

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Honorable Deadra L. Jefferson, Circuit Court Judge

GEORGE SALISBURY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001289

APPENDIX

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S.C. SUPREME COURT

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1 REGARDING THE LATENESS OF THE PROVISION IN THE DISCOVERY,
2 AND THE COURT'S DENIAL OF OUR MOTION FOR CONTINUANCE.

3 YOUR HONOR, WE HAVE BEEN PUT IN A POSITION
4 BECAUSE -- AGAIN, BECAUSE OF THE TIMELY -- UNTIMELY, I
5 SHOULD SAY, PROVISION OF THE DOCUMENTS THAT ARE RELATED TO
6 THIS PARTICULAR SITUATION, THAT WE HAVE NOT HAD ANY TIME
7 TO SECURE A HANDWRITING EXPERT OF OUR OWN.

8 THE DOCUMENTS WOULD SAY THAT -- THAT THESE LETTERS
9 AND PAPERWORK HAVE BEEN IN THE CUSTODY OF SLED SINCE THEY
10 WERE SEIZED ON JANUARY 18, 2008. THE CHAIN OF CUSTODY
11 INFORMATION THAT WE WERE PROVIDED ON THURSDAY AFTERNOON
12 WOULD REFLECT THAT THESE LETTERS WERE -- THAT AGENT CHINA,
13 RETRIEVED THESE LETTERS ON JANUARY 8, 2009. THEY WERE
14 THEN DELIVERED TO FORENSIC SCIENTIST W. SCOTT WORSHAM ON
15 THAT SAME DAY. THEY WERE THEN---

16 **THE COURT:** LET ME STOP YOU THERE, MS. KENNEDY.
17 MS. WILLIAMS, ARE YOU PLANNING ON CALLING THESE TWO
18 WITNESSES?

19 **MS. WILLIAMS:** YES, YOUR HONOR.

20 **THE COURT:** AND THE BASIS OF?

21 **MS. WILLIAMS:** YOUR HONOR, WE -- IN CHAMBERS BACK
22 ON JANUARY 12TH, WE WENT THROUGH ALL OF THESE ISSUES WITH
23 MR. SHELTON. I HAVE DOCUMENTATION FOR THE COURT THAT WE
24 GAVE THEM THOSE LETTERS ON JANUARY 5TH. AND WE TOLD THE
25 COURT THEN IN -- MR. SHELTON AND I AND YOU, YOUR HONOR,

1 DISCUSSED THAT. AND YOU INSTRUCTED DEFENSE COUNSEL, YOU
2 NEED TO GET YOUR EXPERT. IF YOU HAVE ANY TROUBLE GETTING
3 AN EXPERT, THEN YOU NEED TO ADVISE THE COURT.

4 THEN THIS ISSUE WAS BROUGHT UP AGAIN DURING THE
5 DISCOVERY DISCUSSION, AT WHICH POINT THE COURT SUPPRESSED
6 SEVERAL PIECES OF EVIDENCE, BUT DECLINED TO SUPPRESS
7 THE---

8 COURT REPORTER: I'M SORRY. COULD YOU REPEAT THAT
9 PART?

10 MS. WILLIAMS: WHICH PART?

11 COURT REPORTER: SUPPRESSED?

12 THE COURT: DECLINED TO SUPPRESS THE LETTERS.

13 MS. WILLIAMS: BUT SUPPRESSED OTHER PIECES OF
14 PHYSICAL EVIDENCE AS WELL AS MR. CHRISTOPHER SIMMONS.

15 THE LETTERS WERE PART OF ALL OF THE PHYSICAL
16 EVIDENCE THAT WAS -- WAS THERE. WHEN WE GOT MR. SHELTON'S
17 BRADY MOTION, I INFORMED HIM THAT IF HE WANTED TO GET ANY
18 OF THE PHYSICAL EVIDENCE, LET ME KNOW. I WOULD HAVE LAW
19 ENFORCEMENT SHOW IT TO HIM.

20 THEN WE ACTUALLY LOOKED AT THE LETTERS ON JANUARY
21 5TH, IMMEDIATELY CONTACTED HIM. AND I HAVE -- FOR THE
22 COURT'S EXHIBIT, AND THEY BOTH HAVE THESE -- I CAN SHOW
23 THEM AGAIN IN ALL FAIRNESS -- AN EMAIL---

24 MS. KENNEDY: MAY I READ IT FIRST?

25 MS. WILLIAMS: I'M SORRY.

1 **MS. KENNEDY:** I CAN READ FAST, BUT NOT THAT FAST.
2 YOUR HONOR, I WOULD NOTE FOR THE COURT'S EDIFICATION THESE
3 ITEMS WERE -- THE LETTERS WERE WRITTEN ON JANUARY 5TH.

4 **MS. WILLIAMS:** THEY WERE ON JANUARY 5TH. I ASKED
5 MR. SHELTON -- BECAUSE A LOT OF THE LETTERS WERE MAGAZINES
6 AND PICTURES. WE DIDN'T KNOW WHETHER HE WANTED US TO BLACK
7 AND WHITE COPY ALL OF THAT STUFF, SO I NOTIFIED HIM THAT
8 THEY WERE THERE. HE COULD COME OVER AND TELL US WHAT HE
9 WANTED COPIED. WE WOULD COPY IT. NEVER HEARD FROM HIM.

10 I FINALLY JUST HAD THE WHOLE THING COPIED JANUARY
11 12TH, BROUGHT IT TO HIM IN COURT. STILL NO EXPERT. THEN
12 WE GAVE HIM OUR EXPERT'S REPORT ON JANUARY 14TH. WE
13 SUBMITTED TO OUR EXPERT ON JANUARY 8TH. HE HAD ALL THAT
14 STUFF FROM JANUARY 5TH TO CALL AN EXPERT. STILL NO EXPERT
15 IS CALLED.

16 AND NOW IN THE 11TH HOUR, RIGHT BEFORE OUR WITNESS
17 IS GOING TO TESTIFY, THERE'S A NEW OBJECTION ON DISCOVERY
18 AGAIN. AND -- I DON'T KNOW WHAT THE OTHER BASIS IS. BUT
19 THIS IS NOT NEW INFORMATION. AND THIS IS CRITICAL TO OUR
20 CASE. THIS IS A HOSTAGE NOTE. THEY HAVE KNOWN FROM THE
21 BEGINNING THAT OUT OF THAT BIG PILE OF LETTERS, THERE IS
22 ONE LETTER THAT IS RELEVANT AND THERE IS ONE LETTER THAT
23 IS CRITICAL TO OUR CASE. AND THAT IS A LETTER---

24 **THE COURT:** MS. WILLIAMS, JUST SO I'M CLEAR, YOU'RE
25 ONLY SEEKING TO INTRODUCE THE WITNESSES TO -- AND YOU DO

1 NOT -- THE HANDWRITING ANALYST IS NOT GOING TO TESTIFY AS
2 TO THE CONTENTS OF THE REPORT, IS THAT CORRECT?

3 MS. WILLIAMS: NO. WHAT HE'S -- WE'RE GOING TO
4 HAVE -- LINDA DEAN IS GOING TO TESTIFY THAT SHE WITNESSED
5 MR. SALISBURY SIGN SOMETHING. THAT'S THE STANDARD AS --
6 AS REQUIRED UNDER RULE 901. THEN MR. WORSHAM IS GOING TO
7 TAKE THE ONE LETTER, THAT THEY'VE KNOWN ABOUT FROM THE
8 BEGINNING, AND HE'S GOING TO COMPARE IT TO THE STANDARD.
9 HE'S GOING TO SAY, IN MY OPINION THIS IS MR. SALISBURY'S
10 HANDWRITING.

11 FOR THEM TO COME IN AT THIS POINT AND ACT LIKE THIS
12 IS NEW INFORMATION, OR THEY DIDN'T KNOW ABOUT IT, WHEN
13 WE'VE HASHED IT OVER AND OVER AND OVER AGAIN, IS -- WE'RE
14 GOING TO USE THE CONTENTS OF THE LETTER. WE'RE GOING TO
15 AUTHENTICATE THE LETTER. WE'RE GOING -- WE'RE GOING TO
16 PROVE THAT HE WROTE THE LETTER. HE HAD -- THEY FOUND
17 THOSE LETTERS AT THE CRIME SCENE, WERE IN HIS CELL. THIS
18 IS HIGHLY RELEVANT INFORMATION. THIS IS NOT A SURPRISE.
19 AND I WOULD VENTURE TO SAY THAT NO EXPERT HAS BEEN CALLED
20 BY THE DEFENSE. THEY CAN'T DELAY PREPARING THEIR CASE AND
21 THEN COME IN AND SAY WE'RE PREJUDICED---

22 THE COURT: OKAY. MS. KENNEDY, I -- AGAIN, MY --
23 WHAT IS YOUR OBJECTION?

24 MS. KENNEDY: YOUR HONOR, IF I -- I'LL TRY TO
25 RESPOND ONE BY ONE. THE INFORMATION WAS PROVIDED TO US,

1 THE LETTERS, THE WEEK OF A TERM OF COURT IF I'M NOT
2 MISTAKEN.

3 MR. SHELTON: YOUR HONOR, MAY -- JUST TO CLARIFY --
4 CLARIFY AS FAR AS AN OFFICER OF THE COURT. JANUARY 5TH I
5 RECEIVED A CALL FROM SOLICITOR WILLIAMS, SAYING THAT THE
6 LETTERS WERE AVAILABLE. I CONTACTED -- I TOLD SOLICITOR
7 WILLIAMS THAT I HAVE APPOINTMENTS ALL DAY.

8 THE COURT: WE HAVE ALREADY BEEN THROUGH THE
9 TIME---

10 MR. SHELTON: WE WENT THROUGH THAT---

11 THE COURT: ---FRAME. WE HAD MORE THAN ONE HEARING
12 ABOUT WHETHER OR NOT THE LETTER -- WHEN YOU GET THE
13 LETTERS, WHEN SHE GAVE YOU THE LETTERS, AND I HAVE RULED.
14 THE RULING WAS YOU HAD THE INFORMATION, THE LETTERS. I
15 SUPPRESSED THE FORM ON THE HANDWRITING ANALYSIS BECAUSE
16 THE COURT FELT BASED UPON YOUR -- YOUR INFORMATION GIVEN
17 TO THE COURT THAT THE REPORT GIVEN TO YOU WAS NOT TIMELY
18 GIVEN. AND BASED UPON YOUR MOTION TO COMPEL AND YOUR
19 MOTION FOR CONTINUANCE, THAT WAS IN THE LITANY OF THINGS
20 THAT THE COURT SUPPRESSED, THE TESTIMONY OF CHRISTOPHER
21 SIMMONS, THE CASE OPENING REPORT, THOSE THINGS WERE
22 SUPPRESSED BY THE COURT BASED UPON YOUR REQUEST.

23 I DO NOT UNDERSTAND WHY WE'RE HERE TODAY AGAIN---

24 MS. KENNEDY: AGAIN, YOUR HONOR, I CAN EXPLAIN.

25 MR. SHELTON: THERE IS ANOTHER ISSUE.

1 **MS. KENNEDY:** I -- I -- I CAN EXPLAIN IN TERMS OF
2 THIS. WE RECEIVED -- IT'S INSUFFICIENT TO SAY WE KNOW ALL
3 THIS INFORMATION IS OUT THERE. THE REPORT THAT -- THE
4 REPORT THAT WAS GENERATED BY MR. WORSHAM IS DATED JANUARY
5 14, 2009, WHICH IS IN EFFECT OBVIOUSLY 12 DAYS BEFORE THIS
6 CASE ACTUALLY STARTED. AND WE -- WE -- WE ADVISED THE
7 COURT, I THINK, DURING THE FIRST -- THE FIRST HEARING FOR
8 THE CONTINUANCE THAT WE MIGHT NEED TO CALL A HANDWRITING
9 EXPERT.

10 WE HAVE NOT -- WHAT I UNDERSTAND IS, YOUR HONOR, IS
11 THAT IN ORDER FOR A PROPER ANALYSIS TO BE DONE, FOR US TO
12 BE ABLE TO EFFECTIVELY CROSS EXAMINE -- CROSS EXAMINE THIS
13 WITNESS, IS THAT THE HANDWRITING EXEMPLAR SHOULD BE --
14 SHOULD BE -- CONTAIN THE SAME WORDS OR SOME OF THE SAME
15 PHRASES THAT ARE IN THE -- THE DOCUMENTATION THAT, THAT
16 THE PROSECUTION SEEKS TO ADMIT, FIRST OF ALL.

17 SECONDLY, THEY -- NO ONE EVER FILED A MOTION -- THE
18 STATE NEVER FILED A MOTION SEEKING -- WHICH THEY CAN DO --
19 SEEKING -- JUST LIKE A -- SAYING, YOUR HONOR, THIS IS A
20 VITAL PART OF OUR CASE, THIS IS RELEVANT TO OUR CASE. WE
21 ARE ASKING THAT YOU ORDER HIM TO PROVIDE THAT SAMPLE.
22 THAT WAS NEVER DONE.

23 IT SEEMS TO BE THE ARGUMENT THAT THE BURDEN IS
24 ALWAYS ON THE DEFENSE. AND IN THIS PARTICULAR CASE, IT IS
25 NOT. SO, WHAT THEY HAVE, AS I UNDERSTAND, IS

1 DOCUMENTATION THAT MR. -- HIS SIGNATURE, AND THAT'S WHAT
2 THE REPORT WAS BASED ON, HIS SIGNATURE IN CURSIVE, NOT
3 PRINTED, WHICH IS WHAT THOSE LETTERS REFLECT. AND ALL IT
4 SAYS IS THAT THE QUESTIONED WRITING WAS A "COMMON
5 AUTHORSHIP".

6 IT'S JUST LIKE FINGERPRINTS. THE STANDARD IS --
7 THE FBI STANDARD REQUIRES, I DON'T KNOW, EIGHT, TEN,
8 TWELVE POINTS. PROSECUTORS SEEK ALL THE TIME TO INTRODUCE
9 EVIDENCE OF -- OF FINGERPRINT POINTS THAT ARE LESS THAN
10 THAT STANDARD. IT IS -- THERE IS NO -- THERE IS NO
11 SCIENTIFIC -- IT'S ALL OPINION.

12 **THE COURT:** WHAT RELIEF ARE YOU SEEKING HERE TODAY,
13 MS. KENNEDY?

14 **MS. KENNEDY:** I'M -- I'M SEEKING, FIRST OF ALL, TO
15 -- TO EXCLUDE THIS TESTIMONY BASED ON WHAT -- THIS
16 ARGUMENT. AND -- AND SECONDLY IF THE COURT FINDS THAT
17 THAT IS SUFFICIENT, THEN WE WOULD SEEK TO HAVE IT RULED
18 INADMISSIBLE BASED ON THE FACT THAT THERE IS NO DATE ON
19 IT. THERE IS NOTHING TO INDICATE WHEN IT WAS -- WHEN IT
20 WAS -- WHEN IT WAS DRAFTED.

21 **THE COURT:** YOU'RE SPEAKING IN PARTICULAR TO THE --
22 TO THE LETTER THAT---

23 **MS. KENNEDY:** THAT THEY SEEK TO---

24 **THE COURT:** ---THE ONE PIECE -- ONE PIECE OF PAPER
25 THAT THE STATE IS SEEKING TO INTRODUCE?

1 **MS. KENNEDY:** YES, YOUR HONOR. IF I MAY REMIND THE
2 COURT, AND I DON'T --

3 **MS. WILLIAMS:** IT'S EXHIBIT 27.

4 **MS. KENNEDY:** I DON'T -- THESE ARE ALL THE LETTERS.

5 **THE COURT:** OKAY. THAT'S STATE'S 30?

6 **MS. KENNEDY:** YES, YOUR HONOR. OKAY. STATE'S 30.
7 THERE -- AS TO THIS PARTICULAR ONE, THERE IS -- THERE IS
8 NO DATE. MS. ADAMS' NAME IS NOT MENTIONED. THERE IS
9 NOTHING -- THERE IS NO, IN THIS LETTER, PLAN THAT HE
10 INTENDS TO ASSAULT HER. AS A MATTER OF FACT, IT -- YOU
11 KNOW, EVEN IF IT WERE WRITTEN THREE DAYS BEFORE, IT CAN'T
12 APPLY TO HER IN PARTICULAR BECAUSE SHE WASN'T EVEN
13 SUPPOSED TO BE ON THAT UNIT. SHE WAS ONLY OVER THERE FOR
14 TWO DAYS. SO -- SO, NOW WE'RE FROM THE RELEVANCY TO THE
15 PREJUDICE VS. PROBATIVE. SO, ON ALL THOSE GROUNDS, I
16 WOULD SEEK TO DISALLOW IT.

17 AND IT'S -- AND IT'S -- IN ADDITION, IT'S AN
18 IMPROPER INTRODUCTION OF CHARACTER EVIDENCE.

19 **MS. WILLIAMS:** HOW SO?

20 **MS. KENNEDY:** IT SEEKS TO SHOW THAT HE -- YOU KNOW,
21 THAT HE HAS SOME SORT OF VIOLENT TENDENCIES, WHICH, YOU
22 KNOW, UNLESS HE TAKES THE STAND, THAT CHARACTER -- HIS
23 CHARACTER IS NOT AN ISSUE.

24 **THE COURT:** THE COURT IS DENYING YOUR REQUEST TO
25 SUPPRESS THE TESTIMONY OF LINDA DEAN AND SCOTT WORSHAM.

1 THE COURT HAD AN IN CHAMBERS CONFERENCE CONCERNING YOUR
2 FIRST REQUEST. THE DEFENDANT KNEW THAT THE STATE HAD SENT
3 THE LETTERS TO THE STATE LAW ENFORCEMENT DIVISION FOR
4 ANALYSIS. I HAD SUPPRESSED THE STATEMENT GIVEN BY THE
5 ANALYST. HOWEVER, AT THIS TIME, I AM NOT SUPPRESSING,
6 ASSUMING THAT A PROPER FOUNDATION IS LAID AND THE CHAIN IS
7 PROPER, I AM NOT SUPPRESSING THE TESTIMONY OF MS. DEAN OR
8 MR. WORSHAM. I'LL NOTE YOUR OBJECTION FOR THE RECORD.

9 MS. KENNEDY: THANK YOU, YOUR HONOR.

10 THE COURT: WE'LL TAKE A -- ARE ALL THE JURORS
11 PRESENT?

12 THE CLERK: YES, MA'AM.

13 THE COURT: ALL RIGHT. LET'S TAKE A TEN MINUTE --
14 TEN MINUTE BREAK. EVERYBODY GET READY TO GO. MS.
15 WILLIAMS, YOUR FIRST WITNESS, IT WILL BE?

16 MS. WILLIAMS: LINDA DEAN.

17 THE COURT: LINDA DEAN. DO YOU WANT TO GO AHEAD
18 AND HAVE HER SEATED IN THE COURTROOM?

19 MS. KENNEDY: YOUR HONOR?

20 THE COURT: YES, MA'AM.

21 MS. KENNEDY: BEFORE WE DO THAT, AND I DON'T WANT
22 TO UNNECESSARILY DELAY THE JURORS COMING IN, BUT COULD --
23 COULD WE HAVE THAT TESTIMONY PROFFERED FIRST BEFORE WE GO
24 THROUGH ALL OF THIS? OTHERWISE, THE JURY IS GOING TO HAVE
25 TO COME BACK IN AND OUT AGAIN.

1 **THE COURT:** WHY IS THAT?

2 **MS. KENNEDY:** BECAUSE WE STILL HAVE TO DO THE ISSUE
3 OF PREJUDICIAL VS. PROBATIVE VALUE. AND -- AND WE NEED TO
4 -- TO GET THE INFORMATION FROM MR. WORSHAM ABOUT HOW HE --
5 WHAT HIS UNDERSTANDING IS OF HANDWRITING EXEMPLARS AND HOW
6 YOU'RE SUPPOSED TO DO IT. I JUST HAD A BRIEF OPPORTUNITY
7 LAST NIGHT TO -- TO CALL SOMEBODY THAT ANOTHER LAWYER WAS
8 KIND ENOUGH TO GIVE ME HIS NAME AND NUMBER. SO, I THINK,
9 BEFORE WE BRING AND HAVE ALL THIS STUFF GOING IN AND OUT
10 AGAIN, THAT WOULD BE THE APPROPRIATE---

11 **THE COURT:** MS. WILLIAMS, IN A NUTSHELL, WHAT IS
12 MS. DEAN GOING TO TESTIFY TO?

13 **MS. WILLIAMS:** MS. DEAN IS GOING TO TESTIFY THAT
14 SHE WITNESSED A SIGNATURE ON A PIECE OF PAPER AT THE
15 DEPARTMENT OF CORRECTIONS BECAUSE THAT IS THE STANDARD, AS
16 REQUIRED BY RULE 901, THAT MR. WORSHAM COMPARED THE
17 WRITING TO.

18 **THE COURT:** SHE IS -- SHE IS NOT GOING TO TESTIFY
19 AS TO ANY -- SHE HAS NO INDEPENDENT UNDERSTANDING OR
20 TRAINING OR EXPERIENCE IN HANDWRITING, IS THAT CORRECT?

21 **MS. WILLIAMS:** NO.

22 **THE COURT:** ALL RIGHT. AT THIS TIME BASED UPON THE
23 STATE'S REPRESENTATION OF THE BASIS OF HER TESTIMONY, I'M
24 NOT GOING TO HAVE HER PROFFERED. IF AT ANY TIME THAT
25 BECOMES NECESSARY, IF YOU'LL JUST MAKE AN OBJECTION AND

1 I'LL HAVE THE JURY STEP OUT. WE WILL BE IN RECESS
2 UNTIL---

3 MS. KENNEDY: YOUR HONOR---

4 THE COURT: ---9:15.

5 (WHEREUPON, COURT RECESSED AT 9:11 A.M.)

6 (WHEREUPON, COURT RECONVENED AT 9:19 A.M.)

7 (WHEREUPON, BENCH CONFERENCE HELD BETWEEN COURT AND
8 COUNSEL OUTSIDE THE PRESENCE OF THE JURY.)

9 (WHEREUPON, JURY ENTERED THE COURTROOM AT 9:21
10 A.M.)

11 THE COURT: PLEASE BE SEATED. GOOD MORNING, LADIES
12 AND GENTLEMEN. I HOPE EVERYONE HAD A WONDERFUL EVENING.
13 CALL YOUR NEXT WITNESS.

14 MS. WILLIAMS: THANK YOU, YOUR HONOR. THE STATE
15 CALLS LINDA DEAN.

16 (WITNESS FORWARD.)

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND, PUT YOUR
18 LEFT HAND ON THE BIBLE.

19 LINDA BROWN DEAN, HAVING BEEN
20 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 THE CLERK: PLEASE BE SEATED AND STATE YOUR NAME
22 AND SPELL YOUR LAST NAME FOR THE RECORD.

23 THE WITNESS: LINDA BROWN DEAN. D-E-A-N.

24 THE COURT: MS. WILLIAMS.

25 MS. WILLIAMS: THANK YOU, YOUR HONOR.

1 DIRECT EXAMINATION BY MS. WILLIAMS:

2 Q MS. DEAN, WHERE DO YOU WORK?

3 A SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,
4 MACDOUGALL.

5 Q WHAT IS YOUR TITLE?

6 A CASE MANAGER.

7 Q WHAT ARE YOUR DUTIES AS CASE MANAGER?

8 A I'M RESPONSIBLE FOR PROCESSING INMATES IN,
9 THROUGH INMATE ORIENTATION. ADVISING THEM OF RULES AND
10 REGULATIONS. I'M ALSO RESPONSIBLE FOR CHAIRING THE
11 INSTITUTIONAL CLASSIFICATION COMMITTEE, DECIDING ON
12 CUSTODIES AND JOB ASSIGNMENTS.

13 Q DID YOU EVER HAVE TO WITNESS SIGNATURES BY
14 INMATES?

15 A YES, I DO.

16 MS. WILLIAMS: YOUR HONOR, I'M SHOWING DEFENSE
17 COUNSEL WHAT HAS PREVIOUSLY BEEN MARKED AS STATE'S EXHIBIT
18 23.

19 MS. KENNEDY: THE COURT'S INDULGENCE, YOUR HONOR.
20 LET ME ASK HER---

21 THE COURT: YES.

22 (PAUSE.)

23 MS. WILLIAMS: MAY I APPROACH THE WITNESS?

24 THE COURT: YOU MAY.

25 BY MS. WILLIAMS:

LINDA DEAN -- DIRECT BY MS. WILLIAMS

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1 Q CAN YOU PLEASE TELL US WHAT THIS IS?

2 A THIS IS A CLASSIFICATION WAIVER THAT NORMALLY
3 I'LL SEND FOR AN INMATE TO COME TO MY OFFICE TO NOTIFY HIM
4 CONCERNING A JOB CHANGE REQUEST OR TERMINATION. AND HE
5 HAS THE OPTION OF APPEARING BEFORE THE COMMITTEE OR
6 WAIVING THAT OPTION OF NOT COMING. WHEN HE ENTERS MY
7 OFFICE, I'LL ASK HIM HIS NAME. AND WHEN HE SAYS TO ME WHO
8 IT IS, I'LL ALSO LOOK AT HIS ID. BECAUSE THEY ARE
9 REQUIRED TO WEAR THEIR ID EXPOSED ON THE OUTER MOST
10 GARMENT. TO LOOK AT THE ID AND LOOK AT HIM TO VERIFY THAT
11 THAT'S WHO I AM SPEAKING TO. AND I'LL ASK HIM TO SIGN
12 THIS WAIVER, GIVING ME PERMISSION TO BRING HIM UP FOR A
13 JOB CHANGE BEFORE THE COMMITTEE WITHOUT HIM BEING PRESENT.

14 Q OKAY. AND WHOSE SIGNATURES ARE ON THAT FORM?

15 A MY SIGNATURE AS THE CHAIRPERSON. AND THE
16 INMATE'S SIGNATURE, GEORGE SALISBURY.

17 Q AND HOW DO YOU KNOW THAT IS GEORGE SALISBURY'S
18 SIGNATURE?

19 A BECAUSE WHEN HE ENTERED IN, AS I STATED, I ASKED
20 HIM HIS NAME. AND THEN I ALSO LOOKED AT HIS SCDC ID AS HE
21 STOOD IN THE FRONT OF ME TO MY DESK, AND LOOKED AT HIM.

22 Q DOES THE ID HAVE A PICTURE ON IT?

23 A YES, IT DOES.

24 Q AND DID YOU WATCH HIM SIGN THAT FORM?

25 A YES, I DID..

1 Q IS THAT -- ARE YOU SURE THAT THAT IS THE FORM
2 THAT YOU WITNESSED HIM SIGN?

3 A THIS IS THE FORM.

4 MS. WILLIAMS: OKAY. THANK YOU. YOUR HONOR, AT
5 THIS TIME, WE WOULD ASK THAT THIS BE ENTERED AS STATE'S
6 EXHIBIT 23.

7 THE COURT: MS. KENNEDY?

8 MS. KENNEDY: WELL, LET ME MAKE SURE -- JUST SO I
9 HAVE IT MATCHED UP. I APOLOGIZE, YOUR HONOR. NO
10 OBJECTION.

11 THE COURT: STATE'S 23 INTO EVIDENCE WITHOUT
12 OBJECTION.

13 (STATE'S EXHIBIT NO. 23 RECEIVED INTO EVIDENCE.)

14 MS. WILLIAMS: PLEASE ANSWER ANY QUESTIONS THE
15 DEFENSE MIGHT HAVE.

16 THE COURT: MS. KENNEDY.

17 MS. KENNEDY: THANK YOU, YOUR HONOR.

18 CROSS EXAMINATION BY MS. KENNEDY:

19 Q MS. KING, TELL ME -- MS. DEAN, I'M SORRY.

20 A YES.

21 Q YOU WERE OUT WITH MS. MCCANTS ALL AFTERNOON
22 YESTERDAY?

23 A YES.

24 Q YOU -- WHEN YOU'RE TALKING ABOUT CLASSIFICATION
25 AND ALL THOSE THINGS, YOU'RE TALKING ABOUT THE PROCESS

LINDA DEAN -- CROSS BY MS. KENNEDY

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1 THAT -- WHEREBY PEOPLE COME INTO THE INSTITUTION, RIGHT?

