT WERE TAKEN THAT

1 NIGHT. THE OPPORTUNITY TO REVIEW WHEN THE CASE WAS
2 FORMALLY TRANSFERRED TO SLED. WHAT ADDITIONAL INFORMATION
3 INVESTIGATOR -- INVESTIGATOR -- OR AGENT CHINA HAS, YOUR
4 HONOR. BECAUSE THE MATERIALS -- AND, AGAIN, I DON'T --
5 THIS IS NOT A REFLECTION ON THE ASSISTANT SOLICITOR. IT'S
6 JUST THAT WE -- WE GOT INFORMATION THAT PART OF IT IS
7 MARKED CONFIDENTIAL, PART OF IT HAS BEEN REDACTED. WE
8 WOULD LIKE THE OPPORTUNITY TO REVIEW ALL OF IT. AND,
9 SPECIFICALLY, THE INCIDENT REPORT COMPILED BY LT. JONATHAN
10 BAXTER. THE INCIDENT REPORTS COMPILED -- OR BE ABLE TO
11 VIEW ALL OF THEM BY OFFICER FOGEL, MR. SUMPTER, MR.
12 WILLIAMS. YOUR HONOR, WE HAVE NO INFORMATION WHATSOEVER
13 WHAT MR. BENTON CAN PROVIDE TO ASSIST US IN THIS.

14 WE WOULD SPECIFICALLY REQUEST DATA OR INFORMATION
15 ABOUT THE COMPUTER SYSTEM AT MACDOUGALL. BECAUSE WHAT WE
16 HAVE HERE IS SOMETHING CALLED DISPLAY NARRATIVE. AND IT
17 SAYS UPDATED BY EDESEL TAYLOR. AND THAT GOES TO THE ISSUE
18 OF WHEN THESE -- THESE INMATES PROVIDED INFORMATION.
19 BECAUSE IT'S NOT CLEAR TO US, BASED ON THE INVESTIGATION,
20 HOW THIS CAME TO BE.

21 INVESTIGATOR POWELL HAS SAID THAT THEY CAME
22 FORWARD. THE INMATES THAT WE INTERVIEWED SUGGESTED
23 OTHERWISE. AND IT MAY BE THAT INVESTIGATOR POWELL DIDN'T
24 KNOW BECAUSE THE INFORMATION WAS REPORTED TO INVESTIGATOR
25 POWELL BY THE WARDEN THROUGH THESE NOTES, THROUGH THIS

1 NARRATIVE.

2 WE WOULD LIKE THE ABILITY, YOUR HONOR, TO --
3 HOWEVER IT WOULD -- HOWEVER IT NEEDS TO BE DONE, TO EITHER
4 GO TO MACDOUGALL OR HAVE SOMEONE FROM THE I.T. DEPARTMENT
5 EXPLAIN HOW ALL THIS IS DONE. BECAUSE IT CAN -- IT -- THE
6 CONCERN WE HAVE, YOUR HONOR, -- OR ONE OF THEM IS, THEY
7 CAN DELETE THINGS, THEY CAN CHANGE THINGS AND -- WE DON'T
8 KNOW WE DON'T KNOW.

9 WE WOULD LIKE THE ABILITY TO INTERVIEW AGENT
10 PORTER. ONE OF OUR CONCERNS IS THAT THERE IS -- THERE
11 ARE, IN OUR MINDS, SOME ISSUES CONCERNING THE CHAIN OF
12 CUSTODY. TODAY, WE WERE JUST PROVIDED, AND THIS AGAIN
13 GOES TO THE HEART OF WHAT WE WERE TALKING ABOUT. DURING
14 THE LUNCH BREAK, I GET A CALL SAYING THAT THE INVESTIGATOR
15 HAS BROUGHT SOME PICTURES BY.

16 MS. WILLIAMS IS VERY KIND. SHE CALLED MY OFFICE.
17 SHE SAYS, I HAVE THESE. YOU CAN COME PICK THEM UP OR I
18 CAN BRING THEM TO COURT. ONE IS THE PICTURES OF THE
19 SHANK. THERE'S SOME ISSUES WITH THE SHANK, YOUR HONOR, IN
20 TERMS OF HOW IT'S DESCRIBED ON THE CHAIN OF CUSTODY SHEET.
21 ALL THAT -- ALL THAT STUFF -- OR ALL THOSE ITEMS WERE
22 GIVEN TO AGENT PORTER. WE HAVE NO ACCESS TO AGENT PORTER.
23 AND ALL OF THOSE THINGS ARE IN THE CONTROL OF THE STATE.

24 NOW, WE DID MAKE SOME ATTEMPTS TO GET WHAT
25 INFORMATION WE COULD FROM MACDOUGALL. OUR ACCESS THERE

1 WAS RESTRICTED. WE WERE TOLD THAT WE HAD TO BE OUT OF
2 THERE BY A CERTAIN TIME. I UNDERSTAND THAT. I DON'T HAVE
3 A PROBLEM WITH IT. WHAT -- BUT WE DO NEED THE OPPORTUNITY
4 TO HAVE A COMPLETE INVESTIGATION, TO GET ALL THE MATERIAL
5 AND -- AND TO INCLUDE INFORMATION THAT HASN'T BEEN
6 REDACTED OR QUOTE, UPDATED, BECAUSE OUR CLIENT -- AND THIS
7 IS WHAT GIVES RISE TO MOST OF THIS, IS FACING A LIFE
8 WITHOUT PAROLE SENTENCE. THAT IS ONE NOTCH DOWN, IN MY
9 VIEW, FROM A CAPITAL CASE.

10 IT -- I WOULDN'T -- I WOULDN'T HAVE NEARLY AS
11 MANY PROBLEMS WITH THIS IF WE WERE TALKING ABOUT SOME RUN
12 OF THE MILL DRUG CASE, ALTHOUGH THE PEOPLE AT APPELLATE
13 DEFENSE SUGGESTS THAT I SHOULD. BUT WHEN YOU'RE ASKING A
14 JUDGE TO IMPOSE A PENALTY OF LIFE WITHOUT PAROLE, THEN
15 THAT -- THAT DEFENDANT IS ENTITLED UNDER DUE PROCESS, NOT
16 RULE 5 -- UNDER BRADY, UNDER -- UNDER AUGERS, UNDER ALL
17 THE SUPREME COURT CASES THAT GUARANTEE A -- A FAIR TRIAL.

18 IT'S NOT GOING TO PREJUDICE THE STATE IN ANY WAY
19 TO HAVE THIS CONTINUED FOR A WEEK OR TWO WEEKS OR ANOTHER
20 TERM. THE ARGUMENT THAT THE -- THAT THE INMATES WOULDN'T
21 BE AVAILABLE HAS GONE. THE ARGUMENT THAT -- THAT -- THAT
22 ONE OF THEM HAS ALREADY GONE IS -- IS MOOT AT THIS POINT
23 BECAUSE THEY'VE BEEN ABLE TO CONTACT HIM AND HE CHOOSES
24 NOT TO TESTIFY.

25 BUT THERE ARE ISSUES IN THIS INVESTIGATION WITH

1 THE PAPERWORK THAT WE'VE BEEN PROVIDED, ALBEIT SOME OF IT
2 VERY, VERY LATE IN THIS PROCESS, THAT GIVE RISE TO SERIOUS
3 QUESTIONS THAT WE NEED ANSWERS TO BEFORE WE CAN PROPERLY
4 PREPARE HIS DEFENSE. THANK YOU, YOUR HONOR.

5 **THE COURT:** THANK YOU. MS. WILLIAMS.

6 **MS. WILLIAMS:** YES, YOUR HONOR. I WOULD LIKE TO
7 ADDRESS SOME OF THE FACTS AS RECITED BY MS. KENNEDY AND
8 THEN ADDRESS THE LAW.

9 THIS CASE WAS NOTICED FOR TRIAL BACK IN OCTOBER.
10 ALL OF THE INFORMATION WAS IN THE ORIGINAL CASE FILE. WE
11 HAD COMPLIED COMPLETELY WITH RULE 5, ALL OF THE PROVISIONS
12 IN BRADY. FULL DISCLOSURE HAS BEEN MADE AND FULL
13 DISCOVERY HAS BEEN MADE.

14 SEVERAL ITEMS THAT MS. KENNEDY REFERS TO IN HER
15 ARGUMENT ARE THINGS THAT SHE'S HAD SINCE MAY. LIKE THE
16 PRINT OUT FROM THE WARDEN, THEY'VE HAD SINCE THEN TO
17 INVESTIGATE THIS. THE FIRST TIME THAT DEFENSE COUNSEL HAS
18 GONE TO THE PRISON WAS LAST WEEK, AND YET THEY'VE KNOWN
19 THE NAMES OF ALL OF THE INMATES AND ALL OF THE PEOPLE
20 INVOLVED SINCE MAY.

21 I AM HOLDING A COPY OF THE VICTIM'S STATEMENT
22 GIVEN ON JANUARY 18TH OF 2008, AND TURNED OVER TO THE
23 DEFENDANT IN MAY. IN THAT STATEMENT, SHE GIVES THE NAMES
24 OF ALL THE INMATES, EXCEPT FOR THE DESCRIPTION OF THE
25 SKINNY BLACK MALE THAT PICKED ME UP AND CARRIED ME. SHE

1 GIVES THE NAME OF STAGGERS. SHE GIVES THE NAME OF
2 WALDRUP. AND THE ONLY PERSON THAT SHE DOESN'T GIVE THE
3 NAME OF IS DAVE DARDEN, AND THERE'S A THREE PARAGRAPH
4 SUMMATION OF DAVID DARDEN'S STATEMENT, AGAIN, GIVEN TO THE
5 DEFENSE IN MAY. SO, THERE'S NO QUESTION OF HOW THE
6 INMATES CAME FORWARD. THE VICTIM GAVE THE WARDEN THEIR
7 NAMES IN HER STATEMENT ON JANUARY 18TH.

8 NOW, AS TO WHETHER OR NOT THERE IS SOME LETTER IN
9 THEIR FILE THAT COMPLEMENTS THEM OR COMMENDS THEM FOR
10 COMING TO HER AID IN THE MIDST OF THIS ASSAULT, THAT IS
11 INFORMATION THAT THEY HAVE ALREADY INVESTIGATED AND THEY
12 CAN USE ON CROSS EXAMINATION.

13 I DON'T KNOW WHAT ELSE THEY COULD POSSIBLY FIND
14 OUT WITH REGARD TO THAT. IT'S GREAT THAT THEY WENT AND
15 INTERVIEWED THE INMATES AND FOUND OUT THAT THEY WERE
16 GETTING SOME KIND OF LETTER IN THEIR FILE ABOUT SAVING HER
17 FROM BEING ASSAULTED FROM MR. SALISBURY. BUT, YOU KNOW,
18 THAT'S INFORMATION THAT THEY CAN USE ON CROSS EXAMINATION.

19 WE DO NOT HAVE IN OUR CONTROL THE DISCIPLINARY
20 RECORDS AND FILES OF EVERY INMATE AT MACDOUGALL OR ANY OF
21 THESE INMATES. WE HAVE TURNED OVER ALL OF THEIR RAP
22 SHEETS AND EVERYTHING THAT WE KNOW ABOUT THEM IN OUR FILE.
23 THERE JUST ISN'T ANY SECRET NOTES OR INFORMATION OUT THERE
24 THAT MS. KENNEDY HAS NOT RECEIVED.

25 AS FAR AS WHETHER OR NOT THEY ARE GOING TO MAX

1 OUT ON THEIR PAROLE DATE, I'M SURE THE COURT IS WELL AWARE
2 JUST BECAUSE SOMEONE HAS A DATE THAT THEY'RE SUPPOSED TO
3 BE RELEASED FROM PRISON, DOESN'T NECESSARILY MEAN THAT
4 THAT'S THE DATE THEY ARE GETTING OUT. AT LEAST TWO OF
5 THESE INMATES ARE GOING UP IN FRONT OF THE PAROLE BOARD IN
6 LESS THAN A MONTH. ONE OF THEM IS MR. SIMMONS AND THE
7 OTHER ONE IS MR. WALDRUP. SO, THAT WAS OUR CONCERN WHEN
8 WE ARGUED THIS MOTION ORIGINALLY AND THAT REMAINS A
9 CONCERN.

10 I DON'T KNOW OF ANY INFORMATION THAT HAS NOT BEEN
11 TURNED OVER TO THE DEFENSE. WHEN MR. MERV POWELL CAME
12 TODAY TO MEET WITH MR. ALFARO ABOUT THE DENNO HEARING, HE
13 PRODUCED TWO PICTURES OF THE DEFENDANT AND ONE PICTURE OF
14 THE SHANK, WHICH HE DID NOT GIVE US BEFORE. WE
15 IMMEDIATELY TURNED THEM OVER TO THE DEFENDANT. THERE'S
16 NUMEROUS PICTURES OF THE DEFENDANT IN THE FILE AND THERE'S
17 ALSO PICTURES OF THE SHANK IN THE FILE. SO AS MUCH AS I
18 APOLOGIZE FOR THAT STUFF NOT GETTING TURNED OVER AND I
19 RECOGNIZE THAT THAT IS OUR RESPONSIBILITY, THAT THE
20 INVESTIGATOR SHOULD HAVE GIVEN THAT TO US TO BEGIN WITH,
21 AND THAT IS WITHIN OUR CONTROL, WE TURNED IT OVER RIGHT
22 AWAY, BUT I'M NOT SURE WHAT MORE TIME -- GIVING MORE TIME
23 TO THEM WITH REGARD TO THOSE PICTURES WOULD AFFORD THEM IN
24 THIS PROCESS. AND THAT'S THE ONLY PIECE OF EVIDENCE I'M
25 AWARE OF THAT'S BEEN TURNED OVER LATE.

1 **THE COURT:** WERE THE PHOTOS -- WERE THERE OTHER
2 PHOTOS OF THE SHANK IN THE FILE AND THIS WAS AN ADDITIONAL
3 ONE THAT WAS TURNED OVER, OR WAS THIS THE ONLY PHOTO IN
4 THE FILE?

5 **MS. WILLIAMS:** ACTUALLY, I DON'T KNOW---

6 **MS. KENNEDY:** YOUR HONOR---

7 **MS. WILLIAMS:** ---IF THERE ARE PHOTOGRAPHS OF THE
8 SHANK, BUT THE SHANK ITSELF HAS BEEN AVAILABLE TO THE
9 DEFENSE JUST LIKE IT'S BEEN AVAILABLE TO THE STATE.

10 **THE COURT:** WHERE IS THE SHANK?

11 **MS. WILLIAMS:** THE SHANK WAS AT COLUMBIA, AT
12 HEADQUARTERS, SLED HEADQUARTERS. AND I'VE GIVEN THEM THE
13 NAME SINCE MAY OF PEOPLE THEY CAN GET IN TOUCH WITH TO GO
14 LOOK AT IT. AND THEN I -- MS. KENNEDY, AT HER REQUEST, I
15 HAD ALL OF THAT EVIDENCE TRANSPORTED DOWN HERE ON FRIDAY
16 AND HAD DEFENSE COUNSEL COME OVER TO OUR OFFICE AND REVIEW
17 ALL THE EVIDENCE. BUT IT WAS AVAILABLE TO THEM JUST LIKE
18 IT WAS TO US IN HEADQUARTERS.

19 THERE WERE SOME CONCERNS THAT SLED HAD ABOUT THE
20 CHAIN OF CUSTODY, SO THEY DIDN'T WANT TO MOVE THE EVIDENCE
21 BACK IN MAY, ALL THE EVIDENCE HERE, AND THEN MOVE IT ALL
22 THE WAY BACK. SO, WE TOLD THEM WE CAN MAKE ARRANGEMENTS
23 FOR THEM TO VIEW THE EVIDENCE AT ANY TIME THAT THEY WANTED
24 TO LOOK AT THE EVIDENCE. AND THEN ON FRIDAY, WE ACTUALLY
25 MOVED THE EVIDENCE DOWN IN ANTICIPATION OF TRIAL. AND

1 THEY DID VIEW THE SHANK -- OH, THURSDAY, I'M SORRY, YOUR
2 HONOR. IT WAS BROUGHT DOWN ON THURSDAY.

3 THE NOTES THAT WARDEN TAYLOR -- THE NOTES THAT
4 MS. KENNEDY IS REFERRING TO OF WARDEN TAYLOR TRYING TO GET
5 THE IDENTITY OF ANY OTHER INMATES, THERE ARE NO OTHER
6 INMATES HE WAS ABLE TO GET THE IDENTITY OF BECAUSE THE
7 VICTIM NEVER KNEW THE IDENTITY OF THE SKINNY BLACK MALE.

8 WE FOUND OUT LATE IN THE GAME, AFTER INTERVIEWING
9 THE INMATES, WHO -- WHAT HIS NAME WAS AND THAT INFORMATION
10 WAS SUBSEQUENTLY TURNED OVER TO MS. KENNEDY. SO, YOU
11 KNOW, AND THAT INFORMATION -- THAT REPORT FROM THE WARDEN
12 WHERE HE WAS ATTEMPTING TO FIND OUT NAMES OF ANYONE ELSE
13 THAT HAD HELPED HER, HAS BEEN IN THE FILE SINCE MAY.

14 SO, IN TERMS OF THE FACTS ABOUT DISCOVERY, WE WOULD
15 RESPECTFULLY TAKE ISSUE TO THE TIME LINE THAT MS. KENNEDY
16 PRESENTS TO THE COURT. ALL OF THIS INFORMATION HAS BEEN
17 TURNED OVER.

18 AS THE STATE TOLD THE COURT DURING THE LAST
19 MOTION FOR CONTINUANCE, AGENT CHINA SUBMITTED A BOUND
20 REPORT, HER SLED REPORT. IN THAT REPORT, THERE WAS
21 NOTHING NEW. IT WAS ALL INFORMATION THAT THE DEFENSE HAD
22 ALREADY HAD, SAVE FOR THREE PIECES OF PAPER THAT BASICALLY
23 WERE DESCRIPTIONS OF EVIDENCE, THAT WERE ALSO DESCRIBED
24 ELSEWHERE IN THE FILE. SO, THERE IS NO NEW INFORMATION.
25 THEY'VE HAD AMPLE TIME TO INVESTIGATE THIS CASE.

1 IN KENNERLY, WHICH IS A CASE THAT I PROVIDED TO
2 THE COURT, THAT IS A CASE WHERE THE STATE HAD IN ITS
3 CONTROL AN EXCULPATORY STATEMENT MADE BY A WITNESS THAT
4 THE DEFENSE SUBSEQUENTLY INTERVIEWED AND CALLED. IN THAT
5 CASE, THE COURT SAID THAT THAT WAS NOT ENOUGH TO -- TO
6 PROVIDE SANCTIONS OR GIVE THE DEFENSE A CONTINUANCE. IT
7 ALSO REITERATED WHAT BRADY IS ALL ABOUT.

8 AND IN BRADY, EVIDENCE HAS TO BE IN THE STATE'S
9 POSSESSION, FAVORABLE TO THE ACCUSED AND MATERIAL TO GUILT
10 OR PUNISHMENT. AND IN DEFINING MATERIAL TO GUILT OR
11 PUNISHMENT, THE COURT WENT ON TO SAY THAT THE EVIDENCE
12 WOULD HAVE TO HAVE REASONABLE PROBABILITY THAT -- THAT HAD
13 THAT EVIDENCE BEEN DISCLOSED, THE OUTCOME OF THE TRIAL
14 WOULD BE DIFFERENT.

15 I AM NOT SURE I UNDERSTAND WHAT EXACTLY MS.
16 KENNEDY WANTS THE STATE TO PROVIDE THAT IS MATERIAL TO HER
17 CASE THAT WE'VE HAD IN OUR CONTROL THAT WOULD MAKE ANY
18 DIFFERENCE. AGENT PORTER'S NAME HAS BEEN IN THIS FILE
19 SINCE DAY ONE, SINCE SHE GOT THE FILE IN MAY. HE WAS NOT
20 FIRED FROM SLED UNTIL THREE MONTHS AGO ON A COMPLETELY
21 UNRELATED MATTER. THEY HAD MAY, JUNE, JULY, AUGUST,
22 SEPTEMBER, OCTOBER TO GET IN TOUCH WITH HIM. YOU KNOW,
23 THERE'S PAGES AND PAGES ABOUT AGENT PORTER AND WHAT HE DID
24 IN THE SYSTEM AND WHAT HE DID IN THIS CASE.

25 AS FAR AS FINDING OUT ABOUT THE COMPUTER SYSTEM

1 WITH THE PRISON, I'M NOT SURE WHY THAT'S MATERIAL AND THAT
2 COULD TAKE A CONSIDERABLE AMOUNT OF TIME.

3 WE MAINTAIN THAT WE HAVE PROVIDED EVERY THING THE
4 DEFENSE HAS ASKED FOR. IT IS OUR BELIEF THAT WE ARE NOT
5 REQUIRED TO TURN OVER A WITNESS LIST, BUT I DID GIVE HER
6 THE NAMES OF ALL OUR WITNESSES OVER A PERIOD OF TIME,
7 CULMINATING IN GIVING HER THE LIST ON FRIDAY. BUT I HAD
8 GIVEN BOTH MS. KENNEDY AND HER CO-COUNSEL, MR. SHELTON,
9 NAMES OF WITNESSES AS I KNEW THAT THEY WERE GOING TO BE
10 CALLED, IN TRYING TO HELP THEM PREPARE FOR THEIR CASE.
11 BUT CLEARLY, IF THEY HAD READ THROUGH THE MATERIAL THAT
12 THEY HAD HAD SINCE MAY, GONE TO THE PRISON, TALKED TO THE
13 INMATES, THIS INFORMATION WOULD HAVE BEEN APPARENT. AND
14 WE WOULD JUST ASK, RESPECTFULLY, THAT WE BE ABLE TO
15 PROCEED WITH THIS TRIAL.

16 IT'S BEEN A YEAR. THERE'S BEEN A LOT OF
17 ARRANGEMENTS MADE WITH ALL OF THE INMATES AND A LOT OF
18 LOGISTICS AND THE VICTIM HAS WAITED THIS LONG FOR THIS
19 CASE TO COME TO TRIAL. AND WE WOULD ASK THAT THE COURT
20 NOT GRANT THIS MOTION BASED ON THAT ARGUMENT.

21 MS. KENNEDY: YOUR HONOR,---

22 THE COURT: HOLD ON, MS. KENNEDY.

23 MS. KENNEDY: I'M SORRY.

24 THE COURT: THE INVESTIGATIVE NOTES OF MERV POWELL
25 TAKEN THE NIGHT OF THE INCIDENT, HAVE YOU TURNED THOSE

1 OVER?

2 MS. WILLIAMS: WE DON'T -- SHE HAS EVERYTHING MERV
3 POWELL HAS. WE ASKED HIM AGAIN TODAY, IS THERE ANYTHING
4 ELSE. THERE ARE NO INVESTIGATIVE NOTES. SHE HAS
5 EVERYTHING HE HAD. THE STATEMENT THAT MS. KENNEDY IS
6 REFERRING TO HAS BEEN IN THE FILE FROM DAY ONE. WHAT THE
7 DENNO HEARING IS GOING TO BE ABOUT IS THE RIGHTS FORM, THE
8 WAIVER OF COUNSEL AND AN ORAL STATEMENT THAT IS SUMMARIZED
9 IN MERV POWELL'S REPORT THAT MS. KENNEDY HAS HAD SINCE
10 MAY. THERE ARE NO INVESTIGATIVE NOTES. THERE IS NOTHING
11 ELSE TO TURN OVER.

12 THE COURT: AND DO YOU HAVE CONTAINED IN YOUR FILE
13 INFORMATION ABOUT THE TRANSFER FROM THE MACDOUGALL -- THE
14 WARDEN INVESTIGATION TO AGENT CHINA?

15 MS. WILLIAMS: AGENT CHINA HAS ALWAYS HAD THIS.
16 AGENT CHINA WAS THERE THE NIGHT OF -- IT'S ALWAYS BEEN HER
17 CASE. IT'S JUST THAT MACDOUGALL ALSO DID THEIR OWN
18 INVESTIGATION, SO EVERYTHING FROM AGENT CHINA AND MERV
19 POWELL WAS TURNED OVER TO THE DEFENSE IN MAY. THE ONLY
20 THING THAT COMPLICATED THE MATTER WAS THAT AGENT CHINA DID
21 NOT GIVE US A BOUND REPORT. SHE GAVE US ALL THE
22 INFORMATION. WE TURNED IT OVER TO THE DEFENSE. BUT THEN
23 SHE ACTUALLY MADE A PRETTY REPORT THAT SHE GAVE US ON
24 JANUARY 5TH.

25 I REVIEWED THAT REPORT PAINSTAKINGLY, COMPARED IT

1 TO EVERYTHING THAT HAD BEEN TURNED OVER IN MAY AND THERE
2 IS NOTHING NEW THERE. SHE JUST PUT IT IN A BOUND COPY,
3 WITH -- WITH A TABLE OF CONTENTS.

4 MS. KENNEDY: I---

5 THE COURT: HOLD ON ONE SECOND, MS. KENNEDY. AND
6 MY UNDERSTANDING WHAT MS. KENNEDY WAS COMMENTING ON THE
7 REPORTS FROM LT. BAXTER, THERE'S SOME THAT ARE REDACTED
8 AND NOT -- AND THAT IT'S HARD FOR HER TO READ THOSE
9 REPORTS.

10 MS. WILLIAMS: I'M NOT SURE I UNDERSTAND.

11 MS. KENNEDY: YOUR HONOR, WE HAVE -- JUST IF I MAY
12 -- WE HAVE THIS REPORT THAT WAS DONE BY LT. BAXTER. AND
13 I'LL -- JUST SO THE COURT CAN SEE -- THE BOTTOM LINE. WE
14 HAD THE SAME REPORT THAT WAS SUPPOSEDLY -- THAT WAS DONE
15 BY LT. BAXTER MARKED CONFIDENTIAL WITH A BUNCH OF NOTES AT
16 THE BOTTOM.

17 THE SAME IS TRUE OF EACH OF THE STATEMENTS THAT
18 WAS TAKEN -- THAT WERE TAKEN FROM THE GUARD. THE
19 STATEMENTS THAT WERE SUBMITTED BY AGENT CHINA ARE BLANK AT
20 THE BOTTOM. AND THAT'S JUST ONE OF THE ISSUES, YOUR
21 HONOR.

22 MS. WILLIAMS: SO, WE'RE GIVING HER TOO MUCH
23 INFORMATION?

24 MS. KENNEDY: YOUR HONOR, IF I MAY? THE
25 ATTACHMENTS -- WELL, FIRST OF ALL, LET ME BACK UP ABOUT

1 THE WITNESS LIST.

2 THE COURT: OKAY. HOLD ON.

3 MS. KENNEDY: OKAY.

4 THE COURT: I'M TRYING -- I'M GOING DOWN -- I MADE
5 A LIST AND I'M TRYING TO GO DOWN MY LIST.

6 MS. KENNEDY: OKAY.

7 THE COURT: SO, THERE'S DISCREPANCIES IN REPORTS
8 FROM LT. BAKER (SIC) AS -- FROM THE SOURCES THAT YOU'VE
9 RECEIVED THEM?

10 MS. KENNEDY: YES, YOUR HONOR. AND IN ADDITION TO
11 THAT, THERE ARE -- WHERE LT. -- I MEAN WHERE INVESTIGATOR
12 POWELL IS CONCERNED, THERE IS ONE REPORT THAT'S DATED
13 JANUARY THE 18TH THAT SAYS -- IT WAS TRANSCRIBED JANUARY
14 THE 18TH.

15 THERE IS ANOTHER REPORT THAT -- REPORTS OF THE
16 INCIDENT ON JANUARY THE -- DATED INCIDENT -- JANUARY 18TH.
17 THE REPORT WAS NOT COMPILED UNTIL MAY. AND WHAT THAT
18 REPORT DOES, IT JUST GOES THROUGH AND DO -- AND
19 REGURGITATES A BUNCH OF STUFF THAT -- THAT -- THAT -- THAT
20 THERE IS NO UNDERLYING BASIS FOR, WHICH IS THE SAME THING
21 THAT AGENT CHINA DID.

22 AND I WOULD SUBMIT TO THE COURT THAT -- I MEAN,
23 YOU HAVE TO HAVE HAD -- IF YOU'RE DOING A PROPER MIRANDA,
24 IF YOU'RE DOING A PROPER STATEMENT, IF YOU -- IF YOU HAVE
25 FORESIGHT ENOUGH TO GIVE A CRIMINAL DEFENDANT -- AN

1 ALLEGED CRIMINAL DEFENDANT A MIRANDA WARNING FOR HIM TO
2 SIGN, THERE HAS TO BE NOTES TO GO ALONG WITH -- WITH YOUR
3 CONVERSATION WITH HIM.

4 AND WHAT AGENT POWELL DID -- OR WHAT INVESTIGATOR
5 POWELL DID, OR SEEMINGLY SO, IS HE THEN TOOK THE
6 INFORMATION THAT WAS PROVIDED BY THE WARDEN AND
7 INCORPORATED IT INTO HIS FILE. THE SIGNIFICANCE OF THAT
8 INFORMATION, WE WEREN'T AWARE OF IN TERMS OF OUR -- I
9 MEAN, IT'S ONE THING FOR US TO HAVE IT. WHAT IT MEANS IS
10 SOMETHING ELSE. IF ALL WE GET IS A DISPLAY OF THESE ARE
11 THE MINUTES FROM THE COMPUTER SCREEN THAT THE WARDEN CAN
12 GO IN AND OBVIOUSLY CHANGE AT ANY TIME, THEN THAT HAS NO
13 SIGNIFICANCE TO US UNTIL WE GET THE INFORMATION OF HOW HE
14 GOT IT.

15 **THE COURT:** BACK TO THE RECORDS OF LT. BAXTER, DO
16 YOU HAVE VARYING DOCUMENTS FROM THE LIEUTENANT, ONE
17 CONFIDENTIAL---

18 **MS. WILLIAMS:** YOUR HONOR, WHAT WE TURNED OVER WAS
19 -- THERE IS ONE -- THE SAME STATEMENT THAT HE GAVE THE
20 EVENING OF, A COUPLE OF DAYS LATER HIS SUPERVISOR SIGNS
21 OFF ON IT. AND IT SAYS "THIS REPORT IS FOR INFORMATION
22 CONCERNING THE ABOVE INCIDENT. ALL APPROPRIATE PERSONNEL
23 NOTIFIED". AND THAT'S IT. THAT'S -- HIS SUPERVISOR JUST
24 SIGNS OFF ON THE STATEMENT. AND THAT'S WHAT -- PRETTY
25 MUCH THEY ALL SAY, AND THEY HAVE IT ALL.

1 SO, I MEAN, IF THERE'S SOME ISSUE AS TO WHETHER
2 THERE'S A DISCREPANCY, THAT'S JUST A SUPERVISOR'S COMMENTS
3 ON THE ABOVE STATEMENT. AND THAT CAN -- I GUESS THAT
4 WOULD GO TO WEIGHT, AND THEY CAN ARGUE THAT IN FRONT OF
5 THE JURY, THAT THAT SOMEHOW SAYS SOMETHING ABOUT THE
6 VERACITY OF THE STATEMENT. BUT THERE'S NO SECRETS HERE.
7 I MEAN, THIS IS -- THEY HAVE BOTH. I'M NOT SURE I
8 UNDERSTAND THE SIGNIFICANCE OF THAT AND WHY THAT WOULD,
9 YOU KNOW, CAUSE FOR ADDITIONAL INVESTIGATION BECAUSE THEY
10 HAVE IT.

11 AND AS FAR AS THE COMPUTER SYSTEM WITH THE
12 WARDEN, THEY'VE HAD THAT SINCE MAY. I DON'T UNDERSTAND
13 WHY NO INVESTIGATION IS DONE BACK THEN.

14 **MS. KENNEDY:** YOUR HONOR, IF I JUST---

15 **THE COURT:** ONE SECOND, MS. KENNEDY. I'M GOING TO
16 GIVE YOU ALL THE TIME YOU WANT.

17 **MS. KENNEDY:** OKAY.

18 **MS. WILLIAMS:** AS FAR AS MERV POWELL SUMMARIZING
19 THE INVESTIGATION IN THE REPORT, THAT'S WHAT HE DID. HE
20 SUMMARIZED THE INVESTIGATION AND THAT'S JUST WHAT IT IS.

21 AND I -- AGAIN, WHEN MERV POWELL IS ON THE STAND
22 AND THEY QUESTION HIM, I GUESS IF THERE'S AN ISSUE WITH
23 THAT OR THEY THINK THAT IS UNPROFESSIONAL OR THAT'S NOT
24 THE BEST WAY TO DO IT, I THINK THAT WOULD GO TO WEIGHT.

25 **THE COURT:** ANYTHING FURTHER, MS. WILLIAMS?

1 **MS. WILLIAMS:** NO, YOUR HONOR.

2 **THE COURT:** ANY CONCERN THAT THERE'S SOMETHING ELSE
3 THAT AGENT POWELL HAS NOT TURNED OVER SINCE HE JUST TURNED
4 OVER PHOTOS TO YOU?

5 **MS. WILLIAMS:** I WAS VERY UPSET THAT AGENT POWELL
6 HAD NOT GIVEN US THE THREE PHOTOS UNTIL TODAY. AND I
7 ASKED HIM AGAIN, IS THERE ANYTHING ELSE. AND HE SAID
8 THERE WASN'T. SO, I AM CONFIDENT IN TELLING THE COURT
9 THAT THERE ISN'T. AND I INTEND TO CALL HIM WHEN I LEAVE
10 HERE AND JUST TO MAKE SURE, BUT THAT IS WHAT HE IS TELLING
11 US.

12 AND I REALLY DO THINK IT WAS AN OVERSIGHT. IT
13 WAS SOME POLAROIDS THAT HE TOOK THAT HE HAD PAPER CLIPPED
14 AND I THINK HE JUST MISSED IT.

15 **THE COURT:** AND DID YOU -- HAVE YOU REVIEWED HIS
16 FILE?

17 **MS. WILLIAMS:** WE HAVE TODAY. WE REVIEWED HIS
18 FILE. HE BROUGHT IT INTO THE OFFICE AND I DON'T SEE
19 ANYTHING ELSE.

20 **THE COURT:** ALL RIGHT. MS. KENNEDY.

21 **MS. KENNEDY:** YOUR HONOR, IF I MAY JUST IN REGARD
22 TO THE LAST STATEMENT. I ASKED INVESTIGATOR POWELL THIS
23 AFTERNOON WHEN HE CAME, WHEN I ASKED THAT HE BE -- NOT BE
24 PRESENT FOR THIS MOTION HEARING, IF HE HAD HIS FILE WITH
25 HIM AND HE SAID NO.

1 WHAT I HAVE -- WHAT GIVES RISE TO THE CONCERN --
2 AND, AGAIN, YOUR HONOR, HAVING BEEN A PROSECUTOR YOU CAN
3 KNOW AND APPRECIATE THE VALUE OF INCIDENT REPORTS. THIS
4 IS MR. POWELL'S INVESTIGATIVE REPORT. THE DATE OF THE
5 REPORT IS MAY THE 19TH. THE DATE OF THE INCIDENT IS
6 JANUARY THE 18TH. IT IS A -- LET'S SEE -- SIX PAGE
7 REGURGITATION "INVESTIGATION REVEALED, INVESTIGATION
8 REVEALED, INVESTIGATION REVEALED", THERE'S -- THERE'S NO
9 INFORMATION WHATSOEVER -- "INVESTIGATION REVEALED" --
10 THAT ACCORDING TO WARDEN TAYLOR, ADAMS PROVIDED THE
11 FOLLOWING NAMES OF THESE INMATES. THE ONLY TWO THAT ARE
12 IN HIS STATEMENT ARE MR. STAGGERS AND MR. WALDRUP, I
13 BELIEVE. THERE IS NO INFORMATION WHATSOEVER -- AND THIS
14 GOES TO WHY I DIDN'T WANT MS. ADAMS HERE, IS THERE'S NO
15 INFORMATION WHATSOEVER HOW THIS INFORMATION CAME TO BE IN
16 THIS REPORT.

17 "INVESTIGATION REVEALED THAT INMATE DAVID DARDEN
18 REQUESTED TO SPEAK WITH INVESTIGATOR POWELL." NO
19 INFORMATION WHATSOEVER WHEN THAT INTERVIEW TOOK PLACE.
20 THERE ARE NO WITNESS STATEMENTS IN THIS CASE. AND WE'RE
21 HAVING TO RELY UPON AN INSTITUTION WHO HAS A VESTED
22 INTEREST IN PROTECTING ITSELF FROM A WHOLE LOT OF LEGAL
23 LIABILITY, NOT TO MENTION THAT -- THAT -- THAT -- THAT --
24 I MEAN, YOU KNOW, THAT THIS INFORMATION WAS NOT TIMELY
25 GIVEN TO US.

1 MS. WILLIAMS STATES WE'VE HAD IT SINCE MAY. IT'S
2 INCIDENTS LIKE THIS THAT GIVE ME PAUSE IN -- WHEN WE'RE
3 TRYING TO WORK WITH THE SOLICITOR'S OFFICE. BECAUSE WE
4 BECAME INVOLVED IN THIS CASE IN MAY AS A RESULT OF A
5 TELEPHONE CONVERSATION, WHICH IS -- IS REFERENCED IN -- IN
6 -- IN MY MEMO. WE DIDN'T SEEK FORMAL DISCOVERY IN THIS
7 CASE UNTIL OCTOBER. THE NOTION THAT WE CAN SOMEHOW GLEAN
8 ALL OF THIS STUFF JUST BY REVIEWING IT AND KNOWING IT'S
9 CONSEQUENCES IS LUDICROUS.

10 AND AS FAR AS THE WITNESS LIST, I CALLED MS.
11 WILLIAMS ON TUESDAY. I SAID DO YOU HAVE A WITNESS LIST.
12 SHE SAID NO, BUT I'LL HAVE YOU ONE BY FRIDAY. THAT'S THE
13 MENTION OF ANY KIND OF A WITNESS LIST.

14 WHEN I TALKED TO HER ON WEDNESDAY, SHE IDENTIFIED
15 THREE PEOPLE. IT'S MY UNDERSTANDING AT A PRETRIAL
16 CONFERENCE WITH YOU ON THURSDAY, SHE SAID THERE WERE GOING
17 TO BE 18 PEOPLE. WHEN WE GOT THE LIST, IT'S ABOUT 29.
18 AND WE KEEP -- YOU KNOW, THE QUESTION -- WELL, WE'RE GOING
19 TO HAVE A JACKSON V. DENNO -- WE'RE GOING TO HAVE A
20 JACKSON V. DENNO. I WANT TO KNOW, I WANT TO SEE WHERE THE
21 INFORMATION COMES FROM. IT -- IT BEGS THE QUESTION. ALL
22 RIGHT. IF YOU CAN DO ALL THIS FROM MEMORY AND KNOW THAT
23 WHAT YOU'RE SAYING IS ABSOLUTELY RIGHT, THEN YOU'RE A
24 BETTER HUMAN BEING THAN I AM AND A WHOLE LOT SMARTER.

25 BECAUSE I CONTEND THAT IF THERE'S BEEN -- IF

1 THERE WAS AN ABILITY TO TAKE A WITNESS STATEMENT IN THE
2 FORM THAT IT SHOULD HAVE BEEN TAKEN, LIKE MR. OLIVER'S
3 WAS, THEN THEY COULD HAVE DONE THAT WITH EVERYBODY ELSE.
4 AND IT'S AT LEAST SUSPICIOUS, BASED ON THE INFORMATION
5 THAT WE HAVE RIGHT NOW, THAT IT WASN'T DONE IN THAT WAY.

6 **MS. WILLIAMS:** YOUR HONOR, CAN I JUST BRIEFLY---

7 **THE COURT:** NO, MA'AM.

8 **MS. WILLIAMS:** ---RESPOND TO THAT?

9 **THE COURT:** NO, MA'AM.

10 **MS. WILLIAMS:** THERE ARE SEVERAL---

11 **THE COURT:** NO, MA'AM.

12 **MS. WILLIAMS:** OH, I'M SORRY.

13 **THE COURT:** WHERE IS MR. POWELL?

14 **MS. WILLIAMS:** I'M NOT SURE, YOUR HONOR. I THINK
15 HE'S GONE. BUT HE'S INCORPORATED WITNESS STATEMENTS IN
16 THE REPORT---

17 **THE COURT:** MS. WILLIAMS. MR. HART, DO YOU KNOW IF
18 MR. POWELL IS GONE?

19 **MR. HARP:** YES, HE LEFT. HE WILL BE IN COURT THE
20 FIRST THING IN THE MORNING.

21 **THE COURT:** THANK YOU, MR. HART. AND, MS. KENNEDY,
22 EXPLAIN TO THE COURT, OTHER THAN WHAT -- WHAT I'M HEARING,
23 HOW ALL OF THESE -- THE FAILURE, ACCORDING TO YOU, TO --
24 FOR THE STATE TO PROVIDE, IT SUBSTANTIALLY PREJUDICES YOUR
25 CASE?

1 **MS. KENNEDY:** YOUR HONOR, IT SUBSTANTIALLY
2 PREJUDICES OUR CASE BECAUSE WE -- BECAUSE OF OUR INABILITY
3 TO PREPARE. WE DO NOT HAVE UNLIMITED RESOURCES. WE CAN
4 NOT SEND AN INVESTIGATOR TO COLUMBIA. WE DON'T EVEN HAVE
5 INVESTIGATORS ANYMORE. WE HAVE TERMS OF COURT, WE HAVE
6 OTHER CLIENTS.

7 YOUR HONOR, SO WHEN WE GET THE INFORMATION LATE
8 OR IF WE DON'T GET IT IN A TIMELY FASHION, THEN WE ARE
9 HANDICAPPED IN OUR ABILITY TO ACCESS THE INFO -- THE SHANK
10 IS A PERFECT EXAMPLE, THE PICTURE OF THE SHANK.

11 THE PICTURE THAT WE GOT TODAY, ALTHOUGH --
12 ALTHOUGH IT -- IT -- IT IS LIKE THE -- I MEAN, IT COMPORTS
13 WITH THE ITEM THAT WE SAW ON FRIDAY, DOES NOT JIVE WITH
14 THE DESCRIPTION GIVEN BY THE PEOPLE WHO SUPPOSEDLY TOOK
15 IT.

16 WE DON'T HAVE ACCESS TO AGENT PORTER AND THAT'S A
17 SUBSTANTIAL PREJUDICE ISSUE BECAUSE ALL THE STUFF WAS
18 GIVEN TO HIM. THE WITNESS STATEMENT SAYS THAT JOYCE FOGLE
19 PUT THE VICTIM ON THE CART. AND IF YOU HAVEN'T -- I
20 ASSUME YOU HAVEN'T BEEN TO MACDOUGALL -- SO WHAT HAPPENS
21 IS THERE ARE UNITS. MAGNOLIA UNIT IS AWAY FROM THE
22 ADMINISTRATION BUILDING. IT'S A PRETTY GOOD WALK, BUT
23 THEY HAVE GOLF CARTS. SO THEY TRANSPORTED HER ON THE GOLF
24 CART.

25 INVESTIGATOR FOGEL SAYS "SHE HAS THE SHANK IN HER

1 HAND". THE SHANK SOMEHOW IS GIVEN -- MR. POWELL TOOK --
2 INVESTIGATOR POWELL TOOK A PICTURE OF IT. IT'S ON THE
3 SLED CUSTODY SHEET. IT'S -- AS LT. BAXTER HAVING
4 TRANSFERRED IT TO MR. PORTER. WHAT WE DON'T KNOW IS WHAT
5 HAPPENED TO IT IN THE MEANTIME. AND WE NEED THE ABILITY
6 -- I MEAN, YOU KNOW, MS. WILLIAMS CAN SAY, WELL, ALL THIS
7 STUFF HAS BEEN WITH US. WELL, I WOULD SUBMIT TO YOU, YOUR
8 HONOR, IT HASN'T.

9 WE DIDN'T GET THE LIST OF THE DNA, BUT WE GOT THE
10 DNA REPORT -- BUT WE DIDN'T GET THE FINAL REPORT. BUT WE
11 DIDN'T GET THE DNA ANALYSIS UNTIL THURSDAY AFTERNOON.
12 THAT GOES -- AND IT WAS THEN AT THAT POINT THAT WE
13 DISCOVERED THAT THERE WERE OTHER SWABS. IT WAS AT THAT
14 POINT THAT WE DISCOVERED THAT -- THAT THERE WERE OTHER
15 TESTS THAT HAD NOT BEEN DONE.

16 IT WAS AT THAT POINT THAT WE DISCOVERED THAT --
17 THAT -- THAT THE SHANK HAD BEEN WRAPPED IN A BROWN OR A
18 TAN CLOTH. ALL OF THAT GOES TO THE INTEGRITY OF THE
19 EVIDENCE. ALL OF THAT GOES TO THEIR ABILITY TO TAKE
20 FINGERPRINTS, TAKE SWABS, DO WHATEVER IT IS THEY NEED TO
21 DO. AND -- AND AGENT PORTER, YOU KNOW, HE -- I -- AS SOON
22 AS WE WERE GIVEN THAT INFORMATION, I TRIED TO FIND OUT.
23 THAT DEFINITELY IS INFORMATION IN THE STATE'S POSSESSION
24 AND CONTROL. AND THAT -- THAT IS AN ESSENTIAL PART OF OUR
25 INVESTIGATION BECAUSE WE NEED TO KNOW WHY, GIVEN THE

1 STATEMENTS THAT WERE MADE, WHY THEY DIDN'T TEST THAT
2 SHANK, DNA TESTS -- SWABS FOR SALIVA.

3 THE COURT: MS. WILLIAMS, YOU JUST TURNED OVER THE
4 DNA REPORT LAST WEEK?

5 MS. WILLIAMS: NO. THAT'S COMPLETELY UNTRUE. IT
6 WAS TURNED OVER ON 2/6/08. WHAT SHE'S REFERRING TO IS THE
7 INTERNAL CHAIN. AS THE COURT MAY OR MAY NOT BE AWARE OF,
8 THE INTERNAL CHAIN THAT SHOWS WHAT SECRETARY LOGGED THE
9 EVIDENCE IN, AND THEN BROUGHT IT TO THE REFRIGERATOR, AND
10 THEN GAVE IT BACK TO, YOU KNOW, THE PERSON THAT
11 TRANSPORTED IT BACK HERE, IS NOT AVAILABLE UNTIL
12 EVERYTHING HAS BEEN SUBMITTED. AND THEY WOULDN'T GIVE IT
13 TO US UNTIL THE HANDWRITING ANALYSIS.

14 BUT THE ONLY PEOPLE THAT THEY WERE NOT AWARE OF
15 WERE LIKE AMY STEPHENS, WHO LOGGED THE EVIDENCE IN. THE
16 ACTUAL TOXICOLOGY REPORT FOR THE VICTIM AND THE DNA
17 ANALYSIS WAS ALL TURNED OVER TO THE DEFENSE ON 2/6/08, AND
18 THAT HAS THE FORENSIC SCIENTIST, IT HAS THE RESULTS.

19 THEY'VE HAD THE CHAIN OF EVIDENCE FORMS THAT SHOW
20 THAT THE SHANK AND THE BLOOD SWABS WENT TO THE CRIME SCENE
21 PEOPLE -- JONATHAN BAXTER WAS IN PART OF THAT CHAIN.
22 THEY'VE HAD ALL OF THAT SINCE THE SUMMER, SINCE MAY.

23 THERE'S NO SECRET HERE, YOUR HONOR. THE ONLY
24 THING THAT THEY GOT LATE WAS THE ACTUAL CHAIN. AGAIN,
25 THAT'S JUST THE SECRETARIES THAT MIGHT HAVE LOGGED IN THE

1 EVIDENCE AND BROUGHT IT TO THE REFRIGERATOR. BECAUSE WE
2 ASKED THEM IF THEY WANTED TO STIPULATE TO THE CHAIN. OF
3 COURSE, WE UNDERSTAND THEY DIDN'T WANT TO, SO WE STARTED
4 GETTING OUR CHAIN WITNESSES ORGANIZED.

5 AND AS FAR AS EDDIE PORTER, HIS NAME HAS BEEN IN
6 THE FILE SINCE THE BEGINNING. HE WASN'T LET GO FROM SLED
7 UNTIL A FEW MONTHS AGO. AND AS SOON AS WE FOUND OUT HE
8 WAS LET GO -- MS. KENNEDY DOESN'T REALIZE THAT I ALSO TOLD
9 MR. SHELTON BEFORE THE DATE THAT I TOLD HER THAT MR.
10 PORTER HAD BEEN LET GO, AND THAT WE WEREN'T GOING TO CALL
11 HIM, BUT THAT IF THEY WANTED TO, THAT WE WOULD BE HAPPY TO
12 HELP THEM FIND HIM.

13 THE COURT: WHERE IS MR. PORTER?

14 MS. WILLIAMS: MR. PORTER NO LONGER WORKS FOR SLED,
15 BUT WE CAN -- WE CAN TRY TO FIND PHONE NUMBERS FOR HIM IF
16 THEY -- BUT THEY HAVEN'T ASKED ME FOR ANY. SO, I'M NOT
17 SURE WHERE HE'S WORKING NOW, BUT WE CAN CERTAINLY ASK HIS
18 PARTNER.

19 THE COURT: AND WHO IS HIS PARTNER?

20 MS. WILLIAMS: VICKIE HOLMAN, WHO WAS WITH HIM WHEN
21 HE COLLECTED EVERY PIECE OF EVIDENCE.

22 THE COURT: AND SHE'S ON THE WITNESS LIST?

23 MS. WILLIAMS: SHE IS.

24 MS. KENNEDY: AND, YOUR HONOR, WE HAVE NO INCIDENT
25 REPORT RELATED TO ANY OF THIS.

1 **THE COURT:** RELATED TO? I'M SORRY.

2 **MS. KENNEDY:** TO -- TO -- TO WHAT WAS TAKEN, WHEN
3 IT WAS TAKEN, HOW IT WAS TAKEN. IT -- IT WAS APPARENTLY
4 SWABS -- BLOOD TAKEN FROM THE BATHROOM. YOU KNOW, IT'S
5 MISLEADING. AND -- AND -- I MEAN -- AND PEOPLE'S MEMORIES
6 ARE FAULTY. AND I -- AND I'LL BE THE FIRST TO ADMIT THAT.
7 I DIDN'T REALLY GET INVOLVED IN THIS CASE, IN THE
8 PREPARATION OF THIS CASE UNTIL YOUR HONOR DENIED OUR FIRST
9 MOTION FOR CONTINUANCE. BECAUSE I WAS BUSY WORKING ON THE
10 CASE THAT WAS SUPPOSED -- WAS SUPPOSED TO BE SECOND FOR
11 TRIAL.

12 IT IS -- IT IS DISINGENUOUS FOR THE SOLICITORS TO
13 SUGGEST THAT WE HAD ALL THIS INFORMATION BASED ON ANY
14 SEMBLANCE OF REPRESENTATION IN MAY, WHEN WE WERE -- SIMPLY
15 ASKED AT THAT POINT IN TIME TO TALK TO HIM BECAUSE HE
16 WANTED A PRELIMINARY HEARING. THAT IS NOT REPRESENTATION.

17 **MS. WILLIAMS:** YOUR HONOR, JUST FOR THE RECORD, I'M
18 NOT GOING TO ARGUE ANY MORE---

19 **THE COURT:** NO. NO. NO. NO. MS.---

20 **MS. WILLIAMS:** BUT---

21 **THE COURT:** MS. WILLIAMS, MS. KENNEDY.

22 **MS. KENNEDY:** YES, YOUR HONOR.

23 **THE COURT:** BASED UPON THE INFORMATION THAT I HAVE
24 BEEN PROVIDED, READING YOUR NOTICE OF MOTION TO COMPEL THE
25 CASE LAW THAT YOU HAVE PRESENTED, AS WELL AS THE RESPONSE

1 FROM MS. WILLIAMS AND THE CASE LAW THAT SHE HAS PRESENTED,
2 I AM ORDERING, MS. WILLIAMS, THAT YOU PROVIDE THE LOCATION
3 OF WHERE AGENT PORTER -- OR FORMER AGENT PORTER IS BY
4 10:00 A.M. TOMORROW TO THE DEFENSE.

5 MR. -- INVESTIGATOR POWELL NEEDS TO BE IN YOUR
6 OFFICE IN YOUR CONFERENCE ROOM NO LATER THAN 9:00 A.M.
7 WITH HIS COMPLETE FILE.

8 I'M GOING TO HAVE THE JURY RETURN BACK AT 2:00
9 P.M. TOMORROW. WE WILL HEAR THE JACKSON V. DENNO HEARING.
10 THAT NEEDS TO BE SCHEDULED AT 1:00.

11 BASED UPON YOUR REVIEW OF THE FILE AND THE
12 INFORMATION BASED UPON -- CONTAINED IN MR. POWELL'S FILE,
13 IF THERE IS ANY OTHER, I WILL BE IN MY CHAMBERS BY 10:00
14 IN THE MORNING. AND WE WILL HEAR ANY ADDITIONAL THINGS
15 THAT NEED TO BE -- CONCERNING WHAT IS OR IS NOT IN MR.
16 POWELL'S FILE THAT YOU NEED.

17 BASED UPON WHAT I'VE HEARD, THE STATE HAS
18 INDICATED TO THE COURT THAT IT HAS TURNED OVER -- THE
19 STATE HAS TURNED OVER EVERYTHING IN THE STATE'S POSSESSION
20 IN A FORM OR FASHION, PERHAPS NOT IN A TIDY FASHION. MY
21 CONCERN IS THE TURNING OVER THE PHOTOS TODAY. EVEN THOUGH
22 THE SHANK WAS IN EVIDENCE, MY CONCERN IS, MS. KENNEDY,
23 THAT YOU HAVE AN OPPORTUNITY TO REVIEW THE FILE OF MR.
24 POWELL. ANYTHING FURTHER?

25 MS. KENNEDY: YES, YOUR HONOR. WE WOULD LIKE THE

1 OPPORTUNITY TO REVIEW THE WARDEN JACKETS OF THE INMATES ON
2 THE LIST, TO DETERMINE WHAT LETTERS ARE IN THERE.

3 **THE COURT:** MS. WILLIAMS.

4 **MS. WILLIAMS:** THAT'S NOT IN OUR CONTROL. THE
5 PERSONAL FILES OF ALL OF THE INMATES, I THINK SHE CAN ASK
6 THEM ON CROSS EXAMINATION, JUST LIKE SHE DID WHEN SHE WENT
7 AND TALKED TO THEM, HAVE YOU BEEN PROVIDED ANYTHING IN
8 RETURN FOR YOUR TESTIMONY TODAY OR FOR COMING FORWARD.
9 BUT WHETHER OR NOT THE WARDEN GIVES THEM A, YOU KNOW, GOOD
10 JOB BECAUSE YOU SAVED A WOMAN FROM BEING RAPED, I JUST
11 DON'T HAVE THAT INFORMATION.

12 I MEAN, I THINK THAT'S WHAT SHE IS TALKING ABOUT,
13 I CAN ONLY GUESS, BECAUSE WE'RE NOT AWARE OF ANY
14 INFORMATION THAT HAS TO DO WITH PAROLE OR SENTENCING OR
15 TESTIFYING AT TRIAL. IT SOUNDS LIKE MAYBE THE WARDEN
16 SAID, YOU KNOW, WE COMMEND YOU FOR HELPING WITH ADAMS---

17 **THE COURT:** IS THE WARDEN ON THE WITNESS LIST?

18 **MS. KENNEDY:** NO, YOUR HONOR.

19 **THE COURT:** ARE YOU PLANNING ON CALLING HIM?

20 **MS. WILLIAMS:** I'M---

21 **THE COURT:** MS. KENNEDY, IS THERE ANY REASON YOU
22 HAVEN'T SUBPOENAED HIM AND THE JACKETS?

23 **MS. KENNEDY:** YOUR HONOR, WE DIDN'T -- AGAIN, WE
24 DIDN'T BECOME AWARE OF THE SIGNIFICANCE OF THOSE NOTES --
25 THE COMPUTER NOTES UNTIL WE GOT THE INFORMATION THAT THOSE

1 LETTERS HAD BEEN PUT IN THE JACKETS.

2 IN THE DEPARTMENT OF CORRECTIONS, WHAT YOU AND I
3 WOULD CONSIDER A PERSONNEL FILE IS CALLED A JACKET. OKAY.
4 AND THAT'S WHERE THE DISCIPLINARY RECORDS ARE KEPT.
5 THAT'S WHERE EVERYTHING IS KEPT. I -- I -- I SEE NO -- I
6 MEAN, YOU KNOW, WE STILL HAVE BY -- THEY HAVE CONTROL OR
7 THEY CAN GET -- THEY CAN ACCESS THE INFORMATION FASTER AND
8 BETTER THAN I CAN. IF WE DETERMINE THAT WE NEED --
9 BECAUSE RIGHT NOW WE DON'T HAVE TO PROVE ANYTHING. AND WE
10 MAY BE HAVING, BY VIRTUE OF THIS ARGUMENT, BEING FORCED TO
11 GIVE UP OUR -- OUR RIGHT NOT TO CALL ANYBODY AND,
12 THEREFORE, HAVE LESS ARGUMENT.

13 I SUBMIT TO YOU IF THEY CAN GET THE DISCIPLINARY
14 RECORDS, WHICH THEY DID OF MR. SALISBURY, WHICH WE HAVE,
15 THEN THEY CAN GET THOSE LETTERS. AND IF THEY'RE NOT
16 THERE, THEN WE CAN ASK ABOUT IT, AND THEN I CAN CALL -- WE
17 CAN SUBPOENA MR. -- WARDEN TAYLOR. THAT WOULD BE THE
18 APPROPRIATE WAY TO DO IT.

19 **THE COURT:** ALL RIGHT. MS. KENNEDY, I AM NOT
20 RULING ON THAT, BUT BECAUSE OF THE LATENESS OF THE HOUR
21 AND THE FACT THAT WE HAVE ALREADY PICKED A JURY, MS.
22 WILLIAMS, WILL YOU, THROUGH YOUR ASSISTANT, FACILITATE
23 GETTING THE INMATES JACKETS FROM THE WARDEN AND HAVING
24 THEM IN THE -- IN YOUR OFFICE SEALED, LIKE YOU DID ON THE
25 EMPLOYMENT RECORDS, BY NOON TOMORROW. DO YOU THINK THAT

1 WOULD BE -- YOU WOULD BE ABLE TO ACCOMPLISH THAT?

2 MS. WILLIAMS: I CAN TRY -- IF IT'S WITHIN MY
3 CONTROL OR POWER, I CAN DO IT. I THINK AT THE VERY LEAST,
4 IF WE CAN'T GET THEM, WE WILL -- WE WILL TRY TO DO
5 EVERYTHING WE CAN TO COMPLY WITH THE COURT'S ORDER. I
6 THINK MERV POWELL MAY KNOW HOW THAT -- YOU KNOW, IF WE
7 CAN'T GET IT BY TOMORROW, HOW QUICKLY WE CAN GET IT.
8 BECAUSE HE'S THE ONE THAT HAS ACCESS, THROUGH THE
9 COMPUTER, THE DISCIPLINARY RECORDS -- I'M NOT SURE, ARE WE
10 ASKING FOR THE DISCIPLINARY RECORDS OF EACH INMATE, OR A
11 LETTER THAT'S IN THERE? I JUST NEED TO BE CLEAR ON
12 WHAT---

13 THE COURT: MY UNDERSTANDING IS MS. KENNEDY IS
14 ASKING FOR THE JACKET, WHICH WOULD -- IF THERE IS
15 DISCIPLINARY AND THE LETTER, IT WOULD CONTAIN BOTH; IS
16 THAT CORRECT?

17 MS. KENNEDY: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. YES. THE WHOLE FILE.

19 MS. WILLIAMS: I JUST DON'T KNOW IF IT'S A SPECIFIC
20 PHYSICAL THING, BUT WE'LL FIND OUT, THIS COMPUTER---

21 THE COURT: ALL RIGHT. ANYTHING FURTHER?

22 MS. KENNEDY: NO, YOUR HONOR. I ASSUME, YOUR
23 HONOR, SINCE YOU'RE GRANTING SOME OF OUR MOTION TO COMPEL,
24 THAT -- THAT -- THAT THE FINAL RESOLUTION OF THE REQUEST
25 FOR AN ORDER OF CONTINUANCE IS IN ABEYANCE UNTIL WE---

1 **THE COURT:** IT IS IN ABEYANCE, MS. KENNEDY, BECAUSE
2 I DO NOT KNOW THAT THERE IS ANYTHING CONTAINED IN THE
3 FILES OF MR. POWELL. I HAVE NOT MADE MY OFFICIAL RULING
4 ON WHETHER OR NOT I'M COMPELLING THE STATE TO TURN OVER
5 THOSE RECORDS, THE JACKETS. BUT IN ORDER TO PREVENT ANY
6 DELAY IN THE TRIAL, THEY WILL AT LEAST BE IN THE
7 COURTHOUSE WHEN I MAKE MY RULING TOMORROW AS -- AND WE
8 WILL SEE WHERE MR. -- FORMER AGENT PORTER IS, AND THEN I
9 WILL MAKE THAT DETERMINATION.

10 **MS. KENNEDY:** THANK YOU, YOUR HONOR.

11 **THE COURT:** THANK YOU.

12 **MS. KENNEDY:** I APPRECIATE IT.

13 **THE COURT:** WE ARE IN RECESS IN THIS CASE UNTIL
14 1:00. THE JURY WILL BE BACK TO BEGIN OPENING AT 2:00.

15 **MS. WILLIAMS:** BUT YOU WANT POWELL AT 9:00?

16 **THE COURT:** I WANT POWELL MADE AVAILABLE TO MS.
17 KENNEDY IN YOUR OFFICE. HE DOES NOT NEED TO BE UP HERE.

18 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

19 **THE COURT:** THANK YOU.

20 **MS. KENNEDY:** THANK YOU, YOUR HONOR.

21 (WHEREUPON, THE COURT RECESSED DAY 1 OF TRIAL AT
22 7:00 P.M.)

23

24

25

P R O C E E D I N G S

(JANUARY 27, 2009 11:15 A.M.)

(DAY TWO OF TRIAL)

THE COURT: GOOD MORNING. BE SEATED. ALL RIGHT.

WE ARE BACK ON THE RECORD IN STATE V. SALISBURY. WE HAVE HAD TWO IN CHAMBERS CONFERENCES IN WHICH MS. WILLIAMS, MR. ALFARO, MS. KENNEDY AND MR. SHELTON WERE PRESENT, ALONG WITH MR. POWELL AND MR. HART WITH THE SOLICITOR'S OFFICE.

IT IS MY UNDERSTANDING THAT THE COURT DID INSTRUCT MR. POWELL TO BE AT THE SOLICITOR'S OFFICE BY 9:00 A.M. WITH HIS FILE. THAT HE WAS LATE, BUT THAT THERE HAS BEEN TIME FOR MS. KENNEDY AND MR. SHELTON TO REVIEW THAT FILE.

IT'S ALSO THE COURT'S UNDERSTANDING THAT THE INMATES FROM MACDOUGALL ARE PRESENT. THEY WERE NOT TO BE TRANSPORTED, TO THE COURT'S UNDERSTANDING UNTIL TOMORROW, BUT THEY HAVE ARRIVED A DAY EARLY.

THE COURT HAS FURTHER BEEN INFORMED THAT THE STATE IS NOW IN POSSESSION AND HAS SHARED WITH THE PUBLIC DEFENDER'S OFFICE, THE LETTERS CONTAINED IN THE FILES OF THE INMATES, AS WELL AS THEIR DISCIPLINARY RECORDS.

MS. KENNEDY, IS THAT AN ACCURATE STATEMENT?

MS. KENNEDY: WITH THE EXCEPTION OF THE DISCIPLINARY RECORDS, YOUR HONOR. WE DON'T HAVE THOSE. WE DO HAVE THE LETTERS THAT WERE -- THAT GAVE TO THE --

1 THAT GAVE RISE TO THE MOTION---

2 COURT REPORTER: I'M SORRY?

3 MS. KENNEDY: WE DON'T HAVE THE DISCIPLINARY
4 RECORDS, YOUR HONOR. BUT WE DO HAVE---

5 THE COURT: MR. SHELTON IS INDICATING THAT HE DOES
6 HAVE THE DISCIPLINARY RECORDS, MS. KENNEDY.

7 MS. KENNEDY: OH. OKAY.

8 THE COURT: ALL RIGHT. THE COURT WAS FURTHER
9 INFORMED THAT OUR FIRST IN CAM -- IN CHAMBERS MEETING,
10 THAT THE STATE HAS LOCATED THE PERSONAL HOME NUMBER OF
11 FORMER AGENT PORTER, IS THAT CORRECT, MS. WILLIAMS?

12 MS. WILLIAMS: YES, YOUR HONOR.

13 THE COURT: HAVE YOU PROVIDED THAT TO MS. KENNEDY
14 AND MR. SHELTON?

15 MS. WILLIAMS: YES, MA'AM.

16 THE COURT: AND, MS. KENNEDY, I UNDERSTAND THAT
17 BASED UPON YOUR REVIEW OF -- INVESTIGATOR POWELL, IS THAT
18 CORRECT?

19 MR. POWELL: YES.

20 THE COURT: INVESTIGATOR POWELL -- THAT THERE WERE
21 SOME DOCUMENTS THAT YOU INDICATED TO THE COURT THAT WERE
22 NOT IN YOUR POSSESSION, IS THAT CORRECT?

23 MS. KENNEDY: YES, YOUR HONOR.

24 THE COURT: AND IF YOU WILL JUST INDICATE TO THE
25 COURT WHAT YOUR -- WHAT YOUR FINDINGS WERE.

1 **MS. KENNEDY:** YOUR HONOR, IN THE -- WELL, FIRST OF
2 ALL, IF I -- I WILL ADVISE THE COURT THAT BASED ON THE
3 INFORMATION THAT WE HAD AND, AGAIN, THE ONE THAT WE DIDN'T
4 -- THE DOCUMENTS THAT -- THAT I DON'T -- I'M NOT CERTAIN
5 THAT WE WERE ABLE TO REVIEW THE ENTIRE INVESTIGATIVE FILE.

6 HAVING SAID THAT, THE OPPORTUNITY THAT WE HAD TO
7 REVIEW REFLECTED THAT WE DID NOT RECEIVE THE DOCUMENT
8 CALLED -- ENTITLED RECORDED INTERVIEW, DATED JANUARY 24TH,
9 2008, AND TRANSCRIBED THAT SAME DAY. IT IS---

10 **THE COURT:** I'M SORRY, MS. KENNEDY. WHAT -- WHAT
11 IS THE DOCUMENT?

12 **MS. KENNEDY:** JANUARY 24, 2008.

13 **THE COURT:** AND THE DOCUMENT IS ENTITLED?

14 **MS. KENNEDY:** RECORDED INTERVIEW.

15 **COURT REPORTER:** COULD YOU ADJUST THE MICROPHONE?

16 **MS. KENNEDY:** I'M SORRY. MS. CROSS, I'LL MOVE IT
17 AROUND. YOUR HONOR, IT'S -- A DOCUMENT ENTITLED RECORDED
18 INTERVIEW. IT IS DATED JANUARY 24, 2008. IT WAS
19 TRANSCRIBED ON JANUARY 24, 2008. IT IS AN INMATE
20 INTERVIEW WITH DAVID DARDEN. WE DID NOT HAVE THAT.

21 THERE IS ANOTHER DOCUMENT ENTITLED REPORTED
22 INVESTIGATIVE ACTIVITY THAT'S ALSO DATED JANUARY 24, 2008.
23 TRANSCRIBED JANUARY 24, 2008, REFLECTING THAT INMATE
24 DARDEN HAS INDICATED A DESIRE TO SPEAK WITH INVESTIGATOR
25 POWELL.

1 THERE IS -- THE COURT'S INDULGENCE. AN INMATE
2 STATEMENT THAT WAS TAKEN, AN INCIDENT REPORT, SUPPLEMENTAL
3 REPORT DATED FEBRUARY 7TH, THAT WAS MADE BY THE VICTIM IN
4 REGARD TO THE INCIDENT THAT OCCURRED ON JANUARY 18TH THAT
5 WE -- THAT WE WERE NOT PROVIDED.

6 THERE'S ANOTHER DOCUMENT ENTITLED INVESTIGATION
7 DIVISION CASE OPENING, THAT WAS COMPLETED ON JANUARY THE
8 18TH, THAT WE HAD NOT BEEN PROVIDED.

9 WE HAVE -- WE WERE GIVEN THIS MORNING THREE
10 LETTERS GENERATED BY EDSSEL TAYLOR, WHO WORKED WITH
11 MACDOUGALL CORRECTIONAL FACILITY, ALL OF WHICH WERE DATED
12 FEBRUARY THE 1ST, 2008. THEY WERE GIVEN TO INMATES
13 CHRISTOPHER SIMMONS, WILLIE STAGGERS, JEFFERSON WALDRUP.
14 IT WAS TITLED INMATE CORRESPONDENCE. THE BODY OF THE
15 LETTER WOULD INDICATE THAT IT IS A LETTER OF APPRECIATION
16 FOR THEIR ASSISTANCE IN AIDING OFFICER ADAMS. NONE OF
17 THESE DOCUMENTS WERE EVER PROVIDED TO US, YOUR HONOR.

18 AS TO ALL BUT THE LETTERS, WE WERE -- AGAIN, IN
19 OUR DISCOVERY REQUESTS, MADE SPECIFIC REQUESTS FOR NOTES
20 AND INFORMATION. THAT OBVIOUSLY WE HAD NOT RECEIVED. I
21 AM NOT SUGGESTING IN ANY WAY THAT THERE IS ANY MISCONDUCT
22 IN THIS, IT'S JUST SIMPLY AN OVERSIGHT, I WOULD ASSUME,
23 BECAUSE THE INFORMATION THAT WE -- AND AGAIN, THIS GOES TO
24 THE HEART OF THE PROBLEM. THE INFORMATION THAT WE
25 RECEIVED, EXCEPT FOR THE LETTERS, WERE -- SHOULD HAVE BEEN

1 AND WERE NOT INCLUDED IN AGENT MICHELLE CHINA'S REPORT
2 FROM SLED.

3 BASED ON THIS, YOUR HONOR, AND BASED ON ISSUES
4 THAT WERE ARGUED BEFORE YOU LAST NIGHT, WE WOULD
5 RESPECTIVELY REQUEST THAT YOU GRANT OUR ORDER OF
6 CONTINUANCE. THESE DOCUMENTS, AND PARTICULARLY THE
7 LETTERS FROM WARDEN TAYLOR TO -- TO EACH OF THE INMATES,
8 WOULD REQUIRE US TO HAVE AN OPPORTUNITY TO -- TO INTERVIEW
9 WARDEN TAYLOR AND MAKE AN INFORMED DECISION ABOUT WHETHER
10 OR NOT HE SHOULD BE CALLED AS A WITNESS IN THIS CASE.

11 IT'S NOT ENOUGH FOR ANY OF US TO TAKE THE
12 POSITION THAT THIS IS NOT NEW INFORMATION BECAUSE IT WAS
13 INCORPORATED INTO SOME OTHER REPORT, UNLESS YOU -- UNLESS
14 WE'RE GIVEN THE OPPORTUNITY TO REVIEW EVERYTHING THAT CAME
15 IN THAT REPORT, OR THOSE PRECEDING REPORTS, THEN WE DO NOT
16 HAVE FULL AND FAIR DISCLOSURE. THEN WE DO NOT HAVE AN
17 OPPORTUNITY TO PROPERLY PREPARE OUR CASE. OUR CLIENT THEN
18 IS DENIED HIS CONSTITUTIONAL RIGHTS.

19 IN ADDITION TO WHICH, YOUR HONOR, GIVEN THE
20 INFORMATION THAT WE'VE RECEIVED THIS MORNING, AND THE VERY
21 THOROUGH EXPLANATION PROVIDED BY INVESTIGATOR POWELL, WE
22 NEED ANOTHER -- WE NEED AN OPPORTUNITY TO INTERVIEW AGENT
23 CHINA BECAUSE AS WE WERE EXPLAINED THIS MORNING, THERE ARE
24 -- AND I WOULD ASK INVESTIGATOR POWELL TO CORRECT ME IF I
25 MISSTATE ANYTHING -- IN REGARD TO THIS PARTICULAR

1 INCIDENT, THERE WERE PARALLEL INVESTIGATIONS BEING --
2 BEING CONDUCTED BY THE DEPARTMENT OF CORRECTIONS AND ALSO
3 BY SLED.

4 INVESTIGATOR POWELL ADVISES US THAT ALL THE
5 INFORMATION THAT HE HAD WOULD HAVE BEEN TURNED OVER TO
6 AGENT CHINA, AND ALSO WOULD HAVE BEEN SUBMITTED TO
7 COLUMBIA FOR HIS SUPERVISOR TO REVIEW AND SIGN OFF ON. WE
8 ARE NOT ASKING FOR DELAYS SO WE CAN SEE OR TALK TO ANYBODY
9 IN COLUMBIA, WHAT WE WOULD ASK, AGAIN, YOUR HONOR, IS THE
10 OPPORTUNITY -- AND I DID MAKE THIS REQUEST VERY CLEAR LAST
11 NIGHT -- IS THAT WE WOULD ALSO LIKE THE ENTIRE -- THE
12 OPPORTUNITY TO REVIEW INVESTI -- I MEAN, AGENT CHINA'S
13 REPORT, IN VIEW OF THE FACT THAT WE DIDN'T HAVE THIS
14 INFORMATION FROM HER EITHER.

15 I'M NOT SUGGESTING THAT THERE'S BEEN A DELIBERATE
16 WITHHOLDING OF INFORMATION. WHAT I AM ADVISING THE COURT
17 IS THAT DUE TO THE FACT THAT THIS INFORMATION, FOR
18 WHATEVER REASON, HAS NOT BEEN GIVEN TO US, IT
19 SUBSTANTIALLY -- TO THE EXTENT THAT WE WERE ABLE TO
20 PREPARE A DEFENSE BEFORE, IT SUBSTANTIALLY ALTERS WHAT WE
21 WOULD HAVE DONE. AND IT ALSO GIVES US SOME ABILITY, I
22 THINK, TO REVISE AND PREPARE A DEFENSE, WHICH I WOULD
23 ADVISE THE COURT THAT WE HADN'T HAD AN OPPORTUNITY TO DO
24 BASED ON ISSUES THAT WE BROUGHT TO THE COURT'S ATTENTION
25 YESTERDAY OR LAST EVENING.

1 THE OTHER ISSUE IS QUITE SIMPLY, YOUR HONOR, WE
2 NEED -- WE JUST NEED A LITTLE BIT OF TIME, YOU KNOW.
3 WE'RE PERFECTLY PREPARED TO -- TO COME BACK ON, YOU KNOW,
4 THE NEXT TERM OF COURT, WEEK AFTER NEXT. I KNOW YOUR
5 HONOR IS NOT HERE, BUT I ALSO KNOW ADMINISTRATIVELY THAT
6 CHANGES CAN BE MADE. IF THAT CAN'T BE DONE, WE'RE
7 OBVIOUSLY PERFECTLY PREPARED TO COME BACK IN MARCH. BUT
8 WE NEED THE OPPORTUNITY TO THOROUGHLY DEVELOP OUR CASE.

9 AT THIS JUNCTURE, WE CANNOT EVEN FILE MOTIONS TO
10 SUPPRESS BECAUSE WE DON'T KNOW WHAT THE EVIDENCE IS. AND
11 THAT PUTS OUR CLIENT AT A DISTINCT DISADVANTAGE AND WE
12 CAN'T -- WE CAN'T ARGUE THOSE MOTIONS. WE CAN'T PREPARE
13 MOTIONS TO STREAMLINE THE PROCESS OF THE TRIAL. WE CAN'T
14 -- WE CAN'T PREPARE ANY MOTIONS, OR EVEN QUITE FRANKLY, I
15 THINK, BASED ON SOME OF THOSE THIS MORNING, IT CHANGES THE
16 WHOLE TRIAL STRATEGY, THEREFORE, IT IMPACTS OUR CROSS
17 EXAMINATION. IT IMPACTS CROSS EXAMINATION. IT IMPACTS
18 CLOSING ARGUMENTS. IT IMPACTS OPENING STATEMENTS.

19 YOUR HONOR, ALL WE'RE ASKING FOR IS A LITTLE
20 TIME. WE STILL DON'T HAVE -- AGAIN, IT WOULD BE MY
21 POSITION, JUST -- THAT WE WOULD NEED TO ARGUE A MOTION TO
22 SUPPRESS. BUT AT THIS POINT IN TIME, WITH REGARD TO A
23 HANDWRITING ANALYSIS, AT THIS POINT IN TIME WE DON'T KNOW
24 WHICH OF THOSE LETTERS THE STATE INTENDS TO INTRODUCE.
25 AND IT'S -- IT'S NOT FAIR TO OUR CLIENT. IT'S NOT FAIR TO

1 THE SYSTEM AND IT'S CERTAINLY NOT FAIR TO THE JURORS, TO
2 ASK THEM TO BE HERE FOR EXTENDED PERIODS OF TIME FOR US TO
3 ARGUE MOTIONS, AND HAVE THEM GO IN AND OUT OF THE JURY BOX
4 FOR MATTERS THAT COULD BE ADDRESSED PRETRIAL -- THAT COULD
5 WRAP THIS THING UP IN PROBABLY TWO DAYS, TWO AND A HALF
6 DAYS, IF WE HAD ADEQUATE TIME TO PREPARE ALL THE
7 INFORMATION NECESSARY TO DO IT.

8 THE COURT: AND, MS. KENNEDY, JUST SO I'M CLEAR,
9 COULD YOU ARTICULATE EXACTLY WHAT WAS IN POWELL'S FILE
10 THAT YOU FEEL WAS NOT DISCLOSED TO YOU?

11 MS. KENNEDY: ITEMIZE THEM AGAIN?

12 THE COURT: YES.

13 MS. KENNEDY: OKAY. ALL RIGHT. THERE IS A WITNESS
14 STATEMENT TAKEN FROM THE VICTIM, SARA ADAMS, DATED
15 FEBRUARY 7TH THAT WAS NOT IN OUR FILE.

16 THERE WERE THE THREE LETTERS -- I'LL -- I'LL CALL
17 THEM COMMENDATIONS -- FROM EDSSEL TAYLOR TO CHRISTOPHER
18 SIMMONS, WILLIE STAGGERS AND JEFFERSON WALDRUP, DATED
19 FEBRUARY THE 1ST, 2008.

20 THERE WERE -- THERE WAS A CASE OPENING REPORT
21 GENERATED BY INVESTIGATOR POWELL CONCERNING THE INCIDENT
22 ON -- AND THAT'S DATED JANUARY 18TH. AND, YOUR HONOR, I'D
23 ADVISE THE COURT THAT THAT'S THE FIRST INDICATION THAT WE
24 HAD OF WHEN, BASED ON THE LAST LINE IN THIS REPORT, SLED
25 AGENT EVANS AND CHINA ARRIVED. AND THAT GOES TO ISSUES

1 WHEN STATEMENTS WERE TAKEN AND -- AND WHERE AND UNDER WHAT
2 CIRCUMSTANCES, WHICH OBVIOUSLY TAKES SOME PREPARATION.

3 THERE IS A REPORT OF INVESTIGATIVE ACTIVITY DATED
4 JANUARY 29TH FROM -- INDICATING THAT INVESTIGATOR POWELL
5 HAD SPOKEN WITH OFFICER ADAMS, AT WHICH POINT IN TIME SHE
6 INDICATED THAT SHE HAD ALREADY GIVEN A WRITTEN STATEMENT
7 TO AGENT CHINA, IN WHICH THERE -- IN NO WAY REFERENCES OR
8 ADDRESSES THE STATEMENT THAT -- THAT SUBSEQUENTLY WAS
9 TAKEN FROM -- IT WAS ON FEBRUARY 7TH. IT DOESN'T EVEN
10 SAY THAT THEY ANTICIPATE TAKING ONE.

11 THERE IS A REPORT OF INVESTIGATIVE ACTIVITY
12 JANUARY 24TH, INDICATING THAT INMATE DAVID DARDEN HAD
13 EXPRESSED A DESIRE TO SPEAK WITH INVESTIGATOR POWELL.
14 THERE IS A SUBSEQUENT REPORTED INTERVIEW THAT WAS DONE
15 WITH DAVID DARDEN ON JANUARY 24TH.

16 AND, YOUR HONOR, IN REGARD TO THE LAST ONE, I
17 WOULD SIMPLY STATE TO USE THE DEPARTMENT OF CORRECTIONS
18 LANGUAGE AND WHAT WAS -- WHAT WAS REPORTED TO BE
19 INVESTIGATIVE REPORTS, THAT IS NOT A WITNESS STATEMENT.
20 SO -- THAT IS -- IT'S A REPORT OF AN INTERVIEW. IT IS NOT
21 A WITNESS STATEMENT. AND WE WERE ABLE TO MEET WITH MR.
22 DARDEN AT MACDOUGALL LAST WEDNESDAY, WHICH I BELIEVE IS
23 THE 21ST -- OR TUESDAY. TUESDAY, I'M SORRY, WHICH IS THE
24 20TH. AND WE DID NOT HAVE THAT IN OUR POSSESSION, AND
25 THAT WOULD HAVE SUBSTANTIALLY ALTERED THE INTERVIEW THAT

1 WE HAD -- THAT WE WERE ABLE AT THAT POINT IN TIME TO
2 CONDUCT -- TO CONDUCT THE INTERVIEW.

3 SO, YOUR HONOR, IT'S AN ON-GOING PROBLEM. I JUST
4 -- I MEAN, WE'RE NOT -- EACH OF THESE THINGS THAT -- THAT
5 I MENTIONED THAT WEREN'T PROVIDED AND OTHERS THAT, YOU
6 KNOW, MAY BE DISCOVERED, IF WE GET AMPLE TIME TO DO WHAT I
7 ASKED THE COURT TO ALLOW US TO DO, THE LACK OF THIS
8 INFORMATION SUBSTANTIALLY PREJUDICES OUR CLIENT. IT
9 SUBSTANTIALLY PREJUDICES -- YOU KNOW, WE'RE WAY BEYOND NOT
10 BEING PROVIDED A WITNESS LIST.

11 AND I -- I -- I APPRECIATE THE ASSISTANT
12 SOLICITOR SAYING -- AND, AGAIN, I'M NOT SUGGESTING THAT
13 THERE WAS ANY MISCONDUCT, BUT OBVIOUSLY WE DIDN'T RECEIVE
14 ALL THE DISCOVERY. I AM SURE SHE TURNED OVER EVERYTHING
15 THAT SHE HAD.

16 BUT THE FALL BACK POSITION IS WE SHOULD HAVE
17 KNOWN, YOU KNOW, ALL THIS BECAUSE WE HAD ALL THIS STUFF IN
18 OUR POSSESSION IN MAY OF LAST YEAR. CHRISTOPHER SIMMONS'
19 NAME WAS -- SHOULD HAVE BEEN KNOWN TO THEM IN FEBRUARY OF
20 LAST YEAR.

21 SO, BASED ON ALL THAT, YOUR HONOR, AND
22 REITERATING THE ARGUMENT MADE LAST NIGHT, WE WOULD
23 RESPECTFULLY REQUEST THAT OUR MOTION FOR CONTINUANCE BE
24 GRANTED, AND THAT THIS BE SET FOR TRIAL AT THE NEXT TERM
25 OF COURT OR THE NEXT TERM OF COURT.

1 OUT OF AN ABUNDANCE OF CAUTION, I WOULD ASK THE
2 FOLLOWING TERM OF COURT JUST SO THAT WE WON'T BE
3 SCRAMBLING TO -- TO TRY TO GET ADDITIONAL INFORMATION THAT
4 WE MAY NEED. WE CERTAINLY, AS I SAID, NEED THE
5 OPPORTUNITY TO THOROUGHLY INTERVIEW THE WARDEN AND TO
6 THOROUGHLY INTERVIEW AGENT CHINA, AND ALSO TO HAVE AN
7 OPPORTUNITY TO REVIEW HER FILE TO SEE IF THERE SOMETHING
8 -- BECAUSE I WILL ADVISE THE COURT BASED ON
9 REPRESENTATIONS LAST NIGHT, THAT I AGAIN REVIEWED AGENT
10 CHINA'S FILE, AND THERE ARE ATTACHMENTS IN THERE -- THERE
11 ARE -- SHE VERY THOROUGHLY INDEXED THE THINGS THAT ARE
12 SUPPOSED TO BE IN THAT FILE AND SOME OF THAT -- SOME OF
13 THOSE ARE MISSING TOO.

14 NOW, THEY DON'T -- IT LOOKS AT THIS JUNCTURE,
15 DON'T APPEAR TO BE SIGNIFICANT, BUT -- BUT THE ISSUE OF
16 WHAT THEY HAVE AND WHEN THEY GOT IT AND HOW IT WAS
17 PROVIDED TO US, ALL GOES TO OUR ABILITY TO FAIRLY AND
18 DUTIFULLY AND ZEALOUSLY REPRESENT OUR CLIENT.

19 **THE COURT:** MS. WILLIAMS, JUST TO ARTICULATE, DO
20 YOU HAVE A COPY OF THE FEBRUARY 7TH STATEMENT MADE BY THE
21 VICTIM?

22 **MS. WILLIAMS:** YOUR HONOR, WE DIDN'T HAVE A COPY OF
23 THAT STATEMENT, BUT I -- WE HAVE AN ISSUE WITH ALMOST ALL
24 OF THE FACTUAL RECITATION OF WHAT MS. KENNEDY SAID. IF WE
25 COULD JUST PLEASE CLARIFY THE RECORD BECAUSE -- AND IF I

1 COULD JUST HAVE WHAT SHE'S BEEN REFERRING TO, WE COULD
2 MAKE A COPY AND GIVE IT -- THANK YOU.

3 I WOULD JUST LIKE THE COURT TO SEE HOW---

4 **THE COURT:** MS. WILLIAMS, I JUST REALLY GO THROUGH
5 THE LIST AS GIVEN TO MS. KENNEDY, AND WHETHER OR NOT YOU
6 HAD IT IN YOUR FILE.