2 A THAT'S CORRECT.

3 Q AND THEY HAVE TO GO THROUGH A WHOLE SERIES OF
4 THINGS WHERE YOU ALL TALK TO THEM, YOU GET INFORMATION
5 ABOUT THE NATURE OF THEIR CHARGES, YOU GET INFORMATION
6 ABOUT PERSONAL FAMILY HISTORY ALL THAT, SO THAT YOU CAN
7 START WITH -- WHAT I UNDERSTAND IS CALLED THE JACKET, THE
8 INMATE JACKET?

9 A THE JACKET ALREADY COMES PREPARED TO US.

10 Q OKAY. WHO -- WHO PREPARES THE JACKET?

11 A THAT'S DONE THROUGH KIRKLAND, R&E.

12 Q OKAY.

13 A WE'RE JUST ASSESSING THE INFORMATION IN---

14 Q SO HE -- SO MS. SALISBURY WAS BROUGHT FROM
15 KIRKLAND TO YOU FOR CLASSIFICATION?

16 A NO, I DON'T -- NO. I THINK HE CAME FROM ANOTHER
17 INSTITUTION. HE DIDN'T COME FROM KIRKLAND.

18 Q OKAY. BUT -- BUT THE ONLY WAY THAT -- THAT
19 YOU'RE SURE THAT -- THAT THIS IS GEORGE SALISBURY'S
20 SIGNATURE, IS THAT THAT IS YOUR PROCESS AND PROCEDURE?

21 A AND BESIDES LOOKING AT HIS ID --

22 Q RIGHT.

23 A -- AND HIM, THAT'S CORRECT.

24 Q BUT IT'S PART OF YOUR PROCESS AND PROCEDURE TO
25 LOOK AT HIM?

1 A THAT'S CORRECT.

2 Q SO THAT IF I HAD THE MISFORTUNE TO BE IN THE
3 DEPARTMENT OF CORRECTIONS AND I HAD TO COME TO YOU AND
4 IT'S LIKE FIVE YEARS AGO, AND I HAVE MY ID BADGE ON AND I
5 SIGN EVERYTHING, THAT'S HOW YOU WOULD KNOW IT WAS ME,
6 RIGHT? BECAUSE OF THE POLICIES AND PROCEDURES? YOU DON'T
7 HAVE ANY INDEPENDENT RECOLLECTION?

8 A WOULD YOU REPEAT YOUR QUESTION?

9 Q SURE. IF -- LET'S JUST SAY FIVE YEARS AGO I HAD
10 THE MISFORTUNE OF BEING IN THE DEPARTMENT OF CORRECTIONS.
11 AND I HAD TO COME TO YOU AND I HAD MY BADGE AND I HAD TO
12 FILL THIS OUT. AND YOU FOLLOWED YOUR POLICIES AND
13 PROCEDURES AND YOU -- YOU -- THIS PAPERWORK WAS FILLED OUT
14 AND THEN I HAD TO SIGN IT, AND IT HAD YOUR NAME BESIDE IT,
15 THAT'S POLICIES AND PROCEDURES, CORRECT?

16 A THAT'S CORRECT.

17 Q YOU DON'T HAVE ANY INDEPENDENT RECOLLECTION OF
18 HIM SIGNING THIS, YOU JUST KNOW BASED ON THE FORM, HE DID
19 WHAT HE WAS SUPPOSED TO DO, CORRECT? AND YOU DID WHAT YOU
20 WERE SUPPOSED TO DO?

21 A RIGHT. I HAVE RECOLLECTION THAT HE DID SIGN IT
22 BY HIS ID AND ALSO BECAUSE I HAD HIS RECORD THERE, TOO.
23 AND THAT WE UPDATED HIS ID WHEN HE CAME IN.

24 Q RIGHT. BUT THAT'S BECAUSE OF YOUR POLICIES AND
25 PROCEDURES?

LINDA DEAN -- CROSS BY MS. KENNEDY

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1 **A** YES. THAT'S CORRECT.

2 **Q** IT'S NOT BECAUSE YOU CAN TODAY, SIT THERE AND
3 SAY, I REMEMBER ON AUGUST 20, 2007 HAVING MR. SALISBURY IN
4 MY OFFICE?

5 **A** I DO. I DO REMEMBER HIM BEING THERE.

6 **Q** YOU DO REMEMBER HIM BEING THERE?

7 **A** YES.

8 **Q** OKAY. I WITHDRAW THE QUESTION.

9 **A** OKAY.

10 **MS. KENNEDY:** THANK YOU.

11 **THE COURT:** MS. WILLIAMS?

12 **MS. WILLIAMS:** NOTHING FURTHER FROM THIS WITNESS,
13 YOUR HONOR.

14 **THE COURT:** YOU MAY STEP DOWN. YOU ARE FREE TO
15 REMAIN IN THE COURTROOM, BUT YOU MAY BE EXCUSED FROM THE
16 COURTHOUSE. THANK YOU. CALL YOUR NEXT WITNESS.

17 (WITNESS STEPPED DOWN.)

18 **MS. WILLIAMS:** SCOTT WORSHAM.

19 (WITNESS FORWARD.)

20 **THE COURT:** SIR, UP THIS WAY.

21 **THE CLERK:** PLEASE RAISE YOUR RIGHT HAND, PUT YOUR
22 LEFT HAND ON THE BIBLE.

23 WILLIAM SCOTT WILLIAMS, HAVING
24 BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 **THE CLERK:** PLEASE BE SEATED. AND STATE YOUR NAME

1 AND SPELL YOUR LAST NAME FOR THE RECORD.

2 BY MS. WILLIAMS:

3 Q MR. WORSHAM, WHERE DO YOU WORK?

4 COURT REPORTER: EXCUSE ME. HE HASN'T---

5 MS. WILLIAMS: I'M SO SORRY.

6 THE WITNESS: MY NAME IS WILLIAM SCOTT WORSHAM.

7 AND I'M EMPLOYED AS A SLED AGENT, FORENSIC DOCUMENTS

8 EXAMINER IN THE FORENSIC LABORATORY WITH SLED IN COLUMBIA.

9 MY LAST NAME IS SPELLED W-O-R-S-H-A-M.

10 THE COURT: MS. WILLIAMS.

11 MS. WILLIAMS: THANK YOU, YOUR HONOR.

12 DIRECT EXAMINATION BY MS. WILLIAMS:

13 Q WHERE DO YOU WORK, MR. WORSHAM?

14 A I WORK IN THE FORENSIC LABORATORY IN COLUMBIA

15 WITH SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

16 Q WHAT IS YOUR GENERAL WORK AND EDUCATIONAL

17 BACKGROUND?

18 A I HAVE A BACHELOR OF SCIENCE DEGREE IN BIOLOGY,

19 A MINOR IN CHEMISTRY. SINCE GRADUATING WITH A BS DEGREE,

20 I WENT TO NORTH CAROLINA STATE UNIVERSITY AND TOOK ANOTHER

21 COURSE, A YEAR IN ORGANIC CHEMISTRY. IN 1975, I WAS

22 EMPLOYED AS A SPECIAL AGENT AND FORENSIC CHEMIST WITH THE

23 NORTH CAROLINA STATE BUREAU OF INVESTIGATION.

24 I WORKED THERE UNTIL I RETIRED IN '99. AND I TOOK

25 -- WENT INTO PRIVATE PRACTICE FOR A COUPLE OF YEARS. AND

SCOTT WORSHAM -- DIRECT BY MS. WILLIAMS

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1 THEN WAS EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
2 DIVISION.

3 Q HOW MANY YEARS HAVE YOU BEEN EMPLOYED AS AN
4 EXAMINER IN THE FORENSIC LABORATORY AT SLED?

5 A I'VE BEEN WITH SOUTH CAROLINA FOR SEVEN YEARS
6 NOW.

7 Q AND DURING THIS PERIOD, HAVE YOU EVER TESTIFIED
8 IN COURT?

9 A YES, I HAVE.

10 Q HOW MANY TIMES ROUGHLY?

11 A APPROXIMATELY 20 TO 30 TIMES.

12 Q HAVE YOU RECEIVED ANY SPECIALIZED TRAINING IN
13 THE FIELD OF QUESTIONED DOCUMENTS, TO INCLUDE THE
14 IDENTIFICATION OF HANDWRITING?

15 A YES, I HAVE.

16 Q CAN YOU TELL THE JURY WHAT THAT TRAINING IS?

17 A I WENT ON A TWO YEAR TRAINING PROGRAM BEFORE I
18 WAS ALLOWED TO BEGIN EXAMINING FORENSIC CASES WITH THE
19 NORTH CAROLINA LAB. IN ADDITION TO BEING UNDER FOUR
20 DIFFERENT EXPERTS IN THE FIELD OF HANDWRITING WHO TRAINED
21 ME THERE, I ALSO WENT TO SECRET SERVICE SCHOOL FOR TWO
22 WEEKS AND BASIC HANDWRITING IDENTIFICATION AND COMPARISON.
23 I WAS ALSO SENT TO THE UNITED STATES POSTAL SERVICE
24 LABORATORY IN DULLIS, VIRGINIA, WHERE I DID A TUTORIALSHIP
25 FOR APPROXIMATELY ONE MONTH UNDER THE CHIEF DOCUMENT

1 EXAMINER FOR THE UNITED STATES POSTAL SERVICE LABORATORY.

2 Q IN THAT PERIOD OF TIME, CAN YOU ESTIMATE HOW
3 MANY DOCUMENTS, CASES YOU'VE EXAMINED?

4 A I DON'T KNOW THE EXACT NUMBER. IT WOULD BE IN
5 EXCESS OF A THOUSAND CASES THAT I HAVE EXAMINED. AND,
6 ACCORDINGLY, I HAVE LOOKED AT THOUSANDS OF HANDWRITINGS.

7 Q AND DURING YOUR YEARS AS A FORENSIC EXAMINER,
8 HOW MANY WERE DEDICATED EXCLUSIVELY TO THE FIELD OF
9 HANDWRITING IDENTIFICATION?

10 A THE LAST 14 YEARS OF MY EXAMINATION HAVE BEEN
11 DEDICATED SOLELY TO HANDWRITING ANALYSIS.

12 Q HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
13 FIELD OF QUESTION DOCUMENT EXAMINATION?

14 A YES. I HAVE BEEN QUALIFIED IN ALL THE COURTS IN
15 SOUTH CAROLINA AS AN EXPERT IN THE FIELD OF FORENSIC
16 DOCUMENT EXAMINATION, HANDWRITING EXPERT.

17 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
18 ASK THAT MR. WORSHAM BE QUALIFIED AS AN EXPERT IN THE
19 FIELD OF QUESTION DOCUMENT EXAMINATION.

20 MS. KENNEDY: YOUR HONOR, I JUST HAVE A FEW
21 QUESTIONS.

22 THE COURT: ALL RIGHT. YOU MAY VOIR DIRE.

23 VOIR DIRE BY MS. KENNEDY:

24 Q MR. WORSHAM, WHAT -- WOULD YOU BE KIND ENOUGH TO
25 GIVE ME THE DEFINITION OF QUESTION DOCUMENTATION?

SCOTT WORSHAM -- VOIR DIRE BY MS. KENNEDY

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1 **A** A QUESTION DOCUMENT IS ANY DOCUMENT THAT HAS
2 QUESTION INFORMATION ON IT THAT THEY WANT TO KNOW THE
3 AUTHENTICITY OF OR THE ORIGIN OF.

4 **Q** THEY -- THEY WHO, SIR?

5 **A** THE LAW ENFORCEMENT OFFICERS WHO SUBMIT THE
6 CASES OR OUR OWN SPECIAL AGENTS WHO SUBMIT THE CASES TO
7 US.

8 **Q** AND, UM, SO YOU'RE -- YOU'RE -- THE RECORDS THAT
9 YOU REGARD AS QUESTION DOCUMENTATION ARE THE ONES THAT ARE
10 GENERATED THROUGH, I ASSUME, SOME CHAIN OF CUSTODY TO YOU?

11 **A** YES.

12 **Q** OKAY. AND, UM IS THAT -- IS THAT YOUR --
13 BECAUSE YOU INDICATED TO THE COURT, IN RESPONSE TO MS.
14 WILLIAMS' QUESTIONS, THAT YOU HAD TRAINING IN FORENSIC
15 CHEMISTRY AND THAT YOU RETIRED IN 1999, AND THAT YOU HAD
16 BEEN QUALIFIED A NUMBER OF TIMES; WOULD YOU BE KIND ENOUGH
17 TO TELL ME IN THE COURSE OF YOUR EMPLOYMENT AT SLED, HOW
18 MANY TIMES YOU HAVE QUALIFIED AS AN EXPERT IN---

19 **A** I WOULDN'T KNOW AN EXACT NUMBER. APPROXIMATELY
20 20 SOMETHING TIMES.

21 **Q** APPROXIMATELY 20?

22 **A** YEAH. I DON'T COUNT THEM.

23 **Q** OKAY. SO -- SO ALL -- SO, IF I UNDERSTAND WHAT
24 YOU'RE SAYING -- WELL, LET ME BACK UP A MINUTE. WHEN DID
25 YOU GO THROUGH THIS TWO YEAR HANDWRITING ANALYSIS?

1 A '92-'94, I BELIEVE THAT'S CORRECT.

2 Q OKAY. AND HAVE YOU HAD ANY SUBSEQUENT TRAINING
3 TO THAT COURSE?

4 A OH, YES.

5 Q OKAY. AND WHAT WAS THAT?

6 A I ROUTINELY ATTEND SEMINARS WITH THE AMERICAN
7 ACADEMY OF FORENSIC SCIENCE. THERE THEY HAVE SYMPOSIUMS
8 ON HANDWRITING AND FIELD OF QUESTION DOCUMENT
9 EXAMINATIONS. IN ADDITION, WE READ LITERATURE THAT IS
10 CURRENT IN THE FIELD OF HANDWRITING. I TRY TO KEEP UP
11 WITH THAT.

12 Q SO -- SO WHAT -- I GUESS WHAT YOU'RE TELLING ME
13 IS THAT YOUR SUBSEQUENT EDUCATION ABOUT THIS FIELD IS
14 CONFINED TO -- LIKE, I WOULD HAVE CONTINUING LEGAL
15 EDUCATION REQUIREMENTS THAT I WOULD DO EVERY YEAR AND --
16 AND -- AND GO AND SIT IN A SEMINAR; SIMILAR TO THAT?

17 A WELL, WE'RE -- IN SOME OF THOSE COURSES WE'RE
18 TESTED, AND GIVEN A TEST TO PERFORM AND WE HAVE TO HAVE
19 THE RIGHT ANSWERS.

20 Q OKAY. I UNDERSTAND.

21 A RIGHT. BUT THAT'S CORRECT---

22 Q BUT WE---

23 A IN GENERAL, THAT'S CORRECT.

24 Q RIGHT. WE AREN'T TALKING ABOUT EXTENSIVE
25 TRAINING, WE'RE TALKING ABOUT A DAY HERE OR TWO DAYS

SCOTT WORSHAM -- VOIR DIRE BY MS. KENNEDY

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1 THERE, MAYBE TWO OR THREE DAYS SOME PLACE ELSE?

2 A YES.

3 Q OKAY. COULD YOU TELL IF YOU -- SIR, WHAT --
4 WHAT'S THE MOST RECENT ONE THAT YOU'VE GONE TO?

5 A THE MOST RECENT WAS EITHER THE AMERICAN ACADEMY
6 OF FORENSIC SCIENCE MEETING QUESTION DOCUMENT SECTION IN
7 SEATTLE, WASHINGTON; OR IT WAS THE SOUTHEASTERN
8 ASSOCIATION OF QUESTION DOCUMENTS EXAMINATION IN ATLANTA.

9 MS. KENNEDY: THAT'S ALL WE HAVE, YOUR HONOR.

10 THE COURT: THANK YOU. ANY OBJECTION TO QUALIFYING
11 AGENT WORSHAM AS AN EXPERT IN QUESTION DOCUMENT
12 EXAMINATION?

13 MS. KENNEDY: NOT -- NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
15 JURY, I HAVE -- AS I INSTRUCTED YOU YESTERDAY, NORMALLY A
16 PERSON CANNOT GIVE OPINION TESTIMONY. WHEN A PERSON
17 TESTIFIES, THEY MUST TESTIFY AS TO WHAT THEY EITHER SAW,
18 HEARD OR SENSED BY SMELL OR SOMETHING OF THAT NATURE.
19 THERE IS AN EXCEPTION WHEN SOMEONE IS QUALIFIED BECAUSE OF
20 EDUCATION OR EXPERIENCE. THEY ARE PERMITTED TO GIVE THEIR
21 OPINION IN CERTAIN AREAS IF THE COURT QUALIFIES THEM THAT
22 WAY.

23 AGENT WORSHAM WILL BE QUALIFIED IN THE AREA OF
24 QUESTION DOCUMENT EXAMINATION, TO GIVE OPINION TESTIMONY
25 IN THAT AREA. THAT DOES NOT MEAN THAT YOU MUST ACCEPT THE

1 OPINION, BUT IT IS EVIDENCE FOR YOU TO USE IN ANY WAY YOU
2 THAT SEE FIT. MS. WILLIAMS?

3 MS. WILLIAMS: THANK YOU, YOUR HONOR.

4 BY MS. WILLIAMS:

5 Q MR. WORSHAM, PLEASE EXPLAIN TO THE JURY THE
6 BASIC PRINCIPLE OF HOW YOU ARE ABLE TO CONDUCT A
7 HANDWRITING EXAMINATION AND WHAT YOU LOOK FOR?

8 A THE BASIC PRINCIPLES ARE FEATURES THAT ARE
9 DEMONSTRATED BY THE INDIVIDUAL'S HANDWRITING. AS A PERSON
10 DEVELOPS HIS HANDWRITING FROM HIS YOUTH AS THEY GROW
11 OLDER, THEIR HANDWRITING -- THEY DEVELOP A UNIQUE STYLE.
12 IF WE HAVE ENOUGH OF THEIR KNOWN HANDWRITING, THEN WE CAN
13 IDENTIFY THAT INDIVIDUAL, IN OUR OPINION, AS TO HAVING
14 AUTHORED OR WRITTEN A CERTAIN DOCUMENT OR SIGNATURE.

15 AND WHAT WE LOOK AT ARE FEATURES SUCH AS THE
16 BASELINE, HOW THE WRITING ADHERES TO THE BASELINE. WE
17 ALSO LOOK AT THE WORDS, THE LETTERS WITHIN THE WORDS, HOW
18 THE HEIGHT RATIOS OF THOSE LETTERS AND HOW THEY TRANSFORM
19 EACH OTHER.

20 WE LOOK AT THINGS SUCH AS SLANT, SUCH AS SPACING.
21 THEN WE LOOK AT HOW THE INDIVIDUAL FEATURES ARE
22 ARTICULATED ONTO THE PAPER. WE CONSIDER ALL OF THESE
23 CHARACTERISTICS WHEN WE LOOK AT A HANDWRITING.

24 AND WHAT'S PRESENTED TO ME IS KNOWN HANDWRITING
25 FROM AN INDIVIDUAL. I TAKE THAT KNOWN HANDWRITING AND I

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1 SIT DOWN AND I BECOME THOROUGHLY FAMILIAR WITH THAT. I
2 TRY TO DUPLICATE THAT HANDWRITING. I LOOK AT THE SKILL
3 LEVEL OF THE HANDWRITING. AND THEN I TAKE THAT
4 HANDWRITING AND I COMPARE IT TO A QUESTIONED WRITING THAT
5 HAS BEEN SUBMITTED TO ME IN A PARTICULAR CASE.

6 AND WE HAVE DIFFERENT LEVELS OF OPINIONS THAT WE
7 CAN RENDER ACCORDING TO OUR CERTIFICATION AS TO OUR
8 RESULTS.

9 Q DOES A PERSON ALWAYS WRITE THE SAME WAY?

10 A A PERSON NEVER WRITES THE SAME WAY TWICE. WE'RE
11 NOT MACHINES. IF YOU WERE TO SIT DOWN AND WRITE OUT A
12 HUNDRED OF YOUR SIGNATURES, YOU WOULD FIND A VARIATION IN
13 EACH AND EVERY ONE OF THEM.

14 Q IS IT POSSIBLE TO DETERMINE IF A CERTAIN
15 INDIVIDUAL WROTE SOMETHING?

16 A YES, IT IS.

17 Q WITHOUT TELLING US WHAT YOUR CONCLUSION WAS, DID
18 YOU HAVE ENOUGH OF THESE WRITING FEATURES IN THIS CASE TO
19 COME TO A CONCLUSION?

20 A YES, I DID.

21 MS. WILLIAMS: YOUR HONOR, I'M GOING TO SHOW
22 DEFENSE COUNSEL THE PACKAGE THAT---

23 THE COURT: PLEASE IDENTIFY THE NUMBER AND NOT THE
24 DESCRIPTION, PLEASE.

25 MS. WILLIAMS: I'M SORRY. ACTUALLY, WE'LL ASK FOR

1 THIS ENVELOPE TO BE MARKED -- I THINK WE MARKED THE
2 CONTENTS AND NOT THE ACTUAL ENVELOPE.

3 COURT REPORTER: YOUR HONOR, THE EMPTY ENVELOPE IS
4 MARKED AS STATE'S 31.

5 (STATE'S EXHIBIT NO. 31 MARKED FOR IDENTIFICATION.)

6 THE COURT: THANK YOU.

7 MS. WILLIAMS: I'M SHOWING DEFENSE COUNSEL WHAT'S
8 NOW BEEN MARKED AS STATE'S 31.

9 MS. KENNEDY: YOUR HONOR, JUST A MINUTE.

10 (PAUSE.)

11 MS. WILLIAMS: MAY I APPROACH?

12 THE COURT: YOU MAY.

13 BY MS. WILLIAMS:

14 Q IN THIS CASE, IS THIS THE ENVELOPE THAT THE
15 ITEMS YOU EXAMINED CAME IN?

16 A YES, IT IS.

17 Q HOW DO YOU KNOW THAT?

18 A THIS ENVELOPE CONTAINS A -- BEARS MY LABORATORY
19 CASE NUMBER. IT ALSO BEARS MY INITIALS WHERE I SEALED IT
20 AFTER I WAS DONE EXAMINING IT. I RECEIVED THIS ON JANUARY
21 8TH OF 2009 AT SLED LABORATORY.

22 Q AND WHO DID YOU RECEIVE IT FROM?

23 A I RECEIVED IT FROM EVIDENCE CONTROL FORENSIC
24 TECHNICIAN SELENA KINARD.

25 Q AND HOW DO YOU KNOW WHICH ITEMS ARE -- WERE IN

1 THERE?

2 A IT WAS GIVEN TO ME SEALED. AND I OPENED THE
3 ENVELOPE AND IDENTIFIED THE ITEMS MYSELF.

4 Q AND DID YOU IDENTIFY THOSE ITEMS IN ANY KIND OF
5 REPORT SO YOU -- SO WE WOULD KNOW TODAY WHAT YOU EXAMINED?

6 A YES.

7 MS. WILLIAMS: YOUR HONOR, I'M SHOWING DEFENSE
8 COUNSEL WHAT'S BEEN PREVIOUSLY MARKED COLLECTIVELY AS
9 STATE'S EXHIBIT 26, STATE'S EXHIBITS 27, 23, 24, 21, 22
10 AND 25. MAY I APPROACH, YOUR HONOR?

11 THE COURT: YOU MAY.

12 BY MS. WILLIAMS:

13 Q MR. WORSHAM, I REALIZE THESE ARE A LITTLE
14 JUMBLED. IF YOU COULD LOOK AT THESE ITEMS, AND WITHOUT
15 TELLING US WHAT THE CONTENT IS, SEE IF THOSE ARE THE ITEMS
16 THAT YOU EXAMINED BASED ON THE REPORT THAT YOU SUBMITTED
17 OF YOUR ANALYSIS AND THAT CAME IN THAT PACKAGE?

18 A THESE ARE THE ITEMS THAT I RECEIVED AT THE
19 LABORATORY ON JANUARY 8TH THAT WERE CONTAINED IN THE
20 SEALED MANILA ENVELOPE THAT WAS JUST INTRODUCED. EACH OF
21 THESE ITEMS BEARS MY INITIALS, MY CASE NUMBER.

22 Q AND WITHOUT TELLING US THE CONTENT OF THE
23 WRITINGS, WHAT THEY ACTUALLY SAY, CAN YOU PLEASE EXPLAIN
24 TO THE JURY WHAT THEY ARE AND WHAT YOU DID WITH THEM?

25 A WHAT I HAD IN THIS PARTICULAR CASE SUBMITTED TO

1 ME WERE KNOWN HANDWRITING STANDARDS FROM GEORGE SALISBURY.
2 AND IT COMPRISED ITEMS OF EVIDENCE FROM STATE'S EXHIBITS
3 23, 24, 21 AND 22. THESE WERE SOUTH CAROLINA DEPARTMENT
4 OF CORRECTIONS FORMS, AND THEY HAD SIGNATURES OF GEORGE
5 SALISBURY ON THEM.

6 Q THEN DID YOU COMPARE THOSE KNOWN STANDARD
7 HANDWRITING SAMPLES? AND DID YOU TESTIFY THAT ONE OF
8 THOSE WAS EXHIBIT NO. 23?

9 A YES, MA'AM.

10 Q DID YOU COMPARE EXHIBIT NO. 23 AND THE OTHER
11 STANDARDS TO OTHER HANDWRITING IN THAT PACKET?

12 A I DID. I STUDIED THE KNOWN HANDWRITING ON THESE
13 ITEMS THAT CONTAINED THE SIGNATURE OF GEORGE SALISBURY AND
14 I BECAME FAMILIAR WITH HIS SIGNATURE.

15 I WAS ALSO SUBMITTED IN THIS CASE FOR EXAMINATION
16 ITEMS THAT HAD BEEN REMOVED FROM THE CELL OF GEORGE
17 SALISBURY. I WENT THROUGH THESE ITEMS AND I CHOSE
18 DOCUMENTS, PAGES OF LETTERS. EACH OF THE PAGES HAD ON IT
19 THE SIGNATURE GEORGE SALISBURY. AND SO I COMPARED EACH OF
20 THESE SIGNATURES, ON THE LETTERS FROM THE CELL OF GEORGE
21 SALISBURY, BACK TO THE KNOWN HANDWRITING SIGNATURE OF
22 GEORGE SALISBURY SUBMITTED TO ME AS HIS KNOWN WRITING FROM
23 THE DEPARTMENT OF CORRECTIONS.

24 ON THE WRITING ON THE DOCUMENTS FROM THE CELL,
25 THERE WAS IN ADDITION TO THE SIGNATURE, THERE WAS HAND

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1 PRINTING AND WRITING. I LOOKED AT ALL OF THE HANDWRITING
2 ON THE DOCUMENTS THAT I HAD CHOSEN FROM THE CELL. AND
3 THERE WERE SIX PAGES OF THIS SUBMITTED TO ME. THESE SIX
4 PAGES OF HAND PRINTING---

5 MS. KENNEDY: YOUR HONOR, I WOULD RESPECTFULLY
6 OBJECT BECAUSE IT APPEARS TO ME THAT HE---

7 THE COURT: OKAY. NO SPEAKING OBJECTIONS. COUNSEL
8 APPROACH.

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 BY MS. WILLIAMS:

13 Q IF YOU CAN TRY TO REMEMBER WHERE YOU WERE. BUT
14 JUST TO WARN YOU, DON'T TELL US WHAT'S IN THE DOCUMENT.
15 YOU CAN DESCRIBE WHAT YOU DID AND HOW YOU DID IT AND WHY
16 IT PROVES WHATEVER YOUR CONCLUSION WAS, AS LONG AS YOU
17 DON'T READ ANY OF THE CONTENT OF THE LETTERS. SO, JUST
18 FIND -- JUST PICK UP WHERE YOU WERE IF YOU CAN REMEMBER.

19 A THE LETTERS FROM THE CELL, AS I WAS STATING, HAD
20 WRITING ON THEM. AND IT WAS COMPRISED OF SIX PAGES OF
21 WRITING, BEARING A SIGNATURE GEORGE SALISBURY.

22 AND AS I STATED EARLIER, I COMPARED THAT BACK TO
23 THE KNOWN SIGNATURES---

24 MS. KENNEDY: YOUR HONOR?

25 A ---OF GEORGE SALISBURY. IN ADDITION---

1 **THE COURT:** AGENT WORSHAM. I'LL SUSTAIN THAT.
2 PLEASE LISTEN TO MS. WILLIAMS, HER QUESTIONS SPECIFICALLY.
3 WE NEED YOU TO BE NARROWLY FOCUSED ON HER AND RESPOND ONLY
4 TO HER QUESTION.

5 **THE WITNESS:** YES, MA'AM.

6 **THE COURT:** MS. WILLIAMS, IF YOU WILL AGAIN
7 SUCCINCTLY STATE YOUR NEXT -- YOUR PREVIOUS QUESTION.

8 **MS. WILLIAMS:** LET ME TRY TO COME AT THIS FROM
9 ANOTHER WAY.

10 BY MS. WILLIAMS:

11 **Q** DID YOU EXAMINE AN ITEM THAT -- THAT YOU HAD
12 MARKED AS 24.8, STATE'S EXHIBIT 27?

13 **A** YES, I DID.

14 **Q** OKAY. AND HOW DID YOU ANALYZE THAT DOCUMENT
15 WITHOUT -- WHAT DID YOU COMPARE IT TO?

16 **A** I COMPARED THE FEATURES OF THAT DOCUMENT TO THE
17 HANDWRITING FEATURES ON THE OTHER DOCUMENTS THAT I HAD.

18 **Q** AND HOW DO YOU COME TO CONCLUSIONS OF COMMON
19 AUTHORSHIP, FOR EXAMPLE, WHEN YOU'RE ANALYZING A DOCUMENT
20 LIKE THAT?

21 **A** I LOOK AT THE SKILL OF THE WRITING. I LOOK AT
22 THE CHARACTERISTICS OF THE WRITING FEATURES. I LOOK AT
23 THE SPACING, THE HEIGHT RATIO, THE BASELINE. I CONSIDER
24 ALL OF THESE AND COMPARE ONE PAGE TO ANOTHER.

25 **Q** SO, WITHOUT TELLING US CONTENT, AFTER COMPARING

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1 THE STANDARD AND THE OTHER ITEMS YOU ANALYZED, DID YOU
2 COME TO A CONCLUSION ABOUT STATE'S EXHIBIT 27, YOUR --
3 YOUR MARKINGS 24.8?

4 A YES, I DID.

5 Q OKAY. AND WHAT WAS THAT CONCLUSION?

6 A MY CONCLUSION ABOUT STATE'S EXHIBIT 27 WAS THAT
7 IT WAS A COMMON AUTHORSHIP AS THE QUESTION DOCUMENTS THAT
8 WERE SUBMITTED TO ME TO BE IDENTIFIED---

9 Q WAS---

10 A ---AND THE OTHER WRITINGS.

11 Q WAS IT A COMMON AUTHORSHIP TO STATE'S EXHIBIT
12 23, THE STANDARD?

13 A I CAN'T STATE THAT.

14 Q SO, STATE'S EXHIBIT 23 IS THE STANDARD?

15 A YES.

16 Q CORRECT?

17 A YES.

18 Q AND YOU COMPARED THAT STANDARD TO OTHER WRITINGS
19 THAT WERE SIGNED BY MR. SALISBURY?

20 A I DID.

21 Q AND THEN YOU COMPARED THE ITEMS SIGNED BY MR.
22 SALISBURY TO STATE'S EXHIBIT 27?

23 A YES.

24 Q SO, THE STANDARD NUMBER 23, COMPARED TO ALL THE
25 OTHER ITEMS, IS THE SAME AUTHORSHIP?

1 MS. KENNEDY: YOUR HONOR, I WOULD OBJECT
2 BECAUSE----

3 THE COURT: BASIS?

4 MS. KENNEDY: THERE'S NOT A PROPER FOUNDATION.

5 MS. WILLIAMS: CAN I---

6 THE COURT: OVERRULED.

7 MS. WILLIAMS: I THANK YOU.

8 BY MS. WILLIAMS:

9 Q IF I COULD JUST GET BACK TO WHERE -- 23 IS THE
10 SAME AUTHORSHIP -- I'M JUST TRYING TO REMEMBER WHERE WE
11 WERE -- YOUR TESTIMONY IS 23 IS THE SAME AUTHORSHIP AS THE
12 OTHER ITEMS YOU -- YOU EXAMINED?

13 A I CAN STATE THAT THE HAND PRINTING ON STATE'S
14 EXHIBIT 27 WAS OF COMMON AUTHORSHIP WITH THE QUESTION
15 DOCUMENTS SENT TO ME TO BE IDENTIFIED. I CAN -- I HAVE A
16 CONCLUSION AS TO SIGNATURES.

17 Q WHAT IS YOUR CONCLUSION AS TO THE AUTHORSHIP OF
18 ITEM 27?

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

20 THE COURT: COUNSEL 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: OVERRULED.

25 MS. WILLIAMS: THE COURT'S INDULGENCE. I'M JUST

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1 TRYING TO FIGURE OUT WHERE I WAS.

2 BY MS. WILLIAMS:

3 Q WHAT WAS YOUR CONCLUSION IN TERMS OF ITEM 27?

4 A MY TERMS -- MY CONCLUSION IN TERMS OF ITEM 27
5 WAS THAT---

6 Q ITEM 24.8 IN YOUR REPORT, I'M SORRY.

7 EVIDENCE -- STATE'S EVIDENCE NO. 27, JUST SO WE DON'T GET
8 CONFUSED ON OUR NUMBERS.

9 A YES. STATE'S EXHIBIT 27, MY CONCLUSION WHEN I
10 EXAMINED THE QUESTION WRITING ON THIS PARTICULAR DOCUMENT,
11 IS THAT IT WAS OF COMMON AUTHORSHIP WITH THE HAND PRINTING
12 THAT I FOUND ON THE LETTERS COLLECTED FROM GEORGE
13 SALISBURY'S CELL.

14 Q AND WHAT IS YOUR OPINION AS TO THOSE ITEMS
15 AUTHORSHIP COMPARED TO THE STANDARD?

16 MS. KENNEDY: YOUR HONOR?

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THERE
18 IS A MATTER OF LAW THAT I MUST TAKE UP OUTSIDE OF YOUR
19 PRESENCE. PLEASE DO NOT BEGIN YOUR DELIBERATIONS. PLEASE
20 DO NOT DISCUSS THIS CASE AMONGST YOURSELVES. PLEASE RISE
21 FOR THE JURY.

22 (WHEREUPON, JURY LEFT THE COURTROOM AT 10:03 A.M.)

23 THE COURT: THANK YOU. BE SEATED. AGENT WORSHAM,
24 I REMIND YOU THAT THE RULE OF SEQUESTRATION HAS BEEN
25 INVOKED. PLEASE DO NOT DISCUSS YOUR TESTIMONY WITH ANY OF

1 THE WITNESSES. YOU MAY STEP DOWN FROM THE WITNESS STAND.
2 COUNSEL, I'M GOING TO TAKE A TEN MINUTE RECESS. THANK
3 YOU.

4 (WHEREUPON, COURT RECESSED AT 10:03 A.M.)

5 (WHEREUPON, COURT RECONVENED AT 10:20 A.M.)

6 THE COURT: THANK YOU. BE SEATED. ALL RIGHT. MS.
7 KENNEDY, YOUR OBJECTION?

8 MS. KENNEDY: YOUR HONOR, IF I MAY. MY APOLOGIES
9 TO THE COURT---

10 COURT REPORTER: I CAN'T HEAR YOU.

11 MS. KENNEDY: WITH APOLOGIES TO THE COURT. IT IS
12 DIFFICULT TO CONVEY THIS IN THE PROPER MANNER AND TRY TO
13 KEEP OUR VOICES LOW WITH---

14 THE COURT: THAT'S -- THAT'S WHY I EXCUSED THE
15 JURY. AND -- SO YOU TAKE ALL THE TIME IN THE WORLD YOU
16 NEED, MS. KENNEDY, TO ARTICULATE YOUR POSITION.

17 MS. KENNEDY: ALL RIGHT. YOUR HONOR, RULE 901
18 CONCERNING AN -- AUTHENTICATION AND IDENTIFICATION. MY
19 UNDERSTANDING IS THAT THE SOLICITOR SOUGHT AND WAS ALLOWED
20 TO ELICIT NON-EXPERT OPINION HANDWRITING AS PART OF THE
21 PROCESS OF AUTHENTICATION. THE ONLY SIGNATURE, THE ONLY
22 HANDWRITING -- YOUR HONOR, I'M SORRY -- THE WITNESS IS
23 STILL IN THE ROOM. CAN I---

24 THE COURT: OH, MR. WORSHAM. THANK YOU. IF YOU'LL
25 JUST WAIT OUTSIDE, I APOLOGIZE.

1 **MS. WILLIAMS:** YOUR HONOR, MS. DEAN IS IN THE ROOM,
2 TOO. DO YOU NEED TO EXCUSE HER?

3 **THE COURT:** SHE'S ALREADY TESTIFIED.

4 **MS. KENNEDY:** THE -- THE ONLY DOCUMENT THAT THE
5 SOLICITOR -- ASSISTANT SOLICITOR SOUGHT TO INTRODUCE
6 THROUGH 901 AS NON-EXPERT OPINION HANDWRITING WAS -- I
7 THINK IT WAS EXHIBIT 23, RELATING TO MS. DEAN'S
8 IDENTIFICATION OF HIS SIGNATURE, A SINGLE DOCUMENT ONLY.
9 SHE WAS NOT ASKED, NOR COULD SHE IF SHE WERE ASKED, TO
10 AUTHENTICATE ANY OF THE LETTERS THAT WERE SEIZED FROM MR.
11 SALISBURY'S CUBE ON JANUARY 18TH.

12 WHAT'S HAPPENING IS THAT THE -- WE HAVE ONE
13 DOCUMENT OF AUTHENTICATION. THE WITNESS IS ATTEMPTING TO
14 TESTIFY ABOUT HIS EXPERT OPINION WITH -- WITH USING, I
15 BELIEVE, FIVE OTHER DOCUMENTS OR HANDWRITING EXEMPLARS
16 THAT HAVE NOT BEEN AUTHENTICATED.

17 SO, THEN WE GO FROM -- SO, 901 HIS HANDWRITING
18 ANALYSIS FROM THE R&E CLASSIFICATION, I'VE GOT NO PROBLEM
19 WITH. BUT HE'S -- BUT HE'S ALREADY TESTIFIED THAT HE'S
20 USED DOCUMENTS THAT HE BELIEVES BELONGS -- THEY ARE MR.
21 SALISBURY'S HANDWRITING, THAT HAVE NOT BEEN AUTHENTICATED
22 IN ANY SHAPE, FORM OR FASHION. AND -- AND I WILL CONCEDE
23 AT THE OUTSET THAT -- THAT -- THAT HE'S ALLOWED TO -- TO
24 USE WHAT MS. DEAN HAD TO -- IN TERMS OF ANYTHING THAT THEY
25 INTEND TO INTRODUCE THAT HAS MR. SALISBURY'S SIGNATURE ON

1 IT. ANYTHING ELSE IS IMPROPER BECAUSE -- BECAUSE, AS I
2 POINTED OUT THIS MORNING, YOUR HONOR, THEY COULD HAVE
3 ASKED -- FILED A MOTION, ASKED FOR A HANDWRITING EXEMPLAR,
4 AND ALL THOSE OTHER THINGS WOULD HAVE BEEN AUTHENTICATED.
5 BUT HE'S USING DOCUMENTS THAT HAVE NOT BEEN AUTHENTICATED
6 AS PART OF HIS ANALYSIS TO OFFER HIS EXPERT OPINION. AND
7 THAT'S MY OBJECTION, YOUR HONOR.

8 THE COURT: MS. WILLIAMS.

9 MS. WILLIAMS: YOUR HONOR, THE STANDARD WAS
10 AUTHENTICATED BY LINDA DEAN AS A WITNESS WITH KNOWLEDGE.
11 THAT'S 901 (B) 1.

12 THEN THE EXPERT IS -- HE ANALYZED THE STANDARD AND
13 COMPARED IT TO A NUMBER OF WRITINGS TO COME TO A
14 CONCLUSION ABOUT ITEM 27. IF -- IF THE WAY HE DID THAT IS
15 NOT CONVINCING, HE CAN BE CROSS EXAMINED AND IMPEACHED ON
16 HIS METHOD. BUT HE HAS ALREADY BEEN QUALIFIED AS AN
17 EXPERT. AND IF IT'S HIS EXPERT OPINION THAT ITEM 27 IS OF
18 COMMON AUTHORSHIP TO THE OTHER LETTERS FOUND IN HIS CELL
19 AND THE OTHER LETTERS FOUND IN HIS CELL ARE OF COMMON
20 AUTHORSHIP WITH THE STANDARD, THEN THAT IS HIS -- YOU
21 KNOW, THIS IS HIS OPINION. AND SHE CAN IMPEACH HIM ON
22 THAT OPINION. IT GOES TO WEIGHT.

23 MS. KENNEDY: YOUR HONOR, IF I BRIEFLY MAY RESPOND?
24 BRIEFLY?

25 THE COURT: YES.

1 **MS. KENNEDY:** THE AUTHENTICATION WAS THROUGH A
2 SIGNATURE ONLY. NOTHING ELSE. NOTHING ELSE. THE ITEM
3 WHICH THEY SEEK TO INTRODUCE IS PRINTED. IT DOESN'T BEAR
4 HIS SIGNATURE IN ANY SHAPE OR FORM OR FASHION. AND THAT'S
5 THE PROBLEM.

6 **THE COURT:** MS. KENNEDY, WOULD YOU HAVE THE SAME
7 OBJECTION IF 27 HAD ALREADY BEEN ADMITTED INTO EVIDENCE?

8 **MS. KENNEDY:** TWENTY-SEVEN?

9 **THE COURT:** WHICH IS THE DOCUMENT THEY SEEK TO
10 INTRODUCE?

11 **MS. KENNEDY:** IT'S -- IT HASN'T -- I'M SORRY.
12 WHICH -- WHAT IS EXHIBIT 27?

13 **THE COURT:** TWENTY-THREE---

14 **MS. KENNEDY:** TWENTY-THREE.

15 **THE COURT:** ---IS WHAT WE WILL NOW TERM AS THE
16 STANDARD.

17 **MS. KENNEDY:** OKAY.

18 **THE COURT:** THE CLASSIFICATION---

19 **MS. KENNEDY:** DOCUMENT.

20 **THE COURT:** ---THAT MS. DEAN TESTIFIED TO AND WAS
21 ADMITTED INTO EVIDENCE WITHOUT OBJECTION. MY QUESTION TO
22 YOU, MS. KENNEDY, IS WOULD WE BE HAVING THE SAME
23 CONVERSATION IF 27, WHICH IS THE DOCUMENT THAT THE STATE
24 IS SEEKING TO INTRODUCE, HAD ALREADY BEEN AUTHENTICATED
25 AND MOVED INTO EVIDENCE?

1 **MS. KENNEDY:** NO, YOUR HONOR. I -- I -- I WOULDN'T
2 HAVE ANY BASIS FOR AN OBJECTION, BECAUSE IT WOULD HAVE
3 BEEN PROPERLY AUTHENTICATED. BUT SINCE IT HAS NOT BEEN,
4 THEN THAT'S -- BECAUSE THEY SEEK TO INTRODUCE THE DOCUMENT
5 THROUGH THE AUTHENTICATION PROCESS, WHICH IS ALREADY
6 INVALID, SO -- AND WE ALREADY HAVE -- ALREADY VOICED OUR
7 OBJECTION TO, OUR POTENTIAL OBJECTION, BASED ON
8 AUTHENTICATION. AND OBVIOUSLY THERE WOULD BE---

9 **THE COURT:** MS. WILLIAMS, YOU'RE NOT MOVING OR
10 SEEKING TO INTRODUCE NUMBER 27 THROUGH THIS WITNESS, ARE
11 YOU?

12 **MS. WILLIAMS:** YES, YOUR HONOR. BUT, YOU KNOW, WE
13 CAN INTRODUCE -- WE DID THIS OUT OF DEFERENCE TO MS.
14 KENNEDY'S ARGUMENT. BUT ACTUALLY WE COULD HAVE -- THE
15 STANDARD HAS BEEN ADMITTED. WE COULD THEN MOVE TO
16 INTRODUCE ANY NUMBER OF DOCUMENTS THAT HE SAYS MATCH THE
17 STANDARD. AND THEN HE COULD TESTIFY, AS AN EXPERT, AS TO
18 WHETHER THOSE WRITINGS MATCH THE ULTIMATE WRITING. WE
19 JUST -- BECAUSE SHE DOESN'T WANT ALL OF THOSE WRITINGS IN,
20 WE -- WE DIDN'T INTRODUCE IT. SO, WE JUST HAD HIM TESTIFY
21 THAT HE USED THAT AS PART OF HIS ANALYSIS.

22 IT IS OUR OPINION THAT IT DOESN'T HAVE TO BE
23 INTRODUCED INTO EVIDENCE. IF HE CAN TESTIFY THAT AS AN
24 EXPERT, HE LOOKS AT ALL THESE DIFFERENT THINGS AND HIS
25 ULTIMATE CONCLUSION IS THAT ITEM 27 IS A COMMON AUTHORSHIP

1 TO THOSE OTHER WRITINGS HE LOOKED AT FROM THE CELL, AND
2 ALL OF THOSE MATCH THE SIGNATURE OF GEORGE SALISBURY. THE
3 OTHER WRITINGS IN THE CELL ARE SIGNED GEORGE SALISBURY AND
4 THEY'RE PRINTED. HE PRINTS THEM AND SIGNS THEM GEORGE
5 SALISBURY, SO HE -- HE IS SAYING THAT IT'S THE SAME
6 SIGNATURE.. AND THEN HE'S SAYING THE PRINTING MATCHES 27.
7 WE COULD MOVE TO INTRODUCE ANY NUMBER OF THOSE LETTERS
8 THAT ARE PRINTED WITH A SIGNATURE ON THEM. AND THEN HE
9 COULD, AS AN EXPERT OR EVEN A LAY PERSON, A JUROR COULD
10 LOOK AT BOTH WRITINGS AND DECIDE WHETHER IT'S THE SAME.

11 **THE COURT:** MS. WILLIAMS, YOU DO NOT -- DOES THERE
12 NOT HAVE TO BE A CHAIN OF CUSTODY ON THE LETTERS?

13 **MS. WILLIAMS:** NO, YOUR HONOR. I WAS LOOKING AT
14 THE CHAIN WHILE THE COURT WAS IN RECESS.

15 **THE COURT:** MS. KENNEDY, PLEASE QUIT CLICKING THAT
16 PEN.

17 **MS. KENNEDY:** OH, I'M SORRY.

18 **MS. WILLIAMS:** AND THIS IS A NONFUNGIBLE ITEM.
19 THERE IS NO CHAIN REQUIRED. ALTHOUGH WE HAVE MADE AN
20 EFFORT TO TRY TO EXPLAIN TO THE JURY WHERE THESE ITEMS
21 CAME FROM, BECAUSE JJ EVANS TESTIFIED THAT HE GOT THEM
22 FROM EITHER TWO PLACES, THE BATHROOM FLOOR OR THE CELL.
23 THEN THEY WERE DELIVERED TO AGENT CHINA. HE GOT THEM FROM
24 -- AGENT CHINA GAVE THEM TO SOMEONE AT THE LAB. AND THAT
25 PERSON GAVE THEM TO SCOTT WORSHAM.

1 BUT CLEARLY A CHAIN IS REQUIRED ON ITEMS, BLOOD
2 SAMPLES, ILLEGAL DRUGS, TAPE RECORDINGS, COUNTERFEIT
3 BILLS. A NONFUNGIBLE ITEM WE DON'T HAVE TO ESTABLISH A
4 CHAIN ON IT. IT'S JUST AN EXPERT SAYING THIS WRITING IS
5 THE SAME AS THIS WRITING IN HIS OPINION.

6 **THE COURT:** ALL RIGHT. MS. KENNEDY, AND WHAT IS
7 THE RELIEF THAT YOU SEEK REGARDING THIS WITNESS?

8 **MS. KENNEDY:** YOUR HONOR, I JUST WOULD -- IT -- I
9 MEAN IF -- THE WITNESS CAN CERTAINLY TESTIFY, BUT NOT AS
10 TO THE ITEM THAT WE SEEK TO HAVE EXCLUDED. IT -- IT --
11 IT -- THE CHAIN OF CUSTODY IS -- IS -- IS NOT AN ISSUE AND
12 WE'RE NOT CLAIMING THAT IT IS AN ISSUE. WE'RE -- WE'RE
13 ASSERTING THAT THERE IS A PROCEDURE THAT -- THAT COULD
14 HAVE BEEN FOLLOWED THAT WOULD HAVE AVOIDED ALL OF THIS.
15 IF THEY HAD WANTED TO -- TO, YOU KNOW, SEEK TO INTRODUCE
16 PRINTED -- WHICH IS WHAT THEY'RE TRYING TO DO -- OF MR.
17 SALISBURY, THEN THEY COULD HAVE DONE A MOTION. YOUR
18 HONOR, AUTHENTICATION OF MR. SALISBURY'S SIGNATURE IS (A)
19 ADMITTING THAT -- THE DOCUMENT THAT THEY SEEK TO ADMIT
20 THROUGH EXPERT TESTIMONY IS (C). (B) HAS BEEN COMPLETELY
21 LEFT OUT.

22 THE REQUIREMENT OF AUTHENTICATION BY A NON-EXPERT
23 WITNESS, THERE -- THE STATE HAS NOT SOUGHT TO---

24 **THE COURT:** OKAY. WELL, MS. KENNEDY, LET ME JUST
25 THROW MY UNDERSTANDING BASED UPON WHAT I HAVE INTERPRETED

1 WAS GOING ON AND WHAT -- TO FOLLOW UP ON WHAT MS. WILLIAMS
2 SAID, THE REASON THAT THE OTHER LETTERS ARE NOT COMING IN
3 IS AT A DEFERENCE TO YOU BASED UPON THE DISCOVERY. SO, IF
4 THOSE LETTERS COME IN, THEN IS THE -- IS THE ARGUMENT
5 MOOT?

6 MS. KENNEDY: NO, YOUR HONOR. AND WITH ALL DUE
7 DEFERENCE TO HER DEFERRING TO ME, THAT'S -- THAT IS NOT AN
8 ISSUE. IF YOU -- IF I WAS -- ATTEMPT TO DO THE SAME
9 THING, I WOULD HAVE TO FOLLOW THE PROCEDURE THAT I HAVE
10 OUTLINED FOR THE COURT. YOU -- YOU HAVE ONE ITEM THAT'S
11 BEEN AUTHENTICATED. I AM NOT DISPUTING IN ANY WAY THE
12 AUTHENTICATION THAT THIS EXPERT COULD OFFER AS IT RELATES
13 TO MR. SALISBURY'S SIGNATURE. THERE HAS BEEN NO
14 INFORMATION, NO AUTHENTICATION OF ANY OF THE -- OF ANY WAY
15 TO IDENTIFY THE PRINTED WORDS THAT -- THAT THEY SEEK TO
16 ADMIT WITHOUT AUTHENTICATION.

17 AND, YOUR HONOR, 701 SAYS -- IT SAYS "SPECIALIZED
18 KNOWLEDGE THAT WILL ASSIST THE TRIER OF FACT, BASED ON
19 EXPERIENCE, EDUCATION, AND OTHERWISE". AND IT DOES NOT --
20 AND THEN IT GOES TO 703 WHICH SAYS "THE BASIS OF THE -- OF
21 THE OPINION BY THE EXPERTS AND IF HE REASONABLY RELIED" --
22 WHICH IS WHAT THE STATE IS ASSERTING THAT HE DID --" ON
23 DOCUMENTS THAT HAVEN'T BEEN PROPERLY AUTHENTICATED, THEN
24 IT'S INADMISSIBLE ON THAT GROUND. AND THEN THERE ARE
25 SEVERAL OTHER GROUNDS. BUT THE ONE THAT WE'RE DISCUSSING

1 RIGHT NOW, IT'S INADMISSIBLE. BECAUSE YOU HAVE TO -- YOU
2 HAVE TO HAVE THAT AUTHENTICATION IN ORDER TO START THE --
3 THE ANALYSIS IN ORDER TO FORM THE BASIS OF THE OPINION
4 THAT WOULD BE ADMISSIBLE BY AN EXPERT.

5 THE COURT: AGAIN, MS. KENNEDY, YOU'RE REQUESTING
6 THAT THE WITNESS' TESTIMONY REGARDING NUMBER 27, WHICH IS
7 THE -- IS THAT THE LETTER, MS. WILLIAMS?

8 MS. WILLIAMS: IT'S A PRINTED NOTE THAT MATCHES THE
9 PRINTING ON LETTERS THAT HE SIGNED. AND THAT SIGNATURE
10 MATCHES THE STANDARD WHICH HAS BEEN AUTHENTICATED BY A
11 WITNESS WITH KNOWLEDGE.

12 THE COURT: SO, YOU ARE REQUESTING THAT THAT --
13 THAT NUMBER 27 NOT BE ADMITTED?

14 MS. KENNEDY: YES, YOUR HONOR, I AM. AND IF I JUST
15 -- A FURTHER ARGUMENT, AND THAT IS A 602 ARGUMENT BASED ON
16 LACK OF PERSONAL KNOWLEDGE, WHICH AGAIN GOES TO THE
17 AUTHENTICATION REQUIREMENTS. "A WITNESS MAY NOT TESTIFY
18 TO A MATTER UNLESS EVIDENCE IS INTRODUCED SUFFICIENT TO
19 SUPPORT A FINDING THAT THE WITNESS HAS PERSONAL KNOWLEDGE
20 OF THE MATTER." AND -- AND PERSONAL KNOWLEDGE MEANING IN
21 SOME INSTANCES AS THIS, THAT THE INFORMATION THAT HE
22 PROVIDED -- THAT HE WAS PROVIDED TO START WITH WAS
23 REASONABLY RELIABLE. AND WITHOUT THAT AUTHENTICATION
24 REQUIREMENT HAVING BEEN MET, THEN HE CAN'T DO IT.

25 MS. WILLIAMS: YOUR HONOR, HE'S AN EXPERT. HE

1 DOESN'T HAVE TO HAVE---

2 THE COURT: BASED UPON COUNSEL'S ARGUMENT, I AM
3 ALLOWING THIS WITNESS TO TESTIFY AS TO HIS OPINION AS TO
4 STATE'S 27 BASED UPON THE COURT'S READING OF RULE 901,
5 703.

6 MS. KENNEDY: YOUR HONOR---

7 THE COURT: YES.

8 MS. KENNEDY: ---I UNDERSTAND THE COURT'S RULING AS
9 TO THAT. SHOULD WE ADDRESS THE ISSUE OF PREJUDICE VS.
10 PROBATIVE RIGHT NOW AND RELEVANCE BEFORE WE BRING THEM
11 BACK IN HERE?

12 THE COURT: IF YOU WISH TO GO AHEAD AND DO IT.
13 BECAUSE WE'RE -- I'M NOT GOING TO -- ONCE HE TAKES THE
14 STAND, WE NEED TO CONTINUE.

15 MS. KENNEDY: WELL, YOUR HONOR, I WOULD INQUIRE OF
16 THE STATE AS TO THE RELEVANCE OF THE ITEMS SHE SEEKS TO
17 INTRODUCE, SO I CAN PROPERLY BASE MY ARGUMENT.

18 MS. WILLIAMS: YOUR HONOR, THE LETTER IN QUESTION
19 -- MAY I JUST GRAB IT?

20 THE COURT: YES, PLEASE.

21 MS. WILLIAMS: THERE'S BEEN TESTIMONY THAT LETTERS
22 WERE FOUND IN TWO PLACES, ONE AT THE CRIME SCENE ON THE
23 FLOOR OF THE BATHROOM---

24 COURT REPORTER: I'M SORRY. I CAN'T HEAR AS YOU'RE
25 WALKING AWAY.

1 **MS. WILLIAMS:** I'M SORRY. THE LETTERS WERE FOUND
2 ON THE FLOOR OF THE BATHROOM AND IN THE DEFENDANT'S CELL.
3 THIS LETTER GOES TO MOTIVE, PLANNING. IT SAYS "KEEP BOTH
4 HANDS ON YOUR DESK WHILE READING THIS. I HAVE A SHANK.
5 READ THIS AND READ THIS VERY CAREFULLY. I WANT YOU TO
6 UNDERSTAND THE FULL MEANING OF WHAT'S HAPPENING RIGHT
7 NOW." AND I DON'T KNOW IF THE COURT WANTS ME TO READ THE
8 WHOLE THING, OR IF WE CAN JUST SUBMIT IT FOR YOU TO READ,
9 BUT IT BASICALLY GOES INTO EXACTLY WHAT HE WAS GOING TO DO
10 TO MS. ADAMS. AND, YOUR HONOR, IT'S ESSENTIALLY ALMOST A
11 HOSTAGE NOTE.