7 THE FEBRUARY 7TH STATEMENT MADE BY THE VICTIM.

8 **MS. WILLIAMS:** WELL, THE FEBRUARY 7TH STATEMENT
9 MADE BY THE VICTIM WAS SUMMARIZED IN POWELL'S REPORT, BUT
10 WE DIDN'T HAVE A COPY OF HER WITNESS STATEMENT, AND IT IS
11 A WITNESS STATEMENT. BUT EVERYTHING ELSE -- AND WE CAN GO
12 THROUGH THE LIST -- SHE HAS BEEN PROVIDED.

13 **THE COURT:** SO, THE FEBRUARY STATEMENT WAS
14 SUMMARIZED IN POWELL'S REPORT?

15 **MS. WILLIAMS:** THAT'S CORRECT, YOUR HONOR.

16 **THE COURT:** THE LETTERS GENERATED BY THE WARDEN,
17 WERE THOSE IN OFFICER -- INVESTIGATOR POWELL'S FILE OR
18 YOUR FILE?

19 **MS. WILLIAMS:** NO, YOUR HONOR, THOSE WERE NOT
20 WITHIN OUR CONTROL OR POSSESSION. THOSE WERE IN THE
21 PRIVATE FILES OF EACH INMATE. AND WE WERE NOT AWARE OF
22 THEM.

23 **THE COURT:** EXPLAIN TO ME THE CHRISTOPHER SIMMONS,
24 IS HE ON YOUR WITNESS LIST AND IS HE -- WILL HE BE
25 TESTIFYING TODAY?

1 **MS. WILLIAMS:** CHRISTOPHER SIMMONS IS ON OUR
2 WITNESS LIST. WE WILL CALL HIM TODAY UNLESS THE COURT---

3 **THE COURT:** OR WHENEVER---

4 **MS. WILLIAMS:** WE WILL CALL HIM. HE IS ONE -- HE
5 IS ONE OF THE INMATES ON THE WITNESS LIST.

6 **THE COURT:** DID YOU HAVE A COPY OF THE CASE OPENING
7 REPORT FILED JANUARY 18TH, 2008?

8 **MS. WILLIAMS:** THE CASE OPENING REPORT, ALL OF THAT
9 INFORMATION IS IN THE INFORMATION GIVEN TO MS. KENNEDY.
10 SHE HAS IT. I THINK SHE IS CONFUSED BECAUSE -- BECAUSE
11 THE PARAGRAPH STARTED---

12 **THE COURT:** LET'S NOT ASSUME WHAT MS. KENNEDY IS OR
13 ISN'T. WAS THE INFORMATION THAT'S CONTAINED IN THE CASE
14 OPENING REPORT, THAT WAS INFORMATION THAT WAS IN OFFICER
15 POWELL'S REPORT AS WELL?

16 **MS. WILLIAMS:** OUR CONTENTION IS THAT SHE HAS IT
17 AND I'M PREPARED TO SHOW IT TO THE COURT.

18 **THE COURT:** THE REPORTS FROM THE VICTIM, THE
19 JANUARY 29TH REPORT TO INVESTIGATOR POWELL?

20 **MS. WILLIAMS:** THAT IS SUMMARIZED IN HIS REPORT,
21 IT'S RIGHT HERE WORD FOR WORD IN THE REPORT THAT WAS GIVEN
22 TO DEFENSE COUNSEL. AND I'LL BE HAPPY TO MARK IT AND GIVE
23 IT TO YOU.

24 **THE COURT:** THE JANUARY 24TH INTERVIEW WITH DAVID
25 DARDEN?

1 **MS. WILLIAMS:** WORD FOR WORD -- WHAT MS. KENNEDY IS
2 REFERRING TO THAT SHE DIDN'T GET, IS IN THE REPORT THAT
3 SHE DID GET. THE PARAGRAPH JUST STARTS AT A DIFFERENT
4 POINT ON THE PAGE.

5 **THE COURT:** AND WHEN YOU ARE REFERRING TO A REPORT,
6 ARE YOU REFERRING TO INVESTIGATOR POWELL'S REPORT?

7 **MS. WILLIAMS:** YES, YOUR HONOR.

8 **THE COURT:** AND WHO IS MR. DARDEN FOR THE COURT'S
9 CLARIFICATION?

10 **MS. WILLIAMS:** HE IS THE INMATE THAT IS -- HE IS
11 ANOTHER INMATE THAT IS MENTIONED IN POWELL'S REPORT THAT
12 WAS GIVEN TO DEFENSE COUNSEL IN MAY. AND WORD FOR WORD,
13 WHAT SHE'S LOOKING AT, IS IN THE REPORT THAT WAS PROVIDED.

14 **THE COURT:** AND WILL MR. DARDEN BE TESTIFYING?

15 **MS. WILLIAMS:** YES, YOUR HONOR.

16 **THE COURT:** AND DO YOU HAVE A -- AND IS HE ONE OF
17 THE INDIVIDUALS THAT YOU HAVE A LETTER---

18 **MS. WILLIAMS:** NO. HE DID---

19 **THE COURT:** ---CONCERNING---

20 **MS. WILLIAMS:** ---NOT RECEIVE A LETTER BECAUSE HE
21 WAS NOT ONE OF THE INDIVIDUALS THAT CAME TO HER RESCUE.
22 HE JUST CAME LATER AND APPROACHED INVESTIGATOR POWELL
23 ABOUT SOME INFORMATION THAT HE HAD.

24 **THE COURT:** ANYTHING FURTHER, MS. WILLIAMS?

25 **MS. WILLIAMS:** ONLY THAT MS. KENNEDY IS CORRECT IN

1 THAT THERE WERE TWO INVESTIGATORS FOR THIS CASE. THEY
2 BOTH DID INVESTIGATIONS AND BOTH OF THEIR INVESTIGATIVE
3 FILES WERE TURNED OVER TO DEFENSE COUNSEL. THE LETTERS
4 WERE NEVER IN OUR POSSESSION. WE WERE NOT AWARE OF THE
5 LETTERS.

6 THE COURT: AND ARE YOU PLANNING ON INTRODUCING
7 EVIDENCE OF THE DEFENDANT'S LETTERS THAT YOU SUBMITTED TO
8 SLED FOR ANALYSIS?

9 MS. WILLIAMS: WE -- THAT IS ANOTHER POINT THAT I
10 WOULD LIKE TO MAKE, YOUR HONOR. WE HAVE ONE LETTER THAT
11 WE ARE PLANNING TO INTRODUCE AND THAT LETTER WAS SHARED
12 WITH MR. SHELTON. HE HAS KNOWN SINCE HE GOT THE LETTERS
13 EXACTLY WHICH LETTER WE WERE INTERESTED IN INTRODUCING.
14 IT IS A LETTER THAT APPEARS TO BE SOMETHING HE HAD ON HIS
15 PERSON AND IT STARTS WITH "PUT YOUR HANDS ON THE DESK".
16 AND I TOLD MR. SHELTON, THAT THAT IS THE LETTER THAT WE'RE
17 INTERESTED IN INTRODUCING.

18 THE COURT: AND WHEN DID YOU PROVIDE THAT LETTER TO
19 MR. SHELTON?

20 MS. WILLIAMS: ALL THE LETTERS WERE PROVIDED TO MR.
21 SHELTON ON JANUARY 5TH.

22 THE COURT: '09?

23 MS. WILLIAMS: YES, YOUR HONOR. AND I HAVE A
24 LETTER AND A MOTION THAT WE PREPARED TO MR. SHELTON,
25 TELLING HIM THAT THE LETTERS WERE AVAILABLE AND THAT---

1 **THE COURT:** ALL RIGHT. MR. SHELTON, MS. KENNEDY---

2 **MS. KENNEDY:** YOUR HONOR, IF I MAY JUST DEFER TO
3 MR. SHELTON ABOUT THE ISSUE OF THE LETTERS.

4 **THE COURT:** ALL RIGHT.

5 **MR. SHELTON:** THE ISSUE OF THE LETTERS, WE DIDN'T
6 RECEIVE THOSE UNTIL JANUARY 12TH. NOW, I KNOW THERE'S AN
7 EMAIL GOING AROUND -- SHE SAID IT WAS AVAILABLE JANUARY
8 5TH. I THEN SAID THAT I HAD APPOINTMENTS. I COULDN'T
9 MAKE IT JANUARY 5TH.

10 SO, THEN SHE CALLED ME UP EITHER LATER THAT DAY
11 OR IN THE EARLY MORNING THE NEXT DAY SAYING, WELL, WE'RE
12 MAKING COPIES FOR YOU. I DIDN'T RECEIVE THOSE UNTIL
13 JANUARY 12TH, YOUR HONOR. SO, THAT'S THE ISSUE WITH THAT.

14 AND, ALSO, I HAD NO IDEA WHICH EXACT ONE SHE WAS
15 USING AT TRIAL.

16 **THE COURT:** HOW MANY LETTERS DID YOU RECEIVE, MR.
17 SHELTON?

18 **MR. SHELTON:** UM---

19 **THE COURT:** ONE, TWO, TWENTY?

20 **MR. SHELTON:** I'LL GUESS 80 PAGES OF---

21 **THE COURT:** HANDWRITTEN LETTERS?

22 **MR. SHELTON:** THERE'S SOME LETTERS FROM HIS
23 EX-WIFE. THERE ARE LETTERS -- THERE'S MISCELLANEOUS
24 THINGS THAT HE -- THAT HE ALSO WAS WRITING WHILE -- POEMS
25 AND THAT SORT OF THING, YOUR HONOR. AND A BOOK THAT HE

1 WAS WRITING -- A 30 -- 20 PAGES OF A BOOK THAT HE WAS
2 WRITING. I -- I HAD NO IDEA WHAT EXACTLY SHE WAS GOING TO
3 USE.

4 THE COURT: OKAY. MS. KENNEDY.

5 MS. KENNEDY: YOUR HONOR, IF -- IF I COULD HAVE
6 JUST ONE SECOND, YOUR HONOR? (PAUSE.)

7 YOUR HONOR, AND JUST -- AND, AGAIN, A BRIEF
8 RESPONSE. BECAUSE IT IS -- IT IS NOT ENOUGH TO SAY THESE
9 WERE INCORPORATED IN. WE ARE NOT SUGGESTING IN THAT --
10 THAT -- THAT -- AGAIN, THAT THERE HAS BEEN MISCONDUCT.

11 I WOULD JUST REITERATE THAT -- AND PARTICULARLY
12 AS IT RELATES TO THE INCIDENT REPORT -- OR THE REPORT THAT
13 WAS PREPARED -- I GUESS THAT WOULD HAVE BEEN INVESTIGATOR
14 POWELL'S FINAL REPORT WHERE ALL OF THESE THINGS WERE
15 ALLEGEDLY INCORPORATED -- INCORPORATED BASED ON
16 INFORMATION THAT WE -- SOME OF IT WE DIDN'T GET UNTIL THIS
17 MORNING. THAT REPORT IS NOT DATED UNTIL MAY 19TH. THE
18 COMPLIMENTARY DISCOVERY WE RECEIVED CAME OVER ON MAY 12TH.
19 SO, IT IS IMPOSSIBLE FOR US TO HAVE HAD ALL THAT
20 INFORMATION AT THE POINT IN TIME BECAUSE THE DOCUMENTS
21 SUPPORT THAT, AT THE POINT IN TIME WHEN MS. WILLIAMS
22 BELIEVED THAT WE RECEIVED IT. BECAUSE WE THINK -- IT
23 COULDN'T HAVE HAPPENED.

24 I'M READING THE DISCOVERY LETTER. IT WAS
25 RECEIVED IN OUR OFFICE MAY 12TH, 2008. MR. --

1 INVESTIGATOR POWELL'S REPORT IS DATED MAY 19TH. AND WE
2 DIDN'T HAVE THE OTHER INFORMATION -- WE ONLY HAD, AS AN
3 OFFICER OF THE COURT, I WILL TELL YOU WE HAD, AT THAT
4 POINT IN TIME DATED TWO -- THE INVESTIGATIVE REPORT DATED
5 JANUARY THE 18TH. AND ONE OTHER ONE, AND THAT'S ALL WE
6 HAD, YOUR HONOR. SO, OBVIOUSLY, WE NEED TO HAVE A BETTER
7 SYSTEM OF CATALOGING OUR DISCOVERY. BUT AS TO THAT
8 PARTICULAR POINT, WHICH AGAIN, JUST REINFORCES MY FOCUS --
9 AND OUR FOCUS FOR REQUESTING A CONTINUANCE. IT -- IT
10 SIMPLY COULD NOT HAVE HAPPENED.

11 MS. WILLIAMS: YOUR HONOR, COULD I----

12 THE COURT: NO, MA'AM. WITH RESPECT TO THE
13 FEBRUARY 7TH STATEMENT MADE BY THE VICTIM, THE STATEMENT
14 ITSELF WILL NOT BE ADMISSIBLE. THE COURT DOES FIND THAT
15 BASED UPON THE STATEMENTS MADE BY BOTH PARTIES, THAT IT
16 WAS SUMMARIZED IN INVESTIGATOR POWELL'S REPORT, BUT I WILL
17 NOT ALLOW THE STATEMENT TO BE INTRODUCED INTO EVIDENCE.

18 THE THREE LETTERS GENERATED BY THE WARDEN THAT
19 CONCERNED -- CONCERNING THE INMATES THAT ARE SCHEDULED TO
20 TESTIFY IN THIS MATTER, THE COURT FINDS THAT IT WAS NOT IN
21 THE POSSESSION OF THE STATE. IT WAS IN A PRIVATE FILE OF
22 THE INMATES CONTAINING PERSONAL INFORMATION. THE STATE
23 APPARENTLY -- OR HAS NOT INDICATED TO THE COURT THAT IT
24 KNEW. THE LETTERS FIRST CAME TO THE COURT'S ATTENTION
25 THROUGH THE INFORMATION PROVIDED BY THE STATE. I AM

1 STRIKING THE TESTIMONY. CHRISTOPHER SIMMONS WILL NOT BE
2 ALLOWED TO TESTIFIED.

3 THE CASE OPENING REPORT, IT IS THE SAME RULING
4 WITH REGARDS TO THE FEBRUARY 7TH STATEMENT MADE BY THE
5 VICTIM. THE INFORMATION CONTAINED IN THE REPORT -- IT HAS
6 BEEN INDICATED BY BOTH PARTIES THAT THE INFORMATION WAS
7 CONTAINED IN THE REPORT BY INVESTIGATOR POWELL, BUT I WILL
8 NOT ALLOW THE INDIVIDUAL REPORT TO BE ADMITTED INTO
9 EVIDENCE. THE REPORTS -- STATEMENT TO OFFICER POWELL --
10 INVESTIGATOR POWELL JANUARY 29TH BY THE VICTIM, MS. ADAMS,
11 WAS ALSO SUMMARIZED, BUT THE REPORT WILL NOT BE
12 ADMISSIBLE.

13 THE JANUARY 24TH INTERVIEW OF 2008 IS CONTAINED
14 IN THE SUMMARY OF INVESTIGATOR POWELL'S REPORT, BUT THE
15 INDIVIDUAL INTERVIEW WILL NOT BE ADMISSIBLE. THE COURT
16 TOOK INTO CONSIDERATION THE FACT THAT THERE WERE TWO
17 INVESTIGATORS. THE SUMMARIES INDICATED THE FACT THAT
18 NEITHER PARTY HAS INDICATED OR ALLEGED THAT THERE WAS ANY
19 IMPROPER FAILURE TO DISCLOSE. MOST OF THE EVIDENCE WAS
20 NOT WITHIN THE POSSESSION OF THE STATE. THE CONTINUING
21 DUTY TO DISCLOSE UNDER RULE 5 HAS BEEN COMPLIED WITH.
22 MOST SIGNIFICANT IS THE STATEMENT THAT THE DEFENDANT HAS
23 MET WITH THE WARDEN LAST WEDNESDAY, AND THAT SHE
24 RE-INTERVIEWED CHINA'S REPORT LAST NIGHT INDICATING THAT
25 THERE ARE DOCUMENTS MISSING.

1 WE COULD EXERCISE THIS AD NAUSEAM. BASED UPON
2 ALL OF THOSE FACTORS, THE COURT DOES NOT FEEL THAT THE
3 FAILURE TO TURN OVER THOSE DOCUMENTS, AS REITERATED ONE
4 THROUGH FIVE, AT THIS TIME SUBSTANTIALLY PREJUDICES --
5 SUBSTANTIALLY PREJUDICES THE DEFENDANT.

6 ACCORDINGLY, THE COURT WILL ALLOW THE -- WE WILL
7 HAVE OUR JACKSON VS. DENNO HEARING THIS AFTERNOON -- WELL,
8 ACTUALLY WE CAN HAVE IT RIGHT NOW WHEN THE COURT -- THE
9 JURY IS TO RETURN AT 2:00. I AM GOING TO EXCUSE THEM. WE
10 WILL BEGIN PROMPTLY AT 9:00 A.M. THE INMATES ARE TO
11 REMAIN IN DETENTION AT HILL-FINKLEY DETENTION CENTER TO
12 ALLOW FOR THE DEFENSE TO MEET WITH THEM AND TO INQUIRE AS
13 TO THE LETTERS.

14 MS. KENNEDY: YOUR HONOR, IF I MAY -- I THINK THERE
15 WAS A -- YOU INDICATED THAT THERE HAD BEEN SOME
16 CONVERSATION THAT WE HAD BEEN ABLE TO HAVE WITH THE WARDEN
17 AS FAR AS YOUR RULING, AND I JUST -- BECAUSE WE OBVIOUSLY
18 HAD NOT BEEN ABLE TO DO THAT.

19 THE COURT: I'M SORRY. I HAD THAT YOU HAD MET WITH
20 THE WARDEN LAST WEDNESDAY.

21 MS. KENNEDY: NO. NO, YOUR HONOR.

22 THE COURT: WHO DID YOU MEET WITH LAST WEDNESDAY?

23 MS. KENNEDY: WE MET WITH -- WE MET WITH TWO OF THE
24 INMATES.

25 THE COURT: OKAY. SO YOU DID---

1 **MS. KENNEDY:** WE NEED AN OPPORTUNITY TO MEET WITH
2 THE WARDEN AND -- AND JUST FOR PURPOSES OF THE RECORD,
3 YOUR HONOR, I -- I UNDERSTAND YOUR RULING. WE DID NOT ASK
4 THAT A LOT OF THIS INFORMATION BE EXCLUDED. I -- I, AT
5 THIS POINT IN TIME, WOULD RESPECTFULLY REQUEST THAT --
6 THAT YOU HOLD SOME OF THAT IN ABEYANCE GIVEN THE FACT THAT
7 WE ARE NOT GOING TO BE ALLOWED A CONTINUANCE. YOUR
8 RULINGS COULD, AGAIN, SUBSTANTIALLY PREJUDICE OUR ABILITY
9 TO PUT UP A CASE. BECAUSE YOU'RE NOW SAYING, IF I
10 UNDERSTAND YOU CORRECTLY, THAT WE AREN'T ALLOWED TO USE
11 THAT INFORMATION IF WE NEED TO.

12 **THE COURT:** I WILL AMEND MY RULING. THE STATE
13 CANNOT INTRODUCE THOSE, BUT IF THOSE -- IF YOU FEEL, MS.
14 KENNEDY, THAT YOU'VE NOW HAVE HAD SUBSTANTIAL TIME TO
15 REVIEW THOSE DOCUMENTS, AND THAT THEY ARE NOW IN YOUR
16 POSSESSION, THEN I WILL ALLOW YOU TO CROSS EXAMINE ON
17 THOSE -- WITH THOSE DOCUMENTS, OR TO USE THEM HOWEVER YOU
18 SEE FIT IN YOUR DEFENSE.

19 **MS. KENNEDY:** AND, YOUR HONOR, THERE IS AN
20 ADDITIONAL -- THERE IS AN ADDITIONAL ISSUE IN TERMS OF OUR
21 ABILITY, AGAIN, TO PRESENT A CASE. THERE ARE OTHER
22 INMATES WHOSE NAMES WERE MENTIONED IN THE REPORT WHO
23 AREN'T ON THE WITNESS LIST AND WHO -- WHOSE LETTERS OF
24 COMMENDATION WE HAVEN'T RECEIVED. SO, WE -- ALL OF WHOM
25 -- OR EACH OF WHOM WERE PURPORTEDLY WILLING, ABLE, DID

1 OFFER FAVORABLE INFORMATION WITH REGARD TO THEIR
2 ASSISTANCE TO INVESTIGATOR ADAMS. SO WHAT WE ALSO NEED IS
3 THE ABILITY TO INTERVIEW THOSE PEOPLE AND FIND OUT WHY --
4 WHETHER OR NOT THEY GOT LETTERS AND WHAT INFORMATION THAT
5 THEY WERE ABLE TO PROVIDE, IN ANTICIPATION OF PUTTING UP A
6 DEFENSE.

7 MS. WILLIAMS: YOUR HONOR---

8 MS. KENNEDY: AND JUST FOR PURPOSES OF THE RECORD,
9 YOUR HONOR, AND I UNDERSTAND -- JUST -- JUST TO MAKE IT
10 VERY CLEAR, WE -- IT IS OUR POSITION, AND WE DO NOT AGREE
11 THAT ALL OF THE INFORMATION CONTAINED IN THIS SUMMARY IS
12 -- IS -- IS ALL THE INFORMATION THAT WAS IN THESE PRIOR
13 REPORTS AND ALL THE INFORMATION THAT THE -- THAT THE
14 INVESTIGATOR AND SLED AND THE SOLICITOR'S OFFICE WAS ABLE
15 TO OBTAIN.

16 THE COURT: ALL RIGHT. THE RECORD WILL SO REFLECT,
17 MS. KENNEDY. I AM DENYING YOUR REQUEST. YOU ARE ABLE TO
18 -- THE COURT IS NOT GOING TO ORDER FURTHER SUBPOENA OF THE
19 RECORDS. I HAVE ORDERED AND REQUESTED FOR THE INMATES
20 THAT ARE ON THE WITNESS LIST -- I DON'T -- THE COURT IS
21 NOT AN INVESTIGATIVE BRANCH AT THIS POINT.

22 MS. KENNEDY: NO, YOUR HONOR. I'M NOT ASKING THAT.
23 WHAT I'M ASKING IS THE OPPORTUNITY TO INTERVIEW RICHARD
24 SIMMONS AND THE OTHER TWO PEOPLE -- I MEAN, NOT RICHARD
25 SIMMONS -- RICHARD SINGLETON AND THE OTHER NAME THAT WAS

1 MENTIONED -- RICHARD KELLEY. JUST -- JUST SO WE KNOW
2 WHERE WE ARE IN TERMS OF WHEN THIS INFORMATION CAME TO
3 LIGHT WHEN IT WAS GIVEN BECAUSE, I MEAN, YOU KNOW, IN --
4 IN ARGUMENT AFTER ARGUMENT BEFORE THIS COURT ON THIS
5 ISSUE, THE SOLICITOR CONTINUES TO ASSERT THAT WE SHOULD
6 HAVE HAD ALL THIS INFORMATION AND THAT IT WAS AVAILABLE TO
7 US.

8 AND -- AND PARTICULARLY WITH REGARD TO
9 CHRISTOPHER SIMMONS, YOU KNOW THAT -- THAT INFORMATION --
10 HAD DISCOVERY BEEN COMPLIED WITH, BECAUSE WE ASKED FOR
11 INMATE RECORDS. AND IT'S NOT ENOUGH TO TAKE THE POSITION
12 THAT THEY DON'T HAVE THEM IN THEIR POSSESSION. THEY HAVE
13 THAT UNDER CONTROL AS EVIDENCED IN -- UNDER THEIR CONTROL
14 AS EVIDENCED BY THE FACT THAT THEY COULD GET THE
15 INVESTIGATOR HERE THIS MORNING IN COMPLIANCE WITH THE
16 COURT'S ORDER.

17 SO, JUST SO WE'RE CLEAR -- AND WHAT I WOULD ALSO
18 LIKE TO DO, YOUR HONOR, AT THE END IS PROVIDE COPIES OF --
19 JUST AGAIN, FOR -- FOR ANY APPELLATE REVIEW, OF ALL THE
20 INFORMATION WE RECEIVED AND WHEN IT WAS RECEIVED. IT'S
21 JUST---

22 **THE COURT:** IF YOU WILL MAKE A COPY OF THE
23 INFORMATION THAT YOU'VE RECEIVED TODAY, WE WILL MARK THAT
24 AS -- I THINK WE'RE UP TO COURT'S 2?

25 **MS. KENNEDY:** YOUR HONOR, I -- I WOULD RESPECTFULLY

1 REQUEST THAT YOU GIVE ME SOME OPPORTUNITY -- WE OBVIOUSLY
2 HAVE -- HAVE TO GET READY FOR TRIAL. WE'VE GOT ONE LAWYER
3 OUT WITH PNEUMONIA. WE'VE HAVE TWO SUPPORT STAFF PEOPLE,
4 SO THERE'S NO WAY THAT THAT CAN BE DONE TODAY, MAYBE
5 TONIGHT, MAYBE TOMORROW.

6 **THE COURT:** MS. WILLIAMS, WILL YOU ASSIST MS.
7 KENNEDY IN MAKING COPIES?

8 **MS. WILLIAMS:** YES, YOUR HONOR. AND WE WILL MAKE
9 COPIES OF THE ITEMS THAT SHE -- THAT THE DEFENSE IS
10 CLAIMING THEY DIDN'T HAVE, ALONG WITH A COPY OF WHAT WE
11 SAY IS ENCOMPASSING.

12 ALSO, I JUST WANT TO INFORM THE COURT THAT WE
13 FILED JUST -- WE'RE NOT ARGUING IT -- A MEMORANDUM IN
14 SUPPORT OF OUR RESPONSE YESTERDAY, JUST GOING OVER ALL THE
15 DATES DISCOVERY WAS GIVEN AND THE LETTERS WHERE THE PUBLIC
16 DEFENDER'S OFFICE SIGNED FOR IT, JUST SO THE RECORD IS
17 CLEAR ON---

18 **THE COURT:** ALL RIGHT. THANK YOU, MS. WILLIAMS.
19 ARE WE PREPARED TO GO FORWARD ON THE JACKSON VS. DENNO,
20 ARE YOU REQUESTING ONE, MS. KENNEDY?

21 **MS. KENNEDY:** YOUR HONOR, JUST SO -- I -- WHAT I'M
22 ASKING FOR IS AN OPPORTUNITY TO HAVE OUR TRIAL NOTEBOOK
23 COPIED BECAUSE -- NOT WORK PRODUCT, BUT THE INFORMATION
24 THAT WE RECEIVED FROM THE SOLICITOR.

25 AND PROCEDURALLY -- I'M NOT ASKING FOR THE

1 OPPORTUNITY TO SUPPLEMENT THE RECORD, BECAUSE PROCEDURALLY
2 THAT'S WHAT HAS TO BE DONE. A MEMORANDUM OF LAW WAS FILED
3 YESTERDAY IN RESPONSE TO OUR MEMO. I REALIZE EVERYBODY
4 WAS UNDER TIME RESTRAINTS, BUT IT IS IMPROPER PROCEDURE TO
5 SUPPLEMENT A MEMORANDUM OF LAW WHEN A RESPONSE HAS BEEN
6 FILED.

7 SO, I HAVE NO OBJECTION TO THE RECORD BEING
8 SUPPLEMENTED, BUT I DO HAVE AN OBJECTION TO A MEMORANDUM
9 BEING FILED AT THIS POINT, BECAUSE OBVIOUSLY WE HAVE NO
10 OPPORTUNITY TO RESPOND.

11 **THE COURT:** WELL, MS. WILLIAMS HAS ALREADY FILED
12 IT, SO IT'S ALREADY IN THE COURT'S FILE. I HAVE NOT
13 REVIEWED IT. I HAVE NOT RECEIVED A COPY OF IT.

14 **MS. WILLIAMS:** AND I HAVE COPIES FOR---

15 **MS. KENNEDY:** WELL, YOUR HONOR, WE -- WE DON'T HAVE
16 THAT. AND THAT'S -- THAT'S -- WHAT I JUST WANT TO MAKE
17 AGAIN CLEAR FOR THE RECORD, THAT IS NOT PROPER PROCEDURE.
18 YOU -- WE CAN ASK FOR PERMISSION TO SUPPLEMENT THE RECORD.
19 I JUST ASKED YOU FOR PERMISSION TO SUPPLEMENT THE RECORD.
20 SHE CAN DO THE SAME THING. BUT A MEMORANDUM OF LAW, I
21 HAVE HAD NO OPPORTUNITY TO RESPOND TO, DO RESEARCH IN VIEW
22 OF THE COURT'S RULING -- IS PROPER. AND I WOULD JUST
23 REQUEST THAT THAT NOT BE ALLOWED. IT CAN BE STRICKEN FROM
24 THE RECORD, YOUR HONOR.

25 **THE COURT:** MS. WILLIAMS, I HAVE NOT HAD TIME TO

1 REVIEW YOUR MEMORANDUM OF LAW. MS. KENNEDY IS CORRECT. I
2 AM GOING TO STRIKE YOUR MEMORANDUM OF LAW---

3 MS. WILLIAMS: IT'S NOT A MEMORANDUM OF LAW
4 THOUGH---

5 THE COURT: MS. WILLIAMS, WE ARE GETTING FAR AFIELD
6 OF THE PURPOSE OF WHY WE ARE HERE. I HAVE MADE MY RULINGS
7 AS TO THE TWO MOTIONS, THE MOTION TO COMPEL AND THE MOTION
8 FOR CONTINUANCE. I HAVE HEARD ARGUMENTS ON THREE
9 OCCASIONS NOW CONCERNING BOTH OF THOSE MATTERS.

10 ARE YOU REQUESTING A JACKSON VS. DENNO?

11 MS. KENNEDY: YOUR HONOR, LET ME -- MAY I HAVE AN
12 OPPORTUNITY TO CONFER WITH COUNSEL?

13 THE COURT: WE'LL BE AT EASE.

14 (PAUSE)

15 THE COURT: MR. ALFARO, ARE YOU READY TO PROCEED?

16 MR. ALFARO: THE STATE IS READY.

17 THE COURT: MR. SHELTON?

18 MR. SHELTON: I'M PREPARED, YOUR HONOR.

19 THE COURT: ALL RIGHT. MR. ALFARO, CALL YOUR
20 WITNESS.

21 MR. ALFARO: YOUR HONOR, THE STATE CALLS MERV
22 POWELL.

23 (WITNESS FORWARD.)

24 THE COURT: PLEASE SWEAR IN THE WITNESS.

25 CLARKE MERVIN POWELL, HAVING

1 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: WOULD YOU HAVE A SEAT AND STATE YOUR
3 NAME FOR US AND SPELL YOUR LAST NAME.

4 THE WITNESS: THE NAME IS CLARKE MERVIN, P-O-W---

5 THE CLERK: SPELL IT.

6 THE WITNESS: CLARKE, C-L-A-R-K-E, MERVIN,
7 P-O-W-E-L-L. MERVIN. M-E-R-V-I-N.

8 THE COURT: MR. ALFARO.

9 MR. ALFARO: THANK YOU, YOUR HONOR.

10 (WHEREUPON, THE FOLLOWING TESTIMONY WAS TAKEN
11 OUTSIDE THE JURY'S PRESENCE.)

12 DIRECT EXAMINATION BY MR. ALFARO:

13 Q MR. POWELL, COULD YOU TELL THE COURT WHERE YOU
14 CURRENTLY WORK?

15 A I'M PRESENTLY EMPLOYED AT THE SOUTH CAROLINA
16 DEPARTMENT OF CORRECTION, DIVISION OF INVESTIGATION.

17 Q AND HOW LONG HAVE YOU BEEN WITH THE DEPARTMENT
18 OF CORRECTIONS?

19 A FOURTEEN YEARS.

20 Q AND WHAT IS YOUR CURRENT TITLE?

21 A I'M THE CRIMINAL INVESTIGATOR, SENIOR AGENT FOR
22 THIS REGION.

23 Q AND HOW MANY PRISONS DO YOU CONDUCT
24 INVESTIGATIONS FOR?

25 A SEVEN.

1 Q AND IS ONE OF THOSE PRISONS MACDOUGALL
2 CORRECTIONS FACILITY?

3 A YES, IT IS.

4 Q AND WHERE IS YOUR OFFICE LOCATED?

5 A MY OFFICE IS LOCATED AT MACDOUGALL CORRECTIONAL
6 INSTITUTION.

7 Q OKAY. AND WHERE IS MACDOUGALL LOCATED?

8 A IT'S LOCATED IN BERKELEY COUNTY, RIGHT OFF OF
9 HIGHWAY 27.

10 Q AND COULD YOU BRIEFLY DESCRIBE FOR THE COURT
11 WHAT YOUR DUTIES ARE AS A CRIMINAL INVESTIGATOR FOR THE
12 DEPARTMENT OF CORRECTIONS?

13 A MY DUTY AS A CRIMINAL INVESTIGATOR IS THAT I'M
14 ASSIGNED TO ANY CRIMINAL CASE THAT OCCURS WITHIN THE
15 CONFINEMENT OF THE INSTITUTION, THAT INVOLVE EITHER
16 INMATES, STAFF, VENDORS, OR ANY VISITORS, AS WELL AS ANY
17 ADMINISTRATIVE INVESTIGATION WHERE THERE MAY BE A POLICY
18 VIOLATION THAT MAY INVOLVE STAFF.

19 Q AND PRIOR TO YOUR EMPLOYMENT WITH THE DEPARTMENT
20 OF CORRECTIONS, DID YOU HAVE ANY PRIOR LAW ENFORCEMENT
21 EXPERIENCE?

22 A YES, I DID.

23 Q AND COULD YOU DESCRIBE THAT EXPERIENCE PLEASE?

24 A I SPENT 20 YEARS WITH THE CITY OF NORTH
25 CHARLESTON POLICE DEPARTMENT. I RETIRED IN JULY OF 1993

1 AS A LIEUTENANT.

2 Q OKAY. AND IN YOUR CURRENT CAPACITY WITH THE
3 DEPARTMENT OF CORRECTIONS, DID YOU HAVE THE OPPORTUNITY TO
4 INVESTIGATE AN ALLEGED SEXUAL ASSAULT THAT TOOK PLACE ON
5 JANUARY 18, 2008 AT MACDOUGALL?

6 A YES, I DID.

7 Q AND IN THE COURSE OF THAT INVESTIGATION, DID YOU
8 COME IN CONTACT WITH THE DEFENDANT IN THIS CASE, GEORGE
9 SALISBURY?

10 A YES, I DID.

11 Q AND AS PART OF YOUR DUTIES IN CONDUCTING AN
12 INVESTIGATION, DO YOU HAVE THE OPPORTUNITY TO INTERVIEW
13 INMATES?

14 A YES, I DO.

15 Q OKAY. AND DID YOU HAVE THE OPPORTUNITY TO
16 INTERVIEW MR. SALISBURY REGARDING THIS CASE?

17 A YES, I DID.

18 Q AND DO YOU RECALL WHEN THAT INTERVIEW TOOK
19 PLACE?

20 A IT TOOK PLACE JANUARY 18, 2008 AT MACDOUGALL
21 CORRECTIONAL INSTITUTION IN THE INVESTIGATOR'S OFFICE.

22 Q AND COULD YOU DESCRIBE THAT OFFICE FOR THE
23 COURT?

24 A IT'S A SMALL OFFICE LOCATED INSIDE THE
25 INSTITUTION, LOCATED IN THE ADMINISTRATIVE BUILDING OF THE

INVESTIGATOR POWELL -- DIRECT BY ALFARO

135

1 INSTITUTION.

2 Q AND DO YOU RECALL APPROXIMATELY WHAT TIME THAT
3 INTERVIEW TOOK PLACE?

4 A ABOUT 2:30 IN THE MORNING OF THE 18TH OF
5 JANUARY.

6 Q AND BASED ON YOUR RECOLLECTION, HOW LONG AFTER
7 THE ALLEGED ASSAULT DID THAT INTERVIEW TAKE PLACE?

8 A APPROXIMATELY AN HOUR FORTY-FIVE MINUTES, MAYBE
9 TWO HOURS AT THE MOST.

10 Q AND COULD YOU DESCRIBE THE DEFENDANT'S CONDITION
11 AT THE TIME YOU MET WITH HIM?

12 A HE WAS VERY APOLOGETIC, VERY CALM INDIVIDUAL.
13 HE---

14 Q COULD YOU DESCRIBE HIS PHYSICAL CONDITION?

15 A OH, HE HAD SOME LACERATIONS TO HIS BODY. HE HAD
16 ON A T-SHIRT THAT HAD BLOOD ON IT. IT APPEARED THAT HE
17 WAS INVOLVED IN SOME KIND OF INCIDENT. HE HAD A
18 LACERATION ABOVE THE EYE.

19 Q AND ARE YOU AWARE IF HE RECEIVED ANY MEDICAL
20 ATTENTION PRIOR TO MEETING WITH YOU?

21 A YES.

22 Q DO YOU KNOW THE EXTENT OF THAT MEDICAL
23 TREATMENT?

24 A HE WAS ALLOWED THE OPPORTUNITY TO WASH HIMSELF
25 UP A LITTLE. AND THERE WAS A BANDAGE APPLIED TO HIS --

1 OVER HIS EYE. I THINK IT WAS HIS LEFT EYE.

2 Q AND DURING THE COURSE OF THAT CONVERSATION WITH
3 HIM -- OR BEFORE YOUR CONVERSATION WITH HIM, DID YOU HAVE
4 THE -- DID YOU PROVIDE HIM WITH HIS MIRANDA RIGHTS?

5 A YES, I DID.

6 Q AND COULD YOU DESCRIBE FOR THE COURT HOW YOU
7 WENT ABOUT DOING THAT?

8 A WELL, WE HAVE A FORM THAT'S PRINTED OUT BY THE
9 DIVISION OF INVESTIGATION, WHICH IS THE MIRANDA RIGHTS
10 FORM THAT I READ TO HIM.

11 Q OKAY. IS THAT THE ORIGINAL FORM THAT YOU HAVE
12 IN YOUR POSSESSION?

13 A YES, IT IS.

14 MR. ALFARO: YOUR HONOR, AT THIS TIME, WE WOULD
15 LIKE TO HAVE THIS MARKED AS COURT'S EXHIBIT 1 FOR THE
16 PURPOSES OF THE DENNO HEARING.

17 THE COURT: WE CAN MARK IT ONE FOR THIS HEARING.

18 (COURT'S EXHIBIT NO. 1 MARKED FOR
19 IDENTIFICATION.)

20 BY MR. ALFARO:

21 Q MR. POWELL, I'M GOING TO GIVE YOU BACK WHAT HAS
22 BEEN MARKED AS COURT'S EXHIBIT 1 FOR THE PURPOSES OF THIS
23 HEARING AND ASK YOU A FEW QUESTIONS ABOUT THAT. AND I
24 BELIEVE YOU JUST TESTIFIED THAT YOU -- THAT'S THE FORM
25 THAT YOU USE BEFORE -- TO PROVIDE SOMEONE WITH THEIR

INVESTIGATOR POWELL -- DIRECT BY ALFARO

137

1 RIGHTS PRIOR TO CONDUCTING AN INTERVIEW?

2 A THAT'S CORRECT.

3 Q AND WAS THIS FORM USED WITH THE DEFENDANT ON THE
4 18TH WHEN YOU CONDUCTED THE INTERVIEW?

5 A YES, IT IS.

6 Q AND COULD YOU DESCRIBE FOR THE COURT THE PROCESS
7 THAT YOU USED TO PROVIDE THE DEFENDANT WITH HIS MIRANDA
8 RIGHTS?

9 A YES. IT'S MY PRACTICE THAT I ALWAYS ADVISE THE
10 INMATES THAT'S INVOLVED IN ANY ACTIVITY THAT WILL REQUIRE
11 US TO ADVISE HIM OF HIS RIGHTS BEFORE I TALK WITH HIM. HE
12 ADVISED ME VERBALLY THAT HE UNDERSTANDS. AND THEN I TOLD
13 HIM THAT I WOULD READ EACH OF HIS RIGHTS TO HIM. AND AS I
14 READ IT TO HIM, I LIKE FOR HIM TO ACKNOWLEDGE WHETHER HE
15 UNDERSTANDS OR HE DON'T UNDERSTAND AND HE DID THAT.

16 Q AND COULD YOU DESCRIBE FOR THE COURT THE RIGHTS
17 THAT WERE PROVIDED TO HIM THAT EVENING?

18 A YES. I READ IT TO HIM IN THIS MANNER. "THAT
19 YOU HAVE THE RIGHT TO REMAIN SILENT." AND AS I READ THAT
20 TO HIM, HE ACKNOWLEDGED, "I UNDERSTAND. "ANYTHING YOU SAY
21 CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW."
22 AGAIN, I ASKED IF HE UNDERSTANDS, "YES, I UNDERSTAND".

23 "YOU HAVE THE RIGHT TO TALK WITH AN ATTORNEY FOR
24 ADVICE BEFORE YOU ARE ASKED ANY QUESTION AND TO HAVE AN
25 ATTORNEY PRESENT DURING QUESTIONING". AGAIN, HE ADVISED

1 HE UNDERSTANDS.

2 "IF YOU HAVE NO MONEY FOR AN ATTORNEY'S FEE, THE
3 COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT COSTS IF
4 YOU WISH." AGAIN, HE VERBALIZED HE UNDERSTOOD THAT.

5 "IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
6 LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP
7 ANSWERING QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT
8 TO STOP ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK TO
9 AN ATTORNEY." AGAIN, HE ADVISED -- HE VERBALIZED THAT HE
10 UNDERSTOOD.

11 "I HAVE READ THIS STATEMENT OF YOUR RIGHTS OR HAD
12 IT READ TO YOU AND UNDERSTAND WHAT YOUR RIGHTS ARE."
13 AGAIN, HE VERBALIZED HE UNDERSTOOD.

14 I THEN STOP, GIVE HIM THE SHEET, ASK HIM TO READ
15 IT TO HIMSELF. AND AS HE READ THEM, PLACE HIS INITIAL BY
16 EACH ONE OF THESE RIGHTS, NOT TO GO BELOW THIS SIGNATURE
17 LINE.

18 Q AND DID HE INITIAL BESIDE EACH OF THOSE RIGHTS?

19 A YES, HE DID. HE READ EACH ONE. HE INITIALED IT
20 WITH THE INITIAL G PERIOD S PERIOD. AND THEN HE SIGNED IT
21 WITH THE SIGNATURE GEORGE SALISBURY AS WELL AS PRINT IT
22 OUT AND PLACED HIS INMATE NUMBER ALONG HIS NAME ON THE
23 18TH OF JANUARY.

24 Q AND ARE THOSE INITIALS BESIDE THOSE RIGHTS, WERE
25 EACH OF THOSE WRITTEN BY THE DEFENDANT?

INVESTIGATOR POWELL -- DIRECT BY ALFARO

139

1 A YES.

2 Q AND THE SIGNATURE BELOW THOSE RIGHTS, WAS THAT
3 -- IS THAT THE DEFENDANT'S SIGNATURE?

4 A YES. HE SIGNED IT IN MY PRESENCE.

5 Q AND BASED ON YOUR EXPLANATION OF THE RIGHTS AND
6 HIS RESPONSES TO YOU, WAS IT YOUR BELIEF THAT HE
7 UNDERSTOOD THE RIGHTS -- OR UNDERSTOOD THE RIGHTS AS YOU
8 HAD EXPLAINED THEM TO HIM?

9 A YES.

10 Q AND DID HE VOLUNTARILY AGREE TO INITIAL EACH OF
11 THOSE RIGHTS AND SIGN THAT STATEMENT?

12 A YES, HE DID.

13 Q AND BELOW THAT ON THAT FORM, THERE'S A SECTION
14 MARKED WAIVER OF RIGHTS, COULD YOU EXPLAIN TO THE COURT
15 WHAT THAT IS?

16 A YES. AFTER I HAD INMATE SALISBURY TO SIGN AND
17 HE VERBALIZED THAT HE UNDERSTOOD HIS RIGHTS, I TOLD HIM
18 THERE IS A SECOND PART THAT I NEED TO READ TO HIM BEFORE I
19 GO ANY FURTHER, AND THAT CALLS TO WAIVER HIS RIGHTS. AND
20 I READ "I AM WILLING TO MAKE A STATEMENT AND ANSWER
21 QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS TIME. I
22 UNDERSTAND AND KNOW WHAT I AM DOING. NO PROMISE OR
23 THREATS HAVE BEEN MADE TO ME AND NO PRESSURE OR COERCION
24 OF ANY KIND HAS BEEN USED AGAINST ME." I READ THAT TO
25 HIM. HE STATED THAT HE UNDERSTOOD. DURING THE PROCESS,

1 HE WAS SAYING TO ME, YOU KNOW, I JUST WANT TO APOLOGIZE.
2 I JUST WANT TO APOLOGIZE. I SAID, PLEASE, DON'T SAY
3 ANYTHING UNTIL I HAVE YOU READ THIS. AGAIN, I PASSED IT
4 ON TO HIM. I HAVE HIM READ IT. HE STATED HE UNDERSTOOD
5 IT. HE PUT HIS INITIALS THERE. AND, AGAIN, HE SIGNED IT
6 AND HE DATED IT, JANUARY 18TH -- '07 HE PUT ON HERE -- AND
7 THEN HE PRINTED HIS NAME. AND THEN HE PUT HIS INMATE
8 NUMBER BESIDE HIS NAME.

9 Q THE DATES ON -- NEXT TO HIS SIGNATURE, BELOW THE
10 RIGHTS AND HIS SIGNATURE BELOW THE WAIVER OF RIGHTS, THOSE
11 APPEAR TO BE DIFFERENT. WHICH ONE IS THE CORRECT DATE?

12 A THE 18TH OF JANUARY, 2008 IS THE CORRECT DATE.

13 Q SO, DID HE SIGN -- WAS BOTH SECTIONS OF THE FORM
14 EXPLAINED TO HIM ON -- AT THE SAME TIME?

15 A YES, IT WAS.

16 Q AND THEY SIGNED SUBSEQUENTLY AT THE SAME TIME AS
17 WELL?

18 A YES.

19 Q AND THERE'S -- THERE APPEARS TO BE ANOTHER
20 SIGNATURE PRESENT ON THAT FORM, WHOSE SIGNATURE IS THAT?

21 A IT'S MY SIGNATURE, WITNESSING ON THE 18TH OF
22 JANUARY 2008 AT 02:20 A.M.

23 Q MR. POWELL, AFTER PROVIDING HIM WITH THOSE
24 RIGHTS AND OBTAINING THOSE SIGNATURES, DID HE AGREE TO
25 SPEAK WITH YOU?

1 A HE AGREED TO SPEAK WITH ME, YES.

2 Q AND YOU -- YOU TESTIFIED THAT HE HAD HAD THE
3 OPPORTUNITY TO CLEAN HIMSELF UP AND HAD A BANDAGE OVER HIS
4 EYE, I BELIEVE YOU SAID?

5 A YES.

6 Q DID HE REQUEST ANY FURTHER MEDICAL TREATMENT
7 DURING THE COURSE OF YOUR CONVERSATION WITH HIM?

8 A NOT AT ALL, SIR.

9 Q DID HE APPEAR TO BE COHERENT AND IN CONTROL OF
10 HIS FACULTIES?

11 A VERY MUCH SO.

12 Q DID HE APPEAR TO UNDERSTAND WHAT YOU WERE
13 EXPLAINING TO HIM?

14 A YES, HE DID.

15 Q WAS ANY PHYSICAL FORCE USED BY YOU IN ORDER TO
16 COMPEL HIM TO GIVE YOU A STATEMENT?

17 A NONE AT ALL, SIR.

18 Q AND PROMISES MADE?

19 A NO PROMISES.

20 Q AND DID MR. SALISBURY GIVE YOU A WRITTEN
21 STATEMENT OR WAS IT A VERBAL STATEMENT?

22 A IT WAS A VERBAL STATEMENT.

23 Q AND COULD YOU TELL THE COURT WHAT THE CONTENTS
24 OF HIS VERBAL STATEMENTS WERE TO YOU AFTER HE WAS
25 MIRANDISED?

1 A BRIEFLY HIS VERBAL STATEMENT WAS -- HE WAS BEING
2 VERY APOLOGETIC, VERY APOLOGETIC FOR WHAT HAPPENED. THAT
3 THE LIEUTENANT WOULDN'T ALLOW HIM TO SEE OFFICER ADAMS SO
4 THAT HE COULD APOLOGIZE. HE WAS REFLECTING THAT HE SAW
5 HIS WIFE -- HIS EX-WIFE IN OFFICER ADAMS AND THAT WAS THE
6 REASON FOR THE WAY HE ACTED.

7 Q AT ANY POINT IN TIME DID HE ASK FOR AN ATTORNEY?

8 A AT NO POINT IN TIME DID HE ASK FOR AN ATTORNEY.

9 Q DID YOU QUESTION HIM AT ALL ABOUT ANY WEAPONS
10 THAT MAY HAVE BEEN USED DURING THE ATTACK?

11 A NO. I DIDN'T ASK HIM.

12 Q DID HE MAKE ANY COMMENTS TO YOU ABOUT ANY
13 WEAPONS, ANY SHANKS?

14 A HE MADE THE COMMENT THAT HE HAD A SHANK THAT HE
15 HAD FOR ABOUT A WEEK, AND HE HAD IT FOR HIS PROTECTION.
16 BUT HE DID NOT HAVE ANY PROBLEM WITH ANYBODY, BUT HE JUST
17 HAD IT FOR HIS PROTECTION.

18 Q AT ANY POINT IN YOUR CONVERSATION, DID HE SAY
19 ANYTHING ABOUT THE INCIDENT BEING CONSENSUAL?

20 A NOT AT ALL.

21 Q AND DID HE, AT ANY TIME, DENY INVOLVEMENT IN THE
22 ASSAULT?

23 A NO, HE DID NOT. HE WAS VERY APOLOGETIC. HE WAS
24 VERY APOLOGETIC ALL THROUGH THE COURSE OF THE INTERVIEW.

25 Q AND AT ANY POINT IN TIME DURING YOUR

INVESTIGATOR POWELL -- DIRECT BY ALFARO

143

1 CONVERSATION, DID HE ASK TO STOP THE INTERVIEW?

2 A NO, HE DID NOT.

3 MR. ALFARO: THANK YOU. PLEASE ANSWER ANY
4 QUESTIONS THE DEFENSE HAS FOR YOU.

5 THE COURT: MR. SHELTON.

6 MR. SHELTON: THANK YOU.

7 CROSS EXAMINATION BY MR. SHELTON:

8 Q INVESTIGATOR POWELL, GOING TO MR. SALISBURY'S
9 APPEARANCE, YOU STATED IT WAS -- HE HAD A LACERATION OF
10 WHICH EYE?

11 A I'M PRETTY SURE IT WAS THE LEFT EYE -- THAT HE
12 HAD A LACERATION ABOVE THE LEFT EYE THAT, YOU KNOW, HE HAD
13 A BANDAGE ON IT.

14 Q DID -- AND THERE WAS BLOOD ON HIS PERSON?

15 A HE WORE A WHITE T-SHIRT THAT NIGHT AND IT A HAD
16 BLOOD STAIN ON IT IN THE CENTER, RIGHT AROUND HIS STOMACH
17 AREA.

18 Q WAS THERE ANY OTHER LACERATIONS OR INJURY THAT
19 YOU OBSERVED?

20 A THERE WERE SEVERAL LACERATIONS, BUT I CAN'T
21 RECALL EXACTLY WHERE THEY WERE.

22 Q DID -- DID YOU RECALL ANY IN THE BACK OF THE
23 HEAD, TOP OF THE HEAD?

24 A NO. IF THERE WAS SOMETHING ON TOP OF THE HEAD,
25 I MAY HAVE NOTED IT, BUT NO.

1 Q YOU DIDN'T -- YOU DIDN'T SEE IT OR YOU DON'T
2 REMEMBER?

3 A I DON'T -- I DON'T REMEMBER OR RECALL.

4 Q AT ONE POINT IN HIS STATEMENT, HE MENTIONS -- AT
5 ONE POINT IN HIS STATEMENT TO YOU THAT YOU HAVE PUT DOWN
6 ON -- AS A RECITATION IS THAT HE -- HE HAD NOT BEEN TAKING
7 HIS MEDICATION LIKE HE SHOULD?

8 A THAT'S CORRECT. HE DID MENTION THAT.

9 Q OKAY. DID YOU INQUIRE ABOUT HIS MEDICATION?

10 A I DON'T RECALL ASKING HIM ANYTHING ABOUT HIS
11 MEDICATION.

12 Q DID YOU KNOW ANYTHING ABOUT WHAT TYPE OF
13 MEDICATION HE WAS SUPPOSED TO BE ON?

14 A NOT AT THAT TIME WHEN I INTERVIEWED HIM, NO.

15 Q SO, YOU WEREN'T AWARE OF ANY OF HIS
16 PSYCHOLOGICAL ISSUES?

17 A NOT AT THAT TIME, NO.

18 Q OKAY. AND IN YOUR SUMMARY FROM MAY 19TH, YOU
19 STATE THAT "THE INVESTIGATION REVEALED THAT PRIOR TO
20 INMATE SALISBURY LEAVING FOR MEDICAL TREATMENT", DO YOU
21 RECALL MAKING THAT STATEMENT?

22 A WHERE?

23 MR. SHELTON: MAY I APPROACH?

24 THE COURT: YES.

25 BY MR. SHELTON:

INVESTIGATOR POWELL -- CROSS BY MR. SHELTON

145

1 A YES.

2 Q SO, IT WAS YOUR UNDERSTANDING THAT HE WAS GOING
3 TO GET FURTHER MEDICAL TREATMENT AT LIEBER?

4 A THAT IS CORRECT. LIEBER IS A 24 HOUR MEDICAL
5 FACILITY, WHICH IS SEVEN MILES FROM MACDOUGALL, TO WHERE
6 AS IF AN INMATE NEEDS TO BE SEEN, THEY WILL BE TAKEN
7 THERE..

8 Q OKAY. LET'S GO -- LET'S GO TO YOUR NORMAL
9 PROCEDURE ON THE MIRANDA FORM. YOU LOOK AT THIS VERY
10 CLOSELY AND FOLLOW HIM VERY CLOSELY AS YOU'RE READING THE
11 RIGHTS TO HIM? YOU FOLLOW HIM READING THE RIGHTS---

12 A TO HIMSELF?

13 Q YEAH.

14 A YES.

15 Q AND YOU WATCH HIM DO THAT?

16 A YES.

17 Q ISN'T IT TRUE IT APPEARS THAT THE DATE
18 UNDERNEATH HIS RIGHTS SEEMS TO CORRESPOND WITH YOUR
19 SIGNATURE AND YOUR DATE?

20 A THAT'S CORRECT.

21 Q OKAY. SO, YOU FILLED OUT THE DATE THAT HE
22 SIGNED HIS RIGHTS?

23 A WITH THE EXCEPTION OF THE WAIVER.

24 Q WELL, THE WAIVER -- YEAH, WE'LL GET TO THE
25 WAIVER---

1 A. YEAH. BUT I FILLED -- I FILLED OUT THE DATE.

2 Q FOR THE RIGHTS?

3 A FOR THE RIGHTS ON THE 18TH, YES.

4 Q OKAY. AND THEN HE FILLED OUT HIS SIGNATURE AND
5 THE DATE ON THE WAIVER OF RIGHTS, ISN'T THAT CORRECT?

6 A THAT IS CORRECT.

7 Q OKAY. AND THE DATE FOR THE WAIVER OF HIS RIGHTS
8 IS JANUARY 18, 2007, ISN'T THAT CORRECT?

9 A THAT IS CORRECT.

10 Q DID YOU NOT NOTICE A -- THAT HE PUT 2007?

11 A I NOTICED IT.

12 Q OKAY. DID -- OKAY. WHAT HAPPENS IF HE DOESN'T
13 UNDERSTAND OR ACKNOWLEDGE HIS RIGHTS, WHAT'S THE PROCEDURE
14 THEN?

15 A IF HE DOES NOT ACKNOWLEDGE, AND I WILL ASK HIM
16 AS I READ HIS RIGHTS, DO YOU UNDERSTAND. IF HE CONTINUES
17 NOT TO ACKNOWLEDGE ME, THEN I WOULD ASK A SIMPLE QUESTION,
18 DO YOU UNDERSTAND THE ENGLISH LANGUAGE. IF HE STILL
19 REFUSES OR NOT ACKNOWLEDGES, THEN I WILL NOT INTERVIEW
20 HIM.

21 Q SO, IS IT SAFE TO ASSUME THAT YOU DID NOT ASK
22 HIM INTELLIGENCE QUESTIONS, AS FAR AS UNDERSTANDING THE
23 ENGLISH LANGUAGE?

24 A NO. I FELT -- I FELT I MADE MYSELF PERFECTLY
25 CLEAR AND SPOKE CLEARLY ENOUGH THAT HE WOULD UNDERSTAND

INVESTIGATOR POWELL -- CROSS BY MR. SHELTON

147

1 AND THAT HE WAS ABLE TO RESPOND COHERENTLY AND ACCURATELY
2 WHETHER HE UNDERSTOOD OR NOT.

3 Q SO, HE RESPONDED TO YOU BUT YOU DID NOT INQUIRE
4 AS TO HIS AGE, ISN'T THAT CORRECT?

5 A NO. I DIDN'T ASK HIM ABOUT HIS AGE, NO.

6 Q YOU DID NOT INQUIRE AS TO HIS INTELLIGENCE?

7 A NO, I DID NOT.

8 Q YOU DID NOT INQUIRE AS TO HIS LEVEL OF
9 EDUCATION?

10 A NO, I DID NOT.

11 Q AND YOU DID NOT INQUIRE AS TO HIS PHYSIOLOGICAL
12 MAKE UP, HIS PSYCHOLOGICAL ISSUES?

13 A NO, I DID NOT.

14 Q AND YOU DIDN'T INQUIRE -- DID YOU INQUIRE ABOUT
15 HIS -- YOU DIDN'T INQUIRE ABOUT HIS PRIOR EXPERIENCE WITH
16 GIVING STATEMENTS TO LAW ENFORCEMENT, DID YOU?

17 A NO, I DID NOT.

18 Q OKAY. NOW, THIS INTERVIEW THAT YOU HAD WITH MR.
19 SALISBURY, HOW LONG DID IT LAST?

20 A I WOULD SAY APPROXIMATELY 30 MINUTES.

21 Q THIRTY MINUTES?

22 A APPROXIMATELY 30 MINUTES.

23 Q IS THAT INCLUDING GIVING HIS RIGHTS AND THE
24 WAIVER OF RIGHTS, OR IS THAT HIS RECITATION OF WHAT HE
25 WANTED TO TELL YOU?

1 A EVERYTHING.

2 Q OKAY. AND IT STARTED AT 2:20 ACCORDING TO THIS
3 -- ACCORDING TO THE TIME?

4 A ACCORDING TO THE TIME, YES.

5 Q A.M.

6 A A.M.

7 Q AND THAT'S GIVE OR TAKE TWO HOURS FROM THE
8 ALLEGED INCIDENT?

9 A APPROXIMATELY, YES.

10 Q Okay. HOW LONG WAS HE IN HIS OWN CELL BETWEEN
11 THE INCIDENT AND YOU TALKING TO HIM?

12 A HE WAS NOT IN HIS OWN CELL FROM THE TIME OF THE
13 INCIDENT UNTIL THE TIME I TALKED WITH HIM.

14 Q WAS HE IN A HOLDING CELL?

15 A HE WAS IN A HOLDING CELL.

16 Q OKAY. WAS HE BY HIMSELF?

17 A IN THE HOLDING CELL?

18 Q YES.

19 A YES. HE WAS IN THE HOLDING CELL ALONE.

20 Q ALONE. DO YOU KNOW IF ANYBODY TALKED TO HIM
21 BEFORE THAT?

22 A YES.

23 Q SOME -- OKAY. DO YOU KNOW WHO TALKED TO HIM?

24 A HE SPOKE WITH LT. BAXTER.

25 Q DO YOU KNOW WHAT LT. BAXTER TALKED TO HIM ABOUT?

1 **A** HE JUST ACKNOWLEDGED INMATE SALISBURY'S REQUEST
2 OF HIM, NO, I'M NOT GOING TO LET YOU TALK TO MY OFFICER.
3 BECAUSE INMATE SALISBURY INQUIRED THAT I WANT TO SEE THE
4 OFFICER AND APOLOGIZE TO HER. THAT WAS THE ONLY
5 CONVERSATION.

6 **Q** THAT YOU KNOW ABOUT?

7 **A** THAT I'M AWARE OF, YES.

8 **MR. SHELTON:** NO FURTHER QUESTIONS REGARDING THIS,
9 YOUR HONOR.

10 **THE COURT:** MR. ALFARO?

11 **MR. ALFARO:** THANK YOU.

12 REDIRECT EXAMINATION BY MR. ALFARO:

13 **Q** MR. POWELL, JUST SO WE'RE CLEAR, MR. SHELTON
14 ASKED YOU ABOUT --FURTHER ABOUT THE LACERATIONS THAT YOU
15 OBSERVED ON THE DEFENDANT. YOU SAID YOU OBSERVED SOME, IS
16 THAT CORRECT?

17 **A** I DID.

18 **Q** DID YOU PERSONALLY INFLICT ANY OF THOSE
19 LACERATIONS IN THE COURSE OF YOUR INTERVIEW WITH THE
20 DEFENDANT?

21 **A** NONE AT ALL, SIR.

22 **Q** LET ME ASK YOU ABOUT THE COURT'S EXHIBIT 1
23 BRIEFLY. YOUR -- DURING YOUR 30 MINUTE CONVERSATION WITH
24 THE DEFENDANT, DID YOU OBSERVE HIM TO HAVE ANY -- APPEAR
25 TO HAVE ANY DIFFICULTY UNDERSTANDING WHAT YOU WERE ASKING

1 HIM?

2 A NOT AT ALL, SIR.

3 Q DID HE APPEAR TO HAVE ANY DIFFICULTY
4 UNDERSTANDING THE RIGHTS THAT YOU READ TO HIM?

5 A NOT AT ALL, SIR.

6 Q DID HE APPEAR TO HAVE ANY DIFFICULTY READING THE
7 RIGHTS FOR HIMSELF WHEN GIVEN THE OPPORTUNITY?

8 A NOT AT ALL, SIR.

9 Q DID HE AT ANY POINT ASK YOU WHAT -- TO CLARIFY
10 ANYTHING OR ASK YOU WHAT ANYTHING MEANT OR INDICATE THAT
11 HE DIDN'T UNDERSTAND WHAT WAS IN FRONT OF HIM?

12 A NOT AT ALL, SIR.

13 MR. ALFARO: AND, YOUR HONOR, I THINK JUST -- FOR
14 THE RECORD, I'M NOT SURE IF WE ENTERED THAT INTO EVIDENCE
15 OR NOT -- AT THIS TIME, WE WOULD ASK TO MOVE THE MIRANDA
16 FORM INTO EVIDENCE, COURT'S EXHIBIT 1 INTO EVIDENCE.

17 MR. SHELTON: NO OBJECTION.

18 THE COURT: THANK YOU.

19 (COURT'S EXHIBIT NO. 1 RECEIVED INTO EVIDENCE.)

20 MR. ALFARO: THANK YOU. NO FURTHER QUESTIONS.

21 THE COURT: MR. SHELTON, ANY RECROSS?

22 MR. SHELTON: NO FURTHER QUESTIONS.

23 THE COURT: INVESTIGATOR POWELL, YOU MAY STEP DOWN.

24 THE WITNESS: THANK YOU, YOUR HONOR.

25 (WITNESS STEPPED DOWN.)

1 **MR. SHELTON:** YOUR HONOR, INVESTIGATOR POWELL DID
2 NOT GO INTO PERSONAL CHARACTERISTICS OF THE -- OF THE
3 DEFENDANT AS FAR AS HIS AGE, INTELLIGENCE, LEVEL OF
4 EDUCATION, PSYCHOLOGICAL MAKE-UP OF PRIOR EXPERIENCE. HE
5 -- THIS GOES TO THE INVOLUNTARINESS OF THE STATEMENT. IF
6 HE DOESN'T GO INTO THAT -- THOSE BASIC QUESTIONS, AND TO
7 GLEAN WHAT TYPE OF INTELLIGENCE, MAKE-UP HE HAS, WHAT TYPE
8 OF LEVEL OF EDUCATION HE HAS, HE DOESN'T KNOW IF HE DOES
9 UNDERSTAND ALL OF THESE. HE JUST HAS HIM SIGN -- SIGN AND
10 HE DOESN'T GO INTO PRIOR EXPERIENCE, HE JUST SIGNS -- PUTS
11 THE PAPER IN FRONT OF HIM.

12 THIS IS AN INCIDENT WHERE HE HAD A LOT OF EXTREME
13 BLOOD LOSS. HE WAS BEATEN UP BY OTHER INMATES. HE WAS
14 PLACED IN A CELL AFTER THAT FOR AN HOUR OR SO, AN HOUR --
15 ALMOST TWO HOURS. HE WAS BY HIMSELF.

16 AND HE WAS THEN HANDED A RIGHTS FORM WHERE
17 CORRECTIONAL OFFICERS ARE GOING BACK AND FORTH, HANDED A
18 RIGHTS FORM AND INVESTIGATOR POWELL NEVER WENT INTO HIS
19 ABILITY TO UNDERSTAND THIS AND HIS ABILITY TO UNDERSTAND
20 WHAT'S GOING ON, ESPECIALLY WITH THE FACT THAT HE DID,
21 DURING THE COURSE OF THE INVESTIGATION -- OR IN THE COURSE
22 OF THE STATEMENTS, STATE THAT THEY WERE MEDICAL -- HE
23 WASN'T TAKING HIS MEDICATION. AND I BELIEVE THAT GOES TO
24 HIS INVOLUNTARINESS AS FAR AS -- CAN CALL INTO QUESTION
25 HIS INVOLUNTARINESS -- INVOLUNTARINESS WHICH INVESTIGATOR

1 POWELL NEVER LOOKED INTO.

2 SO, MY ARGUMENT IS THAT THIS WAS AN INVOLUNTARY
3 STATEMENT AND IT SHOULD BE SUPPRESSED.

4 MR. ALFARO: YOUR HONOR, I BELIEVE -- JUST TO GO
5 THROUGH THE PROCESS ON THE MIRANDA, OBVIOUSLY THIS IS A
6 CUSTODIAL SITUATION. THE STATE'S POSITION IS THAT THE
7 DEFENDANT WAS -- IT WAS A CUSTODIAL SITUATION. HE WAS
8 INTERROGATED, THEREFORE, MIRANDA WAS REQUIRED. IN THIS
9 CASE MIRANDA WAS PROVIDED.

10 I BELIEVE OFFICER -- INVESTIGATOR POWELL'S
11 TESTIMONY, HE WAS ASKED SPECIFICALLY IF THE DEFENDANT
12 APPEARED TO BE COHERENT, IN CONTROL OF HIS FACULTIES, TO
13 BE UNDERSTOOD WHAT WAS BEING ASKED TO HIM. I WOULD
14 DISAGREE WITH THE CHARACTERIZATION THAT A FORM WAS JUST
15 PLACED IN FRONT OF HIM. I BELIEVE OFFICER -- INVESTIGATOR
16 POWELL'S TESTIMONY WAS THAT HE READ THE FORM TO HIM, ASKED
17 HIM IF HE UNDERSTOOD, GAVE HIM THE OPPORTUNITY TO READ IT
18 HIMSELF. AT NO POINT DID THE DEFENDANT ASK FOR
19 CLARIFICATION OR APPEARED TO NOT UNDERSTAND WHAT HAD BEEN
20 READ TO HIM OR WHAT HE HAD THE OPPORTUNITY TO READ FOR
21 HIMSELF.

22 THAT HE FREELY AND VOLUNTARILY INITIALLED NEXT TO
23 EACH OF THE INDIVIDUAL RIGHTS THAT WERE PROVIDED TO HIM.
24 IN ADDITION, HAD THE OPPORTUNITY TO SIGN THE RIGHTS
25 HIMSELF, TO SHOW THAT HE UNDERSTOOD IT AND HAD BEEN GIVEN

1 THAT. AND THEN SUBSEQUENTLY, ALSO, WAS READ THE WAIVER OF
2 RIGHTS AND HAD THE OPPORTUNITY TO READ IT HIMSELF, INITIAL
3 AND SIGN THAT HE UNDERSTOOD THE RIGHTS AND WAS FREELY AND
4 VOLUNTARILY AGREEING TO GIVE A STATEMENT.

5 AT NO POINT DID THE DEFENDANT -- IN
6 INVESTIGATOR'S POWELL, AT NO POINT DID HE ASK FOR FURTHER
7 MEDICAL TREATMENT AND AT NO POINT WAS HE DENIED MEDICAL
8 TREATMENT, WHICH WE WOULD AGREE IF HE WAS DENIED
9 TREATMENT, IT WOULD BE COERCIVE. THAT'S NOT THE CASE IN
10 THIS INSTANCE, YOUR HONOR.

11 THE STATE'S POSITION IS THAT BASED ON THE
12 TESTIMONY OF INVESTIGATOR POWELL, THE DEFENDANT'S RIGHTS
13 WERE CLEARLY PROVIDED TO HIM. HE INDICATED TO THE OFFICER
14 -- TO THE INVESTIGATOR THAT HE UNDERSTOOD THOSE RIGHTS.
15 SUBSEQUENTLY, THE STATE WOULD SAY THIS IS A FREE,
16 KNOWINGLY VOLUNTARY WAIVER OF HIS RIGHTS, AND THAT
17 STATEMENTS MADE TO INVESTIGATOR POWELL BE ADMISSIBLE
18 DURING THE STATE'S CASE.

19 THE COURT: MR. SHELTON, YOUR RESPONSE?

20 MR. SHELTON: MY -- MY RESPONSE IS THAT WHILE IN
21 MIRANDA VS. ARIZONA, IT DOES STATE THAT NO STATEMENT OF
22 TAINT FROM A DEFENDANT CAN TRULY BE A PRODUCT OF HIS FREE
23 CHOICE DURING CUSTODIAL INTERROGATION. SO, I THINK IT IS
24 IMPERATIVE THAT -- THAT THE -- THE INVESTIGATOR HAS TO --
25 THE BURDEN IS PLACED ON THE INVESTIGATOR TO -- TO INQUIRE

1 AS TO THE VOLUNTARINESS. IT'S NOT ON THE BURDEN OF THE --
2 THE DEFENDANT. THAT'S MY ARGUMENT, YOUR HONOR.

3 AND HE -- AND THE INVESTIGATOR DOES -- DID
4 ACKNOWLEDGE THAT HE WAS GOING TO SEEK FURTHER MEDICAL
5 TREATMENT AT LIEBER, SO HE KNEW THAT THERE WERE SOME
6 MEDICAL EXAMS THAT HE HAD TO GO THROUGH STILL.

7 **THE COURT:** THE COURT MUST LOOK AT THE TOTALITY OF
8 THE CIRCUMSTANCES TO DETERMINE WHETHER OR NOT THE
9 DEFENDANT'S STATEMENT WAS FREELY AND VOLUNTARILY GIVEN.
10 THE COURT CONSIDERED INVESTIGATOR'S POWELL 20 YEARS OF
11 EXPERIENCE WITH THE CITY OF NORTH CHARLESTON, PRIOR TO
12 BECOMING THE SENIOR AGENT AT THE SOUTH CAROLINA DEPARTMENT
13 OF CORRECTIONS, DIVISION OF INVESTIGATION.

14 THE INVESTIGATOR INDICATED THAT THE INTERVIEW
15 TOOK PLACE APPROXIMATELY AN HOUR AFTER THE INCIDENT, THAT
16 THE DEFENDANT APPEARED TO BE CALM. HE DID NOTICE THAT
17 THERE WAS LACERATIONS AND BLOOD ON THE T-SHIRT, BUT THE
18 DEFENDANT DID NOT REQUEST AT THAT TIME MEDICAL TREATMENT
19 OR REQUEST AN ATTORNEY. THE DEFENDANT MADE THE STATEMENT
20 "I JUST WANT TO APOLOGIZE".

21 THE COURT ALSO CONSIDERED THAT THE FORM WAS USED
22 THAT INVESTIGATOR POWELL HAS A FORMAT, AND THAT HE USES
23 EACH TIME. THAT HE ALWAYS INFORMS THE INMATES OF THEIR
24 RIGHTS. HE READS EACH RIGHT AND THEN REQUESTS THAT THE
25 DEFENDANT INITIAL EACH LINE. THE WITNESS TESTIFIED THAT

1 HE DOES BELIEVE, BASED UPON HIS EXPERIENCE, THAT THE
2 DEFENDANT UNDERSTOOD EACH OF THE RIGHTS.

3 TAKING INTO CONSIDERATION THAT THAT THE DEFENDANT
4 WAS IN CUSTODY AT THE TIME, AS WELL AS THE TOTALITY OF THE
5 CIRCUMSTANCES, THE LENGTH OF THE DETENTION, THE COURT
6 FEELS THAT THE STATEMENTS MADE BY MR. SALISBURY TO
7 INVESTIGATOR POWELL WERE FREELY AND VOLUNTARILY GIVEN. I
8 DENY YOUR REQUEST TO SUPPRESS THE STATEMENTS, MR. SHELTON.

9 MR. SHELTON: THANK YOU, YOUR HONOR.

10 THE COURT: ANYTHING FURTHER?

11 MR. SHELTON: NOT AT THIS TIME.

12 MR. ALFARO: NOTHING FROM THE STATE, YOUR HONOR.

13 THE COURT: MR. SALISBURY, I HAVE A QUESTION
14 CONCERNING YOUR NOTICE WITH THE LIFE WITHOUT PAROLE. MR.
15 SHELTON, HAVE YOU ADVISED YOUR CLIENT THAT HE IS FACING
16 THE POSSIBILITY OF LIFE WITHOUT PAROLE?

17 MR. SHELTON: I HAVE, YOUR HONOR.

18 THE COURT: AND, MS. WILLIAMS, I UNDERSTAND YOU
19 FILED THE WRITTEN NOTICE TEN DAYS BEFORE TRIAL, IS THAT
20 CORRECT?

21 MS. WILLIAMS: YES, YOUR HONOR.

22 THE COURT: AND WAS THAT COPY PROVIDED TO THE
23 DEFENDANT AS WELL, OR DID YOU---

24 MS. WILLIAMS: PERSONALLY SERVED.

25 THE COURT: YOU PERSONALLY SERVED THE DEFENDANT?

1 **MS. WILLIAMS:** MR. HART PERSONALLY SERVED HIM AND
2 HAD HIM SIGN A RETURN. AND THAT RETURN WAS THEN PUT IN
3 THE CLERK'S FILE.

4 **THE COURT:** ALL RIGHT. MR. SALISBURY, YOU
5 UNDERSTAND THAT IF YOU ARE CONVICTED, YOU ARE FACING THE
6 POSSIBILITY OF LIFE WITHOUT PAROLE, IS THAT CORRECT?

7 **MR. SALISBURY:** YES, MA'AM.

8 **THE COURT:** AND YOU WERE GIVEN A COPY OF THE INTENT
9 TO SEEK LIFE WITHOUT PAROLE?

10 **MR. SALISBURY:** YES, MA'AM.

11 **THE COURT:** AND YOU WERE PERSONALLY SERVED BY AN
12 INVESTIGATOR FROM THE SOLICITOR'S OFFICE, IS THAT CORRECT?

13 **MR. SALISBURY:** YES, MA'AM.

14 **THE COURT:** ALL RIGHT. THANK YOU, MR. SALISBURY.

15 **MR. SHELTON:** YOUR HONOR, FOR PURPOSES OF THE
16 RECORD---

17 **THE COURT:** MR. SALISBURY, YOU MAY BE SEATED.
18 THANK YOU.

19 **MR. SHELTON:** I'M SORRY. FOR PURPOSES OF THE
20 RECORD, WITH THE NOTICE FOR LIFE WITHOUT PAROLE, THERE WAS
21 AN AMENDED NOTICE FILED JANUARY 13TH, THAT INCLUDED THE
22 SECOND INDICTMENT OF HOSTAGE TAKING. THE FIRST WAS FILED
23 OCTOBER -- OCTOBER 21ST, THAT ONLY DEALT WITH CRIMINAL
24 SEXUAL CONDUCT FOR PURPOSES---

25 **THE COURT:** BUT NO DOUBT THAT YOUR CLIENT RECEIVED

1 NOT ONE, BUT TWO NOTICES OF THE INTENT TO SEEK LIFE
2 WITHOUT PAROLE?

3 MR. SHELTON: AT DIFFERENT TIMES AND WITHIN THE --
4 THE DIFFERENT CHARGES AS FAR AS THE SECOND ONE. BUT, YES,
5 YOUR HONOR, AND WITHIN THE TEN DAYS.

6 THE COURT: ALL RIGHT. THANK YOU. ANYTHING
7 FURTHER FROM THE STATE BEFORE WE BREAK IN THIS MATTER?

8 MS. WILLIAMS: NOTHING FROM THE STATE, YOUR HONOR.

9 THE COURT: ANYTHING FURTHER, MR. SHELTON, MS.
10 KENNEDY?

11 MS. KENNEDY: YOUR HONOR, I DON'T THINK WE -- SINCE
12 WE WERE USING THOSE REPORTS, THAT WERE PART OF THE -- OUR
13 RENEWED REQUEST FOR CONTINUANCE. IF WE COULD JUST---

14 MS. WILLIAMS: I HAVEN'T HAD TIME TO MAKE COPIES.
15 IN FACT, I DON'T EVEN HAVE COPIES FOR MYSELF. SO, I WAS
16 GOING TO MAKE A COPY FOR THE COURT, A COPY FOR MS.
17 KENNEDY, A COPY FOR MYSELF AND THEN GIVE THE ORIGINALS
18 BACK TO THE INVESTIGATOR IF THAT'S APPROPRIATE.

19 THE COURT: MS. KENNEDY, WILL THAT BE SUFFICIENT,
20 DO YOU ---

21 MS. KENNEDY: YES, YOUR HONOR. I BELIEVE SO. AND
22 IF WE COULD HAVE THE COPY OF THE DISCIPLINARY REPORTS.

23 THE COURT: AND, MS. WILLIAMS, SINCE YOU'RE MAKING
24 COPIES, WILL YOU MAKE SURE THAT YOU MAKE A COPY FOR MS.
25 KENNEDY AND MR. SHELTON AT THE SAME TIME?

1 MS. WILLIAMS: YES, YOUR HONOR.

2 THE COURT: THANK YOU. ANYTHING FURTHER BEFORE WE
3 BREAK?

4 MS. WILLIAMS: NOT AT THIS TIME.

5 THE COURT: ALL RIGHT. PLEASE BE BACK AT 8:45 IN
6 THE MORNING. WE WILL BEGIN PROMPTLY AT 9:00, OR ONCE ALL
7 THE JURORS ARE IN THE JURY ROOM WITH OPENING STATEMENTS.
8 I WILL BE IN CHAMBERS THE REST OF THE AFTERNOON IF OTHER
9 ISSUES SHOULD ARISE. THANK YOU.

10 MS. WILLIAMS: THANK YOU.

11 MS. KENNEDY: THANK YOU.

12 (WHEREUPON, THE COURT RECESSED DAY 2 OF TRIAL AT
13 12:33 P.M.)

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P R O C E E D I N G S

(JANUARY 28, 2009 9:00 A.M.)

(DAY THREE OF TRIAL)

1 **THE COURT:** ALL RIGHT, COUNSEL, JUST FOR THE
2
3
4 RECORD, LAST EVENING JUROR NUMBER 17, ADAM SHEELER, CALLED
5
6 THE CLERK OF COURT AND INDICATED THAT HIS AUNT HAS PASSED
7
8 AWAY, AND THAT HE WOULD LIKE TO GO TO INDIANA FOR THE
9
10 FUNERAL. I INDICATED TO THE CLERK THAT HE NEEDED TO
11
12 PROVIDE A COPY OF THE DEATH CERTIFICATE OR HIS TRAVEL
13
14 ARRANGEMENTS TO THE COURT.

15 WE DO HAVE TWO ALTERNATES AT THIS TIME. MR.
16
17 SHEELER IS PRESENT AND THE PLAINTIFFS HAVE INQUIRED OF MR.
18
19 SHEELER WHETHER HE WISHES TO BE EXCUSED FROM JURY SERVICE
20
21 AT THIS TIME. HE HAS INDICATED THAT HE IS FULLY COMMITTED
22
23 TO REMAINING ON THE JURY FOR THE REMAINDER OF THE TRIAL.

24 ANY RESPONSE FROM THE STATE?

25 **MS. WILLIAMS:** NONE FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENSE?

MR. SHELTON: NONE FROM DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING BEFORE WE BRING IN
THE JURY FROM THE STATE?

MS. WILLIAMS: NONE FROM THE STATE.

MR. SHELTON: YOUR HONOR, AT THIS TIME, WE HAVE TWO
MOTIONS, A MOTION TO SEQUESTER THE WITNESSES AND ALSO A
MOTION IN LIMINE TO NOT USE THE WORD "RAPE" IN THE TRIAL.

1 **THE COURT:** THE RULE OF SEQUESTRATION HAS BEEN --
2 WILL BE INVOKED. MS. WILLIAMS, MR. ALFARO, ARE THERE
3 ANY -- OTHER THAN THE VICTIM, ARE THERE ANY WITNESSES IN
4 THE COURTROOM AT THIS TIME?

5 **MS. WILLIAMS:** WE WOULD JUST REQUEST THAT MERV
6 POWELL BE ALLOWED TO -- BE AT OUR TABLE OR RIGHT BEHIND US
7 HERE.

8 **THE COURT:** IS MR. POWELL HERE AT THIS TIME?

9 **MS. WILLIAMS:** HE'S NOT ARRIVED YET, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. I WILL ALLOW MR. POWELL TO
11 REMAIN AS THE CHIEF INVESTIGATING OFFICER, AS WELL AS THE
12 VICTIM, PURSUANT TO THE COURT'S READING OF THE STATUTE
13 PERTAINING TO THE VICTIM'S RIGHTS. I DO NOT WANT A LOT OF
14 MOVEMENT -- IF MR. POWELL IS NOT HERE, THERE IS TO BE NO
15 MOVEMENT IN AND OUT UNTIL THE APPROPRIATE BREAK TIME.

16 **MS. WILLIAMS:** YES, YOUR HONOR.

17 **THE COURT:** ANYTHING AS FAR AS -- ANYTHING FURTHER
18 AS FAR AS THE SEQUESTRATION?

19 **MR. SHELTON:** JUST FOR PURPOSES OF THE RECORD THAT
20 ALL PARTIES KNOW AND ALL AGENTS OF THE PARTIES KNOW THAT
21 SINCE -- FROM THIS TIME FORWARD, THEY ARE NOT TO DISCUSS
22 ANY TRIALS -- ANYTHING PERTAINING TO THE TRIAL WITH ANY
23 WITNESSES.

24 **THE COURT:** ALL RIGHT. AND, MR. SHELTON, JUST FOR
25 THE RECORD, I'M SURE THAT MS. WILLIAMS AND MR. ALFARO ARE

1 CLEAR WITH THE COURT'S INTERPRETATION OF THE RULES OF
2 SEQUESTRATION. THERE IS TO BE ABSOLUTELY NO DISCUSSION OF
3 THE TESTIMONY WITH ANY OF THE WITNESSES, EITHER PRIOR TO
4 OR FOLLOWING -- WELL, ONCE THEY TESTIFY, YOU MAY DISCUSS
5 IT, BUT THERE IS TO BE NO DISCUSSION. AND YOU NEED TO
6 MAKE IT CLEAR TO YOUR WITNESSES THAT THEY ARE NOT TO
7 DISCUSS THEIR TESTIMONY WITH EACH OTHER ONCE THEY HAVE
8 TESTIFIED AS WELL.

9 IT IS MY POLICY TO ALLOW THE WITNESSES, ONCE THEY
10 HAVE TESTIFIED, TO REMAIN IN THE COURTROOM SHOULD THEY
11 WISH TO DO SO. AND -- ANYTHING FURTHER REGARDING THE RULE
12 OF SEQUESTRATION, MR. SHELTON?

13 MR. SHELTON: NOTHING FURTHER.

14 THE COURT: AS FAR AS THE MOTION IN LIMINE
15 REGARDING REFERENCE TO THE WORD "RAPE".

16 MS. WILLIAMS: WE WILL TRY TO LIMIT THE USE OF THAT
17 WORD, BUT I DON'T KNOW THAT WE CAN COMPLETELY ERASE IT.
18 BECAUSE THAT'S WHAT THIS CASE IS ABOUT, YOUR HONOR, IS
19 CRIMINAL SEXUAL CONDUCT.

20 THE COURT: MR. SHELTON, YOUR RESPONSE?

21 MR. SHELTON: THAT THE STATUTE SAYS CRIMINAL SEXUAL
22 CONDUCT, IT DOES NOT USE THE TERM RAPE, YOUR HONOR, SO WE
23 WOULD -- WE WOULD ASK THAT THAT BE IMPOSED.

24 THE COURT: AS FAR AS THE PERSONS THAT ARE PRESENT
25 IN THE COURTROOM, AS FAR AS MS. WILLIAMS AND MR. ALFARO

1 USING THE WORD "RAPE", I -- THAT DOES NEED TO BE LIMITED.
2 BUT AS FAR AS INSTRUCTING OTHER WITNESSES, UNLESS YOU CAN
3 PROVIDE THE COURT SOME CASE LAW THAT I NEED TO BRING THEM
4 IN AND ADMONISH THEM ABOUT USING THE WORD "RAPE", THAT IS
5 A COMMON -- A COMMON TERMINOLOGY THAT IS USED IN
6 CONJUNCTION WITH CRIMINAL SEXUAL CONDUCT. AND, SO, MR.
7 SHELTON, IF AT A BREAK YOU CAN PROVIDE THE COURT WITH CASE
8 LAW ON HOW TO DEAL WITH THAT PARTICULAR ISSUE, I'LL BE
9 MORE THAN HAPPY TO LOOK AT IT AT THAT TIME.

10 MR. SHELTON: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU. ANYTHING FURTHER?

12 MS. WILLIAMS: NOTHING FURTHER FROM THE STATE, YOUR
13 HONOR.

14 THE COURT: ALL RIGHT. THANK YOU. LADIES AND
15 GENTLEMEN IN THE AUDIENCE, PLEASE MAKE SURE THAT YOUR CELL
16 PHONES ARE TURNED OFF. WHAT IS GOING TO HAPPEN IN THE
17 NEXT FEW MOMENTS, WE'RE GOING TO BRING IN THE JURY. THE
18 COURT IS GOING TO GIVE ITS OPENING INSTRUCTIONS. THE
19 ATTORNEY FOR THE STATE WILL GIVE HER -- HIS OR HER
20 OPENING, AND THE DEFENDANT WILL, AT THAT TIME, MAKE A
21 CHOICE ON WHETHER OR NOT TO MAKE HIS OPENING.

22 IT IS VERY DISTRACTING TO THE PARTIES INVOLVED AND
23 TO THE COURT IF YOU MOVE ABOUT WHILE THE OPENING
24 STATEMENTS ARE BEING GIVEN. THIS IS A PUBLIC COURTROOM,
25 AND YOU ARE FREE TO REMAIN IN THE COURTROOM, BUT I DO ASK

1 THAT YOU SHOW RESPECT FOR ALL OF THE PARTIES INVOLVED AND
2 NOT MOVE WHILE THE PARTIES ARE SPEAKING. THANK YOU.
3 ANYTHING FURTHER BEFORE WE BRING IN THE JURY?

4 MS. WILLIAMS: NO, YOUR HONOR.

5 MR. SHELTON: NOTHING.

6 THE COURT: MS. WILLIAMS, ARE YOU USING THE SCREEN
7 FOR YOUR OPENING?

8 MS. WILLIAMS: NOT FOR THE OPENING, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MS. WILLIAMS: MR. POWELL HAS ARRIVED, YOUR HONOR.

11 THE COURT: ALL RIGHT. IF YOU WILL PLEASE ADVISE
12 MR. POWELL OF THE ADMONITIONS THAT THE COURT HAS GIVEN.

13 MR. ALFARO: I'M DOING THAT NOW.

14 THE COURT: THANK YOU. ALL RIGHT. PLEASE BRING IN
15 THE JURY. PLEASE RISE FOR THE JURY.

16 (WHEREUPON, JURY ENTERED THE COURTROOM AT 9:15
17 A.M.)

18 THE COURT: Y'ALL MAY BE SEATED. THANK YOU.

19 PLEASE BE SEATED. LADIES AND GENTLEMEN OF THE JURY, YOU
20 ARE CONSIDERED TO BE THE JUDGES OF THE FACTS. AS SUCH,
21 OUT OF RESPECT FOR YOU, AS WHEN I WALK IN THE COURTROOM,
22 PEOPLE RISE. AND WHEN I WALK IN -- DURING THE COURSE OF
23 THIS TRIAL, PEOPLE WILL RISE WHEN YOU WALK IN AND WHEN YOU
24 LEAVE.

25 PLEASE COME INTO YOUR SEATS AND HAVE A SEAT. AND

1 ONCE ALL OF YOU ARE SEATED, THE MEMBERS OF THE AUDIENCE
2 AND THE ATTORNEYS WILL ALSO SEATED.

3 MADAM CLERK, IF YOU WILL PLEASE ADMINISTER THE
4 OATH.

5 THE CLERK: WILL YOU PLEASE STAND AND RAISE YOUR
6 RIGHT HAND?

7 (WHEREUPON, THE JURY WAS SWORN IN.)

8 THE COURT: MS. ROYALL, AS FOREPERSON, LADIES AND
9 GENTLEMEN OF THE JURY, AGAIN, I AM JUDGE KRISTI
10 HARRINGTON. I AM THE RESIDENT JUDGE FOR BERKELEY COUNTY.
11 THIS IS KYLE HOBBS, HE IS A THIRD YEAR LAW STUDENT AT THE
12 CHARLESTON SCHOOL OF LAW. AND HE WILL BE ON THE BENCH
13 ASSISTING ME AND OBSERVING DURING THIS TRIAL.

14 THIS IS VIVIAN CROSS. SHE IS MY COURT REPORTER.
15 WE ARE A COURT OF RECORD AND SHE WILL BE TAKING DOWN
16 EVERYTHING THAT I SAY AS WELL AS ANYTHING THAT GOES ON IN
17 THIS COURTROOM. SO, OCCASIONALLY, YOU WILL -- AS YOU MAY
18 RECALL FROM JURY SELECTION, SHE MAY NOT BE ABLE TO HEAR OR
19 -- OR SO SHE MAY SAY PLEASE SPEAK UP, BUT SHE IS WRITING
20 DOWN EVERYTHING THAT GOES ON IN THIS COURTROOM.

21 LADIES AND GENTLEMEN OF THE JURY, WE ARE ABOUT TO
22 BEGIN THE CASE OF THE STATE VS. GEORGE SALISBURY. BEFORE
23 WE BEGIN THIS TRIAL, I WANT TO TELL YOU THAT THIS TRIAL
24 PROBABLY WILL BE DIFFERENT FROM WHAT YOU HAVE SEEN IN
25 TELEVISION, READ IN BOOKS OR MOVIES.

1 FROM WATCHING TELEVISION OR MOVIES, TRIALS ARE
2 ALWAYS FULL OF HIGH DRAMA, INTENSE ACTION AND RIVETING
3 CIRCUMSTANCES. WHILE ALL OF THESE THINGS MAY BE TRUE IN
4 THIS COURTROOM AT TIMES, THIS TRIAL IS NOT FOR
5 ENTERTAINMENT. THIS TRIAL IS A FUNDAMENTAL PART OF OUR
6 DEMOCRACY, A SEARCH FOR THE TRUTH IN AN EFFORT TO MAKE
7 SURE THAT JUSTICE IS DONE BETWEEN THE PARTIES BEFORE THE
8 COURT. SEARCHING FOR THE TRUTH IS OFTEN SLOW,
9 DELIBERATIVE AND REPETITIVE. THE OPPOSITE OF WHAT YOU MAY
10 HAVE SEEN ON TELEVISION OR IN MOVIES.

11 THE COURTROOM IS A PLACE OF HONOR, DEDICATED TO THE
12 PROTECTION AND PRESERVATION OF CITIZENS' RIGHTS THROUGH
13 WHAT MANY HAVE CALLED THE GREATEST JUSTICE SYSTEM EVER
14 CREATED.

15 THE ATTORNEYS THAT ARE APPEARING BEFORE YOU HERE
16 TODAY ARE ADVOCATES FOR THE PARTIES THAT THEY REPRESENT,
17 BUT FIRST AND FOREMOST, THEY ARE SWORN TO UPHOLD THE
18 INTEGRITY AND THE FAIRNESS OF OUR JUDICIAL SYSTEM, AND TO
19 HELP YOU, THE JURY, IN THE SEARCH FOR THE TRUTH.

20 YOU SHOULD EXPECT THEM TO BE PROFESSIONAL,
21 COMPETENT AND ETHICAL IN THE REPRESENTATION OF THEIR
22 CLIENTS' INTERESTS. REMEMBER THAT YOU HAVE JUST TAKEN AN
23 OATH, AND YOU ARE ALSO EXPECTED TO BE PROFESSIONAL,
24 REASONABLE AND ETHICAL.

25 AGAIN, I THANK YOU FOR ACCEPTING THE IMPORTANT

1 RESPONSIBILITY OF JURY SERVICE AND FOR YOUR CONTRIBUTION
2 TODAY TO OUR JUSTICE SYSTEM.

3 WHAT I NOW SAY ISN'T SERVED TO BE AN INTRODUCTION
4 TO THE TRIAL OF THIS CASE. THESE REMARKS ARE NOT A CHARGE
5 ON THE LAW. I WILL INSTRUCT YOU ON THE LAW APPLICABLE TO
6 THIS CASE AT THE END OF THE TRIAL BEFORE YOU RETIRE TO
7 CONSIDER YOUR VERDICT. THIS IS MERELY AN EXPLANATION OF
8 THE PROCEDURE THAT WE WILL FOLLOW IN THIS TRIAL SO THAT
9 YOU MAY BETTER UNDERSTAND WHAT MAY BE HAPPENING.

10 YOU HAVE BEEN GIVEN NOTEBOOKS. YOU WILL BE ALLOWED
11 TO TAKE NOTES DURING THE COURSE OF THIS TRIAL. BUT I
12 ALWAYS REMIND JURORS, SOME OF US WERE BETTER NOTE TAKERS
13 IN SCHOOL, AND THOSE ARE FOR YOUR RECORDS AND YOUR
14 REFLECTION. DO NOT CONSIDER THAT PERHAPS ONE JUROR'S
15 NOTES ARE MORE IMPORTANT OR WERE BETTER THAN YOURS.

16 IT'S ALSO IMPORTANT TO REMEMBER THAT WHILE YOU ARE
17 TAKING NOTES, YOU MAY MISS WHAT IS HAPPENING ON THE
18 WITNESS STAND. BUT WITH THOSE ADMONISHMENTS, I REMIND YOU
19 THAT YOU ARE FREE TO TAKE NOTES DURING THIS TRIAL AND YOU
20 WILL BE ALLOWED TO TAKE THOSE BACK IN -- DURING YOUR
21 DELIBERATIONS.

22 THE DEFENDANT IS CHARGED BY AN INDICTMENT FILED IN
23 THIS COURT. HE IS CHARGED WITH THREE INDICTMENTS: AN
24 ASSAULT ON A CORRECTIONAL OFFICER; CRIMINAL SEXUAL CONDUCT
25 IN THE FIRST DEGREE; AND TAKING OF A HOSTAGE BY AN INMATE.

1 MR. SALISBURY HAS PLED NOT GUILTY TO ALL THREE
2 INDICTMENTS.

3 THE INDICTMENT IS SIMPLY THE CHARGE BY WHICH THE
4 CASE IS BROUGHT INTO THE COURT. IT IS NOT IN ANY SENSE
5 EVIDENCE OF THE ALLEGATIONS IT CONTAINS. THE DEFENDANT
6 HAS PLED NOT GUILTY TO EACH OF THESE INDICTMENTS. THE
7 STATE, THEREFORE, THEN HAS THE BURDEN OF PROVING EACH OF
8 THE ELEMENTS OF EACH INDICTMENT BEYOND A REASONABLE DOUBT.
9 IT WILL BE YOUR DUTY, LADIES AND GENTLEMEN OF THE JURY, TO
10 DECIDE WHETHER THE STATE HAS MET THAT BURDEN.

11 YOUR PURPOSE AS JURORS IS TO FIND AND DETERMINE THE
12 FACTS. YOU ARE THE SOLE JUDGES OF THE FACTS. IF AT ANY
13 TIME I, AS THE COURT, MAKE ANY COMMENTS REGARDING THE
14 FACTS, YOU HAVE TO DISREGARD THAT COMMENT.

15 YOU ARE TO DETERMINE THE FACTS FROM THE TESTIMONY
16 YOU HEAR AND OTHER EVIDENCE INTRODUCED IN COURT. IT IS UP
17 TO YOU TO DETERMINE THE INFERENCES WHICH YOU FEEL MAY BE
18 PROPERLY DRAWN FROM THE EVIDENCE. IT IS ESPECIALLY
19 IMPORTANT THAT YOU PERFORM YOUR DUTY OF DETERMINING THE
20 FACTS DILIGENTLY AND CONSCIENTIOUSLY BECAUSE ORDINARILY
21 THERE IS NO WAY TO CORRECT AN ERRONEOUS DETERMINATION OF
22 THE FACTS BY A JURY.

23 ON THE OTHER HAND, AND WITH EQUAL EMPHASIS, THE
24 SAME LAW THAT MAKES YOU THE JUDGES OF THE FACT MAKES ME
25 THE JUDGE OF THE LAW. THE LAW AS GIVEN BY THE COURT IS

1 THE ONLY LAW THAT YOU MAY CONSIDER. YOU MUST ACCEPT IT
2 AND FOLLOW IT EVEN THOUGH YOU MAY DISAGREE WITH IT.

3 I CANNOT TELL YOU WHAT THE FACTS ARE AND YOU MAY
4 NOT DISAGREE WITH ME AS TO WHAT THE LAW IS OR WHAT THE LAW
5 SHOULD BE. YOUR JOB IS TO TAKE THE LAW AS I GIVE IT TO
6 YOU, APPLY IT TO THE FACTS AS YOU FIND THEM FROM THE
7 TESTIMONY AND ANY OTHER EVIDENCE THAT MAY BE INTRODUCED.
8 AFTER DOING THAT, YOU WILL RENDER YOUR VERDICT. A TRUE
9 AND JUST VERDICT UNDER THE SOLEMN OATH AS YOU JUST TOOK AS
10 JURORS.

11 UNTIL I ADVISE YOU TO BEGIN YOUR DELIBERATIONS, YOU
12 MUST NOT DISCUSS THIS CASE WITH ANYONE, AND THAT DOES
13 INCLUDE YOUR FELLOW JURORS, FRIENDS, FAMILY MEMBERS AND
14 ANYONE INVOLVED IN THIS CASE. AFTER THE CASE IS SUBMITTED
15 TO YOU, YOU MUST DISCUSS IT ONLY IN THE JURY ROOM AND ONLY
16 WITH YOUR FELLOW JURORS.

17 THE ATTORNEYS AND ALL THE PARTIES IN THIS CASE HAVE
18 BEEN ADVISED BY THIS COURT THAT THEY ARE NOT TO TALK TO
19 YOU AT ALL. SO, IF YOU SEE ANYONE AT LUNCH OR IN THE
20 HALLWAYS AND THEY DO NOT EVEN SAY HELLO, AND THEY'RE NOT
21 BEING FRIENDLY, THEY ARE MERELY FOLLOWING THE COURT'S
22 INSTRUCTIONS.

23 DURING THE TRIAL DO NOT READ, WATCH, LISTEN TO ANY
24 NEWS REPORTS ABOUT THIS CASE. THIS INCLUDES ANYTHING THAT
25 MAY BE IN NEWSPAPERS, ON THE INTERNET, RADIO OR

1 TELEVISION.

2 YOU MUST NOT CONSIDER ANYTHING THAT YOU HAVE READ
3 OR HEARD ABOUT THIS CASE OUTSIDE OF THE COURTROOM, WHETHER
4 BEFORE OR DURING THIS TRIAL.

5 IT IS VERY IMPORTANT THAT YOU KEEP AN OPEN MIND AND
6 NOT DECIDE ANY ISSUE IN THIS CASE UNTIL ALL THE EVIDENCE
7 HAS BEEN PRESENTED, THE PARTIES HAVE MADE THEIR CLOSING
8 ARGUMENTS AND I HAVE INSTRUCTED YOU ON THE LAW.

9 IT IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE
10 GUILT OR INNOCENCE OF THE DEFENDANT AND YOUR VERDICT MUST
11 BE BASED SOLELY ON THE EVIDENCE PRESENTED TO YOU IN THIS
12 TRIAL AND ON THE LAW AS I INSTRUCT YOU DURING AND AT THE
13 CLOSE OF THIS TRIAL.

14 IN JUST A MOMENT, THE SOLICITOR WILL MAKE WHAT IS
15 CALLED AN OPENING STATEMENT, IN WHICH THE SOLICITOR WILL
16 EXPLAIN TO YOU THE ISSUES IN THIS CASE, OR AT LEAST WHAT
17 THE SOLICITOR THINKS THE ISSUES MAY BE. THE ATTORNEY FOR
18 THE DEFENDANT MAY ALSO MAKE AN OPENING STATEMENT, ALTHOUGH
19 HE IS NOT REQUIRED TO DO SO.

20 I REMIND YOU WHAT THE ATTORNEYS TELL YOU IN THEIR
21 OPENING STATEMENTS IS NOT EVIDENCE IN THIS CASE. IT IS
22 ONLY THEIR CONTENTION AS TO WHAT THE ISSUES ARE.

23 THE EVIDENCE IN THIS CASE WILL BE PRESENTED TO YOU
24 BY THE TESTIMONY OF SWORN WITNESSES FROM THAT WITNESS
25 STAND AND BY ANY EXHIBITS THAT MAY BE INTRODUCED INTO

1 EVIDENCE.

2 FROM TIME TO TIME DURING THE TRIAL, YOU MAY HEAR
3 ONE OF THE LAWYERS SAY SOMETHING LIKE, YOUR HONOR, I
4 BELIEVE WE HAVE A QUESTION OF LAW OR MATTER OF LAW TO
5 DISCUSS WITH YOU, OR YOUR HONOR MAY WE APPROACH THE BENCH.
6 SOMETIMES I MIGHT FIND IT NECESSARY TO EXCUSE YOU FROM THE
7 COURTROOM FOR A SHORT WHILE SO THE ATTORNEYS AND I CAN
8 DISCUSS A MATTER OF LAW. THE REASON FOR THIS IS BECAUSE
9 YOU ARE THE JUDGES OF THE FACTS AND I AM THE JUDGE OF THE
10 LAW. IT MAY BE NECESSARY FOR ME TO MAKE SOME COMMENT AS
11 TO THE FACTS OF THIS CASE IN CONNECTION WITH MY RULING. I
12 AM NOT SUPPOSED TO TELL YOU WHAT I THINK THE FACTS ARE, SO
13 I WILL EXCUSE YOU FROM THE COURTROOM WHILE THESE
14 DISCUSSIONS TAKE PLACE, SO THAT IN NO WAY WILL YOU BE
15 INFLUENCED BY ANYTHING THAT I SAY OR DO IN CONNECTION WITH
16 THE FACTS.

17 IN DETERMINING WHAT THE TRUE FACTS ARE, YOU MUST
18 DECIDE WHETHER OR NOT THE TESTIMONY OF THE WITNESSES ARE
19 BELIEVABLE. IT WILL BE MY RESPONSIBILITY TO RULE AS A
20 MATTER OF LAW WHETHER CERTAIN TESTIMONY IS ADMISSIBLE AT
21 ALL. BUT ONCE THE TESTIMONY IS ADMITTED, WHETHER OR NOT
22 YOU BELIEVE IT IS SOLELY FOR YOU TO DETERMINE.

23 IN DECIDING WHETHER TO BELIEVE A WITNESS, YOU HAVE
24 THE RIGHT TO CONSIDER THE INTEREST OF ANY WITNESS, THE
25 BIAS OF ANY WITNESS, THE PREJUDICE OF ANY WITNESS, THE

1 OPPORTUNITY FOR THE WITNESS TO HAVE SEEN AND HEARD THE
2 THINGS ABOUT WHICH THE WITNESS MAY TESTIFY, AS WELL AS THE
3 WAY THE WITNESS ACTS ON THE WITNESS STAND.

4 YOU HAVE A RIGHT TO CONSIDER ANYTHING THAT IS IN
5 THE RECORD, THAT WILL HELP YOU EVALUATE THE TESTIMONY OF
6 THE WITNESSES. THAT MEANS THAT IT IS YOUR DUTY TO PAY
7 CLOSE ATTENTION TO THE WITNESSES, TO OBSERVE THE
8 WITNESSES, TO LISTEN TO THE WITNESSES, AS WELL AS TO PAY
9 CLOSE ATTENTION TO THE ATTORNEYS AND TO THE COURT.

10 PLEASE DO NOT LET YOUR THOUGHTS WONDER, BUT GIVE
11 STRICT ATTENTION TO THE TESTIMONY IN THIS CASE SO THAT AT
12 THE END OF ALL THE TESTIMONY, AFTER ARGUMENTS OF COUNSEL
13 AND THE CHARGE OF THE LAW BY THE COURT, YOU WILL THEN BE
14 IN A POSITION TO DETERMINE WHAT THE TRUE FACTS ARE, TO
15 APPLY THE LAW AS I GIVE IT TO YOU TO THOSE FACTS, AND MUST
16 RENDER A TRUE AND JUST VERDICT.

17 IT IS YOUR ADDED DUTY, MS. FOREPERSON, TO PRESIDE
18 IN THE JURY ROOM AND BE THE JURY'S SPOKESPERSON HERE IN
19 COURT. IT WILL ALSO BE YOUR DUTY TO WRITE THE VERDICT,
20 BUT I WILL GIVE YOU FURTHER INSTRUCTIONS LATER WHEN I GIVE
21 YOU THE CHARGE ON THE LAW.

22 MADAM SOLICITOR.

23 MS. WILLIAMS: YOUR HONOR, THE STATE CALLS THE CASE
24 OF THE STATE VS. GEORGE SALISBURY -- OH, I'M SORRY. SHALL
25 I CALL THE CASE?

1 **THE COURT:** YOU MAY CALL THE CASE.

2 **MS. WILLIAMS:** DOCKET NUMBER 08-GS-08-1687,

3 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

4 08-GS-08-1688 ASSAULT ON A CORRECTIONS OFFICER.

5 08-GS-08-1074, TAKING OF A HOSTAGE BY AN INMATE.

6 **THE COURT:** AND YOU MAY PROCEED WITH OPENING.

7 **MS. WILLIAMS:** THANK YOU, YOUR HONOR. MAY IT

8 PLEASE THE COURT.

9 THE FIRST WORDS SPOKEN ON THE NIGHTMARE THAT
10 STARTED FOR SARA ADAMS ON JANUARY 18, 2008 WERE PLEASE
11 DON'T KILL ME. I JUST WANT TO GO HOME. THAT IS WHAT SARA
12 ADAMS BEGGED THE DEFENDANT, GEORGE SALISBURY, AS HE
13 ENTERED HER OFFICE AND PUT A METAL SHANK TO HER NECK.

14 SARA ADAMS WAS A CORRECTIONS OFFICER AT MACDOUGALL
15 PRISON. SHE WAS WORKING A 7:00 P.M. TO 7:00 A.M. SHIFT
16 THAT NIGHT. AND HER -- HER SHIFT STARTED NORMALLY. SHE
17 WENT THROUGH HER PAPERWORK. SHE PERFORMED HER DUTIES.
18 SHE DID HER HEAD COUNT. AND THEN AROUND MIDNIGHT SHE SAT
19 DOWN TO HAVE HER DINNER.

20 IT WAS AT THIS POINT, THE DEFENDANT, AN INMATE ON
21 HER FLOOR, ENTERED HER OFFICE, LOCKED THE DOOR BEHIND HIM,
22 LOCKED THE OTHER DOOR, AND GRABBED HER PUTTING A SHANK TO
23 HER NECK, THREATENING TO KILL HER.

24 HE DRAGGED HER INTO THE BATHROOM THAT WAS IN THE
25 OFFICE, LOCKED THE DOOR, AND ORDERED HER TO TAKE HER

1 CLOTHING OFF. WHEN SHE DIDN'T COOPERATE, HE RIPPED HER
2 SHIRT.

3 HE MANAGED TO GET HER PANTS OFF AND THEN HE STARTED
4 TO UNBUTTON HIS OWN PANTS. AT THIS POINT, SARA ADAMS WAS
5 PLEADING WITH HIM. SHE WAS TRYING TO TALK HIM OUT OF IT,
6 PLEASE DON'T DO THIS. CALM DOWN. CALM DOWN.

7 AT THAT POINT THAT MR. SALISBURY WAS ABLE TO
8 PENETRATE HER WITH HIS FINGERS, SHE REALIZED THAT THAT
9 TACTIC WAS NOT GOING TO WORK, SO SHE STARTED SCREAMING.
10 SHE STARTED SCREAMING FOR HELP, AT WHICH POINT MR.
11 SALISBURY COVERED HER MOUTH WITH HIS HAND.

12 SHE STARTED STRUGGLING FOR THE SHANK AND SHE WAS
13 ABLE TO GET SOME CONTROL OF IT AND THEY WERE FIGHTING OVER
14 IT. BUT NOW SHE HAD A NEW PROBLEM BECAUSE SHE HEARD GLASS
15 BREAKING IN THE OFFICE OUTSIDE THE BATHROOM. AND SHE KNEW
16 THIS MEANT THAT SOMEONE ELSE HAD ENTERED THE OFFICE.
17 PRETTY SOON SHE SAW THE DOOR BEING OPENED TO THE BATHROOM,
18 LITERALLY BEING RIPPED FROM THE FRAME.

19 BEFORE SHE KNEW IT, THERE WAS A CROWD OF INMATES
20 ENTERING THE BATHROOM. AT THIS POINT, THINGS COULD HAVE
21 GOTTEN REALLY BAD. BUT THIS IS WHERE THIS HORRIBLE
22 NIGHTMARE TOOK AN UNEXPECTED TURN, AN AMAZING TURN BECAUSE
23 THOSE INMATES INSTEAD OF HELPING HIM, INSTEAD OF SEXUALLY
24 ASSAULTING HER THEMSELVES, THEY PICKED HER UP. THEY
25 COVERED HER WITH THEIR OWN CLOTHING. THEY CARRIED HER TO

1 A DAY ROOM NEXT TO THE OFFICE AND THEY GUARDED HER WHILE
2 THEY SOUNDED THE ALARM AND HELP CAME. THEY PROTECTED HER
3 FROM EVERYONE ELSE ON THAT FLOOR SO THAT SHE WOULD BE
4 SAFE.

5 YOU'RE GOING TO HEAR TESTIMONY FROM THIS WITNESS
6 STAND. YOU ARE GOING TO SEE PHYSICAL EVIDENCE. WE'RE
7 GOING TO ASK YOU TO CONSIDER ALL OF THAT EVIDENCE
8 CAREFULLY, ANALYZE IT, CONSIDER IT. BECAUSE THE STATE
9 WILL PROVE BEYOND A REASONABLE DOUBT ALL OF THE ELEMENTS
10 OF CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, TAKING OF
11 A HOSTAGE BY AN INMATE, AND ASSAULT ON A CORRECTIONS
12 OFFICER.

13 THE COURT: MR. SHELTON.

14 MR. SHELTON: THANK YOU, YOUR HONOR. MAY IT PLEASE
15 THE COURT.

16 THE COURT: YES, SIR.

17 MR. SHELTON: THIS CASE IS A MESS. THE
18 INVESTIGATIONS, THROUGH MANY INVESTIGATIONS, IT'S A MESS.
19 PARALLEL, PERPENDICULAR INVESTIGATIONS, IT'S A MESS.

20 WHAT YOU DON'T KNOW, YOU WILL NEVER FIND OUT. ALL
21 QUESTIONS -- AND THE JUDGE WILL GIVE YOU THE LAW AT THE
22 END OF THIS CASE, AND WE WILL GO OVER THIS AGAIN AT
23 CLOSING, BUT ALL QUESTIONS MUST BE RESOLVED IN FAVOR OF
24 MR. SALISBURY.

25 YOU'RE GOING TO HEAR TESTIMONY ABOUT WHAT THIS

1 PRISON LOOKED LIKE. THIS PRISON IS NOT A NORMAL PRISON.
2 IN YOUR -- IN NORMAL PEOPLES' MINDS, IT'S BARS. IT'S --
3 YOU HAVE TO KNOCK TO GET IN, YOU HAVE TO GET AROUND DOORS.
4 THERE'S MANY PEOPLE AROUND. THAT'S NOT THIS PRISON.

5 THIS PRISON HAD CUBICLES. NINETY-SIX MALE INMATES
6 WERE IN THIS CUBE, THIS MAGNOLIA II UNIT. FORTY-EIGHT ON
7 EACH SIDE. THERE WERE 24 CUBICLES ABOUT CHEST HIGH. YOU
8 COULD SEE OVER THEM. TWO INMATES PER CUBICLE, SO THERE
9 WERE 24 ON EACH SIDE. THIS IS NOT A NORMAL PRISON, AND
10 ONE CORRECTIONAL OFFICER.

11 YOU'RE GOING TO SEE THE -- WHAT THIS LOOKED LIKE,
12 HOW THIS WAS -- HOW THIS WAS LAID OUT. KEEP IN MIND, THIS
13 IS NOT A NORMAL PRISON AND -- AS FAR AS BARS AND DOORS
14 SHUTTING EVERYBODY IN.

15 YOU'RE GOING TO HEAR TESTIMONY FROM CORRECTIONAL
16 OFFICERS AND YOU'RE GOING TO HEAR TESTIMONY FROM INMATES,
17 AND YOU'RE GOING TO HEAR TESTIMONY FROM MEDICAL EVIDENCE.
18 QUESTION IT. DON'T TAKE THAT ALL FOR WHAT -- WHAT IT IS,
19 QUESTION IT. RELATIONSHIPS, THAT'S IMPORTANT IN THIS
20 CASE. RELATIONSHIPS.

21 MR. SALISBURY, HE'S INNOCENT. RIGHT NOW HE'S
22 INNOCENT. DURING OPENINGS, HE'S INNOCENT. DURING THE
23 PRESENTING OF THE EVIDENCE, HE'S INNOCENT. DURING
24 CLOSINGS, HE'S INNOCENT. DURING THE JUDGE'S LAW, HE IS
25 INNOCENT. THAT IS THE GREATEST PART ABOUT THIS CRIMINAL

1 JUSTICE SYSTEM IS THAT AN INNOCENT PERSON THAT IS BEING
2 ACCUSED OF A CRIME GETS TO CONFRONT THEIR ACCUSER. AND
3 YOU, AS JURY MEMBERS, GET TO DECIDE THE GUILT. HE IS
4 INNOCENT. NOT UNTIL YOU START DOING YOUR DELIBERATIONS
5 CAN HE -- YOU EVEN CONSIDER IT.

6 MY NAME IS CHAD SHELTON, ALONG WITH PATRICIA
7 KENNEDY, AND WE REPRESENT GEORGE. AND I WANT TO THANK YOU
8 FOR TAKING PART IN THIS VITAL PROCESS, HIS CONSTITUTIONAL
9 RIGHT TO GO TO TRIAL. WE WANT TO THANK YOU FOR TAKING
10 PART IN THIS PROCESS. IT'S NOT EASY, BUT WE WANT TO THANK
11 YOU.

12 AND WE ASK THAT YOU KEEP THE STATE TO THEIR HIGH
13 BURDEN OF PROOF. THAT WILL COME OUT IN THE LAW LATER ON.
14 THERE IS A HIGH BURDEN. THEY HAVE TO OVERCOME THAT. AND
15 WE ASK THAT YOU KEEP THEM TO THAT HIGH BURDEN IN
16 DELIBERATING IN THIS CASE. AND WE FEEL CONFIDENT THAT YOU
17 WILL COME OUT WITH A NOT GUILTY VERDICT. THANK YOU.

18 **THE COURT:** CALL YOUR FIRST WITNESS.

19 **MS. WILLIAMS:** THANK YOU, YOUR HONOR. MAJOR RUFUS
20 MINCEY.

21 (WITNESS FORWARD.)

22 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND AND PUT
23 YOUR LEFT HAND ON THE BIBLE.

24 MAJOR RUFUS MINCEY, HAVING BEEN
25 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 **THE CLERK:** PLEASE BE SEATED AND STATE YOUR NAME,
2 SPELL YOUR LAST NAME FOR THE RECORD.

3 **THE WITNESS:** MY NAME IS RUFUS MINCEY. THE LAST
4 NAME IS SPELLED M-I-N-C-E-Y.

5 DIRECT EXAMINATION BY MS. WILLIAMS:

6 **Q** THANK YOU, MAJOR MINCEY. WHERE DO YOU WORK?

7 **A** PRESENTLY I'M EMPLOYED AT THE MACDOUGALL
8 CORRECTIONAL INSTITUTION.

9 **Q** AND WHAT IS YOUR TITLE AT THAT FACILITY?

10 **A** MY UNIFORM TITLE IS MAJOR, INFORMAL TITLE WOULD
11 BE CHIEF OF SECURITY.

12 **Q** AND WHAT IS YOUR BACKGROUND THAT LED YOU TO THIS
13 OCCUPATION OR IN THIS OCCUPATION -- AS A -- WITH LAW
14 ENFORCEMENT?

15 **A** INITIALLY -- WELL, I WENT INTO THE AIR FORCE AT
16 AGE 19. STAYED 21 YEARS. AND THE 21 YEARS I WAS IN THE
17 AIR FORCE, I WAS IN LAW ENFORCEMENT. SO, IT WAS BASICALLY
18 A NATURAL TRANSITION COMING OUT OF LAW ENFORCEMENT TO WORK
19 WITH THE DEPARTMENT OF CORRECTIONS.

20 **Q** AND WHAT ARE YOUR PRESENT DUTIES AS CHIEF OF
21 SECURITY AT THE PRISON?

22 **A** BASICALLY I EITHER DIRECTLY OR INDIRECTLY
23 SUPERVISE APPROXIMATELY 114 CORRECTIONAL OFFICERS.

24 **Q** SO, WOULD YOU HAVE SUPERVISED DIRECTLY OR
25 INDIRECTLY SARA ADAMS?

1 A PRETTY MUCH INDIRECTLY. I -- HER SUPERVISOR, OR
2 SHIFT SUPERVISOR WAS THE ONE I DIRECTLY SUPERVISE.

3 Q WHAT LEVEL FACILITY IS MACDOUGALL PRISON?

4 A MACDOUGALL IS CONSIDERED A LEVEL TWO
5 INSTITUTION.

6 Q AND WHAT DOES THAT MEAN FOR THOSE OF US THAT
7 DON'T KNOW A LOT ABOUT THE PRISON SYSTEM?

8 A WELL, WITHIN THE PRISON SYSTEM, THERE ARE
9 BASICALLY THREE LEVELS. YOU'VE GOT LEVEL ONE, LEVEL TWO
10 AND A LEVEL THREE. LEVEL THREE BEING THE MAXIMUM SECURITY
11 PRISON. WE PROBABLY HOUSE DEATH ROW INMATES, INMATES WITH
12 MORE VIOLENT TYPE CRIMES. IT REQUIRES MAYBE A LITTLE MORE
13 SECURITY THAN THE INDIVIDUALS AT A LEVEL TWO WHICH IS
14 WHERE I WORK AT.

15 Q AND AT THIS FACILITY, DO YOU HAVE FEMALE
16 CORRECTIONS OFFICERS GUARDING MALE PRISONERS?

17 A YES, WE DO.

18 Q TO THE BEST OF YOUR KNOWLEDGE BEFORE THIS
19 INCIDENT WITH MS. ADAMS, HOW MANY ASSAULTS HAD TAKEN PLACE
20 OF CORRECTIONS OFFICERS?

21 A NONE DURING THE TIME THAT I HAVE BEEN THERE AS
22 THE MAJOR, OR -- ACTUALLY ASSIGNED AT THAT PARTICULAR
23 INSTITUTION SINCE 1995.

24 Q YOU DON'T KNOW OF ANY BEFORE THEN? BUT YOU JUST
25 DON'T KNOW -- YOU DON'T HAVE THAT KNOWLEDGE?

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

179

1 A NO.

2 Q DO YOU KNOW HOW MANY FEMALE CORRECTIONS OFFICERS
3 WORK THERE DURING THE TIME MS. ADAMS WAS THERE?

4 A I'M GOING TO SAY ROUGHLY 30. THEY COMPRISE
5 APPROXIMATELY 30 PERCENT OF OUR CORRECTIONAL OFFICERS
6 STAFF OR UNIFORMED STAFF I SHOULD SAY.

7 Q DO CORRECTIONS OFFICERS CARRY GUNS?

8 A NOT IN THE NORMAL LINE OF DUTY. THERE ARE TIMES
9 WHEN THEY ARE REQUIRED TO CARRY FIREARMS. THAT WOULD BE
10 ON TRANSPORTS, TRANSPORTING INMATES EITHER TO THE
11 HOSPITAL, COURT. THEN WE ALSO HAVE A UNIFORMED OFFICER
12 AND AN ARMED OFFICER ON OUR PERIMETER THAT'S ARMED, BUT NO
13 OFFICERS WITHIN THE CONFINES OF THE INSTITUTION ITSELF.

14 Q SO, SOMEBODY WORKING ON THE FLOOR AS MS. ADAMS
15 WAS THAT EVENING, WOULD THEY BE CARRYING A GUN?

16 A NO, MA'AM.

17 Q WHAT IS THE REASON FOR THAT?

18 A THE PRIMARY REASON IS -- EXCUSE ME -- IS -- JUST
19 THE NUMBERS -- THE SHEER NUMBERS ALONE. IF YOU'RE
20 BASICALLY SUPERVISING 96 INMATES AT A TIME, THEY COULD
21 FORCIBLY TAKE YOUR WEAPON FROM YOU AND FORCE THEIR WAY OUT
22 OF THE INSTITUTION.

23 Q SO, WHAT DOES THAT CORRECTIONS OFFICER HAVE FOR
24 PROTECTION SHOULD SOMETHING GO WRONG?

25 A THE ONLY PHYSICAL ITEM THEY WOULD HAVE WOULD --

1 I GUESS WOULD BASICALLY BE THEIR BODY, YOU KNOW, TO DEFEND
2 OFF AN INDIVIDUAL, YOU KNOW, DEFENSE TACTICS. AND ALSO AN
3 INDIVIDUAL PROTECTION DEVICE, CHEMICAL MUNITIONS IF YOU
4 WILL.

5 Q WHAT IS CHEMICAL MUNITIONS, IS THAT MACE?

6 A YES, MA'AM.

7 Q AND THEY HAVE A RADIO?

8 A AND A RADIO.

9 Q AS PART OF YOUR DUTIES, DO YOU GET INVOLVED WITH
10 SAFETY AND EVACUATIONS PLANS?

11 A YES, WE DO.

12 Q AND ARE YOU FAMILIAR WITH THE FLOOR PLANS ON THE
13 UNITS?

14 A OH, VERY FAMILIAR.

15 MS. WILLIAMS: YOUR HONOR, AT THIS TIME WE WOULD
16 ASK THAT THIS DOCUMENT BE MARKED AS STATE'S EXHIBIT 3 --
17 2.

18 (STATE'S EXHIBIT NO. 2 MARKED FOR IDENTIFICATION.)

19 MS. WILLIAMS: MAY I APPROACH THE WITNESS, YOUR
20 HONOR?

21 THE COURT: YOU MAY.

22 BY MS. WILLIAMS:

23 Q MAJOR MINCEY, IF YOU WOULD JUST REVIEW THIS
24 DOCUMENT---

25 THE COURT: MS. WILLIAMS, CAN YOU SHOW MR. SHELTON?

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

181

1 MS. WILLIAMS: OH, I'M SO SORRY.

2 (PAUSE.)

3 BY MS. WILLIAMS:

4 Q IF YOU COULD JUST LOOK AT THIS AND TELL -- TELL
5 US WHAT THAT IS?

6 A THIS RIGHT HERE IS A BASIC FLOOR PLAN OF THE
7 UNITS THAT THE INMATES -- EXCUSE ME -- THAT THE INMATES
8 ARE HOUSED IN. AND BASICALLY WHAT IT SHOWS IS THE -- THE,
9 YOU KNOW, THE COMMON AREAS OR THE CUBES THAT THE
10 INDIVIDUALS ARE HOUSED IN, WHERE THEY SLEEP. SEVERAL OF
11 THE AREAS LIKE THE DAY ROOM, REST ROOM, THIS IS YOUR BASIC
12 FLOOR PLAN.

13 Q IS THAT AN ACCURATE DEPICTION OF THE FLOOR PLAN
14 THAT MS. ADAMS WAS SUPERVISING ON THE EVENING THAT THIS
15 INCIDENT TOOK PLACE?

16 A YES, MA'AM.

17 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
18 ASK THAT STATE'S EXHIBIT 2 BE ENTERED INTO EVIDENCE.

19 MR. SHELTON: NO OBJECTION.

20 THE COURT: STATE'S 2 INTO EVIDENCE WITHOUT
21 OBJECTION.

22 (STATE'S EXHIBIT NO. 2 RECEIVED INTO EVIDENCE.)

23 MS. WILLIAMS: MAY WE PUBLISH, YOUR HONOR?

24 THE COURT: YOU MAY.

25 BY MS. WILLIAMS:

1 Q MAJOR MINCEY, I'M GOING TO GIVE YOU A POINTER --
2 DO WE HAVE A LASER POINTER? WHILE I PUT THIS ON -- MAJOR
3 MINCEY, THIS IS A POINTER. IF YOU WOULDN'T MIND AS I ASK
4 YOU QUESTIONS, POINTING OUT DIFFERENT THINGS ON THE
5 DIAGRAM AS YOU READ IT. OKAY. ON THIS DIAGRAM, COULD YOU
6 EXPLAIN THE UNIT THAT MS. ADAMS WAS SUPERVISING AND WHAT
7 AREA THAT SHE HAD CONTROL OF?

8 A THE HOUSING UNIT THAT OFFICER ADAMS WAS ASSIGNED
9 TO THAT EVENING WAS THE MAGNOLIA UNIT OR MAG II. AND WHAT
10 I MEAN BY THIS, THIS IS MAG I, THIS AREA OF THE FLOOR
11 PLAN. AND OVER HERE IS MAG II WHERE OFFICER ADAMS WAS
12 ASSIGNED.

13 Q AND WHERE ARE THE -- THE INMATES HOUSED ON THAT
14 DIAGRAM, WHERE ARE THEIR CELLS?

15 A IF YOU START HERE, THESE INDIVIDUAL LINES HERE
16 REPRESENT A CUBE, TWO INDIVIDUALS TO A ROOM ON EITHER
17 SIDE. AND THEN ON THIS SIDE ALSO. AND COME DOWN A LITTLE
18 FURTHER, THESE TWO AREAS ALSO REPRESENT THE LIVING AREAS
19 OF THE INMATES.

20 Q SO, INMATES ON EITHER SIDE. AND THEN WHERE IS
21 THE OFFICE WHERE SHE WOULD HAVE BEEN SITTING WHEN THE
22 ASSAULT HAPPENED?

23 A THIS AREA HERE, THAT I'M GOING AROUND, THIS AREA
24 IS THE OFFICER'S AREA.

25 Q AND WHAT ARE THOSE TWO ROOMS NEXT TO THE OFFICE

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

183

1 TO THE RIGHT?

2 A REFERRING TO THIS ONE HERE?

3 Q YEAH. THOSE TWO.

4 A THIS IS A DAY ROOM AND THIS IS A DAY ROOM,
5 SEPARATED BY, YOU KNOW, INDIVIDUAL WALLS.

6 Q WHERE IS THE BATHROOM IN THAT OFFICE?

7 A RIGHT HERE.

8 Q AND IN ORDER FOR INMATES -- CAN THEY MOVE FREELY
9 FROM SIDE TO SIDE?

10 A CERTAINLY INMATES HERE, THEY HAVE ACCESS TO THE
11 DAY ROOM. THEY ALSO HAVE ACCESS TO THE INMATES'
12 RESTROOMS, WHICH ARE -- THIS AREA HERE. THERE IS A FIRE
13 DOOR, BUT THAT'S -- IT'S CLOSED, BUT IT'S NOT LOCKED.
14 THAT ALLOWS INMATES ACCESS TO THE TELEPHONES, WHICH ARE
15 LOCATED ON THE SIDE OF THE WALL HERE. AND THEY ALSO HAVE
16 FREE ACCESS TO -- GOING TO THIS DAY ROOM.

17 Q AND WHERE ARE THE RESTROOMS THAT THE INMATES
18 HAVE ACCESS TO?

19 A THIS IS AN INMATE RESTROOM AND THIS IS AN INMATE
20 RESTROOM.

21 Q AT FULL CAPACITY, HOW MANY INMATES ARE IN THAT
22 UNIT?

23 A WE HAVE A MAXIMUM CAPACITY OF 48 ON THIS SIDE
24 AND 48 ON THIS SIDE FOR A TOTAL OF 96.

25 Q IF YOU KNOW, HOW MANY INMATES WERE -- WERE

1 HOUSED THAT EVENING?

2 **A** OFF THE TOP OF MY HEAD, I REALLY DON'T KNOW AT
3 THAT --

4 **Q** THAT'S FINE. IS IT UNUSUAL FOR AN INMATE TO
5 WALK INTO THE CORRECTIONS OFFICER'S OFFICE?

6 **A** NO, MA'AM.

7 **Q** WHAT ARE SOME OF THE REASONS THEY WOULD WALK
8 INTO THE OFFICE?

9 **A** IT COULD BE FOR A VARIETY OF REASONS. WITHIN
10 THE OFFICER'S AREA, THEY HAVE A LITTLE SMALL FIRST AID BOX
11 THAT CONTAINS ASPIRIN, IBUPROFEN, BANDAIDS, OINTMENTS FOR
12 LITTLE MINOR ABRASIONS, HEADACHES AND THINGS OF THAT
13 NATURE. AND THE INMATES ARE REQUIRED TO ACCESS THE
14 OFFICER -- YOU KNOW, AT LEAST ASK FOR IT AND THEN SIGN FOR
15 THE MEDICATION THEY RECEIVE.

16 **Q** ARE THERE ANY OTHER REASONS WHY THEY MIGHT COME
17 IN THERE BESIDES MEDICATION?

18 **MR. SHELTON:** OBJECTION. IT CALLS FOR SPECULATION.

19 **THE COURT:** OVERRULED.

20 **BY MS. WILLIAMS:**

21 **Q** CONTINUE.

22 **A** OKAY. OFF THE TOP OF MY HEAD, IT COULD BE A
23 NUMBER OF THINGS. THEY CAN ASK FOR INMATES REQUEST TO A
24 STAFF MEMBER, THAT'S A FORM THAT THEY CAN FILL OUT. THEY
25 MIGHT HAVE A PERSONAL QUESTION THEY WANT TO ASK ME OR

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

185

1 SOMETHING TO LOOK INTO, OR ANY OTHER STAFF MEMBER. IT
2 COULD BE FOR A PERSONAL REASON. THEY HAD SOMETHING STOLEN
3 FROM THEM, SOMETHING OF THEIRS IS MISSING, WHICH THE
4 OFFICER MIGHT HAVE TO LOOK INTO AT SOME POINT IN TIME.

5 Q ARE THERE ANY PROTOCOLS OR RULES ABOUT WHETHER
6 OR NOT -- COULD YOU SHOW THE JURY WHERE THE DOORS ARE THAT
7 ACCESS FROM WHERE THE PRISONERS ARE AND THE CORRECTIONS
8 OFFICER IN HER OFFICE?

9 A OKAY. AGAIN, THIS IS THE -- EXCUSE ME -- THIS
10 IS THE OFFICE ITSELF. THERE IS AN ACCESS DOOR RIGHT HERE,
11 THIS DARKENED LINE. THAT ALLOWS INMATES ON THE C SIDE
12 ACCESS TO THE OFFICE. AND THERE IS ANOTHER DOOR HERE
13 WHICH ALLOWS INMATES ACCESS FROM THE D SIDE.

14 Q DO THOSE DOORS HAVE GLASS IN THEM?

15 A YES, THEY DO.

16 Q AND IS THERE SOME KIND OF DESK OR SOMETHING IN
17 THERE WHERE THE GUARD CAN SIT?

18 A YEAH. THE -- ALL OF THE DESK ISN'T SHOWN HERE.
19 IT OCCUPIES AN AREA THAT STRETCHES APPROXIMATELY FROM THAT
20 POINT DOWN TO MAYBE THIS POINT.

21 Q IS THERE ANY KIND OF RULE OR RECOMMENDATION AS
22 FAR AS WHETHER THOSE DOORS ARE LOCKED DURING VARIOUS
23 SHIFTS?

24 A NO, MA'AM. ABOUT THE ONLY REQUIREMENT WE HAVE
25 AS FAR AS LOCKING THAT OFFICE, IS WHEN THE OFFICER IS NOT

1 ACTUALLY IN THE OFFICE.

2 Q WHAT DOES THE EXPRESSION SIGHT AND SOUND MEAN IN
3 THE WORLD OF CORRECTIONS OFFICERS?

4 A WELL, BASICALLY, ONE OF THE PRIMARY DUTIES OF --
5 A CORRECTIONAL OFFICER HAS IN A UNIT LIKE THAT, DURING
6 HOURS OF DARKNESS OR EVEN DURING THE DAY FOR THAT MATTER,
7 IS TO BE ABLE TO VISUALLY SEE THE INMATES AS THEY MOVE IN
8 AND AROUND THE UNITS AND TO HEAR VARIOUS DIFFERENT THINGS
9 THAT MIGHT BE GOING ON.

10 Q SO, HAVING THE DOORS OPEN WOULD NOT BE UNCOMMON?

11 A OH, NO, MA'AM.

12 Q THAT'S HOW THEY CAN HEAR THEM?

13 A YES.

14 Q AND CAN SEE THEM. WHAT IS LIGHTS OUT?

15 A LIGHTS OUT NORMALLY OCCURS APPROXIMATELY 10:00
16 IN THE EVENING. AND WHAT HAPPENS IS IT'S LIGHTS OUT, BUT
17 THERE IS SUBDUED LIGHTS IN THERE, YOU KNOW, THE EXIT
18 LIGHTS, THE NIGHT LIGHTS IF YOU WILL. IT'S A REQUIREMENT.
19 THINGS THAT -- ARE TONED DOWN AT ABOUT 10:00 IN THE
20 EVENING. INMATES GO TO SLEEP. THEY DON'T NECESSARILY
21 HAVE TO GO TO SLEEP, BUT THEY CAN'T COME OUT OF THEIR
22 CUBES AND ---

23 Q ARE THEY ALLOWED TO LEAVE THEIR CUBES AFTER
24 LIGHTS OUT TO GO TO THE RESTROOM?

25 A YES, MA'AM.

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

187

1 Q WERE YOU WORKING IN YOUR PRESENT CAPACITY ON
2 JANUARY 18, OF '08?

3 A YES, I WAS.

4 Q AND YOU WORKED WITH SARA ADAMS, IS THAT TRUE?

5 A YES, MA'AM.

6 Q CAN YOU TELL THE JURY WHAT EMPLOYEE OF THE YEAR
7 IS FOR THE CORRECTIONS OFFICERS?

8 A SURE. I'LL BE GLAD TO.

9 MR. SHELTON: OBJECTION.

10 THE COURT: MAJOR, ONE SECOND.

11 THE WITNESS: SURE.

12 THE COURT: THE BASIS?

13 MR. SHELTON: CHARACTER.

14 THE COURT: COUNSEL APPROACH.

15 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
16 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
17 THE HEARING OF THE JURY, OFF THE RECORD.)

18 THE COURT: MR. SHELTON, THAT OBJECTION IS
19 OVERRULED.

20 MR. SHELTON: THANK YOU.

21 THE COURT: YOU MAY CONTINUE. MAJOR MINCEY, YOU
22 MAY ANSWER THAT QUESTION. IF YOU NEED IT REPEATED, TELL
23 MS. WILLIAMS.

24 THE WITNESS: NO. I UNDERSTOOD THE QUESTION.
25 WITHIN THE DEPARTMENT OF CORRECTIONS, WE HAVE A -- A

1 SYSTEM OR A PROGRAM IN WHICH WE CAN IDENTIFY SOME OF OUR
2 BETTER EMPLOYEES. THOSE THAT BASICALLY GO ABOVE AND
3 BEYOND WHAT'S ACTUALLY REQUIRED OF THEM. AND ONCE A
4 QUARTER, A SHIFT SUPERVISOR CAN SUBMIT A PERSON OF HIS
5 RECOMMENDATION FROM HIS PARTICULAR SHIFT THAT HAS MET THE
6 REQUIREMENTS OF, YOU KNOW, BASICALLY COMING TO WORK ON
7 TIME, BEING AVAILABLE FOR EXTRA DUTY, THINGS OF THIS
8 NATURE. THE ABILITY TO, YOU KNOW, CALM, YOU KNOW,
9 DISPUTES WITHIN THEIR UNIT, OR WHAT HAVE YOU.

10 EACH QUARTER THIS IS DONE. SO, OVER THE COURSE OF
11 A YEAR, THAT LEAVES YOU WITH FOUR CORRECTIONAL OFFICERS OF
12 THE QUARTER. OUT OF THOSE FOUR---

13 MR. SHELTON: OBJECT -- OBJECTION.

14 Q IF I JUST ASK A FOUNDATION QUESTION---

15 THE COURT: WELL, ONE MOMENT. WHAT'S YOUR BASIS?

16 MR. SHELTON: FOUNDATION, YOUR HONOR.

17 THE COURT: ALL RIGHT. SUSTAINED, MS. WILLIAMS.

18 BY MS. WILLIAMS:

19 Q SO, THOSE SHIFT SUPERVISORS THAT ARE
20 RECOMMENDING CORRECTIONAL OFFICERS IN THEIR UNIT REPORT
21 DIRECTLY TO YOU?

22 A YES, MA'AM.

23 Q SO, YOU'RE INVOLVED IN THAT PROCESS, OVERSEEING
24 IT?

25 A YES.

1 Q ALL RIGHT. SO, GETTING BACK TO THIS, CAN YOU
2 TELL US THE -- YOU JUST DESCRIBED THE DUTIES, COULD YOU
3 GET BACK TO HOW--

4 A OH, HOW THE SELECTION IS MADE?

5 Q NO. JUST PICK UP WHERE YOU LEFT OFF.

6 A OKAY. EACH QUARTER, AGAIN, AN INDIVIDUAL IS
7 IDENTIFIED AS THE CORRECTIONAL OFFICER OF THE QUARTER.
8 OVER THE COURSE OF THE YEAR, THAT LEAVES YOU FOUR
9 CORRECTIONAL OFFICERS THAT AT THE END OF THE YEAR, THEIR
10 -- WHAT'S THE WORD TO SAY -- THEY COME BEFORE A PANEL.
11 THEY ARE ASKED A SERIES OF QUESTIONS ALONG WITH OTHER
12 RECOMMENDATIONS FROM THEIR PARTICULAR SUPERVISOR.

13 Q ARE THESE WORK RELATED QUESTIONS, QUESTIONS
14 RELATED TO THEIR DUTIES AND THE PERFORMANCE OF THEIR
15 DUTIES?

16 A YES. MISSION STATEMENT. ACTIVITIES WITHIN THE
17 AGENCY. POLICY, PROCEDURE.

18 Q IS SOME OF THAT HAVE TO DO -- IS SOME OF THE
19 REASON WHY THEY GIVE THE REPORT HAVE TO DO DIRECTLY WITH
20 HOW THEY---

21 MR. SHELTON: OBJECTION.

22 MS. WILLIAMS: ---HANDLE THE INMATES?

23 THE COURT: BASIS?

24 MR. SHELTON: LEADING.

25 THE COURT: SUSTAINED. REPHRASE YOUR QUESTION.

1 BY MS. WILLIAMS:

2 Q AS PART OF THE ANALYSIS, ARE THEY EVALUATED ON
3 THEIR DUTIES ON THE UNIT?

4 MR. SHELTON: OBJECTION. LEADING.

5 THE COURT: OVERRULED. YOU MAY ANSWER, MR. MINCEY.

6 THE WITNESS: OKAY. YES. ALONG WITH CLEANLINESS
7 OF THE UNIT -- ANY NUMBER OF THINGS THAT THEY ARE
8 RESPONSIBLE FOR DURING THE COURSE OF THEIR -- THEIR DUTY
9 HOURS.

10 MS. WILLIAMS: JUST ONE MOMENT. YOUR HONOR, MAY WE
11 APPROACH FOR JUST ONE MINUTE?

12 THE COURT: YOU MAY.

13 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
14 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
15 THE HEARING OF THE JURY, OFF THE RECORD.)

16 BY MS. WILLIAMS:

17 Q YOU WERE WORKING BACK IN JANUARY 18, 2008?

18 A YES.

19 Q WHEN DID YOU LEARN THAT THERE HAD BEEN A PROBLEM
20 AT THE MAG II UNIT?

21 A I RECEIVED A CALL FROM THE CONTROL ROOM AT MY
22 HOME.

23 Q ABOUT WHAT TIME WAS THAT IF YOU REMEMBER?

24 A IT WAS FAIRLY LATE IN THE EVENING. I WAS IN
25 BED. I -- TO GIVE YOU AN EXACT TIME, I COULDN'T TELL YOU

MAJOR MINCEY -- DIRECT BY MS. WILLIAMS

191

1 OFF THE TOP OF MY HEAD. I---

2 Q THAT'S FINE.

3 A ---COULD REFER TO AN INCIDENT REPORT.

4 Q WHAT DID YOU DO WHEN YOU GOT THE CALL?

5 A I BASICALLY WAS BRIEFED. I ASKED A FEW
6 QUESTIONS ABOUT THE PHYSICAL WELL BEING OF THE OFFICER
7 THAT WAS ASSAULTED. I IMMEDIATELY GOT DRESSED AND CAME
8 OUT TO THE INSTITUTION.

9 Q WHEN YOU GOT THERE, WAS THE VICTIM STILL THERE?

10 A NO, MA'AM. SHE WASN'T.

11 Q IF YOU KNOW, WHERE HAD SHE BEEN TRANSPORTED?

12 A SHE HAD BEEN TRANSPORTED TO THE HOSPITAL BY EMS.

13 MS. WILLIAMS: THANK YOU. PLEASE ANSWER ANY
14 QUESTIONS THAT THE DEFENSE HAS.

15 CROSS EXAMINATION BY MR. SHELTON:

16 Q HOW ARE YOU DOING, MAJOR?

17 A VERY GOOD.

18 Q OKAY. YOU'RE IN CHARGE OF THE SAFETY AND
19 EVACUATION, OR YOU DEAL WITH THE PROTOCOLS WITH SAFETY AND
20 EVACUATION?

21 A I OVERSEE IT. WE ACTUALLY HAVE A -- AN EHSO,
22 ENVIRONMENTAL HEALTH AND SAFETY OFFICER, THAT GOES ABOUT
23 PERIODICALLY UPDATING EVACUATION CHARTS, CONDUCTING FIRE
24 DRILLS, THINGS LIKE THAT.

25 Q OKAY. SO, WOULD YOU KNOW THE DIMENSIONS AND THE

1 LAYOUT -- THE DIMENSIONS OF THIS MAG II UNIT?

2 A I COULD GIVE YOU SOME REALLY CLOSE
3 APPROXIMATIONS.

4 Q OKAY.

5 A SIZE WISE, YES.

6 Q OKAY. GOING TO THE -- THE C SIDE, DO YOU KNOW
7 ABOUT HOW -- HOW FAR IT IS FROM THE BACK OF THE C SIDE
8 UNIT TO THE ACTUAL CORRECTIONAL OFFICER'S OFFICE?

9 A OKAY. YOU'RE---

10 Q OR YOU CAN GO---

11 A ---BOUNCING OFF OF THE -- BECAUSE BOTH OF THEM
12 ARE BASICALLY -- NOT BASICALLY, THEY'RE IDENTICAL IN
13 DISTANCE -- THE LASER IS BOUNCING OFF THE TOP OF THE BENCH
14 -- I'LL BE REFERRING FROM THIS DISTANCE TO THE DOOR?

15 Q YES, SIR.

16 A EACH -- EACH ONE OF THESE CUBES IS APPROXIMATELY
17 EIGHT FEET BY SEVEN FEET, OR SIX AND A HALF. SO, IF YOU
18 HAVE ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN -- MY BEST
19 GUESTIMATE ON THE DISTANCE FROM THIS POINT TO THIS POINT,
20 TAKING INTO CONSIDERATION THIS OPEN AREA, IS APPROXIMATELY
21 12 FEET WIDE, THE DISTANCE FROM THIS CUBE TO THE ACTUAL
22 DOOR -- MAYBE -- MAYBE MORE LIKE 15 -- SAY APPROXIMATELY
23 60 FEET.

24 Q SIXTY FEET. OKAY. AND THERE'S A STEP UP INTO
25 THE CORRECTIONAL OFFICER'S STATION, ISN'T THERE?

1 A YES. THIS AREA RIGHT HERE COMPRISES OF TWO
2 STEPS.

3 Q TWO STEPS. OKAY. AND THERE'S WINDOWS ON THE
4 CORRECTIONAL OFFICER'S STATION FACING THE DAY ROOM?

5 A YES. THERE ARE WINDOWS ON THIS SIDE. THERE IS
6 A WINDOW THERE. THERE IS A WINDOW HERE. A WINDOW HERE.
7 A WINDOW HERE AND A WINDOW THERE.

8 Q NOW -- NOW, THE WINDOWS WHERE THE DOORS ARE,
9 THAT'S ON THE DOOR, ISN'T THAT CORRECT?

10 A YES.

11 Q CAN YOU TELL ABOUT HOW -- HOW MUCH THE LENGTH IS
12 OF THE CORRECTIONAL OFFICER'S STATION, THE LENGTH?

13 A I WOULD -- IN LOOKING AT THE JURY PANEL, I -- I
14 WOULD SAY THE OFFICER'S OFFICE EXTENDS FROM THE FAR POINT
15 HERE TO THE SECOND TO THE LAST GENTLEMAN.

16 Q SO, ABOUT WHERE THE PROSECUTOR'S TABLE IS?

17 A MAYBE TOWARDS THE END OF THE PROSECUTOR'S TABLE
18 WOULD BE THE OVERALL LENGTH OF THAT OFFICE, EXTENDING FROM
19 THIS POINT TO THAT POINT.

20 Q FROM DOOR TO DOOR?

21 A YES.

22 Q NOW, THE DOORS ARE BACK TOWARDS THE -- TOWARDS
23 THE ONE WALL, ISN'T THAT CORRECT? TOWARDS THE LEFT WALL,
24 ACCORDING TO THIS?

25 A ARE YOU REFERRING TO THIS -- THIS DOOR HERE,

1 SIR?

2 Q YES, SIR.

3 A YES. THIS DOOR SWINGS IN.

4 Q SO, YOU CAN'T GO FROM -- STRAIGHT BEHIND ONE
5 DOOR TO THE NEXT DOOR, ISN'T THAT CORRECT? YOU HAVE TO
6 KIND OF DO AN ARCH AROUND THE BACK?

7 A ARE YOU REFERRING TO COMING AROUND THIS SIDE?

8 Q YES.

9 A TO THIS DOOR?

10 Q WELL, IN THE CORRECTIONAL OFFICER'S STATION --
11 THE CORRECTIONAL OFFICER'S OFFICE?

12 A IN ALL HONESTY, THIS BATHROOM JUTS OUT PROBABLY
13 ABOUT SIX FEET FROM THIS PARTICULAR WALL. BUT IT'S
14 POSSIBLE TO GO FROM THIS DOOR TO WALK AROUND IT AND COME
15 TO THAT DOOR.

16 Q YEAH. YOU CAN WALK AROUND IT, BUT YOU CAN'T --
17 IT'S NOT A STRAIGHT SHOT?

18 A NO.

19 Q YOU SAID THAT THE RESTROOM COMES OUT ABOUT SIX
20 FEET. DO YOU KNOW HOW -- THE OTHER DIMENSIONS OF THE
21 RESTROOM?

22 A IT'S NOT A VERY BIG RESTROOM. PROBABLY ABOUT
23 SIX FEET BY FIVE AND A HALF FEET, SIX BY FIVE. JUST LARGE
24 ENOUGH FOR A TOILET AND A SINK.

25 Q TAKING THE DIAGRAM, ON THE LEFT SIDE OF THE

1 CORRECTIONAL OFFICER'S STATION, TO THE RIGHT SIDE OF THE
2 CORRECTIONAL OFFICER'S STATION---

3 A FROM THIS POINT?

4 Q ---THAT'S THE DAY ROOM, HOW -- WHAT'S THAT
5 LENGTH?

6 A FROM THIS POINT TO THIS POINT?

7 Q FROM THAT WINDOW---

8 A YES.

9 Q ---TO THE -- TO THE DAY SIDE.

10 A NO MORE THAN TEN FEET.

11 Q OKAY. FROM -- DO YOU KNOW HOW -- HOW MUCH --
12 HOW OPEN THE TABLE -- HOW FAR OUT FROM THE WALL THE TABLE
13 COMES?

14 A THE TABLE ITSELF IS ABOUT THE SAME WIDTH AS THIS
15 DESK OR TABLE IN FRONT OF ME.

16 Q WHAT'S THE -- WHAT'S THE DISTANCE BETWEEN THE
17 BATHROOM AND THE TABLE?

18 A IT'S -- AS CLOSE AS I CAN IMAGINE, THE DISTANCE
19 IS ABOUT THE DISTANCE FROM THIS TO THE BENCH ITSELF.

20 Q OKAY. AND IS IT -- IS IT COMMON FOR THE OFFICER
21 TO SIT IN BETWEEN THE BATHROOM AND THE TABLE?

22 A IN ALL HONESTY, THE OFFICER HAS A COUPLE OF
23 DIFFERENT OPTIONS OF WHERE THEY CAN SIT. THEY CAN -- MOST
24 OF THE UNITS WILL HAVE A TABLE THAT WILL SIT HERE, OR
25 EITHER IN THIS CORNER, DEPENDING ON THE CONFIGURATION OF

1 WHERE THEY SIT AT. BUT, AGAIN, THEIR DESK RUNS ABOUT THIS
2 DISTANCE TO THIS DISTANCE.

3 Q OKAY. AND THE BATHROOM IS PRETTY MUCH RIGHT IN
4 THE MIDDLE OF THE CORRECTIONAL OFFICER'S STATION, IS THAT
5 TRUE?

6 A YES.

7 Q OKAY. AND YOU MENTIONED SIGHT AND SOUND?

8 A YES.

9 Q IT -- IT WOULD BE -- BASED OFF SIGHT AND SOUND,
10 BEST TO BE RIGHT IN THE MIDDLE SO YOU CAN SEE BOTH -- HEAR
11 BOTH SIDES AND BE ABLE TO REACT TO BOTH SIDES?

12 A UM, I -- IT COULD BASICALLY BOIL DOWN TO A
13 PREFERENCE OF WHICH SIDE OF THAT UNIT YOU WANT TO, YOU
14 KNOW, BASICALLY, POST YOURSELF IN. BUT YOU -- WHAT WOULD
15 HAPPEN, IF THE OFFICER POSTED THEMSELVES DIRECTLY AT THAT
16 SPOT, THERE -- WHICH WOULD BE IN THE MIDDLE OF THE DESK,
17 IT MIGHT OFFER A BLIND SPOT. THEY -- THE BATHROOM BLOCKS
18 THEIR VISION INTO THE RESTROOMS. SO, MORE OFTEN THAN NOT,
19 AN OFFICER WILL PRETTY MUCH POST THEMSELVES HERE OR HERE.
20 AND, AGAIN, KEEPING IN MIND THE -- THE LENGTH OF THE
21 ACTUAL DESK THAT THEY HAVE.

22 Q WELL, IF THEY'RE ON ONE SIDE OR THE OTHER, THEN
23 THEY ARE GOING TO CREATE A BLIND SPOT FOR THEMSELVES FOR
24 THE OTHER SIDE, ISN'T THAT CORRECT?

25 A NOT NECESSARILY. YOU WOULD HAVE TO -- EVEN

1 THOUGH THIS DRAWING DOESN'T DEPICT IT, YOU HAVE TO
2 IMAGINE, THIS IS A BIG WIDE WINDOW HERE, SO YOU CAN
3 CLEARLY SEE FROM THIS POINT TO THAT POINT. IF YOU WERE
4 SITTING HERE, YOU COULD DIRECTLY SEE THIS WING RIGHT HERE.
5 OR IF YOU WERE ON THIS SIDE, YOU COULD SEE IN THIS WING.
6 SO, IF YOU WERE POSTED HERE OR HERE, YOU COULD ACTUALLY
7 SEE BOTH SIDES OF THIS WING, THE SIDE INTO THE DAY ROOMS.

8 Q BUT -- BUT YOU COULDN'T SEE THE -- WAY INTO THE
9 BATHROOM, COULD YOU NOT?

10 A WHICH BATHROOM?

11 Q TO THE OTHER -- WELL, IF YOU'RE SITTING ON --
12 SAY YOU'RE SITTING ON THE C SIDE.

13 A OKAY. THIS IS THE C SIDE.

14 Q OKAY. CLOSE TO THE C SIDE. YOU WOULD THEN NOT
15 BE ABLE TO SEE THE BATHROOM FROM -- FROM THAT SIDE WINDOW,
16 CORRECT?

17 A ARE YOU REFERRING TO -- THIS---

18 Q THE BATHROOM ON THE D SIDE BATHROOM?

19 A WELL, SURE. AGAIN, KEEPING IN MIND -- YOU WOULD
20 ALMOST ACTUALLY HAVE TO VISUALLY BE IN THAT OFFICE TO SEE
21 -- IF I WERE HERE, THERE IS NO WAY I BELIEVE AN INMATE
22 COULD ACTUALLY COME THROUGH THAT DOOR WITHOUT ME KNOWING
23 IT. FIRST OF ALL, I WOULD PROBABLY HEAR HIM COMING UP THE
24 STEPS, WALKING ACROSS THE TILES OR SOMETHING WOULD, YOU
25 KNOW, -- SOME SORT OF SOUND WOULD PROBABLY GET MY

1 ATTENTION, AT LEAST MAKE ME LOOK AROUND, I WOULD THINK.

2 Q OKAY. IS IT PART OF THE RULES AND REGULATIONS
3 THAT IF AN INMATE WANTS TO COME INTO THE OFFICE, THEY NEED
4 TO KNOCK?

5 A IT'S NOT A POSTED OR WRITTEN RULE, NO.

6 Q OKAY. NOW, THERE'S -- THERE'S A TELEPHONE
7 ALARM, IS THERE NOT?

8 A YES. WE HAVE AN EMERGENCY SYSTEM WHERE IT'S --
9 IF AN OFFICER FEELS IT NECESSARY TO NOTIFY OR SET OFF AN
10 ALARM, THE HANDSET CAN BE KNOCKED OFF THE PHONE. AND IT'S
11 -- NO ONE DIALS THE PHONE, IT'LL ALARM OUR OFFICE AFTER A
12 FEW SECONDS.

13 Q AFTER A FEW SECONDS?

14 A YES.

15 Q SO, IT'S FAIRLY QUICK?

16 A YES.

17 Q OKAY. WHAT HAPPENS IF THE FIRE ALARM IS PULLED?

18 A IF THE FIRE ALARM IS PULLED, WE HAVE AN
19 ENUNCIATOR PANEL WITHIN THE CONTROL ROOM THAT'S MANNED 24
20 HOURS A DAY. THE CONTROL ROOM OFFICER WOULD ACKNOWLEDGE
21 THAT ALARM AND THEN SEND OUR FIRST RESPONDERS.

22 Q OKAY. ISN'T IT TRUE YOU DIDN'T DIRECTLY
23 SUPERVISE CORRECTIONAL OFFICER ADAMS?

24 A NO. NOT DIRECTLY.

25 MR.. SHELTON: I BEG THE COURT'S INDULGENCE.

MAJOR MINCEY -- CROSS BY MR. SHELTON

199

1 THE COURT: YES, SIR.

2 (PAUSE.)

3 BY MR. SHELTON:

4 Q GOING TO THE TELEPHONE ALARM, WHO DOES -- WHO --
5 DOES THAT ALERT THE FIRST RESPONDERS?

6 A NO, IT DOESN'T. IT ACTUALLY ALARMS IN THE
7 CONTROL ROOM.

8 Q IN THE CONTROL ROOM. AND THEN THE CONTROL ROOM
9 ALERTS THE FIRST RESPONDERS?

10 A YES.

11 Q OKAY. AND WE'RE TALKING ABOUT -- THIS IS THE
12 BUILDING, CORRECT, MAG II -- MAGNOLIA BUILDING, CORRECT?

13 A YES.

14 Q ONE AND II?

15 A YES.

16 Q ABOUT HOW FAR AWAY ARE THE ADMINISTRATIVE
17 OFFICES?

18 A IN THAT PARTICULAR BUILDING OR WHERE THE CONTROL
19 ROOM IS?

20 Q WHERE THE CONTROL ROOM IS.

21 A OKAY. I THINK ABOUT FOUR MINUTES -- FOUR OR
22 FIVE MINUTES ACTUALLY WALK. DISTANCE WISE, STRAIGHT LINE
23 DISTANCE WOULD PROBABLY BE ABOUT 200 YARDS.

24 Q BECAUSE THIS IS A STAND ALONE BUILDING, CORRECT?

25 A YES, IT IS.

1 Q OKAY. GOING TO THE -- WHEN AN INMATE WANTS TO
2 COME INTO THE CORRECTIONAL OFFICER'S STATION, OKAY, IT'S
3 CUSTOMARY, IT'S NOT A WRITTEN RULE THAT THEY KNOCK AND ASK
4 FOR PERMISSION, CORRECT?

5 A YES.

6 Q OKAY. THEY THEN HAVE TO COME UP -- IF THEY'RE
7 GRANTED PERMISSION, THEY THEN HAVE TO COME UP TWO STEPS,
8 CORRECT?

9 A YES.

10 Q OKAY.

11 MR. SHELTON: NO FURTHER QUESTIONS.

12 THE COURT: MS. WILLIAMS.

13 MS. WILLIAMS: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MS. WILLIAMS:

15 Q MAJOR MINCEY, WHEN THE ALARM IS SOUNDED, THE
16 CONTROL ROOM GETS THE ALARM?

17 A YES.

18 Q DO THE FIRST RESPONDERS COME FROM THE CONTROL
19 ROOM NECESSARILY?

20 A NO, MA'AM.

21 Q WHERE WOULD THEY BE?

22 A NORMALLY THE FIRST RESPONDERS ARE POSITIONED OUT
23 ON THE YARD ITSELF, SO THEY COULD BE ANYWHERE FROM 200
24 YARDS TO RIGHT IN FRONT OF THE BUILDING, DEPENDING ON
25 WHERE THEY WERE AT, AT THE TIME THAT THE CALL WAS

1 RECEIVED.

2 MS. WILLIAMS: YOUR HONOR, BASED ON MR. SHELTON'S
3 CROSS EXAMINATION, THE STATE HAS A COUPLE OF PHOTOS THAT
4 WE WOULD LIKE MARKED AND SHOW TO DEFENSE COUNSEL.

5 (STATE'S EXHIBIT NO. 4 MARKED FOR IDENTIFICATION.)

6 MS. WILLIAMS: MAY I APPROACH -- OH. MAY I
7 APPROACH THE WITNESS?

8 THE COURT: YOU MAY.

9 BY MS. WILLIAMS:

10 Q WOULD YOU PLEASE LOOK AT THAT PICTURE AND TELL
11 US IF YOU RECOGNIZE WHAT IT IS?

12 A YES. THIS IS A -- WOULD BE THE WING OF ONE OF
13 OUR UNITS, EITHER THE MAG UNIT OR THE CYPRESS UNIT.

14 Q IS THAT AN ACCURATE DEPICTION OF WHAT THE CELLS
15 LOOK LIKE IN THE MAG II UNIT?

16 A YES, MA'AM.

17 MS. WILLIAMS: YOUR HONOR, AT THIS TIME WE WOULD
18 ASK THAT STATE'S EXHIBIT 4 BE ENTERED INTO EVIDENCE.

19 THE COURT: MR. SHELTON?

20 MR. SHELTON: MAY I APPROACH?

21 THE COURT: YOU MAY.

22 (PAUSE.)

23 MR. SHELTON: NO OBJECTIONS.

24 THE COURT: THANK YOU. STATE'S NO. 4 INTO EVIDENCE
25 WITHOUT OBJECTION.

1 (STATE'S EXHIBIT NO. 4 RECEIVED INTO EVIDENCE.)

2 MS. WILLIAMS: MAY WE PUBLISH, YOUR HONOR?

3 THE COURT: YOU MAY.

4 BY MS. WILLIAMS:

5 Q MAJOR MINCEY, THIS IS NOT THE KIND OF PRISON --
6 IT'S NOT A PRISON THAT WE SEE ON TV, IS IT?

7 A NO, MA'AM.

8 Q ARE THERE BARS?

9 A NO, MA'AM.

10 Q ARE THE INMATES RESTRICTED FROM MOVING ABOUT THE
11 UNIT---

12 MR. SHELTON: OBJECTION.

13 THE COURT: BASIS?

14 MR. SHELTON: LEADING.

15 THE COURT: SUSTAINED.

16 BY MS. WILLIAMS:

17 Q ARE THE INMATES RESTRICTED?

18 MR. SHELTON: OBJECTION, YOUR HONOR. BEYOND THE
19 SCOPE OF CROSS EXAMINATION.

20 THE COURT: OVERRULED.

21 THE WITNESS: NO. THEIR MOVEMENT IS NOT
22 RESTRICTED.

23 BY MS. WILLIAMS:

24 Q CAN YOU PLEASE EXPLAIN TO THE JURY WHAT THAT IS
25 A PICTURE OF?

1 **A** THIS PICTURE RIGHT HERE IS AN EXACT PICTURE OF
2 -- AND I MENTIONED EARLIER THAT IT MAY HAVE BEEN EITHER
3 THE CYPRESS UNIT OR THE MAG UNIT, BECAUSE THEY ARE EXACTLY
4 ALIKE. AND THE REASON I SAY THAT, EVEN THOUGH WE HAVE A
5 THIRD UNIT, THE WALLS ARE A LITTLE HIGHER.

6 IN THE MAG UNIT, IF THIS IS A PICTURE OF THE MAG
7 UNIT, THE WALLS ARE APPROXIMATELY FOUR AND A HALF FEET
8 TALL. EACH ONE OF THESE AREAS I'M POINTING AT IS A CUBE.
9 YOU CAN SEE THE ENTRANCE WAY ON THIS SIDE OF THE PICTURE.
10 THERE'S ANOTHER ONE ON THAT SIDE AND ON DOWN.

11 **Q** AND ARE THOSE CUBES THE CELLS FOR THE INMATES?

12 **A** YES, THEY ARE.

13 **MS. WILLIAMS:** I HAVE NOTHING FURTHER, YOUR HONOR.

14 **THE COURT:** MR. SHELTON?

15 **MR. SHELTON:** NOTHING FURTHER, YOUR HONOR.

16 **THE COURT:** ANY OBJECTION TO THIS WITNESS BEING
17 EXCUSED FROM THE WITNESS STAND AND FROM THE COURTROOM FROM
18 THE STATE?

19 **MS. WILLIAMS:** NOTHING FROM THE STATE -- NOT FROM
20 THE STATE.

21 **MR. SHELTON:** NO, YOUR HONOR.

22 **THE COURT:** MR. MINCEY, YOU MAY STEP DOWN. YOU ARE
23 FREE TO REMAIN IN THE COURTROOM, BUT YOU ARE ALSO EXCUSED
24 FROM THE COURTHOUSE. THANK YOU.

25 **THE WITNESS:** THANK YOU VERY MUCH.

1 (WITNESS STEPPED DOWN.)

2 THE COURT: CALL YOUR NEXT WITNESS.

3 MS. WILLIAMS: THE STATE CALLS DAVID BENTON.

4 (WITNESS FORWARD.)

5 DAVID ALLEN BENTON, HAVING BEEN
6 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
8 FOR THE RECORD AND SPELL YOUR LAST NAME.

9 THE WITNESS: MY NAME IS DAVID ALLEN BENTON,
10 B-E-N-T-O-N.

11 THE COURT: ALL RIGHT. MS. WILLIAMS.

12 MS. WILLIAMS: THANK YOU, YOUR HONOR.

13 DIRECT EXAMINATION BY MS. WILLIAMS:

14 Q MR. BENTON, WHERE WERE YOU WORKING IN JANUARY OF
15 2008?

16 A AT MACDOUGALL CORRECTIONAL INSTITUTION.

17 Q AND WHAT UNIT WERE YOU WORKING ON, ON THE
18 EVENING OF JANUARY 17, 2008?

19 A MAG II.

20 Q AND DID YOU KNOW SARA ADAMS?

21 A YES.

22 Q WHAT WAS YOUR RELATIONSHIP WITH HER?

23 A WE WERE ENGAGED.

24 Q DID YOU KNOW MS. ADAMS BEFORE THE TWO OF YOU
25 BEGAN WORKING AT MACDOUGALL?

DAVID BENTON -- DIRECT BY MS. WILLIAMS

205

- 1 A YES.
- 2 Q WHAT WAS THE RELATIONSHIP THEN?
- 3 A WE WERE DATING.
- 4 Q WHAT IS YOUR RELATIONSHIP NOW?
- 5 A WE'RE CURRENTLY ENGAGED.
- 6 Q WHAT SHIFT WERE YOU WORKING THAT EVENING?
- 7 A THE SHIFT BEFORE HER.
- 8 Q WHAT TIME 'TIL WHAT TIME WAS THAT?
- 9 A 7:00 A.M. TO 7:00 P.M.
- 10 Q SO, YOU LEFT AT WHAT TIME THAT EVENING?
- 11 A AFTER SHIFT CHANGE, IT WAS PROBABLY 7:15.
- 12 Q DID YOU HAVE ANY PROBLEMS ON THE UNIT THAT
- 13 EVENING?
- 14 A NO.
- 15 Q DID YOU HAVE ANY RUN-INS WITH ANY INMATES?
- 16 A NONE AT ALL.
- 17 Q DID YOU HAVE ANY RUN-INS WITH THE DEFENDANT?
- 18 A NO---
- 19 MR. SHELTON: OBJECTION. LEADING.
- 20 THE COURT: SUSTAINED.
- 21 BY MS. WILLIAMS:
- 22 Q DID ANYTHING UNUSUAL HAPPEN THAT EVENING?
- 23 A NO.
- 24 Q DID YOU KNOW GEORGE SALISBURY BEFORE YOU STARTED
- 25 WORKING THERE?

1 A NO.

2 Q WHEN DID YOU LEARN WHAT TOOK PLACE ON THE EARLY
3 MORNING HOURS OF JANUARY 18TH?

4 MR. SHELTON: OBJECTION.

5 THE COURT: BASIS?

6 MR. SHELTON: RELEVANCE, YOUR HONOR.

7 THE COURT: OVERRULED.

8 BY MS. WILLIAMS:

9 Q OKAY.

10 A IT WAS ABOUT 1:30 WHENEVER MY BEST FRIEND CAME
11 OVER AND TOLD ME.

12 Q WHERE WERE YOU?

13 A AT HOME.

14 Q WHAT DID YOU DO?

15 A I IMMEDIATELY GOT DRESSED AND WENT DOWN TO THE
16 HOSPITAL WHERE SHE WAS AT.

17 Q WHAT WAS HER DEMEANOR WHEN YOU GOT THERE?

18 MR. SHELTON: OBJECTION.

19 THE COURT: BASIS?

20 MR. SHELTON: RELEVANCE, YOUR HONOR.

21 THE COURT: OVERRULED.

22 THE WITNESS: SHE WAS A LITTLE STAND-OFFISH AT
23 FIRST. IT TOOK HER A LITTLE WHILE TO WARM UP.

24 BY MS. WILLIAMS:

25 Q DID YOU TAKE HER ANYWHERE ELSE?

1 **A** YES. I TOOK HER -- I CAN'T REMEMBER THE NAME OF
2 THE PLACE, BUT, UM, WHERE THEY DONE THE RAPE KIT AND
3 EVERYTHING, OFF OF RIVERS AVENUE.

4 **Q** HOW WAS SHE ACTING?

5 **A** SHE WAS A LITTLE QUIET.

6 **Q** DO YOU KNOW ROUGHLY WHAT TIME THIS WAS?

7 **A** NO.

8 **MS. WILLIAMS:** PLEASE ANSWER ANY QUESTIONS THE
9 DEFENSE MIGHT HAVE.

10 **THE COURT:** MR. SHELTON.

11 CROSS EXAMINATION BY MR. SHELTON:

12 **Q** MR. BENTON, YOU -- YOU WERE NOT PRESENT AT THE
13 MAG II UNIT AT THE TIME OF THIS ALLEGED INCIDENT, WERE
14 YOU?

15 **A** NO.

16 **Q** SO, YOU WERE NOT A WITNESS TO ANY OF -- ANYTHING
17 THAT TOOK PLACE THAT NIGHT, WERE YOU?

18 **A** NO.

19 **MR. SHELTON:** NO FURTHER QUESTIONS.

20 **THE COURT:** MS. WILLIAMS.

21 **MS. WILLIAMS:** WE HAVE NOTHING FURTHER FOR THIS
22 WITNESS.

23 **THE COURT:** ANY OBJECTION TO THIS WITNESS BEING
24 EXCUSED FROM THE WITNESS STAND AND THE COURTHOUSE?

25 **MR. SHELTON:** NO.

1 **THE COURT:** MR. BENTON, YOU MAY STEP DOWN. YOU ARE
2 FREE TO REMAIN IN THE COURTROOM, BUT YOU MAY BE EXCUSED IF
3 YOU WISH. THANK YOU.

4 (WITNESS STEPPED DOWN.)

5 LADIES AND GENTLEMEN OF THE JURY, IN MY OPENING
6 CHARGE, I NEGLECTED TO TELL YOU OUR SCHEDULE. BASICALLY
7 WE WILL BEGIN PROMPTLY AT 9:00. RUN -- TAKE A MID MORNING
8 BREAK, BREAK AS CLOSE TO NOON AS POSSIBLE, TAKE AN HOUR
9 AND 15 MINUTES FOR LUNCH AND RUN UNTIL ABOUT 5:30, ALSO
10 TAKING A MID AFTERNOON BREAK.

11 WE HAVE REACHED A POINT THAT I THINK IT WOULD BE
12 APPROPRIATE FOR US TO TAKE OUR MORNING BREAK. AND, MS.
13 ROYAL, AS FOREPERSON, IF YOU NOTICE THAT ANY OF YOUR OTHER
14 JURORS NEED A COMFORT BREAK, IF YOU WILL JUST ALERT THE
15 BAILIFF IF WE -- IF WE ARE GOING A LITTLE LONG SOMETIMES,
16 I FORGET TO LOOK AT THE CLOCK. SO, THAT IS ONE OF YOUR
17 ROLES AS WELL.

18 BUT, AGAIN, AS I INDICATED TO YOU, DO NOT BEGIN
19 YOUR DELIBERATIONS, DO NOT DISCUSS THIS CASE AMONGST
20 YOURSELVES AND WE'LL TAKE A 15 MINUTE RECESS. PLEASE RISE
21 FOR THE JURY.

22 YOU MAY LEAVE YOUR NOTEBOOKS OR TAKE THEM WITH YOU,
23 WHATEVER IS MOST CONVENIENT FOR YOU.

24 (WHEREUPON, JURY LEFT THE COURTROOM AT 10:21 A.M.)