12 AND WHY HE DIDN'T GIVE IT TO HER, WE DON'T KNOW.
13 MAYBE SHE STOOD UP TOO QUICKLY. MAYBE HE FORGOT TO GET IT
14 FROM HIS CELL, BUT IT'S HIGHLY PROBATIVE. AND JUST
15 BECAUSE SOMETHING IS PREJUDICIAL, DOESN'T MEAN IT GETS
16 SUPPRESSED. IT IS JUST -- THIS IS -- OUR ARGUMENT IS THAT
17 IT IS MORE PROBATIVE THAN PREJUDICIAL.

18 AND THERE WERE A LOT OF VERY PREJUDICIAL LETTERS IN
19 THAT PACKAGE. THIS IS THE ONE THAT WE'RE SEEKING TO
20 INTRODUCE BECAUSE IT'S SO PROBATIVE.

21 **THE COURT:** MS. KENNEDY.

22 **MS. KENNEDY:** THANK YOU, YOUR HONOR. MAY IT PLEASE
23 THE COURT. YOUR HONOR, I DON'T WHERE -- AH, HERE'S --
24 BASED ON THE SOLICITOR'S ARGUMENT, THERE IS NO INFORMATION
25 WHATSOEVER -- THEY DON'T EVEN KNOW WHERE THEY FOUND --

1 WHETHER THIS WAS IN THE LETTERS THAT WERE REMOVED IN THE
2 DORM. OFFICE, OR WHETHER THIS -- THESE -- THIS LETTER WAS
3 IN HIS CELL. THAT'S THE FIRST THING.

4 THE SECOND THING IS THE LETTER IS NOT DATED. SO,
5 TO ARGUE THAT THIS IS A BLUE PRINT FOR WHAT HE INTENDED TO
6 DO TO CORRECTIONAL OFFICER ADAMS IS -- IS -- IS AT BEST
7 SPECULATION.

8 THERE'S -- THERE'S NO SIGNATURE ON IT. THERE --
9 IT DOES NOT REFER, IN ANY WAY, TO ANY INTENT TO ASSAULT
10 HER, TAKE HER HOSTAGE, SEXUALLY ASSAULT HER, IT'S -- IT'S
11 JUST A WRITING, WHOSE -- WHOSE TIME AND DATE OF
12 DRAFTSMANSHIP CANNOT BE DETERMINED. AND, THEREFORE, IS
13 HIGHLY SPECULATIVE.

14 OFFICER ADAMS, ACCORDING TO HER TESTIMONY AND THE
15 EVIDENCE PRESENTED BY THE STATE, HAD ONLY BEEN IN THERE
16 FOR TWO DAYS. THE SUGGESTION THAT THIS LETTER WOULD
17 ESTABLISH A MOTIVE AND A PLAN FOR ANY KIND OF ASSAULT ON
18 THIS MS. ADAMS, IT CAN'T BE VERIFIED IN ANY WAY.

19 AGAIN, YOU'VE SEEN -- YOU'VE SEEN THE NUMBER OF
20 LETTERS THAT WERE SUBMITTED. AND THERE'S --THERE'S
21 NOTHING IN THERE -- THE FACT THAT THEY WANT TO SELECT THE
22 ONE THAT APPEARS TO BE MOST FAVORABLE TO THEIR CASE
23 WITHOUT ESTABLISHING PROPER FOUNDATION, WITHOUT BEING ABLE
24 TO IDENTIFY WHEN, WHERE AND WHAT CIRCUMSTANCES IT WAS
25 WRITTEN, EVEN HOW LONG HE HAD IT IN HIS CUSTODY.

1 HE HAD A WHOLE BUNCH OF STUFF. FOR ALL WE KNOW,
2 THIS -- THESE -- THIS LETTER WAS IN HIS PACKET WHEN HE SAW
3 -- WHEN HE MET WITH LINDA DEAN. SO, IT IS IN -- IT WOULD
4 BE INADMISSIBLE FROM THOSE GROUNDS. IT'S INADMISSIBLE, I
5 WOULD SUGGEST TO THE COURT, THAT IT'S HIGHLY PREJUDICIAL.
6 IT'S MORE PREJUDICIAL THAN IT IS PROBATIVE BECAUSE IT
7 DOESN'T HELP TO ESTABLISH ANY OF THE ELEMENTS OF THE
8 OFFENSE -- OFFENSES THAT ARE ALLEGED TO HAVE---

9 THE COURT: LET ME SEE THE LETTER PLEASE. (PAUSE.)
10 ANYTHING FURTHER, MS. KENNEDY?

11 MS. KENNEDY: YOUR HONOR, JUST NOW SINCE YOU'VE HAD
12 THE OPPORTUNITY TO READ IT, AGAIN, THERE IS NO
13 IDENTIFICATION OF ANYBODY, AND PARTICULARLY OFFICER ADAMS.
14 AND WE'RE NOT -- MOTIVE IS NOT AN ISSUE HERE. IT'S
15 INTENT.

16 THE COURT: MS. WILLIAMS.

17 MS. WILLIAMS: YOUR HONOR, WE JUST EXTEND OUR
18 ARGUMENT, WITH THE -- THE EXPERT IS GOING TO TESTIFY THAT
19 THAT IS COMMON AUTHORSHIP WITH THE OTHER ITEMS THAT HE
20 LOOKED AT. AND WE JUST FEEL THAT THAT IS MORE PROBATIVE
21 THAN PREJUDICIAL. IT GOES TO THE ELEMENTS CERTAINLY OF AN
22 ASSAULT ON A CORRECTIONS OFFICER. WE WILL JUST STAND ON
23 OUR PREVIOUS ARGUMENT.

24 THE COURT: BASED UPON MY READING OF THE LETTER AND
25 THE FACTS THAT THE COURT HAS HEARD SO FAR, THE TESTIMONY

1 OF THE VICTIM, THE COURT WILL ALLOW STATE'S EXHIBIT NO.
2 27. I DO FIND IT MORE PROBATIVE THAN PREJUDICIAL UNDER
3 404 (B), IN PARTICULAR THE ABSENCE OF MISTAKE OR ACCIDENT,
4 AND TO INTENT. I NOTE YOUR OBJECTION FOR THE RECORD.

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

6 (STATE'S EXHIBIT NO. 27 RECEIVED INTO EVIDENCE.)

7 **THE COURT:** MS. WILLIAMS, BEFORE THAT LETTER IS
8 INTRODUCED INTO EVIDENCE, THERE NEEDS TO BE SOME
9 FOUNDATION LAID AS TO WHERE THAT LETTER WAS FOUND.

10 **MS. WILLIAMS:** YOUR HONOR, THE TESTIMONY FROM JJ
11 EVANS IS THAT THEY COLLECTED LETTERS FROM TWO SEPARATE
12 PLACES, THE BATHROOM FLOOR AND THE CELL. WE CAN
13 CERTAINLY -- AND THEN -- AND THEN HE BROUGHT IT TO AGENT
14 CHINA. WE CAN CERTAINLY HAVE AGENT CHINA TESTIFY
15 AFTERWARDS THAT SHE GOT THE LETTERS FROM JJ EVANS AND
16 BROUGHT THEM TO SCOTT WORSHAM. SHE IS BACK.

17 AND WE ALSO HAVE THE TECHNICIAN THAT COLLECTED THEM
18 FROM CHINA AND GAVE THEM TO WORSHAM. AND ALL THEIR
19 INITIALS ARE ON THE PACKAGE.

20 **THE COURT:** WHO CAN TESTIFY AS TO WHERE THAT LETTER
21 WAS FOUND?

22 **MS. WILLIAMS:** JJ EVANS TESTIFIED THAT HE TOOK ALL
23 THE LETTERS AND PUT THEM IN THAT PACKAGE. AND SCOTT
24 WORSHAM AND EVERYBODY ELSE TESTIFIED -- WE CAN HAVE CHINA
25 TESTIFY THAT AFTER IT WAS SEALED, SHE GOT IT. SCOTT

1 WORSHAM TESTIFIED THAT EVERYTHING HE'S ANALYZED, HE GOT
2 OUT OF THAT SEALED ENVELOPE. AND JJ EVANS HAS ALREADY
3 TESTIFIED THAT ALL THE LETTERS HE GOT FROM THE CELL AND
4 THE BATHROOM FLOOR WENT INTO THE ENVELOPE, AND HE SEALED
5 IT AND BROUGHT IT TO CHINA. SCOTT WORSHAM IDENTIFIED HIS
6 INITIALS ON THE ENVELOPE AND SAID HE GOT THEM FROM CHINA.

7 **THE COURT:** AND 31 IS THE SEALED EMPTY MANILA
8 ENVELOPE, IS THAT CORRECT?

9 **MS. WILLIAMS:** YES, YOUR HONOR.

10 **THE COURT:** AND OFFICER EVANS TESTIFIED THAT THAT
11 LETTER WENT INTO 31?

12 **MS. WILLIAMS:** HE -- HE TESTIFIED THAT ALL THE
13 LETTERS HE GOT FROM THE SCENE WENT INTO 31.

14 **THE COURT:** BUT WAS THAT LETTER AT THE SCENE, MS.
15 WILLIAMS?

16 **MS. WILLIAMS:** YES, YOUR HONOR. SCOTT WORSHAM
17 TESTIFIED THAT EVERYTHING HE ANALYZED CAME OUT OF THAT
18 ENVELOPE. SO---

19 **THE COURT:** OKAY. THAT WASN'T MY QUESTION. MY
20 QUESTION IS, IS THAT THE -- DID OFFICER EVANS TESTIFY THAT
21 THAT IS THE LETTER -- THAT THAT LETTER WAS AT THE SCENE?

22 **MS. WILLIAMS:** THERE WERE SEVERAL LETTERS---

23 **THE COURT:** IT'S YES OR NO.

24 **MS. WILLIAMS:** I DON'T THINK HE CAN IDENTIFY THAT
25 SPECIFIC LETTER WENT INTO THE ENVELOPE. HE CAN JUST SAY

1 THAT ALL THE LETTERS HE COLLECTED WENT INTO THE ENVELOPE.
2 I DON'T THINK HE EXAMINED EACH AND EVERY ONE, IN ALL
3 FAIRNESS, YOUR HONOR. I DON'T THINK HE CAN SAY, YOU KNOW,
4 THIS LETTER OR THAT LETTER. HE CAN JUST SAY, ALL THE
5 LETTERS HE COLLECTED WENT INTO THE ENVELOPE. AND THEN
6 SCOTT WORSHAM CAN SAY THAT HE ANALYZED EVERYTHING THAT
7 CAME OUT OF THE ENVELOPE. AND THAT IT WAS SEALED WHEN HE
8 GOT IT.

9 THE OTHER LETTERS THAT HE'S COMPARING IT TO HAVE
10 GEORGE SALISBURY'S SIGNATURE ON IT.

11 **MS. KENNEDY:** YOUR HONOR, MAY I? JUST IN REGARD TO
12 YOUR QUESTION.

13 **THE COURT:** YES, MA'AM.

14 **MS. KENNEDY:** WE WOULDN'T BE HAVING THIS ARGUMENT
15 -- OR PROBABLY COULDN'T BE HAVING THIS ARGUMENT IF OFFICER
16 EVANS HAD TESTIFIED -- OR AGENT EVANS HAD TESTIFIED
17 BECAUSE THE STATE SUBMITTED, I BELIEVE, WERE AWKWARD --
18 COPIES OF LETTERS AND ENVELOPES THAT WERE LAID OUT ON THE
19 TABLE OF WHICH -- AND PHOTOGRAPHS -- PHOTOGRAPHS WERE
20 TAKEN OF ALL THOSE. I -- I -- I WOULD NOT -- IF THIS
21 LETTER, IF IT COULD BE DETERMINED THAT THIS LETTER WAS IN
22 ALL THE STUFF THAT WAS IN THE DORM ROOM, THEN MY ARGUMENT
23 WOULD BE SUBSTANTIALLY WEAKER. AND I WOULD CONCEDE THAT.

24 BUT SINCE WE DON'T KNOW WHERE IT CAME FROM AND --
25 AND WE DON'T KNOW UNDER WHAT CIRCUMSTANCES IT WAS

1 RETRIEVED, AND THERE'S NO -- ALL AGENT EVANS WAS ABLE TO
2 SAY, WAS THEY TOOK A BUNCH OF STUFF. THE CHAIN OF CUSTODY
3 SHOWS THEY TOOK A BUNCH OF LETTERS. THERE IS NO LOG. ONE
4 OF THE FAILINGS IN THIS WHOLE THING IS THAT THERE IS NO
5 CRIME SCENE LOG. AND YOU, FROM YOUR FORMER EXPERIENCE AS
6 A PROSECUTOR, WOULD REALIZE IT IS ESSENTIAL TO ANY
7 PRESENTATION OF EVIDENCE. AND THAT -- AND THAT WOULD BE
8 THE ARGUMENT, YOUR HONOR. THERE IS NO WAY YOU COULD HAVE
9 A FOUNDATION.

10 **THE COURT:** MS. WILLIAMS, JUST SO BOTH PARTIES ARE
11 CLEAR AS TO MY RULING AND -- I DON'T THINK THAT A CHAIN
12 HAS -- THE -- AGENT WORSHAM CAN TESTIFY AS TO -- IN HIS
13 EXPERT OPINION AS TO 27. IF HE DOES NOT BY THAT -- BY
14 THAT TESTIMONY, DOES NOT GET -- THAT DOES NOT MEAN THAT
15 IT'S ADMITTED INTO EVIDENCE. YOU NEED -- THERE NEEDS TO
16 BE A FOUNDATION LAID AS TO WHERE THAT LETTER CAME FROM.
17 THE COURT IS UNCLEAR AS TO WHERE THAT PARTICULAR LETTER
18 CAME FROM.

19 SO, SUBJECT TO THAT, IS THE ADMISSIBILITY OF 27.

20 **MS. WILLIAMS:** JUST FOR CLARIFICATION, YOUR HONOR,
21 IF -- JUST SO THAT WE KNOW, BECAUSE THERE IS REALLY NO
22 POINT IN GETTING SCOTT WORSHAM BACK IF WE -- YOU KNOW, I
23 JUST WANT TO KNOW IF IT'S POSSIBLE TO -- IF -- BASED ON JJ
24 EVANS' TESTIMONY THAT ALL THE LETTERS HE COLLECTED AT THE
25 SCENE WENT INTO THAT ENVELOPE AND IT WAS SEALED AND HE

1 GAVE IT TO CHINA. IF CHINA TESTIFIES THAT SHE TOOK THE
2 SEALED ENVELOPE AND GAVE IT TO WORSHAM, WORSHAM TESTIFIES
3 AS HE DID, THAT HE GOT THAT LETTER, ITEM 27, OUT OF THAT
4 ENVELOPE, WOULD -- WOULD THAT BE ENOUGH? BECAUSE I DON'T
5 THINK ANYONE IS GOING TO BE ABLE TO TESTIFY THAT THEY CAN
6 IDENTIFY ANY PARTICULAR LETTER IN THERE. THEY TOOK SOME
7 PICTURES OF SOME ENVELOPES JUST BECAUSE IT SAID THE
8 INMATE'S NAME AND HIS INMATE NUMBER. AND, YOU KNOW,
9 THEY -- THEY DIDN'T PHOTOGRAPH EACH INDIVIDUAL LETTER JUST
10 BECAUSE WE DIDN'T -- THEY KNOW IT'S NONFUNGIBLE AND WE
11 DIDN'T NEED A CHAIN. BUT I UNDERSTAND THE COURT'S RULING
12 IN PERSPECTIVE, I JUST WANT TO MAKE SURE THAT I CAN
13 ESTABLISH WHAT THE COURT WANTS ME TO ESTABLISH, BEFORE I
14 PUT MY EXPERT BACK UP THERE AND THEN THE JURY WONDERS WHY
15 THIS LETTER DIDN'T GET IN.

16 THE COURT: MS. KENNEDY?

17 MS. KENNEDY: YES, YOUR HONOR.

18 THE COURT: ANY RESPONSE?

19 MS. KENNEDY: YOUR HONOR, THE COURT HAS ADVISED THE
20 PROSECUTOR THAT -- MY UNDERSTANDING OF WHAT YOUR RULING
21 IS, IS THAT SHE HAS TO BE ABLE TO ESTABLISH A FOUNDATION
22 AS TO THE LOCATION OF THIS PARTICULAR LETTER, AMONG ALL
23 THE LETTERS -- OR THE TWO SETS OF LETTERS THAT WERE
24 GATHERED AT THE SCENE -- OR NOT -- THE TWO SETS OF
25 DOCUMENTS THAT WERE GATHERED AT THE SCENE. AND WITHOUT A

1 CRIME SCENE LOG AND WITHOUT PROPER DOCUMENTATION, I WOULD
2 SUBMIT TO THE COURT THAT THERE IS REALLY NO WAY TO LAY
3 THAT FOUNDATION. IT'S INSUFFICIENT TO -- TO SAY THAT
4 AGENT EVANS -- WE DON'T DISPUTE THAT IT WAS TAKEN INTO
5 CUSTODY, WE JUST -- AND WE DON'T DISPUTE THAT THE
6 DOCUMENTS WERE TAKEN INTO CUSTODY, WE JUST NEED TO KNOW
7 WHICH -- WHICH DOCUMENTS WERE TAKEN FROM WHAT SCENE. AND
8 I -- FROM THE DORM ROOM OR FROM HIS CUBE.

9 AND GIVEN THE INFORMATION THAT WE HAVE, AND I WOULD
10 SUBMIT THE INFORMATION THE SOLICITOR HAS, THAT THAT CANNOT
11 BE DONE.

12 **THE COURT:** MS. KENNEDY, DO YOU RECALL WHAT --
13 WELL, I'M GOING TO LISTEN TO -- BEFORE WE NEED TO BRING
14 THE JURY BACK IN, BUT AT OUR LUNCH BREAK WHAT YOUR OFFICER
15 WORSHAM -- DETECTIVE -- AGENT WORSHAM CAN TESTIFY AS TO
16 27. BUT THAT TESTIMONY DOES NOT MEAN THAT IT IS
17 ADMISSIBLE. WHAT THE COURT WILL DO IS REVIEW THE
18 TESTIMONY OF OFFICER EVANS, BECAUSE I HAVE NOT -- I DID
19 NOT PARTICULARIZE WHERE -- WHERE HE STATED EACH OF THE
20 DOCUMENTS CAME. AND I WILL GET A FURTHER CLARIFICATION AS
21 TO THE ADMISSIBILITY OF 27 PURSUANT TO THAT REVIEW OF THAT
22 TESTIMONY.

23 **MS. WILLIAMS:** AND BECAUSE MR. ALFARO DID JJ EVANS
24 TESTIMONY, I -- HE IS GOING TO CLARIFY THAT.

25 **MR. ALFARO:** I JUST WANT TO CLARIFY ONE OF THE

1 THINGS AS FAR AS THE -- THERE HAS BEEN DISCUSSION ABOUT
2 31, THE ENVELOPE 31, THE ACTUAL TESTIMONY OF AGENT EVANS
3 WAS THAT THE LETTERS -- THE BAG OF LETTERS WERE COLLECTED
4 AT THE SCENE. THAT WENT INTO ITEM 30. THAT WAS THE
5 ENTIRE -- THAT'S THE CLEAR PLASTIC BAG THAT HAD ALL THE
6 LETTERS IN IT.

7 ITEM 30 WAS THEN TURNED OVER, HIS TESTIMONY WAS,
8 FROM HIM TO AGENT CHINA. AGENT CHINA THEN SUBSEQUENTLY
9 TOOK THOSE BAGS -- THAT BAG -- THAT BAG OF LETTERS,
10 EXHIBIT 30, TOOK THOSE TO SELENA KINARD AT SLED. THAT IS
11 WHERE THE LETTER IN QUESTION, NUMBER 27, WAS REMOVED FROM
12 THAT BAG AND PUT INTO A SEALED ENVELOPE NUMBER 31, ALONG
13 WITH THE OTHER DOCUMENTS THAT AGENT WORSHAM EXAMINED.

14 SO, THERE'S NOT GOING TO BE -- THE TESTIMONY AS FAR
15 AS WHERE A SPECIFIC ITEM CAME FROM AT THE PRISON, WE'RE
16 NOT GOING TO BE ABLE TO DO THAT. WHAT WE CAN -- WHAT WE
17 ARE ABLE TO DO IS WHAT AGENT EVANS HAS ALREADY TESTIFIED
18 TO, IS THAT EVERY LETTER THAT WAS COLLECTED AT THAT SCENE,
19 WAS SEALED INTO -- INTO A BAG -- WAS PUT INTO A PLASTIC
20 BAG, ITEM 30. ALL THOSE LETTERS WERE THEN TRANSFERRED TO
21 AGENT CHINA IN WHOLE, AND THEN SHE TRANSFERRED THAT BAG --
22 SEALED THE BAG, TRANSFERRED IT TO SLED. AT WHICH POINT,
23 MS. KINARD REMOVED THE ITEMS THAT MR. WORSHAM EXAMINED.
24 PUT THOSE INTO SEALED ENVELOPE NUMBER 31. AND THEN THAT'S
25 WHEN THE EXAMINATION -- SO, IF THE COURT IS -- IF THE --

1 IF NUMBER 27 IS ONLY GOING TO BE ADMITTED IF WE CAN PROVE
2 EXACTLY WHICH LOCATION AT SCDC THAT LETTER WAS FOUND AT,
3 WE'RE NOT GOING TO BE ABLE TO DO THAT. AND IF WE'RE NOT
4 GOING TO BE ABLE TO DO THAT, THE STATE'S PREFERENCE WOULD
5 BE TO NOT EVEN PUT MR. WORSHAM BACK UP. BECAUSE IF WE DO
6 THAT AND THEN HE SUBSEQUENTLY CAN'T PROVE THAT THE LETTER
7 SHOULD BE ADMITTED, THEN WE JUST HAVE THAT ISSUE HANGING
8 FOR THE JURY, WHERE IS THE LETTER THAT WE WANTED TO LOOK
9 AT, WHICH MEANS WE WILL GET AT LEAST ONE QUESTION FROM
10 THEM.

11 SO, OUR QUESTION IS JUST, AGAIN, WITH THE
12 CLARIFICATION OF ITEM 30 VERSUS ITEM 31, ARE WE STILL
13 GOING TO BE REQUIRED TO---

14 **THE COURT:** LET ME -- MR. ALFARO, I APPRECIATE THE
15 CLARIFICATION. I'M GOING TO GO INTO CHAMBERS RIGHT NOW
16 AND REVIEW THE TESTIMONY OF OFFICER EVANS AND THEN I'LL
17 MAKE MY RULING SO THAT THERE IS NO ISSUE AS TO WHETHER OR
18 NOT AGENT WORSHAM NEEDS TO COME BACK ON.

19 (WHEREUPON, COURT RECESSED AND RECONVENED.)

20 **THE COURT:** THE COURT HAS REVIEWED THE TESTIMONY OF
21 OFFICER EVANS, AND BASED UPON MY REVIEW OF THAT TESTIMONY,
22 THE COURT WILL ALLOW THE INTRODUCTION OF STATE'S 27. I'LL
23 NOTE YOUR OBJECTION FOR THE RECORD, MS. KENNEDY.

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

25 **THE COURT:** ANYTHING BEFORE WE BRING THE JURY IN?

1 **MS. WILLIAMS:** NOT FROM THE STATE, YOUR HONOR.

2 **THE COURT:** AND JUST FOR SCHEDULING, WE HAVE AGENT
3 WORSHAM TO FINISH OUT, AND THEN AGENT POWELL AND AGENT
4 CHINA, IS THAT CORRECT?

5 **MS. WILLIAMS:** IF THE -- IF THE COURT -- WE CAN PUT
6 KINARD AND CHINA UP TO FIRM UP THE CHAIN OF THE ENVELOPE
7 IF THE COURT IS REQUIRING US TO DO THAT. WE ONLY NEED
8 AGENT WORSHAM -- I'M NOT SURE WHAT THE RULING WAS FROM
9 BEFORE, IF WE CAN JUST USE WORSHAM TO AUTHENTICATE THE
10 AUTHORSHIP OF THE DOCUMENTS, OR IF THE---

11 **THE COURT:** BEFORE THE COURT LEFT, THAT WAS THE
12 RULING THAT WORSHAM COULD AUTHENTICATE BASED UPON HIS
13 EXPERIENCE AND EXPERTISE AS TO THE AUTHORSHIP OF THE
14 LETTERS.

15 THERE WAS THEN A CONCERN BY THE COURT AS TO WHERE
16 THE LETTER CAME FROM. BASED UPON MY REVIEW OF THE
17 TESTIMONY OF OFFICER EVANS, IT WAS CLEAR THAT THE CHAIN --
18 THAT IT WAS PLACED IN THE ENVELOPE. THE LETTERS CAME FROM
19 IN OR NEAR THE BATHROOM, OR IN A STACK OF LETTERS
20 ADDRESSED TO MR. -- OR THE TESTIMONY FROM OFFICER EVANS
21 WAS THAT LETTERS WERE OBTAINED IN OR NEAR THE BATHROOM.
22 THAT HE WAS THE FIRST OFFICER FROM SLED TO ARRIVE. AND
23 THAT OFFICER -- THAT THERE WERE LETTERS OBTAINED FROM MR.
24 SALISBURY'S CUBICLE ADDRESSED TO MS. SALISBURY.

25 SO, IN RESPONSE TO YOUR QUESTION, NO.

1 **MS. WILLIAMS:** SO, OUR -- IN RESPONSE TO YOUR
2 QUESTION, THANK YOU. WE WILL PUT UP MR. WORSHAM AND THEN
3 INVESTIGATOR POWELL, AND THEN THE STATE WILL MOST LIKELY
4 REST.

5 **THE COURT:** AND, AGAIN, BASED UPON THEIR TESTIMONY
6 -- I'M NOT GOING TO HOLD YOU TO THIS -- DO YOU HAVE ANY
7 WITNESSES AT THIS TIME, MR. SHELTON?

8 **MR. SHELTON:** NO, YOUR HONOR.

9 **THE COURT:** AND HAVE YOU SUBMITTED PROPOSED JURY
10 INSTRUCTIONS?

11 **MR. SHELTON:** WE HAVE NO JURY INSTRUCTIONS, YOUR
12 HONOR, OTHER THAN THE -- THE NORMAL JURY INSTRUCTIONS.

13 **THE COURT:** AND YOU ARE NOT REQUESTING ANY LESSOR
14 INCLUDED, MR. SHELTON?

15 **MR. SHELTON:** NO, YOUR HONOR.

16 **THE COURT:** AND THE STATE IS REQUESTING ATTEMPTED
17 CSC AND CSC II, IS THAT CORRECT?

18 **MS. WILLIAMS:** YES, YOUR HONOR.

19 **THE COURT:** ANY OTHER LESSER INCLUDED?

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

21 **THE COURT:** THANK YOU. ANYTHING BEFORE WE BRING IN
22 THE JURY?

23 **MS. WILLIAMS:** NOTHING FROM THE STATE.

24 **THE COURT:** ALL RIGHT. IF YOU COULD HAVE AGENT
25 WORSHAM COME IN AND GO AHEAD AND BE ON THE STAND.

1 (WITNESS FORWARD.)

2 THE COURT: AGENT WORSHAM, PLEASE COME IN AND TAKE
3 YOUR PLACE ON THE STAND. THANK YOU. AND I REMIND YOU
4 THAT YOU'RE STILL UNDER OATH. PLEASE BRING IN THE JURY.
5 PLEASE STAND FOR THE JURY.

6 (WHEREUPON, JURY ENTERED THE COURTROOM AT 11:35
7 A.M.)