25 **THE COURT:** THANK YOU. BE SEATED. PLEASE BE BACK

1 AT 10:30. AND IF Y'ALL CAN, WORK ON MARKING YOUR
2 EXHIBITS. THANK YOU.

3 MS. KENNEDY: YOUR HONOR, IF I MAY ONE THING,
4 PLEASE, I JUST WOULD LIKE TO INQUIRE OF THE STATE WHETHER
5 OR NOT WHAT WE HAVE -- WERE GIVEN ON FRIDAY AFTERNOON WAS
6 A LIST OF PROPOSED WITNESSES. WE WOULD JUST LIKE, FOR
7 PURPOSES OF THE RECORD, AND FOR OUR -- FOR OUR CASE, TOO,
8 YOUR HONOR, TO HAVE WHATEVER THE FINAL LIST IS.

9 THE COURT: HAVE YOU GIVEN THEM A COPY -- I HAVE A
10 COPY OF THE STATE'S---

11 MS. WILLIAMS: I HAVE -- BUT I'LL BE HAPPY TO LOOK
12 AT MS. KENNEDY'S AGAIN JUST TO MAKE SURE THAT SHE HAS GOT
13 THE FINAL LIST THAT THE COURT WAS GIVEN.

14 MS. KENNEDY: WELL, YOUR HONOR, WE KNOW, FOR
15 INSTANCE, THAT NUMBER 20, TYRONE OLIVER, IS NOT GOING TO
16 BE TESTIFYING BASED ON THE REPRESENTATIONS OF THE STATE.
17 AND AGAIN, WE HAVE SOME ISSUES WITH OTHER PEOPLE THAT WE
18 NEED TO ADDRESS AT THE APPROPRIATE TIME. SO, IF WE COULD
19 HAVE A FINAL -- AND IF THIS IS IT, THEN THIS IS IT. BUT
20 THAT'S -- AND I'LL DEFER TO THE REPRESENTATIONS MADE BY
21 THE STATE.

22 THE COURT: THE COURT HAS A COPY OF THE STATE'S
23 PROSPECTIVE WITNESS LIST. THAT IS THE WITNESS LIST THAT I
24 READ OUT DURING JURY SELECTION. AND AT THIS TIME, I'M NOT
25 REQUIRING THE STATE TO GIVE YOU ANOTHER WITNESS LIST, MS.

1 KENNEDY. THANK YOU.

2 (WHEREUPON, COURT RECESSED AT 10:23 A.M.)

3 (WHEREUPON, COURT RESUMED AT 10:35 A.M.)

4 **THE COURT:** BE SEATED.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
6 BENCH CONFERENCE OUTSIDE THE PRESENCE OF THE JURY.)

7 **THE COURT:** THANK YOU, DEPUTY VARNER. PLEASE KEEP
8 THE COURT INFORMED IF THERE'S ANY OTHER MATTERS THAT NEED
9 ASSISTANCE. THANK YOU. PLEASE BRING IN THE JURY. PLEASE
10 RISE FOR THE JURY.

11 (WHEREUPON, JURY ENTERED THE COURTROOM AT 10:38
12 A.M.)

13 **THE COURT:** THANK YOU. THANK YOU. PLEASE BE
14 SEATED. CALL YOUR NEXT WITNESS.

15 **MS. WILLIAMS:** MR. DEVIN GADSON.

16 **THE COURT:** YES, SIR. PLEASE COME FORWARD.

17 (WITNESS FORWARD.)

18 **THE CLERK:** RAISE YOUR RIGHT HAND AND PLACE YOUR
19 LEFT HAND ON THE BIBLE.

20 DEVIN GADSON, HAVING BEEN FIRST
21 DULY SWORN, TESTIFIED AS FOLLOWS:

22 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL NAME
23 FOR THE RECORD AND SPELL YOUR LAST NAME.

24 **THE WITNESS:** DEVIN GODFREY GADSON. LAST NAME,
25 G-A-D-S-O-N.

1 **THE COURT:** MS. WILLIAMS.

2 **COURT REPORTER:** I'M SORRY, COULD I GET THE MIDDLE
3 NAME A SECOND TIME?

4 **THE WITNESS:** GODFREY, G-O-D-F-R-E-Y.

5 DIRECT EXAMINATION BY MS. WILLIAMS:

6 **Q** MR. GADSON, WHERE ARE YOU CURRENTLY EMPLOYED?

7 **A** MACDOUGALL CORRECTIONAL INSTITUTION.

8 **Q** WHAT IS YOUR TITLE THERE?

9 **A** CORPORAL.

10 **Q** HOW LONG HAVE YOU BEEN EMPLOYED THERE?

11 **A** ABOUT THREE YEARS -- ABOUT THREE YEARS, FOUR
12 MONTHS.

13 **Q** WHAT ARE YOUR PRESENT DUTIES?

14 **A** CONTROL ROOM OFFICER, UNIT OFFICER, YARD
15 OFFICER, PERIMETER OFFICER. I WORK ON THE B 2 SHIFT.

16 **Q** DID YOU WORK WITH CORRECTIONS OFFICER, SARA
17 ADAMS?

18 **A** YES, MA'AM.

19 **Q** DID YOU EVER WORK ON THE MAG II UNIT?

20 **A** YES.

21 **Q** DID YOU WORK IN THE SAME CAPACITY THAT SHE WAS
22 WORKING?

23 **A** YES, MA'AM.

24 **Q** DID YOU EVER WORK THE NIGHT SHIFT?

25 **A** YES, MA'AM.

1 **Q** HOW DID YOU HEAR THE INMATES AT NIGHT WHEN YOU
2 WERE WORKING THE NIGHT SHIFT?

3 **A** HOW DID I HEAR THEM? THEY -- AFTER AROUND ABOUT
4 10:00, IT'S FAIRLY QUIET. WE GET ON AT 7:00. AND FROM
5 THERE, THE INMATES ARE UP AND THEY ARE WALKING AROUND.
6 IT'S NOT REALLY NOISY. BUT, YOU KNOW, IT WAS JUST REGULAR
7 TRAFFIC GOING THROUGH. BUT AFTER 10:00, LIGHTS GO OUT.
8 IT TENDS TO QUIET DOWN.

9 **Q** HOW DID YOU HANDLE THE DOORS TO THE OFFICE?

10 **A** YOU TAKE THE UNIT KEYS, YOU ENTER THE DOOR. THE
11 DOORS -- MOST DOORS LOCK BEHIND THEM. SOME DOORS YOU
12 ACTUALLY HAVE TO LOCK THEM BEHIND YOU. IF YOU'RE IN THE
13 OFFICE, YOU HAVE YOUR DOORS OPEN. OR IF YOU LEAVE OUT THE
14 OFFICE, YOU SHUT THE DOORS.

15 **Q** SO, WHEN YOU'RE IN THE OFFICE, THE DOORS ARE
16 OPEN -- ARE OPEN?

17 **A** UH-HUH.

18 **COURT REPORTER:** IS THAT A YES OR NO, SIR?

19 **THE WITNESS:** YES, MA'AM.

20 **BY MS. WILLIAMS:**

21 **Q** WAS SARA ADAMS, TO THE BEST OF YOUR KNOWLEDGE,
22 WORKING ON THE 18TH OF JANUARY 2008?

23 **A** YES, SHE WAS.

24 **Q** AND WHERE WERE YOU WORKING ON THAT EVENING?

25 **A** I WAS IN THE CONTROL ROOM.

DEVIN GADSON -- DIRECT BY MS. WILLIAMS

213

1 Q DID YOU LEARN THAT THERE WAS A PROBLEM ON THE
2 UNIT THAT SHE WAS WORKING THAT EVENING?

3 A YES, MA'AM.

4 Q HOW DID YOU LEARN OF THAT?

5 A THE PHONE ALARM WENT OFF.

6 Q HOW OFTEN DO YOU HAVE TELEPHONE ALARMS?

7 A UM, WE HAVE THEM FAIRLY OFTEN. MOST TIMES, IT'S
8 JUST A MISTAKE. PROBABLY MAYBE ONCE EVERY TWO NIGHTS.

9 Q HAVE YOU EVER HAD A TELEPHONE ALARM GO OFF WHERE
10 THE SITUATION WAS THE SAME AS THAT NIGHT?

11 A NO, MA'AM.

12 Q HOW DOES THE ALARM SOUND?

13 A IT'S A REGULAR TELEPHONE RING, A STANDARD
14 TELEPHONE RING.

15 Q HOW DOES IT HAPPEN, THOUGH, HOW DOES THE ALARM
16 GO OFF?

17 A THE EMERGENCY TELEPHONE LINE GOES OFF AFTER THE
18 PHONE IN THE UNIT -- OR ANY PHONE AT MACDOUGALL HAS BEEN
19 LEFT OFF THE HOOK FOR A FEW SECONDS, MOST TIMES BETWEEN
20 FIVE TO TEN SECONDS.

21 Q WHO WAS IN THE CONTROL ROOM WITH YOU THAT
22 EVENING?

23 A I WAS IN BY MYSELF UNTIL THE EMERGENCY ALARM
24 WENT OFF, THEN LT. BAXTER ALSO ENTERED THE CONTROL ROOM.

25 Q IF YOU REMEMBER, WHAT TIME DID THE ALARM GO OFF?

1 **A** AT APPROXIMATELY 12:15 A.M.

2 **Q** DID YOU SEE OFFICER ADAMS AFTER THAT TIME THAT
3 EVENING?

4 **A** YES, MA'AM.

5 **Q** CAN YOU TELL US HOW?

6 **A** I ACTUALLY LEFT OUT OF THE CONTROL ROOM AND LEFT
7 LT. BAXTER IN THE CONTROL ROOM, AND WENT DOWN TO THE UNIT
8 TO SEE IF I COULD ASSIST. AND WHEN I WENT DOWN, SHE WAS
9 ON THE BREEZEWAY, THE PORCH TYPE AREA. AND SHE WAS
10 SITTING THERE AND SHE WAS VERY DISTRAUGHT, TERRIFIED
11 ACTUALLY.

12 **Q** HAD THE FIRST RESPONDERS ARRIVED?

13 **A** YES. THEY WENT DOWN BEFORE I DID.

14 **Q** HOW MANY CORRECTIONS OFFICERS HAD ARRIVED WHEN
15 YOU GOT THERE?

16 **A** THREE.

17 **Q** WHAT WAS SHE WEARING?

18 **A** SHE HAD ON INMATE'S PANTS AND A WHITE T-SHIRT.

19 **MS. WILLIAMS:** PLEASE ANSWER ANY QUESTIONS THE
20 DEFENSE MIGHT HAVE.

21 CROSS EXAMINATION BY MR. SHELTON:

22 **Q** CORPORAL GADSON, HOW ARE YOU DOING?

23 **A** PRETTY GOOD. HOW ARE YOU DOING?

24 **Q** GOOD. YOU SAID THAT THE ALARM WENT OFF ABOUT

25 12:15?

DEVIN GADSON -- DIRECT BY MS. WILLIAMS

215

1 **A** APPROXIMATELY 12:15.

2 **Q** THE PHONE ALARM?

3 **A** YES, SIR.

4 **Q** WAS THERE A FIRE ALARM THAT WENT OFF?

5 **A** NO, SIR.

6 **Q** SO, YOU'RE NOT AWARE OF A FIRE ALARM GOING OFF?

7 **A** NO, SIR.

8 **MR. SHELTON:** NO FURTHER QUESTIONS.

9 **THE COURT:** ANYTHING FURTHER, MS. WILLIAMS?

10 **MS. WILLIAMS:** NO, YOUR HONOR.

11 **THE COURT:** MR. GADSON, YOU MAY STEP DOWN. YOU MAY

12 REMAIN IN THE COURTROOM, BUT YOU ARE FREE TO LEAVE IF YOU

13 WISH. THANK YOU.

14 **THE WITNESS:** THANK YOU, MA'AM.

15 (WITNESS STEPPED DOWN.)

16 **THE COURT:** CALL YOUR NEXT WITNESS.

17 **MS. WILLIAMS:** THE STATE CALLS SARA ADAMS.

18 (WITNESS FORWARD.)

19 **THE CLERK:** RAISE YOUR RIGHT HAND, PLACE YOUR LEFT

20 HAND ON THE BIBLE.

21 SARA ADAMS, HAVING BEEN FIRST

22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL NAME

24 FOR THE RECORD AND SPELL YOUR LAST NAME.

25 **THE WITNESS:** SARA ELIZABETH ADAMS, A-D-A-M-S.

1 **THE COURT:** MS. WILLIAMS.

2 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

3 **DIRECT EXAMINATION BY MS. WILLIAMS:**

4 **Q** MS. ADAMS, WHERE WERE YOU WORKING ON JANUARY 18,
5 2008?

6 **A** IN -- IN THE MAGNOLIA II UNIT.

7 **Q** AND WHAT FACILITY IS THAT AT?

8 **A** IT'S AT MACDOUGALL CORRECTIONAL INSTITUTION.

9 **Q** WAS MAGNOLIA II UNIT YOUR USUAL PLACE WHERE YOU
10 WORKED?

11 **A** NO. WE HAVE SIX MONTH ROTATIONS, WHERE AFTER
12 SIX MONTHS WE ARE ROTATED INTO ANOTHER UNIT. I WAS
13 ACTUALLY PRIOR TO THAT, PRIMARY CONTROL ROOM OFFICER AND
14 THE SECONDARY BIRCH I OFFICER. SO, IF THE BIRCH I OFFICER
15 DIDN'T SHOW UP, I WORKED IN BIRCH I. AND USUALLY CORPORAL
16 GADSON WOULD GO INTO THE CONTROL ROOM. BUT AT THE TIME OF
17 THE 18TH, I WAS PRIMARY CONTROL ROOM.

18 **Q** SO, HOW MANY NIGHTS HAD YOU WORKED AT THE MAG II
19 UNIT BEFORE THIS TOOK PLACE, THIS ASSAULT?

20 **A** ONE NIGHT.

21 **Q** DID YOU KNOW ANY OF THE INMATES ON THE FLOOR?

22 **A** I KNOW A FEW OF THEM. I'VE WORKED THERE, AT THE
23 TIME, ALMOST TWO AND A HALF YEARS. WALDRUP, STAGGERS,
24 DARDEN, TRUSDALE, YOU KNOW, A FEW OF THEM THAT I KNEW FROM
25 OTHER UNITS.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

217

1 Q DID YOU KNOW GEORGE SALISBURY?

2 A NO, MA'AM.

3 Q DID YOU HAVE ANY PROBLEMS WITH MR. SALISBURY
4 THAT EVENING---

5 A NO, MA'AM.

6 Q -- BEFORE IT TOOK PLACE. DID ANYONE ELSE, IN
7 TERMS OF EMPLOYEES, COME INTO THE UNIT THAT NIGHT?

8 A SGT. MULLINO AND SGT. WILLIAMS CAME IN EARLIER
9 THAT EVENING FOR ME TO SIGN MY TIME SHEET. AND THEN WE DO
10 A 9:00 ROLL CALL COUNT AND IT HAS TO BE CONFIRMED, BECAUSE
11 IT'S ONE OF OUR OFFICIAL COUNTS. AND SGT. MULLINO
12 CONFIRMED MY 9:00 COUNT.

13 Q AND WHEN WAS THE LAST TIME YOU SAW SGT. WILLIAMS
14 THAT NIGHT?

15 A HONESTLY, I CAN'T RECALL. NOBODY CAME IN REALLY
16 AFTER 10:00 I DON'T BELIEVE.

17 Q WHAT DID YOU DO AFTER -- WHAT IS LIGHTS OUT?

18 A LIGHTS OUT IS WHEN -- THEY HAVE TWO DAY ROOMS
19 THAT THEY CAN WATCH TV IN. AT 10:00 THE LIGHTS GO OUT.
20 AND THEY MAY CONTINUE TO WATCH TV, BUT THEY HAVE TO
21 RESTRICT THEIR MOVEMENT TO THE DAY ROOM OR THEIR CUBE
22 ONLY. THEY CAN'T VISIT OTHER INMATE CUBES. THEY HAVE TO
23 BE IN THEIR OWN CUBE. AND THEN AT 11:00 OR 11:30, I
24 BELIEVE TV'S ARE TURNED OFF AND THEN THEY'RE RESTRICTED
25 COMPLETELY TO THEIR CUBES. THEY CAN ONLY LEAVE TO GO TO

1 THE RESTROOM.

2 Q AND WHAT DID YOU DO AFTER LIGHTS OUT?

3 A AFTER LIGHTS OUT, WE DO ANOTHER ROUND OF THE
4 UNIT, JUST TO MAKE SURE THAT EVERYBODY IS QUIET AND IN
5 THEIR CUBES LIKE THEY'RE SUPPOSED TO BE, AND EVERYBODY
6 WAS. AND THEN PROBABLY ABOUT 11:15, 11:30, SOMEWHERE
7 AROUND THERE, BECAUSE IT QUIETS DOWN, I FIXED MY LUNCH AND
8 ATE MY LUNCH.

9 Q WHERE WERE YOU EATING YOUR LUNCH?

10 A AT MY DESK.

11 Q DID SOMEONE ENTER -- DID ANYONE ENTER THE OFFICE
12 AT THAT POINT?

13 A NO.

14 Q WHAT ABOUT AFTER YOU BEGAN TO EAT YOUR LUNCH,
15 DID -- DID YOU SEE MR. SALISBURY THAT EVENING?

16 A AFTER I FINISHED EATING MY LUNCH AND CLEANED
17 EVERYTHING UP, I WAS UPDATING MY LOG BOOK. WE HAVE A LOG
18 BOOK THAT WE HAVE TO NOTATE EVERYTHING THAT HAPPENS IN THE
19 UNIT, ALL OF OUR COUNTS, ANYTHING UNUSUAL. AND IT'S
20 PRETTY MUCH A PASSED DOWN LOG SO THE REST OF THE OFFICERS
21 KNOW WHAT HAPPENED. I WAS UPDATING MY LOG WHEN INMATE
22 SALISBURY CAME IN. I'M TRYING TO REMEMBER WHICH SIDE
23 DOOR, BECAUSE THEY'RE CONFUSING, IT'S THE C AND THE D.

24 HE CAME IN ON THE LEFT HAND SIDE AND SHUT THE DOOR
25 BEHIND HIM. AND HE WALKED BEHIND MY CHAIR OVER TO THE

SARA ADAMS -- DIRECT BY MS. WILLIAMS

219

1 OTHER DOOR, AND STOOD FACING ME, AND HE SAID, "MS. ADAMS,
2 I NEED TO TALK TO YOU ABOUT SOMETHING". AND HE SHUT THAT
3 DOOR.

4 Q WHAT HAPPENS WHEN THE DOORS SHUT?

5 A THEY LOCK.

6 Q WHAT HAPPENED NEXT?

7 A HE PULLED A SHANK OUT OF HIS POCKET AND AT -- AT
8 FIRST -- MY FIRST THOUGHT WAS, OH, HE FOUND A SHANK, HE'S
9 GOING TO TURN IT OVER TO ME. AND, YOU KNOW, I WAS JUST
10 PRETTY MUCH SHOCKED. HE RUSHED ME. HE GRABBED MY ARM.
11 HE PUT THE SHANKED UP TO MY THROAT AND FORCED ME INTO THE
12 BATHROOM, AND TOLD ME IF I DIDN'T GET IN THE BATHROOM, HE
13 WAS GOING TO KILL ME.

14 Q WHAT WAS YOUR DEMEANOR LIKE AT THIS POINT?

15 A PRETTY HYSTERICAL.

16 Q DID YOU SAY ANYTHING TO HIM?

17 A YEAH. I ASKED HIM, YOU KNOW, I ACTUALLY TOLD
18 HIM, I SAID, "YOU DON'T WANT TO DO THIS. PLEASE DON'T DO
19 THIS. I HAVE TWO BOYS AT HOME AND, HONESTLY, I'M ALL THEY
20 HAVE".

21 Q WHAT HAPPENED AFTER YOU GOT INTO THE BATHROOM?

22 A AFTER I GOT INTO THE BATHROOM, HE WAS TELLING ME
23 TO TAKE MY PANTS OFF. THE WAY WE WEAR OUR RADIOS -- WELL,
24 THE WAY I WEAR IT, IS I HAVE A RADIO HOLDER IN THE BACK.
25 AND I TAKE THE CORD AND WRAP IT UP AROUND MY LEFT

1 SHOULDER. AND I THOUGHT THAT IF I COULD ACT LIKE I WAS
2 TAKING MY RADIO OFF AND KEY THE MIKE, THEN CORPORAL GADSON
3 WOULD BE ABLE TO HEAR SOMETHING WASN'T NORMAL. AND HE
4 LOOKED AT ME, AND HE SAID "DON'T DO THAT". AND HE TOOK MY
5 RADIO OFF. AND WHEN I REFUSED TO TAKE OFF MY PANTS, HE
6 TOOK OFF MY BELT. HE TOOK MY CHEMICAL MUNITIONS. HE PUT
7 IT IN HIS POCKET.

8 Q LET ME STOP YOU JUST A MINUTE. WHEN YOU SAY
9 YOUR RADIO ON YOUR SHOULDER, CAN YOU JUST LOOK AT THIS
10 OFFICER, ARE YOU TALKING ABOUT IT BEING UP ON YOUR
11 SHOULDER LIKE THIS OFFICER?

12 A YES, MA'AM.

13 MS. WILLIAMS: YOUR HONOR, JUST LET THE RECORD
14 REFLECT THAT SHE IS JUST USING AN OFFICER THAT HAS A RADIO
15 ON THE SHOULDER AND THAT SHE'S JUST USING THAT AS AN
16 EXAMPLE.

17 THE COURT: IT WILL REFLECT.

18 BY MS. WILLIAMS:

19 Q SO, THEN, WHAT HAPPENED?

20 A HE PULLED DOWN MY PANTS. HE KEPT THE SHANK UP
21 THE WHOLE TIME. HE PULLED DOWN MY PANTS. AND IT WAS --
22 IT WAS COLD. IT WAS JANUARY. AND -- MACDOUGALL IS VERY
23 COLD, SO I HAD ON LEGGINS UNDER IT. HE PULLED OFF MY
24 LEGGINS AND MY PANTS. AND AT THE TIME, I WASN'T WEARING
25 THE BOOTS. I WAS WEARING TENNIS SHOES, LIKE TENNIS SHOES,

SARA ADAMS -- DIRECT BY MS. WILLIAMS

221

1 AND HE KICKED THOSE OFF AND KICKED OFF MY CLOTHES TO THE
2 SIDE.

3 Q AT SOME POINT, DID YOUR SHIRT COME OFF?

4 A UM, AFTER HE -- BEFORE -- BEFORE MY SHIRT CAME
5 OFF, HE, UM -- HE PULLED DOWN HIS PANTS AND EXPOSED
6 HIMSELF TO ME. AND TOOK TWO OF HIS FINGERS AND PUT THEM
7 IN MY VAGINA.

8 Q PUT HIS FINGERS INTO YOUR VAGINA?

9 A YES. AND HE KEPT TRYING TO GET ME TO TAKE OFF
10 MY SHIRT, AND I JUST KEPT TELLING HIM, "LOOK, IF YOU THROW
11 THE SHANK OUT THE DOOR, I'LL DO WHAT YOU WANT. YOU KNOW,
12 JUST THROW THE SHANK OUT THE DOOR. YOU'RE SCARING ME".
13 YOU KNOW, I KEPT TRYING TO TALK TO HIM THE WHOLE TIME.
14 WELL, HE TOOK THE ONE HAND THAT HE DIDN'T HAVE THE SHANK
15 IN, THE LEFT HAND, AND HE JUST RIPPED MY UNIFORM SHIRT
16 OFF.

17 MS. WILLIAMS: YOUR HONOR, I AM PULLING OUT, AT
18 THIS POINT JUST FOR DEMONSTRATIVE PURPOSES, WHAT'S BEEN
19 PREVIOUSLY MARKED AS STATE'S EXHIBIT 1, A PORTION OF
20 STATE'S EXHIBIT 1, WHICH IS THE VICTIM'S CLOTHING. MAY I
21 APPROACH THE WITNESS, YOUR HONOR?

22 THE COURT: YOU MAY.

23 BY MS. WILLIAMS:

24 Q WOULD YOU TELL THE JURY WHAT THIS IS?

25 A THAT'S THE UNIFORM SHIRT I WAS WEARING THAT

1 NIGHT.

2 Q OKAY. IS THAT YOUR NAME TAG ON IT?

3 A YES, MA'AM.

4 Q WHAT CONDITION IS THE -- THE BUTTONS IN ON THE
5 SIDE OF IT?

6 A IT'S COMPLETELY RIPPED.

7 Q AND IS THAT WHERE MR. SALISBURY RIPPED YOUR
8 SHIRT?

9 A YES, MA'AM.

10 Q WHAT HAPPENED NEXT?

11 A HE KEPT TRYING TO GET ME TO TAKE OFF MY T-SHIRT.
12 WE STANDARDLY WEAR A WHITE T-SHIRT UNDER OUR UNIFORM. AND
13 AT THIS POINT, I'M STILL TRYING -- TRYING TO TALK TO HIM,
14 TELLING HIM, "LOOK, I'VE GOT TO GO HOME TO MY KIDS. YOU
15 DON'T WANT TO DO THIS. IT'S NOT TOO LATE. YOU KNOW, YOU
16 CAN STOP." AND HE PROCEEDED TO TRY TO TAKE MY SHIRT OFF.
17 WELL, HE COULDN'T DO IT WITH THE SHANK IN HIS HAND,
18 SO HE PUT THE SHANK IN HIS MOUTH. AND I DID MY ELBOWS TO
19 HOLD MY T-SHIRT DOWN.

20 AND AT THAT TIME, I COULD HEAR THE INMATES OUTSIDE
21 THE DOOR. I COULD HEAR THEM YELLING, WHAT'S GOING ON.
22 AND AT THAT POINT, I KNEW THERE WAS NO TALKING HIM OUT OF
23 IT. THAT HE WAS GOING TO RAPE ME AND HE WAS GOING TO KILL
24 ME. THAT'S HOW I HONESTLY FELT AT THE TIME. SO, WHEN HE
25 WENT TO TAKE THE SHANK BACK OUT OF HIS MOUTH, I TOOK IT

SARA ADAMS -- DIRECT BY MS. WILLIAMS

223

1 FROM HIM IN MY RIGHT HAND, AND I TURNED MY BODY TOWARDS
2 THE WALL, BECAUSE IT IS A VERY CONFINED BATHROOM. AND I
3 STARTED SCREAMING FOR HELP.

4 AND I WAS SCREAMING, "SOMEBODY, HELP ME, PLEASE,
5 GOD. JUST SOMEBODY". AND HE PUT HIS HAND OVER MY MOUTH
6 AND HE TOLD ME THAT IF I DIDN'T SHUT UP, HE WAS GOING TO
7 KILL ME. AND I BIT HIS HAND NUMEROUS TIMES. AND IN THE
8 PROCESS, ELBOWING HIM TO TRY TO GET HIM OFF OF ME. AND I
9 ACTUALLY BENT THE SHANK AROUND THE NAIL, AROUND MY FINGER
10 BECAUSE I WAS AFRAID HE WAS GOING TO GET IT FROM ME.

11 I THEN HEARD GLASS BREAKING. AND I HEARD THE DOOR
12 BEING BROKEN DOWN. AND AT THAT TIME, THAT'S THE ONLY TIME
13 THAT HE EVER SHOWED EMOTION. BEFORE, I MEAN, HE WAS DEAD
14 CALM, COLLECTED. BUT WHEN THE INMATES STARTED BEATING ON
15 THE DOOR, HE STARTED, YOU KNOW, PANICKING. HE KEPT
16 TELLING ME, YOU KNOW, "SHUT UP, SHUT UP, OR I'LL KILL
17 YOU".

18 WELL, WHEN THE DOOR BUSTED IN, I WASN'T REALLY
19 FAMILIAR WITH ANY OF THE INMATES OTHER THAN THE FEW I'VE
20 MENTIONED IN THE MAG II UNIT. FOUR OR FIVE YOUNG BLACK
21 GENTLEMEN BUSTED IN THE DOOR. ONE OF THEM, I KNOW NOW
22 THAT HIS NAME IS CHRISTOPHER SIMMONS. I DIDN'T KNOW IT AT
23 THE TIME. HE PICKED ME UP IN HIS ARMS. AND HE SAID,
24 "IT'S OKAY, MS. ADAMS, YOU'RE SAFE NOW. WE'VE GOT YOU".

25 AND HE -- THE INMATES STARTED TAKING OFF THEIR

1 T-SHIRTS AND BLANKETS, WHATEVER THEY HAD JUST TO COVER ME,
2 BECAUSE ALL I HAD ON WAS A T-SHIRT.

3 AND AT THAT POINT, THEY TOOK ME INTO THE -- INTO
4 THE DAY ROOM AND SAT ME ON THE FLOOR. MR. WALDRUP, WHO IS
5 ONE OF THE OLDER INMATES, HE CAME IN AND HE SAT THERE
6 HOLDING MY HAND. AND HE SAID IT'S OKAY. AND ALL I COULD
7 THINK WAS CALL MULLINO, CALL GADSON OR CALL BAXTER.
8 THAT'S WHAT I TOLD HIM. I SAID, "GET MY RADIO AND CALL
9 ONE OF THEM".

10 AND INMATE STAGGERS ALSO CAME INTO THE ROOM. I
11 KNOW INMATE STAGGERS FROM ANOTHER UNIT. AND I TOLD HIM, I
12 SAID, "STAGGERS, DON'T LET THE INMATES KILL HIM. IF THEY
13 KILL HIM, THEN THEY'RE ALL GOING TO BE IN TROUBLE FOR IT."
14 I SAID, "YOU KNOW, DON'T -- DON'T LET THEM RUIN THEIR
15 LIVES. PLEASE STOP THEM."

16 Q BECAUSE AT THIS POINT, WHAT WAS GOING ON IN THE
17 OFFICE?

18 A I DIDN'T KNOW. I HAD MY SUSPICIONS. BECAUSE
19 WHEN YOU'RE ON THE FLOOR IN THE DAY ROOM, YOU CAN'T SEE
20 INTO THE OFFICE.

21 Q WHAT DID YOU HEAR?

22 A I HEARD BANGING, YELLING, A LOT OF CUSSING. THE
23 INMATES WERE YELLING THINGS LIKE, YOU KNOW, "YOU PIECE OF
24 SHIT, YOU SON OF A BITCH" AND LOTS OF BANGING.

25 AT THAT POINT, THE FIRST RESPONDERS GOT TO THE

SARA ADAMS -- DIRECT BY MS. WILLIAMS

225

1 DOOR. AND ONE OF THE INMATES, I BELIEVE IT WAS
2 CHRISTOPHER SIMMONS, GAVE ME HIS PANTS TO PUT ON. AND
3 THEY FORMED A LINE FROM THE DAY ROOM, ON BOTH SIDES, ALL
4 THE WAY TO THE FRONT DOOR AND ESCORTED ME TO THE FRONT
5 DOOR BECAUSE -- I DON'T KNOW WHY, YOU KNOW, WHEN YOU'RE
6 HYSTERICAL, YOU DON'T KNOW WHY YOU DO THINGS YOU DO, I
7 WANTED TO GET MY BAG OUT OF THE OFFICE. I HAVE NO IDEA
8 WHY, BUT I WANTED MY LUNCH BAG OUT OF THE OFFICE. AND ONE
9 OF THE INMATES PICKED ME UP IN HIS ARMS AND HE SAID, "MS.
10 ADAMS, YOU DON'T NEED TO GO IN THERE. YOU DON'T NEED TO
11 SEE THAT." AND THE INMATES WERE BEATING ON THE FRONT
12 DOOR, YELLING AT THE SERGEANTS, "GET IN HERE AND GET HER.
13 MS. ADAMS NEEDS HELP".

14 Q DID YOU -- WHEN YOU WENT INTO THE BATHROOM, WAS
15 THE DOOR LOCKED?

16 A HE LOCKED IT BEHIND HIM.

17 Q DID YOU TRY TO GO BACK TO WORK AFTER THIS
18 HAPPENED?

19 A I DID.

20 Q WHEN -- WHEN WAS THAT?

21 A AROUND JUNE, JULY, I WENT BACK PROBABLY A MONTH
22 AND A HALF OR TWO MONTHS, AND I JUST COULDN'T PHYSICALLY
23 OR MENTALLY HANDLE IT.

24 Q WHEN YOU WERE WORKING AT MACDOUGALL, DID YOU
25 EVER RECEIVE ANY REWARDS OR COMMENDATIONS FOR YOUR WORK

1 THERE?

2 A I WAS OFFICER OF THE QUARTER. AND I ALSO WAS
3 OFFICER OF THE YEAR FOR LAST YEAR.

4 Q SO FOR 2007 OR 2008?

5 A 2008.

6 MS. WILLIAMS: YOUR HONOR, I'M SHOWING DEFENSE
7 COUNSEL A PORTION -- ANOTHER PORTION OF WHAT'S BEEN
8 PREVIOUSLY MARKED AS STATE'S EXHIBIT 1.

9 THE COURT: WOULD COUNSEL APPROACH?

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
12 THE HEARING OF THE JURY, OFF THE RECORD.)

13 MS. WILLIAMS: YOUR HONOR, MAY I APPROACH THE
14 WITNESS?

15 THE COURT: YOU MAY.

16 BY MS. WILLIAMS:

17 Q WHAT DO YOU RECOGNIZE THESE AS?

18 A INMATE PANTS.

19 Q ARE THOSE THE INMATE PANTS YOU WERE WEARING THAT
20 EVENING?

21 A HONESTLY, YOU CAN'T TELL. THEY'RE ALL
22 IDENTICAL.

23 Q WHAT IS ON THE INMATE PANTS?

24 A BLOOD.

25 Q ARE THESE -- COULD THEY HAVE BEEN THE INMATE

1 PANTS YOU WERE WEARING?

2 A THEY COULD HAVE BEEN, YES.

3 Q WHERE IS THE BLOOD LOCATED ON THESE PANTS?

4 A ON THE BACK SIDE.

5 Q AND?

6 A ON THE FRONT.

7 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
8 MOVE TO ENTER STATE'S EXHIBIT 1, VICTIM'S CLOTHING.

9 THE COURT: AND THAT IS THE PANTS AND THE SHIRT?

10 MS. WILLIAMS: AND THE SHIRT.

11 THE COURT: MS. KENNEDY?

12 MS. KENNEDY: YOUR HONOR, SUBJECT TO THE FOUNDATION
13 AND PROPER CHAIN OF CUSTODY, WHICH WE, I ASSUME, WILL HAVE
14 LATER IN THE DAY.

15 MS. WILLIAMS: WE'RE NOT INTERESTED---

16 THE COURT: COUNSEL APPROACH.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
19 THE HEARING OF THE JURY, OFF THE RECORD.)

20 THE COURT: MS. KENNEDY, I NOTE YOUR OBJECTION.

21 MS. KENNEDY: THANK YOU, YOUR HONOR.

22 THE COURT: MS. WILLIAMS.

23 MS. WILLIAMS: YOUR HONOR, WE KIND OF -- NOT
24 PREVIOUSLY MARKED THIS EXHIBIT, THIS IS ANOTHER BAG
25 CONTAINING VICTIM'S CLOTHING, T-SHIRT, BELT, JACKET,

1 PANTS, LEGGINS.

2 THE COURT: MS. WILLIAMS, IT MIGHT BE EASIER TO
3 MARK THE BAG AND HAND THE BAG TO MS. ADAMS.

4 MS. WILLIAMS: THANK YOU, YOUR HONOR.

5 COURT REPORTER: MARKED AS STATE'S 20, YOUR HONOR.

6 THE COURT: STATE'S 20?

7 COURT REPORTER: YES, MA'AM.

8 THE COURT: THANK YOU.

9 (STATE'S EXHIBIT NO. 20 MARKED FOR IDENTIFICATION.)

10 MS. WILLIAMS: MAY I APPROACH THE WITNESS?

11 THE COURT: YOU MAY.

12 MS. WILLIAMS: I CAN'T GET IT ALL BACK IN. IT'S
13 LIKE THE CLOWN CAR, I DON'T KNOW HOW IT ALL GOT IN THERE
14 TO BEGIN WITH.

15 BY MS. WILLIAMS:

16 Q COULD YOU PLEASE LOOK AT THIS AND TELL US WHAT
17 THESE ITEMS ARE?

18 A THIS IS MY UTILITY BELT. THIS IS MY SCDC JACKET
19 THAT WE'RE ISSUED. THESE ARE MY ISSUED UNIFORM PANTS.
20 THESE ARE THE SOCKS THAT I WAS WEARING THAT NIGHT. AND
21 THESE ARE THE LEGGINS THAT I WAS WEARING UNDER MY PANTS
22 AND THE WHITE T-SHIRT THAT I HAD ON.

23 Q SO, WERE YOU WEARING ALL OF THIS CLOTHING THAT
24 YOU JUST IDENTIFIED PIECE BY PIECE THAT EVENING?

25 A YES.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

229

1 Q IS THERE ANY DOUBT IN YOUR MIND THAT THIS IS THE
2 SHIRT THAT YOU WERE WEARING THAT EVENING?

3 A NO, NO DOUBT. WE'RE ONLY ISSUED ONE BADGE.
4 WE'RE ONLY ISSUED ONE ID. AND WE'RE ONLY ISSUED ONE PAIR
5 OF OFFICER FIRST CLASS WINGS.

6 Q AND THESE ARE YOUR NAME TAGS AND YOUR PICTURE ON
7 THIS SHIRT?

8 A YES, MA'AM.

9 Q AND WAS THIS SHIRT RIPPED BEFORE YOU CAME INTO
10 CONTACT WITH MR. SALISBURY?

11 A NO, MA'AM.

12 MS. WILLIAMS: YOUR HONOR, I'M GOING TO PUT STATE'S
13 EXHIBIT 1 BACK INTO THE BAG AND WE WILL AGAIN ASK FOR IT
14 TO BE ADMITTED AT THE APPROPRIATE TIME.

15 THE COURT: THANK YOU.

16 MS. WILLIAMS: STATE'S EXHIBIT 2, SHE HAS
17 IDENTIFIED UNEQUIVOCALLY AS THE CLOTHES SHE WAS WEARING
18 THAT EVENING, WE WOULD ASK THAT STATE'S -- I'M SORRY --
19 STATE'S EXHIBIT 20 BE ADMITTED INTO EVIDENCE.

20 THE COURT: MS. KENNEDY?

21 MS. KENNEDY: YOUR HONOR, I THINK WE CAN RESOLVE IT
22 ALL AFTER -- SUBJECT TO -- SUBJECT--

23 THE COURT: SUBJECT TO THE SIDE BAR CONFERENCE?

24 MS. KENNEDY: YES, YOUR HONOR.

25 MS. WILLIAMS: YOUR HONOR, I HAVE WHAT'S BEEN

1 MARKED STATE'S EXHIBIT 5 THROUGH 19, IF I COULD SHOW THEM
2 TO HER FOR AUTHENTICATION PURPOSES AT ONCE.

3 THE COURT: YES, MA'AM.

4 MS. WILLIAMS: MAY I APPROACH?

5 THE COURT: YOU MAY.

6 BY MS. WILLIAMS:

7 Q CAN YOU TELL US IF YOU RECOGNIZE WHAT THESE
8 PHOTOS ARE OF? JUST LOOK THROUGH THEM.

9 A THAT'S OF THE BRUISES ON MY ARMS. UM---

10 Q WELL, IF YOU COULD JUST TELL US -- LOOK THROUGH
11 THEM ALL AND TELL US IF YOU RECOGNIZE THEM, WHAT THEY ARE.

12 A YES, MA'AM.

13 Q ARE ALL OF THOSE PICTURES AN ACCURATE DEPICTION
14 OF WHAT YOU KNOW THE SUBJECT OF THE PICTURES TO BE?

15 A YES, MA'AM.

16 MS. WILLIAMS: YOUR HONOR, THESE HAVE ALREADY BEEN
17 REVIEWED WITH DEFENSE COUNSEL. WE WOULD ASK THAT STATE'S
18 5 THROUGH 19 BE ENTERED INTO EVIDENCE.

19 MS. KENNEDY: YOUR HONOR, IF I JUST MAY MAKE SURE
20 -- I DON'T DOUBT MS. WILLIAMS. I JUST WANT TO MAKE SURE.

21 MS. WILLIAMS: YOUR HONOR, MAY WE PUBLISH?

22 THE COURT: MS. KENNEDY, ANY OBJECTION?

23 MS. KENNEDY: NO, YOUR HONOR. AND I APOLOGIZE FOR
24 THE CONFUSION WITH IT. THANK YOU.

25 THE COURT: STATE'S 5, 6, 7, 8, 9, 10, 11, 12, 13,

SARA ADAMS -- DIRECT BY MS. WILLIAMS

231

1 14, 15, 16, 17, 18, 19 INTO EVIDENCE WITHOUT OBJECTION.

2 YOU MAY PUBLISH, MS. WILLIAMS.

3 (STATE'S EXHIBITS NOS. 5 THROUGH 19 RECEIVED INTO
4 EVIDENCE.)

5 MS. WILLIAMS: THANK YOU, YOUR HONOR. I JUST WANT
6 TO MOVE SOME OF THIS STUFF ON THE TABLE. WHILE HE'S DOING
7 THAT, I THINK WE CAN MOVE ON TO ANOTHER PIECE OF EVIDENCE
8 AND THEN PUBLISH---

9 THE COURT: ALL RIGHT.

10 MS. WILLIAMS: ---AFTER IF THAT WILL BE OKAY WITH
11 THE COURT. YOUR HONOR, THIS IS STATE'S EXHIBIT 3. IT HAS
12 BEEN SHOWN TO DEFENSE COUNSEL. MAY I APPROACH THE
13 WITNESS?

14 THE COURT: YOU MAY.

15 BY MS. WILLIAMS:

16 Q DO YOU RECOGNIZE THIS?

17 A YES.

18 Q WHAT IS THAT?

19 A THAT'S THE SHANK THAT HE HELD UP TO MY THROAT.

20 Q IF YOU KNOW, WHAT IS IT MADE OUT OF?

21 A IT APPEARED -- A TOOTHBRUSH ON THE END. AND
22 THEN THAT APPEARS TO BE A PIECE OUT OF HIS INMATE PANTS.
23 AND THAT'S EITHER A NAIL OR ONE OF THE PIECES OF FENCING,
24 BECAUSE THEY WERE DOING A LOT OF CONSTRUCTION AROUND
25 MACDOUGALL AT THE TIME.

1 Q ARE YOU SURE THAT THIS IS THE NAIL THAT MR.
2 SALISBURY HELD AGAINST YOUR THROAT THE NIGHT THAT HE HAD
3 YOU IN THE BATHROOM?

4 A YES.

5 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
6 ASK THAT STATE'S EXHIBIT 3 BE INTRODUCED INTO EVIDENCE.

7 MS. KENNEDY: YOUR HONOR, SUBJECT TO MY CROSS
8 EXAMINATION AGAIN. I APOLOGIZE, BECAUSE OF THE CHAIN OF
9 CUSTODY.

10 MS. WILLIAMS: NO. WE'RE NOT INTRODUCING ANY
11 FORENSIC -- I'M SORRY.

12 THE COURT: COUNSEL APPROACH.

13 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
14 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
15 THE HEARING OF THE JURY, OFF THE RECORD.)

16 MS. KENNEDY: YOUR HONOR, I WITHDRAW MY OBJECTION.

17 THE COURT: THANK YOU. STATE'S NO. 3 INTO EVIDENCE
18 WITHOUT OBJECTION.

19 (STATE'S EXHIBIT NO. 3 RECEIVED INTO EVIDENCE.)

20 MS. WILLIAMS: THANK YOU, YOUR HONOR.

21 BY MS. WILLIAMS:

22 Q CAN YOU TELL US WHAT THAT IS? IT'S KIND OF HARD
23 TO SEE.

24 A THAT APPEARS TO BE THE DOOR COMING INTO THE
25 OFFICE. EITHER THAT OR THE DAY -- NO, THAT'S -- HOLD ON.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

233

1 THAT'S THE DOOR COMING INTO THE OFFICE.

2 Q IT'S HARD TO SEE, BUT WHAT IS THAT HOLE IN THE
3 MIDDLE?

4 A THE -- IT'S A WINDOW.

5 Q OKAY. AND IS IT BROKEN?

6 A YES.

7 MS. WILLIAMS: THAT'S STATE'S EXHIBIT 11, YOUR
8 HONOR. THAT'S STATE'S EXHIBIT 17.

9 BY MS. WILLIAMS:

10 Q WHAT IS THAT?

11 A THAT'S ONE OF MY OFFICE DOORS.

12 Q OKAY. AND IF YOU KNOW, WHY IS IT IN THAT
13 CONDITION?

14 A BECAUSE INMATE TY -- TYRONE OLIVER PUT HIS FIST
15 THROUGH IT TO ENTER THE OFFICE.

16 Q AND WHAT IS THIS A PICTURE OF, THIS IS STATE'S
17 EXHIBIT 16?

18 A THAT'S THE BATHROOM. AND THAT'S WHERE THE
19 INMATES PULLED THE DOOR OFF THE HINGES.

20 Q IS THAT THE BATHROOM THAT MR. SALISBURY WAS
21 HOLDING YOU IN?

22 A YES.

23 Q IF YOU KNOW, WHOSE CLOTHING IS THAT ON THE
24 FLOOR?

25 A THAT APPEARS TO BE HIS INMATE JACKET.

1 Q AND THIS IS STATE'S 18, WHAT IS THAT A PICTURE
2 OF?

3 A THE HINGES ON THE BATHROOM DOOR.

4 Q AND WHY ARE THEY DAMAGED?

5 A BECAUSE THE INMATES LITERALLY BUSTED THE DOOR
6 DOWN.

7 Q WHAT IS THAT A PICTURE OF?

8 A THAT'S HOW OUR OFFICE IS SET UP. THAT'S MY DESK
9 OVER TO THE RIGHT SIDE. AND THAT'S THE WINDOW LOOKING
10 DIRECTLY INTO THE DAY ROOM.

11 COURT REPORTER: THAT WAS EXHIBIT NUMBER, PLEASE?

12 MS. WILLIAMS: I'M SO SORRY. THAT WAS EXHIBIT NO.
13 12.

14 BY MS. WILLIAMS:

15 Q THIS IS EXHIBIT 13. WHAT IS THIS A PICTURE OF?

16 A INMATE SALISBURY'S HAND. AND THERE'S MARKS ON
17 IT FROM WHERE I BIT HIM.

18 Q IT'S HARD TO SEE ON HERE, BUT CAN YOU JUST SHOW
19 THE JURY -- DO YOU HAVE A POINTER UP THERE -- WHERE THE
20 BITE MARKS ARE?

21 A I CAN'T REALLY SEE THEM FROM---

22 Q LET ME ---

23 MS. WILLIAMS: YOUR HONOR, MAY I APPROACH?

24 THE COURT: YOU MAY.

25 MS. WILLIAMS: IT'S JUST BLURRY ON THE OVERHEAD.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

235

1 BY MS. WILLIAMS:

2 Q DO YOU WANT TO LOOK AT IT AGAIN AND THEN YOU CAN
3 POINT OUT -- IS IT WORKING?

4 A I THINK SO, BUT -- THERE YOU GO. RIGHT THERE ON
5 HIS FINGER.

6 Q AND JUST LOOK AT IT AGAIN, AND -- DESCRIBE TO
7 THE JURY WHAT THOSE ARE THAT -- ARE THERE THREE
8 DISTINCT---

9 A THERE'S THREE DISTINCT MARKS. MY TWO FRONT
10 TEETH ARE BOTH CHIPPED, SO THAT THEY LEAVE VERY DISTINCT
11 BITE IMPRESSIONS. AND YOU CAN SEE WHERE IT -- IT'S LEFT
12 WHERE MY TWO TEETH ARE CHIPPED.

13 Q OKAY. THANK YOU. THIS IS STATE'S 10. WHAT IS
14 THAT PICTURE OF?

15 A THAT'S A PICTURE OF BRUISING ON MY UPPER ARM.

16 Q STATE'S EXHIBIT 7?

17 A THAT'S ALSO A PICTURE OF BRUISING ON MY UPPER
18 ARM.

19 Q STATE'S EXHIBIT 8?

20 A THAT'S WHERE SHE WAS MARKING THE BLOOD THAT WAS
21 ON MY T-SHIRT.

22 Q STATE'S EXHIBIT 6?

23 A THAT'S THE BRUISING ON THE OTHER UPPER ARM.

24 Q STATE'S EXHIBIT 15?

25 A THAT'S SCRATCHES ON MY FACE FROM WHERE -- WHEN

1 HE HAD HIS HAND AROUND MY MOUTH TRYING TO -- TRYING TO
2 MAKE ME STOP SCREAMING. I HAD MULTIPLE SCRATCHES ON THE
3 SIDE OF MY FACE FROM IT.

4 Q STATE'S EXHIBIT 14?

5 A THAT'S WHERE I'VE GOT -- FROM STRUGGLING WITH
6 HIM, THE SKIN THAT WAS -- FROM THE SHANK, IT WAS RIPPED
7 OPENED RIGHT THERE, THE FIRST LAYER OF SKIN.

8 Q OKAY. AND LASTLY, STATE'S EXHIBIT 9?

9 A THAT'S ON MY RIGHT HAND, THAT'S FROM THE SHANK
10 WHERE I BENT IT OVER MY FINGER. I ACTUALLY CUT MYSELF
11 WITH IT TRYING TO KEEP IT FROM INMATE SALISBURY.

12 MS. WILLIAMS: I BEG THE COURT'S INDULGENCE FOR
13 JUST ONE MINUTE.

14 THE COURT: OKAY.

15 MS. WILLIAMS: I WILL PASS THE WITNESS SUBJECT TO
16 OUR PREVIOUS REQUEST THAT STATE'S EXHIBIT 1 BE ADMITTED
17 INTO EVIDENCE.

18 THE COURT: ONE AND 20.

19 MS. WILLIAMS: ONE AND 20, THAT'S CORRECT. THANK
20 YOU, YOUR HONOR. PLEASE ANSWER ANY QUESTIONS THE DEFENSE
21 MAY HAVE FOR YOU.

22 CROSS EXAMINATION BY MS. KENNEDY:

23 Q GOOD MORNING, MS. ADAMS.

24 A GOOD MORNING. I'M FINE.

25 Q MY NAME IS PATTY KENNEDY AND I AM ONE OF THE

SARA ADAMS -- DIRECT BY MS. WILLIAMS

237

1 LAWYERS REPRESENTING MR. SALISBURY. AND I JUST HAVE A FEW
2 QUESTIONS TO ASK YOU. I DON'T WANT TO UNDULY UPSET YOU.
3 BUT I HAVE, NOW, -- I HAVE A COUPLE OF QUESTIONS TO ASK.
4 I'M GOING TO START WITH EXHIBIT NO. 11, AND DISREGARD THE
5 HOLE IN THE DOOR. THIS IS THE DOOR WHERE THE INMATES
6 WOULD HAVE TO ENTER TO COME IN AND SPEAK WITH YOU, IS THAT
7 CORRECT?

8 A YES.

9 Q AND THERE -- THERE ARE TWO STEPS THAT THEY HAVE
10 TO COME IN, IN ORDER TO ACCESS THAT OFFICE?

11 A YES.

12 Q AND WE HEARD CORPORAL GADSON, I BELIEVE,
13 INDICATE -- OR MAYBE IT WAS MAJOR MINCEY -- THAT THERE
14 WERE DIFFERENT WAYS THAT THE GUARDS OR C.O.'S ON DUTY
15 HANDLE THAT ISSUE; THE DOORS CAN BE OPEN, CORRECT?

16 A ACTUALLY, MY SHIFT, OUR CAPTAIN REQUIRES US TO
17 KEEP THE DOORS OPEN.

18 Q THE DOORS OPEN?

19 A YES.

20 Q ALL THE WAY?

21 A YES, MA'AM.

22 Q OKAY. AND THAT GOES TO THE SIGHT AND SOUND
23 ISSUE?

24 A YES, MA'AM.

25 Q OKAY. SO, IF THE DOORS ARE OPEN, WHAT IS --

1 WHAT IS YOUR POLICY IN TERMS OF ALLOWING INMATES TO COME
2 INTO THE OFFICE, DO THEY HAVE TO KNOCK, DO THEY HAVE TO
3 ASK PERMISSION?

4 A THEY ARE SUPPOSED TO KNOCK BEFORE THEY COME IN,
5 BUT A LOT OF THEM DON'T. IT WAS ONLY MY SECOND NIGHT IN
6 THE UNIT. AND A LOT OF TIMES IT TAKES TIME FOR THE
7 INMATES TO GET USED TO THE INDIVIDUAL OFFICER'S
8 PREFERENCES.

9 Q OKAY. BUT IF I UNDERSTOOD YOU CORRECTLY, YOU
10 TESTIFIED EARLIER THAT THERE -- THERE IS A ROTATION OF SIX
11 MONTH SHIFTS?

12 A YES.

13 Q AND YOU HAD BEEN IN MAGNOLIA II BEFORE?

14 A TWO DAYS.

15 Q TWO DAYS. YOU HAD NEVER BEEN IN THAT UNIT
16 BEFORE THAT?

17 A UM, AT THE BEGINNING WHEN I FIRST STARTED
18 WORKING AT MACDOUGALL, BUT THE INMATES CHANGE EVERY OTHER
19 MONTH.

20 Q OKAY. WHEN -- WHEN YOU SAY AT THE BEGINNING,
21 GIVE -- IF YOU COULD KIND OF GIVE ME A TIME FRAME?

22 A I COULDN'T TELL YOU. SOMETIME THAT FIRST YEAR
23 THAT I WORKED THERE.

24 Q OKAY. SO, -- JUST SO I UNDERSTAND IT, SO --
25 WHEN -- WHEN A NEW C.O. COMES INTO A UNIT, THEN, I GUESS

SARA ADAMS -- DIRECT BY MS. WILLIAMS

239

1 YOU ARE ALLOWED TO -- TO TELL THE INMATES WHAT YOUR
2 EXPECTATIONS ARE IN TERMS OF THEIR BEHAVIOR AND COMING
3 INTO THE OFFICE AND THOSE KINDS OF THINGS?

4 A YES.

5 Q OKAY. HAD YOU DONE THAT?

6 A YES. I DO THAT AT THE 9:00 COUNT WHEN EVERYBODY
7 IS QUIET AND I HAVE THEIR ATTENTION. I MADE ALL OF MY
8 RULES KNOWN.

9 Q HAD YOU DONE -- YOU MEAN THE NIGHT BEFORE?

10 A YES.

11 Q OKAY. DID YOU -- DID YOU REITERATE THOSE?

12 A NO. I GIVE MY RULES ONE TIME.

13 Q OKAY. OKAY. SO, YOUR RULE IS THAT THEY HAVE TO
14 KNOCK?

15 A UH-HUH, BEFORE THEY ENTER.

16 Q OKAY. AND IF THEY FAIL TO KNOCK, WHAT WOULD BE
17 -- OR WHAT WOULD HAVE BEEN YOUR RESPONSE SINCE YOU DON'T
18 WORK THERE ANYMORE?

19 A I WOULD TELL THEM TO GO BACK OUT USUALLY.

20 Q OKAY. ALL RIGHT. ALL RIGHT. ON THIS
21 PARTICULAR NIGHT, UM, DID MR. SALISBURY KNOCK?

22 A NO.

23 Q WHEN HE JUST CAME INTO THE OFFICE, WHAT DID YOU
24 DO?

25 A HE WALKED IN VERY QUICKLY, IN THE ONE, AND SHUT

1 IT. HE WALKED VERY QUICKLY TO THE OTHER SIDE. I WAS IN
2 THE PROCESS OF STANDING UP.

3 Q BUT YOU DIDN'T TELL HIM HE HAD TO LEAVE WHEN HE
4 IMPROPERLY ACCESSED THE FIRST DOOR?

5 A I DIDN'T HAVE A CHANCE TO.

6 Q OKAY. ALL RIGHT. NOW, WHEN HE, UM -- IF YOU
7 WOULD BE KIND ENOUGH TO GET YOUR LASER. THIS -- THIS IS
8 THE PART -- THIS THAT WE HAVE ALREADY DONE, IT'S MARKED
9 THE DORM ROOM OFFICE, CORRECT?

10 A IT'S THE WHAT?

11 Q THE DORM -- THE DORM OFFICE?

12 A RIGHT THERE IS.

13 Q WHERE WERE YOU SITTING THAT NIGHT?

14 A IN FRONT OF MY DESK.

15 Q SO, YOU WOULD HAVE BEEN SITTING -- THE DESK
16 WOULD HAVE BEEN WHERE?

17 A THE DESK IS RIGHT THERE IN BETWEEN THE TWO
18 WINDOWS THERE. AND I WAS SITTING PROBABLY ABOUT RIGHT
19 THERE.

20 Q SO, YOU WOULD HAVE BEEN SITTING IN FRONT OF THE
21 BATHROOM?

22 A YES.

23 Q AND SO HE WOULD HAVE WALKED IN THIS DOOR---

24 A NO.

25 Q NO, THIS DOOR?

SARA ADAMS -- DIRECT BY MS. WILLIAMS

241

1 A HE WALKED IN THIS DOOR.

2 Q THANK YOU FOR CORRECTING ME. HE WOULD HAVE BEEN
3 WALKING IN THIS DOOR, WALKED BEHIND YOU AND THEN CLOSED
4 THIS DOOR?

5 A YES.

6 Q OKAY. DID -- DID THAT CAUSE YOU ANY CONCERN?

7 A IT DID. THAT'S WHY I IMMEDIATELY STOOD UP.

8 Q DID YOU HIT YOUR RADIO MIKE ON YOUR SHOULDER?

9 A I DIDN'T HAVE TIME. HE PULLED OUT THE SHANK,
10 GRABBED MY ARM AND PUSHED ME INTO THE BATHROOM. IT
11 HAPPENED WITHIN A MATTER OF SECONDS.

12 Q SECONDS. OKAY. DO YOU KNOW, SPEAKING OF YOUR
13 MIKE, DO YOU KNOW WHAT HAPPENED TO IT THAT NIGHT?

14 A HE TOOK IT OFF AND PUT IT ON THE FLOOR.

15 Q DO YOU KNOW WHAT HAPPENED TO IT AFTERWARDS?

16 A THE INMATES TOOK IT AND CALLED THE CONTROL ROOM
17 FOR HELP.

18 Q SO, -- WELL, LET ME ASK YOU ANOTHER -- DO YOU
19 KNOW WHERE IT IS NOW?

20 A UM, NO. I WOULD ASSUME THAT ONE OF MY SERGEANTS
21 TOOK IT INTO EVIDENCE.

22 Q OKAY. HOW ABOUT YOUR -- WHAT YOU REFER TO, THE
23 CHEMICAL SOLUTION?

24 A THE CHEMICAL MUNITIONS, HE HAD IT IN HIS INMATE
25 POCKET.

1 Q OKAY.

2 A THEY TOOK HIM STRAIGHT UP TO ADMIN. AND I LET
3 THEM KNOW AND THEY REMOVED IT OFF OF INMATE SALISBURY.

4 Q I'M SORRY. SAY THAT AGAIN, PLEASE.

5 A THEY REMOVED IT OFF OF INMATE SALISBURY. HE HAD
6 IT IN HIS POSSESSION.

7 Q WERE YOU PRESENT WHEN THEY DID THAT?

8 A NO.

9 Q AND IN TERMS OF THE SHANK, WHAT -- WHAT --
10 EXPLAIN TO ME, IF YOU WILL, MA'AM, EXACTLY WHAT HAPPENED.
11 YOU HAD IT IN YOUR HAND?

12 A I TOOK IT FROM HIM, YES.

13 Q OKAY. AND YOU CONTINUED TO HAVE IT IN YOUR HAND
14 WHEN YOU WERE SITTING IN THE DAY ROOM?

15 A YES.

16 Q AND JUST SO WE CAN HAVE A BETTER PICTURE FOR THE
17 JURY, WHEN WE'RE -- WE'RE TALKING ABOUT THE -- THE DAY
18 ROOM, WHAT THIS IS, THERE ARE THREE TABLES -- TWO OR THREE
19 TABLES OVER HERE?

20 A NO. WHAT IT IS IN THE DAY ROOM, IS THERE IS, I
21 BELIEVE THREE ROWS OF METAL BENCHES. AND UP HERE ON THE
22 WALL, THERE'S THREE TV'S THAT HAD THREE SEPARATE TV
23 STATIONS.

24 Q OKAY. THERE ARE NO TABLES IN THERE?

25 A OH, YEAH. THERE'S TWO TABLES. ONE OVER THERE

SARA ADAMS -- DIRECT BY MS. WILLIAMS

243

1 AND ONE OVER THERE.

2 Q ALL RIGHT.

3 A THE CARD TABLES.

4 Q RIGHT. THE GUYS PLAY CARDS?

5 A UH-HUH.

6 Q OR THEY CAN SIT ON THE BENCH AND WATCH TV?

7 A WATCH TV.

8 Q AND THE TV'S ARE THROUGH HERE?

9 A THE TV'S ARE UP HERE ON THE WALL.

10 Q ARE ON THE WALL. AND THEY'RE PROBABLY, LIKE,
11 MAYBE FIVE OR SIX BENCHES?

12 A SOMETHING LIKE THAT---

13 Q RIGHT. BECAUSE---

14 A YEAH.

15 Q OKAY. SO, AND WHEN YOU -- WHEN THE INMATES CAME
16 TO ASSIST YOU, THEY TOOK YOU INTO WHICH DAY ROOM?

17 A THEY TOOK ME INTO THIS DAY ROOM.

18 Q OKAY. NOW, DO YOU -- DO YOU -- AND YOU SAID
19 THIS TOOK ALL A MATTER OF SECONDS?

20 A YES.

21 Q AND I BELIEVE AT SOME POINT YOU INDICATED THAT
22 MR. SALISBURY HAD THE SHANK, HOW WERE YOU ABLE TO REST
23 THAT FROM HIM?

24 A HE WAS IN THE MIDDLE OF PUTTING IT BACK --
25 TAKING IT BACK OUT OF HIS MOUTH AND I TOOK IT FROM HIM.

1 Q SO, HE -- HE HAD IT IN HIS MOUTH?

2 A YES. WHEN HE TRIED TO TAKE OFF MY SHIRT, HE PUT
3 IT IN HIS MOUTH.

4 Q OKAY. SO, JUST BEAR WITH ME A MINUTE, HE HAD IT
5 -- IT WAS IN HIS MOUTH LIKE THIS?

6 A YES.

7 Q OKAY. SO, THAT HIS HANDS WERE FREE?

8 A YES.

9 Q AND DID YOU HAVE ANYTHING IN YOUR HANDS?

10 A NO.

11 Q DID YOU -- HOW -- AND I -- I MEAN YOU NO
12 DISRESPECT, HOW DID YOU ATTEMPT TO DEFEND YOURSELF?

13 A I TOOK THE SHANK FROM HIM. THAT WAS DEFENDING
14 MYSELF.

15 Q WAS THERE ANY OTHER STRUGGLE INVOLVED IN IT
16 OTHER THAN YOU RESTING -- BEING ABLE TO REST THE SHANK
17 FROM HIM?

18 A YES. WE WERE WRESTLING FOR IT. HE WAS OVER MY
19 SHOULDER WRESTLING ME FOR IT.

20 Q OKAY. AND -- AND JUST SO I UNDERSTAND, HERE,
21 MS. ADAMS. THIS IS COURT'S EXHIBIT -- EXHIBIT 20, WERE
22 YOU WEARING THIS JACKET WHEN HE ENTERED THE DORM ROOM?

23 A YES.

24 Q OKAY. AND THIS JACKET -- WAS THE JACKET ZIPPED
25 UP?

SARA ADAMS -- DIRECT BY MS. WILLIAMS

245

1 A NO.

2 Q OKAY. SO, THE JACKET WAS OPEN. ALL RIGHT. AND
3 YOU WERE WEARING THESE PANTS?

4 A YES.

5 Q AND THE PANTS HAVE A -- A -- A ZIPPER AND ONE
6 PRETTY THICK BUTTON, CORRECT?

7 A YES.

8 Q OKAY. AND THE SHIRT THAT WE HAVE PREVIOUSLY
9 SEEN AND THE LEGGINS, WHICH ARE SOME SORT OF KNIT?

10 A UH-HUH.

11 COURT REPORTER: IS THAT A YES OR NO, MA'AM?

12 A YES.

13 BY MS. KENNEDY:

14 Q AND THIS -- THIS T-SHIRT, WHICH YOU INDICATE
15 THAT YOU HAVE TO WEAR AS PART OF YOUR UNIFORM?

16 A YES.

17 Q ALL RIGHT. AND THESE SOCKS?

18 A YES.

19 Q AND THE BELT---

20 A IT'S RIGHT HERE.

21 Q UM---

22 A THE BELT'S RIGHT HERE.

23 Q OH, I'M SORRY. THANK YOU. THE BELT IS -- HAS
24 TO GO THROUGH -- LET ME SEE--

25 A ALL THE BELT LOOPS.

1 Q ALL THE BELT LOOPS, RIGHT. AND SO THERE ARE
2 ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN BELT LOOPS ON YOUR
3 PANTS, RIGHT?

4 A YES, MA'AM.

5 Q OKAY. AND, MR. SALISBURY WAS ABLE TO, ACCORDING
6 TO YOUR TESTIMONY, REMOVE ALL THESE ARTICLES OF CLOTHING
7 FROM YOU?

8 A YES, MA'AM, HE DID.

9 Q AND WHEN HE -- THAT WAS HAPPENING, THE SHANK WAS
10 WHERE?

11 A IN HIS HAND.

12 Q IN HIS HAND. SO, HE WAS, THROUGH ALL OF THIS,
13 USING ONE HAND?

14 A YES.

15 Q WAS HE -- IS HE LEFT HANDED OR RIGHT HANDED, OR
16 DO YOU KNOW?

17 A I DON'T KNOW.

18 Q OKAY. SO, HE WAS -- HE WAS ABLE TO TAKE ALL OF
19 YOUR -- INCLUDING THE LEGGINS OFF, USING ONE HAND?

20 A AND HIS FOOT.

21 Q I'M SORRY?

22 A AND HIS FOOT.

23 Q AND HIS FOOT?

24 A WHEN HE GOT THEM DOWN TO A CERTAIN POINT, HE
25 USED HIS FEET TO PUSH THEM OFF AND KICK THEM AWAY.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

247

1 Q OKAY. SO, HE DIDN'T HAVE ANY KIND OF SHOES ON?

2 A I DON'T REMEMBER.

3 Q OKAY. DO YOU KNOW WHETHER OR NOT WHEN -- WELL,
4 STRIKE THAT. SO, DO -- HE CAME INTO THE OFFICE, HE PUSHED
5 YOU INTO THE BATHROOM DOOR -- THROUGH THE BATHROOM DOOR?

6 A YES, MA'AM.

7 Q DID YOU MAKE ANY ATTEMPT AT THAT TIME TO CALL
8 OUT TO SOMEBODY FOR ASSISTANCE?

9 A NO, WITH THE SHANK UP AGAINST MY THROAT, HIM
10 TELLING ME HE WAS GOING TO KILL ME, NO.

11 Q I UNDERSTAND. BUT ONCE YOU HAD THE SHANK IN
12 YOUR POSSESSION, DID YOU CALL OUT FOR ANYBODY TO HELP YOU?

13 A YES. I SCREAMED FOR HELP AND THAT'S WHEN THE
14 INMATES BUSTED IN.

15 Q OKAY. SO, YOU -- YOUR TESTIMONY IS THAT -- THAT
16 YOU SCREAMED FOR HELP AND THEY RESPONDED TO YOU?

17 A YES, MA'AM.

18 Q OKAY. ALL OF THIS TOOK PLACE OVER -- AND I KNOW
19 IT'S HARD TO SAY THE RIGHT TIME -- BUT ALL OF THIS TOOK
20 PLACE OVER WHAT PERIOD OF TIME?

21 A I DON'T KNOW. SOMETIME BETWEEN 11:40 AND 12
22 SOMETHING. I HONESTLY DON'T KNOW. I WASN'T LOOKING AT
23 THE CLOCK.

24 Q AND I UNDERSTAND THAT. SO, WHO -- WHO WERE THE
25 FIRST RESPONDERS THAT CAME TO YOUR ATTENTION?

1 A SGT. WILLIAMS, SGT. SUMPTER AND CORPORAL FOGEL.
2 AND THEN CORPORAL GADSON SHOWED UP AFTER THEY HAD ME
3 OUTSIDE.

4 Q OKAY. AND -- AND -- AND FORGIVE ME, I'M NOT --
5 THE FIRST RESPONDERS, ARE ALL THESE PEOPLE WHO ARE IN SOME
6 SUPERVISORY POSITION AT MACDOUGALL THAT NIGHT, CORRECT?

7 A THAT NIGHT, YES.

8 Q OKAY. SO THAT WHO -- I ASSUME THAT WHOEVER IS
9 ON DUTY THAT NIGHT IN A SITUATION LIKE THIS, OR SOME OTHER
10 EMERGENCIES, THOSE PEOPLE -- WHOEVER IS ON DUTY WOULD BE
11 DESIGNATED AS THE FIRST RESPONDER?

12 A IT CHANGES EVERY SHIFT.

13 Q BUT THERE IS NO PARTICULAR KNOWLEDGE OR
14 REQUIREMENT OR EXPERTISE TO BE -- IN THIS SETTING TO BE
15 DESIGNATED AS A FIRST RESPONDER?

16 A ACTUALLY, YES, MA'AM, THERE IS, BUT WE'RE ALL
17 TRAINED FOR IT.

18 Q OKAY. SO, YOU WOULD HAVE BEEN A FIRST RESPONDER
19 HAD YOU BEEN IN A CONTROL UNIT?

20 A IN THE CONTROL ROOM?

21 Q YES.

22 A YES, MA'AM. I WAS PRIMARY CONTROL ROOM OFFICER.

23 Q ALL RIGHT. SO, JUST SO I'M CLEAR, THAT THE
24 OFFICERS ON DUTY ARE THE C.O.'S AND FIRST RESPONDERS?

25 A NOT THE UNIT C.O.'S, BUT THE C.O.'S ASSIGNED TO

SARA ADAMS -- DIRECT BY MS. WILLIAMS

249

1 THE YARD, YES, MA'AM.

2 Q THE C.O.'S?

3 A ASSIGNED TO THE YARD.

4 Q AND IF YOU WOULD BE KIND ENOUGH TO EXPLAIN TO ME

5 WHAT THAT MEANS.

6 A THEY MONITOR ALL OF THE UNITS. THEY MONITOR THE

7 YARD. IF THERE'S ANY PROBLEMS, THEY'RE -- THEY'RE PRETTY

8 MUCH MOBILE.

9 Q BUT -- BUT -- SO, IN THE YARD -- YOU -- YOU --

10 WHEN YOU SAY THE YARD, THAT'S YOUR TERMINOLOGY FOR THE

11 WHOLE---

12 A FOR THE WHOLE INSTITUTION.

13 Q FOR THE WHOLE INSTITUTION. NOT THE YARD WHERE

14 THE GUYS GO OUT---

15 A ACTUALLY THAT IS THE YARD.

16 Q ALL RIGHT. JUST SO I -- THIS RIGHT HERE IS THE

17 YARD, RIGHT?

18 A NO. THAT'S ACTUALLY THE BREEZEWAY.

19 Q NO. NO. NO. THIS PART IN FRONT OF THE

20 BREEZEWAY, THAT'S THE YARD?

21 A NOT TECHNICALLY. THAT'S STILL A PART OF THE

22 UNIT GROUNDS.

23 Q OKAY. ALL RIGHT. AS I UNDERSTAND IT, INMATES

24 CAN GO OUTSIDE DURING CERTAIN HOURS?

25 A YES, MA'AM.

1 Q AND THAT'S THE YARD?

2 A YES.

3 Q AND SO THE WHOLE INSTITUTION IS ALSO THE YARD?

4 A PRETTY MUCH.

5 Q ALL RIGHT. SO, WHEN THE FIRST RESPONDERS CAME
6 TO YOU, WHERE WOULD THEY HAVE BEEN WITHIN THE FACILITY?

7 A I HAVE NO IDEA. IT DEPENDS ON WHERE THEIR DUTY
8 HAPPENED AT THAT TIME.

9 Q OKAY. ALL RIGHT. DO YOU HAVE ANY -- DO YOU
10 REMEMBER WHO -- WHO CAME TO YOUR AID FIRST FROM -- SGT.
11 WILLIAMS, SGT. SUMPTER, CORPORAL FOGEL?

12 A THEY WERE ALL THREE THERE.

13 Q OKAY.

14 A THEY ALL ENTERED THE UNIT TOGETHER.

15 Q OKAY. AND DO YOU KNOW EXACTLY WHAT THEY DID,
16 EACH ONE OF THEM DID WHEN THEY ENTERED THE UNIT TO ASSIST
17 YOU?

18 A NO. I HAVE NO IDEA. I WAS IMMEDIATELY ESCORTED
19 OUT.

20 Q WHO ESCORTED YOU OUT?

21 A CORPORAL FOGEL.

22 Q OKAY. SO, YOU -- YOU -- YOU DO KNOW WHAT SHE
23 DID?

24 A SHE TOOK ME OUT TO THE ADMIN. BUILDING.

25 Q AND DID SHE TRANSPORT YOU BY GOLF CART?

SARA ADAMS -- DIRECT BY MS. WILLIAMS

251

1 A YES.

2 Q OKAY. AND WHEN SHE TRANSPORTED YOU, THAT'S WHEN
3 YOU WERE WEARING THE PANTS, THE INMATE PANTS AND THE
4 T-SHIRT?

5 A AND THE T-SHIRT, YES.

6 Q DO YOU KNOW WHERE YOUR UNIFORM WAS?

7 A IN THE UNIT.

8 Q IN THE UNIT?

9 A IN THE BATHROOM.

10 Q IN THE BATHROOM?

11 A YES, MA'AM.

12 Q DID -- DO YOU HAPPEN TO KNOW WHO PICKED UP YOUR
13 CLOTHES?

14 A IT WOULD HAVE BEEN EITHER SGT. WILLIAMS OR SGT.
15 SUMPTER.

16 Q AND AT SOME POINT WERE THOSE CLOTHES RETURNED TO
17 YOU?

18 A NO.

19 Q THAT NIGHT?

20 A NO. JUST THE -- THESE WERE, NOT THE UNIFORM
21 SHIRT. THESE WERE RETURNED TO ME TO WEAR TO THE HOSPITAL
22 AND THEN THEY WERE COLLECTED AT THE MUSC WOMEN'S CLINIC AS
23 EVIDENCE.

24 Q OKAY. SO, IF I UNDERSTAND WHAT YOU'RE SAYING,
25 YOU HAD ON INMATE CLOTHES -- PAIR OF PANTS ON AND A

1 T-SHIRT?

2 A YES.

3 Q YOUR T-SHIRT?

4 A MY T-SHIRT.

5 Q OKAY. AND AT SOME POINT, SOMEBODY COLLECTED ALL
6 YOUR CLOTHES BUT YOU'RE NOT SURE WHO?

7 A CORRECT.

8 Q AND GAVE THEM TO YOU SO THAT YOU COULD DRESS?

9 A RIGHT.

10 Q OKAY. WERE YOU WEARING THOSE CLOTHES WHEN YOU
11 WERE TRANSPORTED TO MUSC?

12 A YES.

13 Q OKAY. AND FORGIVE ME, I -- I -- IT'S NOT REALLY
14 CLEAR FROM THE DOCUMENTATION THAT WE HAVE, YOU WERE TAKEN
15 TO MUSC DOWNTOWN?

16 A YES.

17 Q AND THEN AT SOME POINT YOU WERE TAKEN TO ANOTHER
18 FACILITY IN THE NORTH AREA?

19 A YES. THE WOMEN'S CLINIC.

20 Q THE WOMEN'S CLINIC. WHEN YOU WENT TO THE
21 MEDICAL UNIVERSITY OF SOUTH CAROLINA, WERE YOU GIVEN A
22 PHYSICAL EXAMINATION?

23 A NO.

24 Q OKAY. WHEN YOU LEFT THE MEDICAL UNIVERSITY AND
25 WENT TO THE WOMEN'S CLINIC, WERE YOU TRANSPORTED BY EMS?

SARA ADAMS -- DIRECT BY MS. WILLIAMS

253

1 A NO. MY FIANCE DROVE ME.

2 Q OKAY. SO, HE CAME AND PICKED YOU UP AND TOOK
3 YOU TO THE WOMEN'S CLINIC?

4 A YES.

5 Q WHEN YOU ARRIVED AT THE WOMEN'S CLINIC, WERE YOU
6 GIVEN A PHYSICAL EXAMINATION?

7 A YES.

8 Q DO YOU REMEMBER THE NAME OF THE PHYSICIAN WHO
9 GAVE THAT EXAMINATION TO YOU?

10 A IT WAS A FEMALE NURSE PRACTITIONER. I CAN'T
11 REMEMBER HER NAME.

12 Q OKAY. SO, YOU WERE EXAMINED BY A NURSE
13 PRACTITIONER---

14 A I BELIEVE THAT'S WHAT SHE WAS.

15 Q OKAY. ALL RIGHT. NOW, YOU -- IT'S YOUR
16 UNDERSTANDING -- TELL ME WHO YOU KNOW OR WHO CAME TO YOUR
17 ASSISTANCE THAT NIGHT -- INMATES?

18 A THE ONLY INMATES I KNOW FOR SURE WERE TYRONE
19 OLIVER, CHRISTOPHER SIMMONS, WALDRUP AND STAGGERS AND
20 DARDEN.

21 Q OKAY. TYRONE OLIVER, SIMMONS, DARDEN AND
22 WALDRUP.

23 A AND STAGGERS.

24 Q AND STAGGERS. THANK YOU. IF YOU REMEMBER,
25 WHICH INMATE WAS THE FIRST ONE THAT YOU SAW?

1 **A** I DON'T KNOW.

2 **Q** OKAY. IF YOU REMEMBER, WHICH INMATE WAS THE
3 FIRST ONE -- OR WHICH INMATE WAS -- IF YOU KNOW, WHO BROKE
4 THE DOOR -- THE GLASS ON THE DOOR?

5 **A** TYRONE OLIVER BROKE THE GLASS ON THE DOOR.

6 **Q** AND HOW DO YOU KNOW THAT?

7 **A** HIS HAND WAS BUSTED AND BLOODY.

8 **Q** OKAY. AND WHO DO YOU -- IF YOU KNOW, WHO CAME
9 INTO THE BATHROOM TO ASSIST YOU, THE INMATES?

10 **A** IT WAS A NUMBER OF INMATES. IT WASN'T JUST ONE.
11 THE ONLY ONE I KNOW WHO HE WAS NOW, IS CHRISTOPHER
12 SIMMONS, AND HE'S THE ONE THAT CARRIED ME TO THE DAY ROOM.

13 **Q** OKAY. LET ME ASK THE QUESTION IN A WAY --
14 BECAUSE WE'VE SEEN THE PICTURE OF THE -- THE BATHROOM.

15 **MS. KENNEDY:** THE COURT'S INDULGENCE, YOUR HONOR.

16 **THE COURT:** YES, MA'AM.

17 **BY MS. KENNEDY:**

18 **Q** HOW MANY, SINCE YOU DON'T KNOW THEIR NAMES, DO
19 YOU REMEMBER HOW MANY PEOPLE WERE ACTUALLY IN THERE WITH
20 YOU?

21 **A** THEY DIDN'T COME IN THERE WITH ME, THEY PULLED
22 ME OUT OF THE BATHROOM.

23 **Q** OKAY.

24 **A** THEY WERE IN MY OFFICE. AND, NO, I COULDN'T
25 TELL YOU HOW MANY. I WAS HYSTERICAL. I DON'T KNOW.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

255

1 Q YES, MA'AM. AND I UNDERSTAND THAT AND I'M NOT
2 TRYING TO CAUSE YOU ANY TROUBLE OR PAIN, BUT THERE'S SOME
3 QUESTIONS THAT I HAVE TO ASK YOU. WHEN THEY PULLED YOU
4 OUT -- WHERE WAS MR. SALISBURY WHEN THEY PULLED YOU OUT OF
5 THE BATHROOM?

6 A HE WAS STILL IN THE BATHROOM.

7 Q OKAY. DO YOU, IF YOU REMEMBER, DO YOU REMEMBER
8 WHO WAS IN THE BATHROOM WITH HIM?

9 A I HAVE NO IDEA.

10 Q OKAY. HOW MANY PEOPLE -- HOW MANY INMATES
11 PULLED YOU FROM THE BATHROOM?

12 A THE ONE PULLED ME OUT AND TOOK ME TO THE DAY
13 ROOM.

14 Q TO THE DAY ROOM. SO THERE WAS JUST -- IF -- SO
15 THEY TOOK YOU -- DO YOU -- YOU WENT TO THE C ROOM -- C DAY
16 ROOM, D DAY ROOM?

17 A THE ONE I SHOWED YOU. THE CLOSER ONE TO THE
18 FRONT DOOR.

19 Q OKAY. SO ONE -- THEY TOOK YOU TO THAT DAY ROOM?

20 A YES, MA'AM.

21 MS. WILLIAMS: OBJECTION. ASKED AND ANSWERED.

22 MS. KENNEDY: YOUR HONOR, I'M JUST TRYING TO---

23 THE COURT: OVERRULED.

24 MS. KENNEDY: ---CLARIFY---

25 BY MS. KENNEDY:

1 Q THEY TOOK YOU TO THAT DAY ROOM. DID ANY ONE OF
2 THEM, IF YOU REMEMBER, ESCORT YOU TO THE DAY ROOM? YOU
3 TESTIFIED THAT THEY WERE TRYING TO COVER YOU UP AND THEY
4 HAD BLANKETS AND ALL THAT, DO -- DO YOU REMEMBER WHO --
5 EVEN NOW AFTER THE FACT, HAVE YOU BEEN MADE AWARE OF WHO
6 THOSE PEOPLE ARE?

7 A YES. CHRISTOPHER SIMMONS CARRIED ME INTO THE
8 DAY ROOM, PHYSICALLY CARRIED ME INTO THE DAY ROOM.

9 Q OKAY. AND AT WHAT POINT DID MR. STAGGERS AND --
10 I BELIEVE YOU SAID INMATE---

11 A WALDRUP.

12 Q ---WALDRUP.

13 A THEY CAME IN THERE ALMOST IMMEDIATELY.

14 Q THEY CAME INTO THE DAY ROOM?

15 A YES.

16 Q SO, YOU HAVE NO KNOWLEDGE OF WHETHER OR NOT THEY
17 WERE ACTUALLY IN THE OFFICE?

18 A I HAVE NO IDEA.

19 Q OKAY. UM, AND DID -- WHERE WAS THE SHANK THEN?

20 A IN MY HAND.

21 Q YOU HAD IT WITH YOU?

22 A YES, MA'AM.

23 Q YOU HAD IT WITH YOU THE WHOLE TIME?

24 A YES, MA'AM.

25 Q ALL THE WAY UP UNTIL THE TIME---

SARA ADAMS -- DIRECT BY MS. WILLIAMS

257

1 A ALL THE WAY UNTIL I WENT TO THE ADMIN. BUILDING.

2 Q OKAY. AND WHEN YOU GOT TO THE ADMIN. BUILDING,
3 YOU GAVE IT TO WHOM?

4 A ONE OF MY FELLOW OFFICERS. I COULDN'T HONESTLY
5 TELL YOU.

6 Q OKAY. AND WERE YOU -- DID YOU GIVE HIM THE
7 SHANK BEFORE OR AFTER YOU WERE -- PUT YOUR CLOTHES BACK
8 ON?

9 A BEFORE.

10 Q ALL RIGHT. UM, AND THE -- THE PHOTOS THAT YOU
11 IDENTIFIED, YOU WERE ABLE TO DO THIS AS PART OF YOUR
12 PREPARATION FOR THE CASE, CORRECT?

13 A I'M SORRY?

14 Q THE PHOTOS THAT YOU WERE ABLE TO IDENTIFY, YOU
15 WERE ABLE TO -- AS PART OF THE PREPARATION FOR THE CASE,
16 YOU WEREN'T THERE WHEN THESE WERE TAKEN? NONE OF THEM
17 WERE ONES TAKEN OF YOU?

18 A RIGHT.

19 Q THE PROSECUTOR HAS SHOWN YOU THESE PICTURES?

20 A YES.

21 Q AND THE PROSECUTOR HAS EXPLAINED TO YOU OR
22 DISCUSSED WITH YOU THE HOLES AND HOW THEY GOT THERE?

23 A NO. I KNEW HOW THEY GOT THERE. I WAS THERE
24 WHEN IT HAPPENED.

25 Q OKAY. YOU HEARD IT?

1 **A** YES. I HEARD IT AND I SAW THE DOOR.

2 **Q** OKAY. UM, AND I BELIEVE ACCORDING TO ONE -- TO
3 YOUR STATEMENT, -- AND AGAIN I APOLOGIZE, YOU INDICATED TO
4 -- IN YOUR STATEMENT -- IN A STATEMENT THAT YOU GAVE, THAT
5 YOU BIT MR. SALISBURY, BIT HIS HAND AT SOME POINT?

6 **A** YES.

7 **Q** WHERE WAS THE SHANK THEN?

8 **A** IN MY HAND.

9 **Q** OKAY. DID YOU TRY TO SAY, YOU KNOW, I'VE GOT
10 THE SHANK, STOP, I'M GOING TO HURT YOU?

11 **A** NO.

12 **Q** OKAY. BUT WITH REGARD TO THE BITE MARKS, HE --
13 YOU INDICATED IN YOUR STATEMENT THAT YOU BIT HIM SO HARD
14 THAT YOU COULD TASTE HIS FLESH?

15 **A** YES.

16 **Q** AND -- OKAY.

17 **MS. KENNEDY:** THE COURT'S INDULGENCE, YOUR HONOR.

18 **THE COURT:** YES, MA'AM.

19 **BY MS. KENNEDY:**

20 **Q** NOW, JUST -- I JUST HAVE A COUPLE OF MORE
21 QUESTIONS ABOUT THIS ALARM SITUATION. IF YOU HAVE THE
22 MIKE, THEORETICALLY, THE MIKE -- YOU ARE SUPPOSED TO BE
23 ABLE TO PUNCH IT AND SOMEBODY IS SUPPOSED TO RESPOND OR
24 YOU CAN RADIO SOMEBODY TO ASSIST YOU?

25 **A** WE HAVE TO RADIO SOMEBODY TO ASSIST US.

SARA ADAMS -- DIRECT BY MS. WILLIAMS

259

1 Q OKAY. BUT YOU WERE UNABLE TO DO THAT BECAUSE HE
2 TOOK IT FROM YOU?

3 A YES.

4 Q DID HE TAKE IT BEFORE OR AFTER HE PUSHED YOU
5 INTO THE BATHROOM?

6 A AFTER.

7 Q OKAY. AND AS I UNDERSTAND IT, ON THE PHONE
8 ALARM SITUATION, IF -- IF -- IF THE PHONE IS OFF THE HOOK
9 MORE THAN FIVE SECONDS, THEN THAT'S SUPPOSED TO SIGNAL
10 SOMEBODY IN THE CONTROL ROOM---

11 A YES, MA'AM.

12 Q ---BECAUSE THERE'S A PROBLEM?

13 A IT DOES.

14 Q AND IT'S -- IT'S -- IS IT YOUR UNDERSTANDING
15 THAT THAT'S HOW THE FIRST RESPONDERS WERE ABLE TO COME TO
16 YOUR AID?

17 A FROM WHAT I UNDERSTAND, ONE OF THE INMATES
18 KNOCKED THE PHONE OFF THE HOOK.

19 Q I'M SORRY?

20 A FROM WHAT I UNDERSTAND, ONE OF THE INMATES
21 KNOCKED THE PHONE OFF THE HOOK.

22 Q KNOCKED THE PHONE OFF THE HOOK?

23 A BECAUSE THEY KNEW IT WOULD BRING THE OFFICERS.

24 Q OKAY. OKAY. UM, AND YOU WERE -- YOU WERE
25 REQUIRED, I GUESS AT SOME POINT, YOU -- YOU GAVE A

1 STATEMENT TO A SLED AGENT CONCERNING THIS INCIDENT?

2 A YES, MA'AM.

3 Q OKAY. AND IS THE SLED AGENT THE ONE WHO TOOK
4 THOSE PICTURES?

5 A I'M NOT SURE. SOME WERE TAKEN BY THE SLED AGENT
6 AND SOME WERE TAKEN DOWN AT THE WOMEN'S CLINIC AND I DON'T
7 KNOW WHICH ARE WHICH.

8 Q OKAY.

9 MS. KENNEDY: I THINK THAT'S ALL I HAVE, YOUR
10 HONOR. THE COURT'S INDULGENCE. (PAUSE.) I DON'T HAVE
11 ANYTHING ELSE. THANK YOU, MS. ADAMS. I APPRECIATE IT
12 VERY MUCH.

13 THE COURT: MS. WILLIAMS.

14 MS. WILLIAMS: THE COURT'S INDULGENCE.

15 THE COURT: YES, MA'AM.

16 MS. WILLIAMS: I JUST HAVE ONE QUESTION.

17 REDIRECT EXAMINATION BY MS. WILLIAMS:

18 Q DO YOU SEE THE MAN THAT ASSAULTED YOU ON JANUARY
19 18TH IN THE COURTROOM TODAY---

20 MS. KENNEDY: YOUR HONOR, OBJECTION. IF WE MAY?

21 THE COURT: COUNSEL WILL APPROACH.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
23 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
24 THE HEARING OF THE JURY, OFF THE RECORD.)

25 BY MS. WILLIAMS:

SARA ADAMS -- REDIRECT BY MS. WILLIAMS

261

1 Q DO YOU SEE THE MAN THAT ASSAULTED YOU THAT
2 EVENING IN THE COURTROOM TODAY?

3 A YES, MA'AM.

4 Q COULD YOU PLEASE POINT HIM OUT TO THE JURY?

5 A HE'S RIGHT THERE.

6 Q AND IS HE -- IS HE IN -- WHICH SEAT?

7 A HE'S IN THE MIDDLE SEAT BETWEEN THE TWO
8 COUNSELORS.

9 MS. WILLIAMS: PLEASE LET THE RECORD REFLECT THAT
10 SHE HAS IDENTIFIED THE DEFENDANT, MR. SALISBURY.

11 THE COURT: THE RECORD WILL REFLECT THAT. I WILL
12 NOTE YOUR OBJECTION FOR THE RECORD. PLEASE CONTINUE.

13 MS. WILLIAMS: WE HAVE NOTHING FURTHER, YOUR HONOR.

14 THE COURT: MS. KENNEDY?

15 MS. KENNEDY: YOUR HONOR, I -- I HAVE NOTHING
16 FURTHER.

17 THE COURT: AND AS TO STATE'S NO. 1 AND NO. 20?

18 MS. KENNEDY: UM, NO. 1 IS THE UNIFORM, YOUR HONOR?

19 THE COURT: YES. THE SHIRT AND THE PANTS.

20 MS. KENNEDY: I HAVE NO OBJECTION TO THAT. I HAVE
21 NO OBJECTION TO THE SHANK. MY OBJECTION GOES TO THE
22 INMATE PANTS.

23 THE COURT: OKAY. THAT WOULD BE IN PART OF 1, NO.
24 1, WHICH IS THE UNIFORM SHIRT AND THE INMATE PANTS. NO.
25 20 IS THE BELT, JACKET, PANTS, SOCKS, LEGGINS AND T-SHIRT.

1 DO YOU HAVE---

2 MS. KENNEDY: NO, YOUR HONOR, I HAVE NO OBJECTION
3 TO THE UNIFORM, THE INMATE SHIRT AND THE BLUE UNIFORM. MY
4 OBJECTION IS TO THE PANTS.

5 THE COURT: THE NO. 1 --

6 MS. KENNEDY: INMATE---

7 THE COURT: -- PANTS?

8 MS. WILLIAMS: WE CAN SEPARATE 1 AND 1-A---

9 THE COURT: HOLD ON ONE SECOND. I JUST WANT THE
10 RECORD TO BE CLEAR. NO. 1 CONTAINED THE UNIFORM SHIRT AND
11 INMATE PANTS. TWENTY CONTAINED UNIFORM PANTS.

12 MS. KENNEDY: WHAT I SEEK TO HAVE EXCLUDED, YOUR
13 HONOR, AND MY OBJECTION IS TO THE INMATE PANTS FROM THE
14 DEPARTMENT OF CORRECTIONS.

15 THE COURT: ALL RIGHT. WHAT THE COURT IS GOING TO
16 DO IS STATE'S 20 WILL BE ADMITTED WITHOUT OBJECTION. NO.
17 1 WITH RESPECT TO THE UNIFORM SHIRT WILL BE NOW TITLED 1-A
18 AND THERE IS NO OBJECTION TO THE UNIFORM SHIRT, MS.
19 KENNEDY?

20 MS. KENNEDY: NO, YOUR HONOR.

21 THE COURT: WITHOUT OBJECTION. THE INMATE PANTS
22 THAT WERE PART OF THE BAG IN NO. 1 WILL NOW BE CONSIDERED
23 1-B, AND YOU NEED TO LAY THE PROPER FOUNDATION, MS.
24 WILLIAMS, AS TO THOSE. SO, THOSE WILL NOT BE ADMITTED
25 INTO EVIDENCE AT THIS TIME.

1 MS. WILLIAMS: THANK YOU, YOUR HONOR.

2 THE COURT: THANK YOU.

3 (STATE'S EXHIBIT NO. 20 RECEIVED INTO EVIDENCE.)

4 (STATE'S EXHIBIT NO. 1-A RECEIVED INTO EVIDENCE.)

5 MS. WILLIAMS: DO WE NEED TO RELABEL THIS FOR---

6 THE COURT: WE WILL NEED TO AT A LATER TIME. ANY
7 OBJECTION TO THE WITNESS STEPPING DOWN AT THIS TIME?

8 MS. KENNEDY: NO, YOUR HONOR.

9 THE COURT: MS. ADAMS, YOU MAY STEP DOWN. YOU ARE
10 FREE TO REMAIN IN THE COURTROOM. THANK YOU. CALL YOUR
11 NEXT WITNESS.

12 (WITNESS STEPPED DOWN.)

13 MS. WILLIAMS: THE STATE CALLS SGT. SUMPTER.

14 (WITNESS FORWARD.)

15 THE CLERK: RAISE YOUR RIGHT HAND, PLACE YOUR LEFT
16 HAND ON THE BIBLE.

17 WILLIAM SUMPTER, HAVING BEEN
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
20 FOR THE RECORD AND SPELL YOUR LAST NAME.

21 THE WITNESS: MY NAME IS WILLIAM SUMPTER. THE LAST
22 NAME IS SPELLED, S-U-M-P-T-E-R.

23 THE COURT: MS. WILLIAMS.

24 MS. WILLIAMS: THANK YOU, YOUR HONOR.

25 DIRECT EXAMINATION BY MS. WILLIAMS:

1 Q WHERE DO YOU WORK, SGT. SUMPTER?

2 A MACDOUGALL CORRECTIONAL INSTITUTION.

3 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

4 A THIRTEEN YEARS.

5 Q WHAT ARE YOUR PRESENT DUTIES?

6 A SERGEANT.

7 Q WHAT DO YOU DO?

8 A I'M A SERGEANT IN THE HOUSING UNIT.

9 Q DID YOU WORK WITH CORRECTIONS OFFICER, SARA
10 ADAMS?

11 A YEAH. I HAD WORKED WITH HER BEFORE, YEAH.

12 Q AND WERE YOU WORKING ON JANUARY 18, 2008?

13 A I WAS ON MY UNIT, ON BIRCH I UNIT---

14 COURT REPORTER: I'M SORRY. REPEAT THE UNIT NAME.

15 A BIRCH I.

16 BY MS. WILLIAMS:

17 Q WHERE WERE YOU WHEN YOU LEARNED THERE WAS A
18 PROBLEM AT THE MAGNOLIA II UNIT?

19 A IN THE CENTER YARD.

20 Q IN THE YARD?

21 A YEAH.

22 Q HOW DID YOU LEARN THERE WAS A PROBLEM?

23 A BECAUSE I -- I HEARD A LOT OF COMMOTION ON THE
24 RADIO. AND THE CONTROL ROOM CALLED AND SAID THERE WAS A
25 PROBLEM IN MAG II UNIT.

SGT. SUMPTER -- DIRECT BY MS. WILLIAMS

265

1 Q WERE YOU ONE OF THE FIRST RESPONDERS?

2 A I WAS THE FIRST ONE THAT GOT THERE.

3 Q WERE YOU THE FIRST ONE TO GET TO THE SCENE?

4 A YEAH. I WAS THE FIRST ONE AT THE SCENE, BUT I
5 DIDN'T HAVE A KEY TO GET IN THE UNIT. I WAS AT THE DOOR
6 WAITING FOR THE FIRST RESPONDER.

7 Q SO, WHEN YOU GOT TO THE UNIT, YOU COULD -- COULD
8 YOU ENTER?

9 A NO.

10 Q AND WHY WAS THAT?

11 A BECAUSE I WAS WAITING FOR THE OVERRIDE KEY TO
12 GET IN, BECAUSE -- SHE COULD OPEN THE DOOR BECAUSE --
13 SOMEBODY HAD THE OTHER KEY INSIDE, DO YOU KNOW WHAT I
14 MEAN?

15 Q SO, YOU DIDN'T HAVE A KEY?

16 A NO. TO GET IN, NO.

17 Q COULD YOU SEE INTO THE UNIT?

18 A WELL, THROUGH THE DOOR, THERE WAS SO MUCH
19 COMMOTION. INMATES WERE ALL OVER, AROUND THE UNIT THERE.
20 I COULDN'T SEE WHETHER---

21 COURT REPORTER: I'M SORRY, SIR. COULD YOU REPEAT
22 THAT PLEASE?

23 THE WITNESS: I COULDN'T SEE THE UNIT BECAUSE THERE
24 WAS A LOT OF INMATES WALKING BACK AND FORTH THERE -- I
25 COULDN'T SEE THROUGH THE WINDOW.

1 BY MS. WILLIAMS:

2 Q DID YOU GET INTO THE UNIT AT SOME POINT?

3 A IT WAS -- SGT. WILLIAMS HAD GOT THERE AND
4 CORPORAL FOGEL. HE OPENED THE DOOR. HE WENT IN FIRST,
5 YOU KNOW.

6 Q WHO WENT IN FIRST?

7 A SGT. WILLIAMS.

8 Q AND THEN?

9 A CORPORAL FOGEL.

10 Q AND THEN YOU?

11 A AND I SORT OF STAYED OUTSIDE BECAUSE IT'S REALLY
12 THE SERGEANT'S JOB TO GO IN AND TELL ME WHAT IS
13 HAPPENING---

14 COURT REPORTER: I'M SORRY, SIR. I'M NOT FOLLOWING
15 YOU.

16 THE WITNESS: OKAY. ONCE SGT. WILLIAMS GOT IN THE
17 UNIT, OKAY, I SORT OF STAYED OUTSIDE AND WAITED UNTIL HE
18 -- HE GAVE ME SOME INTELLIGENCE TO KNOW WHAT'S GOING ON.
19 AND ONCE SHE TOLD ME WHAT IS GOING ON---

20 MR. SHELTON: OBJECTION, YOUR HONOR. HEARSAY.

21 THE COURT: SUSTAINED.

22 BY MS. WILLIAMS:

23 Q DID YOU GO INTO THE UNIT?

24 A YES, I DID.

25 Q DID YOU OBSERVE CORRECTIONS OFFICER ADAMS?

SGT. SUMPTER -- DIRECT BY MS. WILLIAMS

267

1 A YES, I DID.

2 Q WHAT WAS HER DEemeanOR LIKE?

3 A SHE WAS CRYING.

4 Q DID SHE SAY ANYTHING TO YOU?

5 MR. SHELTON: OBJECTION. IT CALLS FOR HEARSAY.

6 THE COURT: OVERRULED.

7 BY MS. WILLIAMS:

8 Q WHAT DID SHE SAY TO YOU?

9 THE COURT: COUNSEL, YOUR QUESTION WAS, DID SHE SAY
10 ANYTHING TO YOU.

11 MS. WILLIAMS: I'M SORRY.

12 BY MS. WILLIAMS:

13 Q DID SHE SAY ANYTHING TO YOU?

14 A NO, SHE DIDN'T.

15 Q DID YOU HEAR HER SAY ANYTHING?

16 MR. SHELTON: OBJECTION.

17 THE COURT: SUSTAINED.

18 BY MS. WILLIAMS:

19 Q COULD YOU TELL THE -- TELL THE JURY WHAT HER
20 DEemeanOR WAS LIKE WHEN YOU OBSERVED HER RIGHT BEFORE SHE
21 SAID SOMETHING?

22 A WELL, SHE WAS LIKE -- LIKE CRYING, AND VERY
23 EMOTIONAL. SHE WAS VERY EMOTIONAL AND SHE WAS CRYING.

24 Q AND AFTER YOU OBSERVED THAT DEemeanOR, DID YOU
25 HEAR HER SAY ANYTHING?

1 **MR. SHELTON:** OBJECTION. HEARSAY. I'M SORRY---

2 **THE COURT:** OVERRULED. OVERRULED.

3 **BY MS. WILLIAMS:**

4 **Q** AFTER YOU OBSERVED HER DEemeanor, DID YOU HEAR
5 HER SAY ANYTHING?

6 **A** MOST WAS DIRECTED TO CORPORAL FOGEL BECAUSE I
7 WENT UP IN THE OFFICE, DO YOU KNOW WHAT I MEAN?

8 **Q** DID YOU HEAR HER SAY ANYTHING?

9 **A** NOT REALLY, NO.

10 **Q** WHAT WAS SHE WEARING?

11 **A** SHE HAD ON A T-SHIRT AND INMATE UNIFORM PANTS.

12 **Q** DID YOU SEE THE DEFENDANT?

13 **A** YES, I DID.

14 **Q** WHERE DID YOU SEE HIM?

15 **A** HE WAS IN THE OFFICE, BUT I SEEN HIM.

16 **Q** WHAT CONDITION WAS HE IN?

17 **A** HE WAS -- THERE WAS BLOOD ALL OVER HIS FACE, YOU
18 KNOW, IT WAS BLOOD ON THE FLOOR IN THE OFFICE THERE. BUT
19 -- ALL OVER THE PLACE THERE---

20 **COURT REPORTER:** I'M SORRY.

21 **THE WITNESS:** THERE WAS -- HIS FACE WAS BLOODY, YOU
22 KNOW. AND IT WAS BLOOD ALL OVER THE OFFICE THERE, A LOT
23 OF BLOOD IN THE OFFICE.

24 **BY MS. WILLIAMS:**

25 **Q** IF YOU KNOW, WAS -- WAS MS. ADAMS -- DID SHE GO

SGT. SUMPTER -- DIRECT BY MS. WILLIAMS

269

1 SOMEWHERE ELSE AFTER YOU GOT THERE?

2 A WELL, THE INMATES SORT OF HAD HER UP IN THEIR
3 ARMS LIKE, YOU KNOW, WHEN THEY BROUGHT HER TO THE DOOR AND
4 CORPORAL FOGEL ESCORTED HER OUT OF THE DOOR.

5 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THE
6 DEFENSE HAS.

7 THE COURT: MR. SHELTON.

8 MR. SHELTON: THANK YOU.

9 CROSS EXAMINATION BY MR. SHELTON:

10 Q SGT. SUMPTER, HOW ARE YOU DOING?

11 A HOW ARE YOU DOING TODAY?

12 Q GOOD. OKAY. YOU -- YOU WERE IN THE BIRCH I
13 UNIT OUTSIDE?

14 A NO. I WAS -- I BE OUT IN THE CENTER YARD THERE,
15 THERE'S A LITTLE -- A LITTLE HUT OUTSIDE IN THE CENTER OF
16 THE YARD, AND I WAS THERE. I WAS LIKE -- JUST GOT -- I
17 JUST ARRIVED THERE WHEN I HEARD ALL THE COMMOTION.

18 Q OKAY. THERE'S -- THERE'S A BASEBALL FIELD
19 OUTSIDE---

20 A YES, IT IS.

21 Q ---THE MAGNOLIA II UNIT, RIGHT?

22 A YEAH.

23 Q MAGNOLIA UNIT. THE BIRCH UNIT, WHERE IS THAT?

24 A IT'S ACROSS THE YARD.

25 Q IT'S ACROSS THE YARD?

1 A YEAH.

2 Q AND YOU WERE THE -- YOU WERE THE FIRST ONE TO
3 THE DOOR?

4 A TO THE DOOR.

5 Q OKAY. YOU FILLED OUT AN INCIDENT REPORT, ISN'T
6 THAT CORRECT?

7 A YES, I DID.

8 Q DO YOU KNOW ABOUT WHAT TIME YOU FILLED OUT THAT
9 INCIDENT REPORT?

10 A IT WAS AFTER 12:00, I KNOW THAT. NO -- IT WAS
11 LIKE THAT MORNING -- THAT MORNING. THAT MORNING, YEAH, I
12 LEFT WORK IN THE MORNING.

13 Q OKAY. WHAT'S YOUR PROCEDURE ONCE YOU FILL OUT
14 THAT INCIDENT REPORT?

15 A WHAT'S THE PROCEDURE?

16 Q YEAH. WITH THE INCIDENT REPORT.

17 A OKAY. WE WRITE THE INCIDENT REPORT. WE GIVE IT
18 TO OUR SUPERVISOR. HE PUTS THE STATEMENT ON THE INCIDENT
19 REPORT.

20 Q DID YOU GIVE A STATEMENT TO MERV POWELL?

21 A I DON'T REMEMBER. I TALKED TO MERV POWELL, YES,
22 I DID.

23 Q OKAY. BUT YOU DIDN'T -- YOU DIDN'T HAVE A
24 WRITTEN DOWN STATEMENT WITH MERV POWELL?

25 A NO.

SGT. SUMPTER -- CROSS BY MS. SHELTON

271

1 Q OKAY. DO YOU HAVE A -- DID YOU WRITE DOWN A
2 STATEMENT WITH SLED?

3 A YES, I DID.

4 Q J.J. EVANS?

5 A YES -- I CAN'T RECALL HIS NAME -- I THINK IT WAS
6 EVANS, YEAH.

7 Q HE CAME -- HE CAME AND TOOK YOUR STATEMENT?

8 A YEAH, THAT MORNING, YEAH.

9 Q DO YOU REMEMBER ABOUT WHAT TIME THAT WAS?

10 A IT WAS OUR SHIFT CHANGE. I CAN'T REMEMBER
11 EXACTLY WHAT TIME IT WAS. BUT IT WAS AFTER THE SHIFT
12 CHANGE.

13 Q AFTER THE SHIFT CHANGE?

14 A YEAH. IT WAS LIKE ABOUT -- I DON'T KNOW IF IT
15 WAS SEVENISH OR EIGHTISH, I DON'T KNOW EXACTLY WHAT TIME
16 IT WAS. THIS WAS ABOUT A YEAR AGO NOW.

17 Q AND YOU SIGNED -- YOU SIGNED THE BOTTOM OF YOUR
18 STATEMENT THAT YOU PROVIDED TO J.J. EVANS?

19 A YES, I DID.

20 MR. SHELTON: NO FURTHER QUESTIONS.

21 THE COURT: MS. WILLIAMS?

22 MS. WILLIAMS: NOTHING FURTHER FROM THIS WITNESS,
23 YOUR HONOR.

24 THE COURT: MAY THIS WITNESS STEP DOWN AND BE
25 EXCUSED FROM THE COURTHOUSE?

1 MS. WILLIAMS: YES, YOUR HONOR.

2 THE COURT: ANY OBJECTIONS?

3 MR. SHELTON: NO OBJECTION.

4 THE COURT: YOU MAY STEP DOWN. YOU ARE FREE TO
5 REMAIN IN THE COURTROOM, BUT YOU ARE ALSO FREE TO LEAVE.
6 THANK YOU.

7 THE WITNESS: OKAY. THANK YOU, TOO.

8 (WITNESS STEPPED DOWN.)

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY. WE
10 ARE GOING TO TAKE OUR LUNCH BREAK. WE HAVE REACHED AN
11 APPROPRIATE POINT TO STOP. AGAIN, I REMIND YOU PLEASE DO
12 NOT BEGIN DELIBERATIONS. DO NOT DISCUSS THIS CASE AMONGST
13 YOURSELVES OR WITH ANY OTHER INDIVIDUALS. PLEASE DO NOT
14 READ, WATCH, LISTEN TO ANY NEWS ACCOUNTS SHOULD THERE BE
15 ANY REGARDING THIS CASE.

16 PLEASE BE BACK IN YOUR JURY ROOM AT 1:15. AND WE
17 WILL BEGIN PROMPTLY ONCE ALL THE JURORS -- ONCE ALL OF YOU
18 ARE BACK IN THE JURY ROOM. PLEASE RISE FOR THE JURY.

19 (WHEREUPON, JURY LEFT THE COURTROOM AT 12:06 P.M.)

20 THE COURT: THANK YOU. PLEASE BE SEATED. MS.
21 KENNEDY, I'M GOING TO ALLOW YOU AT THIS TIME TO PLACE ON
22 THE RECORD WHAT -- THE OBJECTION FOR YOU -- THE DISCUSSION
23 CONCERNING THE DEFENDANT'S ID.

24 MS. KENNEDY: THANK YOU, YOUR HONOR. WE OBJECTED
25 TO THE PROSECUTOR BEING ALLOWED TO ASK THE WITNESS, AFTER

1 OUR CROSS EXAMINATION, TO IDENTIFY THE INMATE.

2 MY UNDERSTANDING OF THE RULES OF PROCEDURE IS THAT
3 YOU ARE LIMITED TO -- ON REDIRECT THOSE ISSUES THAT WERE
4 RAISED ON CROSS EXAMINATION. AT NO POINT IN TIME DID I
5 ASK THE WITNESS TO IDENTIFY MR. SALISBURY. THERE WAS
6 NEVER ANY ISSUE OF HIS IDENTIFICATION.

7 MY QUESTIONS WENT TO THE IDENTITIES OF THE INMATES
8 AND WHO WAS ABLE TO ASSIST HER IN ANTICIPATION OF CROSS
9 EXAMINATION, YOUR HONOR. AND THAT, IN EFFECT, WAS NEW
10 MATTER.

11 I -- I -- PROCEDURALLY THAT'S -- THAT'S INCORRECT.
12 IT ALLOWS -- IT ALLOWS -- GIVES THE PROSECUTION AN UNFAIR
13 ADVANTAGE TO ALLOW THEM TO, IN EFFECT, CLEAN UP THEIR
14 DIRECT EXAMINATION BY OMISSIONS THAT WERE MADE DURING THAT
15 EXAMINATION, YOUR HONOR, AND THAT'S JUST A PROCEDURAL
16 ISSUE.

17 AND THE OTHER ISSUE, I WOULD -- OR THE OTHER --
18 IT'S NOT AN ISSUE, IT'S NOT A PROBLEM, BUT IT IS A
19 CONCERN. AND THAT IS DURING THE STATE'S EXAMINATION OF
20 THE WITNESSES, THERE IS A SLIGHT TENDENCY TO LEAD THE
21 WITNESS. IF WE WERE PUT IN A POSITION OF EVERY TIME
22 OBJECT TO THE LEADING QUESTION, THEN THAT RUNS A SERIOUS
23 RISK OF -- OF -- OF -- YOU KNOW, MAKING A JURY THINK THAT
24 WE'RE TRYING TO KEEP THINGS OUT.

25 I WOULD JUST ASK THE COURT TO ADVISE THE

1 PROSECUTION SO WE WON'T HAVE TO KEEP OBJECTING, IT PUTS US
2 IN A VERY DIFFICULT POSITION. BECAUSE IF WE -- IF WE --
3 IF WE OBJECT EVERY TIME, THERE'S A CHANCE THAT THE JURY IS
4 GOING TO THINK WE'RE TRYING TO KEEP SOMETHING OUT, AND ALL
5 WE'RE DOING IS OBJECTING TO THE FORM OF THE QUESTION. AND
6 JURORS REALLY DON'T KNOW OR APPRECIATE THAT DISTINCTION.
7 SO, I JUST WOULD ASK THAT WE ALL TRY TO DO A BETTER JOB AT
8 THAT.

9 THE COURT: MS. WILLIAMS, YOUR RESPONSE FIRST TO
10 THE ID.

11 MS. WILLIAMS: THANK YOU, YOUR HONOR. ON CROSS
12 EXAMINATION, MS. KENNEDY WENT INTO LENGTH ABOUT WHO WAS IN
13 THE BATHROOM, WHO CAME INTO THE BATHROOM, WHAT THE
14 ACTIVITY WAS OF MR. SALISBURY, WHAT HE DID TO THE VICTIM,
15 WHAT HE SAID TO THE VICTIM, HOW HE DID IT. AND WE WOULD
16 ARGUE THAT ASKING WHO IT WAS THAT DID THESE THINGS TO HER
17 IS SOMETHING WITHIN THE REALM OF REDIRECT AND THAT -- THAT
18 IS NOT OUTSIDE THE SCOPE.

19 WITH REGARD TO LEADING, I WILL BE MORE CAREFUL.

20 THE COURT: ALL RIGHT. THANK YOU, MS. WILLIAMS,
21 FOR THE UNDERSTANDING OF THE LEADING QUESTIONS. JUST SO
22 THE RECORD IS CLEAR, THE COURT ON CROSS EXAMINATION HEARD
23 MS. KENNEDY INQUIRE OF THE VICTIM ON SEVERAL OCCASIONS,
24 WHERE WAS THE -- HOW DID HE DO THIS, WHERE WAS THE SHANK.

25 THEN THERE WAS THE WHOLE -- WHO WAS THERE. ON

1 SEVERAL OCCASIONS, MS. KENNEDY ASKED, I BELIEVE MS.
2 WILLIAMS OBJECTED TO ASKED AND ANSWERED SEVERAL TIMES --
3 WHO WAS THERE. SHE CALLED THE -- THE VICTIM CALLED THE
4 INMATES BY NAME. SO, THE COURT ALLOWED THE ID TO GO
5 AHEAD. IT WAS NOT A NEW ISSUE BROUGHT UP ON REDIRECT, BUT
6 MERELY CLARIFYING THE IDENTIFICATION OF WHO OR WHAT THAT
7 ASSAULTED HER. ANYTHING -- I NOTE YOUR OBJECTION, MS.
8 KENNEDY---

9 MS. KENNEDY: THANK YOU, YOUR HONOR.

10 THE COURT: ---TO THE ID ON THE RECORD. ANYTHING
11 FURTHER REGARDING EITHER OF THOSE MATTERS, MS. KENNEDY,
12 EITHER THE ID OR THE -- THE LEADING QUESTIONS?

13 MS. KENNEDY: NO, YOUR HONOR. NOT AS TO THOSE
14 MATTERS.

15 THE COURT: OKAY. ANYTHING FURTHER BEFORE WE---

16 MS. KENNEDY: I JUST -- AND MR. SHELTON ASKED -- I
17 JUST HAVE ONE CLARIFICATION ABOUT THE INMATE -- THE INMATE
18 PANTS THAT MS. ADAMS WORE, THOSE HAVE NOT BEEN ENTERED
19 INTO EVIDENCE?

20 THE COURT: THOSE HAVE NOT BEEN ADMITTED INTO
21 EVIDENCE AND THERE WAS -- WHEN THEY WERE REMOVED FROM THE
22 BAG, THEY WERE LABELED 1. AND MS. WILLIAMS SHOWED THEM TO
23 THE VICTIM AS THE SHIRT AND THE PANTS, BUT THEY WERE BOTH
24 1. IN ORDER TO KEEP THE RECORD CLEAR, I HOPE, THE COURT
25 IS NOW STATING THAT THE SHIRT THAT IS INTRODUCED INTO

1 EVIDENCE, WHICH WAS THE SHIRT THAT THE VICTIM TESTIFIED
2 WAS THE SHIRT SHE WAS WEARING ON THE NIGHT OF THE
3 INCIDENT, IS IN EVIDENCE.

4 THE INMATE PANTS THAT THE VICTIM TESTIFIED TO THAT
5 -- AT THIS TIME HAVE NOT BEEN ADMITTED BECAUSE THE VICTIM
6 COULD NOT STATE THAT THOSE WERE THE SPECIFIC PANTS, HAVE
7 NOT BEEN ADMITTED AT THIS TIME. THOSE WILL NOW BE
8 RELABELED AS 1-B.

9 MS. KENNEDY: THANK YOU, YOUR HONOR.

10 THE COURT: DID THAT CLARIFY IT?

11 MS. KENNEDY: I THINK SO, YOUR HONOR.

12 (STATE'S EXHIBIT NO. 1-B MARKED FOR
13 IDENTIFICATION.)

14 THE COURT: OKAY. IS -- ANYTHING WITH RESPECT TO
15 1-A OR 1-B?

16 MS. WILLIAMS: NO, YOUR HONOR, AS LONG AS 1-A IS
17 ADMITTED. AND THE SHANK, I THINK, WAS 3.

18 THE COURT: THE SHANK WAS ADMITTED WITHOUT
19 OBJECTION WHEN YOU FIRST INTRODUCED IT.

20 MS. WILLIAMS: THANK YOU.

21 THE COURT: THANK YOU.

22 MR. SHELTON: THERE'S ONE -- THERE'S ONE SIDE BAR
23 THAT WAS -- IS NOT ON THE RECORD, AS FAR AS I CAN TELL,
24 WITH MAJOR MINCEY AND HIS TESTIMONY, AND THE OBJECTION TO
25 THE OFFICER OF THE YEAR AND THE BOLSTERING OF THE WITNESS.

1 AND I BELIEVE YOU SUSTAINED THAT OBJECTION ON 608 GROUNDS
2 AND I JUST WANTED TO MAKE SURE THAT'S ON THE RECORD.

3 THE COURT: OKAY. FEEL FREE, MR. SHELTON, TO PUT
4 IT ON THE RECORD.

5 MR. SHELTON: IT'S -- I PUT THAT ON THE RECORD.

6 THE COURT: ALL RIGHT. THANK YOU. ANYTHING BEFORE
7 WE BREAK FOR LUNCH?

8 MS. WILLIAMS: NOTHING, YOUR HONOR. NOTHING FROM
9 THE STATE.

10 MR. SHELTON: THAT'S ALL.

11 THE COURT: COUNSEL, FOR BOTH THE STATE AND THE
12 DEFENSE, WHEN A WITNESS TAKES THE WITNESS STAND, PLEASE
13 ENSURE THAT THEY DO NOT HAVE GUM IN THEIR MOUTH. IT MAKES
14 IT, ONE, VERY DIFFICULT TO LISTEN TO THEM. AND, TWO, IT'S
15 JUST NOT VERY ATTRACTIVE WATCHING THEM CHEW GUM ON THE
16 WITNESS STAND. SO, IF YOU ALL WILL ENSURE THAT WHEN YOUR
17 WITNESSES COME FORWARD THAT THEY DO NOT HAVE GUM IN THEIR
18 MOUTH, I WOULD APPRECIATE IT.

19 WE WILL BE IN RECESS UNTIL 1:15. THANK YOU.

20 (WHEREUPON, COURT RECESSED AT 12:13 P.M.)

21 (WHEREUPON, COURT RESUMED AT 1:20 P.M.)

22 THE COURT: THANK YOU. BE SEATED. DEPUTY, CAN YOU
23 GIVE ASSISTANCE AS TO WHERE THE STATE IS?

24 (STATE'S EXHIBITS 21-27 MARKED FOR IDENTIFICATION.)

25 THE COURT: BRING IN THE JURY.

1 AND I BELIEVE YOU SUSTAINED THAT OBJECTION ON 608 GROUNDS
2 AND I JUST WANTED TO MAKE SURE THAT'S ON THE RECORD.

3 THE COURT: OKAY. FEEL FREE, MR. SHELTON, TO PUT
4 IT ON THE RECORD.

5 MR. SHELTON: IT'S -- I PUT THAT ON THE RECORD.

6 THE COURT: ALL RIGHT. THANK YOU. ANYTHING BEFORE
7 WE BREAK FOR LUNCH?

8 MS. WILLIAMS: NOTHING, YOUR HONOR. NOTHING FROM
9 THE STATE.

10 MR. SHELTON: THAT'S ALL.

11 THE COURT: COUNSEL, FOR BOTH THE STATE AND THE
12 DEFENSE, WHEN A WITNESS TAKES THE WITNESS STAND, PLEASE
13 ENSURE THAT THEY DO NOT HAVE GUM IN THEIR MOUTH. IT MAKES
14 IT, ONE, VERY DIFFICULT TO LISTEN TO THEM. AND, TWO, IT'S
15 JUST NOT VERY ATTRACTIVE WATCHING THEM CHEW GUM ON THE
16 WITNESS STAND. SO, IF YOU ALL WILL ENSURE THAT WHEN YOUR
17 WITNESSES COME FORWARD THAT THEY DO NOT HAVE GUM IN THEIR
18 MOUTH, I WOULD APPRECIATE IT.

19 WE WILL BE IN RECESS UNTIL 1:15. THANK YOU.

20 (WHEREUPON, COURT RECESSED AT 12:13 P.M.)

21 (WHEREUPON, COURT RESUMED AT 1:20 P.M.)

22 THE COURT: THANK YOU. BE SEATED. DEPUTY, CAN YOU
23 GIVE ASSISTANCE AS TO WHERE THE STATE IS?

24 (PAUSE.)

25 THE COURT: BRING IN THE JURY.

1 (WHEREUPON, JURY ENTERED THE COURTROOM AT 1:22
2 P.M.)

3 THE COURT: THANK YOU. PLEASE BE SEATED. MS.
4 WILLIAMS, CALL YOUR NEXT WITNESS.

5 MS. WILLIAMS: THANK YOU, YOUR HONOR. SGT.
6 WILLIAMS.

7 (WITNESS FORWARD.)

8 JAMES BENJAMIN WILLIAMS, HAVING
9 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
11 FOR THE RECORD AND SPELL YOUR LAST NAME.

12 THE WITNESS: JAMES BENJAMIN WILLIAMS,
13 W-I-L-L-I-A-M-S.

14 MS. WILLIAMS: THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION BY MS. WILLIAMS:

16 Q SGT. WILLIAMS, WHERE DO YOU WORK?

17 A MACDOUGALL CORRECTIONAL INSTITUTION.

18 Q AND HOW LONG HAVE YOU WORKED THERE?

19 A FIFTEEN YEARS.

20 Q WHAT ARE YOUR PRESENT DUTIES?

21 A IT RANGES FROM SUPERVISING THE OFFICERS AND
22 INMATES, WORKING THE DORMS AND ON THE YARD, INMATE
23 MOVEMENT.

24 Q DO YOU KNOW SARA ADAMS?

25 A YES, I DO.

1 Q WHAT WAS YOUR RELATIONSHIP WITH HER -- YOUR
2 PROFESSIONAL WORK RELATIONSHIP WITH HER?

3 A SHE WAS AN OFFICER ON OUR SHIFT.

4 Q WHO DID SHE REPORT TO?

5 A SHE REPORTED TO ME.

6 Q DID YOU SEE HER ON JANUARY 18, 2008?

7 A YES, I DID.

8 Q WHEN DID YOU SEE HER?

9 A AT THE BEGINNING OF THE SHIFT. AND THEN ONCE,
10 AGAIN, LATER THAT EVENING WHEN I WAS CALLED TO THAT DORM.

11 Q AND WHEN YOU WERE CALLED TO THAT DORM -- LET ME
12 BACK UP. STRIKE THAT. WHEN DID YOU LEARN THERE WAS A
13 PROBLEM AT THAT DORM?

14 A AT -- SOMETIME AFTER 12:00, WE GOT A TELEPHONE
15 ALARM. AND THE CONTROL ROOM OFFICER DISPATCHED US TO
16 THE -- TO THE DORMITORY. I WAS THE FIRST RESPONDER ON
17 THAT.

18 Q AND WHEN YOU ARRIVED, WAS ANYONE ELSE THERE?

19 A YES. SGT. SUMPTER WAS AT THE DOOR. CORPORAL
20 FOGEL RODE WITH ME ON THE CART TO THE DORM. AND THAT'S
21 IT.

22 Q COULD -- COULD SGT. SUMPTER ENTER?

23 A NO, HE COULDN'T BECAUSE I HAD THE KEY.

24 Q AND AT SOME POINT, DID YOU COME INTO CONTACT
25 WITH SARA ADAMS?

SGT. WILLIAMS -- DIRECT BY MS. WILLIAMS

280

1 A WHEN I ARRIVED AT THE -- HER DORMITORY, WE CAME
2 FACE TO FACE AT THE DOOR THROUGH THE GLASS WINDOW. SHE
3 WAS CRYING AND THERE WAS A LOT OF HOLLERING GOING ON. AND
4 SHE SAID, "PLEASE HELP ME".

5 Q WHAT WAS SHE WEARING?

6 A SHE WAS WEARING A WHITE T-SHIRT AND INMATE'S
7 UNIFORM PANTS.

8 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THAT THE
9 DEFENSE MIGHT HAVE.

10 THE COURT: MR. SHELTON.

11 MR. SHELTON: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION BY MR. SHELTON:

13 Q IS IT SGT. WILLIAMS?

14 A YES.

15 Q WERE YOU A CORRECTIONAL OFFICER -- SARA ADAMS'
16 SUPERVISOR?

17 A I'M ONE OF HER SUPERVISORS, YES.

18 Q ONE OF HER SUPERVISORS.

19 A YES. I DID HER EVALUATIONS, THAT'S WHY I SAID
20 SHE REPORTED TO ME.

21 Q OKAY. YOU PROVIDED A STATEMENT -- YOU WROTE OUT
22 AN INCIDENT REPORT AFTER THIS INCIDENT, DID YOU NOT?

23 A YES.

24 Q DO YOU KNOW ABOUT WHAT TIME YOU WROTE THAT?

25 A BETWEEN 12:00 AND 12:30.

1 Q BETWEEN 12:00 AND 12:30?

2 A YEAH. THAT'S MY RECOLLECTION. IT WAS AFTER
3 12:00.

4 MR. SHELTON: YOUR HONOR, MAY I APPROACH?

5 THE COURT: YES.

6 BY MR. SHELTON:

7 Q MAYBE THIS WILL HELP YOU REFRESH YOUR MEMORY.

8 THE COURT: MR. SHELTON, DID YOU MARK THAT FOR
9 IDENTIFICATION PURPOSES?

10 MR. SHELTON: I CAN, YOUR HONOR.

11 (DEFENDANT'S EXHIBIT NO. 1 MARKED FOR
12 IDENTIFICATION.)

13 THE COURT: AND JUST FOR MY NOTES, IS THAT NO. 1?

14 MR. SHELTON: YES, YOUR HONOR. YOUR HONOR, MAY WE
15 APPROACH?

16 THE COURT: YOU MAY.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
19 THE HEARING OF THE JURY, OFF THE RECORD.)

20 BY MR. SHELTON:

21 Q SGT. WILLIAMS, DO YOU REMEMBER WHAT TIME YOU
22 WROTE THAT STATEMENT NOW?

23 A WELL, IT'S 12:15 ON HERE.

24 Q MAYBE -- MAYBE I'M NOT MAKING MYSELF CLEAR.
25 WHAT TIME DID YOU ACTUALLY REPORT AND WRITE THIS

SGT. WILLIAMS -- CROSS BY MR. SHELTON

282

1 STATEMENT?

2 A WHAT TIME DID I REPORT TO THE DORM?

3 Q NO. WHAT TIME DID YOU REPORT TO WRITE THIS
4 STATEMENT?

5 A 2:25.

6 Q OKAY. YOU WROTE THIS STATEMENT AT 2:25. DID
7 YOU, AT ANY TIME, TALK TO AGENT POWELL, INVESTIGATOR
8 POWELL?

9 A YES. THAT NIGHT WHEN HE ARRIVED.

10 Q OKAY. SO, YOU WOULD HAVE TALKED TO HIM AFTER
11 YOU WROTE THE STATEMENT?

12 A I DON'T REMEMBER IF IT WAS BEFORE OR AFTER.

13 Q OKAY. AND AT ANY TIME, DID YOU TALK TO THE SLED
14 INVESTIGATOR EVANS?

15 A YES.

16 Q DO YOU REMEMBER WHAT TIME YOU WROTE THAT
17 STATEMENT?

18 A NO, I DON'T.

19 Q DID YOU WRITE A STATEMENT FOR INVESTIGATOR
20 EVANS?

21 A YES, I DID, I THINK.

22 Q OKAY. DID YOU WRITE A STATEMENT, OR DID YOU
23 JUST DO A COVER SHEET FOR INVESTIGATOR EVANS?

24 A I REMEMBER IT WAS VERY BRIEF. I DON'T REMEMBER
25 -- HIS REPORT OR WHATEVER WAS IN IT.

1 Q NOW, YOU WERE THE ONE THAT ACTUALLY TOOK AND
2 HANDCUFFED MR. SALISBURY, ISN'T THAT TRUE?

3 A THAT'S TRUE.

4 Q AND YOU FILLED OUT A SEPARATE FORM FOR THAT --
5 FOR HANDCUFFING HIM, DID YOU NOT?

6 A I DON'T REMEMBER.

7 (DEFENDANT'S EXHIBIT NO. 2 MARKED FOR
8 IDENTIFICATION).

9 BY MR. SHELTON:

10 A OKAY.

11 Q DO YOU REMEMBER FILLING OUT A FORM FOR THAT?

12 A YES.

13 Q DID YOU REMEMBER WHAT TYPE OF CONDITION THAT --
14 AS FAR AS WHAT -- WHAT DID MR. SALISBURY LOOK LIKE WHEN
15 YOU HANDCUFFED HIM?

16 A HE HAD BLOOD ON HIM AND HE LOOKED, AH,
17 DISTRESSED I WOULD SAY.

18 MR. SHELTON: NO FURTHER QUESTIONS, YOUR HONOR.

19 MS. WILLIAMS: NOTHING FURTHER FOR THIS WITNESS,
20 YOUR HONOR.

21 THE COURT: MAY THIS WITNESS BE EXCUSED?

22 MS. WILLIAMS: NO OBJECTION.

23 MR. SHELTON: NO OBJECTION.

24 THE COURT: SGT. WILLIAMS, YOU MAY STEP DOWN AND
25 YOU MAY BE EXCUSED. YOU MAY REMAIN IN THE COURTROOM IF

SGT. WILLIAMS -- CROSS BY MR. SHELTON

284

1 YOU WISH.

2 THE WITNESS: THANK YOU.

3 (WITNESS STEPPED DOWN.)

4 THE COURT: THANK YOU. CALL YOUR NEXT WITNESS.

5 MS. WILLIAMS: YOUR HONOR, CAN WE BRIEFLY APPROACH?

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
7 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
8 THE HEARING OF THE JURY, OFF THE RECORD.)

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THERE
10 IS A MATTER OF LAW THAT I MUST TAKE UP OUTSIDE OF YOUR
11 PRESENCE. PLEASE DO NOT BEGIN YOUR DELIBERATIONS. PLEASE
12 DO NOT DISCUSS THIS CASE AMONGST YOURSELVES. I WILL
13 RECEIVE YOU BACK INTO THE COURTROOM WHEN WE HAVE
14 COMPLETED. PLEASE RISE FOR THE JURY.

15 (WHEREUPON, JURY LEFT THE COURTROOM AT 1:34 P.M.)

16 THE COURT: THANK YOU. BE SEATED. FOR THE RECORD,
17 WE WERE -- WE HAD A SIDE BAR. MS. WILLIAMS INDICATED THAT
18 HER NEXT WITNESS WAS TONYA MCCANTS. AND IT WAS MS.
19 WILLIAMS' UNDERSTANDING THAT MS. KENNEDY HAD AN OBJECTION.
20 COUNSEL APPROACHED. MS. KENNEDY INDICATED THAT SHE DID
21 HAVE AN OBJECTION. AND OUT OF AN ABUNDANCE OF CAUTION,
22 THE COURT DETERMINED THAT WE WOULD EXCUSE THE JURY.

23 I'LL BE HAPPY TO HEAR FROM YOU, MS. KENNEDY, AS TO
24 THE NATURE OF YOUR OBJECTION.

25 MS. KENNEDY: THANK YOU, YOUR HONOR. IT WAS FOR --

1 THERE -- THERE -- AND, AGAIN, JUST FOR PURPOSES OF THE
2 RECORD, IT DIRECTLY RELATES BACK TO -- I THINK I ALERTED
3 THE COURT TO THE PROBLEM IN THE MOTION HEARINGS THAT WE
4 HAD EARLIER THIS WEEK.

5 WE WERE GIVEN A WITNESS LIST ON FRIDAY AFTERNOON.
6 THAT WITNESS LIST CONTAINED THE NAME OF ONE TONYA MCCANTS,
7 SCDC. WHEN WE WERE PREPARING OUR CASE OVER THE WEEKEND,
8 AND WE -- BECAUSE WHAT THAT DID IS PUT US IN A POSITION OF
9 HAVING TO TAKE DOCUMENTS AND MATCH THEM UP WITH WITNESSES
10 AND THEN SORT OF TRY AND ANTICIPATE WHAT THOSE WITNESSES
11 MIGHT SAY.

12 IT'S OUR UNDERSTANDING THAT MS. MCCANTS, WITH THE
13 INFORMATION THAT WE RECEIVED PREVIOUSLY, IS A MENTAL
14 HEALTH COUNSELOR AT THE DEPARTMENT OF CORRECTIONS.

15 I ANTICIPATE THAT THE REASON THAT SHE IS BEING
16 CALLED IS THAT MR. SALISBURY MADE CERTAIN ADMISSIONS TO
17 HER WITHIN THE CONTEXT OF HER MENTAL HEALTH COUNSELLING
18 RELATIONSHIP WITH HIM THAT WAS A NECESSARY PREDICATE TO
19 HIM BEING PRESCRIBED DRUGS AS PART AS HIS MENTAL HEALTH
20 TREATMENT WITHIN THE DEPARTMENT OF CORRECTIONS.

21 I APOLOGIZE TO THE COURT BECAUSE MY UNDERSTANDING
22 IN DISCUSSIONS WITH MS. WILLIAMS DURING THE LUNCH BREAK,
23 WAS THAT -- THAT -- I THOUGHT WE WERE GOING TO GO THROUGH
24 A BUNCH OF OTHER PEOPLE ON THE LIST BEFORE WE GOT TO HER.
25 BUT -- SO WHAT WE ATTEMPTED TO DO AND ARE ATTEMPTING TO

1 DO, YOUR HONOR, -- MY UNDERSTANDING OF HIPAA REGULATIONS
2 AS IT RELATES TO INCARCERATED INMATES, AND THIS APPLIES TO
3 OUR CLIENTS AT THE JAIL, WHO -- THAT WE CAN'T GET
4 INFORMATION FROM OR ABOUT WITHOUT A HIPAA RELEASE BECAUSE
5 IT'S PROTECTED INFORMATION, INFORMATION UNDER THE HEALTH
6 -- HEALTH INFORMATION PROTECTION AND PRIVACY ACT OF THE
7 FEDERAL STATUTE.

8 WE WERE -- WE MADE SOME ATTEMPTS DURING THE LUNCH
9 BREAK -- WE WERE ABLE TO CONTACT SOMEONE IN THE DEPARTMENT
10 OF CORRECTIONS, WHO ADVISED WITH A PROPER RELEASE THAT WE
11 COULD OBTAIN THAT INFORMATION.

12 **THE COURT:** OKAY. WELL, LET ME STOP YOU THERE.
13 SHE MAY NOT BE TESTIFYING AS TO ANYTHING THAT IS -- WHAT
14 IS SHE TESTIFYING TO, MS. WILLIAMS?

15 **MS. WILLIAMS:** SHE IS TESTIFYING TO AN ADMISSION
16 THAT THE DEFENDANT MADE TO HER.

17 **THE COURT:** WHEN DID SHE MAKE THE -- WHEN IS YOUR
18 WITNESS GOING TO TESTIFY THAT THE ADMISSION WAS MADE?

19 **MS. WILLIAMS:** YOUR HONOR, SHE IS NOT A COUNSELOR
20 UNDER -- AND WE WILL -- I THINK WE WILL CLARIFY WHY THIS
21 IS NOT A PROTECTED COMMUNICATION. BUT MR. SALISBURY WAS
22 IN A ROOM WITH MS. MCCANTS. HE SAW HER ON A REGULAR BASIS
23 WITH TWO OTHER PEOPLE. AND I HAVE CASE LAW AND I HAVE THE
24 STATUTE TO SHARE WITH COUNSEL AND WITH THE COURT. IT IS
25 OUR POSITION THAT NOT ONLY WAS SHE NOT A COUNSELOR AS

1 DEFINED BY THE STATUTE, BUT ALSO THAT THIS WAS NOT A
2 CONFIDENTIAL COMMUNICATION. AND AT THE APPROPRIATE TIME,
3 I'LL BE HAPPY TO ARGUE THAT.

4 BUT -- BUT IT WAS AFTER THIS INCIDENT OCCURRED AND
5 IT WAS AT LIEBER PRISON.

6 **MS. KENNEDY:** YOUR HONOR, IT'S ALL -- I -- THE WAY
7 WE WERE ABLE TO FIND MS. MCCANTS' NAME IS THROUGH A
8 DOCUMENT ENTITLED, SOUTH CAROLINA DEPARTMENT OF
9 CORRECTIONS, HEALTH SERVICES SYSTEM. YOU KNOW, WE -- WE
10 -- AGAIN, YOU KNOW, WE HAD BEEN -- IT'S -- IT'S ALL WELL.
11 AND GOOD THAT MS. WILLIAMS IS PREPARED TO ARGUE THE LAW,
12 BUT WHEN WE HAVEN'T BEEN GIVEN THE LAW, WE CAN'T
13 ADEQUATELY RESPOND.

14 AND MY INFORMATION, AND AGAIN IT WAS DURING THE
15 LUNCH BREAK WHEN WE WERE TRYING TO SUPPLEMENT -- IS --
16 THAT ANY INMATE RECORDS REGARDING HEALTH ARE NOT
17 ACCESSIBLE TO ANYONE UNLESS THERE IS A PROPERLY SIGNED
18 RELEASE.

19 NOW, AND, YOU KNOW, I MAY BE OVERSTEPPING MY
20 BOUNDARIES HERE, BUT MY -- BUT MY UNDERSTANDING IS IN
21 ORDER TO GET AROUND THE HIPAA REGULATIONS, A MOTION FIRST
22 HAS TO BE FILED FOR THE COURT TO DETERMINE WHETHER OR NOT
23 -- JUST LIKE WE HAD TO DO WITH MS. ADAMS' PERSONNEL
24 RECORDS, FOR THE COURT TO DETERMINE -- FIRST OF ALL, IT
25 HAS TO BE DISCLOSED WHY SHE IS TRYING TO USE IT, WHAT

1 PURPOSE SHE IS TRYING TO USE IT FOR. AND, SECONDLY,
2 WHETHER OR NOT THAT'S APPROPRIATE GIVEN ALL THE ISSUES AND
3 MATERIALITY AND RELEVANCY AND ALL THOSE OTHER THINGS.

4 I ANTICIPATE THAT INVESTIGATOR POWELL IS GOING TO
5 TESTIFY, AND HE ALREADY DID WITH THE JACKSON VS. DENNO
6 HEARING WITH REGARD TO ADMISSIONS THAT HE MADE -- THAT
7 WERE ALLEGEDLY MADE BY OUR CLIENT TO INVESTIGATOR POWELL.

8 YOUR HONOR, ANYTHING THAT HE -- AND, ESSENTIALLY,
9 AS I UNDERSTAND BASED ON THE PAPERWORK, THE STATEMENTS
10 THAT HE MADE TO INVESTIGATOR POWELL ARE ESSENTIALLY THE
11 SAME THAT WERE MADE TO MS. MCCANTS. AND, THEREFORE,
12 ANOTHER GROUND WOULD BE THAT IT'S CUMULATIVE.

13 BUT I WOULD JUST RESPECTIVELY REQUEST THAT SHE NOT
14 BE -- THAT WE -- THAT SHE NOT BE CALLED AS A WITNESS UNTIL
15 WE CAN CLARIFY WHAT THOSE ISSUES -- WHAT THE -- WHAT THE
16 PROCEDURES ARE WITH THE DEPARTMENT OF CORRECTIONS AND HAVE
17 THE COURT RULE ACCORDINGLY WITH ALL THE INFORMATION.

18 THE COURT: MS. WILLIAMS---

19 MS. KENNEDY: MS. MCCANTS IS -- IS ---

20 THE COURT: ALL RIGHT, MS. KENNEDY. MS. WILLIAMS?

21 MS. WILLIAMS: YOUR HONOR, TO BEGIN WITH, THIS IS
22 HEARSAY -- OUR ORIGINAL ARGUMENT IS THAT IT IS -- IT
23 INVOLVES -- IT IS NOT HEARSAY BECAUSE IT IS AN ADMISSION,
24 A STATEMENT AGAINST INTEREST.

25 IN SOUTH CAROLINA, THERE IS NO DOCTOR/PATIENT

1 PRIVILEGE. THERE IS, HOWEVER, UNDER 19-1195, A MENTAL
2 HEALTH PROVIDER PRIVILEGE. IN THE STATUTE, IT SAYS
3 SPECIFICALLY, "PROVIDER MEANS A PERSON LICENSED UNDER THE
4 PROVISIONS OF ANY OF THE FOLLOWING AND WHO ENTERS INTO A
5 RELATIONSHIP FOR A PATIENT FOR DIAGNOSIS"---

6 **COURT REPORTER:** I'M SORRY. COULD YOU SLOW DOWN
7 PLEASE?

8 **MS. WILLIAMS:** I'M SORRY. "PROVIDER MEANS A PERSON
9 LICENSED UNDER THE PROVISIONS OF ANY OF THE FOLLOWING",
10 AND THEN IT GOES INTO A, B AND C. A IS CHAPTER 55 TITLE
11 40. B IS CHAPTER 75 TITLE 40. C IS SECTION 40-63-70.
12 AND D IS SECTION 40-33-10.

13 **MS. MCCANTS** IS NOT LICENSED UNDER ANY OF THOSE
14 PROVISIONS, SO SHE IS NOT A PROVIDER UNDER THE DEFINITION
15 OF THE STATUTE. AND AS I SAID BECAUSE SOUTH CAROLINA DOES
16 NOT HAVE A DOCTOR/PATIENT PRIVILEGE, THIS IS A VERY
17 SPECIFIC PRIVILEGE THAT IS CARVED OUT AND IT IS VERY
18 SPECIFIC AS TO WHO IT APPLIES TO.

19 **THE COURT:** IN WHAT CONTEXT WAS THE STATEMENT, WAS
20 IT A THERAPY SESSION, WAS IT -- WHERE WERE THEY AND WHO
21 WAS PRESENT?

22 **MS. WILLIAMS:** THEY WERE IN MS. MCCANTS' OFFICE.
23 SHE IS A COUNSELOR. SHE JUST WASN'T A MENTAL HEALTH
24 PROVIDER. HE WAS THERE WITH ANOTHER OFFICER, I THINK, IT
25 WAS OFFICER NUNLEY, AND WITH A NURSE, WHOSE NAME WAS

1 PRESTON FITZGERALD.

2 AND THAT'S THE SECOND PART OF OUR ARGUMENT IS THAT
3 THERE WERE OTHER PEOPLE PRESENT. SO UNDER CASE LAW, IT
4 HAS TO BE -- THERE ARE SO MANY CASES WHERE -- WHEN THE
5 PERSON IS PRESENT WITH OTHERS, IT IS NOT NECESSARILY A
6 PRIVILEGE BECAUSE THEY'VE WAIVED THAT. IT IS NOT A
7 CONFIDENTIAL COMMUNICATION. BUT MOST SPECIFICALLY SHE IS
8 NOT A PROVIDER UNDER THE STATUTE.

9 AND WE HAVE CASE LAW TO SUPPORT THAT, YOUR HONOR.
10 THERE'S MCCORMICK V. ENGLAND, WHERE THERE WAS SOME
11 PSYCHOLOGICAL COUNSELING DONE BY A MEDICAL DOCTOR. AND
12 THE COURT RULED THAT THAT WAS NOT PROTECTED UNDER THIS
13 PROVISION BECAUSE HE WASN'T A PSYCHOLOGIST OR A COUNSELOR
14 AS DEFINED BY THE STATUTE. AND HE WAS A MEDICAL DOCTOR,
15 COUNSELLING THAT PATIENT ABOUT PSYCHOLOGICAL ISSUES.

16 **THE COURT:** AND AS TO THE HIPAA REGULATIONS, DO YOU
17 FEEL THAT THOSE APPLY?

18 **MS. WILLIAMS:** YOUR HONOR, HIPAA REGULATIONS ARE
19 ALL ABOUT GETTING RECORDS. WE HAVE THE RECORDS. THE
20 RECORDS HAVE ALREADY BEEN GIVEN TO US. THEY WERE PART OF
21 THE SCDC FILE. AND MS. KENNEDY HAS THEM. THAT IS A
22 FEDERAL ACT. HIPAA IS THERE TO PROTECT PATIENTS FROM
23 EVERYBODY GETTING THEIR RECORDS. WE HAVE HIS RECORDS.
24 THIS IS ABOUT A HEARSAY STATEMENT. IT IS NOT ABOUT
25 RECORDS. WE'RE NOT INTRODUCING RECORDS.

1 THIS IS ABOUT AN ADMISSION THAT THE DEFENDANT MADE
2 TO AN INDIVIDUAL WHO IS NOT UNDER THIS STATUTE. AND OUR
3 POSITION IS THAT IT IS NOT PROTECTED. IT'S ABOUT THE
4 RECORDS. WE'RE NOT INTRODUCING THE RECORDS.

5 **MS. KENNEDY:** YOUR HONOR, IF I MAY SINCE MS.
6 MCCANTS IS WITNESS NUMBER 25, WE -- I -- I WOULD JUST
7 RESPECTIVELY REQUEST THAT ANY TESTIMONY THAT SHE BE
8 PROVIDED -- THAT SHE INTENDS -- INTENDS TO OFFER, BE
9 DELAYED UNTIL -- BECAUSE IT'S NOT -- I MEAN, IT'S ALL WELL
10 AND GOOD TO SAY THAT SHE HAS CASE LAW TO SUPPORT HER
11 ARGUMENT, WE HAVE NOT BEEN PROVIDED THAT CASE LAW. WE
12 HAVE NOT BEEN GIVEN AN OPPORTUNITY TO -- TO THOROUGHLY
13 RESEARCH IT SO THAT WE CAN BE ABLE TO PROPERLY RESPOND.
14 AND IT -- AND I HATE TO BEAT A DEAD HORSE, BUT IT ALL GOES
15 BACK TO THE ISSUE OF -- OF THE, YOU KNOW, THE DISCOVERY
16 PROBLEMS.

17 NOW, I -- I WILL ADVISE THE COURT QUITE CANDIDLY,
18 AND I THINK ANY OFFICER WHO IS HERE WILL -- I CANNOT
19 CONCEIVE THAT THE HILL-FINKLEY DETENTION CENTER WOULD
20 IMPOSE RESTRICTIONS ON ME AND MY ABILITY TO ACCESS MY
21 CLIENT'S INFORMATION, AND THOSE SAME RESTRICTIONS NOT
22 APPLY TO THE DEPARTMENT OF CORRECTIONS.

23 AND IN TERMS OF WHAT MS. MCCANTS' JOB IS AND WHAT
24 IT ISN'T, THERE IS AN ISSUE -- A RECENT CASE WHERE
25 SOMEBODY WAS SUPPOSEDLY PROVIDING MENTAL HEALTH

1 COUNSELLING AND THE PERSON WHO WAS DOING IT WAS AN INTERN
2 AND THEREFORE, YOU KNOW, THAT TESTIMONY WAS EXCLUDED. I'M
3 NOT SAYING -- IT'S UP TO THE COURT ULTIMATELY TO RULE ON
4 THIS, BUT IT -- IT -- IT PRESENTS SUBSTANTIAL PREJUDICE TO
5 US IN TRYING TO DO IT AT THIS TIME WITHOUT OUR HAVING FULL
6 ABILITY TO RESEARCH THE ISSUE, TO PROPERLY ARGUE IT AND TO
7 GET -- BECAUSE WHAT WE'RE TRYING TO GET, YOUR HONOR, IS
8 THE DEPARTMENT OF CORRECTIONS' POLICY WITH -- WITH REGARD
9 TO ACCESSING INFORMATION.

10 MS. WILLIAMS MADE THE ARGUMENT IN TERMS OF OUR
11 ABILITY TO -- YOU KNOW, SHE CAN'T -- SHE DOESN'T HAVE ANY
12 CONTROL OVER WHAT CAN BE PROVIDED, YOU KNOW, IN INMATE'S
13 JACKETS AND OUR ABILITY TO ACCESS THAT. BUT -- BUT THESE
14 HAVE BEEN PROVIDED AS PART OF THE DISCOVERY. THERE -- IT
15 IS HELPFUL TO HER, YOUR HONOR. IF WE HAD HAD THE ABILITY
16 TO PROPERLY RESEARCH IT, THEN -- THEN I WOULDN'T BE
17 STANDING HERE.

18 BECAUSE AS I SAID, EVERYTHING THAT HE SAID OR
19 ALLEGEDLY SAID IN FRONT OF THESE PEOPLE, HE -- HE IS IN
20 CUSTODY. HE HAS NO PLACE TO GO. HE HAS NO ABILITY TO
21 OBJECT TO ANYBODY WHO IS IN -- WHO HAPPENS TO BE IN A
22 ROOM. WHATEVER HE SAYS -- AND IT'S CLEAR FROM READING THE
23 RECORD, PART OF IT IS, THE AGITATION, ANGER, YOU KNOW, AND
24 ALL OF THIS IS A PREDICATE TO INFORMATION THAT WAS
25 PROVIDED, SUPPOSEDLY BASED ON THE RECORDS, TO A DOCTOR SO

1 THAT HE COULD BE GIVEN PRESCRIPTIONS FOR HIS HEALTH
2 ISSUES. IT'S NOT JUST A SIMPLE MATTER THAT SHE IS SERVING
3 OR NOT SERVING---

4 THE COURT: OKAY. MS. WILLIAMS, HAVE YOU PROVIDED
5 THE CASE LAW TO MS. KENNEDY?

6 MS. WILLIAMS: ACTUALLY, IT'S NOT OUR MOTION. I
7 WAS JUST PREPARING FOR IT. BUT I'M HAPPY TO -- I HAVE
8 COPIES TODAY AND I HAVE A COPY OF THE STATUTE. BUT, I
9 MEAN, WE DIDN'T -- SHE IS JUST A WITNESS ON OUR LIST, SO I
10 DIDN'T PREPARE A MOTION. I JUST KNEW THAT IT WAS AN
11 ISSUE, SO I WAS JUST, YOU KNOW, TRYING TO PREPARE FOR MY
12 RESPONSE.

13 THE COURT: IS YOUR WITNESS GOING TO TESTIFY AS TO
14 WHAT IS CONTAINED IN THOSE MEDICAL RECORDS, MS. WILLIAMS?

15 MS. WILLIAMS: NO. JUST WHAT THE DEFENDANT TOLD
16 HER. THAT'S IT. THE ONE SENTENCE.

17 MS. KENNEDY: YOUR HONOR, IF I MAY RESPOND?

18 THE COURT: YES.

19 MS. KENNEDY: THAT ONE SENTENCE IS CONTAINED IN THE
20 MEDICAL RECORD, ALSO ADDRESSES HIS MOOD, HIS AFFECT, HIS
21 ORIENTATION, THE TIME, PLACE AND DATE. ALL OF IT.

22 THE COURT: ALL RIGHT. MS. WILLIAMS, WHEN WILL MS.
23 LEBOEUF BE HERE?

24 MS. WILLIAMS: 2:00. I CAN CHECK AND SEE IF SHE IS
25 HERE NOW.

1 **THE COURT:** CHECK IF SHE IS HERE NOW. AND THEN YOU
2 NEED TO CALL -- I AM GOING TO REVIEW YOUR CASE LAW AND --
3 MS. KENNEDY, I'M ASSUMING YOU HAVE CASE LAW AS WELL?

4 **MS. KENNEDY:** NO, YOUR HONOR, I DON'T. I MEAN, I
5 -- I -- I HAVEN'T HAD AN OPPORTUNITY. I ALERTED THE COURT
6 TO THE POSSIBILITY THAT THIS MIGHT BE A MOTION BASED ON
7 OUR INABILITY TO ADEQUATELY PREPARE. SO, NO, YOUR HONOR,
8 I DON'T. AND WE NEED THE HIPAA REGULATIONS BECAUSE QUITE
9 FRANKLY, I THINK FEDERAL LAWS CONTROL.

10 **THE COURT:** IF MS. LEBOEUF IS NOT HERE, THEN WE
11 NEED TO START CALLING OTHER WITNESSES SO THAT WE CAN GET
12 THOSE OUT. AND AT OUR APPROPRIATE AFTERNOON BREAK, I WILL
13 HEAR THIS ISSUE.

14 **MS. WILLIAMS:** YES, YOUR HONOR.

15 **THE COURT:** THANK YOU.

16 **MS. WILLIAMS:** SHE IS NOT HERE, BUT WE ARE PREPARED
17 TO CALL ANOTHER --

18 **MR. ALFARO:** YOUR HONOR, WE HAVE ANOTHER WITNESS
19 WHO IS AVAILABLE.

20 **THE COURT:** ALL RIGHT. THANK YOU. (PAUSE.) DO
21 YOU HAVE A WITNESS AVAILABLE, MS. WILLIAMS?

22 **MS. WILLIAMS:** YES, YOUR HONOR.

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

24 (WHEREUPON, JURY ENTERED THE COURTROOM AT 1:51

25 P.M.)

1 **THE COURT:** THANK YOU. PLEASE BE SEATED. MR.
2 ALFARO, CALL YOUR NEXT WITNESS.

3 **MR. ALFARO:** THANK YOU. THE STATE CALLS J.J.
4 EVANS.

5 (WITNESS FORWARD.)

6 **THE CLERK:** RAISE YOUR RIGHT HAND, PLACE YOUR LEFT
7 HAND ON THE BIBLE.

8 JONNY JOSEPH EVANS, JR., HAVING
9 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL NAME
11 FOR THE RECORD AND SPELL YOUR LAST NAME.

12 **THE WITNESS:** JONNY JOSEPH EVANS, JR. E-V-A-N-S.

13 **THE COURT:** MR. ALFARO.

14 **MR. ALFARO:** THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION BY MR. ALFARO:

16 **Q** MR. EVANS, WOULD YOU TELL THE COURT WHERE -- OR
17 TELL THE JURY WHERE YOU WORK?

18 **A** I'M A SPECIAL AGENT AT THE SOUTH CAROLINA LAW
19 ENFORCEMENT DIVISION.

20 **Q** AND HOW LONG HAVE YOU BEEN WITH SLED?

21 **A** ALMOST TWO YEARS.

22 **Q** AND DID YOU HAVE ANY PRIOR LAW ENFORCEMENT
23 EXPERIENCE BEFORE JOINING SLED?

24 **A** I HAVE ELEVEN YEARS LAW ENFORCEMENT EXPERIENCE,
25 MOSTLY WITH CHARLESTON COUNTY SHERIFF'S OFFICE.

AGENT J. EVANS -- DIRECT BY MR. ALFARO

296

1 Q AND WHAT IS YOUR CURRENT DUTY ASSIGNMENT WITH
2 SLED?

3 A I'M AN INVESTIGATOR SPECIAL AGENT. I'M ASSIGNED
4 TO A GANG AND VIOLENT CRIME TASK FORCE.

5 Q WERE YOU WORKING IN THAT SAME CAPACITY ON
6 JANUARY 18, 2008?

7 A I WAS A SPECIAL AGENT IN INVESTIGATIONS.

8 Q AND IN YOUR CAPACITY AS A SPECIAL AGENT IN
9 INVESTIGATIONS, DID YOU HAVE THE OPPORTUNITY TO RESPOND TO
10 MACDOUGALL PRISON ON THE EARLY MORNING OF JANUARY 18,
11 2008?

12 A I DID.

13 Q AND YOU WERE CALLED -- APPROXIMATELY WHAT TIME
14 THAT YOU RESPONDED TO THAT PRISON?

15 A TO THE BEST OF MY KNOWLEDGE, I WANT TO SAY IT
16 WAS AFTER MIDNIGHT. I'M NOT SURE EXACTLY WHAT TIME I GOT
17 THERE.

18 Q AND WHEN YOU ARRIVED AT THE PRISON, DID YOU GO
19 BY YOURSELF OR WERE YOU WITH SOMEONE?

20 A I WENT ALONE.

21 Q AND WHEN YOU ARRIVED AT THE SCENE, WAS ANYONE
22 ELSE FROM SLED PRESENT?

23 A NO, SIR. I WAS THE FIRST SLED AGENT THERE.

24 Q AND WHAT DID YOU DO WHEN YOU ARRIVED AT THE
25 SCENE?

1 A I MET WITH INVESTIGATOR POWELL FROM THE SOUTH
2 CAROLINA DEPARTMENT OF CORRECTIONS. AND HE BRIEFED ME.
3 AND I WAITED UNTIL OUR CRIME SCENE AGENTS GOT THERE.

4 Q AND WHAT TYPE OF INCIDENT WAS IT THAT YOU HAD
5 BEEN CALLED OUT TO?

6 A I WAS INFORMED THAT IT WAS A SEXUAL ASSAULT.

7 Q AND HOW LONG AFTER YOU ARRIVED DID THE OTHER
8 AGENTS ARRIVE?

9 A WITHIN THE HOUR. I'M NOT SURE. MAYBE 30 -- 30
10 MINUTES OR SO. I HADN'T BEEN THERE VERY LONG.

11 Q AND WHILE YOU WERE AT THE PRISON, DID YOU ASSIST
12 IN THE INVESTIGATION?

13 A I DID.

14 Q WERE YOU THE ONLY INVESTIGATOR PRESENT AT THE
15 SCENE FROM THE STATE LAW ENFORCEMENT DIVISION?

16 A I WAS THE ONLY CRIMINAL INVESTIGATOR. ANYBODY
17 ELSE FROM SLED WAS A CRIME SCENE INVESTIGATOR.

18 Q AND DID YOU HAVE THE OPPORTUNITY TO SPEAK WITH
19 THE VICTIM, SARA ADAMS?

20 A I DID NOT.

21 Q DID YOU HAVE THE OPPORTUNITY TO SPEAK WITH THE
22 DEFENDANT, GEORGE SALISBURY, THAT NIGHT?

23 A NO, SIR. I DID NOT---

24 MR. SHELTON: OBJECTION. LEADING.

25 THE COURT: OVERRULED.

AGENT J. EVANS -- DIRECT BY MR. ALFARO

298

1 BY MR. ALFARO:

2 Q WHAT DID YOU DO AT THE SCENE?

3 A I INTERVIEWED ONE INMATE -- I'M TRYING TO
4 REMEMBER HIS LAST NAME NOW -- POSSIBLY OLIVER. AND I
5 ASSISTED CRIME SCENE WITH THEIR INVESTIGATION IN THE
6 HOUSING UNIT.

7 Q DID ANYONE TAKE YOU TO THE AREA OF THE PRISON
8 WHERE THE INCIDENT OCCURRED?

9 A INVESTIGATOR POWELL TOOK ME THERE.

10 Q DO YOU RECALL THE CONDITION OF THE AREA THAT YOU
11 RESPONDED TO?

12 A IT WAS IN SOMEWHAT DISARRAY. THERE WERE WOOD --
13 IT WAS LIKE A -- AN OFFICER'S ROOM BETWEEN LIKE TWO DORM
14 ROOMS OR NEAR THE DORM ROOM WHERE THE -- MAYBE A CONTROL
15 ROOM OR SOMETHING LIKE THAT. THE AREA HAD BROKEN GLASS ON
16 THE FLOOR AND WOOD SPLINTERS, LIKE A DOOR HAD BEEN PRIED
17 OPEN, SOMETHING LIKE THAT. AND THERE WAS A LITTLE BLOOD
18 ON THE FLOOR.

19 Q OKAY. AGENT EVANS, I'M GOING TO SHOW YOU WHAT
20 HAS PREVIOUSLY BEEN ENTERED INTO EVIDENCE AS STATE'S
21 EXHIBITS 11, 16, 17, 18 AND 19. IF YOU COULD REVIEW THOSE
22 PHOTOGRAPHS, AND I'LL ASK YOU SOME QUESTIONS AFTER YOU'VE
23 HAD THE CHANCE TO LOOK AT EACH OF THEM. HAVE YOU HAD THE
24 OPPORTUNITY TO LOOK AT EACH OF THOSE PHOTOGRAPHS, SIR?

25 A I HAVE, SIR.

1 Q DO EACH OF THOSE PHOTOGRAPHS FAIRLY AND
2 ACCURATELY DEPICT THE CRIME SCENE AS YOU SAW IT THAT NIGHT
3 AT MACDOUGALL?

4 A THEY DO.

5 MR. ALFARO: I'D LIKE TO PUBLISH WHAT'S BEEN
6 ENTERED AS STATE'S EXHIBIT 16.

7 BY MR. ALFARO:

8 Q IS THAT THE AREA THAT YOU WERE REFERRING TO WHEN
9 YOU SAID THERE WAS BLOOD ON THE FLOOR?

10 A IT IS, SIR.

11 Q STATE'S EXHIBIT 19, IS THAT THE DOOR FRAME THAT
12 YOU WERE REFERRING TO THAT HAD BEEN DAMAGED?

13 A IT IS.

14 Q AND STATE'S EXHIBIT 17, DOES THAT REFLECT THE
15 BROKEN GLASS THAT YOU REFERRED TO?

16 A YES, SIR, IT DOES.

17 Q AND DURING THE COURSE OF YOUR INVESTIGATION AT
18 THE SCENE THAT NIGHT, DID YOU ASSIST IN GATHERING ANY
19 OTHER EVIDENCE?

20 A I DID.

21 Q WHAT EVIDENCE DO YOU RECALL ASSISTING IN
22 COLLECTING?

23 A THERE WERE SEVERAL LETTERS. I BELIEVE THEY WERE
24 FOUND IN -- IN OR NEAR THE BATHROOM AREA. AND THERE'S
25 ALSO A BUNDLE OF DIFFERENT MISCELLANEOUS PAPERS,

AGENT J. EVANS -- DIRECT BY MR. ALFARO

300

1 PAPERWORK, LETTERS, AND WHAT NOT FOUND IN A CUBICLE IN THE
2 HOUSING AREA.

3 Q ARE YOU AWARE OF WHICH CUBICLE THOSE WERE
4 LOCATED IN?

5 A I'M NOT SURE OF THE NUMBER OR ANYTHING LIKE
6 THAT, BUT FROM WHAT I UNDERSTAND FROM INVESTIGATOR POWELL
7 THAT NIGHT, IT WAS MR. SALISBURY.

8 Q AND DID YOU LOOK AT THOSE LETTERS THAT YOU
9 COLLECTED?

10 A I DID.

11 Q AND DID YOU DO ANYTHING ELSE WITH THOSE LETTERS
12 AT THE SCENE THAT NIGHT?

13 A WE SPREAD THEM OUT ON THE TABLE IN THE OFFICER'S
14 ROOM, NEAR WHERE THAT BATHROOM WAS IN THE PICTURE. AND
15 PHOTOGRAPHED TO DOCUMENT WHAT WE HAD COLLECTED. AND THEN
16 I TURNED THEM OVER TO THE -- WE PLACED THEM IN A PLASTIC
17 BAG AND THEN TRANSPORTED THEM BACK TO OUR CHARLESTON
18 OFFICE, WHERE WE TURNED THEM OVER TO -- I TURNED THEM OVER
19 TO SPECIAL AGENT CHINA, WHO IS THE CASE AGENT.

20 Q SO, IS IT YOUR TESTIMONY THAT YOU HAVE KEPT
21 CUSTODY OF THOSE UNTIL TURNING THEM OVER TO CHINA?

22 A I DID.

23 Q AND YOU SAID THAT YOU PHOTOGRAPHED THE LETTERS,
24 IS THAT CORRECT?

25 A I CRIME SCENE PHOTOGRAPHED THEM. THE

1 PHOTOGRAPHS WERE TAKEN.

2 Q ARE YOU AWARE IF ANY OF THE LETTERS THAT YOU
3 LOOKED AT THAT EVENING HAD ANY ADDRESSES OR ENVELOPES OR
4 ANYTHING ATTACHED WITH THEM?

5 A THERE WERE SOME ENVELOPES AND -- THAT WERE
6 ADDRESSED AS IF THEY -- I CAN'T REMEMBER. IT'S BEEN A
7 WHILE SINCE IT, BUT THEY WERE EITHER TO OR FROM THE
8 DEFENDANT.

9 Q AND WERE THOSE ITEMS PHOTOGRAPHED?

10 A THEY WERE.

11 MR. ALFARO: I WOULD LIKE TO GET THESE TWO
12 PHOTOGRAPHS MARKED AS STATE'S EXHIBITS.

13 COURT REPORTER: YOUR HONOR, PHOTOGRAPHS MARKED AS
14 STATE'S 28 AND 29.

15 THE COURT: THANK YOU.

16 (STATE'S EXHIBITS NOS. 28 AND 29 MARKED FOR
17 IDENTIFICATION.)

18 BY MR. ALFARO:

19 Q AGENT EVANS, IF YOU COULD LOOK AT STATE'S
20 EXHIBITS 28 AND 29 FOR IDENTIFICATION, THEN I'LL ASK YOU
21 ABOUT THOSE PHOTOS AFTER YOU'VE HAD A CHANCE TO LOOK AT
22 THEM. DO EACH OF THOSE PHOTOS FAIRLY AND ACCURATELY
23 DEPICT THE LETTERS OR THE ENVELOPES AS YOU SPREAD THEM OUT
24 AND HAD THEM PHOTOGRAPHED THAT EVENING?

25 A YES, SIR. I SPREAD THOSE OUT ON THE TABLE JUST

AGENT J. EVANS -- DIRECT BY MR. ALFARO

302

1 LIKE THAT AND THE CRIME SCENE UNIT PHOTOGRAPHED THEM.

2 **MR. ALFARO:** AT THIS TIME, THE STATE WOULD ASK THAT
3 EXHIBITS 28 AND 29 BE ENTERED INTO EVIDENCE.

4 **MR. SHELTON:** NO OBJECTION.

5 **THE COURT:** STATE'S 28 AND 29 INTO EVIDENCE WITHOUT
6 OBJECTION. YOU MAY PUBLISH.

7 **MR. ALFARO:** THANK YOU, YOUR HONOR.

8 (STATE'S EXHIBITS NOS. 28 AND 29 RECEIVED INTO
9 EVIDENCE.)

10 **BY MR. ALFARO:**

11 **Q.** AGENT EVENS, IF YOU COULD LOOK AT STATE'S
12 EXHIBIT 28 AND TELL THE JURY WHAT ADDRESS THE -- THE
13 MAILING ADDRESS, AS WELL AS THE RETURN ADDRESS IS ON THAT
14 ENVELOPE?

15 **A** THE MAILING ADDRESS IS TO GEORGE SALISBURY,
16 NUMBER 263724, SMV BX4, PERRY CORRECTIONAL INSTITUTION,
17 430 OAK LAWN ROAD IN PELZER, SOUTH CAROLINA, 29669. AND
18 THE RETURN ADDRESS IS ALLISON THOMAS, 778 SPRING BRANCH
19 ROAD, HARLEYVILLE, SOUTH CAROLINA, 29448.

20 **Q** AND ON STATE'S EXHIBIT 29, COULD YOU TELL THE
21 JURY IF THE ADDRESSES ON THOSE ENVELOPES REFLECT THAT SAME
22 MAILING ADDRESS?

23 **A** AS I CAN READ IT, IT DOES. THERE APPEARS ONE
24 RETURN ADDRESS THAT IS DIFFERENT FROM -- IT'S FROM PO BOX
25 1029 IN COLUMBIA, SC, BUT I CAN'T READ THE NAME. THE REST

1 APPEARS TO BE THE SAME.

2 Q STATE'S EXHIBIT 28 I'M PUTTING ON THE OVERHEAD.
3 THAT'S THE -- IS THAT THE PHOTOGRAPH THAT YOU JUST
4 REVIEWED FOR THE JURY, WITH THE DEFENDANT'S NAME ON IT?

5 A IT IS, SIR.

6 Q AND STATE'S EXHIBIT 29, IS THAT THE SAME AS
7 WELL?

8 A YES, SIR.

9 COURT REPORTER: I'VE MARKED STATE'S EXHIBIT 30,
10 YOUR HONOR.

11 (STATE'S EXHIBIT NO. 30 MARKED FOR IDENTIFICATION.)

12 BY MR. ALFARO:

13 Q AGENT EVANS, I'M GOING TO SHOW YOU WHAT'S BEEN
14 MARKED AS STATE'S EXHIBIT NO. 30 FOR IDENTIFICATION.
15 COULD YOU LOOK AT THAT EXHIBIT? IS THAT THE WAY -- OR IS
16 THAT EXHIBIT THE BAG THAT YOU PUT THOSE LETTERS IN THAT
17 EVENING, THAT YOU TESTIFIED TO?

18 A YES, SIR. THIS IS THE BAG THAT WE PUT THEM IN.
19 BUT IT WASN'T MARKED IN THIS FASHION UNTIL I TURNED IT
20 OVER TO AGENT CHINA. SHE MARKED IT AND SEALED IT.

21 Q OKAY. COULD YOU TELL THE JURY WHAT YOU DID WITH
22 THE LETTERS BETWEEN THE TIME YOU FIRST FOUND THEM AND THE
23 TIME THEY MADE IT TO THAT BAG?

24 A WE HAD SPREAD THEM OUT AND TOOK PHOTOGRAPHS OF
25 THEM, THEN I BAGGED THEM. ANY -- ANY AND ALL PAPER

AGENT J. EVANS -- DIRECT BY MR. ALFARO

304

1 EVIDENCE WE STORE DIFFERENTLY THAN THINGS THAT CRIME SCENE
2 WOULD COLLECT, SO I BAGGED THEM IN THAT PLASTIC BAG. AND
3 KEPT THEM IN MY POSSESSION, ON MY FRONT SEAT OF MY VEHICLE
4 UNTIL I GOT BACK TO OUR CHARLESTON OFFICE, WHERE I TOOK
5 THEM IN JUST LIKE THIS, AND HANDED THEM TO AGENT CHINA.

6 Q AND IN THE COURSE OF YOUR CONTACT WITH THESE
7 LETTERS, DID YOU ALTER ANY OF THE LETTERS IN ANY WAY?

8 A NO, SIR.

9 Q DID YOU CHANGE ANY OF THE WRITING OR ADDRESSES
10 ON ANY OF THE ENVELOPES AS WELL?

11 A NO, SIR.

12 Q AND WERE THE ENVELOPES AND LETTERS THAT YOU
13 VIEWED IN STATE'S EXHIBITS 28 AND 29, ALSO INCLUDED IN
14 THAT BAG OF THE LETTERS?

15 A YES, SIR.

16 Q YOU MENTIONED AGENT CHINA, WAS SHE -- WHICH OF
17 YOU WAS DESIGNATED OR WERE ONE OF YOU DESIGNATED AS THE
18 LEAD INVESTIGATOR FOR SLED FOR THIS CASE?

19 A AGENT CHINA WAS THE LEAD INVESTIGATOR AND I
20 ASSISTED HER ON THE -- JUST THE CALL-OUT THAT NIGHT.

21 Q AND AT ANY POINT IN TIME, IN ASSISTING AGENT
22 CHINA, DID YOU HAVE ANY CONVERSATION WITH THE DEFENDANT?

23 A I DID NOT.

24 MR. ALFARO: THANK YOU. PLEASE ANSWER ANY
25 QUESTIONS THE DEFENSE MAY HAVE.

1 THE COURT: MR. SHELTON.

2 MR. SHELTON: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. SHELTON:

4 Q AGENT EVANS, HOW ARE YOU DOING? YOU'RE NOT
5 QUITE SURE WHAT TIME YOU ARRIVED AT THE SCENE THAT NIGHT?

6 A NO, SIR. I DON'T KNOW FOR SURE. I'LL BE HONEST
7 WITH YOU, I WAS DEAD ASLEEP WHENEVER MY CAPTAIN CALLED AND
8 TOLD ME TO ROLL OUT TO MACDOUGALL. I -- IT WAS AFTER
9 MIDNIGHT. I WOULD HAVE TO GO BACK -- I MEAN, I COULD GET
10 MY OLD CELL PHONE BILL. I KNOW WHEN I CALLED TO TELL THEM
11 I WAS THERE, BUT I DON'T KNOW FOR SURE.