8 THE COURT: PLEASE BE SEATED. LADIES AND GENTLEMEN
9 OF THE JURY, I APPRECIATE YOUR PATIENCE. THERE WERE SOME
10 MATTERS UNRELATED TO THIS CASE THAT THE COURT HAD TO TAKE
11 UP OUTSIDE OF YOUR PRESENCE. AGAIN, I APOLOGIZE FOR THE
12 INCONVENIENCE. MS. WILLIAMS.

13 MS. WILLIAMS: THANK YOU, YOUR HONOR.

14 BY MS. WILLIAMS:

15 Q MR. WORSHAM, BASED ON ALL OF THE COMPARISONS AND
16 TESTS THAT YOU RAN, WHAT IS YOUR OPINION AS TO THE COMMON
17 AUTHORSHIP OF ALL OF THE LETTERS AND SIGNATURES AND
18 WRITINGS THAT YOU LOOKED AT, AS FAR AS COMMON AUTHORSHIP?

19 A IT'S MY CONCLUSION THAT THE HAND PRINTING ON THE
20 LETTERS IS OF COMMON AUTHORSHIP. AND THE SIGNATURES ON
21 THE LETTERS FOUND IN THE CELL WERE AUTHORED BY GEORGE
22 SALISBURY.

23 Q SO, -- AND PART OF THAT---

24 MS. WILLIAMS: MAY I APPROACH, YOUR HONOR?

25 THE COURT: YOU MAY.

1 BY MS. WILLIAMS:

2 Q I WANT TO JUST POINT OUT TO HIM AN ITEM THAT
3 TALKED ABOUT, ITEM 27 -- I MEAN, STATE'S EXHIBIT 27. AND
4 AS PART OF THAT ANALYSIS, AND THE PRINTING THAT YOU'RE
5 REFERRING TO, WAS ITEM 27 ONE OF THE ITEMS THAT YOU ARE
6 TESTIFYING WAS OF THAT COMMON AUTHORSHIP?

7 A THAT'S CORRECT.

8 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, WE WOULD
9 MOVE TO ENTER STATE'S EXHIBIT NO. 27.

10 MS. KENNEDY: YOUR HONOR, WE COVERED IT, OVER --
11 OVER OUR OBJECTION.

12 THE COURT: STATE'S 27 INTO EVIDENCE NOTING THE
13 DEFENDANT'S OBJECTION.

14 MS. WILLIAMS: MAY WE PUBLISH?

15 THE COURT: HOW -- HOW ARE YOU GOING TO PUBLISH
16 THAT?

17 MS. WILLIAMS: WE WERE GOING TO HAVE MR. WORSHAM
18 READ IT, OR WE CAN PUT IT ON THE OVERHEAD, WHATEVER THE
19 COURT THINKS -- OR WE CAN PASS IT AROUND.

20 THE COURT: MS. KENNEDY, DOES THE DEFENSE HAVE A
21 PREFERENCE AS TO PUBLISHING?

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

23 THE COURT: YOU MAY APPROACH.

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 BENCH CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE

SCOTT WORSHAM -- DIRECT BY MS. WILLIAMS

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1 THE HEARING OF THE JURY, OFF THE RECORD.)

2 THE COURT: LADIES AND GENTLEMEN OF THE JURY, YOU
3 WILL BE HANDED WHAT HAS BEEN INTRODUCED INTO EVIDENCE AS
4 STATE'S 27. YOU MAY APPROACH THE BAILIFF -- MADAM
5 BAILIFF, IF YOU WILL HAND THAT TO THE FORELADY.

6 LADIES AND GENTLEMEN OF THE JURY, YOU ARE GOING TO
7 HAVE AN OPPORTUNITY, EACH ONE OF YOU -- AND THERE'S ONLY
8 ONE COPY -- SO ONCE YOU READ THE LETTER, STATE'S 27, IF
9 YOU'LL THEN PASS IT TO THE NEXT JUROR.

10 MS. WILLIAMS: YOUR HONOR, MAY I SIT WHILE IT'S
11 PUBLISHED?

12 THE COURT: YOU MAY.

13 MS. WILLIAMS: THANK YOU.

14 (WHEREUPON, STATE'S EXHIBIT NO. 27 WAS HANDED TO
15 THE JURY.)

16 (PAUSE IN PROCEEDINGS FOR JURORS TO READ DOCUMENT.)

17 MS. WILLIAMS: MR. WORSHAM, THANK YOU. PLEASE
18 ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

19 THE WITNESS: YES, MA'AM.

20 THE COURT: MS. KENNEDY.

21 MS. KENNEDY: THANK YOU, YOUR HONOR. YOUR HONOR,
22 MAY I APPROACH THE WITNESS?

23 THE COURT: YOU MAY.

24 CROSS EXAMINATION BY MS. KENNEDY:

25 Q AGENT WORSHAM, LET'S START ALL OVER AGAIN. AND

1 IT'S BEEN -- WE STARTED EARLIER THIS MORNING. AND I -- I
2 -- I MADE A MISTAKE IN MY NOTES. IF YOU WOULD BE KIND
3 ENOUGH TO CLARIFY SOMETHING FOR ME BEFORE WE START. YOU
4 MADE A COMMENT IN RESPONSE TO A QUESTION THAT MS. WILLIAMS
5 ASKED YOU, THE ASSISTANT SOLICITOR ASKED YOU ON DIRECT
6 EXAMINATION ABOUT DIFFERENT LEVELS. AND I DIDN'T CATCH
7 THE LAST WORD, DIFFERENT LEVELS OF COMPARISONS, DIFFERENT
8 LEVELS OF...?

9 A DIFFERENT LEVELS OF CONCLUSIONS THAT WE CAN
10 REACH.

11 Q OKAY. AND IF YOU'LL BE KIND ENOUGH, SIR, TO
12 TELL ME EXACTLY WHAT THAT MEANS.

13 A WE HAVE NINE DIFFERENT CONCLUSIONS THAT WE CAN
14 STATE AFTER EXAMINING HANDWRITING. THE -- ONE CONCLUSION
15 WOULD BE NO CONCLUSION WHATSOEVER. NO CONCLUSION WOULD BE
16 WHERE YOU DIDN'T HAVE SUFFICIENT INFORMATION GIVEN TO YOU
17 WHEN YOU'RE COMPARING THE HANDWRITING SO THAT YOU COULD
18 STATE ANYTHING ABOUT IT.

19 Q OKAY. AND---

20 A IN OTHER WORDS, I EXAMINED IT AND I HAVE NO
21 CONCLUSION.

22 Q ALL RIGHT. IN REGARD TO THAT, I MEAN, JUST --
23 JUST SO -- SO THE NINE, IT'S A RANGE?

24 A YES, MA'AM.

25 Q WITH ONE BEING NO CONCLUSION AND NINE BEING

SCOTT WORSHAM -- CROSS BY MS. KENNEDY

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1 WHAT?

2 A WELL, THERE'S FOUR BELOW AND FOUR ABOVE, BUT IT
3 GOES---

4 Q RIGHT. RIGHT. BUT I -- I MEAN IF ONE IS NO
5 CONCLUSION, WHAT IS NINE?

6 A NINE WOULD BE AN IDENTIFICATION OR AN
7 ELIMINATION.

8 Q ALL RIGHT. SO, COMMON AUTHORSHIP FALLS
9 SOMEWHERE BETWEEN ONE AND NINE?

10 A COMMON AUTHORSHIP IS AN IDENTIFICATION.

11 Q IDENTIFICATION?

12 A YES.

13 Q OKAY. AND -- AND WHAT -- AS I UNDERSTAND YOUR
14 TESTIMONY, WHAT YOU DID WAS TAKE A SIGNATURE SHEET THAT
15 WAS PROVIDED TO YOU THROUGH MS. DEAN, AND OTHER ITEMS, AND
16 YOU STARTED WITH THE SIGNATURE AND THEN YOU WENT THROUGH
17 ALL THE -- I THINK PROBABLY ABOUT LIKE 80 PAGES OF
18 DOCUMENTS?

19 A A VOLUME, YES, MA'AM.

20 Q ALL RIGHT. AND THEN YOU EXTRACTED CERTAIN ONES?

21 A YES.

22 Q TO DO YOUR ANALYSIS?

23 A YES.

24 Q OKAY. AND THERE'S NO -- IS -- NO RHYME NOR

25 REASON TO WHICH ONES YOU EXTRACTED AND WHICH ONES YOU LEFT

1 OUT?

2 A NO. THERE'S A VERY DEFINITE REASON I SELECTED
3 THE ONES I DID SELECT.

4 Q OKAY. WELL, THOSE AREN'T MENTIONED IN YOUR
5 REPORT, SO.

6 A THE OTHERS?

7 Q THE -- THE REASON WHY YOU CHOSE THOSE -- THOSE
8 -- THOSE ONES THAT YOU DID THE COMPARISON TO.

9 A I WOULD HAVE TO EXPLAIN ALL OF IT TO EXPLAIN
10 THAT. IF YOU---

11 Q THAT'S ALL RIGHT. BUT THE POINT IS THAT THE
12 SELECTION WAS UP TO YOU ENTIRELY?

13 A YES.

14 Q YES. OKAY. AND YOU DON'T HAVE ANY IDEA OF --
15 AS TO -- IN GOING THROUGH THAT -- THAT SHEAF OF PAPERWORK,
16 SOME OF THOSE THINGS WERE SIGNED, CORRECT?

17 A YES.

18 Q SOME WERE SIGNED AND DATED?

19 A YES.

20 Q SOME WERE NOT -- SOME WERE JUST PRINTED?

21 A YES, MA'AM.

22 Q YOU HAVE NO WAY OF KNOWING WHEN THAT -- WHEN
23 THEY WERE DRAFTED UNLESS THEY WERE DATED?

24 A THAT'S CORRECT.

25 Q NO WAY OF KNOWING, UNLESS IT SAID DEAR SOMEONE,

1 WHO THEY WERE SUPPOSED TO GO TO?

2 A RIGHT.

3 Q NO WAY OF KNOWING ANYTHING ABOUT IT, OTHER THAN
4 IN YOUR OPINION, THE HANDWRITING MATCHES?

5 A OR ELIMINATES.

6 Q COMMON -- WELL, COMMON AUTHORSHIP TO USE YOUR
7 TERM?

8 A YES. I WENT THROUGH THE VOLUMES OF
9 INFORMATION---

10 Q I'M SORRY.

11 A -- AND I -- I WAS LOOKING FOR SOMETHING TO
12 COMPARE THE SIGNATURES -- THE KNOWN HANDWRITING SIGNATURES
13 THAT I HAD OF GEORGE SALISBURY TO. AND IN DOING SO I
14 FOUND CERTAIN ITEMS BEARING THAT.

15 Q YES, SIR. I UNDERSTAND THAT. BUT AS TO ALL THE
16 ITEMS TO EXAMINE, JUST SO WE'RE ALL CLEAR, AGAIN, SOME
17 WERE DATED, SOME WERE NOT?

18 A YES.

19 Q SOME WERE SIGNED, SOME WERE NOT?

20 A THAT'S CORRECT.

21 Q SOME WERE DATED AND SIGNED AND SOME WERE NOT,
22 AND THE REST OF THEM WERE JUST PRINTED?

23 A PRINTED OR IN CURSIVE, YES.

24 Q SO, AS TO THE ONES -- PARTICULARLY THE ONE
25 THAT'S BEEN OFFERED INTO EVIDENCE, YOU HAVE NO IDEA WHEN

1 IT WAS WRITTEN?

2 A NO, I DO NOT.

3 Q YOU HAVE NO IDEA WHAT -- WHAT -- WHAT CAUSED IT
4 TO BE WRITTEN?

5 A LET ME SEE MY NOTES.

6 MS. KENNEDY: YOUR HONOR, MAY I APPROACH THE
7 WITNESS?

8 THE COURT: YOU MAY.

9 MS. KENNEDY: THIS MIGHT BE HELPFUL TO HIM.
10 BY MS. KENNEDY:

11 Q OKAY.

12 A THAT'S CORRECT. I DO NOT KNOW WHEN THEY WERE
13 WRITTEN.

14 Q YOU DON'T KNOW WHEN IT WAS WRITTEN, TO WHOM IT
15 WAS WRITTEN, OR WHY IT WAS WRITTEN?

16 A THAT'S CORRECT.

17 Q OKAY.

18 MS. KENNEDY: THE COURT'S INDULGENCE.

19 THE COURT: YES, MA'AM.

20 MS. KENNEDY: THAT'S ALL, YOUR HONOR. THANK YOU.

21 THE COURT: MS. KENNEDY -- EXCUSE ME. MS.
22 WILLIAMS.

23 MS. WILLIAMS: I DON'T HAVE ANY OTHER QUESTIONS,
24 YOUR HONOR.

25 THE COURT: MAY THIS WITNESS STEP DOWN AND BE

1 EXCUSED? ANY OBJECTION, MS. KENNEDY?

2 MS. KENNEDY: NO, YOUR HONOR. THANK YOU.

3 THE COURT: AGENT WORSHAM, YOU MAY STEP DOWN. YOU
4 ARE FREE TO REMAIN IN THE COURTROOM, BUT YOU ARE ALSO FREE
5 TO LEAVE THE COURTHOUSE IF YOU WISH.

6 THE WITNESS: THANK YOU, YOUR HONOR.

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IT IS
8 AN APPROPRIATE TIME FOR US TO TAKE OUR LUNCH BREAK.
9 PLEASE DO NOT BEGIN DELIBERATIONS. PLEASE DO NOT DISCUSS
10 THIS CASE AMONGST YOURSELVES, OR WITH ANY OTHER
11 INDIVIDUALS, FRIENDS, FAMILY MEMBERS. PLEASE DO NOT READ,
12 WATCH, LISTEN TO ANY NEWS REPORTS, IF ANY, CONCERNING THIS
13 CASE. AND ENJOY YOUR LUNCH. PLEASE BE BACK IN YOUR JURY
14 ROOM AT 1:25. PLEASE STAND FOR THE JURY.

15 (WHEREUPON, JURY LEFT THE COURTROOM AT 12:13 P.M.)

16 THE COURT: THANK YOU. BE SEATED. MR. SHELTON,
17 I'LL BE HAPPY TO HEAR FROM YOU -- THE COURT HAS DECIDED TO
18 CHARGE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. I'LL
19 BE HAPPY TO HEAR FROM YOU IF YOU WISH TO PUT ANYTHING ON
20 THE RECORD.

21 MR. SHELTON: YOUR HONOR, I BELIEVE YOUR REASON WAS
22 BECAUSE OF THE -- THE AGGRAVATED COERCION?

23 THE COURT: YES.

24 MR. SHELTON: THAT'S -- I -- I WOULD ASK THAT I BE
25 ABLE TO DO A LITTLE BIT MORE RESEARCH DURING THE LUNCH

1 BREAK TO HAVE MY ARGUMENTS HEARD AT THAT TIME, AFTER THE
2 LUNCH BREAK.

3 THE COURT: ALL RIGHT. AND I WILL ALLOW YOU, AS
4 WELL, MR. SHELTON -- THE STATE HAS REQUESTED ATTEMPT --
5 ATTEMPTED CSC, IS THAT CORRECT?

6 MS. WILLIAMS: YES, YOUR HONOR.

7 THE COURT: ANYTHING FURTHER BEFORE OUR LUNCH
8 BREAK?

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

10 MR. SHELTON: NOTHING FURTHER, YOUR HONOR. I THINK
11 WE MENTIONED IN OUR SIDE BAR ABOUT PROVIDING RIGHTS TO---

12 THE COURT: YES. I'M GETTING THOSE RIGHT NOW, MR.
13 SHELTON. PLEASE SWEAR THE DEFENDANT. MR. HAMILTON,
14 PLEASE RISE.

15 MR. SHELTON: MR. SALISBURY.

16 THE COURT: SALISBURY. I'M SORRY.

17 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

18 GEORGE SALISBURY, HAVING BEEN
19 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE COURT: MR. SALISBURY, AT THIS TIME I'M GOING
21 TO EXPLAIN TO YOU CERTAIN OF YOUR RIGHTS, WHICH YOU
22 UNDERSTAND THE STATE HAS NOT RESTED, BUT SINCE WE ARE
23 APPROACHING OUR LUNCH HOUR, I WANTED TO GIVE YOU THIS
24 OPPORTUNITY TO UNDERSTAND AND BE ADVISED OF YOUR RIGHTS
25 AND THAT YOU CAN DISCUSS YOUR RIGHTS WITH YOUR ATTORNEY.

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1 DO YOU UNDERSTAND?

2 MR. SALISBURY: YES, MA'AM.

3 THE COURT: IF YOU DO NOT UNDERSTAND ANYTHING THAT
4 I'M ABOUT TO EXPLAIN TO YOU, PLEASE LET ME KNOW. IF YOU
5 NEED ME TO EXPLAIN ANYTHING TO YOU IN FURTHER DETAIL,
6 PLEASE LET ME KNOW. DO YOU UNDERSTAND, SIR?

7 MR. SALISBURY: YES, MA'AM.

8 THE COURT: WE HAVE REACHED THE STAGE OF THE TRIAL
9 WHERE I ANTICIPATE THAT WE ARE GOING TO REACH THE STAGE OF
10 THE TRIAL THIS AFTERNOON WHERE YOU MAY PRESENT YOUR
11 DEFENSE. YOU HAVE THE RIGHT TO CLAIM THE PROTECTIONS
12 GIVEN TO YOU BY THE 5TH AMENDMENT TO THE CONSTITUTION OF
13 THE UNITED STATES.

14 THIS AMENDMENT STATES IN PART THAT NO PERSON SHALL
15 BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST
16 HIMSELF. THIS MEANS, SIR, THAT YOU CANNOT BE REQUIRED TO
17 TESTIFY IN THIS CASE. YOU HAVE THE RIGHT TO TESTIFY ON
18 YOUR OWN BEHALF. HOWEVER, NO ONE CAN MAKE YOU TESTIFY.
19 THIS IS A PERSONAL RIGHT AND NO ONE CAN WAIVE THIS RIGHT
20 EXCEPT FOR YOU.

21 IF YOU DECIDE TO TESTIFY, YOU WILL BE SUBJECT TO
22 THE SAME RULES THAT GOVERN OTHER WITNESSES. AND YOU MAY
23 BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE IN
24 THIS CASE.

25 IN ADDITION, IF YOU HAVE ANY CONVICTIONS INVOLVING

1 DISHONESTY OR FALSE STATEMENTS OR FOR CRIMES PUNISHABLE BY
2 IMPRISONMENT FOR MORE THAN ONE YEAR, AND I DETERMINE THAT
3 THE PROBATIVE VALUE OF ADMITTING THIS EVIDENCE OUTWEIGHS
4 ITS PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL BE ABLE
5 TO INTRODUCE YOUR RECORD TO ATTACK YOUR CREDIBILITY.

6 MADAM SOLICITOR, DO YOU HAVE PRIOR CONVICTIONS THAT
7 YOU WOULD PLAN TO INTRODUCE?

8 MS. WILLIAMS: YES, YOUR HONOR. MR. SALISBURY HAS
9 A PRIOR CONVICTION FOR CRIMINAL SEXUAL CONDUCT IN THE
10 SECOND DEGREE AND A PRIOR CONVICTION FOR ASSAULT AND
11 BATTERY OF A HIGH AND AGGRAVATED NATURE.

12 THE COURT: AND WHEN WERE THOSE CONVICTIONS?

13 MS. WILLIAMS: THE -- THE COURT'S INDULGENCE FOR
14 JUST A SECOND. 2002, I BELIEVE, WAS THE -- I HAVE A
15 CERTIFIED COPY -- IT WAS 7/11/01 FOR THE CSC SECOND. AND
16 -- I'M SORRY, YOUR HONOR. AND THE ASSAULT AND BATTERY OF
17 A HIGH AND AGGRAVATED NATURE WAS 1/20 OF 2000.

18 THE COURT: MR. SHELTON, DO YOU AGREE THAT THAT IS
19 YOUR CLIENT'S PREVIOUS CRIMINAL HISTORY?

20 MR. SHELTON: JUST FOR PURPOSES OF THE RECORD, I'D
21 LIKE -- IT'S CRIMINAL SEXUAL CONDUCT WITH A MINOR, YOUR
22 HONOR, SECOND DEGREE.

23 MS. WILLIAMS: I STAND CORRECTED.

24 THE COURT: AND -- BUT, MR. SHELTON, JUST FOR THE
25 PURPOSES OF ADVISING YOUR CLIENT AS TO HIS RIGHTS, I AM

1 NOT MAKING A DETERMINATION AT THIS TIME WHETHER OR NOT
2 THOSE WOULD BE ADMISSIBLE; BUT YOU AGREE THAT THOSE ARE
3 CONVICTIONS WHICH YOUR CLIENT HAS RECEIVED?

4 MR. SHELTON: YES, YOUR HONOR.

5 THE COURT: IF YOU DECIDE TO TESTIFY, MR.
6 SALISBURY, THE DECISION ON YOUR PART MUST BE FREELY,
7 VOLUNTARILY AND INTELLIGENTLY MADE, WITH THE KNOWLEDGE OF
8 THE PROTECTIONS GIVEN TO YOU BY THE 5TH AMENDMENT, AND THE
9 CONSEQUENCES OF YOUR RIGHT TO TESTIFY.

10 IF YOU DECIDE NOT TO TESTIFY, SIR, I WILL INSTRUCT
11 THE JURORS THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
12 TESTIFY ANY CONSIDERATION WHATSOEVER, AND THAT THERE IS TO
13 BE ABSOLUTELY NO PREJUDICE TO YOU BECAUSE YOU DID NOT
14 TESTIFY.

15 IT IS LEFT ENTIRELY UP TO YOU, MR. SALISBURY,
16 WHETHER OR NOT YOU TESTIFY. YOU MAY TALK WITH YOUR
17 ATTORNEY, WITH YOUR FAMILY, YOUR FRIENDS OR ANYONE ELSE,
18 BUT THE FINAL DECISION IS LEFT ENTIRELY UP TO YOU.

19 DO YOU UNDERSTAND WHAT I HAVE EXPLAINED TO YOU,
20 SIR?

21 MR. SALISBURY: YES, MA'AM.

22 THE COURT: DO YOU HAVE ANY QUESTIONS OF THE COURT
23 ABOUT WHAT I'VE EXPLAINED TO YOU?

24 MR. SALISBURY: NO, MA'AM.

25 THE COURT: HAVE YOU DISCUSSED WITH YOUR LAWYER

1 WHETHER OR NOT YOU SHOULD TESTIFY?

2 MR. SALISBURY: YES, MA'AM.

3 THE COURT: AND I WILL THEN -- I'M GOING TO ASK YOU
4 THE FOLLOWING QUESTION WHEN WE RETURN, OR ONCE THE STATE
5 RESTS ITS CASE. THE QUESTION THAT I WILL HAVE TO YOU, DO
6 YOU WISH TO TALK TO YOUR LAWYER ANYMORE AT THIS TIME, AND
7 DO YOU WISH TO TESTIFY. THAT WILL BE THE QUESTION, DO YOU
8 WISH TO TESTIFY THAT I WILL REQUEST AN ANSWER ON THE
9 RECORD. WE WILL BE IN RECESS. IF Y'ALL WILL BE BACK AT
10 1:30, WE WILL -- PROMPTLY AT 1:30, WE WILL BEGIN AT THAT
11 TIME.

12 ANYTHING FURTHER FROM THE STATE?

13 MS. WILLIAMS: NOT AT THIS TIME.

14 MR. SHELTON: JUDGE, THERE IS ONE THING AS TO THE
15 --

16 THE COURT: HOLD ON ONE SECOND. MR. SALISBURY, YOU
17 MAY BE SEATED. THANK YOU.

18 MR. SHELTON: JUST AN EVIDENCE ISSUE, YOUR HONOR.
19 THE -- WE USED THE ORIGINAL MIRANDA FORM AT THE DENNO
20 HEARING. WE'LL BE USING THAT AGAIN IN MR. POWELL'S
21 TESTIMONY AFTER THE LUNCH BREAK. AND I HAD SOME
22 DISCUSSION WITH MS. CROSS THAT WE WILL BE MARKING THAT
23 EXHIBIT AND GET THAT TAKEN CARE OF. BUT THAT'S THE ISSUE
24 THAT WE HAVE AS FAR AS---

25 THE COURT: ALL RIGHT. I BELIEVE THAT WAS COURT'S

1 TWO -- SO WHATEVER THAT NEEDS TO BE REMARKED -- ANY
2 OBJECTIONS TO HANDLING IT THAT WAY?

3 MS. KENNEDY: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU. ANYTHING FROM
5 THE DEFENDANT BEFORE WE RECESS FOR LUNCH?

6 MS. KENNEDY: YOUR HONOR, I -- I HAVE A REQUEST AND
7 IT -- IT CONCERNS OUR CASE AND OUR CASE EXCLUSIVELY. IT'S
8 NOT ANY KIND OF EX PARTE COMMUNICATION, I JUST NEED TO
9 SEEK ASSISTANCE FROM THE COURT ABOUT MY CLOSING.

10 THE COURT: OKAY. YOU WANTED TO DO THAT IN
11 CHAMBERS?

12 MS. KENNEDY: YES, YOUR HONOR.

13 THE COURT: WITH -- WITH COUNSEL?

14 MS. KENNEDY: NO, YOUR HONOR. THIS IS NOT
15 SOMETHING THAT REQUIRES COUNSEL. IT'S -- IT'S AN INQUIRY
16 THAT IS SOLELY WITHIN THE DISCRETION OF THE COURT. IT'S
17 -- AND IT'S FOR PURPOSES OF CLOSING ONLY. IT HAS NOTHING
18 TO DO WITH EVIDENCE. AND IT HAS NOTHING TO DO WITH THE
19 CASE. IT'S JUST -- I MEAN, THE CASE AS HAS BEEN
20 PRESENTED. IT'S A DEMONSTRATIVE EVIDENCE ISSUE. I MEAN,
21 DEMONSTRATIVE PRESENTATION ISSUE RELATED TO MY CLIENT.

22 THE COURT: WELL, I'M AGAIN, PERPLEXED, MS.
23 KENNEDY, AS TO ALLOWING YOU TO DISCUSS WITH THE COURT
24 SOMETHING RELATED TO THE TRIAL.

25 MS. KENNEDY: YOUR HONOR, IT'S JUST PERMISSION TO

1 USE CERTAIN EVIDENCE THAT'S ALREADY BEEN ADMITTED AS PART
2 OF MY CLOSING. THAT'S THE ONLY THING.

3 **THE COURT:** WELL, I DO NOT THINK THERE IS ANY --
4 ANY PROHIBITION AGAINST DOING THAT, MS. KENNEDY. ANY
5 EVIDENCE THAT HAS BEEN ADMITTED, I WOULD THINK, WOULD BE
6 PROPER TO USE DURING YOUR CLOSING.

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

8 **THE COURT:** WITH THE EXCEPTION, THAT THAT SHANK
9 NEEDS TO REMAIN IN THE CASE.

10 **MS. KENNEDY:** NO, YOUR HONOR. IT HAS NOTHING TO DO
11 WITH THE SHANK. IT HAS NOTHING TO DO WITH THE SHANK. IT
12 IS OTHER ITEMS OF EVIDENCE.

13 **THE COURT:** MS. KENNEDY, I AM CONCERNED THAT YOU
14 ARE CONCERNED ENOUGH TO WANT TO HAVE A -- AN OFF THE
15 RECORD DISCUSSION WITH THE COURT. SO, I---

16 **MS. KENNEDY:** YOUR HONOR, IT'S NOT OFF THE RECORD.
17 I'LL BE HAPPY TO PROFFER SO LONG AS I CAN DO IT OUTSIDE
18 THE PRESENCE OF THE PROSECUTOR BECAUSE IT'S NOT AN EX
19 PARTE COMMUNICATION. IT IS SIMPLY A REQUEST TO USE THE
20 EVIDENCE THAT HAS ALREADY BEEN ADMITTED FOR DEMONSTRATIVE
21 PURPOSES, YOUR HONOR. AND TO DISCLOSE IT AT THIS TIME, IT
22 -- I MEAN, AND THAT'S ALL I'M ASKING. I'M NOT ASKING TO
23 ALTER THE EVIDENCE IN ANY WAY. IT'S ALREADY BEEN
24 ADMITTED. I JUST -- I JUST WANT TO USE IT FOR
25 DEMONSTRATIVE PURPOSES IN MY CLOSING.