12 Q BUT BY THE TIME YOU HAD ARRIVED, INVESTIGATOR
13 POWELL WAS ALREADY THERE?

14 A HE WAS.

15 Q OKAY. AND YOU TWO CONVERSED?

16 A YES, SIR.

17 Q AND YOU THEN WAITED FOR THE CRIME SCENE
18 TECHNICIANS TO COME ON THE SCENE, IS THAT CORRECT?

19 A YES, YES, SIR.

20 Q OKAY. AND THAT WAS ABOUT A HALF HOUR TO AN HOUR
21 AFTER YOU ARRIVED?

22 A SOMEWHERE IN THE TIME FRAME, I BELIEVE.

23 Q OKAY. DO YOU KNOW WHO -- WHO THE LEAD CRIME
24 SCENE INVESTIGATOR WAS THAT NIGHT?

25 A I DON'T KNOW WHO WAS LEAD AND WHO WAS NOT LEAD.

AGENT EVANS -- CROSS BY MR. SHELTON

306

1 I KNOW VICKIE HOLMAN, SPECIAL AGENT HOLMAN AND SPECIAL
2 AGENT PORTER---

3 Q AGENT PORTER WAS THERE?

4 A -- THAT CAME, YES.

5 Q WAS THERE ANY OTHER SLED CRIME SCENE---

6 A THERE WAS NO OTHER SLED AGENTS -- SLED, IN THEIR
7 CAPACITY AS A STATE POLICE, TRAINS OTHER AGENCIES TO
8 HANDLE CRIME SCENES. AND BECAUSE WE HANDLE MORE THAN THE
9 AVERAGE POLICE DEPARTMENT WOULD, WE AT TIMES BRING PEOPLE
10 IN FROM OTHER AGENCIES TO TRAIN THEM. AND THEY HAD A
11 TRAINEE FROM ANOTHER AGENCY. I DON'T EVEN REMEMBER HIS
12 NAME OR WHO HE WAS WITH, BUT HE WAS THERE AS WELL.

13 Q OKAY. WHEN YOU -- YOU THEN INTERVIEWED TYRONE
14 OLIVER?

15 A I DID.

16 Q OKAY. DID YOU INTERVIEW TYRONE OLIVER BEFORE
17 YOU WENT OUT TO THE SCENE OR AFTER YOU WENT OUT TO THE
18 SCENE?

19 A I BELIEVE IT WAS BEFORE.

20 Q BEFORE. OKAY. THEN YOU ARRIVED ON THE SCENE.
21 WAS THE SCENE SECURED?

22 A THEY HAD A CORRECTIONS OFFICER POSTED AT THE
23 DOOR. THERE WAS NO CRIME SCENE TAPE OR ANYTHING LIKE
24 THAT. I'M NOT SURE IF THEY EVEN HAVE THAT. SO, THEY HAD
25 -- THEY WERE KEEPING PEOPLE FROM COMING IN AND OUT, BUT

1 THEY WEREN'T -- YOU KNOW, IT WASN'T LIKE -- I DON'T RECALL
2 THERE BEING CRIME SCENE TAPE.

3 Q OKAY. AND YOU -- YOU DIRECTED WHAT THE
4 TECHNICIANS DID?

5 A TO AN EXTENT. I ASKED THEM FOR CERTAIN THINGS
6 THAT I KNEW WE WOULD -- WE WOULD WANT TO LOOK AT. BUT
7 THEY'RE EXPERIENCED CRIME SCENE TECHS. THEY'RE NOT --
8 THEY DON'T REALLY NEED DIRECTION. THEY'RE -- THEY DO IT A
9 LOT.

10 Q OKAY. WHAT -- WHAT -- WHAT DID YOU DIRECT THEM
11 THAT YOU WOULD NEED?

12 A ANY PAPER EVIDENCE THAT -- THAT THEY -- THAT WAS
13 ON THE GROUND. I ASKED THEM TO COLLECT UP FOR --
14 PHOTOGRAPH FOR ME. I ASKED THEM TO MAKE SURE WE
15 PHOTOGRAPH THAT DOOR JAM THAT WAS IN THERE. AND THEN I
16 ASKED THEM, ONCE I COLLECTED THE OTHER PAPER EVIDENCE OUT
17 OF THAT BUNDLE SACK -- IT WAS LIKE A PILLOW CASE OR A
18 LAUNDRY BAG OR BLANKET OR SOMETHING LIKE THAT, I ASKED
19 THEM TO PHOTOGRAPH THAT ONCE I HAD IT LAID OUT ON THE
20 COUNTER.

21 Q OKAY. NOW, WHEN YOU TOOK THE LETTERS IN, YOU
22 DIDN'T INVENTORY EVERY SINGLE THING, DID YOU?

23 A NO, SIR. NOT ON SCENE, I DIDN'T.

24 Q ALL RIGHT. NOW, YOU INTERVIEWED THE OTHER
25 CORRECTIONAL OFFICERS, DID YOU NOT?

AGENT EVANS -- CROSS BY MR. SHELTON

308

1 A NO, SIR. I ONLY TOOK ONE STATEMENT THAT NIGHT.

2 Q DID YOU TALK TO THE OTHER CORRECTIONAL OFFICERS?

3 A UM...

4 Q FIRST RESPONDERS?

5 A NO, SIR. THERE WAS NOBODY THAT WAS IDENTIFIED
6 TO ME AS BEING A WITNESS TO ANYTHING OTHER THAN --
7 EVERYBODY THAT -- THEY HAD TRANSPORTED MR. SALISBURY OVER
8 TO LIEBER. AND, I THINK, THE PEOPLE THAT TRANSPORTED HIM
9 WERE -- WHAT I RECALL IS THEY WERE THE ONES THAT WERE --
10 THAT HAD TAKEN HIM OVER AND THEY WEREN'T AROUND. I DID
11 NOT TALK TO HIM.

12 Q OKAY. WHAT -- WHAT TIME DID YOU LEAVE THAT
13 NIGHT -- THAT MORNING?

14 A SOMEWHERE AROUND 6:00 OR SO. BECAUSE WE GOT A
15 CALL TO GO OVER TO LIEBER. AND SPECIAL AGENT PORTER, WE
16 WAITED IN THE PARKING LOT WHILE HE WENT INSIDE AND TOOK
17 PHOTOGRAPHS OF MR. SALISBURY.

18 Q SO---

19 A SO, IT WAS ALMOST -- IT WAS DAYLIGHT AS WE WERE
20 IN THE PARKING LOT OF LIEBER, SO I'M GUESSING 6:00. I
21 DIDN'T DOCUMENT A TIME. I'M ACTUALLY -- I MEAN, THAT'S --
22 THAT'S THE TRUTH. I DIDN'T WRITE DOWN A TIME. IT WAS DAY
23 LIGHT. IT WAS GETTING DAY LIGHT.

24 Q BUT YOU LEFT WITH THE CRIME SCENE TECHNICIANS?

25 A WE ALL LEFT AT THE SAME TIME. ONCE THEY SECURED

1 THE SCENE, WE LEFT.

2 Q AND YOU DIDN'T INTERVIEW ANY OTHER INMATES?

3 A NO OTHER INMATES WERE WILLING TO BE INTERVIEWED.

4 Q OKAY.

5 MR. SHELTON: I BEG THE COURT'S INDULGENCE.

6 THE COURT: YES, SIR.

7 BY MR. SHELTON:

8 Q YOU WERE INFORMED THAT THIS WAS A SEXUAL
9 ASSAULT, CORRECT?

10 A THAT'S THE CALL THAT I GOT, YES, SIR.

11 Q THE CALL YOU GOT---

12 A FROM---

13 Q --IN THE MIDDLE OF THE NIGHT?

14 A YES, SIR.

15 Q THAT WAS THE CALL THAT YOU RECEIVED?

16 A YES, SIR.

17 Q THAT IT WAS A SEXUAL ASSAULT?

18 A YES, SIR.

19 Q OKAY. DID YOU OBTAIN ANY -- ANY -- OR HAD THE
20 CRIME SCENE INVESTIGATORS OBTAIN ANY EVIDENCE CONCERNING
21 THE SEXUAL ASSAULT?

22 A THEY TOOK SWABS OF THE APPARENT BLOOD ON THE
23 FLOOR. AND I WANT TO SAY THEY, OF COURSE, USED THE BLACK
24 LIGHT IN THE BATHROOM TO TRY TO OBTAIN ANY KIND OF -- OF
25 OTHER -- YOU KNOW, BODY FLUIDS OR ANYTHING LIKE THAT.

AGENT EVANS -- CROSS BY MR. SHELTON

310

1 BUT, OF COURSE, IT'S A BATHROOM. SO, THERE WAS NOTHING --
2 THERE WAS NOTHING OF -- THAT YOU COULD DETERMINE WAS OF
3 EVIDENTIARY VALUE CONCERNING THAT, AS OPPOSED TO ANYTHING
4 ELSE THAT WAS IN THERE. I KNOW THAT AGENT CHINA, I THINK,
5 OBTAINED SOME -- SOME EVIDENCE FROM THE HOSPITAL, BUT
6 THAT'S -- CONCERNING THAT, BUT I -- I DID NOT.

7 Q CONCERNING THE VICTIM?

8 A YES.

9 Q NOW, YOU WENT WITH -- YOU WENT WITH THE CRIME
10 SCENE TECHS TO LIEBER, CORRECT?

11 A I DID.

12 Q AND MR. SALISBURY WAS AT LIEBER AT THAT TIME,
13 CORRECT?

14 A I DID NOT SEE HIM, BUT THAT'S WHERE THEY
15 REPORTED HIM TO BE. I STAYED IN THE PARKING LOT.

16 Q OKAY. DID YOU -- DID YOU DIRECT -- DIRECT MR.
17 PORTER TO TAKE ANY EVIDENCE FROM MR. SALISBURY THAT NIGHT
18 OR THAT MORNING AT LIEBER?

19 A I DID NOT -- I DID NOT DIRECT HIM TO DO
20 ANYTHING. I KNOW THAT HE HAD SPOKEN WITH -- I HAD
21 OVERHEARD A PHONE CALL FROM AGENT CHINA TO HIM. AND SINCE
22 SHE WAS THE CASE AGENT, SHE MAY HAVE DIRECTED HIM TO TAKE
23 SOMETHING OTHER THAN PHOTOGRAPHS, BUT NOT THAT I KNOW OF.

24 Q OKAY.

25 MR. SHELTON: NO FURTHER QUESTIONS.

1 **MS. WILLIAMS:** NOTHING ELSE, YOUR HONOR.

2 **THE COURT:** OFFICER, YOU MAY STEP DOWN. YOU MAY
3 REMAIN IN THE COURTROOM, BUT YOU'RE FREE TO BE EXCUSED
4 FROM THE COURTHOUSE IF YOU WISH.

5 **THE WITNESS:** THANK YOU, MA'AM.

6 (WITNESS STEPPED DOWN.)

7 **THE COURT:** CALL YOUR NEXT WITNESS.

8 **MS. WILLIAMS:** FAYE LEBOEUF.

9 (WITNESS FORWARD.)

10 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND, PLACE
11 YOUR LEFT HAND ON THE BIBLE.

12 FAYE LEBOEUF, HAVING BEEN FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL NAME
15 FOR THE RECORD AND SPELL YOUR LAST NAME.

16 **THE WITNESS:** FAYE LEBOEUF, L-E-B-O-E-U---F AS IN
17 FRANK.

18 **THE COURT:** MS. WILLIAMS.

19 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

20 DIRECT EXAMINATION BY MS. WILLIAMS:

21 **Q** MS. LEBOEUF, WHERE DO YOU WORK?

22 **A** I WORK AT THE MEDICAL UNIVERSITY OF SOUTH
23 CAROLINA.

24 **Q** AND WHAT DO YOU DO?

25 **A** I AM A CERTIFIED NURSE MIDWIFE AND I'M ALSO A

1 SEXUAL ASSAULT NURSE EXAMINER.

2 Q AND WHAT IS YOUR EDUCATIONAL BACKGROUND WITH
3 REGARD TO THIS FIELD?

4 A I HAVE AN ASSOCIATES DEGREE IN NURSING FROM THE
5 UNIVERSITY OF VERMONT FROM 1975. I HAVE A CERTIFICATE IN
6 NURSE MIDWIFERY FROM THE MEDICAL UNIVERSITY OF SOUTH
7 CAROLINA, 1987. I HAVE BOTH A MASTERS AND A BACHELORS
8 DEGREE IN NURSING FROM THE MEDICAL UNIVERSITY OF SOUTH
9 CAROLINA IN 1992.

10 Q DO YOU HAVE ANY SPECIALIZED TRAINING IN SEXUAL
11 ASSAULT EXAMINATIONS?

12 A I'M CERTIFIED BY THE INTERNATIONAL FORENSICS
13 NURSES ASSOCIATION AS A SEXUAL ASSAULT NURSE EXAMINER FOR
14 BOTH ADULTS AND ADOLESCENTS SINCE THE YEAR 2003.

15 Q OKAY. HOW LONG HAVE YOU WORKED FOR MUSC -- OR
16 THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?

17 A FOR 21 YEARS.

18 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
19 FIELD OF FORENSIC NURSE EXAMINATION OR SEXUAL ASSAULT
20 NURSE EXAMINATION?

21 A YES, MA'AM, I HAVE.

22 Q DO YOU KNOW ROUGHLY HOW MANY TIMES?

23 A I WOULD TELL YOU THREE TO FOUR TIMES.

24 Q WERE THOSE -- WHAT KIND OF COURTS?

25 A ONE WAS IN A MILITARY COURT. AND THE OTHERS

1 WERE WITH CHARLESTON COUNTY.

2 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
3 ASK THAT MS. LEBOEUF BE QUALIFIED AS AN EXPERT IN THE
4 FIELD OF SEXUAL ASSAULT NURSE EXAMINATION.

5 MS. KENNEDY: YOUR HONOR, I'M VERY FAMILIAR WITH
6 MS. LEBOEUF. AND I HAVE NO PROBLEM--

7 THE COURT: NO OBJECTION?

8 MS. KENNEDY: NO.

9 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
10 NORMALLY A PERSON CANNOT GIVE OPINION TESTIMONY. WHEN A
11 PERSON TESTIFIES, THEY NORMALLY MUST TESTIFY AS TO WHAT
12 THEY EITHER SAW, HEARD OR SENSED BY SMELL OR SOMETHING OF
13 THAT NATURE. HOWEVER, THERE IS AN EXCEPTION WHEN SOMEONE
14 IS QUALIFIED BECAUSE OF EDUCATION OR EXPERIENCE. THEY ARE
15 PERMITTED TO GIVE THEIR OPINION IN CERTAIN AREAS IF THE
16 COURT QUALIFIES THEM THAT WAY.

17 THIS WITNESS WILL BE QUALIFIED IN THE AREA OF
18 FORENSIC SEXUAL ASSAULT NURSE EXAMINATION, TO GIVE OPINION
19 TESTIMONY IN THAT AREA. THAT DOES NOT MEAN THAT YOU MUST
20 ACCEPT THE TESTIMONY, BUT IT IS EVIDENCE FOR YOU, THE
21 JURY, TO USE AS YOU SEE FIT.

22 MS. WILLIAMS.

23 MS. WILLIAMS: THANK YOU, YOUR HONOR.

24 BY MS. WILLIAMS:

25 Q WERE YOU WORKING AT MUSC ON JANUARY 18, 2008?

FAYE LEBOEUF -- DIRECT BY MS. WILLIAMS

314

1 A YES, MA'AM, I WAS.

2 Q DURING THIS TIME, CAN YOU TELL US WHETHER OR NOT
3 YOU HAD AN OPPORTUNITY TO TREAT A PATIENT NAMED SARA
4 ADAMS?

5 A YES, I DID.

6 Q DID YOU OBTAIN SOME GENERAL INFORMATION
7 CONCERNING THAT PATIENT?

8 A YES, MA'AM, I DID.

9 Q WHAT IS THE PROTOCOL FOR DOCTORS AND NURSES FOR
10 TREATING A PATIENT FOR SEXUAL ASSAULT?

11 A WHEN THEY FIRST COME IN, WE SIT DOWN AND DO A
12 HISTORY WITH THEM TO GET AN IDEA OF WHAT HAD HAPPENED
13 PRIOR TO OUR MEETING UP WITH THEM. AND THEN THERE IS A
14 PROTOCOL SET OUT BY THE STATE LAW ENFORCEMENT DIVISION ON
15 EVIDENCE COLLECTION THAT WE FOLLOW.

16 Q IS THERE A SPECIFIC FORM THAT YOU USE AS PART OF
17 THAT PROTOCOL?

18 A THERE'S A FORM THAT COMES WITH THE BOX THAT IS
19 SET OUT BY THE -- BY THE SLED AGENT. AND THEN THERE IS
20 ALSO A DATA BASE THAT WE USE THAT ASKS MEDICAL HISTORY AND
21 QUESTIONS REGARDING HER SEXUAL ASSAULT.

22 Q DID YOU USE THAT PROTOCOL AND THAT FORM IN THIS
23 CASE?

24 A YES, MA'AM, I DID.

25 Q WHEN TREATING A PATIENT, IS GATHERING CERTAIN

1 INFORMATION ABOUT PAST OR PRESENT SYMPTOMS NECESSARY FOR
2 MEDICAL DIAGNOSIS OR TREATMENT?

3 A YES, IT IS.

4 Q IS OBTAINING INFORMATION CONCERNING THE CAUSE OF
5 AN -- AN INJURY NECESSARY FOR PURPOSES OF MEDICAL
6 DIAGNOSIS OR TREATMENT?

7 A YES, IT IS.

8 Q DO YOU NEED TO KNOW THE CIRCUMSTANCES OF THE
9 EVENT IN ORDER TO TREAT THAT PATIENT?

10 A IT DOES HELP, YES, IT DOES.

11 Q IS IT NECESSARY FOR PURPOSES OF MEDICAL
12 DIAGNOSIS AND TREATMENT TO LEARN THE LOCATIONS OF POSSIBLE
13 INJURIES ON THE BODY?

14 A YES, IT DOES.

15 Q WAS SUCH INFORMATION OBTAINED IN THIS CASE?

16 A YES, MA'AM, IT WAS.

17 Q AND DID YOU DOCUMENT THAT?

18 A YES, I DID.

19 Q DID YOU DOCUMENT ANY BRUISING OR INJURIES TO MS.
20 ADAMS?

21 A I DOCUMENTED BOTH BRUISING AND INJURIES, BOTH ON
22 MY FORMS AND WITH PHOTOGRAPHY.

23 Q CAN YOU TELL THE JURY WHERE THOSE INJURIES WERE?

24 A SHE HAD SOME SCRATCHES UNDERNEATH HER JAW, ON
25 HER FACE. SHE ALSO HAD SOME SCRATCHES AND INJURIES DONE

1 TO HER LEFT CHEEK. SHE HAD A LACERATION ON HER INDEX
2 FINGER OF HER LEFT HAND, NEAR HER SECOND KNUCKLE. SHE HAD
3 SOME BRUISING ON HER BACK OF HER SHOULDER, ONE OF THEM
4 WHICH WAS A BLUISH, PURPLISH BRUISE. SHE HAD SOME
5 SCRATCHES NEAR THE UNDERARM OF HER RIGHT SHOULDER.

6 SHE ALSO HAD A RED AREA ON HER UPPER BACK ABOUT THE
7 SIZE OF MY FINGER. AND SHE HAD A CUT ON HER RIGHT WRIST.

8 Q WHAT WAS THE INFORMATION YOU OBTAINED WITH
9 REGARD TO THE CIRCUMSTANCES OF WHAT HAPPENED TO MS. ADAMS
10 THAT NIGHT?

11 A SHE HAD TOLD ME THAT THE PERSON THAT ASSAULTED
12 HER HAD SOMETHING CALLED A SHANK AND THAT'S HOW SHE HAD
13 GOT THE CUTS.

14 Q DID SHE DISCLOSE SEXUAL ABUSE?

15 A SHE SAID THAT THERE HAD BEEN A FINGER PLACED
16 INSIDE HER VAGINA.

17 Q AND IS THAT SOMETIMES KNOWN AS -- WHAT DO WE---

18 A DIGITAL PENETRATION.

19 Q WOULD YOU ALWAYS EXPECT TO FIND TRAUMA IN THE
20 GENITAL AREA FROM DIGITAL PENETRATION?

21 A NOT NECESSARILY.

22 Q DOES DIGITAL PENETRATION USUALLY LEAVE SCARING
23 OR TEARS IN AN ADULT FEMALE?

24 A NOT USUALLY, NO.

25 Q SO, WOULD A NORMAL SEXUAL EXAMINATION BE

1 CONSISTENT WITH WHAT THE VICTIM TOLD YOU HAPPENED?

2 A YES, IT COULD BE VERY CONSISTENT.

3 Q WOULD YOU EXPECT TO FIND SEMEN IN A CASE WHERE
4 DIGITAL PENETRATION OCCURRED?

5 A NO, MA'AM. I WOULD NOT.

6 Q DO YOU REMEMBER WHAT THE Demeanor WAS OF MS.
7 ADAMS WHEN YOU EXAMINED HER?

8 A SHE WAS VERY TREMBLY AND SHAKY, AND VERY ANXIOUS
9 ABOUT WHAT HAD HAPPENED TO HER.

10 MS. WILLIAMS: I BEG THE COURT'S INDULGENCE FOR
11 JUST A SECOND.

12 THE COURT: YES, MA'AM.

13 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THE
14 DEFENDANT MIGHT HAVE, MS. LEBOEUF.

15 THE COURT: MS. KENNEDY.

16 MS. KENNEDY: YES, YOUR HONOR. THE COURT'S
17 INDULGENCE.

18 THE COURT: YES, MA'AM.

19 CROSS EXAMINATION BY MS. KENNEDY:

20 Q AFTERNOON.

21 A GOOD AFTERNOON.

22 Q HOW ARE YOU?

23 A I'M FINE. THANK YOU.

24 Q YOU -- YOU TESTIFIED THAT YOU FOLLOW OR YOU'RE
25 REQUIRED TO FOLLOW A PROTOCOL THAT IS PRESCRIBED BY SLED?

1 A YES, MA'AM.

2 Q OKAY. AND THAT PROTOCOL IS GIVEN TO YOU IN A
3 FORM THAT PRETTY MUCH -- LET'S SEE -- FIVE, SIX -- FIVE
4 PAGES THAT -- THAT TELLS YOU THE KINDS OF QUESTIONS YOU
5 NEED TO ASK?

6 A YES, MA'AM.

7 Q OKAY. SO, IN EFFECT, WHAT YOU'RE DOING IS
8 TAKING A HISTORY FROM A VICTIM BASED ON A PRESCRIBED SET
9 OF QUESTIONS THAT ARE TAKEN -- THAT ARE GIVEN TO YOU BY
10 SLED?

11 A YES, MA'AM.

12 Q OKAY. SO THAT WHEN YOU WENT THROUGH AND YOU
13 WERE -- WERE SPEAKING WITH MS. ADAMS, THE QUESTIONS ABOUT
14 THE SEXUAL ASSAULT THAT YOU -- THE ALLEGED SEXUAL ASSAULT,
15 THAT YOU CHECKED OFF FOR JUST BASICALLY YES OR NO
16 RESPONSES TO THE QUESTIONS THAT YOU'VE BEEN GIVEN?

17 A YES, MA'AM.

18 Q AND -- AND THAT'S PART OF MAINTAINING -- I MEAN,
19 THAT'S -- THAT'S PART OF THE SEXUAL ASSAULT RAPE KIT THAT
20 YOU HAVE TO PROVIDE TO SLED IN ANY CASE LIKE THIS, THAT IS
21 GOING TO TRIAL---

22 A YES, MA'AM.

23 Q -- OR IS PART OF A CRIMINAL INVESTIGATION?

24 A YES, MA'AM.

25 Q AND IT'S BASICALLY DONE -- IN ADDITIONAL TO

1 OBVIOUSLY AIDING THE VICTIM AND TREATING THE VICTIM, BUT
2 IT'S BASICALLY DONE FOR PURPOSES OF THE CRIMINAL
3 INVESTIGATION?

4 A YES, IT IS.

5 Q OKAY. NOW, YOU -- YOU INDICATED THAT -- TO THE
6 ASSISTANT SOLICITOR THAT YOU OBSERVED, BASED ON YOUR
7 EXAMINATION AND WITH THE ANATOMICAL DRAWINGS ON PAGE FOUR
8 OF THE REPORT, THAT THERE WAS BRUISING ON HER FACE AND
9 BRUISING ON HER ARMS AND BASICALLY BRUISES ON THE UPPER
10 PART OF HER BODY, ON HER FACE?

11 A BRUISES AND SCRATCHES.

12 Q BRUISES AND SCRATCHES. AND DID YOU -- AND YOU
13 ALSO INDICATED THAT YOU, AS PART OF YOUR INVESTIGATION OR
14 YOUR RESPONSIBILITY -- I GUESS IS A MORE ACCURATE WORD,
15 THAT YOU TOOK SOME PICTURES OF MS. ADAMS?

16 A YES, MA'AM, I DID.

17 Q DO YOU -- DO YOU HAPPEN TO KNOW WHICH PICTURES,
18 OR DO YOU HAVE A COPY OF THE PICTURES THAT YOU TOOK, OR
19 WAS THAT PART OF WHAT WAS TURNED OVER?

20 A THAT WAS PART OF WHAT WAS TURNED OVER.

21 Q IF -- IF I SHOWED YOU SOME PICTURES THAT HAVE
22 ALREADY BEEN MARKED AS EXHIBITS, WOULD YOU BE ABLE TO TELL
23 US WHICH ONES YOU ACTUALLY TOOK?

24 A PROBABLY.

25 Q OKAY..

FAYE LEBOEUF -- CROSS BY MS. KENNEDY

320

1 MS. KENNEDY: YOUR HONOR, THE COURT'S INDULGENCE.

2 THE COURT: YES, MA'AM.

3 MS. KENNEDY: YOUR HONOR, MAY I APPROACH THE
4 WITNESS?

5 THE COURT: YOU MAY.

6 BY MS. KENNEDY:

7 Q THIS IS WHAT I -- I'M SHOWING YOU WHAT HAS BEEN
8 PREVIOUSLY MARKED AS STATE'S EXHIBITS NOS. 5, 6, 7, 8, 9,
9 10, 14 AND 15; WOULD THOSE -- WOULD YOU BE KIND ENOUGH TO
10 TELL ME, BASED ON YOUR RECOLLECTION, WHICH ONES YOU TOOK?

11 A THESE FOUR.

12 Q THE---

13 A FOR SURE.

14 Q OKAY.

15 MS. KENNEDY: MAY THE RECORD REFLECT, YOUR HONOR,
16 THAT MS. LEBOEUF HAS IDENTIFIED PICTURES -- STATE'S
17 EXHIBITS 5, 6, 7 AND 8 AS THE ONES THAT SHE -- SHE TOOK.

18 THE COURT: YES, MA'AM.

19 MS. KENNEDY: MAY THE RECORD REFLECT, YOUR HONOR,
20 THAT SHE'S UNSURE AS TO STATE'S EXHIBITS 9, 10, 14 AND 15.

21 THE COURT: YES, MA'AM.

22 MS. KENNEDY: THANK YOU, YOUR HONOR.

23 BY MS. KENNEDY:

24 Q MS. LEBOEUF, WOULD YOU -- DO YOU HAVE A COPY OF
25 YOUR REPORT WITH YOU?

1 A NO. IT'S RIGHT THERE.

2 Q I JUST HAVE A FEW MORE QUESTIONS BECAUSE IT'S
3 NOT VERY LEGIBLE. I THINK IT'S -- IT'S -- THAT MAY BE
4 ACCOUNTED FOR BY THE NUMBER OF COPIES THAT IT WENT
5 THROUGH, BUT -- WELL, LET ME ASK YOU THIS, THOUGH, YOU
6 WERE CALLED -- WHERE DO YOU WORK ACTUALLY? WHERE DO YOU
7 WORK OUT OF, WHAT FACILITY?

8 A I WORK OUT OF OUR NORTHWOODS OFFICE, UP IN NORTH
9 CHARLESTON, AT MUSC WOMEN'S HEALTH.

10 Q OKAY. OKAY. IT'S CALLED MUSC WOMEN'S HEALTH --
11 AND WHERE IS THAT LOCATED?

12 A 2070 NORTHBROOK BLVD. SUITE E-9.

13 Q WHICH IS?

14 A NORTH CHARLESTON.

15 Q I MEAN, WHERE IN NORTH CHARLESTON?

16 A IT IS RIGHT NEAR -- ACROSS THE STREET FROM
17 NORTHWOODS MALL.

18 Q OH, OKAY. OKAY. SO, IT'S RIGHT AT NORTHWOODS
19 MALL?

20 A ACROSS THE STREET FROM NORTHWOODS MALL.

21 Q OKAY. ACROSS THE STREET. ALL RIGHT. BUT ARE
22 YOU AWARE THAT THEY TOOK MS. ADAMS TO THE MEDICAL
23 UNIVERSITY HOSPITAL DOWNTOWN BEFORE SHE CAME TO SEE YOU?

24 A YES, MA'AM, I AM.

25 Q IS THAT THE PROTOCOL THAT THEY WOULD TRANSPORT

1 SOMEBODY TO MUSC AND THEN SEND THEM TO YOU?

2 A BECAUSE OF THE INJURIES THAT SHE HAD, SHE WENT
3 THERE TO BE EVALUATED BY A DOCTOR FIRST, TO MAKE SURE THAT
4 THOSE INJURIES DID NOT NEED TO BE TAKEN CARE OF BEFORE SHE
5 CAME TO GET THE SEXUAL ASSAULT EXAM DONE.

6 Q OKAY.

7 A AND THAT'S A PROTOCOL.

8 Q OKAY. SO -- SO WHAT -- WHAT YOUR JOB, THEN, WAS
9 THAT NIGHT WAS -- YOU WERE THE PERSON THAT WAS -- WAS THE
10 -- DESIGNATED BY THE STATE, BY MUSC, BY EVERYBODY
11 INVOLVED, DUE TO YOUR EXPERTISE DOING THE SEXUAL ASSAULT
12 EXAMINATION?

13 A YES, MA'AM.

14 Q OKAY. AND WHAT WAS REPORTED TO YOU WAS JUST --
15 AGAIN, INFORMATION -- GENERAL INFORMATION, I ASSUME --
16 WELL, LET ME BACK UP. HOW DID YOU FIRST BECOME AWARE THAT
17 MS. ADAMS WAS COMING TO SEE YOU, TO BE EXAMINED BY YOU?

18 A THE EMERGENCY ROOM SENT OUT A PAGE FOR WHAT'S
19 CALLED THE SAFE TEAM, AND WE'RE THE GROUP THAT DOES THE
20 SEXUAL ASSAULT EXAMS. AND I WAS ON CALL THAT NIGHT SO
21 THEY CALLED ME. AND I MADE ARRANGEMENTS WHEN SHE WAS
22 MEDICALLY CLEARED TO MEET HER OUT AT THE NORTH CHARLESTON
23 OFFICE.

24 Q SO, WHAT THEY DID WAS BASICALLY DIRECT YOU TO BE
25 AT YOUR OFFICE SO THAT YOU COULD PERFORM THE EXAM?

1 A YES, MA'AM.

2 Q OKAY. AND THEN WHEN YOU DID THE EXAMINATION,
3 AGAIN, MOST OF THE RESPONSES WERE AND THE HISTORY THAT YOU
4 WERE TAKING, AGAIN CONSISTENT WITH THE SLED PROTOCOL IS --
5 INFORMATION THAT SHE PROVIDED TO YOU?

6 A YES, MA'AM, IT WAS.

7 Q OKAY. AND -- AND IF YOU WOULD BE KIND ENOUGH TO
8 LOOK BECAUSE I DON'T -- I'M -- I CAN'T EXACTLY READ IT, ON
9 PAGE 2 WHERE IT REFLECTS THE PELVIC EXAMINATION. IF YOU
10 -- JUST THE FIRST LINE, AND MAYBE THAT'LL ANSWER MY
11 QUESTION BECAUSE I CAN'T READ IT.

12 A I NEED -- YOUR COPY IS A LITTLE DIFFERENT THAN
13 MY COPY.

14 Q OKAY.

15 A SORRY.

16 MS. KENNEDY: YOUR HONOR, MAY I APPROACH THE
17 WITNESS?

18 THE COURT: YOU MAY.

19 BY MS. KENNEDY:

20 Q IT WOULD BE THIS PORTION RIGHT HERE THAT I'M
21 HAVING TROUBLE WITH.

22 A "THIS IS WITHOUT REDNESS."

23 Q OKAY. ALL RIGHT.

24 A "WITHOUT REDNESS, WITHOUT BRUISING, WITHOUT
25 TRAUMA."

1 Q OKAY. SO, WHEN YOU DID YOUR SEXUAL ASSAULT
2 EXAMINATION, AND YOU WENT THROUGH THE PELVIC EXAMINATION
3 IN EACH OF THE AREAS, VULVA, HYMEN, VAGINA, ANUS -- AND I
4 CAN'T PRONOUNCE THE OTHER WORD--- I--

5 A INTROITUS.

6 Q INTROITUS. IT'S -- IT'S WITHOUT ANY TRAUMA?

7 A YES, MA'AM.

8 Q ON EACH OF THOSE ITEMS THAT WERE LISTED?

9 A RIGHT. THERE WAS NO TRAUMA OR REDNESS OR
10 BRUISING ON ANY OF THOSE ITEMS.

11 MS. KENNEDY: I THINK THAT'S ALL I HAVE, YOUR
12 HONOR. THE COURT'S INDULGENCE.

13 THE COURT: YES, MA'AM.

14 MS. KENNEDY: THAT WOULD BE ALL I HAVE, YOUR HONOR.
15 THANK YOU.

16 THE COURT: MS. WILLIAMS.

17 MS. WILLIAMS: VERY BRIEFLY, YOUR HONOR.

18 REDIRECT EXAMINATION BY MS. WILLIAMS:

19 Q MS. LEBOEUF, WOULD YOU EXPECT TO FIND BRUISING,
20 TRAUMA, REDNESS IN THAT AREA AFTER DIGITAL PENETRATION?

21 A NO, MA'AM, I WOULD NOT.

22 MS. KENNEDY: YOUR HONOR, I OBJECT. AGAIN, THAT
23 WAS -- THAT QUESTION---

24 THE COURT: COUNSEL, NO SPEAKING OBJECTIONS.

25 MS. KENNEDY: THANK YOU, YOUR HONOR.

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
2 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
3 THE HEARING OF THE JURY, OFF THE RECORD.)

4 THE COURT: OVERRULED. MS. KENNEDY, DO YOU HAVE
5 ANY RECROSS?

6 MS. KENNEDY: NO, YOUR HONOR.

7 THE COURT: YOU MAY, MS. LEBOEUF, STEP DOWN. ANY
8 OBJECTION?

9 MS. KENNEDY: NO, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN. YOU ARE FREE TO
11 REMAIN IN THE COURTROOM, BUT YOU MAY BE EXCUSED FROM THE
12 COURTHOUSE. MS. WILLIAMS, CALL YOUR NEXT WITNESS.

13 (WITNESS STEPPED DOWN.)

14 MS. WILLIAMS: THE STATE CALLS WILLIE STAGGERS.

15 THE COURT: WOULD COUNSEL APPROACH FOR SCHEDULING?

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
18 THE HEARING OF THE JURY, OFF THE RECORD.)

19 THE COURT: MS. WILLIAMS.

20 MS. WILLIAMS: YES, YOUR HONOR. THE STATE WOULD
21 CALL LT. BAXTER, JONATHAN BAXTER.

22 (WITNESS FORWARD.)

23 THE CLERK: RAISE YOUR RIGHT HAND, PLACE YOUR LEFT
24 HAND ON THE BIBLE.

25 LT. JONATHAN BAXTER, HAVING BEEN

1 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
3 FOR THE RECORD AND SPELL YOUR LAST NAME.

4 THE WITNESS: MY NAME IS JONATHAN J. BAXTER.

5 DIRECT EXAMINATION BY MS. WILLIAMS:

6 Q LT. BAXTER, WHERE DO YOU WORK?

7 A AT MACDOUGALL CORRECTIONAL INSTITUTION.

8 Q AND HOW LONG HAVE YOU WORKED THERE?

9 A GOING ON 14 YEARS.

10 Q WHAT ARE YOUR PRESENT DUTIES?

11 A I'M THE SHIFT LIEUTENANT FOR B 2 SHIFT.

12 COURT REPORTER: SHIFT LIEUTENANT FOR WHAT, SIR?

13 THE WITNESS: B 2 SHIFT.

14 BY MS. WILLIAMS:

15 Q DID YOU WORK WITH CORRECTIONS OFFICER, SARA
16 ADAMS?

17 A YES, MA'AM.

18 Q WERE YOU WORKING ON JANUARY 18, 2008?

19 A YES, MA'AM.

20 Q WERE YOU WORKING IN YOUR PRESENT CAPACITY?

21 A YES.

22 Q WHERE WERE YOU WHEN YOU LEARNED THERE WAS A
23 PROBLEM ON THE MAGNOLIA II UNIT?

24 A I WAS ORIGINALLY INSIDE THE SUPERVISOR'S OFFICE.

25 WHEN I HEARD THAT WE HAD A PROBLEM DOWN IN MAG II, I

1 IMMEDIATELY WENT TO THE CONTROL ROOM.

2 Q WHO WAS IN THE COURTROOM WITH YOU?

3 A CORPORAL GADSON.

4 Q IF YOU KNOW, ABOUT WHEN DID THE ALARM GO OFF?

5 A IT WAS AROUND -- SOMEWHERE AROUND ABOUT 12:17 OR
6 SOMEWHERE AFTER THAT.

7 Q DID YOU DIRECT GADSON TO DO ANYTHING?

8 A WHEN I HEARD SGT. WILLIAMS SAID HE NEEDED ALL
9 AVAILABLE DOWN AT MAG II, I SENT CORPORAL GADSON DOWN
10 THERE ALSO.

11 Q DID YOU SEE SARA ADAMS THAT EVENING?

12 A YES, MA'AM.

13 Q WHERE?

14 A I SEEN HER WHEN THEY BROUGHT HER BACK UP TO THE
15 ADMINISTRATION BUILDING.

16 Q WHAT WAS HER DEMEANOR LIKE WHEN YOU SAW HER?

17 A SHE WAS REAL DISTRAUGHT. SHE WAS SHAKING AND
18 TREMBLING.

19 Q DID SHE SAY ANYTHING TO YOU?

20 MR. SHELTON: OBJECTION. IT CALLS FOR HEARSAY.

21 THE COURT: OVERRULED AT THIS TIME.

22 BY MS. WILLIAMS:

23 Q OKAY.

24 A WHEN I -- I SEEN HER COME UP THERE, DRESSED THE
25 WAY SHE WAS, I WAS -- MY HEART WENT OUT TO HER. THAT'S

LT. BAXTER -- DIRECT BY MS. WILLIAMS

328

1 WHEN I ASKED HER WHAT HAPPENED---

2 MR. SHELTON: OBJECTION.

3 THE COURT: SUSTAINED. AS TO HEARSAY.

4 MS. WILLIAMS: YOUR HONOR, IF WE COULD LAY A
5 FOUNDATION, I THINK THIS MIGHT FIT INTO AN EXCEPTION---

6 THE COURT: YOU CAN LAY YOUR FOUNDATION, MS.
7 WILLIAMS.

8 MS. WILLIAMS: THANK YOU, YOUR HONOR.

9 BY MS. WILLIAMS:

10 Q IF YOU COULD JUST DESCRIBE IN DETAIL WHAT HER
11 DEMEANOR WAS LIKE.

12 A SHE WAS REALLY UPSET. AS I SAID EARLIER, SHE
13 WAS SHAKING AND SHE WAS OUT OF IT.

14 Q CAN YOU TELL THE JURY WHAT SHE SAID TO YOU WHEN
15 YOU ASKED HER QUESTIONS?

16 MR. SHELTON: OBJECTION.

17 THE COURT: BASIS.

18 MR. ALFARO: HEARSAY.

19 MS. WILLIAMS: YOUR HONOR, WE WOULD -- WE WOULD
20 SUBMIT TO THE COURT THAT THIS FALLS UNDER THE EXCITED
21 UTTERANCE EXCEPTION OF THE HEARSAY RULES.

22 THE COURT: COUNSEL APPROACH.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
25 THE HEARING OF THE JURY, OFF THE RECORD.)

1 THE COURT: SUSTAINED.

2 BY MS. WILLIAMS:

3 Q HOW LONG AFTER THE ALARM WENT OFF DID YOU SEE
4 SARA ADAMS? ROUGHLY?

5 A PROBABLY ABOUT TEN MINUTES, TEN OR TWELVE
6 MINUTES.

7 Q WHAT DID SHE SAY TO YOU IN RESPONSE TO YOUR
8 QUESTIONS?

9 MR. SHELTON: YOUR HONOR, I RENEW MY OBJECTION.

10 THE COURT: OVERRULED.

11 THE WITNESS: WHEN I ASKED HER WHAT HAPPENED TO
12 HER, SHE TOLD ME THAT -- THAT HE HAD A HOME KNIFE, WHAT
13 THEY CALL A SHANK INSIDE THE INSTITUTION. AND HE FORCED
14 HER INSIDE THE RESTROOM, WHICH IS INSIDE THE OFFICER'S
15 STATION, AND FORCED HER TO TAKE HER CLOTHES OFF AND WHAT
16 HAVE YOU. AND SHE DID EVERYTHING THAT SHE POSSIBLY COULD
17 TO LET SOMEONE KNOW WHAT WAS GOING ON. SHE ALSO SAID THAT
18 HE TOOK HER RADIO BECAUSE -- THAT'S ONE OF THE THINGS SHE
19 COULDN'T USE, THE RADIO. HE TOOK THAT. AND WHEN WE FOUND
20 OUT WHAT WAS GOING ON -- THE INMATES FOUND OUT WHAT WAS
21 GOING ON AND THEY SOUNDED -- THEY PULLED THE FIRE ALARM.
22 AND WE IMMEDIATELY SENT RESPONDERS DOWN THERE. THAT'S HOW
23 WE FOUND OUT WHAT WAS GOING ON.

24 BY MS. WILLIAMS:

25 Q ARE YOU POSITIVE IT WAS A FIRE ALARM?

LT. BAXTER -- DIRECT BY MS. WILLIAMS

330

1 A IT WAS A FIRE ALARM OR THE PHONE, ONE OR THE
2 OTHER. BECAUSE THE PHONES -- BECAUSE YOU HAVE A DURESS
3 SYSTEM ON THE PHONES ALSO.

4 Q DID MS. ADAMS HAVE ANYTHING WITH HER?

5 A THE ONLY THING I SAW THAT SHE WAS DRESSED IN A
6 -- HAD A WHITE T-SHIRT, AND THE BROWN TAN SCDC PANTS ON.

7 Q DID YOU AT SOME POINT IN TIME GET THE WEAPON?

8 A YES, MA'AM.

9 Q DO YOU KNOW WHO YOU GOT THAT FROM?

10 A I GOT IT FROM A CORRECTIONS OFFICER, A STAFF
11 MEMBER.

12 Q AND IF YOU KNOW, WHERE DID THEY GET IT FROM?

13 A UM, I BELIEVE IT WAS CORPORAL FOGEL.

14 Q BUT WHERE DID CORPORAL FOGEL GET IT FROM?

15 A FROM HER.

16 Q WHEN YOU SAY HER, WHO ARE YOU TALKING ABOUT?

17 A MS. ADAMS.

18 MS. WILLIAMS: YOUR HONOR, I AM HOLDING WHAT HAS
19 BEEN PREVIOUSLY MARKED AS STATE'S EXHIBIT 3.

20 THE COURT: STATE'S 3 HAS BEEN ENTERED INTO
21 EVIDENCE.

22 MS. WILLIAMS: YES, YOUR HONOR. MAY I APPROACH,
23 YOUR HONOR?

24 THE COURT: YOU MAY.

25 BY MS. WILLIAMS:

1 Q DO YOU RECOGNIZE THIS?

2 A YES, MA'AM.

3 Q WHAT IS THAT?

4 A THAT IS -- THAT IS A SHANK, A HOME MADE KNIFE.

5 Q AND IS THIS THE SHANK THAT YOU GOT -- THAT SARA
6 ADAMS GAVE TO ONE OF THE CORRECTIONS OFFICERS?

7 A YES, MA'AM.

8 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THE
9 DEFENSE MIGHT HAVE.

10 THE COURT: MR. SHELTON.

11 MR. SHELTON: THANK YOU, YOUR HONOR.

12 CROSS EXAMINATION BY MR. SHELTON:

13 Q WHAT WAS YOUR TITLE, MR. BAXTER, I'M SORRY?

14 A LT. BAXTER, SHIFT LIEUTENANT.

15 Q LIEUTENANT. SORRY ABOUT THAT. NOW, THERE'S AN
16 ALARM THAT WENT OFF AROUND 12:17 YOU SAID?

17 A SOMEWHERE AROUND THERE, YES, SIR.

18 Q OKAY. AND YOU'RE NOT SURE IF IT WAS A FIRE
19 ALARM OR IF IT WAS A TELEPHONE ALARM?

20 A SEE, AT THE TIME THE ALARM WENT OFF, I WAS
21 INSIDE THE SUPERVISOR'S OFFICE, SO I DON'T KNOW WHICH ONE.
22 ALL I KNOW IS SOMETHING WAS GOING ON DOWN THERE. CORPORAL
23 GADSON SENT THE RESPONDERS DOWN THERE. I IMMEDIATELY GO
24 INTO THE CONTROL ROOM.

25 Q OKAY. AND YOU ADVISED CORPORAL GADSON TO THEN

LT. BAXTER -- CROSS BY MR. SHELTON

332

1 GO AND HELP AS FAR AS A RESPONDER?

2 A CORRECT.

3 Q WHO WERE THE -- WHO WERE THE OTHER RESPONDERS
4 THAT -- WHO WERE THE FIRST RESPONDERS?

5 A YOU HAD SGT. WILLIAMS AND YOU HAD SGT. SUMPTER.
6 SGT. SUMPTER WAS POSTED DOWN AT THE YARD POST, WHICH IS IN
7 THE CENTER OF THE YARD, THAT IS CLOSEST TO ALL OF THE
8 DORMITORIES.

9 Q AT SOME POINT OFFICER FOGEL ARRIVED ON SCENE?

10 A CORPORAL FOGEL.

11 Q CORPORAL FOGEL ARRIVED ON SCENE.

12 A YES.

13 Q SHE WASN'T A FIRST RESPONDER? WAS CORPORAL
14 FOGEL A FIRST RESPONDER?

15 A I'M NOT SURE RIGHT NOW. I -- I THINK SHE WAS.
16 SHE WAS PART OF THE RESPONDER TEAM.

17 Q OKAY. YOU'RE -- YOU'RE THE SUPERVISOR OF ALL
18 THESE?

19 A CORRECT.

20 Q CORRECT. OKAY. SO, YOU SIGNED OFF ON THEIR
21 STATEMENTS THAT THEY PROVIDED TO MACDOUGALL, CORRECT?

22 A RIGHT.

23 Q OKAY. AND YOU -- YOU MADE -- GAVE A STATEMENT,
24 ALSO, CORRECT?

25 A CORRECT.

1 Q HOW MANY STATEMENTS DID YOU WRITE?

2 A I DON'T REMEMBER IT WAS SO MANY OF THEM.

3 Q OKAY. MORE THAN ONE?

4 A YES.

5 Q MORE THAN TWO?

6 A I KNOW I DID MY INITIAL STATEMENT. AND FROM ALL
7 THE OTHER STATEMENTS THAT'S WHERE -- YOU COMBINE THOSE,
8 THAT'S WHERE THE M.I.N. COMES IN.

9 COURT REPORTER: THAT'S WHERE THE WHAT COMES IN?

10 THE WITNESS: M.I.N.

11 BY MR. SHELTON:

12 Q ON THE BOTTOM OF THE INCIDENT REPORT THAT --
13 THAT YOU FILLED OUT AND THE OTHER OFFICERS FILLED OUT, IT
14 SAYS S.T.G. RELATED. WHAT IS THAT REFERRING TO?

15 A S.T.G.?

16 Q YES, SIR.

17 A STG RELATED, THAT MEANS IT'S GANG RELATED.

18 Q SO, YOU FILLED OUT NO ON THAT?

19 A CORRECT.

20 Q ALONG WITH DRUG RELATED, CORRECT?

21 A RIGHT.

22 Q DID YOU, AT ANY TIME, GIVE A -- GIVE A STATEMENT
23 TO SLED AGENT EVANS?

24 A THERE WAS SO MANY PEOPLE THERE, YES, I DID.

25 Q YOU GAVE A STATEMENT TO SLED AGENT EVANS. DID

LT. BAXTER -- CROSS BY MR. SHELTON

334

1 YOU GIVE A STATEMENT TO INVESTIGATOR POWELL?

2 A I HAD TO WRITE THEM, YES, SIR.

3 Q YOU WROTE ONE STATEMENT?

4 A NO -- WHAT WE DID FROM ALL THOSE REPORTS THAT
5 WAS DONE, WE HAD TO BURN COPIES TO DISTRIBUTE THEM TO
6 EVERYBODY THAT -- FROM THE INVESTIGATOR TO THE SOCIAL
7 WARDEN TO THE MAJOR.

8 Q OKAY. SO -- SO YOU DID ONE INCIDENT REPORT, AND
9 YOU MADE A COPY OF THAT, AND YOU HANDED THAT OUT TO---

10 A RIGHT. TO BE DISTRIBUTED TO ALL THE---

11 Q AND YOU ALSO GAVE STATEMENTS AS FAR AS -- VERBAL
12 STATEMENTS TO -- TO THESE DIFFERENT INVESTIGATORS?

13 A YES, SIR. AFTER EVERYTHING WAS DONE.

14 Q NOW, YOU -- YOU MENTIONED WHAT CORRECTIONAL
15 OFFICER ADAMS TOLD YOU. SHE MENTIONED SHE WENT FOR HER
16 RADIO, DID YOU SEE THE RADIO?

17 A NO.

18 Q SO, YOU DON'T KNOW WHERE THE RADIO WAS?

19 A NO. SHE SAID IT WAS TAKEN -- HE TOOK IT AWAY
20 FROM HER. THAT'S ALL I KNOW.

21 Q OKAY. OKAY. BUT YOU NEVER SAW IT AFTER THAT?

22 A RIGHT.

23 Q DID YOU SEE THE CHEMICAL MUNITIONS?

24 A NO.

25 Q YOU NEVER SAW THAT?

1 A I NEVER SEEN THAT.

2 Q AT SOME POINT YOU TOOK POSSESSION OF THE SHANK,
3 CORRECT?

4 A CORRECT.

5 Q AND THEN YOU HANDED THAT OVER TO SLED, IS THAT
6 CORRECT?

7 A I DON'T REMEMBER OFF-HAND BECAUSE WE -- THERE
8 HAD TO BE -- WE HAD TO DO A -- WHAT THEY CALL A CHAIN OF
9 CUSTODY CARD.

10 Q A CHAIN OF CUSTODY CARD?

11 A YES.

12 Q AND YOU SIGNED IT, CORRECT?

13 A YES.

14 Q WHAT DID -- WHAT DID -- WHAT WAS YOUR LAST
15 ACTION WITH THE SHANK? WHAT WAS THE LAST THING YOU DID
16 WITH THE SHANK?

17 A WE HAD TO DO, LIKE I SAID, THE CHAIN OF CUSTODY
18 CARD.

19 Q OKAY. YOU HAD PHYSICAL POSSESSION OF THE SHANK.
20 WHAT DID YOU DO WITH IT? DID YOU HAND IT OVER TO SOMEBODY
21 -- PHYSICALLY HAND IT OVER TO SOMEBODY? DID YOU PUT IT IN
22 A BAG? DID YOU PUT IT IN THIS?

23 A I HAD TO GIVE -- I HAD TO GIVE IT OVER TO SLED.

24 Q OKAY. AT WHAT POINT DID A TAN CLOTH BECOME PART
25 OF THE SHANK?

LT. BAXTER -- CROSS BY MR. SHELTON

336

1 A A TAN CLOTH?

2 Q YES, SIR.

3 A THERE WAS SOMETHING WRAPPED AROUND THE SHANK.

4 OKAY.

5 Q A TAN CLOTH?

6 A I DON'T REMEMBER WHETHER IT WAS A TAN CLOTH OR
7 NOT, BUT THERE WAS SOMETHING WRAPPED AROUND IT.

8 Q AND THAT WAS WHEN IT WAS GIVEN TO YOU?

9 A RIGHT. IN OPERATIONS.

10 Q BY -- I'M SORRY -- WAS IT C.O. FOGEL WHO GAVE
11 YOU THE SHANK?

12 A THAT'S WHO I REMEMBER GETTING IT FROM.

13 Q SHE GOT IT FROM ANOTHER CORRECTIONAL OFFICER?

14 A FROM ANOTHER STAFF MEMBER.

15 Q FROM A STAFF MEMBER. YOU ALSO TOOK POSSESSION
16 OF THE TAN SCDC PANTS, THE BLUE VICTIM'S SHIRT AND HER
17 BLACK BELT, ISN'T THAT CORRECT?

18 A INSIDE OF OPERATIONS, INSIDE THE OPERATIONS
19 DESK.

20 Q BUT YOU DIDN'T TAKE INTO POSSESSION THE CHEMICAL
21 MUNITIONS?

22 A I DIDN'T SEE IT.

23 Q YOU DIDN'T SEE IT. AND YOU DIDN'T TAKE INTO
24 POSSESSION HER RADIO?

25 A I DIDN'T SEE IT.

1 Q YOU DON'T KNOW WHAT HAPPENED TO THOSE?

2 A CORRECT.

3 MR. SHELTON: I BEG THE COURT'S INDULGENCE.

4 THE COURT: YES, SIR.

5 BY MR. SHELTON:

6 Q DID YOU RECEIVE ALL OF HER CLOTHING THAT SHE WAS
7 WEARING, HER DUTY UNIFORM?

8 A UM, I DON'T REMEMBER ALL -- ALL THAT. ALL I
9 KNEW WHAT SHE HAD ON AND THE STUFF THAT I RECEIVED, IT WAS
10 ON SIDE -- TOP -- WE PUT IT ON TOP OF THE OPERATIONS DESK.

11 Q SO, YOU DON'T SEE -- THE TAN -- THE TAN SCDC
12 PANTS---

13 A CORRECT.

14 Q ---THE INMATE PANTS?

15 A YES.

16 Q DID YOU PHYSICALLY RECEIVE THAT FROM HER?

17 A SHE WAS WEARING -- SHE HAD A WHITE T-SHIRT ON.
18 WHEN SHE CAME UP, THE ONLY THING THAT SHE HAD ON WAS A
19 WHITE T-SHIRT AND THE SCDC TAN PANTS.

20 Q OKAY. AND AT SOME POINT, YOU CAME INTO
21 POSSESSION OF THOSE, CORRECT?

22 A WHAT SHE WAS WEARING?

23 Q YES. YOU CAME INTO POSSESSION OF THE TAN -- TAN
24 SCDC PANTS?

25 A RIGHT.

LT. BAXTER -- CROSS BY MR. SHELTON

338

1 Q DID SHE HAND YOU THOSE TAN SCDC PANTS?

2 A I DON'T REMEMBER. IT WAS FROM A STAFF -- A
3 STAFF.

4 Q A STAFFER HANDED YOU THAT?

5 A YES. A STAFF MEMBER, YES.

6 Q OKAY. AND SO THERE WAS A WHOLE BUNCH OF -- I'M
7 A LITTLE CONFUSED AS TO HOW YOU TOOK POSSESSION OF SOME OF
8 THESE ITEMS, WERE THEY ALL IN ONE OFFICE AND YOU THEN TOOK
9 POSSESSION AND HANDED THAT OVER TO SLED? AM I
10 MISCHARACTERIZING IT?

11 A THAT'S WHAT -- THAT'S WHAT -- SEE, WE HAD SO
12 MANY THINGS GOING ON. I HAD A MEDICAL EMERGENCY. I WAS
13 MAKING SURE THAT SHE WAS GETTING MEDICALLY ATTENDED TO.
14 ALSO, THE INMATES THAT WENT IN AND TRIED TO HELP HER.
15 ALSO, INMATE SALISBURY. SO, I HAD ALL THAT GOING ON AT
16 THE SAME TIME.

17 Q ABSOLUTELY.

18 A OKAY. SO, WE CENTRALLY PUT EVERYTHING IN THERE.
19 NOW, THAT'S ALL I REMEMBER AS FAR AS ALL THAT.

20 Q OKAY. DID YOU CALL THE MEDICAL PERSONNEL TO THE
21 SCENE, THE AMBULANCE?

22 A SEE, ONCE EVERYTHING -- ONCE SGT. WILLIAMS GOT
23 BACK UP TO THE ADMINISTRATION BUILDING AND BROUGHT INMATE
24 SALISBURY AND PUT HIM IN THE HOLDING CELL, AFTER -- A FEW
25 MINUTES AFTER THAT, CORPORAL FOGEL CAME UP WITH MS. ADAMS.

1 ONCE THINGS SETTLED DOWN, I CALLED CORPORAL GADSON BACK
2 INTO THE CONTROL ROOM. THAT FREED ME UP IN ORDER FOR ME
3 TO DO THE THINGS I HAD TO DO. HE CALLED -- HE HAD CALLED
4 FOR MEDICAL ATTENTION PRIOR TO THAT.

5 Q OKAY.

6 A OKAY.

7 Q SO -- SO HE CALLED BERKELEY EMS?

8 A HE CALLED BERKELEY COUNTY. AND I INSTRUCTED HIM
9 TO WRITE DOWN ALL THE TIMES THAT HE CALLED EMS. WE HAD TO
10 DO A CALL TO THE WARDEN. WE HAD TO CALL THE INVESTIGATOR
11 MERV POWELL. I HAD TO NOTIFY THE WARDEN. I HAD TO NOTIFY
12 MY SHIFT CAPTAIN. I INSTRUCTED HIM TO WRITE DOWN ALL
13 THOSE TIMES. FROM THOSE TIMES, I CAN DO MY REPORT.

14 Q OKAY.

15 A AND MAKE SURE EVERYBODY IS NOTIFIED. BECAUSE
16 SEE, WARDEN TAYLOR, HE ONLY LIVES A COUPLE OF MILES AWAY,
17 SO HE WAS THERE REAL QUICK. BECAUSE I HAD TO NOTIFY THE
18 EMERGENCY ACTION CENTER, BUT HE -- HE ARRIVED BEFORE I DID
19 THAT, SO HE TOOK CARE OF THAT PART.

20 Q SO, -- SO YOU CREATED A LOG? YOU CREATED A
21 LOG---

22 A OF TIMEFRAMES.

23 Q OF CALLS AND TIMES?

24 A YES.

25 Q THAT YOU CALLED -- OKAY.

LT. BAXTER -- CROSS BY MR. SHELTON

340

1 **MR. SHELTON:** NO FURTHER QUESTIONS.

2 **THE COURT:** MS. WILLIAMS.

3 **MS. WILLIAMS:** NOTHING FURTHER, YOUR HONOR.

4 **THE COURT:** MAY THIS WITNESS STEP DOWN AND BE
5 EXCUSED? ANY OBJECTION?

6 **MR. SHELTON:** NO.

7 **THE COURT:** LT. BAXTER, YOU MAY STEP DOWN. YOU ARE
8 FREE TO REMAIN IN THE COURTROOM, BUT YOU MAY ALSO BE
9 EXCUSED FROM THE COURTHOUSE IF YOU WISH.

10 **THE WITNESS:** THANK YOU.

11 **THE COURT:** THANK YOU.

12 (WITNESS STEPPED DOWN.)

13 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, WE
14 ARE NOW GOING TO TAKE OUR MID-AFTERNOON BREAK. PLEASE DO
15 NOT BEGIN DISCUSSING THIS CASE AMONGST YOURSELVES. DO NOT
16 BEGIN YOUR DELIBERATIONS. I WILL RECEIVE YOU BACK IN THE
17 COURTROOM IN APPROXIMATELY 15 MINUTES. PLEASE RISE FOR
18 THE JURY.

19 (WHEREUPON, JURY LEFT THE COURTROOM AT 2:55 P.M.)

20 **THE COURT:** THANK YOU. BE SEATED. JUST FOR THE
21 RECORD, WE HAD TWO BENCH CONFERENCES, ONE CONCERNING THE
22 REDIRECT QUESTIONS BY MS. WILLIAMS OF FAYE LEOEUF. MS.
23 KENNEDY, I'LL ALLOW YOU TO PUT THAT ON THE RECORD.

24 **MS. KENNEDY:** THANK YOU, YOUR HONOR. MAY IT PLEASE
25 THE COURT. AGAIN, YOUR HONOR, THIS IS SIMILAR TO AN

1 OBJECTION I MADE THIS MORNING IN THAT -- AGAIN, MY
2 UNDERSTANDING OF THE PROCEDURE IS THAT YOU'RE LIMITED TO
3 -- IN REDIRECT TO ISSUES THAT WERE RAISED ON CROSS
4 EXAMINATION.

5 THE PARTICULAR OBJECTION I HAD IN ADDITION -- IN
6 FURTHERANCE OF THAT OBJECTION, YOUR HONOR, IS THAT THAT
7 QUESTION HAD BEEN ASKED AND ANSWERED IN DIRECT
8 EXAMINATION. TO ALLOW IT TO BE REPEATED MERELY GIVES
9 EMPHASIS -- OR MORE EMPHASIS THAN NEEDS -- THAN NECESSARY,
10 AND QUITE FRANKLY, SHOULDN'T BE ALLOWED IN THIS PROCEDURE.

11 BECAUSE, AGAIN, AND THIS IS THE SECOND EXAMPLE OF
12 THIS, YOU -- IT WAS A PICTURE AND THE IDENTIFICATION, IT
13 ALLOWS EITHER -- THE PROSECUTION TO -- TO STRENGTHEN ITS
14 CASE BASED ON PRIOR OMISSIONS, WHICH WE MAKE THEM ALL THE
15 TIME AND WE'RE STUCK WITH THEM. YOU DON'T ASK A QUESTION
16 THAT YOU NEEDED TO ASK. BUT IT'S IMPROPER TO ALLOW THAT
17 TO CONTINUE. IN ADDITION TO WHICH, YOU KNOW, THE
18 OBJECTION THIS AFTERNOON WITH REGARD TO MS. LEBOEUF IS
19 SIMPLY THIS, IT JUST REINFORCES HER TESTIMONY AND THAT'S
20 JUST SIMPLY NOT PROPER. THANK YOU, YOUR HONOR.

21 **THE COURT:** IF YOU -- IF YOU WISH TO RESPOND, I WAS
22 JUST ALLOWING MS. KENNEDY TO PLACE IT ON THE RECORD.
23 REDIRECT IS WITHIN THE COURT'S DISCRETION. AND I ALLOWED
24 THAT BECAUSE THE -- THE WAY THE QUESTION WAS WORDED TO MS.
25 LEBEOUF WAS WHETHER OR NOT -- WHAT THE -- WHAT THAT MEANT

1 ON THE FORM. AND SHE STATED THAT DURING THE PELVIC EXAM
2 SHE NOTED ON THE FORM THAT THE PELVIC AREA WAS WITHOUT
3 REDNESS. AND MS. WILLIAMS QUESTION ON REDIRECT WAS WOULD
4 THAT BE ABNORMAL IN A DIGITAL PENETRATION.

5 MS. KENNEDY: YOUR HONOR, I JUST -- BASED ON THAT
6 CLARIFICATION, WHICH I NEGLECTED TO DO, AND AGAIN, IS PART
7 OF THE PROBLEM. I ASKED MS. LEBOEUF SPECIFICALLY ABOUT
8 THE PROTOCOL ON THE FORM. I ASKED HER TO GO THROUGH
9 BECAUSE MY -- MY COPY WAS NOT CLEAR, TO TELL ME WHAT IT
10 SAID. I DIDN'T ASK ANY QUESTIONS RELATED TO WHAT DID YOU
11 FIND, DO YOU EXPECT TO FIND THIS. IT WAS THE INFORMATION
12 THAT SHE HAD MERELY CHRONICLED ON THE FORM, AND IT WAS
13 ASKED IN THE CONTEXT OF MY -- OF MY COPY BEING ILLEGIBLE.
14 AND I WANT TO MAKE THAT CLEAR FOR THE RECORD.

15 THE COURT: ALL RIGHT. SO, THE RECORD IS CLEAR, I
16 HAD ALREADY MADE MY RULING ON YOUR OBJECTION.

17 AS TO THE BENCH CONFERENCE ON EXCITED UTTERANCE,
18 MR. SHELTON.

19 MR. SHELTON: MY -- MY ARGUMENT WAS TIMEFRAME. IT
20 HAD BEEN, AS -- MS. WILLIAMS CAME OUT -- BACK WITH
21 FOUNDATION ON THE HEARSAY. AND IT WAS TEN TO TWELVE
22 MINUTES. SO, THAT WAS MY ARGUMENT, YOUR HONOR.

23 THE COURT: ALL RIGHT. AND, MS. WILLIAMS, ANY
24 RESPONSE UNDER 803-2?

25 MS. WILLIAMS: AND SHE WAS UNDER THE -- SHE WAS

1 EXCITED. SHE WAS -- HE DESCRIBED HER DEMEANOR AS UPSET,
2 EXCITED. AND THAT WAS DUE TO THE EVENT SHE WAS TELLING
3 HIM ABOUT. I THINK IT FITS SQUARELY WITHIN THE EXCITED
4 UTTERANCE EXCEPTION WITHIN TEN MINUTES OF THE INCIDENT
5 OCCURRING.

6 MR. SHELTON: I'M SORRY, YOUR HONOR, I BELIEVE THAT
7 MISCHARACTERIZES OUR SIDE BAR. BECAUSE THAT -- SHE WAS
8 NOT ALLOWED -- SHE DID NOT HAVE AN ARGUMENT IN OUR SIDE
9 BAR. SO, I JUST WANT THE RECORD TO REFLECT THAT. IT WAS
10 MERELY ME SAYING SOMETHING AND YOU ASKING HER THEN TO
11 PROVIDE MORE OF A FOUNDATION. SO, I JUST WANTED TO
12 CHARACTERIZE OUR SIDE BAR, YOUR HONOR.

13 THE COURT: SO, THE RECORD IS CLEAR AS TO THE SIDE
14 BAR, COUNSEL FOR THE STATE, MS. WILLIAMS, AS WELL AS MS.
15 KENNEDY AND MR. SHELTON APPROACHED. I INQUIRED AS TO THE
16 BASIS OF MR. SHELTON'S OBJECTION AND HE STATED AS TO
17 TIMEFRAME. I REQUESTED THAT MS. WILLIAMS LAY A MORE
18 PROPER FOUNDATION.

19 BASED UPON MY READING OF THE CASE LAW, IT DOES NOT
20 MATTER IF IT IS ONE SECOND OR ONE HOUR, THERE IS NO
21 CLEARLY DELINEATED TIMEFRAME, ACCORDING TO CASE LAW.
22 MERELY THAT THE STATEMENT BE MADE WHILE RELATING TO A
23 STARTLING EVENT WHILE THE DECLARANT WAS UNDER THE STRESS
24 OF THE EXCITEMENT.

25 BASED UPON THE TESTIMONY GIVEN TO AT -- BY LT.

1 BAKER (SIC), THAT CLEARLY FITS WITHIN THE 803-2 EXCEPTION.
2 I NOTE YOUR OBJECTION, AGAIN, FOR THE RECORD.

3 JUST AS HOUSEKEEPING, IF WE COULD GET A BAG SO THAT
4 ALL OF NUMBER 20 IS CONTAINED SO THAT THERE'S -- BECAUSE I
5 THINK THERE'S ABOUT SIX PIECES. AND AS SOCKS TYPICALLY
6 DO, SOCKS DISAPPEAR. SO, IF WE COULD GO AHEAD, MR. HARP,
7 IF YOU WILL ASSIST TO GET A TRASH BAG AND GET EVERYTHING
8 BAGGED UP. WE WILL TAKE -- WE WILL TAKE A 15 MINUTE
9 RECESS. IF YOU COULD BE BACK -- PLEASE, EVERYONE, THIS IS
10 THE CLOCK. SO, YOU NEED TO BE BACK IN YOUR SEATS READY TO
11 GO AT 3:15. THANK YOU.

12 (WHEREUPON, COURT RECESSED AT 3:00.)

13 (WHEREUPON, COURT RECONVENED AT 3:14.)

14 THE COURT: THANK YOU. BE SEATED. ANYTHING BEFORE
15 WE BRING IN THE JURY?

16 MS. WILLIAMS: NOTHING FROM THE STATE, YOUR HONOR.

17 MR. SHELTON: NOT AT THIS TIME, YOUR HONOR.

18 THE COURT: ALL RIGHT. MS. WILLIAMS, WHO IS YOUR
19 NEXT WITNESS?

20 MS. WILLIAMS: WE WERE GOING TO CALL THE INMATES,
21 YOUR HONOR, JUST TO MAKE SURE WE GOT THROUGH THOSE TODAY.
22 SO, IT WOULD BE WILLIE STAGGERS.

23 THE COURT: ALL RIGHT. PLEASE RISE FOR THE JURY.

24 (WHEREUPON, JURY ENTERED THE COURTROOM AT 3:22
25 P.M.)

1 **THE COURT:** THANK YOU. YOU MAY BE SEATED. CALL
2 YOUR NEXT WITNESS.

3 **MS. WILLIAMS:** THE STATE CALLS WILLIE STAGGERS.

4 **THE CLERK:** RAISE YOUR RIGHT HAND, PLACE YOUR LEFT
5 HAND ON THE BIBLE.

6 WILLIE STAGGERS, JR., HAVING BEEN
7 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL AND
9 SPELL YOUR LAST NAME FOR THE RECORD.

10 **THE WITNESS:** MY FULL NAME IS WILLIE STAGGERS, JR.
11 LAST NAME, S-T-A-G-G-E-R-S.

12 **THE COURT:** MS. WILLIAMS.

13 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION BY MS. WILLIAMS:

15 **Q** MR. STAGGERS, WHERE DO YOU CURRENTLY RESIDE?

16 **A** MACDOUGALL CORRECTIONAL.

17 **Q** WHAT UNIT ARE YOU HOUSED IN?

18 **A** MAGGIE -- MAGNOLIA II, D.1.

19 **Q** WERE YOU IN THE MAG II UNIT BACK ON JANUARY 18,
20 2008?

21 **A** YES, MA'AM.

22 **Q** WHO WAS YOUR C.O. THAT NIGHT IF YOU REMEMBER?

23 **A** MS. ADAMS, OFFICER ADAMS.

24 **Q** DID YOU KNOW MS. ADAMS BEFORE?

25 **A** NO, MA'AM.

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

346

1 Q WAS SHE EVER ON A DIFFERENT UNIT THAT SHE MIGHT
2 HAVE COME IN CONTACT WITH YOU ON?

3 A YES, MA'AM. THEY ROTATED EVERY SIX MONTHS. AND
4 BECAUSE OF -- OF MY JOB, MY OCCUPATION AT THE INSTITUTION,
5 I HAD OCCASION TO SOMETIMES VISIT ANOTHER UNIT IN ORDER TO
6 GET INFORMATION OR CONVEY INFORMATION TO AN OFFICER.

7 Q WHAT KIND OF CORRECTIONS OFFICER WAS SHE?

8 A WELL, WE KNEW HER ALMOST FROM THE TIME SHE
9 STARTED THE UNIT BY HERSELF AS BEING VERY PROFESSIONAL,
10 DEFINITELY STRICT, AND NOT SOMEBODY TO PLAY GAMES WITH.

11 Q DO YOU REMEMBER THE LATE EVENING HOURS OF
12 JANUARY 17 AND INTO THE MORNING OF JANUARY 18TH OF 2008?

13 A AH, WELL, THE EVENING WAS -- WAS RELATIVELY
14 SMOOTH IN TERMS OF FROM THE TIME SHIFT CHANGED UNTIL AFTER
15 11:00. WE -- WE HAD NO -- NO MAJOR INCIDENTS IN THE DORM
16 TO EVEN REMEMBER. SHE DID HER JOB AS SHE ALWAYS DID. SHE
17 COME IN AND MADE SURE THE UNIT WAS SECURE AND THAT WE WERE
18 IN OUR EXPECTED BEHAVIOR. AND THEN I'D SAY SOMETIME AFTER
19 10:00, BUT BEFORE -- BEFORE THE 11:00 COUNT THAT EVENING,
20 THERE WAS A LOT OF ACTIVITY, MOVEMENT IN THE DORM, WHICH
21 WASN'T UNUSUAL TO SPEAK OF. BECAUSE USUALLY RIGHT BEFORE
22 FINAL SHUT DOWN TIME, EVERYBODY'S GOING TO THE RESTROOM,
23 GOING IN AND OUT OF THEIR ROOMS TO WATCH TV. MAYBE CATCH
24 THE LAST MINUTE OF THE 11:30 NEWS -- THE 11:00 NEWS OR
25 WHATEVER WHILE THE TV'S ARE STILL ON. AND THERE WAS JUST

1 A LOT OF MOVEMENT IN THE UNIT.

2 Q OKAY. CAN YOU SHOW THE JURY WHERE ABOUT -- THIS
3 IS A DIAGRAM OF THE UNIT -- IT'S UPSIDE DOWN -- I DON'T
4 KNOW IF YOU CAN ORIENT YOURSELF AS TO WHAT THIS IS -- CAN
5 YOU SEE THAT THAT IS A DIAGRAM OF THE C AND D SIDE OF MAG
6 II UNIT?

7 A YES, MA'AM.

8 Q CAN YOU SHOW THE JURY -- IS THERE A LASER
9 POINTER STILL UP HERE -- I'M GOING TO GIVE YOU A POINTER.
10 AND IF YOU CAN JUST POINT TO WHERE YOUR CELL WAS.

11 A ALL RIGHT. MY CELL IS RIGHT THERE. D 1.

12 Q OKAY. AND ARE YOU FAMILIAR WITH WHO GEORGE
13 SALISBURY IS?

14 A YES, MA'AM.

15 Q DO YOU SEE HIM HERE?

16 A YES, MA'AM.

17 Q OKAY. CAN YOU JUST POINT HIM OUT?

18 A RIGHT THERE IN THE MIDDLE.

19 Q WHERE WAS MR. SALISBURY'S CELL ON THAT?

20 A HIS CELL WAS DOWN NEAR THE END OF THE HALL, ON
21 THE SAME SIDE OF THE HALL AS MINE, BUT CLOSER TO THE END.

22 Q TOWARD THE END -- GO AHEAD.

23 A AS A MATTER OF FACT, ACTUALLY THIS SIDE OF THE
24 BUILDING HERE.

25 Q OKAY. DID YOU SEE MR. SALISBURY DOING ANYTHING

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

348

1 UNUSUAL WHILE YOU WERE IN YOUR CELL THAT NIGHT?

2 A WELL, I -- BECAUSE OF THE LOCATION OF MY CELL, I
3 HAVE OCCASION TO MONITOR THE MOVEMENTS UP AND DOWN THE
4 HALL AT NIGHT, AND OFTEN DURING THE DAY. BECAUSE THAT'S,
5 YOU KNOW, WHERE I'M LOCATED, IT CAN EASILY BECOME A REAL
6 HANG-OUT SPOT. IT'S A COMMON AREA. THE TELEPHONES ARE
7 NEAR ME. AND THE -- THE ACTIVITIES ARE HIGHER IN THAT
8 AREA THAN ANY OTHER PLACE IN THE DORM. AND FOR MR.
9 SALISBURY, HE EARLY ON DID NOTHING MORE THAN WHAT ANYBODY
10 ELSE DID IN TERMS OF WALK BETWEEN HIS ROOM AND THE
11 RESTROOM. BUT AS THE EVENING WORE ON, I NOTICED THAT HE
12 STARTED SPENDING MORE TIME AT THE CORNER OF MY CUBE, JUST,
13 YOU KNOW, STANDING STILL, LOOKING OFF TOWARDS THE WING
14 DOOR, WHICH WOULD BE RIGHT ABOUT HERE.

15 Q SO, HE WAS LOOKING TOWARDS THE OFFICE?

16 A YEAH. IN THAT DIRECTION. BECAUSE ME AND HIM,
17 UP UNTIL THAT POINT, WERE ALWAYS ON GOOD TERMS FROM THE
18 TIME I MET HIM, I DIDN'T FEEL, SAY, AT UNEASE ABOUT HIM
19 PERSONALLY, YOU KNOW, VERSUS ANYBODY. MOST OTHER PEOPLE
20 MADE ME FEEL THAT UNEASE, SO I ALWAYS, YOU KNOW, ASKED
21 THEM TO LEAVE, YOU KNOW. JUST DON'T STAND NEXT TO ME AND
22 MAKE ME UNCOMFORTABLE. BUT WITH HIM, I DIDN'T FEEL THAT.
23 I DIDN'T SENSE ANYTHING UNUSUAL EXCEPT THAT, YOU KNOW, HE
24 DID AT ONE POINT, TO MY NOTICE, SPEND MORE TIME THAN I
25 THOUGHT SOMEBODY NORMAL WOULD, BUT I DIDN'T HAVE ANY

1 THINKING -- ANY OTHER THOUGHTS ABOUT IT, JUST TO KEEP MY
2 EYE ON HIM.

3 Q AND AS YOU WERE KEEPING YOUR EYE ON HIM, WHAT
4 DID YOU OBSERVE THAT HE DID AFTER HE WAS LINGERING BY
5 THE---

6 A WELL, HE WOULD LEAVE AND GO INTO THE RESTROOM
7 AND MAYBE STAY IN THERE A MOMENT OR TWO, AND THEN COME
8 BACK OUT. AND GO BACK DOWN TO HIS CUBE AND THEN COME BACK
9 UP. GO THROUGH THE WING DOORS TO THE OTHER SIDE OF THE
10 BUILDING TO C SIDE AND THEN COME BACK THROUGH AGAIN AND
11 THEN PAUSE. AND JUST STAND AROUND. AND, YOU KNOW, THAT'S
12 WHAT REALLY CAUGHT MY ATTENTION. I -- I HAD TO ASK MYSELF
13 AT ONE POINT, WHAT'S HE DOING. YOU KNOW, WHY IS HE JUST
14 WALKING THROUGH THE DOOR LIKE THAT. BECAUSE THE WING
15 DOORS, IF YOU DON'T HOLD IT, IT -- IT BANGS REAL LOUD WHEN
16 IT SHUTS. AND THAT GETS TO BE DISTURBING CONSIDERING MY
17 CLOSENESS TO IT. AND I HAD TO START ASKING MYSELF, WHY IS
18 HE LETTING THAT DOOR SHUT SO HARD LIKE THAT. AND WHAT --
19 I DIDN'T NEVER SAY ANYTHING.

20 Q WHAT HAPPENED NEXT?

21 A WELL, 11:00 COMES AND OFFICER ADAMS, SHE
22 ANNOUNCES IN THE UNIT THAT IT WAS COUNT TIME. AND, YOU
23 KNOW, USUALLY THAT'S AN INFORMAL COUNT, SO WE JUST -- IF
24 WE'RE UP, WE JUST GO TO OUR CUBES AND STAND STILL FOR A
25 MOMENT OR TWO BECAUSE IT'S A QUICK WALK THROUGH COUNT.

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

350

1 AND SHE DID THAT. AND SHE WENT BACK IN THE OFFICE LIKE
2 SHE NORMALLY DID MOST NIGHTS THAT SHE WORKED. BECAUSE
3 THEY HAVE TO LISTEN FOR WHAT'S GOING ON IN THE UNIT, SHE
4 DIDN'T SHUT THE OFFICE DOORS COMPLETELY. SHE SAT DOWN AND
5 STARTED READING HER BOOK.

6 AND THEN I NOTICED MR. SALISBURY, HIS ACTIVITIES
7 BETWEEN HIS CUBE AND THE RESTROOM INCREASED. AND, YOU
8 KNOW, HIS BODY LANGUAGE CHANGED A LITTLE BIT. AND AT ONE
9 POINT, HE LEFT FOR A LITTLE WHILE, MAYBE FIVE OR TEN
10 MINUTES. THEN HE CAME BACK. HE STOOD ON THE CORNER BY MY
11 CUBICLE. HE JUST STOOD THERE. AND HE LOOKED TOWARDS ME
12 BECAUSE I WAS LAYING ON MY BUNK, BUT HE DIDN'T KNOW THAT I
13 WAS AWAKE. WE DIDN'T SPEAK. AND I'M WATCHING HIM WATCH
14 ME BUT THEN HE MOVES. AND HE GOES TO HIS CUBE. AND WHAT
15 I NOTICE NEXT IS -- IS A VERY FAST SHIFTY MOVEMENT, JUST A
16 BLUR GO PAST MY CUBE. AND IT DIDN'T TAKE ME A LOT TO
17 FIGURE OUT THAT THAT WAS GEORGE JUST RUN PAST ME. I
18 WONDERED WHY HE'S RUNNING LIKE THAT.

19 Q CAN YOU SHOW THE JURY WHERE HE RAN TO?

20 A WELL, WHEN HE RAN DOWN THE HALL, HE SHOT PAST MY
21 CUBE AND HE WENT INTO THIS DOOR RIGHT HERE OF THE OFFICE.
22 AND I HEARD THAT DOOR SHUT. AND I COULD HEAR THE OTHER
23 DOOR ON THE C SIDE SHUT. AND I DIDN'T THINK ANYTHING, BUT
24 I KNEW -- I SAID, WELL, MAYBE, YOU KNOW, HE NEEDED TO GO
25 TALK TO HER OR SOMETHING AND SHE PROBABLY SHUT THE DOOR

1 AND WENT OUTSIDE THE OFFICE TO TALK TO HIM OR WHATEVER THE
2 CASE WAS. BECAUSE SOMETIMES THAT HAPPENS, YOU KNOW,
3 BECAUSE THE OFFICERS ARE -- TO MY KNOWLEDGE, NOT SUPPOSED
4 TO BE ONE-ON-ONE IN THAT OFFICE WITH THE DOORS SHUT WITH
5 AN INMATE, UNLESS THERE'S ANOTHER OFFICER PRESENT.

6 SO, I SAID, WELL, MAYBE SHE, YOU KNOW, WENT OUT THE
7 OFFICE REAL QUICK. AND SO I JUST WAITED. AND I'M
8 LISTENING TO THE OTHER MOVEMENTS IN THE UNIT BECAUSE THERE
9 ARE OTHER INMATES STILL UP.

10 AND I'D SAY RIGHT AT ABOUT FIVE AFTER -- FIVE OR
11 TEN MINUTES AFTER 11:00, ANOTHER INMATE YELLS, HE SAYS
12 "Y'ALL COME AND HELP, HE'S RAPING HER".

13 MR. SHELTON: OBJECTION.

14 THE COURT: HOLD ON ONE SECOND, MR. STAGGERS.
15 STATE YOUR OBJECTION.

16 MR. SHELTON: HEARSAY.

17 THE COURT: SUSTAINED.

18 MS. WILLIAMS: WOULD THE COURT ALLOW ME TO LAY A
19 FOUNDATION?

20 THE COURT: IF COUNSEL WILL APPROACH.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
22 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
23 THE HEARING OF THE JURY, OFF THE RECORD.)

24 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I
25 HAVE A REQUEST AND INSTRUCT YOU THAT YOU MUST DISREGARD

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

352

1 THIS WITNESS' LAST RESPONSE TO THE QUESTION FROM MS.
2 WILLIAMS. I HAVE DETERMINED THAT IT IS NOT PROPER
3 EVIDENCE AND YOU MUST DISREGARD IT AND NOT CONSIDER FOR
4 ANY PURPOSE DURING YOUR DELIBERATIONS. MS. WILLIAMS.

5 MS. WILLIAMS: THANK YOU, YOUR HONOR.

6 BY MS. WILLIAMS:

7 Q WITHOUT SAYING WHAT THEY SAID, CAN YOU JUST
8 DESCRIBE -- PICK UP YOUR STORY AND DESCRIBE WHAT YOU SAW?

9 A ALL RIGHT. WELL, WE WERE -- YOU KNOW, THERE WAS
10 A YELL IN THE UNIT THAT, YOU KNOW, THE OFFICER NEEDED
11 HELP. AND SO, YOU KNOW, ALL WE DID -- ME AND A HAND FULL
12 OF OTHER PEOPLE, WE -- WE WERE VERY QUICK IN RESPONDING TO
13 THE OFFICE. BOTH DOORS WERE SHUT, OF COURSE. WE COULDN'T
14 GET IN. AND THE D SIDE DOOR CLOSEST TO ME, WHEN I COME
15 OUT OF MY CUBE RUNNING, THERE WAS ALREADY THREE OR FOUR
16 INMATES AT THAT DOOR, BANGING ON THE WINDOW OF THE OFFICE
17 AND THE DOOR, TRYING TO GET IN ON THAT SIDE.

18 AND I DETERMINED WHAT -- YOU KNOW, MEANS FOR ME TO
19 GET IN OR TRY TO GET IN WOULD BE TO GO THROUGH THE C SIDE
20 DOOR. BECAUSE YOU CAN SEE THERE'S A LOT OF GLASS, YOU
21 KNOW, RUNNING ALONG THE OFFICE. AND YOU CAN SEE TO THE
22 OTHER SIDE. AND I SAW ABOUT TWO OR THREE INMATES AT THAT
23 DOOR. SO, I SAID, "WELL, THAT WOULD BE FOR THE BEST AREA
24 FOR ME TO GO IN".

25 AND WHEN I GOT THROUGH THE WING DOORS AND COME

1 AROUND THE CORNER RIGHT HERE, THERE WAS AN INMATE KICKING
2 THAT DOOR. AND HE FINALLY KICKED IT IN. AND WE ALL JUST
3 KIND OF LIKE ALMOST FELL ON EACH OTHER STUMBLING IN REAL
4 FAST.

5 AND WE GOT TO THE RESTROOM DOOR, THAT WAS SHUT.
6 AND THE SAME INMATE WHO KICKED THE STEEL DOOR IN, HE
7 KICKED THE RESTROOM DOOR IN. HE KNOCKED THAT ALMOST OFF
8 THE HINGES.

9 AND WHEN WE WENT IN, RIGHT AWAY WE NOTICED MR.
10 SALISBURY UP AGAINST THE WALL, NEAR THE DOOR INSIDE THE
11 RESTROOM. WE DIDN'T SEE THE OFFICER YET. WE DIDN'T KNOW
12 WHERE SHE WAS. AND THERE WAS, YOU KNOW, JUST A CLAMOR --
13 A CLAMOROUS ATTEMPT TO GET MR. SALISBURY OUT OF THE
14 RESTROOM.

15 AND IN THE PROCESS, I WAS PART OF THAT GROUP TRYING
16 TO REACH IN TO HELP PULL HIM OUT. I ENDED UP GETTING
17 SHOVED BACK OUT OF THE WAY. AND I ENDED UP STANDING RIGHT
18 HERE -- THERE'S A FILE CABINET RIGHT THERE AGAINST THAT
19 WALL.

20 SO, I WAS STANDING THERE AND I WAS OBSERVING WHAT
21 ELSE IS HAPPENING. AND WITHIN ABOUT FIVE MINUTES, OFFICER
22 ADAMS COMES OUT OF THE RESTROOM. SEE, I DON'T THINK SHE
23 KNEW THAT ANYBODY WOULD BE STANDING THERE. AND SHE RUNS
24 OUT AND SHE RUNS INTO ME. AND RECOGNIZES ME RIGHT AWAY,
25 SHE CALLS ME BY NAME, SHE SAID, "HELP". AND I -- I

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

354

1 NOTICED HER, YOU KNOW, PHYSICAL STATE OF UNDRESS. SO, THE
2 ONLY THING TO MY MIND WAS THAT SHE NEEDED TO BE OUT OF
3 THAT OFFICE, BUT FIRST SHE NEEDED TO BE COVERED UP AS
4 QUICK AS POSSIBLE. BECAUSE BY THEN, THERE WAS A LOT OF
5 PEOPLE IN THE DOORWAY AND IN THE WINDOWS TRYING TO SEE
6 WHAT WAS GOING ON IN THE OFFICE.

7 Q CAN YOU DESCRIBE WHAT HER PHYSICAL STATE OF
8 UNDRESS WAS?

9 A WELL, SHE WAS NUDE FROM THE WAIST DOWN. YOU
10 KNOW, SHE HAD A T-SHIRT, A WHITE T-SHIRT AND THAT WAS IT.
11 AND -- BUT SHE, YOU KNOW, WITH AS MUCH OF THE T-SHIRT AS
12 SHE COULD, SHE, YOU KNOW, KEPT HERSELF FAIRLY COVERED.
13 AND I DISROBED AS MUCH AS I COULD AND HANDED HER MY
14 CLOTHING TO -- TO COVER UP A LITTLE MORE COMPLETELY.

15 AT THAT POINT, I INSTRUCTED HER, I SAID, "YOU NEED
16 TO STEP OVER HERE TO MY RIGHT", AND I SORT OF GUIDED HER,
17 YOU KNOW, TO THE CORNER BEHIND ME. AND AT FIRST, SHE WAS
18 JUST STANDING -- AND I SAID, "NO, THAT'S -- THAT'S TOO
19 VISIBLE". I INSTRUCTED HER TO SIT DOWN LOW BECAUSE THE --
20 ON THE FLOOR. AND SHE JUST SAT THERE FOR A MOMENT AND I
21 CONTINUED TO TRY TO FIGURE OUT WHAT I COULD DO TO HELP HER
22 GET OUT.

23 Q WHAT WAS HER DEMEANOR LIKE?

24 A WELL, SHE WAS -- YOU KNOW, AFRAID, DEFINITELY
25 AFRAID. YOU KNOW, JUST YELLING FOR HELP. NOT SCREAMING,

1 BUT JUST REALLY REPEATEDLY, YOU KNOW, "PLEASE HELP.
2 PLEASE HELP, OH, GOD, PLEASE HELP". AND I LOOKED AT HER
3 AND I SAID, "YOU'RE GOING TO BE ALL RIGHT. WE'RE GOING TO
4 GET YOU OUT OF HERE". AND I SAID, "I JUST GOT TO FIND A
5 WAY TO DO THAT." BECAUSE THE DOORWAY, THE C SIDE DOORWAY
6 RIGHT HERE HAD SO MANY INMATES JAMMED IN THE -- YOU KNOW,
7 IN THE WAY -- THAT I KNEW I COULDN'T GO BACK OUT THROUGH D
8 SIDE DOOR BECAUSE THERE WAS A LOT OF BROKEN GLASS ON THAT
9 SIDE AND ALREADY -- BLOOD WAS ALL OVER THE FLOOR. AND, I
10 SAID, WELL, SHE IS BAREFOOT. I'M BAREFOOT. I AIN'T
11 FIXING TO WALK THROUGH THAT GLASS AND BLOOD, BUT I HAVE
12 GOT TO GET HER OUT OF THIS OFFICE AND THEN -- THEN, YOU
13 KNOW, GET A BETTER HANDLE ON EVERYTHING ELSE THAT IS GOING
14 ON.

15 SO, I SAW INMATE SIMMONS. HE JUST BRIEFLY STUCK
16 HIS HEAD IN THE DOOR AND THAT WAS A FACE FRIENDLY ENOUGH
17 FOR ME TO CALL FOR HELP. AND I HAD MS. ADAMS SLIDE
18 FORWARD TO THE OPENING, JUST ENOUGH TO WHERE CHRIS COULD
19 REACH UNDER AND PICK HER UP. I SAID, "DON'T LET HER WALK.
20 JUST LIFT HER AND CARRY HER IN THE DAY ROOM AND KEEP HER
21 COVERED AND -- AND ANYBODY THAT'S IN THERE, RUN THEM OUT.
22 DON'T LET NOBODY ELSE BE IN THAT DAY ROOM UNTIL I COME
23 BACK".

24 AND SO WE DID THAT, THERE WAS SO MUCH ELSE GOING ON
25 THAT I DIDN'T KNOW WHAT TO DO, JUST, YOU KNOW, JUST REALLY

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

356

1 TRY TO KEEP AN EYE ON THINGS AND SEE IF I COULD FIGURE OUT
2 A WAY TO HELP THE OTHER INMATES WHO ARE ATTEMPTING TO CALL
3 FOR HELP. BECAUSE WE HAD ONE INMATE WITH HER WALKIE
4 TALKIE TRYING TO FIGURE OUT HOW TO USE IT TO CALL FOR
5 HELP. ANOTHER INMATE, HE THOUGHT -- HE SAID, WELL, JUST
6 TAKE THE PHONE OFF THE HOOK BECAUSE SOMEBODY UP FRONT
7 SHOULD BE ABLE TO HEAR -- GET THE SIGNAL THAT THERE'S
8 DANGER IN THE DORM. AND -- AND NONE OF THOSE ATTEMPTS
9 WORKED. YOU KNOW, FROM OUR RECOLLECTION, IT TOOK A LONG
10 TIME FOR ANYBODY TO SHOW UP.

11 AND SO -- I'M STANDING IN THE OFFICE AND I HAPPEN
12 TO LOOK IN THE DAY ROOM AGAIN, THE C SIDE DAY ROOM RIGHT
13 HERE, AND I SEE OFFICER ADAMS SITTING ON THE FLOOR. AND I
14 -- I THOUGHT, WHY THEY GOT HER ON THE FLOOR. THEY NEED TO
15 PUT HER ON THE BENCH AND IN THE CORNER, AWAY FROM WHERE
16 PEOPLE CAN SEE HER.

17 SO, I WENT BACK IN THE DAY ROOM AND TO CHECK ON
18 THAT SITUATION. I INSTRUCTED MR. SIMMONS, I SAID PLEASE
19 GET HER OFF THE FLOOR, PUT HER BACK ON THE BENCH AND OUT
20 OF THE WAY WHERE NOBODY CAN SEE HER. AND I TURNED AROUND,
21 YOU KNOW, AND SHE GRABBED MY ARM. AND SHE SAID,
22 "STAGGERS, PLEASE GO BACK IN THERE AND DON'T LET THEM KILL
23 HIM. Y'ALL -- DON'T LET THEM KILL HIM." SHE SAID, "STOP
24 IT. BECAUSE IF THAT HAPPENS, Y'ALL ALL WILL GET IN
25 TROUBLE." AND ON HER INSTRUCTIONS, THAT'S WHAT I DID.

1 AND I RAN IN. AND WHEN I RAN IN THE OFFICE, THERE WAS
2 ABOUT THREE OR FOUR INMATES MOVING IN ON MR. SALISBURY. I
3 JUMPED IN THE MIDDLE -- BECAUSE ONE INMATE HAD A BROKEN
4 MOP HANDLE. AND I COME IN BETWEEN THE TWO OF THEM. AND
5 MR. SALISBURY ENDED UP IN THE CORNER TO MY RIGHT, BEHIND
6 ME. AND, YOU KNOW, THERE IS TEN -- TEN OR SO PEOPLE IN
7 FRONT OF ME. AND EVERYBODY IS LOOKING AT ME LIKE, YOU
8 KNOW, I'M THE MOST FOREIGN OBJECT IN THE WORLD WHEN I
9 SAID, "Y'ALL STOP. DON'T HIT HIM NO MORE. PLEASE. SHE
10 SAID -- SHE SAID DON'T -- DON'T KILL HIM. JUST LEAVE".

11 AND RIGHT ABOUT THAT TIME, SGT. WILLIAMS APPEARS AT
12 THE DOOR. AND SOMEBODY YELLS, "THERE'S A WHITE SHIRT
13 OUTSIDE". AND EVERYBODY RUNS AND LEFT ME IN THE OFFICE BY
14 MYSELF WITH MR. SALISBURY.

15 Q WHAT WAS HER CONCERN, IF YOU KNOW, ABOUT HIM
16 BEING BEAT UP?

17 A HER CONCERN WAS THAT IF HE ENDED UP BEING BEATEN
18 TO DEATH, THEN WE'D ALL BE IN TROUBLE. AND SHE SAID THAT
19 -- SHE TOLD ME, SHE SAID, "DON'T -- DON'T LET THEM KILL
20 HIM, YOU KNOW, BECAUSE Y'ALL ALL WILL GET IN TROUBLE IF
21 THAT HAPPENS."

22 MS. WILLIAMS: THE COURT'S INDULGENCE, YOUR HONOR.

23 THE COURT: YES, MA'AM.

24 BY MS. WILLIAMS:

25 Q DID YOU NOTICE IF SHE HAD ANYTHING WITH HER?

WILLIE STAGGERS -- DIRECT BY MS. WILLIAMS

358

1 A NO, MA'AM. NO, MA'AM.

2 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THE
3 DEFENSE MIGHT HAVE. THANK YOU, MR. STAGGERS.

4 THE COURT: MS. KENNEDY.

5 MS. KENNEDY: THANK YOU, YOUR HONOR.

6 CROSS EXAMINATION BY MS. KENNEDY:

7 Q MR. STAGGERS, GOOD AFTERNOON.

8 A GOOD AFTERNOON, MA'AM.

9 Q NICE TO SEE YOU AGAIN. JUST SO EVERYONE IS
10 CLEAR, YOU AND I JUST MET FOR THE FIRST TIME YESTERDAY
11 AFTERNOON, RIGHT?

12 A YES, MA'AM.

13 Q AND WE REVIEWED SOME OF THE TESTIMONY OR
14 DISCUSSED THE INFORMATION THAT YOU -- THAT YOU WERE GOING
15 TO PROVIDE TO THE COURT TODAY, CORRECT?

16 A YES, MA'AM.

17 Q NOW, JUST SO WE UNDERSTAND AND HAVE A CLEAR
18 PICTURE -- OR THE JURY DOES, BECAUSE I ADMITTEDLY DIDN'T
19 UNDERSTAND UNTIL Y'ALL EXPLAINED IT TO ME, WHEN YOU HAVE
20 -- WHEN YOU'RE IN THE DEPARTMENT OF CORRECTIONS, THEY HAVE
21 HEAD COUNT AROUND---

22 A I---

23 Q SHIFT CHANGE AROUND 7:00, RIGHT?

24 A AT SHIFT CHANGE, THERE'S USUALLY -- THE ONLY
25 THING THE OFFICERS DO IS -- DURING A SHIFT CHANGE IS THEY

1 CHECK THE LOG BOOK WHEN THEY COME IN. AND WHATEVER THEY
2 HAVE TO WRITE IN THAT BOOK, THEY WRITE IT IN. THE
3 IN-GOING -- THE IN-COMING OFFICER AND THE OUT-GOING
4 OFFICER, THEY WRITE WHATEVER THEY'VE GOT TO WRITE IN THAT
5 BOOK.

6 AND THEN SHORTLY THEREAFTER, THE OFFICER WOULD DO A
7 TOUR, A QUICK TOUR OF THE UNIT. CHECK ALL OF THE DOORS,
8 THE EXITS, AND STUFF LIKE THAT TO MAKE SURE THE DOORS ARE
9 SECURE. AND THEN THEY WOULD JUST DO A GENERAL OBSERVANCE
10 OF WHAT'S GOING ON IN THE DORM. AND THEN THEY GO BACK TO
11 SITTING DOWN AND MAYBE DOING MORE WORK, MORE PAPERWORK,
12 GOING OVER THEIR PAPERWORK FOR THE EVENING, TO CHECK TO
13 SEE IF THEY HAVE ANYBODY LEAVING OUT. TO CHECK THE WORK
14 ROSTERS AND SO ON AND SO FORTH. AND THAT'S ABOUT IT, BUT
15 COUNT TIME ---

16 Q BUT -- I -- I DIDN'T WANT TO INTERRUPT YOUR
17 ANSWER, MR. STAGGERS, SO MAYBE I CAN -- THE SHIFT CHANGE
18 IS AT 7:00?

19 A YES, MA'AM.

20 Q THERE'S A HEAD COUNT AT 7:00?

21 A THERE'S A HEAD COUNT AT---

22 Q 7:30?

23 A A ROLL CALL HEAD COUNT AT 9:00.

24 Q OKAY.

25 A AT 9:00 AT NIGHT.

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

360

1 Q AND WHAT HAPPENS AT THE ROLL CALL HEAD COUNT?

2 A THAT'S WHERE WE JUST PRESENT OUR I.D.'S. AND THE
3 OFFICER HAS A ROSTER OF EVERYBODY IN THE DORM, THEY MARK
4 IT OFF, WHO WAS PRESENT.

5 Q DO YOU -- DO YOU STAND IN FRONT OF YOUR CUBICLE?

6 A YES, MA'AM.

7 Q OKAY.

8 A WE STAND IN THE CUBE IN FRONT OF OUR LOCKERS.

9 Q IN FRONT OF YOUR LOCKERS. SO THAT IF I WERE THE
10 CORRECTIONS OFFICER AND THIS IS YOUR CUBE, I WOULD WALK
11 DOWN AND I'D SAY INMATE STAGGERS OR?

12 A I---

13 Q ---DO THEY CALL OUT YOUR NAME?

14 A NO, MA'AM. I'D CALL OUT MY NAME AND NUMBER TO
15 YOU.

16 Q OKAY. ALL RIGHT. AND I WOULD GO ON DOWN AND
17 THEN COME BACK UP AND GO ON DOWN AND COME BACK UP--

18 A YES, MA'AM.

19 Q ---UNTIL I'D -- UNTIL I'D ACCOUNTED FOR ALL THE
20 48 PEOPLE IN C. AND THEN I WOULD GO TO D OR MAYBE VICE
21 VERSA?

22 A YES, MA'AM.

23 Q AND THEN AT THAT POINT IN TIME, YOU ALL ARE FREE
24 TO READ, WATCH TV?

25 A NO, MA'AM. NOT DURING THE 9:00 COUNT.

1 Q OKAY.

2 A WE -- WE'RE ONLY -- WE'RE NOT SUPPOSED TO READ,
3 LISTEN TO RADIOS, HAVE ANY GEAR ON -- PRACTICALLY NOT EVEN
4 LAY BACK DOWN UNTIL THE COUNT IS CLEAR.

5 Q OKAY. SO, -- SO WHAT ARE YOU ALLOWED TO DO
6 BETWEEN 7:00 AND 9:00 WHEN THEY DO THE FIRST---

7 A BETWEEN 7:00 AND 9:00, IF WE HAVE -- SAY, FOR
8 INSTANCE, TONIGHT FOR ME I GO TO CHAPEL -- FOR CHAPEL
9 SERVICES. MY STUDIES CLASSES AND SO ON AND SO FORTH. AND
10 THERE WOULD BE A PILL LINE, A CALL FOR PEOPLE WHO NEED
11 MEDICATION. IF THERE'S ANYBODY HAVING TO GO TO SCHOOL,
12 THEY WOULD ALREADY BE IN SCHOOL BY THE TIME SHIFT CHANGES.
13 BUT THE EVENING UP UNTIL 9:00 IS PRETTY MUCH, YOU KNOW,
14 WE'RE IN DORM RECREATIONAL ACTIVITIES.

15 Q SO, YOU'RE -- YOU'RE FREE TO MOVE ABOUT?

16 A ALL OVER THE DORM.

17 Q ALL OVER HERE IN THE DAY ROOM?

18 A YES, MA'AM.

19 Q WATCH TV?

20 A YES, MA'AM.

21 Q PLAY CARDS?

22 A YES, MA'AM.

23 Q BUT YOU'RE NOT ALLOWED TO USE EITHER ONE OF
24 THESE DOORS TO GO OUT ON THE YARD?

25 A NO, MA'AM.

1 Q OKAY. ALL RIGHT. AND, SO -- AND THEN AFTER
2 THAT, WHAT HAPPENS?

3 A AFTER THE 9:00 COUNT?

4 Q YES, SIR.

5 A WE CAN GO BACK TO OUR NORMAL DORM -- IN DORM
6 ACTIVITIES UNTIL ITS LIGHTS OUT AT 10:00 ON THE WEEK
7 NIGHTS. AND ON THE WEEKENDS, IT'S ALL NIGHTER. YOU KNOW,
8 WE NEVER GO TO BED ON THE WEEKENDS.

9 Q OKAY. SO, WHEN YOU SAY "DORM ACTIVITIES", DO
10 THOSE REQUIRE YOU TO STAY IN YOUR CUBE?

11 A NO, MA'AM.

12 Q OR YOU'RE REQUIRED -- YOU'RE ALLOWED TO GO IN
13 THE DAY ROOM?

14 A WE'RE ALLOWED IN THE DAY ROOMS, VISIT SOMEBODY
15 ELSE IN HIS CUBE. SHOWERS BECAUSE WE HAVE SHOWERS AND
16 EVERYTHING. BECAUSE BY 7:00, THE REC YARD IS ALREADY --
17 ALREADY CLOSED AND WE'RE LOCKED IN UNLESS WE HAVE SOME
18 PLACE TO GO. BUT WE'RE LOCKED IN THE DORM FOR THE REST OF
19 THE NIGHT. AND WE JUST HAVE RECREATIONAL ACTIVITIES IN
20 THE DORM.

21 Q OKAY. SO, IS THERE -- AND THERE'S ANOTHER HEAD
22 COUNT AT WHAT TIME?

23 A THE -- THIS TIME OF YEAR HERE, WE HAVE INFORMAL
24 COUNT AT 6:30, BETWEEN 6:00 AND 6:30 RIGHT NOW. BUT WHEN
25 THE SUMMER TIME COMES, WE WON'T HAVE THAT COUNT.

1 Q OKAY.

2 A BECAUSE THE YARD CLOSES EARLY AND THEY DO LIKE
3 WHAT THEY CALL -- A PRECOUNT.

4 Q RIGHT.

5 A YOU KNOW, A RECALL COUNT. AND THAT'S -- THAT'S
6 REALLY INFORMAL. BUT ONCE IT'S DONE, WE GO BACK TO DOING
7 WHAT WE NORMALLY DO UNTIL 9:00.

8 Q AND THEN AT 9:00---

9 A WE HAVE THE ROLL CALL COUNT.

10 Q OKAY. AND THEN LIGHTS OUT AT WHAT TIME?

11 A LIGHTS ARE OUT AT 10:00 MONDAY THROUGH
12 THURSDAYS, BUT THE TV'S GO OFF AT 11:30 EVERY NIGHT.

13 Q SO -- SO, WHEN YOU SAY LIGHTS OUT, WE'RE NOT
14 TALKING ABOUT TOTAL DARKNESS, RIGHT?

15 A NO, MA'AM.

16 Q LIGHTS -- YOU WOULD HAVE -- THERE WOULD BE SOME
17 LIGHTS?

18 A THERE WOULD BE LOCATED -- OF COURSE THE RESTROOM
19 LIGHTS ARE ON AT ALL TIMES.

20 Q OKAY.

21 A BUT ON THE HALLWAYS, YOU HAVE A LIGHT HERE AT
22 THE BACK DOOR, A LIGHT UP AT THE FRONT ON EACH SIDE.
23 THERE -- OUR RESTROOM LIGHTS ARE ON. THERE IS A LIGHT ON
24 IN THE OFFICE IF THE OFFICER CHOOSES TO KEEP THAT ON.
25 THEY HAVE A TABLE LAMP THAT THEY OFTEN HAVE ON AFTER

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

364

1 LIGHTS OUT. AND -- BUT YOU CAN -- THERE'S VISIBILITY IN
2 THE DORM.

3 Q RIGHT. BUT -- BUT -- YOU KNOW, IT'S LIKE USING
4 THESE OVERHEAD LIGHTS AS AN EXAMPLE?

5 A YEAH, WE HAVE THAT.

6 Q THEY WOULD BE DIM AND YOU WOULD ONLY HAVE A FEW
7 AFTER -- WHEN YOU'RE SUPPOSED TO HAVE LIGHTS OUT?

8 A THAT'S RIGHT.

9 Q OKAY. SO, THAT SOMEBODY WOULD BE ABLE TO SEE
10 MOVEMENT, BUT THE WHOLE -- THE WHOLE PART -- THE WHOLE
11 STRUCTURE WOULD NOT BE ENTIRELY ILLUMINATED?

12 A THAT'S RIGHT.

13 Q OKAY. ALL RIGHT. AND SO WHEN THIS -- AS I --
14 ACCORDING TO YOUR TESTIMONY, YOU WERE ALREADY AT LIGHTS
15 OUT AT THIS POINT IN TIME?

16 A UH-HUH.

17 Q WHEN THIS INCIDENT OCCURRED?

18 A YES, MA'AM.

19 Q OKAY. WAS THE LIGHT ON IN THE OFFICE?

20 A YES, MA'AM. THE LAMP.

21 Q WERE THE DOORS CLOSED TO THE OFFICE?

22 A NO, MA'AM. THEY WERE SHUT, BUT NOT LOCKED.
23 THEY WERE CLOSED, BUT NOT ALL THE WAY CLOSED. THEY
24 WEREN'T SECURE, BUT THEY WERE CLOSED.

25 MS. KENNEDY: YOUR HONOR, IF ---

1 A IN OTHER WORDS, IF I WANTED TO WALK IN, I COULD
2 WALK IN---

3 THE COURT: MR. STAGGERS, ONE SECOND.

4 MS. KENNEDY: YOUR HONOR, JUST FOR PURPOSES OF
5 ILLUSTRATION, MAY I WALK TO THIS DOOR AND ASK HIM -- SO I
6 CAN ASK HIM HOW WIDE IT WAS OPEN? JUST RIGHT HERE?

7 THE COURT: MY CONCERN IS I CAN'T SEE THAT DOOR.

8 MS. KENNEDY: OKAY.

9 THE COURT: CAN THE JURY -- I WANT TO MAKE SURE,
10 MADAM FOREPERSON, CAN ALL THE JURY SEE THAT DOOR?

11 (JURY NODDED IN UNISON IN THE AFFIRMATIVE.)

12 BY MS. KENNEDY:

13 Q MR. STAGGERS, WOULD YOU BE KIND ENOUGH TO STEP
14 DOWN FOR ME JUST A MINUTE, PLEASE? I KNOW THIS MIGHT BE A
15 LITTLE DIFFICULT. AND, MS. CROSS, LET ME KNOW IF WE'RE
16 NOT SPEAKING LOUD ENOUGH. IF THIS IS THE DOOR TO THE DORM
17 OFFICE, HOW -- HOW WIDE WAS IT OPEN, JUST TELL ME WHEN TO
18 STOP?

19 A THAT'S GOOD RIGHT THERE.

20 Q RIGHT THERE. SO, MAYBE ABOUT HALF-WAY OPEN?

21 A YES, MA'AM.

22 Q OKAY.

23 MS. KENNEDY: THANK YOU, YOUR HONOR.

24 BY MS. KENNEDY:

25 Q WERE YOU ABLE TO SEE WHETHER OR NOT BOTH DOORS

1 WERE OPEN LIKE THAT?

2 A I COULD SEE THE D SIDE DOOR OPEN LIKE THAT.

3 Q OKAY.

4 A YOU KNOW, BECAUSE FOR ME, WHERE I'M LOCATED, I'M
5 OFTEN UP MOST NIGHTS. I STUDY A LOT, SO I'M OFTEN UP WITH
6 MY LAMP ON ALL NIGHT. AND I GET UP EVERY SO OFTEN AND
7 WALK AND STRETCH AND MAYBE TO GO GET SOME WATER BECAUSE I
8 HAVE THE WATER FOUNTAIN RIGHT THERE NEXT TO ME. AND ONLY
9 IF I GO IN THE DAY ROOM, WOULD I NOTICE THE C SIDE DOOR
10 OPEN AS WELL.

11 Q MR. STAGGERS, I -- I -- I APPRECIATE THAT YOU'RE
12 TRYING REALLY HARD TO BE HELPFUL.

13 A YES, MA'AM.

14 Q BUT IF YOU WOULD JUST ANSWER THE QUESTION THAT I
15 ASK YOU, THAT WOULD---

16 A GOTCHA.

17 Q -- BE REAL HELPFUL TO ME.

18 A GOTCHA.

19 Q OKAY. THANK YOU, SIR. SO, WERE YOU ABLE TO SEE
20 WHETHER OR NOT THE DOOR WAS OPEN ON THE C SIDE THAT NIGHT,
21 FROM WHERE -- FROM YOUR CUBICLE?

22 A NO, MA'AM.

23 Q OKAY. ALL RIGHT. NOW, YOU SAID YOU WERE LAYING
24 IN YOUR BED READING?

25 A YES, MA'AM.

1 Q OKAY. WHEN DID YOU -- AND THERE WAS SOME SORT
2 OF COMMOTION?

3 A YES, MA'AM.

4 Q THAT YOU HEARD. TELL ME -- DESCRIBE TO ME WHAT
5 YOU MEAN BY SOME SORT OF COMMOTION?

6 A WELL, IT WASN'T LIKE, YOU KNOW, A BIG RACKET OF
7 NOISE, JUST -- JUST THE MOVEMENT OF BODIES. PEOPLE
8 MOVING. BECAUSE GUYS -- I -- I SAY THEY DON'T KNOW HOW TO
9 WALK IN SHOWER SHOES. THERE IS A LOT OF FEET DRAGGING
10 WHEN THEY WALK. AND THAT'S DISTURBING IF YOU'RE TRYING TO
11 REST. BECAUSE THAT'S ALL YOU HEAR IS THE SHOES SLIDING
12 ACROSS THE FLOOR.

13 Q OKAY.

14 A AND YOU CAN HEAR THAT ALL NIGHT.

15 Q RIGHT.

16 A SO, THAT'S THE KIND OF COMMOTION I MEAN WHEN I
17 SAY COMMOTION BECAUSE THAT'S USUALLY WHAT'S GOING ON.
18 IT'S EITHER THE -- THE DOOR SLAMMING, THAT WING DOOR
19 SLAMMING SHUT FOR PEOPLE GOING IN BETWEEN THE DAY ROOMS.
20 BECAUSE SOMETIMES A PERSON MIGHT SIT IN D SIDE DAY ROOM
21 AND WATCH TV OVER THERE, BUT IF HE WANTS TO GO TO C SIDE
22 FOR A LITTLE WHILE, SO HE'LL GET UP AND COME OUT OF THE
23 DAY ROOM AND LET THAT DOOR SHUT HARD. THEN THAT'S THE
24 KIND OF NOISE THAT GOES ON IN THE MIDDLE OF THE NIGHT.

25 Q AND WOULD YOU TELL ME -- BECAUSE YOU USED THE

1 PHRASE AND THE PHRASE HAS BEEN USED A NUMBER OF TIMES WING
2 DOOR, WHICH -- WHAT ARE YOU TALKING ABOUT EXACTLY?

3 A I'M SORRY. THIS DOOR RIGHT HERE. THAT'S THE
4 WING DOOR.

5 Q OKAY. SO THAT PEOPLE WHO ARE IN THE D UNIT,
6 THIS WOULD BE THEIR BATHROOM, THE ONE THEY'RE SUPPOSED TO
7 USE?

8 A YES, MA'AM.

9 Q AND THE SAME WOULD BE TRUE FOR THE -- ON THE
10 OTHER SIDE FOR C?

11 A YES, MA'AM.

12 Q BUT THERE'S A DOOR RIGHT THERE?

13 A YES, MA'AM.

14 Q IS THAT DOOR ALWAYS -- IS THAT OPEN OR CLOSED?

15 A IT DEPENDS ON US MOST OF THE TIMES. IF WE FEEL
16 LIKE WE WANT IT OPEN, WE'LL GO AHEAD AND PUT A STOPPER AT
17 IT AND LEAVE IT OPEN. IF WE WANT IT SHUT, YOU KNOW,
18 BECAUSE SOMETIMES THERE MIGHT BE TOO MUCH NOISE IN ONE
19 WING OR THE OTHER, AND IT CARRIES ALL THE WAY OVER THROUGH
20 THE WHOLE BUILDING. SO, SAY, IF I WAS PARTICULARLY
21 DISTURBED ABOUT THE NOISE COMING FROM C SIDE, I WOULD GET
22 OUT OF MY BED AND SHUT THAT DOOR. BUT IT'S NEVER LOCKED.

23 Q OKAY. BUT -- WHEN YOU HAVE LIGHTS OUT AND
24 THERE'S SUPPOSED BE A LULL IN THE ACTIVITY AND PEOPLE ARE
25 SUPPOSED TO BE GETTING READY FOR BED TO SLEEP FOR THE

1 NIGHT, IS THAT DOOR OPEN OR CLOSED?

2 A EITHER WAY. IT COULD BE OPEN OR CLOSED.

3 Q SO, THAT'S NOT A PROCEDURAL THING, IT'S JUST UP
4 TO THE INMATES AS TO WHETHER OR NOT IT CAN BE OPEN OR
5 CLOSED?

6 A IF THE OFFICER DECIDES THAT IT SHOULD BE SHUT,
7 THEN THE OFFICER WOULD SHUT IT AND LOCK IT IF THEY CHOSE
8 TO DO THAT. BUT OFTEN THAT DOOR IS JUST LEFT UNLOCKED.
9 IT COULD BE SHUT UNLOCKED OR IT CAN BE WIDE OPEN WITH A
10 STOPPER BY IT.

11 Q OKAY. DO YOU HAPPEN TO REMEMBER ON THIS
12 PARTICULAR NIGHT WHETHER THE DOOR WAS OPEN OR CLOSED?

13 A THAT DOOR WAS CLOSED THAT PARTICULAR NIGHT.

14 Q OKAY. AND THAT'S NOT ONE OF THOSE DOORS LIKE
15 THE -- THE OFFICE DOOR WHERE WHEN IT'S CLOSED, IT LOCKS?

16 A THAT'S RIGHT.

17 Q OKAY. ALL RIGHT. AND YOU SAY -- YOU INDICATED
18 THAT YOUR -- YOUR CUBE IS RIGHT HERE?

19 A RIGHT THERE, YES, MA'AM.

20 Q RIGHT THERE?

21 A YES, MA'AM.

22 Q OKAY. DO YOU -- WHERE WAS MR. SALISBURY'S CUBE?

23 A ROUND ABOUT HERE, NEAR THE END OF THE HALL.

24 Q NEAR THE END OF THE HALL?

25 A YES, MA'AM.

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

370

1 Q HOW MANY TIMES DID YOU SEE HIM GO UP AND DOWN
2 THE HALL THAT NIGHT?

3 A I'D SAY MORE THAN TEN AT LEAST.

4 Q BETWEEN WHAT HOURS?

5 A BETWEEN -- I NOTICED HIM AT -- SHORTLY AFTER
6 10:00, ALL THE WAY UP UNTIL THE INCIDENT OCCURRED.

7 Q AND WHAT WERE YOU DOING, YOU WERE STILL IN YOUR
8 CUBE?

9 A YES, MA'AM.

10 Q AND WHAT WERE YOU DOING IN YOUR CUBE?

11 A READING.

12 Q READING. SO, EACH TIME HE WALKED -- HE WALKED
13 PAST, YOU LOOKED UP AND YOU SAW HIM?

14 A YES, MA'AM. WELL, THE WAY IN WHICH I LAY --
15 HOLD MY BOOK, I HOLD MY BOOK IN A MANNER FOR ME TO BE ABLE
16 TO SEE EITHER UNDER OR OVER THE TOP OF IT, JUST FOR THE
17 PURPOSE OF BEING ABLE TO KNOW WHO IS STANDING ON THAT
18 CORNER BY MY CUBE. SOMETIMES, I DON'T -- I JUST HOLD THE
19 BOOK AND NOT READ AT ALL. AND I JUST LAY -- AND IF I'M
20 LAYING, I'LL JUST LAY THERE AND LISTEN A LOT TO WHAT'S
21 GOING ON IN THE UNIT FOR MY OWN SAFETY, YOU KNOW. I'M NOT
22 THE KIND OF PERSON TO GET IN A LOT OF TROUBLE FOR THAT.
23 WHY, I WOULD BE IN DANGER. BUT I RECOGNIZE THE FACT THAT
24 I'M INCARCERATED AND I'M IN A DORM WHERE THERE IS NO DOORS
25 TO SECURE ME IN MY CUBE. IF SOMEBODY CLIMBS OVER THAT

1 WALL, I WANT TO BE ABLE TO HEAR THAT.

2 Q AND, AGAIN, MR. STAGGERS, I REALIZE THAT YOU'RE
3 TRYING TO BE HELPFUL---

4 A I APOLOGIZE.

5 Q I UNDERSTAND. I UNDERSTAND. I'M NOT TRYING TO
6 -- BUT PRETTY SURE WE'RE GOING TO GET TO THE POINT WHERE
7 I'M GOING TO HAVE TO ASK THE JUDGE TO INTERVENE. AND THEN
8 I'M GOING TO BE IN TROUBLE. OKAY. ALL RIGHT. DID YOU
9 SEE BASED ON -- I MEAN, YOU -- WERE YOU ABLE TO OBSERVE
10 MR. SALISBURY ENTER THAT OFFICE?

11 A YES, MA'AM.

12 Q WHAT TIME WAS THAT?

13 A THAT WOULD BE RIGHT AT ABOUT 11:30.

14 Q OKAY. DID HE WALK PAST YOU TO GO INTO THAT
15 OFFICE?

16 A HE RAN.

17 Q HE RAN PAST YOU?

18 A YES, MA'AM.

19 Q AND HE CAME -- HE RAN PAST YOU UP FROM HIS
20 CUBICLE UP TO THE OFFICE DOOR?

21 A YES, MA'AM.

22 Q AND DID THAT GIVE YOU PAUSE, MAKE YOU BECOME
23 CONCERNED FOR YOUR SAFETY?

24 A NOT MINE.

25 Q OKAY.

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

372

1 A UM---

2 Q I'M SORRY.

3 A IT JUST MADE ME WONDER WHY -- WHY IS HE RUNNING.

4 Q OKAY. DID YOU GET UP AND SEE WHAT HE WAS DOING?

5 A NO, MA'AM.

6 Q OKAY. HOW LONG DID YOU CONTINUE TO LAY IN YOUR

7 -- AND I KNOW IT'S NOT A BED. Y'ALL SLEEP ON THE CONCRETE

8 ON MATS, RIGHT?

9 A YES, MA'AM.

10 Q AND THERE ARE TWO PEOPLE IN THE CUBICLE?

11 A YES, MA'AM.

12 Q WHO -- WHO IS IN THE CUBICLE WITH YOU?

13 A I DON'T EVEN REMEMBER HIS NAME. BECAUSE MY

14 ROOMMATES DON'T STAY LONG. THEY COME AND GO.

15 Q OKAY.

16 A I DON'T REMEMBER HIS NAME.

17 Q OKAY. WHAT -- SO -- SO HE RAN PAST YOU, RAN --

18 RAN INTO -- RAN UP THE STAIRS INTO THE -- INTO THE DORM

19 OFFICE?

20 A YES, MA'AM.

21 Q DID YOU OBSERVE HIM DO ANYTHING ELSE?

22 A NO, MA'AM.

23 Q DID YOU GO BACK AND LIE DOWN ON YOUR COT?

24 A I -- I JUST STAYED WHERE I WAS AT AND -- AND

25 LISTENED FOR WHAT ELSE WAS GOING ON IN THE DORM, BECAUSE

1 THERE WERE OTHER PEOPLE ALREADY UP AND MOVING ABOUT. AND
2 -- AND I DIDN'T SENSE THAT THERE WOULD BE ANY TROUBLE AT
3 THAT POINT. I JUST---

4 Q HOW LONG DID THIS GO ON?

5 A IT WASN'T LONG. IT WASN'T LONG AFTER HE ENTERED
6 THAT, YOU KNOW, THE CALL WENT OUT.

7 Q THE CALL WENT OUT?

8 A FOR HELP.

9 Q OKAY. SO, BY THE TIME YOU BECAME AWARE THAT
10 THERE WERE -- THERE WAS SOMETHING GOING ON---

11 A UH-HUH.

12 Q ---A CALL -- THE CALL WENT OUT. WHEN YOU SAY
13 "THE CALL WENT OUT", WHAT EXACTLY ARE YOU TALKING ABOUT?
14 THE INMATES CALL WENT OUT? WHAT?

15 A AN INMATE YELLING FOR HELP.

16 Q AN INMATE YELLING FOR HELP. DID YOU IMMEDIATELY
17 GET OFF THE FLOOR AND GO?

18 A YES, MA'AM.

19 Q OKAY. AND WERE YOU -- WERE YOU ONE OF THE FIRST
20 PEOPLE TO -- TO -- YOU SAID THAT THEY -- THAT THE DOOR---

21 A THE C SIDE DOOR---

22 Q THE ---

23 A RIGHT HERE.

24 Q AND THERE WERE PEOPLE TRYING TO---

25 A ALREADY AT THAT DOOR.

1 Q BREAK DOWN THE DOOR?

2 A UH-HUH.

3 Q I GUESS BREAK THE WINDOW?

4 A THE WINDOW ENDED UP BEING BROKEN AT THAT DOOR.

5 Q I UNDERSTAND THAT. BUT DID YOU SEE ANY OF THAT?

6 A WHAT I SAW---

7 Q YOU NEEDED---

8 A WHAT I SAW -- WHEN THE WINDOW BROKE, I WAS

9 ALREADY IN THE OFFICE FROM THE C SIDE.

10 Q SO, YOU WERE ABLE TO -- I ASSUME, THEN, AND

11 CORRECT ME IF I'M WRONG -- YOU -- YOU -- ACCORDING TO YOUR

12 TESTIMONY, YOU WERE HERE. YOU SORT OF DID A SURVEILLANCE

13 HERE AND DETERMINED THAT YOUR HELP WOULDN'T BE NEEDED OR

14 YOU COULD---

15 A WELL, I COULDN'T GET IN FROM THAT SIDE.

16 Q OKAY.

17 A IT WAS ALREADY TOO MUCH PEOPLE FOR ME TO GET IN

18 FROM THAT SIDE.

19 Q HOW MANY PEOPLE?

20 A AT -- RIGHT AWAY, WHEN I COME OUT OF MY CUBE,

21 THERE WAS AT LEAST FOUR I SAW.

22 Q DO YOU KNOW THE NAMES OF ANY OF THOSE

23 INDIVIDUALS?

24 A NO, MA'AM.

25 Q ALL RIGHT. SO, THEN YOU -- YOU WENT AROUND, YOU

1 CAME DOWN THE HALL?

2 A YES, MA'AM.

3 Q THE DOOR WAS OPEN OR CLOSED?

4 A THE WING DOOR?

5 Q YES.

6 A IT WAS SHUT, BUT NOT LOCKED.

7 Q THEN YOU CAME AROUND AND CAME IN?

8 A RIGHT THERE.

9 Q RIGHT THERE. DID ANYBODY ELSE GO IN THERE WITH
10 YOU?

11 A ABOUT THREE OR FOUR GUYS WERE ALREADY AT THAT
12 DOOR WITH ME. BUT ONE GUY, HE WAS KICKING THAT DOOR AND
13 WHEN I COME AROUND THAT CORNER, YOU KNOW, I COULD HEAR THE
14 KICKING. AND AS SOON AS I COME AROUND THAT CORNER, ALL I
15 SAW WAS HIS LEG GO THROUGH AND I KNEW THE DOOR WAS OPEN
16 THEN. AND WE ALL -- LIKE I SAID BEFORE, WE KIND OF FELL
17 ON EACH OTHER GETTING IN. AND WE JUST TUMBLED RIGHT ON IN
18 AND WENT STRAIGHT FOR THE BATHROOM DOOR.

19 Q SO, HOW MANY -- HOW MANY PEOPLE WERE ON YOUR
20 SIDE, MR. STAGGERS?

21 A FROM THE C SIDE DOOR THAT WENT IN?

22 Q YES, SIR.

23 A MYSELF AND I WOULD SAY FOUR OTHER GUYS. THERE
24 WAS FIVE OF US TOTAL AT THE DOOR ALREADY WHEN WE GOT IN.

25 Q OKAY. ALL RIGHT. AND DO YOU KNOW THE NAMES OF

1 ANY OF THE PEOPLE THAT CAME IN WITH YOU?

2 A NO, MA'AM.

3 Q AND JUST SO THE JURY WILL UNDERSTAND, BECAUSE
4 YOU AND I BOTH KNOW WHAT WE ARE TALKING ABOUT.

5 A YES, MA'AM.

6 Q WHEN YOU'RE -- WHEN YOU ARE AN INMATE IN THE
7 DEPARTMENT OF CORRECTIONS, IT'S NOT UNCOMMON FOR YOU NOT
8 TO KNOW OTHER PEOPLE'S NAMES, CORRECT?

9 A IT'S NOT UNCOMMON, CORRECT.

10 Q IF PEOPLE -- YOU CAN BE SIDE BY SIDE WITH
11 SOMEBODY FOR A NUMBER OF MONTHS, AND HE CAN BE JP TO YOU
12 AND THAT'S ALL YOU KNOW?

13 A THAT'S ALL I KNOW.

14 Q OKAY. AND THE TRUTH BE TOLD, THAT'S ALL YOU
15 WANT TO KNOW MOST OF THE TIME, RIGHT?

16 A YES, MA'AM.

17 Q SO, THERE -- SO, THERE WERE -- JUST SO I GET --
18 THERE ARE LIKE A D -- THE D DOOR, YOU SAY THERE WERE FOUR
19 OR FIVE PEOPLE AND THERE ARE FOUR OR FIVE PEOPLE WITH YOU?

20 A UH-HUH.

21 Q UM, SO THAT WHEN EVERYBODY SORT OF DESCENDED
22 INTO THE OFFICE -- BECAUSE YOU HAVE TO GO UP THE STEPS,
23 RIGHT?

24 A YES, MA'AM.

25 Q TEN PEOPLE IN THERE?

1 A AT -- AT FIRST BECAUSE THE D SIDE DOOR -- BY THE
2 TIME WE GOT IN ON C SIDE, THE -- YOU KNOW, ONE GUY'S FIST
3 WAS STUCK IN THE WINDOW ON THE D SIDE DOOR. HE -- I MEAN,
4 I DON'T KNOW HOW HE DID IT, BUT HIS FIST WAS STUCK IN THE
5 WINDOW. SO, IT KIND OF TOOK THEM A MOMENT TO GET HIS ARM
6 OUT OF THE DOOR. AND THEN OPEN THAT DOOR.

7 Q SO -- SO CHRIS WAS THE ONE THAT WAS ABLE TO BANG
8 THE DOOR THROUGH?

9 A NO, MA'AM.

10 Q OKAY. WHO?

11 A I DON'T KNOW THE GUY'S NAME. WE ALWAYS CALL HIM
12 BY HIS NICKNAME. HE WAS ALWAYS -- AND THERE IS A BUNCH OF
13 PEOPLE THAT KNOW HIM BY THIS NAME -- HE WAS ALWAYS KNOWN
14 TO ME AS NEW YORK. THAT WAS IT.

15 Q NEW YORK. OKAY. SO -- SO THERE -- SO, CHRIS
16 WAS -- AND I'M NOT -- CHRIS WAS UP---

17 A MR. SIMMONS?

18 Q YEAH. MR. SIMMONS WAS AT THE DOOR WITH YOU?

19 A NO. NOT YET.

20 Q OKAY.

21 A NOT YET. HE DIDN'T SHOW UP IN THAT DOORWAY
22 UNTIL MS. ADAMS, I HAD ALREADY HAD HER SIT ON THE FLOOR BY
23 THE WALL, NEAR THAT DOOR.

24 Q ALL RIGHT. WELL, I'M A LITTLE CONFUSED. HOW --
25 HOW -- WHERE WAS CHRIS WHEN HE GOT HIS ARM ALL BLOODIED

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

378

1 UP?

2 A CHRIS DIDN'T GET HIS ARM---

3 Q OKAY. IT WAS MR. -- WAS NEW YORK?

4 A YES, MA'AM.

5 Q OKAY. ALL RIGHT. AND CHRIS WAS ALREADY

6 INSIDE---

7 A NO, MA'AM.

8 Q HE WASN'T?

9 A NO, MA'AM.

10 Q OKAY. WHERE WAS HE?

11 A HE SHOWED UP LATER.

12 Q OKAY.

13 A YOU KNOW.

14 Q AND -- AND WERE YOU THE FIRST PERSON THAT WENT

15 THROUGH THE DOOR TO THE BATHROOM?

16 A NO, MA'AM.

17 Q WHERE MS. ADAMS WAS?

18 A NO, MA'AM.

19 Q OKAY. WHO WAS THAT?

20 A I DON'T KNOW THE GUY'S NAME. BECAUSE THERE WAS

21 PEOPLE -- I CAN SAY PEOPLE WERE ALREADY IN FRONT OF ME, SO

22 I FELL IN WITH THEM -- WHEN THE DOOR OPENED, WE JUST --

23 YOU KNOW, WE WERE RUNNING REAL FAST AND HARD TO GET IN

24 THAT OFFICE. AND I JUST WENT RIGHT ON IN WITH THE FLOW.

25 Q SO, YOU -- JUST SO I UNDERSTAND. SO, YOU AND

1 ANOTHER GROUP OF PEOPLE -- A GROUP -- HOW MANY?

2 A IT WAS FIVE OF US.

3 Q FIVE OF YOU?

4 A THE FIRST FIVE OF US IN THE OFFICE, ME AND FOUR
5 OTHER PEOPLE.

6 Q OKAY. YOU AND FOUR OTHER PEOPLE -- ARE YOU --
7 WHEN YOU SAY THAT, ARE YOU TALKING ABOUT THE FOUR PEOPLE
8 THAT CAME IN WITH YOU?

9 A THE FOUR PEOPLE THAT CAME IN WITH ME.

10 Q OKAY. SO -- SO EVEN THOUGH THE PEOPLE IN THE D
11 SIDE WERE ALREADY OVER THERE, TRYING TO ACCESS, TRYING TO
12 GET THE DOOR OPENED---

13 A YES, MA'AM.

14 Q ---TRYING TO OFFER ASSISTANCE TO -- TO MS.
15 ADAMS, IT WAS YOUR GROUP THAT WAS ABLE TO -- TO GO IN THE
16 C DOOR, BREAK EVERYTHING DOWN, BREAK THE BATHROOM DOOR AND
17 GET HER OUT?

18 A YES, MA'AM.

19 Q OKAY. NOW, WHERE WAS OFFICER ADAMS WHEN ---

20 A WE DIDN'T SEE HER AT FIRST.

21 Q YOU DIDN'T SEE HER?

22 A NOT AT FIRST.

23 Q WHERE WAS MR. SALISBURY?

24 A MR. SALISBURY, WHEN WE -- WHEN WE FINALLY DID
25 GET THE RESTROOM DOOR OPEN, HE WAS STANDING RIGHT THERE

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

380

1 AGAINST THAT -- IS THAT THE OFFICE BATHROOM -- YEAH. HE
2 WAS STANDING AGAINST THAT WALL RIGHT THERE INSIDE THE
3 DOORWAY.

4 Q OKAY.

5 A AND -- YES. AND -- AND WHEN WE SAW HIM, WE
6 REACHED IN TO TRY TO SEE IF WE CAN PULL HIM OUT. AND HE
7 DIDN'T COME EASY, YOU KNOW. AND WE DIDN'T SEE MS. ADAMS
8 RIGHT AWAY AT ALL. I DIDN'T EVEN HEAR HER, BUT WE KNEW
9 SHE WAS IN THERE.

10 MS. KENNEDY: YOUR HONOR, MAY I APPROACH THE
11 WITNESS?

12 THE COURT: YOU MAY.

13 BY MS. KENNEDY:

14 Q MR. STAGGERS, I'M SHOWING YOU STATE'S EXHIBIT
15 NO. 16. DO YOU RECOGNIZE THAT?

16 A YES. THAT'S THE OFFICE RESTROOM.

17 Q THAT'S THE OFFICE RESTROOM.

18 MS. KENNEDY: AND I'M GOING TO ASK THE INVESTIGATOR
19 FROM THE SOLICITOR'S OFFICE TO PUT THIS UP ON THE SCREEN
20 FOR ME.

21 BY MS. KENNEDY:

22 Q SO, IT'S YOUR TESTIMONY THAT YOU DIDN'T SEE
23 CORRECTIONS OFFICER---

24 A ADAMS.

25 Q ---ADAMS WHEN YOU WENT IN, BUT THAT MR.

1 SALISBURY WAS OVER HERE---

2 A YES, MA'AM.

3 Q ---AND YOU WERE ABLE TO SEE HIM?

4 A WE WERE ABLE TO SEE HIM.

5 Q OKAY. HOW IS THAT POSSIBLE?

6 A WELL, FOR ME, I'M ONLY 5'2". AND EVERYBODY ELSE
7 IS TALLER THAN ME.

8 Q OKAY.

9 A AND WITH THEM BEING IN FRONT OF ME AND ME, YOU
10 KNOW, I JUST COULDN'T SEE HER, BUT I COULD SEE HIM BECAUSE
11 HE WAS TALL ENOUGH FOR ME TO SEE HIS FACE RIGHT THERE
12 INSIDE THE DOOR.

13 Q OKAY. SO, WHAT YOU'RE SAYING THEN IS YOU JUST
14 SAW HIS HEAD WHERE HE WAS, YOU DIDN'T---

15 A YES, MA'AM.

16 Q ---ACTUALLY SEE HIM, HIS WHOLE BODY?

17 A I SAW -- I SAW HIS HEAD, HIS FACE. I KNEW IT
18 WAS HIM WHEN I SEEN HIM.

19 Q BUT YOU DIDN'T SEE OFFICER ADAMS?

20 A NO, MA'AM.

21 Q OKAY. YOU DIDN'T SEE -- WERE PEOPLE LIKE
22 SURROUNDING HER?

23 A WELL, IT WAS -- BY THE TIME WE HAD GOT IN, IN
24 THAT DOOR, THERE WAS SO MUCH PEOPLE ALREADY IN THE OFFICE
25 -- COMING IN THE OFFICE STILL THAT EVERYTHING JUST BROKE

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

382

1 LOOSE INTO A -- A BALL OF CONFUSION WITH ACTIVITY.

2 Q NO. I UNDERSTAND THAT, SIR. WHAT I'M TRYING TO
3 FIGURE OUT IS BASED ON WHAT YOU'RE TELLING ME OR TELLING
4 THE JURY IS THAT THERE WERE WITH YOU, YOU AND FOUR OTHER
5 PEOPLE?

6 A UH-HUH.

7 Q AND MS. ADAMS AND MR. SALISBURY, AND ALL OF
8 Y'ALL WERE IN THAT BATHROOM?

9 A WE -- NOT ALL OF US IN THAT BATHROOM. WE ALL
10 COULDN'T GET IN THAT BATHROOM---

11 Q OKAY.

12 A ---TOGETHER LIKE THAT.

13 Q ALL RIGHT. SO -- BUT YOU WERE ONE OF THE PEOPLE
14 IN THE BATHROOM?

15 A I WAS ONE OF THE PEOPLE TRYING TO GET IN THE
16 BATHROOM.

17 Q OKAY. ALL RIGHT. ALL RIGHT. ALL RIGHT. SO,
18 IF YOU WERE TRYING TO GET IN THE BATHROOM, THEN YOU REALLY
19 DIDN'T HAVE A CLEAR VIEW OF WHERE MR. SALISBURY WAS OR
20 WHERE MS. ADAMS WAS?

21 A I HAD A CLEAR VIEW OF MR. SALISBURY.

22 Q OKAY.

23 A JUST NOT HER.

24 Q OKAY. ALL RIGHT. AND THEN WHAT HAPPENED -- AND
25 YOU INDICATED THAT THERE IS LIKE A PHONE ALARM?

1 A WELL, ONCE -- ONCE THE -- THE DAM BROKE LOOSE,
2 I'LL USE THAT TERM -- ONCE EVERYTHING BROKE LOOSE INTO --
3 INTO A LOT OF CHAOS, WE HAD INMATES TRYING EVERYTHING THAT
4 WE THOUGHT WE COULD DO TO GET HELP TO THAT UNIT.

5 Q YES, SIR. AND THAT'S WHAT I'M TRYING TO FIND
6 OUT.

7 A AND TAKING THE PHONE OFF THE HOOK WAS ONE OF THE
8 THINGS THAT WAS DONE, AND TRYING TO USE HER RADIO TO CALL
9 FOR HELP WAS ANOTHER THING THAT WAS DONE.

10 Q ALL RIGHT. LET'S STOP RIGHT THERE FOR A MINUTE.
11 ON THE PHONE ALARM, HOW -- HOW DO YOU ALL KNOW TO DO THE
12 PHONE ALARM?

13 A THAT'S -- THAT'S -- FOR US, THAT'S SORT OF LIKE
14 COMMON KNOWLEDGE, SOMETHING WE LEARNED COMING INTO THE
15 SYSTEM. FOR MOST OF US, WE -- WE -- WE -- WE SORT OF
16 STUDIED THE AGENCY, ITS POLICIES AND PROCEDURES,
17 EVERYTHING. I MEAN, WE STUDIED THE HANDBOOKS THEY GIVE US
18 FOR OUR BEHAVIOR. AND WE STUDY THE HANDBOOKS, AS MUCH AS
19 WE CAN, FROM THE LAW LIBRARY, WHAT THE OFFICERS ARE
20 EXPECTED TO DO. AND FOR US, WE DO THAT MORE THAN ANYTHING
21 TO BE ABLE TO HAVE A BALANCE, NOT ONLY FOR CONFLICTS, BUT
22 JUST TO KNOW WHERE -- YOU KNOW, WHAT WE'RE UP AGAINST AND
23 WHAT WE'RE DEALING WITH ON A DAY-TO-DAY BASIS.

24 Q SO, IF WHAT I UNDERSTAND YOU'RE TELLING US IS
25 THAT YOU ALL HAVE INFORMATION THROUGH A POLICY OR

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

384

1 PROCEDURE OR A HANDBOOK, THAT LETS YOU KNOW THAT IF THE
2 PHONE IS OFF THE HOOK FOR THREE TO FIVE SECONDS, THEN THAT
3 MEANS THAT THE PEOPLE IN THE CONTROL ROOM KNOW THERE'S A
4 PROBLEM?

5 A SHOULD KNOW THERE'S A PROBLEM, YES, MA'AM.

6 Q SHOULD KNOW THERE'S A PROBLEM. OKAY. AND ARE
7 YOU -- IS IT YOUR UNDERSTANDING THAT THAT'S WHAT YOU'RE
8 SUPPOSED TO DO IF AN INCIDENT HAPPENS IN THE DORM LIKE
9 THAT?

10 A WELL, IT'S OUR UNDERSTANDING THAT THAT'S WHAT
11 THE OFFICERS ARE SUPPOSED TO DO---

12 Q THE OFFICER IS SUPPOSED TO TAKE IT OFF?

13 A ---AND -- THAT'S RIGHT. BUT WHEN THE OFFICER
14 CAN'T AND WE'RE THERE, THEN WE KNOW THAT, OKAY. THIS IS
15 ALL WE COULD DO.

16 Q OKAY. AND YOU ALSO INDICATED THAT -- THAT --
17 WERE YOU THE PERSON WHO TRIED TO USE THE PHONE ALARM?

18 A NO, MA'AM.

19 Q DO YOU KNOW WHO WAS?

20 A NO, MA'AM.

21 Q YOU ALSO INDICATED THAT THERE WAS SOMEBODY WHO
22 TRIED TO, LIKE, USE THE MICROPHONE?

23 A USE HER RADIO BECAUSE THAT WAS STILL ON THE
24 DESK.

25 Q THAT WAS STILL ON THE DESK.

1 A YES, MA'AM.

2 Q OKAY. AND THAT WASN'T WORKING EITHER?

3 A IN -- WELL, NOT AT THAT TIME. UM, IF YOU WANT
4 ME TO EXPLAIN, I'LL EXPLAIN---

5 Q WELL, THAT NIGHT IT WASN'T WORKING?

6 A IT WASN'T WORKING THAT NIGHT LIKE IT SHOULD.

7 Q ALL RIGHT. OKAY. SO, AS I UNDERSTAND IT, THE
8 -- THE -- HER MIKE WAS ON THE DESK AND YET -- ANOTHER
9 INMATE, NOT YOU?

10 A UH-HUH.

11 Q WAS TRYING TO---

12 A USE IT.

13 Q USE IT TO -- TO ROUSE SOMEBODY UP?

14 A YES, MA'AM.

15 Q FIRST RESPONDERS TO COME BACK?

16 A UH-HUH.

17 Q NOW, THAT WASN'T WORKING AND YOU MOVED TO THE
18 PHONE?

19 A BOTH THINGS KIND OF OCCURRED AT THE SAME TIME.

20 Q OKAY.

21 A UM, WITH THE NUMBER OF PEOPLE WHO -- WHO WERE
22 ALREADY IN THE OFFICE BY THE TIME WE STARTED USING THOSE
23 METHODS FOR HELP---

24 Q UH-HUH.

25 A EVERYBODY HAD AN IDEA AND WE TRIED IT. AND

1 EVERYBODY TRIED HIS IDEA.

2 Q AND DID THOSE IDEAS WORK?

3 A NONE -- NONE OF THE INITIAL ATTEMPTS WORKED.

4 Q SO, WHAT WAS THE THIRD IDEA THAT Y'ALL HAD THAT
5 FINALLY WORKED, THAT YOU REMEMBER?

6 A THE FIRE ALARM.

7 Q OKAY. ALL RIGHT. SO, AFTER YOU ALL ATTEMPTED
8 TO USE THE RADIO, TRIED TO USE THE MIKE -- I MEAN, THE
9 PHONE, YOU THEN RESORTED TO---

10 A PULLING THE FIRE ALARM.

11 Q MR. STAGGERS, WHERE IS THE FIRE ALARM IN THIS
12 UNIT OR -- THAT Y'ALL WERE ABLE TO ACCESS TO GET SOMEBODY
13 FOR HELP?

14 A TO MY KNOWLEDGE, THE FIRE ALARM IN THE OFFICE IS
15 LOCATED RIGHT THERE BY THE -- ON THE SIDE OF THAT WALL
16 RIGHT THERE IN FRONT OF THE FILE CABINET.

17 Q ALL RIGHT. SO -- SO SOMEBODY, YOU DON'T KNOW
18 WHO---

19 A I DON'T KNOW WHO.

20 Q OKAY. AND HOW SOON AFTER THE FIRE ALARM, DID
21 SOMEBODY RESPOND TO -- TO THE UNIT?

22 A I WOULD SAY IT WAS ABOUT FIVE MINUTES AFTER THE
23 FIRE ALARM WENT OFF, THAT SGT. WILLIAMS SHOWED UP AT THE
24 DOOR.

25 Q AND IF YOU REMEMBER, KNOWING THE TIME IS REALLY

1 HARD, AND I UNDERSTAND THAT -- HOW LONG HAD ALL THIS --
2 ALL THIS OTHER STUFF BEEN GOING ON BEFORE SOMEBODY DECIDED
3 TO PULL THE -- THE FIRE ALARM AND GET THE FIRST RESPONDERS
4 BACK THERE?

5 A ABOUT 45 MINUTES.

6 Q FORTY-FIVE MINUTES?

7 A OKAY. I REMEMBER THINKING IT WAS A LONG TIME
8 FOR HELP TO COME, TOO LONG.

9 Q OKAY. TOO LONG. OKAY. NOW, UM, YOU -- YOU
10 ASSISTED OR HELPED OFFICER ADAMS GET INTO THE DAY ROOM?

11 A UP TO THE -- YES, MA'AM, YOU COULD SAY THAT.
12 BECAUSE IT WAS ON MY INSTRUCTIONS THAT MR. SIMMONS LIFTED
13 HER OFF THE FLOOR AND CARRIED HER IN THE DAY ROOM.

14 Q OKAY. SO, AT SOME POINT YOU WERE ABLE TO
15 OBSERVE MS. ADAMS ON THE FLOOR? WAS SHE STILL IN THE
16 BATHROOM OR WAS SHE---

17 A WHEN SHE CAME OUT OF THE RESTROOM AND RUN INTO
18 ME AND -- FROM THAT POINT, ME HELPING HER COVER HERSELF AS
19 MUCH AS POSSIBLE---

20 Q UH-HUH.

21 A AND ME ASKING HER TO -- TO GET IN THE CORNER
22 BEHIND ME AND THEN FROM THERE SIT ON THE FLOOR OUT OF
23 SIGHT. AFTER THAT POINT, I JUST WENT IN A, YOU KNOW, A
24 BRAIN STORM TRYING TO FIGURE OUT A WAY TO GET HER OUT.
25 AND I SAW MR. SIMMONS. HE KIND OF STUCK HIS HEAD IN THE

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

388

1 DOORWAY TO SEE WHAT WAS GOING ON. AND WHEN I SEEN HIM,
2 YOU KNOW, THE FIRST THING I SAID IS, "COME HERE". YOU
3 KNOW, "HELP ME GET HER IN THAT DAY ROOM." AND I ASKED HER
4 TO SCOOT FORWARD, WHICH SHE DID. AND I WANTED HER TO
5 SCOOT FORWARD JUST ENOUGH FOR HIM TO BE ABLE TO PUT HIS
6 ARMS UNDERNEATH HER KNEES AND LIFT HER. AND ME AND HIM
7 TOGETHER, WE -- WE EASED HER OFF THE FLOOR. AND I HAD HIM
8 CARRY HER IN THE DAY ROOM AND CLEAR IT. AND SHUT THE DOOR
9 AND DON'T LET ANYBODY ELSE IN.

10 Q OKAY. AND -- AND JUST -- AND, AGAIN, THERE'S
11 LIKE 96 INMATES IN THIS -- IN THIS UNIT. AND THERE ARE --
12 ALL THIS IS WINDOWS, CORRECT?

13 A YES, MA'AM.

14 Q ALL THIS IS WINDOWS, CORRECT?

15 A YES, MA'AM.

16 Q THIS, ON THE OTHER SIDE OF THE DOORS, ARE
17 WINDOWS?

18 A YES, MA'AM.

19 Q THE SAME WITH C UNIT, RIGHT?

20 A YES, MA'AM.

21 Q OKAY. WERE THERE A LOT OF PEOPLE THAT YOU
22 OBSERVED WATCHING ALL THIS?

23 A TOO MANY.

24 Q TOO MANY.

25 A BY MY COUNT.

1 Q OKAY.

2 A TOO MANY.

3 Q TOO MANY. SO, THERE WAS JUST GENERAL MAYHEM?

4 A YES, MA'AM.

5 Q OKAY. SO, AND -- AND THE ONLY PEOPLE THAT --

6 THAT CAME TO HER AID ARE THE SIX -- OR THE TEN OR TWELVE

7 THAT YOU---

8 A YES, MA'AM.

9 Q ---REMEMBER BEING IN THE DORM OFFICE, BUT NOT --

10 YOU DON'T KNOW OTHER THAN CHRIS AND NEW YORK, YOU DON'T

11 KNOW WHO THAT WAS?

12 A THAT'S RIGHT.

13 Q OKAY. UM, DO YOU -- DO YOU KNOW -- SO SHE --

14 WHERE WAS OFFICER ADAMS' UNIFORM?

15 A I DON'T KNOW.

16 Q YOU DIDN'T SEE IT IN THE BATHROOM?

17 A I DIDN'T SEE IT IN THE RESTROOM.

18 Q YOU DIDN'T SEE -- YOU DIDN'T SEE IT IN THE

19 OFFICE ANYWHERE?

20 A NO, MA'AM.

21 Q DO YOU -- DO YOU KNOW WHAT HAPPENED TO THE -- TO

22 THE MIKE THAT GOES ON THE SHOULDER?

23 A OTHER THAN IT BEING CONNECTED TO THAT WALKIE

24 TALKIE, I DON'T KNOW WHAT HAPPENED TO IT AFTER IT WAS --

25 ATTEMPTED TO BE USED, I DON'T KNOW WHAT HAPPENED TO IT

1 AFTER THAT.

2 Q SO, YOU DON'T KNOW WHAT HAPPENED AFTER THAT?

3 A NO.

4 Q HOW ABOUT WHAT I CALL MACE, BUT WHAT THEY REFER
5 TO IN THE DEPARTMENT OF CORRECTIONS IS A CHEMICAL WEAPON?

6 A PEPPER SPRAY?

7 Q PEPPER SPRAY. RIGHT.

8 A UM---

9 Q DO YOU KNOW WHAT HAPPENED TO THAT?

10 A NO, MA'AM.

11 Q DID YOU EVER SEE MR. SALISBURY WITH THAT IN HIS
12 HAND?

13 A NO, MA'AM.

14 Q DID YOU EVER SEE MR. SALISBURY WITH THE RADIO IN
15 HIS HAND?

16 A NO, MA'AM.

17 Q OKAY. DID YOU EVER SEE THE PEPPER SPRAY AFTER
18 THAT NIGHT?

19 A NO, MA'AM.

20 Q ALL RIGHT. THEN THE FIRST RESPONDERS CAME?

21 A YES, MA'AM.

22 Q I -- I ASSUME THE FIRST THING THAT THEY TRIED TO
23 DO IS GET EVERYTHING CALM AND PEOPLE BACK TO THEIR CUBES?

24 A YES, MA'AM.

25 Q OKAY. ARE YOU ONE OF THE PEOPLE THAT THEY

1 DIRECTED BACK TO THE CUBE?

2 A I JUST WENT.

3 Q YOU JUST WENT.

4 A I KNEW -- I KNEW TO GO. WHEN SGT. WILLIAMS
5 WALKED INTO THE OFFICE AND HE SAID "I GOT IT". AND UPON
6 HIM TELLING ME THAT, HE PROCEEDED TO PUT MR. SALISBURY IN
7 HANDCUFFS. AND I WENT TO MY CUBE. I KNEW BETTER THAN
8 JUST TRY AND HANG AROUND.

9 Q AND OFFICER ADAMS IS STILL, AS FAR AS YOU KNOW,
10 IN THE DAY ROOM?

11 A AT THAT MOMENT, OFFICER ADAMS WAS STILL IN THE
12 DAY ROOM, BUT OFFICER FOGEL SHOWED UP. AND SHE, ALONG
13 WITH ANOTHER OFFICER, THEY -- YOU KNOW, WE WENT AHEAD AND
14 SAID IT WAS OKAY FOR MS. ADAMS TO COME OUT OF THE DAY
15 ROOM. AND OFFICER FOGEL HELPED HER. ANOTHER INMATE
16 PROVIDED HIS PAIR OF PANTS. AND -- AND THAT'S WHEN MS.
17 ADAMS WAS ABLE TO GET MORE CLOTHING ON AND THEY ESCORTED
18 HER OUT OF THE UNIT AFTER THAT.

19 Q DO YOU HAPPEN TO KNOW THE IDENTITIES OF THE
20 FOLKS WHO WERE IN THE DAY ROOM WITH HER WHILE THEY WERE
21 WAITING FOR THE FIRST RESPONDERS?

22 A JUST -- AS FAR AS THE PEOPLE I INSTRUCTED TO BE
23 IN THERE, WOULD BE MR. SIMMONS AND MR. WALDRUP. THOSE
24 WERE THE ONLY TWO INMATES I INSTRUCTED TO BE IN THAT DAY
25 ROOM WITH HER.

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

392

1 Q YOU INSTRUCTED THEM TO DO THAT?

2 A YES, MA'AM.

3 Q OKAY. AND THEY FOLLOWED YOUR INSTRUCTIONS?

4 A AS FAR AS I KNOW.

5 Q OKAY. AND WHEN SHE WAS IN THE DAY ROOM, WHERE

6 -- WAS SHE SITTING ON A -- ON A BENCH OR WAS SHE

7 SITTING---

8 A AT FIRST THEY HAD HER ON THE FLOOR. AND I WENT

9 AND I TOLD THEM TO GET HER OFF THE FLOOR. DON'T LET HER

10 SIT ON THAT FLOOR. IT'S TOO COLD DOWN THERE.

11 Q OKAY. AND BY THIS TIME, SHE HAD BEEN GIVEN

12 INMATE PANTS?

13 A NO, NOT YET.

14 Q NOT YET?

15 A NOT YET. SHE WAS STILL -- SHE WAS IN WHAT I HAD

16 PROVIDED HER TO COVER UP WITH.

17 Q AND WHAT WAS THAT?

18 A MY THERMAL UNDERWEAR.

19 Q YOU GAVE HER YOUR THERMAL UNDERWEAR?

20 A YEAH.

21 Q TO PUT ON?

22 A UH-HUH.

23 Q DID YOU HAVE THAT BACK IN YOUR CUBE OR YOU TOOK

24 IT OUT?

25 A WELL, IT'S MY HABIT TO WEAR TWO SETS OF THERMAL

1 CLOTHING.

2 Q OKAY.

3 A IN THE WINTER TIME. AND I JUST -- I MEANT TO
4 ONLY TAKE OFF ONE SHIRT, BUT ALL OF IT CAME OFF, SO I
5 HANDED HER WHAT I HAD IN MY HAND.

6 Q SO, WHAT YOU HAD IN YOUR HAND WAS YOUR SHIRT AND
7 YOUR PANTS?

8 A NO. JUST MY THERMAL SHIRT, THE TOPS.

9 Q SO, YOU GAVE HER THE SHIRT?

10 A YEAH.

11 Q TO GO OVER THE T-SHIRT?

12 A AT LEAST TO -- TO WRAP AROUND HER WAIST AND, YOU
13 KNOW.

14 Q DO YOU KNOW WHAT HAPPENED TO THOSE CLOTHES?

15 A I GOT THEM.

16 Q YOU GOT THEM BACK?

17 A UH-HUH.

18 Q WHO GAVE THEM BACK TO YOU?

19 A NOBODY. I PICKED THEM UP OFF THE FLOOR.

20 Q AFTER -- AFTER SHE LEFT?

21 A ONCE -- AFTER SHE LEFT. BECAUSE SHE DROPPED
22 THEM ON THE FLOOR AT THE DOORWAY. AND I WENT AHEAD AND
23 PICKED THEM UP AND, YOU KNOW, TOOK THEM IN THE RESTROOM
24 AND WASHED -- BECAUSE THERE WAS BLOOD ALL OVER THEM. AND
25 I---

1 Q OKAY.

2 A ---YOU KNOW, I'VE STILL GOT THEM.

3 Q OKAY. BLOOD ALL OVER?

4 A MY SHIRT.

5 Q OKAY. FROM HER?

6 A JUST FROM BEING IN THAT OFFICE.

7 Q OKAY.

8 A THERE WAS BLOOD EVERYWHERE IN THAT OFFICE.

9 Q OKAY. NOW, AT SOME POINT, I BELIEVE YOU SAID
10 THAT THE INMATES, EITHER ON THEIR OWN OR WERE REQUIRED TO
11 -- IN OUR CONVERSATIONS, CLEAN UP ALL THE BLOOD IN THE --
12 IN THE OFFICE?

13 A YES, MA'AM. THERE WERE SOME OTHER INMATES WHO
14 -- YOU KNOW, DORM WORKERS, YOU KNOW, WHOSE JOB IT IS TO
15 CLEAN UP ANYHOW.

16 Q OKAY.

17 A THEY CAME FORWARD AND PROCEEDED TO HELP WITH THE
18 CLEAN UP, SWEEPING UP THE BROKEN GLASS AND -- AT LEAST AS
19 FAR AS THE BLOOD IN THE HALLWAY. BECAUSE IN THE OFFICE,
20 THE ONLY THING WAS ALLOWED TO BE DONE WAS PICK UP SOME OF
21 THAT GLASS. IT WAS JUST TOO MUCH GLASS EVERYWHERE.

22 Q OKAY.

23 A AND -- BUT IN THE HALLWAYS, YOU KNOW, WHERE
24 BLOOD WAS ALONG THE -- THROUGH THE WING DOOR AND INTO THE
25 RESTROOM, WE CLEANED ALL OF THAT UP.

1 Q OKAY. DO YOU -- DO YOU REMEMBER, MR. STAGGERS,
2 WHAT TIME IT WAS WHEN YOU CLEANED ALL THAT UP?

3 A I DIDN'T ASSIST IN DOING THAT.

4 Q OR WHEN IT WAS CLEANED UP?

5 A BUT IT WAS AFTER -- WELL AFTER MIDNIGHT.

6 Q WELL AFTER MIDNIGHT. DO YOU REMEMBER WHETHER OR
7 NOT ALL THE PEOPLE FROM SLED, THE CRIME SCENE
8 INVESTIGATORS WERE STILL PRESENT WHEN THAT WAS DONE?

9 A NO, MA'AM.

10 Q WAS IT DONE BEFORE THEY GOT THERE?

11 A NO, MA'AM.

12 Q OKAY. SO, DID -- WELL, LET ME ASK -- DID YOU
13 SEE THE CRIME SCENE PEOPLE?

14 A I SEEN THEM COME IN THE UNIT. AND ---

15 Q BUT YOU DIDN'T SEE WHAT THEY WERE DOING?

16 A I DIDN'T SEE WHAT THEY WERE DOING.

17 Q OKAY. HOW SOON AFTER THEY LEFT, YOU KNOW, IN
18 REALIZING THERE CAN'T BE AN EXACT TIME, HOW SOON AFTER
19 THEY LEFT DID YOU ALL COME AND -- AND CLEAN ALL THAT UP?

20 A IT'S -- I'D SAY MAYBE A HALF HOUR LATER OR SO.
21 BECAUSE WE STILL HAD TO BE SURE IT WAS OKAY FOR US TO DO
22 THAT. BECAUSE THEY COME IN WITH CAMERAS AND EVERYTHING.
23 AND WE WERE LIKE, YOU KNOW, WE'VE GOT TO CLEAN -- FROM OUR
24 POINT OF VIEW, WE'RE THINKING THAT'S A LOT OF BROKEN
25 GLASS, YOU KNOW -- COMING FROM THEM WALKING IN AND OUT OF

1 THE OFFICE, THERE'S GLASS BEING TRAVELED---

2 Q RIGHT.

3 A THROUGHOUT THE BUILDING. AND BLOOD SPLATTER
4 EVERYWHERE.

5 Q BUT STILL A CRIME SCENE?

6 A BUT STILL A CRIME SCENE. AND WE'RE THINKING,
7 YOU KNOW, AT LEAST AS FAR AS WE'RE CONCERNED, I DON'T WANT
8 TO BE WALKING IN NOBODY ELSE'S BLOOD.

9 Q SURE.

10 A THAT HAS GOT TO GET UP.

11 Q OKAY. DID SOMEONE, IF YOU RECALL, DIRECT YOU
12 ALL TO CLEAN THAT UP OR DID YOU JUST DO THAT ON YOUR OWN
13 INITIATIVE BECAUSE OF THE KINDS OF THINGS YOU JUST SAID?

14 A I BELIEVE THE INMATES -- IT WAS KIND OF MAYBE
15 BOTH.

16 Q WELL, OKAY. WELL, EXPLAIN THAT. I MEAN.

17 A THE INMATES WOULD HAVE DONE IT ANYWAYS WHETHER
18 THEY WERE INSTRUCTED TO OR NOT.

19 Q ALL RIGHT.

20 A BUT I BELIEVE THE OFFICERS INSTRUCTED THEM TO GO
21 AHEAD AND START CLEANING IT UP.

22 Q BUT WHAT OFFICERS WERE STILL ON THE SCENE, THEN,
23 MR. STAGGERS?

24 A OH, MAN. I DON'T EVEN KNOW. I CAN'T REMEMBER.
25 I'M SORRY.

1 Q OKAY. THAT'S OKAY. THAT'S ALL RIGHT. I'M
2 JUST -- JUST TRYING -- SO, IT'S -- IT'S YOUR -- YOUR
3 UNDERSTANDING THAT THE WAY THAT ALL CAME ABOUT WAS THAT IT
4 WAS SORT OF A COMBINATION, THAT THE INMATES DECIDED TO DO
5 THAT FOR THEIR OWN HEALTH AND SAFETY. AND THE FIRST
6 RESPONDERS OR THE SUPERVISORS OR WHOEVER AGREED---

7 A YES, MA'AM.

8 Q -- DIRECTLY OR INDIRECTLY THAT IT SHOULD BE
9 DONE?

10 A YES, MA'AM.

11 Q OKAY. AND IT'S YOUR RECOLLECTION THAT ALL OF
12 THIS WAS DONE AFTER THE SLED PEOPLE---

13 A YES, MA'AM.

14 Q ---HAD DONE WHATEVER THEY NEEDED TO DO?

15 A YES, MA'AM.

16 Q ALL RIGHT. NOW, WERE YOU -- YOU'RE HERE TODAY
17 TESTIFYING BASED ON INFORMATION THAT WAS PROVIDED THROUGH
18 THE DEPARTMENT OF CORRECTIONS, DID ANYONE -- GIVEN YOUR
19 ACTIVE INVOLVEMENT IN THIS, ALL RIGHT, DID INVESTIGATOR
20 POWELL -- OR LET ME BACK UP. DID -- DID SLED AGENT EVANS
21 EVER COME TO TALK TO YOU AND TAKE A STATEMENT FROM YOU?

22 A THERE WAS SOME---

23 Q A WRITTEN STATEMENT, MR. STAGGERS?

24 A NO. NO WRITTEN STATEMENT.

25 Q WERE YOU EVER INTERVIEWED BY AGENT EVANS,

1 DIRECTLY, ONE-ON-ONE, JUST LIKE HE DID WITH NEW YORK?

2 A NO, MA'AM.

3 Q DID INVESTIGATOR POWELL EVER COME TO YOU AND
4 INTERVIEW YOU ONE-ON-ONE AND TAKE A STATEMENT?

5 A NO, MA'AM.

6 Q DID INVESTIGATOR -- OR AGENT CHINA -- MICHELLE
7 CHINA FROM SLED EVER COME TO YOU AND INTERVIEW YOU ONE ON
8 ONE TO -- TO GET ANY OF THIS INFORMATION---

9 A NO, MA'AM.

10 Q -- THAT YOU'RE SAYING WITH THE COURT TODAY?

11 A NO, MA'AM.

12 Q DID YOU AT ANY POINT OFFER -- WELL, STRIKE THAT.
13 DID ANYONE EVER ASK YOU, THE WAY I'M ASKING YOU NOW, ANY
14 INFORMATION ABOUT WHAT HAPPENED THAT NIGHT?

15 A FROM THE SOLICITOR'S OFFICE, I WAS QUESTIONED
16 ABOUT WHAT HAPPENED THAT NIGHT, BUT NOT---

17 Q OKAY. AND -- AND WHEN WAS THAT, SIR?

18 A I HONESTLY CAN'T SAY, BUT IT WASN'T LONG AFTER
19 THE INCIDENT---

20 Q OKAY.

21 A ---THAT I WAS QUESTIONED.

22 Q WELL, OKAY. WE'LL JUST DO IT THIS WAY. WE --
23 THE INVESTIGATION BEGAN ON JANUARY 18TH, NOBODY TALKED TO
24 YOU THEN?

25 A NO, MA'AM.

1 Q NOBODY TALKED TO YOU ON JANUARY 19TH?

2 A NO, MA'AM.

3 Q DO YOU EVEN KNOW WHO AGENT CHINA IS?

4 A NEVER SEEN HER BEFORE IN MY LIFE.

5 Q OKAY. SO, AT SOME POINT AFTER ALL THIS -- ALL
6 THIS HAPPENED, SOMEONE FROM THE SOLICITOR'S OFFICE CAME TO
7 TALK TO YOU?

8 A YES, MA'AM.

9 Q AND THAT'S THE ONLY TIME THAT YOU HAVE EVER
10 PROVIDED ANY INFORMATION TO ANYBODY ABOUT THIS CASE?

11 A YES, MA'AM.

12 Q PRIOR TO THE TIME THAT YOU TALKED TO US?

13 A YES, MA'AM.

14 MS. KENNEDY: THE COURT'S INDULGENCE.

15 THE COURT: YES, MA'AM.

16 MS. KENNEDY: JUST A COUPLE MORE.

17 BY MS. KENNEDY:

18 Q YOU -- YOU KNEW OFFICER ADAMS BEFORE THIS,
19 RIGHT?

20 A AS IN -- IN TERMS OF HER BEING AN OFFICER AND ME
21 BEING AN INMATE, YES.

22 Q OKAY. SHE HAD BEEN IN ANOTHER UNIT THAT YOU HAD
23 BEEN ASSIGNED TO AT SOME POINT?

24 A AS FAR AS I KNOW, SHE -- LIKE I SAID BEFORE,
25 THEY ALL ROTATE FROM UNIT TO UNIT ABOUT EVERY SIX MONTHS.

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

400.

1 Q YES, SIR.

2 A SO, EVEN PRIOR TO THIS INCIDENT, SHE HAD WORKED
3 IN ANOTHER UNIT. BUT THEN WHEN THE ROTATION COME BACK FOR
4 HER TO BE BACK IN OUR UNIT, UP -- UP AT THIS POINT, SHE
5 WOULD NORMALLY COME IN THE UNIT, MAYBE TO WORK IN PLACE OF
6 SOMEBODY ELSE WHO DIDN'T SHOW UP. BECAUSE FOR A LITTLE
7 WHILE THEY HAD HER ASSIGNED TO THE CONTROL ROOM UP FRONT.

8 Q AND -- AND ON THIS PARTICULAR NIGHT, SHE WAS
9 THERE BECAUSE SOMEBODY ELSE WAS SICK?

10 A THAT'S WHAT I ASSUMED, YES.

11 Q OKAY. AND SHE HAD BEEN THERE JUST THAT NIGHT
12 BEFORE?

13 A YES, MA'AM.

14 Q AND HOW LONG HAD INMATE SALISBURY -- MR.
15 SALISBURY BEEN THERE?

16 A IN THE UNIT?

17 Q YES, SIR. WITH YOU?

18 A I'D SAY UP -- ABOUT MAYBE FOUR MONTHS OR SO AT
19 LEAST.

20 Q ALL RIGHT. AND SO AS TO THIS PARTICULAR
21 INCIDENT, HE WOULD HAVE ONLY KNOWN HER OR SEEN HER THOSE
22 TWO DAYS, RIGHT, BECAUSE SHE HADN'T BEEN ASSIGNED TO YOUR
23 UNIT?

24 A THAT'S RIGHT.

25 Q NOW, YOU WORK IN PRISON INDUSTRIES, RIGHT?

1 A I USED TO.

2 Q USED TO. AT -- AT THE TIME THAT THIS WAS GOING
3 ON, YOU WERE IN PRISON INDUSTRIES?

4 A YES, MA'AM.

5 Q AND WHAT WAS YOUR JOB IN PRISON INDUSTRIES?

6 A CASE PREP ASSEMBLY.

7 Q WHAT -- WHAT DOES THAT MEAN?

8 A WE BUILD -- WE BUILD AUTOMOTIVE TRANSMISSIONS
9 FOR THE MILITARY.

10 Q OKAY. AND -- AND I'M NOT TALKING ABOUT YOU, BUT
11 OTHER PEOPLE IN PRISON INDUSTRIES WHO HAVE THE SAME KINDS
12 OF JOBS THAT YOU -- Y'ALL ARE UNDER STRICTER SCRUTINY
13 SOMETIMES BECAUSE -- BECAUSE YOU'RE -- YOU'RE---

14 A BECAUSE OF OUR OCCUPATION, YES, MA'AM.

15 Q YES. YES. AND THAT OCCUPATION MEANS THAT
16 YOU'RE EXPOSED TO MATERIALS THAT COULD BE USED TO MAKE
17 SHANKS?

18 A YES, MA'AM.

19 Q AND DID YOU SEE A SHANK THAT NIGHT, MR.
20 STAGGERS?

21 A THAT NIGHT, NO, MA'AM.

22 MS. KENNEDY: THAT WOULD BE ALL I WOULD HAVE, YOUR
23 HONOR. THANK YOU. THANK YOU, MR. STAGGERS.

24 THE WITNESS: YOU'RE WELCOME.

25 THE COURT: MS. WILLIAMS?

WILLIE STAGGERS -- CROSS BY MS. KENNEDY

402

1 **MS. WILLIAMS:** NOTHING FURTHER FROM MR. STAGGERS..

2 **THE COURT:** OKAY. MR. STAGGERS, YOU MAY STEP DOWN.