1 **THE COURT:** MS. KENNEDY, ANY EVIDENCE THAT HAS BEEN
2 ADMITTED IS PROPER FOR YOU TO USE DURING CLOSING ARGUMENTS
3 AS LONG AS -- WITH THE EXCEPTION THAT -- AS THE COURT
4 STATED, I'M CONCERNED ABOUT THAT SHANK COMING OUT OF THE
5 PROTECTIVE---

6 **MS. KENNEDY:** NO, YOUR HONOR.

7 **THE COURT:** ---CASE.

8 **MS. KENNEDY:** NO, YOUR HONOR. IT HAS NOTHING TO DO
9 WITH THE SHANK.

10 **THE COURT:** MS. KENNEDY, YOU ARE FULLY AWARE OF THE
11 RULES OF EVIDENCE, AS WELL AS CRIMINAL PROCEDURE, SO I AM
12 SURE THAT I DO NOT NEED TO REMIND YOU OF THE LIMITS OF
13 CLOSING.

14 **MS. KENNEDY:** YES, YOUR HONOR.

15 **THE COURT:** AND I DO APPRECIATE YOUR BRINGING THAT
16 TO THE COURT'S ATTENTION.

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

18 **THE COURT:** WE'LL BE IN RECESS UNTIL 1:30.

19 (WHEREUPON, COURT RECESSED AT 12:30 P.M.)

20 (WHEREUPON, COURT RECONVENED AT 1:36 P.M.)

21 **THE COURT:** THANK YOU. BE SEATED. OKAY. READY?

22 **MR. ALFARO:** YES, YOUR HONOR.

23 **THE COURT:** THE DEFENSE READY?

24 **MS. KENNEDY:** YES, YOUR HONOR.

25 **THE COURT:** PLEASE BRING IN THE JURY. PLEASE RISE

1 FOR THE JURY.

2 (WHEREUPON, JURY ENTERED THE COURTROOM AT 1:36.
3 P.M.)

4 THE COURT: THANK YOU. BE SEATED. CALL YOUR NEXT
5 WITNESS.

6 MR. ALFARO: THE STATE CALLS CLARKE POWELL.

7 THE CLERK: RAISE YOUR RIGHT HAND, PLACE YOUR LEFT
8 HAND ON THE BIBLE.

9 CLARKE M. POWELL, HAVING BEEN
10 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: PLEASE BE SEATED. STATE YOUR FULL NAME
12 FOR THE RECORD AND SPELL YOUR LAST PLEASE.

13 THE WITNESS: MY NAME IS CLARKE MERVIN POWELL,
14 P-O-W-E-L-L.

15 DIRECT EXAMINATION BY MR. ALFARO:

16 Q MR. POWELL, COULD YOU TELL THE JURY WHERE YOU
17 CURRENTLY WORK?

18 A I'M CURRENTLY EMPLOYED WITH THE SOUTH CAROLINA
19 DEPARTMENT OF INVESTIGATION (SIC), ASSIGNED TO THE
20 DIVISION OF INVESTIGATION.

21 Q WHO DID YOU SAY YOU WORKED FOR AGAIN?

22 A SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, AND
23 ASSIGNED TO THE DIVISION OF INVESTIGATION.

24 Q OKAY. AND HOW LONG HAVE YOU BEEN WITH THE
25 DEPARTMENT OF CORRECTIONS?

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1 A FOURTEEN YEARS.

2 Q AND WHAT IS YOUR CURRENT TITLE?

3 A I'M THE SENIOR AGENT FOR THE DEPARTMENT.

4 Q OKAY. AND IN YOUR CAPACITY WITH THE DEPARTMENT
5 OF CORRECTIONS, DO YOU -- WHAT DO YOU DO FOR THE
6 DEPARTMENT OF CORRECTIONS?

7 A MY PRIMARY RESPONSIBILITY IS I HANDLE CRIMINAL
8 INVESTIGATIONS WITHIN THE STATE PRISON SYSTEM. AND THAT
9 DEALS WITH BOTH CRIMINAL CRIMES THAT INVOLVE INMATES, AS
10 WELL AS STAFF, VENDORS OR VISITORS.

11 Q AND DO YOU HAVE CERTAIN PRISONS THAT YOU'RE
12 ASSIGNED TO WORK IN OR WORK OFF?

13 A I HAVE AN ASSIGNED OFFICE AT MACDOUGALL
14 CORRECTIONAL INSTITUTION, WHICH IS A STATE PRISON SYSTEM.

15 Q AND WHERE IS MACDOUGALL LOCATED?

16 A IT'S LOCATED IN THE DORCHESTER -- NO, BERKELEY
17 COUNTY AREA OF RIDGEVILLE.

18 Q OKAY. AND DO YOU HAVE ANY PRIOR LAW ENFORCEMENT
19 EXPERIENCE BEFORE YOU JOINED THE DEPARTMENT OF
20 CORRECTIONS?

21 A YES. I'M A RETIRED POLICE LIEUTENANT WITH THE
22 CITY OF NORTH CHARLESTON AFTER BEING THERE 20 YEARS.

23 Q OKAY. AND IN YOUR CURRENT CAPACITY WITH THE
24 DEPARTMENT OF CORRECTIONS, WERE YOU -- WERE YOU WORKING
25 FOR THE DEPARTMENT OF CORRECTIONS ON JANUARY 18, 2008?

1 A THAT'S CORRECT.

2 Q AND DID YOU HAVE THE OPPORTUNITY TO INVESTIGATE
3 AN ASSAULT THAT TOOK PLACE AT MACDOUGALL ON THAT EVENING?

4 A THAT'S CORRECT.

5 Q AND TO YOUR KNOWLEDGE, DO YOU KNOW WHO THE
6 PARTIES WERE IN THAT INCIDENT?

7 A YES, I DO.

8 Q COULD YOU TELL THE JURY WHO WAS INVOLVED?

9 A THE PARTIES INVOLVED WERE CORRECTIONAL OFFICER
10 SARA ADAMS AND INMATE GEORGE SALISBURY.

11 Q AND WAS MR. SALISBURY AN INMATE AT MACDOUGALL AT
12 THAT TIME?

13 A YES, HE WAS.

14 Q AND TO YOUR KNOWLEDGE, WAS SARA ADAMS ON DUTY AT
15 THE TIME THE INCIDENT TOOK PLACE?

16 A YES, SHE WAS.

17 Q AND DID YOU HAVE THE OPPORTUNITY, AS PART OF
18 YOUR INVESTIGATION, TO SPEAK WITH MS. ADAMS?

19 A NO, I DID NOT.

20 Q AND AT SOME -- WAS -- THE EVENING IN QUESTION,
21 DID YOU SPEAK WITH MS. ADAMS?

22 A NOT ON THE EVENING IN QUESTION, NO, I DID NOT.

23 Q AT ANY POINT DURING THE COURSE OF YOUR
24 INVESTIGATION, DID YOU HAVE AN OPPORTUNITY TO SPEAK WITH
25 MS. ADAMS?

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1 A YES, I DID.

2 Q AND AT THAT TIME, WHEN YOU SPOKE WITH HER, DID
3 SHE PROVIDE YOU A STATEMENT DETAILING WHAT HAD -- HER
4 VERSION OF EVENTS?

5 A SHE DID NOT PROVIDE ME WITH A DETAILED
6 STATEMENT. SHE INFORMED THAT SHE HAD ALREADY PROVIDED A
7 WRITTEN STATEMENT PERTAINING TO THIS INCIDENT TO AGENT
8 MICHELLE CHINA WITH THE SOUTH CAROLINA LAW ENFORCEMENT
9 DIVISION.

10 Q AND WERE YOU ABLE TO OBTAIN A COPY OF THAT
11 STATEMENT FOR YOUR FILE?

12 A YES, I DID.

13 Q OKAY. AND DID YOU HAVE THE OPPORTUNITY TO SPEAK
14 WITH MR. SALISBURY THE EVENING OF THE INCIDENT?

15 A YES, I DID.

16 Q AND DO YOU RECALL WHAT TIME YOU FIRST SPOKE WITH
17 HIM?

18 A IT WAS APPROXIMATELY 2:20 IN THE MORNING OF THE
19 18TH OF JANUARY.

20 Q AND WHERE DID THAT INTERVIEW TAKE PLACE?

21 A THAT INTERVIEW TOOK PLACE IN MY OFFICE AT
22 MACDOUGALL CORRECTIONAL INSTITUTION.

23 Q AND CAN YOU DESCRIBE FOR THE JURY WHAT THAT ROOM
24 LOOKS LIKE AT MACDOUGALL?

25 A WELL, IT'S A VERY SMALL OFFICE. IT HAS A

1 COMPUTER, A TELEVISION SET AND A BUNCH OF CASE FILES.

2 Q WAS ANYONE ELSE IN THE ROOM WITH YOU WHEN YOU
3 SPOKE WITH MR. SALISBURY?

4 A NO. THERE WAS NO ONE ELSE.

5 Q AND PRIOR TO SPEAKING WITH MR. SALISBURY ABOUT
6 THE INCIDENT, DID YOU HAVE THE OPPORTUNITY TO GIVE HIM HIS
7 MIRANDA RIGHTS?

8 A YES, I DID.

9 Q AND COULD YOU TELL US HOW YOU -- WHAT METHOD YOU
10 USED TO INFORM HIM OF THOSE RIGHTS?

11 A WE HAVE A STANDARD FORM THAT WE USE WHEN WE
12 ADVISE ANYONE OF THEIR MIRANDA RIGHTS, AND THAT FORM IS
13 READ TO THAT INDIVIDUAL.

14 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
15 STATE'S EXHIBIT 32 FOR IDENTIFICATION. COULD YOU LOOK
16 OVER THAT FORM AND THEN I'LL ASK YOU SOME QUESTIONS ABOUT
17 IT. AND ARE YOU FAMILIAR WITH THAT FORM?

18 A YES, I AM.

19 Q AND COULD YOU DESCRIBE FOR THE JURY WHAT IS --
20 WHAT THAT FORM IS?

21 A THIS FORM, IT'S A STANDARD FORM OF THE
22 INDIVIDUAL MIRANDA RIGHTS. THE HEADING SAYS "SOUTH
23 CAROLINA DEPARTMENT OF CORRECTION, OFFICE OF THE INSPECTOR
24 GENERAL, DIVISION OF INVESTIGATION". AND IT HAS "RIGHTS".

25 Q AND IS THAT THE FORM THAT YOU USED TO PROVIDE

1 THE DEFENDANT HIS MIRANDA RIGHTS ON JANUARY 18, 2008?

2 A YES, THIS IS THE FORM.

3 Q AND COULD YOU TELL US HOW YOU RECOGNIZE THAT AS
4 THE FORM THAT YOU USED THAT EVENING?

5 A TO LOOK AT THE FORM, IT HAS MY SIGNATURE, THE
6 DATE AND TIME, AS WELL AS THE SIGNATURE OF GEORGE
7 SALISBURY ON IT.

8 Q AND IS -- THE INDIVIDUAL THAT YOU IDENTIFIED AS
9 MR. SALISBURY, IS HE PRESENT IN THE COURTROOM AT THIS
10 TIME?

11 A YES, HE IS.

12 Q COULD YOU POINT HIM OUT FOR THE JURY?

13 A YES. HE IS SITTING RIGHT OVER AT THE TABLE WITH
14 THE DEFENSE ATTORNEY.

15 Q OKAY. AND IS THAT THE INDIVIDUAL THAT YOU MET
16 WITH ON JANUARY 18, 2008?

17 A YES, IT IS.

18 Q AND THAT'S THE INDIVIDUAL THAT YOU PROVIDED HIS
19 MIRANDA RIGHTS TO?

20 A YES, IT IS.

21 Q YOU SAID YOU RECOGNIZE YOUR SIGNATURE ON THAT
22 FORM?

23 A YES, I DO.

24 MR. ALFARO: YOUR HONOR, AT THIS TIME, THE STATE
25 WOULD ASK THAT EXHIBIT 32 BE ENTERED INTO EVIDENCE.

1 **MS. KENNEDY:** YOUR HONOR, SUBJECT TO OUR PRIOR
2 OBJECTIONS AND THE COURT'S PRIOR RULINGS.

3 **THE COURT:** STATE'S 32 WILL BE ENTERED OVER THE
4 OBJECTION OF THE DEFENDANT.

5 (STATE'S EXHIBIT NO. 32 RECEIVED INTO EVIDENCE.)

6 BY MR. ALFARO:

7 **Q** INVESTIGATOR POWELL, IF I COULD HAVE YOU READ
8 THAT FORM -- JUST DESCRIBE THE CHARGES -- IF YOU COULD
9 TELL THE JURY THE METHOD THAT YOU USED TO PROVIDE THE
10 DEFENDANT HIS RIGHTS ON THAT EVENING?

11 **A** ON THAT EVENING IN QUESTION, HAVING MR.
12 SALISBURY IN MY OFFICE, AND ONCE -- ONCE I HAVE IDENTIFIED
13 MYSELF TO HIM AS TO WHO I WAS, I INFORMED HIM THAT I DO
14 NEED TO SPEAK WITH HIM ABOUT THE INCIDENT. PRIOR TO
15 INFORMING HIM, HE WAS SAYING THAT -- HE WAS BEING VERY
16 APOLOGETIC. AND I TOLD HIM, I UNDERSTAND, BUT I CAN'T
17 TALK TO YOU UNTIL I ADVISE YOU OF YOUR RIGHTS. WHICH HE
18 VERBALIZED, OKAY, I UNDERSTAND. AND WHAT I DID IS THAT I
19 READ THE RIGHTS TO HIM IN THIS MANNER. I SAID, "YOU HAVE
20 THE RIGHT TO REMAIN SILENT". THAT -- I STOPPED. I
21 ALLOWED HIM THE TIME TO VERBALIZE TO ME WHETHER HE
22 UNDERSTOOD HIS RIGHTS OR NOT. HE STATED "I UNDERSTAND."
23 "ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A
24 COURT OF LAW." AGAIN, I WAITED UNTIL HE ACKNOWLEDGED ME
25 THAT HE UNDERSTOOD AND HE DID SO, HE VERBALIZED HE

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1 UNDERSTOOD.

2 "YOU HAVE THE RIGHT TO TALK WITH AN ATTORNEY FOR
3 ADVICE BEFORE I ASK YOU ANY QUESTIONS, AND TO HAVE AN
4 ATTORNEY PRESENT DURING QUESTIONING." AGAIN, HE
5 VERBALIZED HE UNDERSTOOD.

6 "IF YOU HAVE NO MONEY FOR AN ATTORNEY FEE, THE
7 COURT WILL APPROVE -- WILL APPOINT ONE TO REPRESENT YOU
8 WITHOUT COST IF YOU WISH." AGAIN, I ALLOWED HIM TO
9 VERBALIZE WHETHER HE UNDERSTOOD. AND HE ADVISED HE
10 UNDERSTOOD.

11 "IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
12 LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP
13 ANSWERING QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT
14 TO STOP ANSWERING QUESTIONS AT ANY TIME UNTIL YOU TALK TO
15 AN ATTORNEY." HE AGAIN ACKNOWLEDGED HE UNDERSTOOD.

16 "I HAVE READ THIS STATEMENT OF MY RIGHTS OR HAD IT
17 READ TO ME AND I UNDERSTAND WHAT MY RIGHTS ARE." HE
18 UNDERSTOOD.

19 ONCE HE INFORMED ME THAT HE UNDERSTOOD, I PRESENTED
20 THIS PAPER BACK TO HIM SO THAT HE CAN READ EACH ONE OF HIS
21 RIGHTS TO HIMSELF AND PLACE HIS INITIAL BY EACH ONE. AND
22 I INFORMED HIM ONCE HE HAS DONE THAT, TO SIGN IT AND TO
23 PUT HIS NAME ON THERE AND HIS SCDC NUMBER. HE DID THAT.
24 I ASKED HIM NOT TO GO BELOW THE SIGNATURE LINE.

25 Q AND DID MR. SALISBURY ACKNOWLEDGE THAT HE

1 UNDERSTOOD EACH OF THOSE RIGHTS?

2 A HE ACKNOWLEDGED VERBALLY AS WELL AS PUTTING HIS
3 INITIAL BY EACH ONE OF THE RIGHTS.

4 Q AND YOU MENTIONED A SIGNATURE BLOCK, DID HE ALSO
5 -- DID HE SIGN THAT FORM?

6 A YES, HE DID.

7 Q AND WHAT IS THE DATE BESIDE THAT FORM?

8 A 1/18/08.

9 Q DID YOU PUT THAT DATE ON THERE FOR HIM OR DID HE
10 DO THAT HIMSELF?

11 A NO, I PUT THAT DATE THERE.

12 Q ARE THE INITIALS -- WERE THE INITIALS WRITTEN BY
13 HIM OR BY YOU?

14 A NO. THE INITIALS WERE WRITTEN BY HIM.

15 Q AND IS THE SIGNATURE HIS OR YOURS?

16 A NO. THE SIGNATURE IS HIS.

17 Q AND UNDERSTANDING THOSE RIGHTS, DID HE AGREE TO
18 WAIVE HIS RIGHTS?

19 A YES, HE DID.

20 Q COULD YOU TELL US WHAT THE METHOD IS FOR
21 OBTAINING A WAIVER OF RIGHTS FROM A DEFENDANT BEFORE YOU
22 SPEAK WITH HIM?

23 A ONCE -- AFTER HE HAS COMPLETED SIGNING HIS
24 RIGHTS AND ACKNOWLEDGED THAT HE HAS UNDERSTOOD HIS RIGHTS,
25 I THEN INFORM HIM THAT THERE WAS A SECOND PART THAT I MUST

1 READ TO HIM CALLED THE "WAIVER OF HIS RIGHTS". AND I READ
2 "I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I
3 DO NOT WANT AN ATTORNEY AT THIS TIME. I UNDERSTAND AND
4 KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE BEEN
5 MADE TO ME AND NO PRESSURE OR COERCION OF ANY KIND HAS
6 BEEN USED AGAINST ME." AT THAT POINT, HE ACKNOWLEDGED, I
7 UNDERSTAND. I, AGAIN, PUT THE PAPER IN FRONT OF HIM, HAD
8 HIM TO READ IT SO THAT HE CAN MAKE -- FOR CLARIFICATION,
9 IF HE HAD ANY QUESTIONS. HE DID. HE PUT HIS INITIAL AND
10 THEN HE ALSO SIGNED IT THAT HE UNDERSTOOD.

11 Q AND AT WHAT POINT DID YOU PUT YOUR SIGNATURE ON
12 THAT DOCUMENT?

13 A AFTER HE HAD SIGNED IT, THAT HE UNDERSTOOD IT,
14 THEN I WITNESSED IT.

15 Q AND WHAT IS THE DATE BESIDES MR. SALISBURY'S
16 SIGNATURE ON THE WAIVER OF RIGHTS?

17 A ON THE WAIVER OF RIGHTS THE DATE IS 1/18/07.

18 Q AND IS THAT DIFFERENT FROM THE OTHER DAYS THAT
19 ARE ON THAT FORM?

20 A THAT IS CORRECT.

21 Q COULD YOU EXPLAIN FOR THE JURY THE REASON FOR
22 THAT DISCREPANCY?

23 A THE DISCREPANCY IS THAT HE PUT 1/18/07 INSTEAD
24 OF PUTTING 1/18/08.

25 Q IS THERE ANY QUESTION IN YOUR MIND THAT YOUR

1 INTERVIEW AND YOUR MIRANDA -- MIRANDIZING OF HIM TOOK
2 PLACE ON JANUARY 18, 2008?

3 A THERE IS NO QUESTION.

4 Q AT THE TIME THAT YOU MET WITH MR. SALISBURY,
5 COULD YOU DESCRIBE WHAT HIS PHYSICAL CONDITION WAS?

6 A WHEN I MET WITH MR. SALISBURY, HIS PHYSICAL
7 CONDITION, HE WAS EMOTIONAL. HE WAS BLEEDING LIGHTLY FROM
8 THE HEAD, BUT HE WAS VERY, VERY APOLOGETIC.

9 Q YOU SAID HE WAS BLEEDING FROM THE HEAD, COULD
10 YOU EXPLAIN HOW THOSE -- HOW HE SUFFERED -- WHERE HE
11 SUFFERED THOSE INJURIES?

12 A THOSE INJURIES WAS RIGHT ABOVE HIS RIGHT EYE AND
13 HE GOT THAT FROM BEING IN THE DORMITORY OF THE MAGNOLIA
14 UNIT, BEING PULLED OFF BY OTHER INMATES.

15 Q WERE ANY OF THOSE INJURIES INFLICTED BY YOU?

16 A NOT AT ALL.

17 Q AND HAD HE -- APPROXIMATELY WHEN WAS THIS
18 MIRANDA FORM COMPLETED?

19 A AT APPROXIMATELY 2:20 A.M. ON THE MORNING OF
20 JANUARY 18TH.

21 Q AND TO YOUR RECOLLECTION, APPROXIMATELY HOW MUCH
22 TIME WOULD HAVE PASSED SINCE THE -- SINCE HE WOULD HAVE
23 SUFFERED THOSE INJURIES AND THE TIME OF THE INTERVIEW?

24 A APPROXIMATELY TWO HOURS.

25 Q AND ARE YOU AWARE WHETHER OR NOT DURING THAT TWO

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1 HOUR PERIOD, HE OBTAINED ANY MEDICAL TREATMENT?

2 A YES.

3 Q AND ARE YOU AWARE WHAT TYPE OF TREATMENT HE
4 OBTAINED?

5 A HE WAS ALLOWED TO WASH HIS FACE. AND HE WAS
6 GIVEN A BAND-AID TO PUT OVER THE WOUND OVER HIS EYE.

7 Q AND WHEN YOU SAY THAT HE WAS BLEEDING LIGHTLY
8 FROM THE HEAD, WAS IT JUST BLEEDING THROUGH THE BANDAGE,
9 OR WAS IT POURING DOWN HIS FACE OR---

10 A NO. IT WAS JUST -- IT TRICKLED.

11 Q AND AT ANY POINT IN TIME DURING YOUR INTERVIEW
12 WITH HIM, DID HE ASK TO -- ASK YOU TO GET HIM FURTHER
13 MEDICAL TREATMENT?

14 A AT NO TIME, NO, HE DID NOT.

15 Q AT ANY POINT IN TIME AFTER BEING MIRANDIZED, DID
16 HE ASK YOU TO -- WELL, I GUESS -- STRIKE THAT. THE FIRST
17 QUESTION, DID HE AGREE TO SPEAK WITH YOU AFTER BEING GIVEN
18 HIS MIRANDA RIGHTS?

19 A YES, HE DID. HE AGREED TO SPEAK WITH ME AFTER
20 BEING ADVISED OF HIS MIRANDA RIGHTS, AS WELL AS THE WAIVER
21 OF HIS RIGHTS, HE AGREED TO TALK.

22 Q AND AT ANY POINT IN TIME AFTER AGREEING TO SPEAK
23 WITH YOU, DID HE ASK FOR AN ATTORNEY?

24 A AT NO TIME DID HE ASK FOR NO ATTORNEY.

25 Q DID HE EVER ASK TO STOP THE INTERVIEW FOR ANY

1 REASON?

2 A AT NO TIME, HE DID NOT.

3 Q AT ANY TIME, WAS HE EVER DENIED MEDICAL
4 TREATMENT?

5 A AT NO TIME, NO.

6 Q AND DID YOU THREATEN HIM OR COERCE HIM IN ANY
7 WAY TO SPEAK WITH YOU ABOUT THE INCIDENT?

8 A NO, I DID NOT.

9 Q AND COULD YOU TELL THE JURY WHAT THE DEFENDANT
10 TOLD YOU DURING YOUR INTERVIEW WITH HIM THAT EVENING?

11 A DURING THE COURSE OF THE INTERVIEW WITH INMATE
12 SALISBURY, HE RELATED THAT HE WAS THINKING ABOUT HIS WIFE.
13 AND DURING THE COURSE OF THINKING ABOUT HIS WIFE AND EVERY
14 TIME THAT HE VISIONED OR SEEN OFFICER ADAMS, HE SEES HIS
15 WIFE IN HER. AND THAT HE WAS VERY, VERY APOLOGETIC FOR
16 WHAT HAS HAPPENED.

17 Q DURING THE COURSE OF YOUR INTERVIEW, DID HE DENY
18 ASSAULTING SARA ADAMS?

19 A NO, HE DID NOT.

20 Q DID HE, AT ANY TIME, INDICATE TO YOU THAT THE
21 INCIDENT WAS CONSENSUAL?

22 A AT NO TIME---

23 MS. KENNEDY: YOUR HONOR, JUST WITH ALL DUE
24 RESPECT, HIS LEADING QUESTIONS AND -- AND -- THAT -- THAT
25 -- THIS INFORMATION---

1 **THE COURT:** NO SPEAKING OBJECTIONS.

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

5 **THE COURT:** SUSTAINED AS TO LEADING.

6 **MR. ALFARO:** THANK YOU.

7 BY MR. ALFARO:

8 **Q** MR. POWELL, DID THE DEFENDANT GIVE YOU ANY MORE
9 INFORMATION ABOUT THE ASSAULT OTHER THAN WHAT YOU'VE
10 TESTIFIED TO REGARDING HIS EX-WIFE?

11 **A** THE ONLY OTHER THING HE ADDED THAT -- HE
12 EXPLAINED TO ME WHY HE HAD -- WHAT WE CALL IN PRISON TERM
13 A SHANK. AND THAT HE HAD THAT SHANK FOR HIS PROTECTION.
14 AND HE HAD THAT SHANK FOR ABOUT A WEEK, ALTHOUGH HE DID
15 NOT HAVE ANY PROBLEM WITH ANY INMATES.

16 **Q** WAS THERE ANYTHING ELSE CONTAINED IN THAT
17 INTERVIEW, ANY OTHER INFORMATION PROVIDED TO YOU DURING
18 THAT INTERVIEW?

19 **A** THE ONLY OTHER THING IS THAT HE DIDN'T KNOW WHAT
20 CAME OVER HIM. HE KNOWS HE DIDN'T TAKE HIS MEDICATION.

21 **Q** A---

22 **A** AND---

23 **Q** YOU MENTIONED THE SHANK. DID YOU, AT ANY TIME,
24 DURING YOUR INVESTIGATION SEE THAT SHANK?

25 **A** YES, I DID.

1 Q I WANT TO SHOW YOU WHAT IS IN EVIDENCE AS
2 STATE'S EXHIBIT 3. COULD YOU LOOK AT THAT EXHIBIT AND
3 TELL THE JURY IF THAT'S THE INSTRUMENT THAT YOU OBTAINED
4 DURING THE COURSE OF YOUR -- SAW DURING THE COURSE OF YOUR
5 INVESTIGATION?

6 A YES, IT IS.

7 Q THANK YOU. AND AFTER YOU COMPLETED YOUR
8 INTERVIEW WITH THE DEFENDANT, WHAT WAS DONE WITH THE
9 DEFENDANT AFTER THAT INTERVIEW?

10 A ONCE I COMPLETED MY INTERVIEW WITH INMATE
11 SALISBURY, HE WAS ESCORTED OUT OF MY OFFICE. AND THEN HE
12 WAS LATER TAKEN OVER TO LIEBER CORRECTIONAL INSTITUTION,
13 WHERE THEY HAVE A 24 HOUR MEDICAL STAFF ON DUTY. AND THEN
14 HE WAS TREATED OVER THERE FOR FURTHER MEDICAL TREATMENT.

15 Q AND BACK TO THE INTERVIEW BRIEFLY, DID YOU --
16 DID THE DEFENDANT PROVIDE YOU WITH A WRITTEN STATEMENT?

17 A NO, HE DID NOT.

18 Q AND AFTER YOUR INTERVIEW WITH INMATE SALISBURY,
19 DID YOU TAKE ANY FURTHER ACTION IN INVESTIGATING THIS
20 CASE?

21 A NO, I DID NOT.

22 Q TO YOUR KNOWLEDGE, WERE ANY OF THE OTHER INMATES
23 THAT WERE PRESENT IN THE MAGNOLIA UNIT DURING THE
24 INCIDENT, INTERVIEWED?

25 A NOT BY ME.

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1 Q DID YOU SPEAK WITH ANY INMATES?

2 A I DID SPEAK WITH ONE INMATE, YES.

3 Q DO YOU REMEMBER HIS OR HER NAME?

4 A INMATE DARDEN, DAVID DARDEN.

5 Q AND DURING THE COURSE OF YOUR INVESTIGATION,
6 WERE YOU ABLE TO DETERMINE THE IDENTITIES OF THE INMATES
7 WHO HAD HELPED OFFICER ADAMS?

8 A YES.

9 Q AND DO YOU RECALL THOSE NAMES?

10 A MAY I REFER BACK TO MY NOTES?

11 Q IS THAT YOUR REPORT?

12 A YES.

13 Q LET ME SEE IT BEFORE YOU REFER TO IT.

14 MR. ALFARO: YOUR HONOR, DO YOU WANT ME TO MARK
15 THESE PRIOR TO REFRESHING OR---

16 THE COURT: NO. YOU DON'T HAVE TO DO THAT, MR.
17 ALFARO.

18 BY MR. ALFARO:

19 Q AGENT POWELL, COULD YOU TELL THE JURY WHAT THAT
20 IS THAT YOU HAVE IN YOUR POSSESSION?

21 A YES. THIS IS A COPY OF MY REPORT IN REGARDS TO
22 THE INCIDENT THAT TOOK PLACE ON THE 18TH OF JANUARY OF
23 2008.

24 Q WHEN DID YOU PREPARE THAT REPORT?

25 A I FINAL -- I FINALIZED IT ON MAY 19, 2009.

1 Q WHAT IS THE DATE OF THE REPORT THAT YOU HAVE IN
2 YOUR POSSESSION?

3 A THE DATE IS JANUARY -- JUST ONE MINUTE -- THAT'S
4 THE TOP SHEET. JANUARY 18, 2008. IT'S INVESTIGATED
5 ACTIVITY.

6 Q AND WOULD REFERRING BACK TO THAT REPORT REFRESH
7 YOUR RECOLLECTION AS TO THE IDENTITIES OF THE OTHER
8 INMATES WHO WERE INVOLVED IN HELPING MS. ADAMS?

9 A YES.

10 Q YOU CAN REFER TO YOUR REPORT AND REFRESH YOUR
11 RECOLLECTION AND THEN I'LL ASK YOU A QUESTION AGAIN. DID
12 -- WAS THAT ABLE TO REFRESH YOUR RECOLLECTION AS TO THE
13 OTHER INMATE'S IDENTITY?

14 A NO.

15 Q IN THE COURSE OF YOUR INVESTIGATION, DID YOU
16 UNCOVER ANY EVIDENCE THAT ANY OTHER INMATES WERE --
17 WHETHER OR NOT ANY OTHER INMATES WERE INVOLVED IN THE
18 PLANNING OR THE CARRYING OUT OF THE ATTACK?

19 A NO.

20 MR. ALFARO: THANK YOU. PLEASE ANSWER ANY
21 QUESTIONS THE DEFENSE HAS FOR YOU.

22 THE COURT: MS. KENNEDY.

23 MS. KENNEDY: THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION BY MS. KENNEDY:

25 Q INVESTIGATOR POWELL, YOU'LL FORGIVE ME IF I

CLARKE POWELL -- CROSS BY MS. KENNEDY

540

1 SOMETIMES SAY LIEUTENANT, RIGHT?

2 A I WILL.

3 Q HOW ARE YOU THIS AFTERNOON?

4 A I'M FINE.

5 Q GOOD. GOOD. YOU MENTIONED ON YOUR DIRECT
6 EXAMINATION THAT YOUR RESPONSIBILITIES OR YOUR -- OR PART
7 OF YOUR JOB RESPONSIBILITIES ARE TO INVESTIGATE INCIDENTS
8 THAT OCCUR WITHIN THE DEPARTMENT OF CORRECTIONS, CRIMINAL
9 INVESTIGATIONS?

10 A THAT'S CORRECT, MA'AM.

11 Q OKAY. AND DO THOSE -- ARE -- THOSE
12 INVESTIGATIONS DIFFER FROM THE KIND OF INVESTIGATION THAT
13 IS NORMALLY DONE BY A POLICE OFFICER?

14 A THERE'S A LITTLE DIFFERENCE IN IT, YES.

15 Q OKAY. WHAT -- WHAT WOULD THOSE DIFFERENCES BE,
16 SIR?

17 A ONE OF THE BIGGEST DIFFERENCE WOULD BE THAT IF
18 WE HAVE A MAJOR INCIDENT THAT MAY INVOLVE A STAFF MEMBER,
19 THEN WE WOULD CONTACT THE STATE LAW ENFORCEMENT DIVISION,
20 SLED, TO COME IN SO THAT THERE WERE NOT BE ANY PROPRIETY
21 (SIC) ON BEHALF OF THE AGENCY.

22 Q AND WOULD THIS PARTICULAR INCIDENT BE CLASSIFIED
23 AS A MAJOR INCIDENT?

24 A YES, IT WOULD BE.

25 Q OKAY. SO THAT THE PRIMARY RESPONSIBILITY FOR

1 DOING CRIME SCENE INVESTIGATIONS AND INTERVIEWING
2 WITNESSES AND TAKING EVIDENCE -- PROCURING EVIDENCE AND
3 SECURING IT WOULD BE WITH THE SOUTH CAROLINA LAW
4 ENFORCEMENT DIVISION, CORRECT?

5 A THAT'S CORRECT.

6 Q OKAY. NOW, AS I UNDERSTAND IT IN THIS
7 PARTICULAR INCIDENT, WHEN ALL OF IT HAPPENED, BERKELEY
8 COUNTY SHERIFF'S OFFICE WAS NOTIFIED FIRST, RIGHT?

9 A THAT'S CORRECT. THEY RESPONDED.

10 Q OKAY. THEY -- AND SO THEY -- AND WE'VE HAD A
11 LOT OF TALK ABOUT FIRST RESPONDERS AND ALL THAT, AND I
12 DON'T WANT TO GET ANYTHING CONFUSED.

13 A OKAY.

14 Q BUT -- BUT WHAT -- WHAT WAS REQUIRED, I ASSUME,
15 IS THAT THE PEOPLE AT THE DEPARTMENT OF CORRECTIONS -- OR
16 AT MACDOUGALL, WOULD HAVE CONTACTED THE BERKELEY SHERIFF'S
17 OFFICE?

18 A NOT NECESSARILY, NO, MA'AM.

19 Q WELL, DURING THE COURSE OF YOUR INVESTIGATION,
20 WERE YOU ABLE TO ASCERTAIN WHETHER OR NOT THAT WAS DONE?

21 A THEY DID NOT CONTACT BERKELEY COUNTY SHERIFF'S
22 DEPARTMENT. BERKELEY COUNTY SHERIFF'S DEPARTMENT
23 RESPONDED IN CONJUNCTION WITH EMS.

24 Q OKAY. ALL RIGHT. SO, THEY WERE THERE FIRST?
25 THEY WERE THE FIRST PEOPLE TO ARRIVE?

CLARKE POWELL -- CROSS BY MS. KENNEDY

542

1 A BERKELEY COUNTY SHERIFF'S DEPARTMENT, YES.

2 Q OKAY. AND THEN YOU ARRIVED AFTER BERKELEY
3 COUNTY SHERIFF'S OFFICE?

4 A THAT IS CORRECT, MA'AM.

5 Q AND THEY, IN TURN, GAVE YOU RESPONSIBILITY FOR
6 THE INVESTIGATIONS?

7 A THEY DIDN'T GIVE ME THE RESPONSIBILITY. THEY
8 KNEW THAT WE HAD AN INVESTIGATOR ASSIGNED TO EACH STATE
9 PRISON. AND THEY IN TURN SAY, WELL, SINCE YOU'RE HERE.

10 Q SO, THAT'S THE LAW ENFORCEMENT PROTOCOL?

11 A THAT'S THE LAW ENFORCEMENT PROTOCOL, YES, MA'AM.

12 Q I WANT TO MAKE SURE I GET THE TERMS RIGHT.

13 A YES, MA'AM.

14 Q OKAY. OKAY. SO -- SO THEY TURNED IT OVER TO
15 YOU. AND, I ASSUME, AT SOME POINT BASED ON INFORMATION
16 THAT WE HAVE HEARD THAT -- THAT ALONG THE WAY SOMEBODY
17 FROM SLED WAS NOTIFIED?

18 A THAT'S CORRECT.

19 Q EXCUSE ME. SO, ON THAT PARTICULAR NIGHT, YOU
20 HAD -- YOU HAD -- YOU WERE THERE, AGENTS FROM SLED WERE
21 THERE?

22 A THAT'S CORRECT, MA'AM.

23 Q OKAY. AND DO YOU RECALL HOW MANY AGENTS FROM
24 SLED WERE THERE?

25 A JUST ONE AT THE TIME WHEN I -- YOU KNOW, UPON MY

1 ARRIVAL, JUST ONE AGENT.

2 Q DO YOU RECALL HOW MANY SUBSEQUENTLY ARRIVED ON
3 THE SCENE?

4 A THREE OTHERS.

5 Q WHEN -- WERE YOU BACK IN MAGNOLIA UNIT WHEN THEY
6 WERE THERE, OR WHERE WERE YOU?

7 A AT WHAT POINT IN TIME?

8 Q WELL, YOU ARRIVED THERE. WHAT WAS THE FIRST
9 THING YOU DID?

10 A THE FIRST THING I DID WAS TRY TO ASCERTAIN WHAT
11 HAPPENED.

12 Q AND WHO DID -- DID YOU INTERVIEW PEOPLE TO TRY
13 TO FIGURE THAT OUT?

14 A I SPOKE WITH THE SHIFT LIEUTENANT THAT WAS ON
15 DUTY THAT NIGHT WHO BRIEFED ME.

16 Q SO, THAT WOULD BE LT. BAXTER?

17 A LT. BAXTER.

18 Q OKAY. LT. BAXTER PROVIDED YOU INFORMATION ABOUT
19 THE ASSAULT?

20 A THE ASSAULT, THAT'S CORRECT.

21 Q BASICALLY GAVE YOU A STATEMENT?

22 A NOT -- NOT A STATEMENT, BUT HE JUST BRIEFLY
23 APPRISED ME OF WHAT HAD HAPPENED AND WHAT HE HAD GOING ON.

24 Q OKAY. AND WHAT DID YOU DO AFTER THAT?

25 A ONCE I GOT THAT INFORMATION, I NOTIFIED MY

1 IMMEDIATE SUPERVISOR TO BRIEF THEM AS TO WHAT WE HAD.

2 Q WELL, WHAT DID YOU -- WHAT DID YOU DO AFTER THAT
3 IN TERMS OF CONDUCTING YOUR INVESTIGATION?

4 A WELL, ONCE, YOU KNOW -- AFTER THAT POINT OF
5 NOTIFYING MY SUPERVISOR, I INFORMED LT. BAXTER, ONE, TO
6 MAKE SURE THAT -- WHO ALL THAT MAY BE INVOLVED THAT WE
7 WOULD NEED INCIDENT REPORTS FROM EVERYBODY REGARDLESS, YOU
8 KNOW---

9 Q SO -- SO WHEN YOU REFER TO AN INCIDENT REPORT,
10 THOUGH, YOU'RE TALKING JUST ABOUT THE -- THE PERSONNEL WHO
11 WERE ON DUTY?

12 A THE PERSONNEL ON DUTY.

13 Q OKAY. NOBODY ELSE?

14 A NO ONE ELSE.

15 Q ALL RIGHT. SO -- AND -- HOW -- HOW DID YOU GET
16 THAT INFORMATION, DID YOU ASK LT. BAXTER TO GATHER SGT.
17 SUMPTER AND SGT. WILLIAMS AND OFFICER GADSON, AND WHOEVER
18 ELSE?

19 A THAT IS CORRECT.

20 Q AND OFFICER FOGEL?

21 A EXACTLY. I NEEDED AN INCIDENT REPORT FROM
22 EVERYONE THAT WAS INVOLVED. ONCE THEY HAD COMPLETED THAT
23 INCIDENT REPORT, THEN THEY WOULD FORWARD A COPY TO ME.

24 Q OKAY. ALL RIGHT.

25 MS. KENNEDY: YOUR HONOR, MAY I APPROACH?

1 **THE COURT:** YOU MAY.

2 BY MS. KENNEDY:

3 **Q** OFFICER, I WANT YOU TO BE KIND ENOUGH -- ALL
4 RIGHT. JUST SO I UNDERSTAND WHAT -- YOU -- IT'S BERKELEY
5 COUNTY, AND THEN THE DEPARTMENT OF CORRECTIONS, CORRECT?

6 **A** CORRECT, MA'AM.

7 **Q** AND THEN THE PRIMARY INVESTIGATIVE AGENCY IS
8 SLED?

9 **A** WOULD BE SLED.

10 **Q** WOULD BE SLED. OKAY. SO, YOUR INVESTIGATION,
11 YOU TAKE REPORTS FROM THE PERSONNEL?

12 **A** FROM STAFF MEMBERS.

13 **Q** STAFF MEMBERS. OKAY. DID YOU DO ANYTHING ELSE
14 AFTER THAT, THAT NIGHT?

15 **A** YES.

16 **Q** OKAY. WHAT WAS IT?

17 **A** I MET WITH AGENT JJ EVANS FROM SLED.

18 **Q** OKAY. WELL, LET ME JUST SAY, YOU ALREADY
19 MENTIONED THAT YOU SPOKE TO---

20 **A** I SPOKE TO MY SUPERVISOR.

21 **Q** OKAY. ALL RIGHT. WHO IS -- YOUR SUPERVISOR?

22 **A** YEAH. MY IMMEDIATE SUPERVISOR.

23 **Q** YOUR SUPERVISOR. IS THIS IN THE SEQUENCE THAT
24 THINGS WERE PERFORMED, INVESTIGATOR POWELL?

25 **A** THE BEST THAT I CAN RECALL.

CLARKE POWELL -- CROSS BY MS. KENNEDY

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1 Q OKAY. THEN YOU DID WHAT?

2 A AFTER SPEAKING, YOU KNOW, WITH THEM, JJ. EVANS
3 FROM SLED ARRIVED.

4 Q OKAY.

5 A I BRIEFED HIM AS TO WHAT TOOK PLACE.

6 Q OKAY.

7 A I WAITED FOR CRIME SCENE TO RESPOND.

8 Q CRIME SCENE MEANING SLED?

9 A SLED CRIME SCENE.

10 Q OKAY.

11 A OKAY. ONCE THEY ARRIVED ON THE SCENE, WE WENT
12 DOWN TO MAGNOLIA II UNIT, WHICH IS THE UNIT WHERE THE
13 INCIDENT HAPPENED.

14 Q RIGHT. AND DID WHAT?

15 A AND I JUST STOOD BY WHILE THEY PHOTOGRAPHED AND
16 COLLECTED EVIDENCE.

17 Q SO, YOU OBSERVED THE -- THE COLLECTION OF THE
18 CRIME SCENE EVIDENCE?

19 A THAT'S CORRECT.

20 Q ALL RIGHT. THEN WHAT? AT SOME POINT YOU
21 INTERVIEWED---

22 A WELL, I INTERVIEWED---

23 Q MR. SALISBURY?

24 A WELL, I INTERVIEWED MR. SALISBURY BEFORE --
25 BEFORE MR. EVANS ARRIVED, SO I KNOW I DID THAT.

1 Q OKAY.

2 A YEAH, SO PROBABLY -- AFTER TALKING -- AFTER I
3 TALKED TO MY SUPERVISOR, I PROBABLY TALKED TO MR.
4 SALISBURY.

5 Q LET'S PUT MR. SALISBURY HERE.

6 A THAT WILL BE FINE.

7 Q SO, HE WOULD BE THREE, THIS WOULD BE FOUR, THIS
8 WOULD BE FIVE, THIS WOULD BE SIX. ANYTHING ELSE?

9 A NOT THAT I CAN RECALL. I DON'T HAVE THE REST OF
10 THE REPORT WITH ME. I DON'T HAVE THE TOP COPY OF THE
11 REPORT.

12 Q WHICH---

13 A MY REPORT.

14 MS. KENNEDY: YOUR HONOR, IF I MAY APPROACH, I
15 MIGHT BE ABLE TO HELP HIM IF I CAN SEE WHAT HE'S MISSING.

16 A I'M MISSING THE TOP PAGE.

17 Q WE DIDN'T GET THE TOP PAGE---

18 A YOU DIDN'T GET THE TOP PAGE BACK TO ME.

19 MS. KENNEDY: YOUR HONOR, IF I CAN GET MINE, MAYBE
20 WE CAN WORK THIS OUT. BUT, YOUR HONOR, MAY I APPROACH SO
21 WE CAN MAKE SURE WE GET THESE STRAIGHT?

22 THE COURT: YES.

23 BY MS. KENNEDY:

24 Q ANYTHING ELSE?

25 A NOT ON THAT EVENING, NOTHING ELSE.

CLARKE POWELL -- CROSS BY MS. KENNEDY

548

1 Q OKAY. SO, THE -- THE -- THE COLLECTION OF THE
2 CRIME -- THE -- ALL THE EVIDENCE COLLECTION IS SUPPOSED TO
3 BE DONE BY SLED?

4 A THEY WERE COLLECTED BY SLED.

5 Q OKAY. AND SO YOU DON'T KNOW WHY IT IS OR WAS --
6 WELL, LET ME ASK YOU THIS: YOU INDICATED THAT YOU HAD HOW
7 MANY YEARS OF EXPERIENCE AS A POLICE OFFICER? I'M SORRY.
8 I DON'T REMEMBER.

9 A I HAVE 20 YEARS WITH NORTH CHARLESTON AND 14
10 WITH THE STATE.

11 Q ALL RIGHT. ALL RIGHT. AND IN -- IN YOUR FORMER
12 LIFE AS A POLICE OFFICER AND A LIEUTENANT IN THE POLICE
13 DEPARTMENT, YOU ARE WELL AWARE OF THE IMPORTANCE OF
14 PRESERVING A CRIME SCENE, ARE YOU NOT?

15 A THAT'S CORRECT.

16 Q AND YOU'RE WELL AWARE OF THE SIGNIFICANCE OF NOT
17 DOING ANYTHING TO CONTAMINATE A CRIME SCENE?

18 A THAT IS CORRECT.

19 Q AND YOU'RE ALSO AWARE THAT IF LAW ENFORCEMENT
20 OFFICIALS OR CRIME SCENE INVESTIGATORS ARE GIVEN
21 INFORMATION THAT THE CRIME SCENE HAS BEEN CONTAMINATED OR
22 ALTERED IN ANY WAY, THEN IT'S IMPORTANT TO DO -- TO
23 RECONSTRUCT THAT AS BEST YOU CAN, CORRECT?

24 A THAT IS CORRECT.

25 Q TO YOUR KNOWLEDGE, WAS ANY OF THAT DONE?

1 A ANY OF WHAT DONE, MA'AM?

2 Q THE RECONSTRUCTION OF THE CRIME SCENE?

3 A NO. TO MY KNOWLEDGE, NO.

4 Q PRESERVATION OF THE EVIDENCE? MAYBE I CAN HELP.

5 FOR INSTANCE, EVIDENCE IN THIS CASE WOULD HAVE -- WOULD

6 HAVE INCLUDED OR SHOULD HAVE INCLUDED A SWAB OF MR.

7 SALISBURY'S FINGERS TO DETERMINED WHETHER OR NOT THERE WAS

8 ANY VAGINAL FLUID ON THERE, RIGHT?

9 A THAT'S CORRECT.

10 Q TO YOUR KNOWLEDGE, WAS THAT DONE?

11 A NOT TO MY KNOWLEDGE.

12 Q OKAY. IT ALSO SHOULD HAVE INCLUDED A SWAB OF

13 SALIVA AND TESTING OF THE SHANK TO DETERMINE WHETHER OR

14 NOT, GIVEN MS. ADAMS' STATEMENT, THAT THAT SALIVA WAS ON

15 THE SHANK, MR. SALISBURY'S?

16 A OKAY.

17 Q THAT WASN'T DONE, TO YOUR KNOWLEDGE?

18 A NOT TO MY KNOWLEDGE.

19 Q OKAY. THERE ALSO SHOULD HAVE BEEN DONE, AGAIN,

20 BASED ON YOUR PRIOR KNOWLEDGE AND EXPERIENCE AS A LAW

21 ENFORCEMENT OFFICER, THAT -- THAT THE CRIME SCENE

22 SHOULDN'T HAVE BEEN ALTERED IN ANY WAY AND CERTAINLY

23 SHOULD NOT HAVE BEEN CLEANED UP BY THE INMATES AT

24 MACDOUGALL, CORRECT?

25 A THAT IS CORRECT.

CLARKE POWELL -- CROSS BY MS. KENNEDY

550

1 Q OKAY. AND THAT IN ORDER TO PROPERLY PROCESS A
2 CRIME SCENE AND HAVE ALL THESE THINGS COUNTED FOR, A CRIME
3 SCENE LOG SHOULD HAVE BEEN COMPLETED?

4 A IT SHOULD HAVE BEEN.

5 Q OKAY. AND, AGAIN, THAT WOULD HAVE BEEN SLED'S
6 RESPONSIBILITY, NOT YOURS?

7 A THAT'S CORRECT.

8 Q NOW, -- THE COURT'S INDULGENCE.

9 THE COURT: YES, MA'AM.

10 BY MS. KENNEDY:

11 Q THERE SHOULD HAVE BEEN SOME EFFORT BASED ON THE
12 INFORMATION THAT SLED WAS PROVIDED, TO LOCATE THE
13 MICROPHONE THAT WAS ON OFFICER'S ADAMS' SHOULDER, CORRECT?

14 A YES.

15 Q OKAY. FOR FINGERPRINTS?

16 A YES.

17 Q SOME EFFORT MADE TO FIND THE PEPPER SPRAY AND
18 TEST IT TO SEE IF MR. SALISBURY'S FINGERPRINTS WERE ON IT,
19 CORRECT?

20 A CORRECT.

21 Q NONE OF THAT WAS DONE?

22 A NOT TO MY KNOWLEDGE.

23 Q OKAY. AND THAT WOULD HAVE BEEN SLED'S
24 RESPONSIBILITY?

25 A YES.

1 Q OKAY. ALL RIGHT. AND OF THE AGENTS THERE THAT
2 NIGHT, AND YOU MENTIONED AGENT EVANS SPECIFICALLY; WHO
3 WERE THE CRIME SCENE TECHNICIANS, DO YOU KNOW?

4 A VICKI HOLMAN, A MR. PORTER, AND ANOTHER
5 GENTLEMAN, MR. TAYLOR, I THINK HIS LAST NAME WAS.

6 Q DID ANY ONE OF THOSE PEOPLE EVER COME TO YOU AND
7 SAY INVESTIGATOR POWELL, YOU WORK HERE, YOU KNOW WHAT GOES
8 ON HERE, YOU'RE FAMILIAR WITH THIS LOCATION, COULD YOU
9 GIVE US SOME HELP IN---

10 MR. ALFARO: OBJECTION. IT CALLS FOR HEARSAY.

11 THE COURT: SUSTAINED.

12 MS. KENNEDY: ALL RIGHT. I'LL ASK -- I'LL
13 REPHRASE, YOUR HONOR.

14 THE COURT: THANK YOU.

15 BY MS. KENNEDY:

16 Q DID ANYBODY EVER COME TO YOU SEEKING YOUR HELP
17 IN GATHERING ALL OF THIS -- THIS EVIDENCE?

18 A NO.

19 Q OKAY. DID ANYONE FROM SLED, TO YOUR KNOWLEDGE,
20 INTERVIEW ANY OF THE INMATES THAT WERE INVOLVED IN THIS
21 INCIDENT OTHER THAN JJ EVANS?

22 A DID ANYONE ELSE?

23 Q YES, SIR.

24 A NO. NOT TO MY KNOWLEDGE.

25 Q DID ANYONE FROM SLED COME IN THE DAYS AFTER THIS

CLARKE POWELL -- CROSS BY MS. KENNEDY

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1 INCIDENT, WHILE THIS WAS STILL UNDER INVESTIGATION, TO GET
2 ADDITIONAL INFORMATION FROM ANYBODY IN THE FACILITY?

3 A I DON'T KNOW BECAUSE I WAS NOT THERE ALL THE
4 TIME, SO I DON'T KNOW WHETHER THEY CAME THERE WHILE I WAS
5 NOT THERE. SO, I CAN'T GIVE YOU AN HONEST ANSWER.

6 Q OKAY. SO, THE REPORTS THAT YOU GATHERED FROM --
7 FROM THE STAFF MEMBERS, IS IT FAIR TO CHARACTERIZE THOSE
8 AS INTERNAL DOCUMENTS FOR THE DEPARTMENT OF CORRECTIONS
9 INVESTIGATION?

10 A YES.

11 Q AND WHEN YOU DO THOSE REPORTS, THEY GO, AS I
12 UNDERSTAND IT, YOU -- YOU GENERATE THEM -- DOES -- DOES
13 WARDEN TAYLOR REVIEW THEM?

14 A YES. HE REVIEWS INCIDENT REPORTS FROM THE
15 INSTITUTION, YES.

16 Q THE ONES THAT WERE COMPLETED BY THE STAFF
17 MEMBERS?

18 A YES, HE DOES.

19 Q AND THEN THEY GO FROM YOU TO WHOEVER YOUR
20 SUPERVISOR IS IN COLUMBIA OR WHEREVER?

21 A THAT'S CORRECT.

22 Q AND THEN YOUR SUPERVISOR IN COLUMBIA, I ASSUME,
23 YOU KNOW -- COMPLETES OR REVIEWS OR HAS A FILE ON IT FOR
24 -- FOR THEIR -- FOR PURPOSES OF THEIR RECORDS?

25 A THAT'S CORRECT.

1 Q AND SO IN TERMS OF YOUR REPORT AND -- WHERE IT
2 SAYS INVESTIGATION REVEAL, INVESTIGATION REVEAL -- ARE YOU
3 PRIMARILY RELYING ON -- WELL, WHAT'S THAT BASED ON? BUT
4 -- ALL THE STATEMENTS THROUGHOUT YOUR REPORT WHERE IT SAYS
5 INVESTIGATION REVEAL, INVESTIGATION---

6 A THAT RELIES ON THE INFORMATION THAT I RECEIVED.

7 Q THAT YOU RECEIVED?

8 A YES.

9 Q OKAY. SO THAT -- THE COURT'S INDULGENCE, YOUR
10 HONOR.

11 THE COURT: YES, MA'AM.

12 BY MS. KENNEDY:

13 Q DIRECTING YOUR ATTENTION, INVESTIGATOR POWELL,
14 TO THE REPORT DATED MAY 19TH, THE INFORMATION RECEIVED --
15 INVESTIGATION REVEALED, INVESTIGATION REVEALED, ALL THAT
16 RELATES TO IS THE -- I MEAN, THE PERSONNEL STATEMENTS --
17 OR THE STATEMENTS THAT WERE MADE BY STAFF MEMBERS AND THE
18 ONES IN YOUR -- IN YOUR EFFORT OR YOUR ATTEMPT TO
19 INTERVIEW OFFICER ADAMS, IN WHICH YOU INCORPORATED THE
20 STATEMENT SHE HAD PREVIOUSLY GIVEN TO THE SLED AGENT?

21 A THAT'S CORRECT, MA'AM.

22 Q OKAY. AND THEN THE -- THEN IT SAYS -- AND YOUR
23 REPORT ALSO INDICATES THAT -- THAT YOU -- THAT THE
24 INVESTIGATION WAS TURNED OVER TO AGENT CHINA WITH SLED.
25 DO YOU REMEMBER WHEN THAT WAS?

CLARKE POWELL -- CROSS BY MS. KENNEDY

554

1 A WELL, INVEST -- AGENT CHINA WAS ASSIGNED AS THE
2 LEAD AGENT ON THE NIGHT OF THE INCIDENT.

3 Q OKAY.

4 A OKAY. SO, SHE -- SHE WAS PRIMARY -- ASSIGNED AS
5 THE LEAD AGENT.

6 Q OKAY.

7 A YOU KNOW.

8 Q ALL RIGHT. SO, LET ME GO BACK TO THIS THING.
9 WE CAN ASSUME, BASED ON YOUR EXAMINATION, THAT YOUR --
10 BERKELEY COUNTY IS OUT OF THE INVESTIGATION. YOUR --
11 YOU'RE OUT OF THE CRIMINAL ASPECT OF THE INVESTIGATION?