3 **THE WITNESS:** THANK YOU.

4 (WITNESS STEPPED DOWN.)

5 **THE COURT:** CALL YOUR NEXT WITNESS.

6 **MS. WILLIAMS:** THE STATE CALLS JEFFERSON WALDRUP.

7 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, WHILE
8 WE'RE BRINGING IN THE NEXT WITNESS, IF YOU WANT TO TAKE A
9 LITTLE STRETCH, WIGGLE AROUND IN YOUR SEAT, FEEL FREE TO
10 DO SO. (PAUSE.)

11 (WITNESS FORWARD.)

12 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND, PLACE
13 YOUR LEFT HAND ON THE BIBLE.

14 JEFFERSON WALDROP, JR., HAVING
15 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 **THE CLERK:** PLEASE BE SEATED. STATE YOUR FULL NAME
17 FOR THE RECORD AND SPELL YOUR LAST NAME.

18 **THE WITNESS:** JEFFERSON WALDROP, JR.
19 W-A-L-D-R-O-P.

20 **THE COURT:** MS. WILLIAMS.

21 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

22 DIRECT EXAMINATION BY MS. WILLIAMS:

23 **Q** MR. WALDROP, WHERE DO YOU CURRENTLY RESIDE?

24 **A** MACDOUGALL CORRECTIONAL INSTITUTION.

25 **Q** WHAT UNIT ARE YOU HOUSED IN?

1 A MAG II.

2 Q WERE YOU HOUSED IN THAT UNIT ON JANUARY 18,
3 2008?

4 A YES, MA'AM.

5 Q AND WHO WAS YOUR CORRECTIONS OFFICER ON THAT
6 NIGHT?

7 A MS. ADAMS.

8 Q DID YOU KNOW MS. ADAMS BEFORE?

9 A BEFORE SHE STARTED WORKING AT MACDOUGALL?

10 Q DURING THE TIME, HAD YOU BEEN ASSOCIATED -- DID
11 YOU KNOW WHO SHE WAS?

12 A I KNEW SHE WAS A CORRECTIONS OFFICER.

13 Q AND THAT EVENING, DID YOU HAVE TO GO INTO THE
14 OFFICE FOR ANY REASON?

15 A I HAD TO GO TO THE RESTROOM, BUT I WENT BY AND I
16 SAW THE DOORS OPEN. AND I SAID, "HOW ARE YOU DOING, MS.
17 ADAMS".

18 Q AND DO YOU REMEMBER ABOUT WHAT TIME THAT WAS?

19 A ABOUT 9:00.

20 Q AND DO YOU REMEMBER -- DID ANYTHING ELSE HAPPEN
21 THAT EVENING BEFORE LIGHTS OUT THAT YOU CAN REMEMBER?

22 A NOT BEFORE LIGHTS OUT.

23 Q AFTER LIGHTS OUT, WHAT HAPPENED?

24 A A COMMOTION, WHEN I WOKE UP, THEY WERE TRYING TO
25 GET INTO THE OFFICER'S QUARTERS.

J. WALDROP -- DIRECT BY MS. WILLIAMS

404

1 Q WHEN YOU SAY "THEY", HOW MANY PEOPLE WERE TRYING
2 TO GET IN?

3 A IT WAS A LOT OF PEOPLE RUNNING AROUND. TWO OF
4 THEM BEATING ON THE DOOR TO TRY TO GET IT OPEN.

5 Q AND DID YOU THEN GET UP?

6 A YES, MA'AM.

7 Q AND WHERE DID YOU GO TO?

8 A I WENT TO THE DAY ROOM ON THE OUTSIDE, BY THE
9 MICROWAVE, TO SEE WHO -- WHAT WAS GOING ON.

10 Q I'M GOING TO PUT A DIAGRAM UP HERE, MR. WALDROP.
11 AND WHEN I ASK YOU CERTAIN QUESTIONS, THIS -- I'LL ASK YOU
12 TO USE THIS POINTER, IF YOU COULD, TO POINT TO THIS. I
13 KNOW IT'S HARD WITH THOSE -- AND I'M SORRY ABOUT THAT. DO
14 YOU RECOGNIZE THE DIAGRAM OF THIS -- OF THIS AREA AS THE
15 MAG II UNIT?

16 A YES, MA'AM.

17 Q ABOUT HOW MANY PEOPLE WERE TRYING TO GET INTO
18 THE OFFICE?

19 A INTO HER -- INTO HER OFFICE?

20 Q YES, SIR.

21 A FROM MAG -- FROM C SIDE ABOUT -- ONE WAS BEATING
22 ON THE DOOR.

23 Q AND WHAT ABOUT ON THE OTHER SIDE?

24 A I DON'T -- I DON'T KNOW. I DIDN'T GO ON THE
25 OTHER SIDE, MA'AM.

1 Q AND THEN WHAT HAPPENED?

2 A WELL, WHEN THEY FINALLY GOT THE DOOR OPENED, I
3 WAS STILL STANDING BY THE MICROWAVE AT THE TIME. I DIDN'T
4 GO NO FURTHER THAN THE MICROWAVE.

5 Q WHERE IS THE MICROWAVE, IF YOU CAN SHOW US ON
6 THIS DIAGRAM?

7 A RIGHT -- WAIT A MINUTE. I'M NERVOUS NOW.

8 Q THAT'S OKAY. IS IT---

9 A THAT'S -- THAT'S THE OFFICE. THE MICROWAVE IS
10 RIGHT THERE AT THE CORNER, RIGHT THERE.

11 Q OKAY. YOU HAD NOT ENTERED THE OFFICE?

12 A NO, MA'AM.

13 Q BUT YOU COULD SEE. SO, YOU WERE STANDING THERE.
14 THEN WHAT HAPPENED? WHAT ELSE DID YOU OBSERVE?

15 A THEN I SAW MR. STAGGERS. HE CAME TO THE DOOR.
16 AND THEN HE ASKED CHRIS AND -- AND CHRIS CAME AND HELPED
17 PICK UP MS. ADAMS.

18 Q WHEN YOU SAY CHRIS, DO YOU KNOW HIS LAST NAME?

19 A NO, MA'AM.

20 Q COULD IT BE CHRISTOPHER SIMMONS?

21 A SIMMONS. AND THEY BROUGHT -- I SAID, TAKE HER
22 INTO THE DAY ROOM. SET HER ON THE FLOOR. AND I SAID, --
23 I SAT THERE WITH HER. AND SHE SAID, "Y'ALL PLEASE GO IN
24 THERE AND TELL THEM BOYS, DON'T KILL THAT MAN".

25 Q YOU SAID THAT?

J. WALDROP -- DIRECT BY MS. WILLIAMS

406

1 A WELL, SHE SAID IT AND I TOLD THEM. I SAID, I
2 ALSO TOLD THEM, I SAID, "PLEASE DON'T KILL HIM". I SAID,
3 "BECAUSE WE ALL COULD GET CHARGED WITH MURDER."

4 Q DO YOU HAVE A NICKNAME ON THE UNIT?

5 A WHICH ONE? YES, MA'AM. THEY CALL ME POP.

6 Q AND HOW DID YOU FEEL ABOUT MS. ADAMS THAT NIGHT,
7 GIVEN THAT SITUATION?

8 A I THOUGHT OF MY DAUGHTER.

9 Q DID MS. ADAMS HAVE ANYTHING WITH HER WHEN YOU
10 ENCOUNTERED HER IN THE DAY ROOM?

11 A YES, MA'AM.

12 Q WHAT WAS IT?

13 A SHE GAVE ME A HOMEMADE SHANK.

14 Q WHAT -- DID YOU---

15 A I TOLD HER -- SHE LAID IT IN MY HAND. I SAID,
16 "PLEASE YOU KEEP THIS. YOU MAY NEED THIS. I'M -- I DON'T
17 NEED IT IN MY POSSESSION."

18 Q WHAT WAS MS. ADAMS' DEMEANOR LIKE?

19 A TO ME, SHE ALL BUT -- GETTING READY LIKE SHE WAS
20 GOING TO GO INTO SHOCK. I'M NOT NO MEDIC, BUT SHE WAS ALL
21 TO PIECES.

22 Q I'M SORRY. I DIDN'T HEAR WHAT YOU -- WHAT DID
23 YOU SAY?

24 A I'M NOT A MEDIC. BUT TO ME, SHE LOOKED LIKE SHE
25 WAS GETTING READY TO GO -- GO TO PIECES.

1 Q WHAT WAS SHE WEARING WHEN YOU FIRST SAW HER?

2 A A T-SHIRT.

3 Q AND THEN AT SOME POINT, WAS OTHER CLOTHING
4 PROVIDED?

5 A WHEN SHE WENT -- THEY WENT TO TAKE HER OUT THE
6 DOOR, THEY GAVE HER A PAIR OF PANTS LIKE WE WEAR.

7 Q AFTER MR. SIMMONS BROUGHT HER INTO THE DAY ROOM,
8 DID YOU SEE WHERE HE WENT?

9 A HE WENT BACK INSIDE TO HELP GET THEM TO STOP
10 BEATING ON HIM.

11 Q AND WHERE WAS MR. STAGGERS DURING THIS TIME?

12 A AT THAT TIME, WHEN I TOLD HIM THAT, HE WAS
13 STANDING IN THE DOOR AT THE BATHROOM.

14 MS. WILLIAMS: I BEG THE COURT'S INDULGENCE.

15 THE COURT: YES, MA'AM.

16 MS. WILLIAMS: THANK YOU, MR. WALDROP. WOULD YOU
17 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE?

18 THE WITNESS: YES, MA'AM.

19 THE COURT: MR. SHELTON.

20 MR. SHELTON: THANK YOU, YOUR HONOR.

21 CROSS EXAMINATION BY MR. SHELTON:

22 Q HEY, JEFFERSON, HOW ARE YOU DOING?

23 A OKAY.

24 Q YOU'VE TALKED TO ME A COUPLE OF TIMES NOW, HUH?

25 A YEAH.

J. WALDROP -- CROSS BY MR. SHELTON

408

1 Q A LITTLE NERVOUS?

2 A WOULDN'T YOU BE?

3 Q I'M NOT IN YOUR SITUATION.

4 A THAT'S TRUE, SIR.

5 Q NOW, YOU -- YOU DIDN'T SEE ANYTHING ELSE HAPPEN
6 BEFORE THIS?

7 A NO, SIR.

8 Q YOU WERE SLEEPING?

9 A YES, SIR.

10 Q OKAY. YOU WORK FOR PRISON INDUSTRIES, IS THAT
11 CORRECT?

12 A THAT'S RIGHT, SIR.

13 Q AND WHEN DO YOU START YOUR SHIFT?

14 A ABOUT 5:30.

15 Q ABOUT 5:30 A.M.

16 A YES.

17 Q SO, IT IS IMPORTANT THAT YOU GET SOME SLEEP THAT
18 NIGHT, ISN'T THAT CORRECT?

19 A YES.

20 Q WHAT DORM IN THE C SIDE UNIT WERE YOU IN, WHAT
21 CUBICLE?

22 A THE C SIDE, ONE, TWO, THREE -- ABOUT THE FOURTH
23 CUBE RIGHT THERE.

24 Q OKAY. AND YOU SAW MR. SIMMONS -- HE -- HE
25 BROUGHT C.O. ADAMS INTO THE ROOM?

1 A AND I WAS STANDING BY THE MICROWAVE IN THE
2 CORNER. AND THEY COULD -- I WALKED UP THERE TO THE DOOR
3 AND HE SAID, -- WILLIE, AS I CALL HIM, THE LITTLE SHORT
4 ONE.

5 Q WILLIE?

6 A YEAH. HE BROUGHT -- CHRIS SIMMONS -- AND CHRIS
7 TOOK HER IN THE DAY ROOM -- I SAID, "Y'ALL BRING HER IN
8 THE DAY ROOM". AND I SAT THERE WITH HER. AND Y'ALL GET
9 THE PEOPLE AWAY FROM HIM UNTIL THE C.O.'S GETS HERE.
10 WE -- THEY DONE GOT THE GIRL OUT. IT WASN'T NO NEED --
11 GETTING THE GIRL OUT, SO. WE DIDN'T NEED NOBODY ELSE
12 GETTING NO MURDER CHARGES.

13 Q SO -- SO YOU TOLD -- YOU TOLD WILLIE THIS NOT TO
14 -- NOT TO HAVE THEM KILL -- KILL HIM---

15 A YES. WE TOLD HIM -- SHE TOLD HIM NOT TO LET
16 THEM KILL HIM.

17 Q OKAY. WAS THERE ANYBODY ELSE IN THE DAY ROOM
18 WITH YOU?

19 A NOT AS I REMEMBER.

20 Q WHY -- WHY DID YOU HAVE CORRECTIONAL OFFICER
21 ADAMS KEEP THE SHANK WHEN SHE TRIED TO GIVE IT TO YOU?

22 A THE WAY THE PEOPLE WAS RUNNING AROUND ON THE
23 INSIDE, OUTSIDE THE DAY ROOM, I'M JUST ONE MAN. THERE'S
24 95 OTHER PEOPLE IN THAT -- THEY GO CRAZY.

25 Q SO, YOU -- YOU FEARED FOR HER SAFETY?

J. WALDROP -- CROSS BY MR. SHELTON

410

1 A YES, SIR.

2 Q OKAY. WERE -- THERE WERE COMMENTS BEING MADE BY
3 OTHER INMATES?

4 A I DIDN'T HEAR IT. I WAS ON THE INSIDE OF THE
5 DAY ROOM. IF THEY SAID ANYTHING, I WAS INSIDE THE DAY
6 ROOM.

7 Q THERE WERE A LOT OF PEOPLE CONGREGATING AROUND
8 THERE?

9 A WALKING AROUND LOOKING IN THE DAY ROOM WINDOWS.
10 YOU'VE GOT DAY -- YOU'VE GOT WINDOWS ON EACH SIDE RIGHT
11 THERE. YOU'VE GOT THE DOOR. YOU'VE GOT TWO WINDOWS RIGHT
12 THERE.

13 Q AND HOW ABOUT HOW MANY -- HOW MANY MALE INMATES
14 ARE THERE IN THIS MAGNOLIA II UNIT?

15 A NINETY-SIX.

16 Q NINETY-SIX. THAT'S A LOT FOR ONE PERSON, IS IT
17 NOT, AS FAR AS YOU -- YOU HAVE -- YOU'RE PROTECTING HER?

18 A YES.

19 Q CORRECT?

20 A YES.

21 Q DID AT SOME TIME, DID SOMEONE PULL A FIRE ALARM?

22 A YES. I DON'T KNOW WHO PULLED THE FIRE ALARM.

23 Q DID YOU SEE SOMEBODY TRYING TO USE THE WALKIE
24 TALKIE?

25 A NO, SIR. I HEARD THEY DID, BUT I NEVER SAW

1 THEM.

2 Q NOW, DID YOU -- WHAT HAPPENED -- WHAT HAPPENED
3 -- HOW DID -- HOW DID C.O. ADAMS GET FROM THE DAY ROOM TO
4 OUTSIDE -- ACTUALLY THE OFFICERS HAD COME INTO---

5 A SHE WALKED.

6 Q SHE WALKED?

7 A I WALKED -- SHE WALKED -- SHE WALKED BETWEEN ME
8 AND THE WALL. I GOT ABOUT -- I GOT FROM THAT DOOR TO THAT
9 DOOR.

10 Q OKAY. AND WAS THERE ANYBODY WITH YOU OR WAS IT
11 YOU THAT WAS TAKING---

12 A NO. THEY HAD -- THERE WAS PEOPLE STANDING RIGHT
13 THERE AT THAT WALL. AND I TOLD THEM TO BACK UP. AND THE
14 SGT. WAS STANDING -- HE COME TO ABOUT RIGHT THERE -- AND I
15 MET HIM. WE MET HIM AND HE WALKED -- WE WALKED TO THE
16 DOOR.

17 Q OKAY. SGT. WILLIAMS?

18 A WILLIAMS.

19 Q ALL RIGHT. DID YOU RECEIVE CLOTHING AFTER THAT?

20 A YES, SIR. WOMEN'S PANTS, UNIFORM PANTS, SHIRT
21 AND COAT.

22 Q WHO DID YOU RECEIVE THAT FROM?

23 A WHOEVER THREW THEM OUT THE DOOR --

24 COURT REPORTER: I'M SORRY. YOUR ANSWER AGAIN.

25 THE WITNESS: WHOEVER -- I DON'T KNOW WHO THREW

1 THEM OUT THE OFFICER'S DOOR. BUT WHOEVER THREW THEM OUT,
2 I CAUGHT THEM AND GAVE THEM TO SGT. WILLIAMS.

3 **BY MR. SHELTON:**

4 **Q** YOU GAVE THEM TO SGT. WILLIAMS?

5 **A** YES.

6 **Q** DID YOU SEE THE RADIO?

7 **A** NO, SIR.

8 **Q** DID YOU SEE THE MACE?

9 **A** NO, SIR. I DIDN'T SEE NONE OF THE BELT.

10 **Q** YOU DIDN'T SEE NONE OF THE BELT?

11 **A** THE C.O. BELT THAT CARRIES THE RADIO AND THE
12 MACE AND STUFF ON IT.

13 **Q** OH, THEY'RE HOOKED---

14 **A** IT'S ALL HOOKED ON ONE BELT.

15 **Q** OKAY. IS THERE A HOLDER OR SOMETHING ON THE
16 BELT, LIKE A -- LIKE A HOLDER FOR THE MACE? LIKE CELL
17 PHONE HOLDERS HAVE---

18 **A** IT IS JUST LIKE IT IS FOR THE RADIOS.

19 **Q** OKAY.

20 **A** IT'S A CLIP ON SOMETIMES.

21 **Q** AND YOU DIDN'T SEE THAT? OKAY.

22 **A** NO, SIR.

23 **Q** NOW, YOU MENTIONED THAT YOU WORKED FOR PRISON
24 INDUSTRIES?

25 **A** RIGHT.

1 Q HOW LONG HAVE YOU BEEN WORKING FOR PRISON
2 INDUSTRIES?

3 A SINCE 2003.

4 Q OKAY. HOW LONG HAVE YOU BEEN AT MACDOUGALL?

5 A SINCE 2002.

6 Q OKAY. AND WHAT DO YOU DO FOR PRISON INDUSTRIES?

7 A I BUILD TRANSMISSIONS FOR THE MILITARY --
8 REBUILD TRANSMISSIONS.

9 Q AND ISN'T IT TRUE THAT PEOPLE THAT WORK FOR
10 PRISON INDUSTRIES, THEY GET BLAMED FOR A LOT OF THE
11 SHANKS?

12 A A LOT OF THEM.

13 MR. SHELTON: I BEG THE COURT'S INDULGENCE.

14 THE COURT: YES, SIR.

15 BY MR. SHELTON:

16 Q DID YOU PROVIDE ANY WRITTEN STATEMENTS?

17 A NO, SIR.

18 Q OKAY. WERE YOU EVER INTERVIEWED BY MERV POWELL?

19 A NO, SIR.

20 Q OKAY.

21 A THE ONLY PERSON I TALKED TO WAS A -- MR. HOT
22 SAUCE.

23 Q OKAY. BUT YOU DON'T KNOW WHO THAT IS?

24 COURT REPORTER: MISTER WHO, PLEASE?

25 THE WITNESS: HOT SAUCE. HE---

J. WALDROP -- CROSS BY MR. SHELTON

414

1 BY MR. SHELTON:

2 Q AND---

3 A HE WORKS FOR SCDC, MACDOUGALL.

4 Q OKAY. CAN YOU DESCRIBE MR. HOT SAUCE REAL
5 QUICK?

6 A HE MAY BE -- I'M 6'3". HE MAY BE ABOUT 5'10",
7 MAYBE A LITTLE TALLER.

8 Q OKAY.

9 A HE'S A LITTLE CHUBBY.

10 Q OKAY.

11 A HE'S A -- HE'S A FAT OFFICER.

12 Q IS HE BLACK OR WHITE?

13 A WHITE.

14 Q SO, THAT -- THAT PERSON'S FROM SCDC?

15 A YES, SIR.

16 Q OKAY. HE DIDN'T INTER -- YOU WEREN'T
17 INTERVIEWED BY ANYBODY FROM SOUTH CAROLINA LAW ENFORCEMENT
18 DIVISION, WERE YOU, SLED?

19 A NO. NOBODY NEVER SAID THEY WERE SLED.

20 Q OKAY. YOU WEREN'T INTERVIEWED BY JJ EVANS?

21 A I DON'T -- NO, SIR. I DON'T THINK I WAS.

22 Q AN AGENT CHINA?

23 A WHO.

24 Q AN AGENT CHINA?

25 A NO. I DON'T KNOW NO AGENT CHINA.

1 Q OKAY. HOW LONG -- HOW -- STRIKE THAT.

2 MR. SHELTON: NO FURTHER QUESTIONS.

3 MS. WILLIAMS: NOTHING FURTHER FROM MR. WALDROP.

4 THE COURT: MR. WALDROP, YOU MAY STEP DOWN. WHO IS
5 YOUR NEXT WITNESS, MS. WILLIAMS?

6 (WITNESS STEPPED DOWN.)

7 MS. WILLIAMS: THE STATE WOULD CALL DR. BABB.

8 THE COURT: COUNSEL APPROACH JUST FOR SCHEDULING.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE
11 THE HEARING OF THE JURY, OFF THE RECORD.)

12 THE COURT: LADIES AND GENTLEMEN, YOU MAY AGAIN
13 STRETCH AND STAND UP. THANK YOU. DR. BABB, PLEASE COME
14 FORWARD. STAND RIGHT THERE. THANK YOU.

15 (WITNESS FORWARD.)

16 THE CLERK: PLEASE RAISE YOUR RIGHT HAND, PLACE
17 YOUR LEFT HAND ON THE BIBLE.

18 ROBERT EDGAR BABB, III, HAVING
19 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
21 AND SPELL YOUR LAST NAME FOR THE RECORD.

22 THE WITNESS: ROBERT EDGAR BABB, III. B-A-B-B.

23 THE COURT: MS. WILLIAMS.

24 DIRECT EXAMINATION BY MS. WILLIAMS:

25 Q DR. BABB, WHERE DO YOU WORK?

DR. BABB -- DIRECT BY MS. WILLIAMS

416

1 A AT LIEBER. LIEBER CORRECTIONAL CENTER.

2 Q IS THAT A PRISON?

3 A YES.

4 Q AND WERE YOU WORKING THERE ON JANUARY 18, 2008?

5 A YES, I WAS.

6 Q AND ON THAT DATE, DID YOU TREAT A GEORGE
7 SALISBURY?

8 A YES, I DID.

9 Q CAN YOU PLEASE EXPLAIN THE CIRCUMSTANCES OF THAT
10 TREATMENT? HOW HE CAME TO YOU?

11 A I WAS MAKING ROUNDS IN THE MAXIMUM SECURITY AREA
12 AND THEN I WAS ASKED TO SEE HIM.

13 Q OKAY. AND WHAT LACERATIONS DID HE HAVE?

14 A HE HAD -- MAINLY HE HAD ABRASIONS AROUND HIS
15 HEAD. AND HE HAD A PUFFY RIGHT CHEEK AND HE HAD A SMALL
16 LACERATION OVER THE RIGHT EYE.

17 Q AND WHEN YOU SAW MR. SALISBURY, HAD HE RECEIVED
18 ANY TREATMENT THUS FAR?

19 A I THINK HE HAD BECAUSE THERE WERE SOME STERI
20 STRIPS OVER THE SMALL LACERATIONS TO HOLD IT TOGETHER.

21 Q AND WHAT DID YOU DO TO TREAT HIS INJURIES?

22 A SIMPLY WE JUST GAVE HIM SOME ANTIBIOTIC OINTMENT
23 AND BANDAIDS AND REFERRED HIM TO A DENTIST FOR A CHIPPED
24 TOOTH.

25 Q NO BROKEN BONES?

1 A NO. I CHECKED FOR BROKEN BONES, BUT COULDN'T
2 FIND ANY.

3 MS. WILLIAMS: THANK YOU, DR. BABB. WOULD YOU
4 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE?

5 CROSS EXAMINATION BY MS. KENNEDY:

6 Q GOOD AFTERNOON, DR. BABB.

7 A HI.

8 Q IF YOU'VE BEEN OUT THERE WAITING FOR A LONG
9 TIME, I APOLOGIZE.

10 A YES, I HAVE.

11 Q I JUST HAVE MAYBE TWO OR THREE QUESTIONS. YOU
12 -- MR. SALISBURY WAS BROUGHT OVER FROM MACDOUGALL?

13 A THAT WAS MY UNDERSTANDING.

14 Q AND YOU WERE ON DUTY THAT NIGHT OR -- WHAT TIME
15 DID YOU SEE HIM?

16 A I SAW HIM IN THE MORNING TIME ON A FRIDAY
17 MORNING, I THINK.

18 Q OKAY. WHAT DO YOU NORMALLY -- I DON'T KNOW IF
19 THEY CALL DOCTORS ON DUTY OR -- WHAT TIME DO YOU COME TO
20 WORK?

21 A ABOUT 8:30.

22 Q ABOUT 8:30?

23 A YES.

24 Q SO, YOU SAW HIM AFTER YOU ARRIVED AT 8:30?

25 A YES.

DR. BABB -- CROSS BY MS. KENNEDY

418

1 Q AND YOU TREATED HIM FOR, I BELIEVE YOU SAID,
2 ABRASIONS OVER HIS EYE AND---

3 A HE HAD ABRASIONS -- I DON'T REMEMBER EXACTLY,
4 BUT I SAID THE FRONTAL AREA, THE TEMPORAL AREA, THE
5 POSTERIOR HEAD IN MY NOTE.

6 Q ALL RIGHT. AND -- AND THOSE WERE THE INJURIES
7 THAT YOU OBSERVED OF HIM?

8 A AND HE HAD A PUFFY RIGHT CHEEK AND A LACERATION.

9 Q SO -- SO EVERYTHING BASICALLY, BASED ON YOUR
10 EXAMINATION, IS FROM THE HEAD UP?

11 A YES, MA'AM.

12 Q OKAY. DID YOU TAKE ANY PICTURES OF HIS
13 INJURIES?

14 A I DID NOT.

15 Q DID ANYBODY AT ANY TIME EVER SHOW YOU PICTURES
16 OF HIS INJURIES?

17 A NOBODY DID.

18 Q WERE YOU GIVE ANY INFORMATION WHATSOEVER THAT HE
19 HAD RECEIVED ANY TREATMENT AT ALL WHEN HE WAS STILL AT
20 MACDOUGALL BEFORE HE WAS TRANSPORTED---

21 A I WAS NOT GIVEN ANY INFORMATION ON THAT. BUT I
22 DID SEE THAT HE HAD THE STERI STRIPS ON.

23 Q DID YOU HAPPEN TO KNOW WHETHER OR NOT HE -- OR
24 OBSERVED, IN YOUR EXAMINATION, WHETHER OR NOT HE HAD ANY
25 INJURIES TO HIS HAND?

1 A HE DIDN'T DIRECTLY TO HIS HANDS.

2 Q AND YOU DIDN'T SEE ANYTHING?

3 A NO, MA'AM.

4 MS. KENNEDY: OKAY. THE COURT'S INDULGENCE.

5 THE COURT: YES, MA'AM.

6 MS. KENNEDY: THAT'S -- THAT'S ALL I HAVE, YOUR

7 HONOR. THANK YOU.

8 THE COURT: MS. WILLIAMS.

9 MS. WILLIAMS: NOTHING FURTHER.

10 THE COURT: MAY THIS WITNESS STEP DOWN AND BE
11 EXCUSED?

12 MS. WILLIAMS: YES, YOUR HONOR.

13 THE COURT: ANY OBJECTIONS?

14 MS. KENNEDY: NO, YOUR HONOR.

15 THE COURT: DR. BABB, YOU MAY STEP DOWN AND BE
16 EXCUSED. YOU ARE FREE TO REMAIN IN THE COURTROOM.

17 THE WITNESS: THANK YOU.

18 (WITNESS STEPPED DOWN.)

19 THE COURT: LADIES AND GENTLEMEN OF THE JURY, I TRY
20 TO END AT CLOSE TO 5:00 OR AROUND 5:00. AND FOR
21 SCHEDULING PURPOSES, WE WOULD GO LATER THAN I WOULD
22 ANTICIPATE OR HAVE TOLD YOU IF WE CALLED ANOTHER WITNESS.
23 SO, AT THIS TIME, WE ARE GOING TO BE IN RECESS FOR THE
24 DAY.

25 I REMIND YOU, PLEASE DO NOT BEGIN DELIBERATIONS.

1 DO NOT DISCUSS THIS CASE AMONGST YOURSELVES. DO NOT READ,
2 WATCH, LISTEN TO ANY NEWS ACCOUNTS SHOULD THERE BE ANY
3 REGARDING THIS TRIAL.

4 PLEASE BE BACK IN THE JURY ROOM IN THE MORNING AT
5 9:00 A.M. AND, AGAIN, I WISH TO THANK Y'ALL. EACH OF YOU
6 WERE HERE EARLIER THAN YOU NEEDED TO BE. SO, AGAIN, I
7 THANK YOU FOR YOUR PROMPTNESS THIS MORNING.

8 PLEASE RISE FOR THE JURY.

9 (WHEREUPON, JURY LEFT THE COURTROOM AT 4:52 P.M.)

10 **THE COURT:** THANK YOU. BE SEATED. MS. KENNEDY,
11 ARE YOU PREPARED TO TAKE UP THE MATTER AT THIS TIME OF MS.
12 MCCANTS?

13 **MS. KENNEDY:** NO, YOUR HONOR, I'M NOT. WE WERE
14 WAITING FOR INFORMATION FROM THE DEPARTMENT OF
15 CORRECTIONS. WE ARE IN -- AS I UNDERSTAND THE INFORMATION
16 FROM MY OFFICE WAS THAT THAT INFORMATION -- OR THAT THE
17 INFORMATION THAT WE WERE REQUESTING HAD TO BE SIGNED OFF
18 ON BY SOMEONE ELSE.

19 AND IN REGARD TO THAT, YOUR HONOR, IN TERMS OF MS.
20 WILLIAMS ALLEGES -- ASSERTS THAT SHE IS NOT A MENTAL
21 HEALTH COUNSELOR. SO, IF WE COULD HAVE -- IT WOULD BE
22 HELPFUL IF WE COULD HAVE SOME INFORMATION ABOUT WHAT HER
23 OCCUPATION IS BECAUSE -- AND I BRING THIS TO THE COURT'S
24 ATTENTION BECAUSE IF SHE'S A CORRECTIONS OFFICER, THEN
25 WE'VE GOT -- WE HAVE TO HAVE A JACKSON V. DENNO HEARING.

1 IF SHE IS EMPLOYED AS A COUNSELOR, THEN THE ISSUE
2 GOES TO HIPAA AND THE REGULATIONS. WE'VE BEEN -- THE ONLY
3 THING, YOUR HONOR, THAT WE'VE -- I'VE BEEN ABLE TO GET
4 RIGHT NOW WITH THE ASSISTANCE DURING THE LUNCH OF MY --
5 FROM MY OFFICE IS THAT -- IN TERMS OF THE RIGHT OF ACCESS,
6 IS THAT THERE ARE RESTRICTIONS, YOU KNOW, PLACED ON WHO
7 CAN HAVE THAT INFORMATION. I HAVEN'T HAD A FULL
8 OPPORTUNITY TO REVIEW ALL OF THAT, BUT THE INFORMATION
9 WOULD SUGGEST THAT IT IS SUBJECT TO DISCLOSURE, BECAUSE IT
10 DOESN'T MEET, AGAIN, BASED ON A CURSORY REVIEW OF THE
11 INFORMATION I HAVE, IT DOESN'T MEET ANY OF THE EXCEPTIONS.

12 IN ADDITION TO WHICH, THE ASSERTION THAT THERE IS A
13 WAIVER BECAUSE OF THE PRESENCE OF THE THIRD PARTY, THE
14 RECORDS CLEARLY INDICATE THAT THAT OFFICER WAS THERE AS A
15 RESULT OF A SECURITY ISSUE. SO, THERE -- THERE CAN'T BE
16 -- MR. SALISBURY HAD -- THERE IS NO WAIVER OF THAT. HE
17 HAD NO CHOICE. THAT THIRD PERSON WAS THERE.

18 AND SO, AGAIN, BASED ON THE LIMITED INFORMATION
19 THAT I HAVE BEEN PROVIDED, AND THE EXTREMELY LIMITED
20 OPPORTUNITY THAT I'VE HAD TO PUT IT ALL TOGETHER, I WOULD
21 JUST REQUEST THAT WE TAKE THAT ISSUE UP IN THE MORNING.

22 MS. WILLIAMS: YOUR HONOR?

23 THE COURT: YES, MS. WILLIAMS.

24 MS. WILLIAMS: WHATEVER THE COURT WOULD LIKE US TO
25 DO, THIS ISSUE -- MS. KENNEDY'S MOTION, SHE KNEW THE

1 WITNESS WAS ON THE LIST. SHE IS THE ONE THAT IS TRYING TO
2 PREVENT HER FROM TESTIFYING. SHE'S NOT A CORRECTIONS
3 OFFICER. ALL WE SIMPLY SAID IS THAT SHE IS NOT A PROVIDER
4 AS DEFINED IN THE STATUTE. SO, WE DON'T NEED A JACKSON V.
5 DENNO HEARING. WE STAND ON THE CASE LAW THAT WE CITED TO
6 THIS COURT AND OUR UNDERSTANDING OF THE STATUTE. WE THINK
7 THAT IT IS A STATEMENT THAT IS NOT GOVERNED BY HIPAA.
8 WE'RE NOT TRYING TO GET MEDICAL RECORDS IN.

9 THE COURT: MS. WILLIAMS, IS MS. MCCANTS STILL
10 OUTSIDE?

11 MS. WILLIAMS: YES.

12 THE COURT: LET'S CALL HER IN FOR THE LIMITED
13 PURPOSE----

14 MS. KENNEDY: YOUR HONOR---

15 THE COURT: OUT OF THE PRESENCE OF THE JURY ---

16 MS. KENNEDY: ---BEFORE -- I'M SORRY, YOUR HONOR.

17 THE COURT: FOR THE LIMITED PURPOSE OF FINDING OUT
18 WHAT HER EMPLOYMENT STATUS IS AND HER JOB TITLE AND THAT
19 IS IT. ANY OBJECTIONS TO THAT, MS. KENNEDY?

20 MS. KENNEDY: NO, YOUR HONOR. BUT WHAT I WAS GOING
21 TO REQUEST IS SINCE WE HAVEN'T HAD THE OPPORTUNITY TO TALK
22 WITH HER, IF WE DID -- IF I COULD HAVE SOME TIME, IF
23 NECESSARY, TO SPEAK WITH HER INDIVIDUALLY AFTER WE
24 ASCERTAIN THAT INFORMATION?

25 THE COURT: WELL, WHY DON'T WE DO THIS, LET'S DO IT

1 THIS WAY: LET'S TAKE A TEN MINUTE BREAK. AND THAT WAY
2 EVERYBODY CAN TAKE A COMFORT BREAK. MS. KENNEDY, WILL
3 THAT GIVE YOU SUFFICIENT TIME TO MEET WITH HER?

4 MS. KENNEDY: I THINK SO.

5 THE COURT: ASK HER A FEW QUESTIONS?

6 MS. KENNEDY: I THINK SO, YOUR HONOR. AS LONG AS
7 I'M NOT WAIVING ANY RIGHT TO ARGUE THIS IN THE MORNING.
8 BECAUSE WE -- I HAVEN'T HAD THE OPPORTUNITY TO READ THE
9 CASE LAW. AND IT'S -- IT'S SOMEWHAT DISINGENUOUS TO
10 SUGGEST THAT I SHOULD BE READY FOR A MOTION BASED ON
11 INFORMATION THAT I VERY CANDIDLY SHARED WITH THE COURT IN
12 -- IN -- IN RESPONSE TO THE COURT'S INQUIRY OF ME, WHETHER
13 OR NOT I WOULD HAVE ANY MOTIONS. AND I ALERTED THE COURT
14 TO THE POSSIBILITY BASED ON THE CIRCUMSTANCES, AND HERE WE
15 ARE EXACTLY WHERE I THOUGHT WE WOULD BE.

16 THE COURT: ALL RIGHT. WE'RE GOING TO TAKE A TEN
17 MINUTE RECESS. LET ME KNOW, MS. KENNEDY, IF THAT'S
18 SUFFICIENT TIME. WHEN WE COME BACK, MS. MCCANTS WILL BE
19 ON THE STAND FOR THE LIMITED PURPOSE OF STATING FOR THE
20 RECORD -- AND, MS. WILLIAMS, I UNDERSTAND IT'S MS.
21 KENNEDY'S MOTION, BUT I WANT YOU TO INQUIRE AS TO HER
22 OCCUPATION, TRAINING AND THEN GO AHEAD AND PROFFER THE
23 STATEMENT SO THAT WE'RE ALL CLEAR AS TO WHAT THE STATEMENT
24 WAS, WHO WAS PRESENT AND THEN WE WILL ARGUE THE MOTION IN
25 THE MORNING BEFORE THE JURY COMES IN. THAT WAY, EVERYONE

1 IS CLEAR AS TO HER EDUCATION, HER OCCUPATION AND TO THE
2 STATEMENT. THANK YOU.

3 MS. KENNEDY: THANK YOU, YOUR HONOR.

4 (WHEREUPON, COURT RECESSED AT 4:55 P.M.)

5 (WHEREUPON, COURT RESUMED AT 5:11 P.M.)

6 THE COURT: THANK YOU. BE SEATED. MS. MCCANTS,
7 PLEASE COME FORWARD.

8 (WITNESS FORWARD.)

9 THE CLERK: PLEASE RAISE YOUR RIGHT HAND, PLACE
10 YOUR LEFT HAND ON THE BIBLE.

11 TONYA FELICIA MCCANTS, HAVING
12 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
14 AND SPELL YOUR LAST NAME FOR THE RECORD.

15 THE WITNESS: TONYA FELICIA MCCANTS, M-C-C-A-N-T-S.

16 (WHEREUPON, THE FOLLOWING TESTIMONY WAS TAKEN
17 OUTSIDE THE PRESENCE OF THE JURY.)

18 DIRECT EXAMINATION BY MS. WILLIAMS:

19 Q MS. MCCANTS, WHAT IS YOUR POSITION AT MACDOUGALL
20 CORRECTIONAL FACILITY?

21 A I'M A MENTAL HEALTH COUNSELOR.

22 Q AND ARE YOU LICENSED -- ARE YOU A LICENCED
23 MEDICAL HEALTH COUNSELOR?

24 A NO, I'M NOT.

25 Q DO YOU HAVE ANY LICENSES AT ALL IN THE MEDICAL

1 FIELD?

2 A NO.

3 Q AND YOU'RE NOT LICENSED UNDER ANY STATE STATUTE?

4 A NO.

5 Q DID YOU SEE THE DEFENDANT, GEORGE SALISBURY,
6 AFTER THE ALLEGED ASSAULT OCCURRED ON JANUARY 18TH?

7 A YES, I DID.

8 MS. KENNEDY: YOUR HONOR, IF I MAY, I'M JUST TRYING
9 TO FIGURE OUT WHAT -- IS THIS A PROFFER THAT WE'RE DOING
10 AND THEN I GET TO ARGUE, OR -- I'M UNCLEAR PROCEDURALLY
11 WHAT WE'RE DOING RIGHT NOW.

12 THE COURT: I WANT TO KNOW -- WHAT WE'RE DOING IS I
13 WANT TO KNOW HER QUALIFICATIONS, SO I'M ALLOWING MS.
14 WILLIAMS TO INQUIRE AS TO HER QUALIFICATIONS AND HER EXACT
15 TITLE. AND THEN I'M GOING TO ALLOW HER TO, OF COURSE,
16 THEN PROFFER WHAT IT WAS THAT MS. WILLIAMS INTENDS TO HAVE
17 THIS WITNESS TESTIFY TO.

18 MS. KENNEDY: IN THAT REGARD, YOUR HONOR, MAY I BE
19 ALLOWED TO ASK SOME QUESTIONS WITH THE PROFFER?

20 THE COURT: YES, MA'AM.

21 MS. KENNEDY: THANK YOU, YOUR HONOR.

22 BY MS. WILLIAMS:

23 Q WHAT ARE YOUR QUALIFICATIONS AS A MENTAL HEALTH
24 COUNSELOR?

25 A I HAVE A MASTERS IN CLINICAL COUNSELLING.

TONYA MCCANTS -- DIRECT BY MS. WILLIAMS

426

1 Q AND WHEN YOU SAW MR. SALISBURY AFTER THE EVENT,
2 DID HE SAY ANYTHING TO YOU ABOUT WHAT HAPPENED?

3 A YES, HE DID.

4 Q WHAT DID HE SAY?

5 A HE STATED THAT WHEN HE -- HE WAS SITTING ON THE
6 SIDE OF HIS BED READING SOME LETTERS FROM HIS WIFE. HE
7 LOOKED UP IN THE BOOTH AND THAT'S WHEN HE SAW HIS WIFE.
8 AFTER THAT, HE DON'T KNOW WHAT HAPPENED. HE BLACKED OUT.
9 AND WHEN HE CAME TO, THAT'S WHEN HE FOUND THE INMATES ON
10 TOP OF HIM WITH CHAIRS AND TABLES BEATING HIM WITH -- THE
11 -- EXCUSE ME -- TABLES AND CHAIRS.

12 Q AND WHEN -- WHEN HE SAID HE "LOOKED INTO THE
13 BOOTH", WHAT WAS YOUR UNDERSTANDING OF WHAT BOOTH WAS
14 THAT?

15 A THE SECURITY OFFICE BOOTH.

16 MS. WILLIAMS: THAT'S IT.

17 THE COURT: OKAY.

18 MS. WILLIAMS: I'M SORRY, YOUR HONOR. WHO ELSE --
19 I'M SO SORRY.

20 BY MS. WILLIAMS:

21 Q WHO ELSE WAS IN THE ROOM DURING THE TIME THAT HE
22 MADE THE STATEMENT?

23 A CAPTAIN NUNLEY AND THE NURSE -- PSYCHE NURSE
24 PRACTITIONER, MR. FITZGERALD.

25 COURT REPORTER: THE NAMES PLEASE.

1 **THE WITNESS:** CAPTAIN NUNLEY AND THE NURSE
2 PRACTITIONER, MR. FITZGERALD.

3 **MS. WILLIAMS:** OKAY.

4 CROSS EXAMINATION BY MS. KENNEDY:

5 **Q** NICE TO SEE YOU AGAIN, MS. MCCANTS. YOU
6 INDICATED IN RESPONSE TO MS. WILLIAMS' QUESTIONS THAT YOU
7 WERE A -- A CLINIC -- YOU HAD A MASTERS DEGREE IN CLINICAL
8 COUNSELLING AND THEN YOU ARE CURRENTLY EMPLOYED BY THE
9 DEPARTMENT OF CORRECTIONS?

10 **A** YES, I AM.

11 **Q** AND ARE YOU -- IN YOUR JOB, ARE YOU -- THE
12 COUNSELLING SERVICE PART OF WHAT'S THE BROAD AREA OF
13 HEALTH SERVICES FOR THE DEPARTMENT OF CORRECTIONS?

14 **A** YES.

15 **Q** AND BEING IN THE -- UNDER THE BROAD UMBRELLA OF
16 HEALTH SERVICES, YOU'RE REQUIRED TO FOLLOW HIPAA
17 REGULATIONS, ARE YOU NOT?

18 **A** YES.

19 **Q** AND WHAT IS YOUR UNDERSTANDING ABOUT
20 CONFIDENTIALITY ISSUES AS IT RELATES TO YOUR CONVERSATIONS
21 WITH -- I ASSUME YOU CALL THEM YOUR PATIENTS, NOT YOUR
22 CLIENTS? MR. SALISBURY, IS HE YOUR CLIENT OR YOUR
23 PATIENT?

24 **A** CLIENT.

25 **Q** CLIENT. OKAY. WHAT -- WHAT IS YOUR

1 UNDERSTANDING ABOUT THE DEPARTMENT OF CORRECTIONS
2 PROCEDURES AS IT RELATES TO ANY CONFIDENTIAL CONVERSATIONS
3 THAT YOU HAD WITH MR. SALISBURY OR ANY OTHER INMATE?

4 A IF THERE IS ANY INFORMATION THAT NEEDS TO BE
5 DISCLOSED, IT WOULD HAVE TO BE AUTHORIZED BY THE PATIENT.

6 Q OR IT HAS TO COME FROM YOUR GENERAL COUNSEL?

7 A RIGHT.

8 Q AFTER IT'S BEEN PROPERLY SUBPOENAED?

9 A RIGHT.

10 Q THROUGH YOUR OFFICE IN COLUMBIA?

11 A YES.

12 Q OKAY. AND THEN -- AND EVEN THEN, THERE ARE ONLY
13 CERTAIN -- THERE ARE CERTAIN CATEGORIES OF DISCLOSURES,
14 CORRECT?

15 A YES.

16 Q IF HE'S A SECURITY RISK TO SOMEBODY ELSE?

17 A YES.

18 Q IF HE'S TRANSFERRED WITHIN -- TO ANOTHER
19 INSTITUTION, WHERE THAT INFORMATION IS HELPFUL WITH THE
20 SECURITY?

21 A YES.

22 Q IF HE IS TRANSPORTED BY SOMEONE? LIKE, IF
23 SOMEBODY HAD TO TAKE HIM TO MEDICAL UNIVERSITY?

24 A YES.

25 Q THAT INFORMATION SHOULD BE SHARED?

1 A YES.

2 Q OKAY. AND -- AND WHEN MR. SALISBURY WAS
3 PROCESSED IN, THE VISIT HE HAD WITH YOU WAS A REQUIREMENT
4 OF HIM BEING PROCESSED AT LIEBER, RIGHT?

5 A YES.

6 Q HE HAD NO CHOICE BUT TO SEE YOU?

7 A YES.

8 Q HE HAD -- AND HE HAD NO CHOICE ABOUT OFFICER
9 NUNLEY -- OR CORRECTIONAL OFFICER NUNLEY BEING IN THE ROOM
10 AT THAT TIME?

11 A RIGHT.

12 Q BECAUSE OFFICER NUNLEY WAS THERE FOR---

13 A FOR SECURITY REASONS.

14 Q SO ANY DISCLOSURE THAT HE WOULD HAVE MADE TO YOU
15 AT THAT POINT IN TIME SHOULD HAVE BEEN PROTECTED UNDER
16 CONFIDENTIALITY ISSUES?

17 A CORRECT.

18 Q AND THE ONLY REASON THAT YOU'RE HERE TODAY IS
19 BECAUSE YOU'VE BEEN SUBPOENAED TO COME?

20 A CORRECT.

21 MS. KENNEDY: THAT'S ALL I HAVE, YOUR HONOR.

22 THE COURT: ANY FOLLOW UP, MS. WILLIAMS?

23 REDIRECT EXAMINATION BY MS. WILLIAMS:

24 Q YOU'RE NOT GIVING US MEDICAL RECORDS, ARE YOU?
25 YOU'RE NOT GIVING US MEDICAL RECORDS?

TONYA MCCANTS -- REDIRECT BY MS. WILLIAMS

430

1 **A** NO.

2 **Q** YOU'RE JUST TELLING US WHAT HE SAID?

3 **A** WHAT HE SAID, CORRECT.

4 **MS. KENNEDY:** YOUR HONOR?

5 **THE COURT:** YES.

6 RE CROSS EXAMINATION BY MS. KENNEDY:

7 **Q** BUT WHAT HE SAID TO YOU IS CONTAINED IN THE
8 MEDICAL RECORDS?

9 **A** IT'S CONTAINED IN THE MEDICAL RECORDS, YES.

10 **Q** AND YOU'RE REQUIRED TO PUT IT IN THE MEDICAL
11 RECORDS?

12 **A** YES.

13 **MS. KENNEDY:** THANK YOU.

14 **THE COURT:** MS. MCCANTS, YOU MAY STEP DOWN. AND
15 YOU WILL RECEIVE FURTHER INSTRUCTIONS. YOU ARE STILL
16 UNDER SUBPOENA BY THE STATE AND YOU WILL RECEIVE FURTHER
17 INSTRUCTIONS FROM MS. WILLIAMS OR MR. ALFARO EITHER THIS
18 EVENING OR IN THE MORNING.

19 **THE WITNESS:** OKAY.

20 **THE COURT:** THANK YOU. MAY THIS WITNESS BE EXCUSED
21 -- I'M SORRY -- FOR THE EVENING -- ANY OBJECTION?

22 **MS. KENNEDY:** NO, YOUR HONOR. THANK YOU.

23 **THE COURT:** THANK YOU.

24 **MS. KENNEDY:** THANK YOU, MS. MCCANTS.

25 **THE COURT:** AND WE WILL -- DO YOU HAVE ANY CASE LAW

1 YOU WISH TO PROVIDE THE COURT?

2 MS. KENNEDY: NO, YOUR HONOR. AS YOU KNOW, I
3 HAVEN'T HAD AN OPPORTUNITY TO HAVE CASE LAW. WHAT I DO
4 HAVE, YOUR HONOR, IS A COPY OF THE SOUTH CAROLINA
5 DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURES AS IT
6 RELATES TO INMATE HEALTH RECORDS WHICH REFLECTS -- AND --
7 ADOPTION OF CERTAIN HIPAA REGULATIONS, YOUR HONOR. AND
8 IT'S -- AND IT CLEARLY -- THERE'S A WHOLE SECTION THAT
9 RELATES TO PRIVACY AND CONFIDENTIALITY OF MEDICAL HEALTH
10 RECORDS.

11 AND THERE'S A SECTION 3, IT'S ENTITLED RELEASE OF
12 INFORMATION AND 3.3 -- OR 3.2, I'M SORRY, YOUR HONOR,
13 REFLECTS THAT THIS INFORMATION -- ASSUMING THAT THERE IS
14 NO EXCEPTIONS THAT I'VE JUST ATTEMPTED TO ESTABLISH, IT
15 SAYS THAT THE INFORMATION CAN ONLY BE RELEASED TO -- UPON
16 A COURT ORDER OR A SUBPOENA. THAT SUBPOENA SHOULD,
17 ACCORDING TO THE PROCEDURES, HAVE GONE TO THE DIRECTOR OF
18 HEALTH -- HEALTH AND -- I'M SORRY -- I DON'T KNOW WHAT
19 H.I.R. -- BUT INMATE RECORDS -- HEALTH INMATE RECORDS.
20 THEN THAT REQUEST SHOULD GO FROM THAT PERSON, SHOULD HAVE
21 BEEN SENT TO THE GENERAL COUNSEL'S OFFICE FOR REVIEW OF --
22 UPON REQUEST. AND THEN, AND ONLY THEN, WAS THAT
23 INFORMATION PROPERLY PROVIDED SO THAT IT COULD BE USED --
24 AND -- POSSIBLY BE USED IN THE COURT.

25 THERE IS NOTHING TO INDICATE THAT THOSE -- FIRST

STATE V. SALISBURY

432

1 AND FOREMOST, THERE IS NOTHING TO INDICATE THAT THOSE
2 PROCEDURES WERE FOLLOWED.

3 THE COURT: HAVE YOU BEEN PROVIDED A COPY OF THAT,
4 MS. WILLIAMS?

5 MS. WILLIAMS: NO, I HAVE NOT. YOUR HONOR, JUST
6 FOR THE COURT'S INFORMATION, WE DID SUBPOENA THIS WITNESS
7 AND WE DID SUBPOENA THE RECORDS. SO, I DON'T KNOW IF --
8 IF THAT WOULD BE IMPORTANT FOR THE COURT TO CONSIDER.

9 MS. KENNEDY: YOUR HONOR, MAY I INQUIRE WHICH
10 RECORDS ARE WE TALKING ABOUT, THE WHOLE -- ALL THE RECORDS
11 OR THESE RECORDS SPECIFICALLY, BECAUSE THAT'S WHAT --
12 THAT'S WHAT MY ARGUMENT IS ABOUT.

13 MS. WILLIAMS: I CAN CHECK AND SEE EXACTLY WHAT WAS
14 SUBPOENAED IN THE MORNING.

15 THE COURT: ALL RIGHT. LET'S -- I WOULD LIKE A
16 COPY OF THAT DOCUMENT, MS. KENNEDY.

17 MS. KENNEDY: YES, YOUR HONOR.

18 THE COURT: AS WELL AS ANY INFORMATION THAT THE
19 STATE HAS, ANY CASE LAW, AS WELL AS THAT MENTAL HEALTH
20 STATUTE. MS. WILLIAMS HAS NOT BEEN PROVIDED A COPY OF
21 THAT -- WILL YOU HAVE ANY ADDITIONAL CASE LAW, MS.
22 KENNEDY?

23 MS. KENNEDY: NO, YOUR HONOR. I THINK THE
24 THRESHOLD QUESTION LIES WITH THEIR ABILITY TO PRODUCE THE
25 SUBPOENA THAT IS REQUIRED TO EVEN HAVE ACCESS TO THESE

1 RECORDS.

2 MS. WILLIAMS: YOUR HONOR, I DO HAVE THE CASES FOR
3 YOU. AND I WILL RESEARCH THE SUBPOENAS FOR YOU IN THE
4 MORNING.

5 THE COURT: ALL RIGHT. WE WILL BE IN RECESS UNTIL
6 8:45. PLEASE PROVIDE, AS SOON AS YOU HAVE THAT
7 INFORMATION REGARDING THE SUBPOENA, PLEASE PROVIDE THAT TO
8 MS. KENNEDY.

9 MS. KENNEDY: I -- YOUR HONOR, I -- WITH ALL DUE
10 DEFERENCE, I THINK I'LL BE -- WE'RE IN THE MIDDLE OF A
11 TRIAL. I'VE GOT SERIOUS WITNESS PREPARATIONS TO DO. THE
12 THRESHOLD QUESTION IS WHETHER OR NOT THE STATE CAN PRODUCE
13 THAT SUBPOENA. IF THEY CAN'T PRODUCE THAT SUBPOENA, SHE
14 HAS ALREADY PROFFERED THE TESTIMONY. IT'S A MOOT ISSUE.
15 IT IS ALREADY ON THE RECORD.

16 THE THRESHOLD REQUIREMENT IS THE SUBPOENA. AND I'M
17 NOT TALKING ABOUT A SUBPOENA FOR ALL THE RECORDS. I'M
18 TALKING ABOUT THE SPECIFIC SUBPOENA THAT'S REQUIRED AS A
19 RESULT OF SOUTH CAROLINA DECORUM THAT'S IN THE DEPARTMENT
20 OF CORRECTIONS.

21 AND I WOULD SUBMIT TO THE COURT, YOUR HONOR, IF --
22 IF IT'S NOT AVAILABLE IN NONE OF THE REST OF THAT---

23 THE COURT: SO, YOU WOULD AGREE, MS. KENNEDY, IF
24 MS. WILLIAMS CAN PRODUCE A SUBPOENA FOR THAT PARTICULAR
25 RECORD, THEN THAT STATEMENT IS ADMISSIBLE?

1 **MS. KENNEDY:** NO, YOUR HONOR. I WOULD -- I WOULD
2 -- THAT WOULD ALLOW US -- THAT THAT INFORMATION IS
3 ACCESSIBLE TO THEM THROUGH PROPER PROCEDURE.

4 I THEN WOULD HAVE ADDITIONAL OBJECTIONS BASED ON
5 THE CUMULATIVE NATURE OF IT, BASED ON THE FACT THAT WE'VE
6 ALREADY HAD A JACKSON V. DENNO HEARING, INVESTIGATOR
7 POWELL, THERE ARE OTHER ISSUES BESIDES -- SO I CAN'T
8 CONCEDE. AND I UNDERSTAND WHERE WE ARE AND THE LATENESS
9 OF THE HOUR. BUT -- BUT -- BUT IF THE SUBPOENA ISN'T
10 PRODUCED, THEN NONE -- NONE OF THE REST OF IT MATTERS.

11 **THE COURT:** OKAY. THEN I'M PERPLEXED, MS. KENNEDY,
12 AS TO WHAT YOUR OBJECTION IS---

13 **MS. KENNEDY:** MY OBJECTION IS---

14 **THE COURT:** ---IS TO BEING BACK AND HAVING MS.
15 WILLIAMS PROVIDE YOU A COPY OF THE SUBPOENA.

16 **MS. KENNEDY:** MY OBJECTION IS AS SUCCINCTLY AS I
17 CAN, GIVEN THE LATENESS OF THE HOUR, THE SOUTH CAROLINA
18 DEPARTMENT OF CORRECTIONS POLICIES AND PROCEDURES
19 ISSUES---

20 **THE COURT:** I UNDERSTAND -- I UNDERSTAND THAT.

21 **MS. KENNEDY:** OKAY.

22 **THE COURT:** THE OBJECTION, AS I HEARD IT FROM YOU,
23 CAME WHEN THE COURT ORDERED THAT MS. WILLIAMS PROVIDE YOU
24 A COPY OF THE SUBPOENA FOR THAT PARTICULAR---

25 **MS. KENNEDY:** PURSUANT TO THE REGULATIONS. I'M NOT

1 CONCEDING THAT IT WOULD BE THEN ADMISSIBLE JUST BECAUSE
2 THEY HAVE IT.

3 THE COURT: OKAY. WELL, MY QUESTION TO YOU IS WHY
4 -- WHY IS THAT OBJECTIONABLE FOR HER TO PRESENT THAT TO
5 YOU AND LET'S HAVE A HEARING AT 8:30?

6 MS. KENNEDY: PRESENT WHAT TO ME, YOUR HONOR?

7 THE COURT: A COPY OF THE SUBPOENA.

8 MS. KENNEDY: IF SHE HAS IT. THAT'S NOT
9 OBJECTIONABLE TO ME. I THINK -- MY UNDERSTANDING OF THE
10 COURT'S QUESTIONING WAS THAT IF SHE PRODUCED THE SUBPOENA,
11 THEN I WOULD CONCEDE THAT -- THAT THE INFORMATION IS --
12 WOULD BE ADMISSIBLE AS EVIDENCE. IT'S LATE IN THE DAY AND
13 I MAY HAVE MISUNDERSTOOD IT, YOUR HONOR.

14 THE COURT: OKAY. MY REQUEST WAS -- BECAUSE I
15 UNDERSTAND, FIRST, FROM YOUR ARGUMENT, FIRST THAT YOU FEEL
16 THAT THE -- THE FIRST STEP THAT NEEDS TO BE COVERED UNDER
17 THAT POLICY AND PROCEDURE FOR THE DOCUMENT, IS THAT THE
18 STATE HAS TO COMPLY WITH THE SUBPOENA?

19 MS. KENNEDY: YES, YOUR HONOR.

20 THE COURT: I HAD REQUESTED MS. WILLIAMS TO PROVIDE
21 THAT SUBPOENA TO YOU.

22 MS. KENNEDY: YES, YOUR HONOR.

23 THE COURT: AS SOON AS POSSIBLE---

24 MS. KENNEDY: IF IT EXISTS.

25 THE COURT: IF IT EXISTS. ALL RIGHT. AND THEN WE

1 WILL -- WE ARE ADJOURNED UNTIL 8:30. IF MS. WILLIAMS CAN
2 PROVIDE THAT SUBPOENA, THEN I THINK FROM WHAT I'VE HEARD
3 YOU INDICATE, IS THAT THERE WILL BE ADDITIONAL ARGUMENT
4 AND OBJECTION NECESSARY?

5 MS. KENNEDY: YES, YOUR HONOR. THAT'S PRECISELY
6 IT.

7 THE COURT: OKAY. SO, MY QUESTION TO YOU IS --
8 BECAUSE I HEARD YOU OBJECT TO THAT PROCEDURE. THAT'S WHAT
9 I HEARD YOUR OBJECTION WAS.

10 MS. KENNEDY: OBJECT TO WHAT PROCEDURE, YOUR HONOR?

11 THE COURT: WHAT I JUST EXPLAINED.

12 MS. KENNEDY: OKAY.

13 THE COURT: OKAY.

14 MS. KENNEDY: IT'S LATE IN THE DAY. I'M SORRY.

15 MS. WILLIAMS: AND, YOUR HONOR, JUST TO CLARIFY THE
16 RECORD---

17 THE COURT: HOLD ON ONE SECOND. ONE SECOND SO MS.
18 KENNEDY CAN LISTEN TO MR. SHELTON.

19 (PAUSE.)

20 MS. KENNEDY: YOUR HONOR, I MIS -- I WASN'T
21 OBJECTING TO -- MR. SHELTON CLARIFIED IT -- I WASN'T
22 OBJECTING TO HER GETTING THE SUBPOENA -- I'M REQUESTING
23 THE PRODUCTION OF THE SUBPOENA IF, IN FACT, IT EXISTS.
24 IF IT EXISTS, THEN WE HAVE OTHER ISSUES TO DEAL
25 WITH. IF IT DOESN'T EXIST, THEN WE ARE WHERE WE ARE.

1 **THE COURT:** AND MS. WILLIAMS.

2 **MS. WILLIAMS:** I PROMISE I WILL BE VERY BRIEF.

3 JUST SO WE KNOW, OUR POSITION IS NOT THAT THE DEPARTMENT
4 OF CORRECTIONS POLICIES AND PROCEDURES GOVERN WHAT IS
5 ADMISSIBLE IN THIS COURTROOM. OUR POSITION REMAINS THAT
6 19-11-95 CONTROLS. I KNOW WE HAVE THE SUBPOENA FOR THAT
7 WITNESS. I'M TOLD WE HAVE THE SUBPOENA FOR THOSE RECORDS.
8 AND I AM GOING TO FIND OUT SPECIFICALLY WHICH RECORDS THAT
9 SUBPOENAED DOCUMENT COVERS, AND IF IT COVERS THOSE MEDICAL
10 RECORDS.

11 BUT OUR POSITION REMAINS THAT THE DEPARTMENT OF
12 CORRECTIONS POLICIES ARE NOT THE RULES OF EVIDENCE. AND I
13 JUST WANT TO MAKE SURE I CLARIFY THAT. AND THE CASE LAW
14 THAT I PROVIDED, WHICH IS MCCORMICK V. ENGLAND,
15 PRIMARILY -- AND I WILL PROVIDE THE COURT WITH A COPY -- I
16 THINK SPEAKS TO THAT ISSUE VERY DIRECTLY. IT'S ON POINT.

17 **THE COURT:** I'VE HEARD ENOUGH. OKAY.

18 **MS. KENNEDY:** YES, MA'AM.

19 **THE COURT:** UNTIL I AM PROVIDED THE DOCUMENTS THAT
20 I'VE REQUESTED, I'M NOT GOING TO HEAR ANY FURTHER
21 ARGUMENTS, THANK YOU.

22 IS THERE ANYTHING UNRELATED TO THAT ISSUE BEFORE WE
23 BREAK FOR THE EVENING?

24 **MS. WILLIAMS:** NO, YOUR HONOR.

25 **THE COURT:** FROM THE DEFENDANT?

1 **MS. KENNEDY:** NO, YOUR HONOR. THANK YOU.

2 **THE COURT:** AND JUST FOR MY -- JUST FOR SCHEDULING,
3 HOW MANY MORE WITNESSES DO YOU -- AND I AM NOT HOLDING YOU
4 TO THIS, MS. WILLIAMS, BUT HOW MANY MORE WITNESSES DO YOU
5 ANTICIPATE?

6 **MS. WILLIAMS:** WE ANTICIPATE ROUGHLY FOUR MORE
7 WITNESSES.

8 **THE COURT:** AND ROUGHLY ESTIMATING TIME WISE, DO
9 YOU THINK YOU WILL REST BEFORE OR AFTER LUNCH?

10 **MS. WILLIAMS:** I THINK WE ARE GOING TO REST BEFORE.
11 THAT'S MY---

12 **THE COURT:** ALL RIGHT. AND YOU HAVE PROVIDED NO
13 WITNESS LIST, IS THAT CORRECT? DO YOU -- AND, AGAIN,
14 WITHOUT HOLDING YOU TO THIS, DO YOU ANTICIPATE HAVING ANY
15 WITNESSES AT THIS TIME?

16 **MR. SHELTON:** WE DON'T ANTICIPATE ANY AT THIS TIME,
17 YOUR HONOR.

18 **THE COURT:** PROPOSED JURY INSTRUCTIONS?

19 **MS. WILLIAMS:** WE WILL HAVE THOSE READY FOR YOU IN
20 THE MORNING, YOUR HONOR.

21 **THE COURT:** PROPOSED JURY INSTRUCTIONS?

22 **MR. SHELTON:** WE WILL DO THE SAME.

23 **THE COURT:** THANK YOU.

24 **MS. KENNEDY:** THANK YOU.

25 **THE COURT:** WE WILL BE IN RECESS UNTIL 8:30.

1 (WHEREUPON, THE COURT RECESSED DAY THREE OF TRIAL
2 AT 5:34 P.M.)
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1 P R O C E E D I N G S
2 (JANUARY 29, 2009 8:30 A.M.)
3 (DAY FOUR OF TRIAL)

4 THE COURT: MS. WILLIAMS, DO YOU HAVE A COPY OF THE
5 SUBPOENA FOR THE RECORDS?

6 MS. WILLIAMS: YES, YOUR HONOR.

7 THE COURT: AND DID YOU PROVIDE THAT TO MS.
8 KENNEDY?

9 MS. WILLIAMS: I HAVE NOT YET. WE JUST ALL GOT IN
10 HERE. JUST A SECOND. THE COURT'S INDULGENCE.

11 (PAUSE.)

12 MS. WILLIAMS: YOUR HONOR, THIS IS A SUBPOENA FOR
13 THE LEGAL MEDICAL DEPARTMENT---

14 COURT REPORTER: I'M SORRY, THIS IS WHAT?

15 MS. WILLIAMS: A SUBPOENA, DIRECTED TO THE LIEBER
16 MEDICAL DEPARTMENT. HOWEVER, IT IS ONLY FOR -- "PLEASE
17 PROVIDE THIS OFFICE WITH ORIGINAL HANDWRITINGS AND/OR
18 SIGNATURES OF INMATE SALISBURY THAT MAY BE CONTAINED IN
19 HIS MEDICAL FILE AND CAN BE VERIFIED BY WITNESSES."

20 WE ALSO HAVE THE SUBPOENA FOR MS. MCCANTS. AND I
21 WOULD SHOW THIS TO MS. KENNEDY AND THEN SUBMIT THEM TO THE
22 COURT. BUT WE CONCEDE THAT THAT IS NOT A SUBPOENA, AS I
23 THOUGHT IT WAS, FOR ALL OF HIS MEDICAL RECORDS. IT IS
24 ONLY FOR SPECIFIC MEDICAL RECORDS. BUT WE -- OUR
25 CONTENTION IS THAT WE'RE NOT ASKING HER TO TESTIFY TO

1 SOMETHING IN THE MEDICAL RECORDS.

2 THE COURT: MS. KENNEDY?

3 MS. KENNEDY: YOUR HONOR, I GUESS YOU WANT MY FULL
4 RESPONSE. FIRST AND FOREMOST, THE HIPAA, HEALTH
5 INFORMATION PORTABILITY AND ACCOUNTABILITY ACT OF 1996 IS
6 A FEDERAL STATUTE, APPLIES TO THE PROCESSING AND
7 DISSEMINATION OF CONFIDENTIAL MEDICAL RECORDS.

8 UNDER THE STATUTE -- UNDER THAT STATUTE, A JAIL
9 AND/OR A PRISON IS CLASSIFIED AS A HEALTH CARE SYSTEM AND
10 THEY ARE HEALTH CARE PROVIDERS. ONE BY VIRTUE OF THE FACT
11 THAT THEY PROVIDE AND PAY FOR THE HEALTH CARE OF INMATES.

12 SECONDLY, THEY ARE A HEALTH CARE PROVIDER BECAUSE
13 OF -- THEY HAVE PRIMARY CARE DOCTORS AND NURSES AND HEALTH
14 PROFESSIONALS ON STAFF. DR. BABB TESTIFIED YESTERDAY THAT
15 HE WORKED WITH THE DEPARTMENT OF CORRECTIONS. HE'S AT
16 LIEBER. THEREFORE, HE IS A HEALTH CARE PROFESSIONAL ON
17 STAFF.

18 THE FEDERAL LAW ALSO -- AND THESE WERE -- FORGIVE
19 ME, YOUR HONOR, -- THESE REGULATIONS ARE IN 45 CFR FROM
20 THE FEDERAL REGULATIONS 164 501 ET AL. THE HIPAA ACT
21 PROVIDES FOR THE AUTHORITY -- IMPLEMENTED AUTHORITY, IN
22 THIS CASE, THE DEPARTMENT OF CORRECTIONS, TO PROMULGATE
23 REGULATIONS AND STATUTES AS TO HOW THAT APPLIES TO
24 INDIVIDUAL STATES.

25 WE HANDED UP TO THE COURT, YOUR HONOR, YESTERDAY

1 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS POLICY AND
2 PROCEDURES. IT CITES SECTION 24-1-130. IT ALSO CITES 24
3 -- SECTION 4 -- 24-3-20. THOSE ARE THE SPECIFIC STATUTES
4 ENACTED BY THE GENERAL ASSEMBLY THAT GIVE THE DEPARTMENT
5 OF CORRECTIONS THE AUTHORITY TO PROMULGATE ANY REGULATION
6 -- NOT JUST HIPAA -- NECESSARY TO THE MAINTENANCE OF THE
7 FACILITY, TO HELP THE WELFARE OF THE INMATES. JUST
8 GENERAL MANAGEMENT REQUIREMENTS.

9 IN THIS PARTICULAR INSTANCE IT SAYS "INMATE HEALTH
10 MEDICAL RECORDS". I WOULD DIRECT YOUR ATTENTION TO PAGE
11 TWO, SECTION 1.43, WHERE IT SAYS "EACH EMPLOYEE WHO HAS
12 ACCESS TO PROTECTED HEALTH INFORMATION, WILL KEEP SUCH
13 INFORMATION CONFIDENTIAL. EACH EMPLOYEE WHO HAS ACCESS TO
14 AUTOMATED MEDICAL RECORDS WILL BE REQUIRED TO SIGN SCDC
15 FORM 13-52", QUOTE "AUTOMATED MEDICAL RECORD COMPUTER AND
16 INFORMATION USAGE AGREEMENTS. EMPLOYEES WHO FAIL TO
17 FOLLOW AGENCY STANDARDS FOR PROTECTING THE SECURITY AND
18 CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION, WILL BE
19 SUBJECT TO CORRECTIVE ACTION AS OUTLINED IN THE POLICY AND
20 PROCEDURE -- ADMINISTRATIVE POLICY AND PROCEDURE
21 GUIDELINES."

22 DIRECTING YOUR ATTENTION, AGAIN, YOUR HONOR, TO
23 SECTION 2 PRIVACY AND CONFIDENTIALITY OF MEDICAL/HEALTH
24 RECORDS. "AN INMATE'S HEALTH RECORD IS CONFIDENTIAL.
25 ACCESS TO AN INMATE'S HEALTH RECORD WILL BE SAFEGUARDED BY

1 THE HEALTH CARE AUTHORITY -- AT HEALTH CARE AUTHORITY AND
2 THE MEDICAL STAFF OF THE APPLICABLE INSTITUTION. THE
3 HEALTH RECORD WILL BE MAINTAINED SEPARATELY FROM THE
4 CONFINEMENT RECORD AND WILL BE MARKED CONFIDENTIAL."

5 SECTION 3 OF THAT -- OF THOSE PROCEDURES IS THE
6 RELEASE OF INFORMATION. AND IT'S -- IT GOES THROUGH -- AS
7 I CITED YESTERDAY, ONE OF THE ISSUES IS SECTION 3.2,
8 "INFORMATION WILL BE RELEASED UPON A PROPERLY EXECUTED
9 COURT ORDER OR SUBPOENA. ALL COURT ORDERS OR SUBPOENAS
10 FOR INMATE HEALTH RECORDS WILL BE REFERRED TO THE
11 DIRECTION OF H.I.R. FOR PROCESSING WITHIN 24 HOURS OF
12 RECEIPT OR NOTIFICATION."

13 **THE COURT:** MS. KENNEDY, YOU DO NOT FEEL THAT THIS
14 SUBPOENA PROVIDED TO YOU BY THE STATE IS SUFFICIENT?

15 **MS. KENNEDY:** NO, YOUR HONOR, I DO NOT.

16 **THE COURT:** AND WHAT IS THE BASIS FOR THAT?

17 **MS. KENNEDY:** BECAUSE THE SUBPOENA -- ACCORDING TO
18 THE POLICIES AND PROCEDURES RECORDS, WHICH TRACKS FEDERAL
19 STATUTE, YOUR HONOR, FEDERAL STATUTE IS CONTROLLING HERE.
20 THIS SUBPOENA IS TO BE DIRECTED TO THE -- A SPECIFIC
21 PERSON WITHIN THE ORGANIZATIONAL STRUCTURE OF THE
22 DEPARTMENT OF CORRECTIONS, AND THEN SUBMITTED TO THE
23 OFFICE OF GENERAL COUNSEL.

24 MY UNDERSTANDING IS THE PURPOSE FOR THAT TRACKING
25 PROCESS IS TO ALERT THE INMATE, NUMBER ONE, TO THE FACT

1 THAT THE INFORMATION IS BEING REQUESTED. AND, NUMBER TWO,
2 SO THAT THERE -- THERE CAN BE SOME WAY OF AVOIDING THE
3 RELEASE OF THAT INFORMATION -- THE IMPROPER RELEASE OF
4 THAT INFORMATION WITHOUT THE APPROPRIATE COURT HEARING.

5 A GENERAL SUBPOENA TO LIEBER CORRECTIONAL FACILITY
6 MEDICAL DEPARTMENT IS INSUFFICIENT. AND, YOUR HONOR, IT
7 DOESN'T EVEN ASK FOR MEDICAL RECORDS. IT ASKS FOR
8 HANDWRITING.

9 IT'S CLEAR FROM THE INFORMATION THAT THE SOLICITOR
10 SEEKS TO RELY ON THAT -- THAT -- THAT INFORMATION CAME
11 FROM MINUTES THAT WERE -- OR NOTES THAT WERE IN -- IN THE
12 INMATE'S FILE, THAT PEOPLE WORKING IN THE DEPARTMENT OF
13 CORRECTIONS HAVE IMMEDIATE ACCESS TO.

14 THE OTHER THING I WOULD BRING TO THE ATTENTION OF
15 THE COURT IS THAT IN TERMS OF COMPLIANCE WITH THE
16 SUBPOENA, THE DOCUMENTS THAT CONTAIN THE INFORMATION WERE
17 GENERATED BY INVESTIGATOR POWELL AS PART OF COMPUTERIZED
18 NOTES THAT ARE FOUND IN THE DEPARTMENT OF CORRECTIONS'
19 FILE. THEREFORE, THERE IS NO -- EVEN IF -- AND THAT'S
20 ASSUMING A LOT -- EVEN IF THE PROPER PROCEDURE HAD BEEN
21 FOLLOWED, IT STILL DOESN'T MEET THE REQUIREMENTS OF THE
22 STATUTE FOR PROTECTION UNDER HIPAA.

23 YOUR HONOR, THE ONLY OTHER THING I WOULD SAY IS,
24 THEY HAD -- THE AGENT HAD TO GET MS. ADAMS TO SIGN A
25 RELEASE FOR HER MEDICAL INFORMATION IN REGARD TO THE

1 EXAMINATION THAT SHE UNDERWENT AT THE WOMEN'S CLINIC. SO,
2 THERE IS, IN THEIR FILE, NOTES THAT THAT IS THE PROCEDURE
3 THAT HAS TO BE FOLLOWED. AND BASED ON ALL THAT, YOUR
4 HONOR, WE WOULD RESPECTFULLY SUBMIT THAT THE INFORMATION
5 SHOULD BE EXCLUDED.

6 THE COURT: MS. KENNEDY, JUST FOR SAKE OF ARGUMENT,
7 ASSUMING THAT I FIND THAT THE PROPER PROCEDURES WERE
8 FOLLOWED PURSUANT TO THE SUBPOENA, AND THROUGH HIPAA, WHAT
9 -- DO YOU FEEL THAT THE STATEMENT WOULD THEN BE
10 ADMISSIBLE?

11 MS. KENNEDY: NO, YOUR HONOR.

12 THE COURT: AND THE BASIS FOR THAT IS?

13 MS. KENNEDY: IT'S PROTECTED INFORMATION.

14 THE COURT: HOW IS IT PROTECTED INFORMATION?

15 MS. KENNEDY: BECAUSE -- BECAUSE MS. MCCANTS
16 TESTIFIED THAT SHE IS PART OF THE HEALTH CARE SYSTEM AT
17 THE DEPARTMENT OF CORRECTIONS. BASED ON THE FEDERAL
18 STATUTES THAT I JUST QUOTED, NONE OF THE PROCEDURES WERE
19 FOLLOWED. IT'S PROTECTED INFORMATION.

20 ONCE MORE, EVEN ALLOWING FOR ALL THAT, MR.
21 SALISBURY HAD NO RECOURSE BUT TO PARTICIPATE IN THAT
22 PROCESS. HE COULDN'T LEAVE. HE WAS IN CUSTODY. IT'S A
23 REQUIREMENT OF THE DEPARTMENT OF CORRECTIONS THAT HE SEE
24 THAT PERSON. SO -- SO EVEN ALLOWING, WHICH I -- I -- THAT
25 THAT INFORMATION WAS PROPERLY OBTAINED, AND I THINK THE

1 RECORD IS CLEAR THAT IT WASN'T, IT'S STILL NOT ADMISSIBLE
2 UNDER THOSE GROUNDS.

3 THE ADDITIONAL GROUNDS ARE, YOUR HONOR, YOU HAVE TO
4 GO TO RELEVANCY. THEN YOU HAVE TO GO TO PROBATIVE VALUE
5 VERSUS PREJUDICE. SO, THERE ARE ALL KINDS OF REASONS WHY
6 IT IS NOT ADMISSIBLE, STARTING WITH THE VIOLATION OF
7 CONFIDENTIALITY PROVISIONS OF THE DEPARTMENT OF
8 CORRECTIONS.

9 THE COURT: MS. WILLIAMS, DO YOU HAVE A RESPONSE?

10 MS. WILLIAMS: YOUR HONOR, IT'S OUR CONTENTION THAT
11 HIPAA DOESN'T CONTROL THIS BECAUSE IT'S JUST SOMETHING HE
12 TOLD HER. THAT IT'S CONTROLLED BY 19-11-95. SHE DOESN'T
13 MEET THE DEFINITION OF PROVIDER AS PROVIDED IN THE
14 STATUTE. AND AS IS MADE CLEAR IN MCCORMICK VS. ENGLAND,
15 IT WOULD BE ADMISSIBLE.

16 MS. KENNEDY: YOUR HONOR, IF I MAY BRIEFLY?

17 THE COURT: BRIEFLY.

18 MS. KENNEDY: 19- -- SECTION 19-11-95 IS A STATUTE
19 THAT APPLIES -- IT SAYS "CONFIDENCES OF PATIENTS OF MENTAL
20 ILLNESS OR EMOTIONAL CONDITION". THERE IS ABSOLUTELY NO
21 INFORMATION IN THIS RECORD THAT THERE'S EVER BEEN ANY KIND
22 OF DIAGNOSIS OF MR. SALISBURY, THAT THAT, IN FACT, IS THE
23 SITUATION. AND THAT THAT, IN FACT, IS WHAT PROMPTED HIS
24 VISIT TO MS. MCCANTS.

25 THE COURT: REPEAT THAT ONE MORE TIME, MS. KENNEDY.

1 **MS. KENNEDY:** THE STATUTE THAT THE SOLICITOR -- THE
2 ASSISTANT SOLICITOR REFERS TO -- SAYS "CONFIDENCES OF" --
3 THE EXCEPTION THAT SHE SEEKS -- "CONFIDENCES OF PATIENTS
4 OF MENTAL ILLNESS OR EMOTIONAL CONDITION". THEN IT SAYS
5 "PROVIDER MEANS A PERSON LICENCED UNDER THE PROVISIONS."
6 BUT YOU HAVE TO START WITH THE THRESHOLD QUESTION, THAT --
7 THAT THERE IS AN ASSUMPTION THAT HE HAS A MENTAL ILLNESS
8 OR THAT THERE IS AN EMOTIONAL CONDITION, WHICH THERE IS
9 NOTHING IN THE RECORD THAT SUPPORTS THAT. AND WE
10 CERTAINLY ARE NOT ADVOCATING ANY MENTAL INCOMPETENCE HERE.

11 **THE COURT:** DO YOU HAVE ANY RESPONSE TO THAT, MS.
12 WILLIAMS?

13 **MS. WILLIAMS:** THEN THERE IS NO PRIVILEGE. THEN IT
14 COMES IN BECAUSE IT'S AN ADMISSION. IF HE WASN'T THERE
15 BECAUSE HE WASN'T A PATIENT, THEN THIS WHOLE CONVERSATION
16 IS MOOT. THERE IS NO DOCTOR/PATIENT PRIVILEGE IN SOUTH
17 CAROLINA. IT'S NOT HEARSAY BECAUSE IT'S AN ADMISSION BY A
18 PARTY. SO, IF WE'RE NOT LOOKING TO 19-11-95, WHICH IS THE
19 ONLY STATUTE I'M AWARE OF THAT WOULD MAKE IT A PRIVILEGE,
20 THEN -- THEN OUR ARGUMENT IS THAT IT'S NOT HEARSAY.

21 **THE COURT:** THEN THE ANALYSIS, DOESN'T IT, BECOME
22 -- MS. WILLIAMS, THE ANALYSIS THEN BECOMES WHETHER OR NOT
23 THE STATEMENT WAS FREELY AND VOLUNTARILY GIVEN?

24 **MS. WILLIAMS:** SHE IS NOT A CUSTODIAL -- SHE IS NOT
25 A CUSTODIAL OFFICER. SHE IS JUST A COUNSELOR. SHE IS

1 JUST NOT A COUNSELOR THAT IS LICENSED UNDER THE PROVISIONS
2 OF THAT STATUTE. THAT STATUTE IS VERY SPECIFIC, THAT THAT
3 PRIVILEGE ONLY APPLIES -- BECAUSE THAT STATUTE HAS BEEN
4 CARVED OUT OF THE RULE THAT SAYS THERE IS NO
5 DOCTOR/PATIENT PRIVILEGE EXCEPT WHEN A PROVIDER, AS
6 DEFINED IN THIS STATUTE, IS MENTAL HEALTH CARE TO A
7 PATIENT. SO, THEN, WE'RE BACK TO THE HEARSAY ANALYSIS.
8 AND SHE'S -- HE IS NOT -- SHE IS NOT A CORRECTIONS
9 OFFICER.

10 THE COURT: THE -- THE COURT LOOKED AT TWO --
11 ACTUALLY AS -- TO USE MS. KENNEDY'S WORDS, WE WERE AT A
12 THRESHOLD. THE COURT'S ANALYSIS LOOKED AT WHETHER OR NOT,
13 FIRST OF ALL, THE STATE USED PROPER PROCEDURE IN OBTAINING
14 THESE MEDICAL RECORDS. ALSO, LOOKED AT THE FACT THAT THE
15 WITNESS WHO WAS A MENTAL HEALTH COUNSELOR THAT -- HER MAIN
16 OFFICE WAS IN LIEBER.

17 BASED UPON HER TESTIMONY YESTERDAY, THE COURT
18 LOOKED AT THE FACT THAT SHE WAS NOT LICENSED, BUT THAT SHE
19 DID HAVE A MASTERS IN CLINICAL COUNSELLING.

20 BASED UPON MY REVIEW OF THE CASE LAW PRESENTED BY
21 BOTH PARTIES AND THE SCDC POLICY AND PROCEDURE, AS WELL AS
22 THE TESTIMONY GIVEN YESTERDAY, THE COURT FINDS THAT EITHER
23 PROPER PROCEDURES WERE NOT FOLLOWED AND THE STATEMENT WAS
24 OBTAINED IN VIOLATION, OR THAT IF SHE WAS NOT A MENTAL
25 HEALTH COUNSELOR -- HOWEVER THEN THE ANALYSIS BECOMES

1 WHETHER OR NOT THE STATEMENT WAS FREELY AND VOLUNTARILY
2 GIVEN. BASED UPON HER STATEMENT -- HER TESTIMONY
3 YESTERDAY, HER -- HER RESPONSE WAS THERE WAS NO CHOICE BUT
4 TO TALK TO HER BY THE DEFENDANT.

5 BASED UPON THAT IN DOING AN ANALYSIS AS WELL
6 PROBATIVE VS. PREJUDICIAL, THE STATE -- OR EXCUSE ME --
7 THE COURT IS SUPPRESSING THE STATEMENT GIVEN BY THE
8 DEFENDANT, REFERRING TO THE FACT THAT HE WAS SITTING ON
9 THE SIDE OF THE BED READING LETTERS FROM HIS WIFE.

10 MS. WILLIAMS: THANK YOU.

11 THE COURT: THANK YOU. ANYTHING FURTHER?

12 MS. KENNEDY: YES, YOUR HONOR. WE HAVE AN
13 ADDITIONAL MATTER CONCERNING POTENTIAL WITNESSES WITH --
14 WITH THE HANDWRITING. MY UNDERSTANDING IS THAT THE STATE
15 INTENDS TO CALL TWO WITNESSES, A MS. -- THEY'RE IDENTIFIED
16 ON THE COURT'S WITNESS LIST AS NUMBER 23, LINDA DEAN, OF
17 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. AND A SLED
18 AGENT WHO HAS BEEN IDENTIFIED AS -- THAT WE WERE -- WHO IS
19 ON THE WITNESS LIST, SCOTT WORSHAM, WHO WE WERE ABLE TO
20 ASCERTAIN -- ASCERTAIN WAS THE HANDWRITING EXPERT, THAT
21 THE LETTERS WERE -- CERTAIN LETTERS WERE GIVEN TO -- FOR
22 HIM TO ANALYZE.

23 YOUR HONOR, WE -- AT THIS TIME, ASK THAT THAT
24 TESTIMONY BE EXCLUDED. THE GROUNDS BEING WE RENEW OUR --
25 INCORPORATE INTO THIS MOTION OUR PREVIOUS ARGUMENTS