12 A I'M OUT OF THE CRIMINAL ASPECT OF THE
13 INVESTIGATION.

14 Q ALL RIGHT. SO, THEN IT'S SLED, RIGHT?

15 A THAT'S CORRECT.

16 Q WHO BECAME THE PRIMARY AGENCY AS OF 1/18/08?

17 A THAT'S CORRECT.

18 Q AND THEN YOUR ONLY INVOLVEMENT AFTER THAT WAS TO
19 COMPLETE YOUR FOLLOW-UP AND COMPLETE THE REPORT THAT YOU
20 SUBMITTED TO YOUR SUPERIORS ON MAY 19TH?

21 A THAT'S CORRECT.

22 Q OKAY. SO, IF ANYBODY -- LET ME -- AND THAT WAS
23 JUST A WRITTEN REPORT, CORRECT?

24 A A WRITTEN REPORT.

25 Q OKAY. DID ANYBODY, GIVEN YOUR JOB AS THE

1 INVESTIGATOR FOR -- FOR THE DEPARTMENT OF CORRECTIONS, DO
2 YOU HAVE ANY CONTACT WITH AGENT CHINA PAST THE DATE THAT
3 WAS REFERENCED IN YOUR MAY 19TH REPORT?

4 A NO.

5 Q SO THAT -- JUST SO WE'RE CLEAR, ALL THE FORENSIC
6 EVIDENCE RELATED TO THIS CASE THAT -- THAT SHOULD HAVE
7 BEEN TAKEN AND COULD HAVE BEEN TAKEN AND NEEDED TO BE
8 TAKEN AT THE CRIME SCENE THAT NIGHT, SHOULD HAVE BEEN DONE
9 BY SLED?

10 A THAT'S CORRECT.

11 Q AND YOU -- AND SO ALL -- ALL OF THE ITEMS THAT I
12 PREVIOUSLY MENTIONED LIKE THE VAGINAL -- THE SWAB OF MR.
13 SALISBURY'S HANDS AND ALL THOSE OTHER THINGS, THEY WERE
14 THE PEOPLE WHO WERE SUPPOSED TO DO IT?

15 A THAT'S CORRECT.

16 Q OKAY. AND -- THE COURT'S INDULGENCE.

17 THE COURT: YES, MA'AM.

18 BY MS. KENNEDY:

19 Q AND BASED ON WHAT HAPPENED THAT NIGHT, WHEN THE
20 PEOPLE YOU OBSERVED -- BECAUSE YOU -- YOU SAID AGENT
21 EVANS, YOU SAID AGENT HOLMAN, AGENT TAYLOR---

22 A PORTER.

23 Q ---MR. PORTER, THANK YOU. WAS AGENT CHINA EVER
24 THERE THAT NIGHT?

25 A NO, SHE NEVER CAME TO THE INSTITUTION.

CLARKE POWELL -- CROSS BY MS. KENNEDY

556

1 **Q** AND SHE'S HAD NO CONTACT WITH YOU SINCE THAT
2 TIME, OTHER THAN DISCUSSION OF TURNING OVER THE SUBMISSION
3 OF YOUR REPORT?

4 **A** THAT'S ALL.

5 **MS. KENNEDY:** THE COURT'S INDULGENCE. I THINK THAT
6 WOULD BE ALL WE WOULD HAVE, YOUR HONOR. THANK YOU.

7 **THE COURT:** THANK YOU. MR. ALFARO.

8 **MR. ALFARO:** THANK YOU, YOUR HONOR.

9 REDIRECT EXAMINATION BY MR. ALFARO:

10 **Q** INVESTIGATOR POWELL, MS. KENNEDY ASKED YOU ABOUT
11 COLLECTING INCIDENT REPORTS FROM THE STAFF THAT WAS ON
12 DUTY THAT NIGHT. DID YOU TESTIFY THAT YOU COLLECTED THOSE
13 DOCUMENTS -- COPIES OF THOSE DOCUMENTS?

14 **A** COPIES OF THE DOCUMENTS.

15 **Q** AND WHAT DID YOU DO WITH THOSE DOCUMENTS?

16 **A** ONCE I RECEIVED THOSE DOCUMENTS, I PROVIDED A
17 COPY OF THOSE DOCUMENTS TO AGENT EVANS WITH SLED.

18 **Q** SO, IN ADDITION TO FORWARDING THOSE STATEMENTS
19 TO SLED, YOU WERE ASKED -- YOU TESTIFIED INITIALLY THAT
20 YOU HAD SEEN THE SHANK THAT NIGHT?

21 **A** I SEEN THE SHANK THAT NIGHT.

22 **Q** AND WHAT DID YOU DO WITH THAT SHANK AFTER YOU
23 SAW IT?

24 **A** I LEFT IT IN THE CUSTODY AND CONTROL OF LT.
25 BAXTER, WHO HELD ON TO IT UNTIL HE COULD PROBABLY TURN IT

1 OVER TO THE CRIME SCENE PERSONNEL. AND I DID PHOTOGRAPH
2 IT THAT NIGHT.

3 Q AND WERE THERE ANY REPORTS THAT YOU OBTAINED
4 DURING THE COURSE OF YOUR INVESTIGATION THAT WERE NOT
5 FORWARDED TO ANY -- LET ME REPHRASE THE QUESTION. WERE
6 THERE ANY INCIDENT REPORTS COMPLETED BY STAFF THAT WERE ON
7 SCENE THAT NIGHT THAT WERE NOT FORWARDED TO AGENT CHINA?

8 A I DON'T THINK THERE WERE.

9 MR. ALFARO: THANK YOU. NO FURTHER QUESTIONS.

10 THE COURT: MS. KENNEDY.

11 MS. KENNEDY: NO QUESTIONS, YOUR HONOR. THANK YOU.

12 THE COURT: ALL RIGHT. MAY THIS WITNESS STEP DOWN?

13 MS. KENNEDY: YES, YOUR HONOR.

14 THE COURT: YOU MAY STEP DOWN. THANK YOU.

15 THE WITNESS: THANK YOU, YOUR HONOR.

16 (WITNESS STEPPED DOWN.)

17 THE COURT: CALL YOUR NEXT WITNESS.

18 MS. WILLIAMS: YOUR HONOR, AT THIS TIME, THE STATE
19 WOULD REST.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THAT
21 SIGNIFIES TO THE COURT THAT THERE IS A MATTER OF LAW THAT
22 I MUST TAKE UP OUTSIDE OF YOUR PRESENCE. PLEASE DO NOT
23 BEGIN YOUR DELIBERATIONS. PLEASE DO NOT DISCUSS THIS CASE
24 AMONGST YOURSELVES. PLEASE RISE FOR THE JURY.

25 (WHEREUPON, JURY LEFT THE COURTROOM AT 2:26 P.M.)

1 **THE COURT:** THANK YOU. BE SEATED. MR. SHELTON.

2 **MR. SHELTON:** THANK YOU, YOUR HONOR. MAY IT PLEASE
3 THE COURT, AT THIS TIME THE STATE MOVES FOR A DIRECTED
4 VERDICT BASED ON THE TOTALITY OF THE CIRCUMSTANCES AND
5 LOOKING AT THE EVIDENCE MOST FAVORABLE TO THE STATE, THE
6 STATE HAS NOT MET THEIR BURDEN FOR EACH AND EVERY ELEMENT
7 OF ALL THREE CHARGES, YOUR HONOR.

8 **THE COURT:** MR. SHELTON, IF YOU COULD ASSIST THE
9 COURT, IN PARTICULAR BY DELINEATING THE ELEMENTS THAT YOU
10 FEEL THAT THEY HAVE NOT MET.

11 **MR. SHELTON:** JUST -- JUST BASED ON THE TOTALITY OF
12 THE CIRCUMSTANCES, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. THANK YOU. MR. SHELTON.
14 MS. WILLIAMS.

15 **MS. WILLIAMS:** THANK YOU, YOUR HONOR. AS THE COURT
16 IS WELL AWARE, THE MOTION FOR DIRECTED VERDICT, THE TRIAL
17 COURT IS CONCERNED WITH THE EXISTENCE OR NON EXISTENCE OF
18 EVIDENCE---

19 **COURT REPORTER:** REPEAT, PLEASE.

20 **THE COURT:** THE COURT REPORTER NEEDS YOU TO REPEAT.

21 **MS. WILLIAMS:** I WAS SAYING, AS THE COURT IS WELL
22 AWARE, IN A MOTION FOR DIRECTED VERDICT, THE COURT IS --
23 IS LOOKING FOR THE EXISTENCE OR NON EXISTENCE OF EVIDENCE,
24 AND NOT CONSIDERING ITS EVIDENCE.

25 IN VIEWING THAT EVIDENCE, THE COURT IS REQUIRED TO

1 LOOK AT THAT EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
2 STATE. AND ANY EVIDENCE THAT TENDS TO PROVE THE GUILT OF
3 THE ACCUSED, WOULD BE SEEN IN THE LIGHT MOST FAVORABLE TO
4 THE STATE.

5 IN THIS CASE, FOR CRIMINAL SEXUAL CONDUCT IN THE
6 FIRST DEGREE, WE HAVE EVIDENCE FROM THE VICTIM AND OTHER
7 PEOPLE THAT THE VICTIM STATED THAT HE PUSHED HER INTO THE
8 BATHROOM, USING A WEAPON, WHICH IS AGGRAVATED FORCE. THAT
9 HE PUT HIS FINGER INSIDE HER VAGINA, WHICH IS A SEXUAL
10 BATTERY.

11 FOR THE CHARGE OF HOSTAGE TAKING, HE IS AN INMATE
12 WITH THE DEPARTMENT OF CORRECTIONS. WE'VE HAD TESTIMONY
13 ABOUT THAT. AND THAT HE THROUGH THE USE OF THREATS,
14 COERCION, INTIMIDATION OR PHYSICAL FORCE, WE WOULD ARGUE
15 THAT HE USED ALL OF THOSE---

16 COURT REPORTER: I'M SORRY. PHYSICAL FORCE, WHAT?

17 MS. WILLIAMS: OR PHYSICAL FORCE, DID YOU GET UP TO
18 THAT -- WE WOULD ARGUE THAT ALL OF THOSE METHODS WERE USED
19 BY MR. SALISBURY AGAINST MS. ADAMS. THE STATUTE SAYS HE
20 EITHER HAS TO TAKE, HOLD, DECOY OR CARRY AWAY ANY PERSON
21 AS A HOSTAGE OR FOR ANY OTHER REASON WHATSOEVER. AND I
22 THINK THE EVIDENCE THAT HE PULLED HER INTO THE BATHROOM,
23 USED THE SHANK, CAUSED BRUISING ON HER BODY, AND THEN
24 LOCKED THE DOOR AND HELD HER THERE, IS SUFFICIENT TO
25 SATISFY THAT CHARGE.

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1 AND THEN ASSAULT ON A CORRECTIONS OFFICER, THERE
2 WAS -- MULTIPLE PEOPLE TESTIFIED ABOUT THE BRUISING AND
3 INJURIES ON MS. ADAMS.. AND WE THINK WE'VE MET OUR BURDEN
4 ON THAT.

5 **MR. SHELTON:** NO RESPONSE.

6 **THE COURT:** RULE 19 OF THE RULES OF CRIMINAL
7 PROCEDURE, THE TRIAL JUDGE MUST CONSIDER ONLY THE
8 EXISTENCE OR NON EXISTENCE OF THE EVIDENCE, NOT THE WEIGHT
9 OF THE EVIDENCE, IN THE LIGHT MOST FAVORABLE TO THE STATE.
10 BASED UPON THE TESTIMONY PRESENTED BY THE VICTIM AS
11 TO THE CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, I DENY
12 YOUR MOTION FOR A DIRECTED VERDICT.

13 AS TO THE INDICTMENT FOR TAKING OF A HOSTAGE BY ANY
14 INMATE, AGAIN, TAKING THE EVIDENCE IN THE LIGHT MOST
15 FAVORABLE TO THE STATE, AND CONSIDERING ONLY THE EXISTENCE
16 OR NON EXISTENCE, THE COURT HEARD TESTIMONY THAT MR.
17 SALISBURY IS AN INMATE AND THAT HE DID USE FORCE TO
18 CONFINED THE VICTIM, SARA ADAMS, AGAINST HER WILL. I DENY
19 YOUR MOTION FOR DIRECTED VERDICT AS TO TAKING OF A HOSTAGE
20 BY AN INMATE.

21 AS TO THE INDICTMENT FOR ASSAULT ON A CORRECTIONAL
22 OFFICER, AGAIN, CONCERNING THE EXISTENCE OR NON EXISTENCE
23 OF THE EVIDENCE, THERE WAS SUBSTANTIAL TESTIMONY BEGINNING
24 WITH MAJOR MINCEY THAT OFFICER ADAMS WAS AN EMPLOYEE OF
25 MACDOUGALL, WAS WORKING ON THE DATE IN QUESTION ON JANUARY

1 18, 2008, AND THAT SHE WAS ASSAULTED. I DENY YOUR MOTION
2 FOR A DIRECTED VERDICT.

3 **MR. SHELTON:** THANK YOU, YOUR HONOR.

4 **THE COURT:** THANK YOU. MR. SALISBURY, PLEASE RISE.
5 I REMIND YOU THAT YOU ARE STILL UNDER OATH. PRIOR TO OUR
6 LUNCH BREAK AND PRIOR TO OFFICER POWELL TESTIFYING, I
7 ADVISED YOU OF YOUR CONSTITUTIONAL RIGHTS. DO YOU RECALL
8 THOSE RIGHTS?

9 **MR. SALISBURY:** YES, MA'AM.

10 **THE COURT:** AND DO YOU HAVE ANY QUESTIONS FOR THE
11 COURT CONCERNING YOUR DECISION TO TESTIFY?

12 **MR. SALISBURY:** NO, MA'AM.

13 **THE COURT:** HAVE YOU HAD SUFFICIENT TIME TO MEET
14 WITH MS. KENNEDY AND MR. SHELTON CONCERNING YOUR DECISION
15 REGARDING YOUR RIGHT TO TESTIFY?

16 **MR. SALISBURY:** YES, MA'AM.

17 **THE COURT:** DO YOU NEED ANY ADDITIONAL TIME TO MEET
18 WITH EITHER OR BOTH OF YOUR ATTORNEYS?

19 **MR. SALISBURY:** NO, MA'AM.

20 **THE COURT:** AND HAVE YOU SPECIFICALLY TALKED TO MS.
21 KENNEDY AND MR. SHELTON REGARDING YOUR RIGHT TO TESTIFY?

22 **MR. SALISBURY:** I SPOKE WITH MR. SHELTON.

23 **THE COURT:** AND BASED UPON THAT CONVERSATION, DO
24 YOU FEEL THAT YOU HAVE BEEN THOROUGHLY ADVISED OF THE
25 CONSEQUENCES OF YOUR DECISION TO TESTIFY?

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1 **MR. SALISBURY:** YES, MA'AM.

2 **THE COURT:** AT THIS TIME, DO YOU WISH TO TESTIFY?

3 **MR. SALISBURY:** NO, MA'AM.

4 **THE COURT:** THANK YOU. MR. SALISBURY, YOU MAY BE
5 SEATED. THANK YOU, MR. SHELTON. DOES THE DEFENSE HAVE
6 ANY WITNESSES TO CALL?

7 **MR. SHELTON:** NO, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. SO, AT THIS TIME THE
9 DEFENSE RESTS?

10 **MR. SHELTON:** YES, YOUR HONOR.

11 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

12 **MS. WILLIAMS:** NOTHING FURTHER FROM THE STATE, YOUR
13 HONOR.

14 **THE COURT:** REGARDING JURY CHARGES, MR. SHELTON?

15 **MR. SHELTON:** YOUR HONOR, I WOULD -- I WOULD LIKE
16 THE OPPORTUNITY TO LOOK AT THE -- THE JURY CHARGES THAT WE
17 ARE GOING TO HAVE AS FAR AS THE NORMAL JURY CHARGES,
18 REASONABLE DOUBT INSTRUCTION.

19 **THE COURT:** MR. SHELTON, YOU HAD REQUESTED
20 ADDITIONAL TIME DURING THE LUNCH HOUR TO PRESENT CASE LAW
21 OR ARGUMENT OR BOTH TO THE COURT REGARDING CHARGING LESSER
22 INCLUDED. HAVE YOU HAD AMPLE OPPORTUNITY TO RESEARCH
23 THAT ISSUE?

24 **MR. SHELTON:** I HAVE, YOUR HONOR.

25 **THE COURT:** AND AT THIS TIME?

1 **MR. SHELTON:** AS FAR AS CRIMINAL SEXUAL CONDUCT IN
2 THE SECOND DEGREE, THERE IS A DIFFERENCE, I GUESS, BETWEEN
3 COERCION AND COERCE, -- THERE'S NOT REALLY -- NOT REALLY
4 AN ARGUMENT I CAN MAKE AGAINST -- AGAINST THAT AS FAR AS
5 THE DIFFERENCE. I DO -- I WOULD LIKE TO ACKNOWLEDGE THAT
6 THIS -- THIS DOES GIVE FOUR -- FOUR DIFFERENT
7 OPPORTUNITIES FOR LIFE WITHOUT PAROLE, AS FAR AS THE MOST
8 SERIOUS. SO, THAT'S WHAT I WOULD LIKE TO MAKE THE
9 COURT -- I KNOW -- BUT OTHER THAN THAT, THERE IS NOTHING I
10 CAN ARGUE AGAINST CRIMINAL SEXUAL CONDUCT IN THE SECOND
11 DEGREE.

12 **THE COURT:** AS FAR AS ATTEMPT?

13 **MR. SHELTON:** IT -- JUST -- THERE HAS TO BE AN
14 OVERT ACT TO COMMIT. AND I THINK THE TESTIMONY BY THE
15 VICTIM IS THAT THE ACT WAS COMMITTED, NOT THAT IT HADN'T
16 -- HER TESTIMONY NEVER WAS THAT IT WASN'T -- IT DIDN'T
17 COME TO FRUITION. SO, THE TESTIMONY IS THAT IT WAS
18 COMMITTED. SO, I WOULD ASK THAT THE ATTEMPT NOT BE A JURY
19 CHARGE, YOUR HONOR.

20 **THE COURT:** YOUR RESPONSES TO -- I HAD INDICATED
21 PREVIOUSLY, MS. WILLIAMS, THAT THE COURT WAS GOING TO
22 CHARGE CSC SECOND, BUT I DID WISH TO ALLOW MR. SHELTON THE
23 OPPORTUNITY TO RESEARCH THAT ISSUE FURTHER.

24 AS TO WHETHER OR NOT TO CHARGE ATTEMPT, MS.
25 WILLIAMS?

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1 **MS. WILLIAMS:** YOUR HONOR, WE WOULD SAY THAT BASED
2 ON THE TESTIMONY THAT'S BEEN HEARD TODAY IN THE COURTROOM,
3 THAT THERE IS A POSSIBILITY THAT THE JURY COULD GO BACK
4 THERE AND THINK THAT -- EITHER -- EITHER NOT UNDERSTAND
5 DIGITAL PENETRATION OR THINK THAT MAYBE HE DIDN'T ACHIEVE
6 FULL DIGITAL PENETRATION TO FULFILL THE DEFINITION OF A
7 SEXUAL BATTERY. SO, IF THEY WERE TO BELIEVE THAT, WE
8 THINK IT IS JUSTIFIABLE TO -- THAT THE FACTS WOULD SUPPORT
9 THAT -- AND WE ALSO HAVE A CASE WHICH SUPPORTS ATTEMPTING
10 LESSER -- IT'S IN -- I HAVE A COPY FOR DEFENSE COUNSEL
11 AND I HAVE A COPY FOR THE COURT. ATTEMPTS IN CRIMINAL
12 SEXUAL CONDUCT FIRST, THE COURT ACKNOWLEDGED THAT.

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

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

15 **THE COURT:** ANY RESPONSE, MR. SHELTON?

16 **MR. SHELTON:** I WAS JUST PROVIDED WITH THIS CASE.
17 HOWEVER, I DON'T KNOW IF THIS CASE IN ON POINT, YOUR
18 HONOR. THIS CAN BE CLEARLY DISTINGUISHED AS FAR AS HE WAS
19 CHARGED WITH ATTEMPTED, AND HE -- HE WAS FOUND GUILTY OF
20 CRIMINAL SEXUAL CONDUCT. SO, I THINK THIS CASE CAN BE
21 DISTINGUISHED. SO, I JUST RENEW -- RENEW MY OBJECTION TO
22 IT. IT IS---

23 **COURT REPORTER:** I'M SORRY. WHAT?

24 **MR. SHELTON:** I JUST RENEW MY OBJECTION TO THE --
25 TO THE LESSER INCLUDED OF THE ATTEMPTED.

1 **THE COURT:** BASED UPON THE FACTS AS PRESENTED IN
2 THE STATEMENTS BY THE VICTIM, AS WELL AS THE TESTIMONY BY
3 THE SEXUAL ASSAULT NURSE EXAMINER, THE COURT IS DECLINING
4 TO CHARGE THE LESSER INCLUDED ATTEMPT. THE COURT HAS
5 INCLUDED A VERY LENGTHY DEFINITION OF SEXUAL BATTERY IN
6 ITS DEFINITIONS SECTION OF FIRST DEGREE CRIMINAL SEXUAL
7 CONDUCT. I NOTE YOUR OBJECTION FOR THE RECORD, MS.
8 WILLIAMS.

9 **MS. WILLIAMS:** THANK YOU, YOUR HONOR.

10 **THE COURT:** WE WILL BE IN RECESS UNTIL 3:00. IF I
11 CAN SEE COUNSEL IN CHAMBERS. ALL RIGHT. WE'RE IN RECESS
12 UNTIL 3:00.

13 (WHEREUPON, COURT RECESSED AT 2:38 P.M.)

14 (WHEREUPON, COURT RECONVENED AT 3:14 P.M.)

15 **THE COURT:** ALL RIGHT. WE'LL GO AHEAD AND BRING IN
16 THE DEFENDANT. MR. SHELTON, I'M GOING TO ALLOW YOU TO
17 REST ON THE RECORD IN FRONT OF -- OF THE JURY. MR.
18 SHELTON, I'LL BE HAPPY TO HEAR FROM YOU.

19 **MR. SHELTON:** THANK YOU, YOUR HONOR. THIS IS
20 REGARDING THE JURY INSTRUCTIONS, IN ONE PROVISION THAT THE
21 INSTRUCTIONS ARE GOING -- THE PHYSICAL INSTRUCTIONS ARE
22 GOING BACK TO THE JURY ROOM, WE OBJECT TO THAT. WE ASK
23 THAT THAT NOT BE A PART OF THE JURY INSTRUCTION. THAT NOT
24 BE -- THAT THEM NOT GO BACK INTO THE JURY ROOM. REALLY,
25 IT CAUSES MORE CONFUSION. THEY'RE HEARING TESTIMONY.

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1 THEY'RE GOING TO HEAR THE LAW FROM BOTH ATTORNEYS, FROM
2 YOU -- FROM YOUR HONOR. IF THEY HAVE QUESTIONS, THEY HAVE
3 THE ABILITY TO ASK AND WRITE A NOTE AND YOU CAN RETELL
4 THEM THE LAW.

5 IF IT ALL COMES DOWN TO IT IN THE END AND THEY
6 STILL CAN'T UNDERSTAND, THEN HANDING THEM A COPY OF THE
7 SPECIFIC PROVISION THAT THEY'RE ASKING FOR IN THE JURY
8 INSTRUCTIONS, THEN OBVIOUSLY WE WOULDN'T HAVE A PROBLEM
9 WITH THAT. BUT AT THE ONSET, WE WOULD RATHER NOT HAVE A
10 COPY OF THE JURY INSTRUCTIONS, YOUR HONOR, SO THAT THEY
11 WOULD LISTEN TO YOU AS FAR AS HANDING OUT THE LAW.

12 THE COURT: UNTIL IT IS REQUESTED OR UNTIL I
13 RECEIVE A NOTE FROM THE JURY INDICATING THAT THEY ARE
14 HAVING TROUBLE INTERPRETING THE COURT'S INSTRUCTIONS, I
15 WILL NOT SEND, AS PART OF THE INITIAL PACKAGE THAT GOES
16 BACK WITH THE JURY, I WILL NOT SEND A COPY OF MY
17 INSTRUCTIONS.

18 MR. SHELTON: THANK YOU, YOUR HONOR.

19 THE COURT: ANYTHING FURTHER?

20 MS. WILLIAMS: NOTHING FROM THE STATE.

21 THE COURT: AND YOU ARE CLOSING?

22 MS. WILLIAMS: YES, YOUR HONOR.

23 THE COURT: AND YOU ARE CLOSING, MR. SHELTON?

24 MS. KENNEDY: NO, YOUR HONOR.

25 THE COURT: I'M SORRY. MS. KENNEDY, YOU ARE

1 CLOSING. OKAY. ARE YOU PREPARED?

2 MS. WILLIAMS: WE ARE PREPARED, YOUR HONOR.

3 THE COURT: ARE YOU READY TO BRING THE JURY IN?

4 MR. SHELTON: YES, YOUR HONOR. I'M GOING TO HAVE A
5 CHANCE TO REST ON THE RECORD?

6 THE COURT: YES.

7 MR. SHELTON: THANK YOU.

8 THE COURT: MS. KENNEDY, YOU ARE PREPARED TO GO
9 FORWARD AS WELL?

10 MS. KENNEDY: OH, YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
12 AUDIENCE, AS I -- THOSE OF YOU WHO WERE PRESENT FOR THE
13 OPENINGS, I JUST WANT TO CAUTION YOU AGAIN, EVERYONE IS
14 FREE TO REMAIN IN THE COURTROOM. HOWEVER, OUT OF RESPECT
15 FOR BOTH OF THE PARTIES AND THE COURT, PLEASE DO NOT MOVE
16 WHILE A PARTY IS SPEAKING. IT IS DISRUPTIVE TO THE
17 INDIVIDUAL SPEAKING AS WELL AS TO THE COURT. PLEASE
18 REMAIN SEATED. ONCE THE ATTORNEY FOR THE STATE AND THEN
19 THE ATTORNEY FOR THE DEFENDANT HAVE COMPLETED THEIR
20 CLOSINGS, I WILL HAVE A BRIEF PAUSE BEFORE I GIVE MY
21 INSTRUCTIONS. IF YOU DO NOT WISH TO REMAIN FOR THE
22 COURT'S INSTRUCTIONS, THAT IS WHEN YOU NEED TO LEAVE. YOU
23 WILL NOT BE ALLOWED TO LEAVE DURING THE COURT'S
24 INSTRUCTIONS OR WHILE ANY PARTY IS SPEAKING. AGAIN, I
25 REMIND YOU, IT IS DISRESPECTFUL AND DISRUPTIVE.

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1 ANY QUESTIONS BEFORE WE BRING IN THE JURY FROM
2 EITHER PARTY?

3 MS. WILLIAMS: NO, YOUR HONOR. I THINK WE'RE
4 HAVING A TECHNICAL DIFFICULTY AND WE NEED THE OVERHEAD FOR
5 CLOSE.

6 THE COURT: ALL RIGHT.

7 MS. WILLIAMS: I'M SORRY.

8 (PAUSE IN THE PROCEEDINGS TO WORK ON COURTROOM
9 PRESENTATION EQUIPMENT.)

10 THE COURT: ALL RIGHT. WE WILL BE AT EASE. LET ME
11 KNOW WHEN YOU'RE READY TO PROCEED.

12 (PAUSE.)

13 THE COURT: ALL RIGHT. ANYTHING BEFORE WE BRING IN
14 THE JURY?

15 MS. WILLIAMS: NOTHING FROM THE STATE, YOUR HONOR.

16 MR. SHELTON: NOTHING FROM THE DEFENSE.

17 THE COURT: ALL RIGHT. LET'S BRING IN THE JURY.
18 PLEASE RISE FOR THE JURY.

19 (WHEREUPON, JURY ENTERED THE COURTROOM AT 3:23
20 P.M.)

21 THE COURT: THANK YOU. PLEASE BE SEATED. MR.
22 SHELTON.

23 MR. SHELTON: THANK YOU, YOUR HONOR. MAY IT PLEASE
24 THE COURT, AT THIS TIME THE DEFENSE RESTS.

25 THE COURT: THANK YOU. LADIES AND GENTLEMEN OF THE

1 JURY, AT THIS TIME THE STATE HAS RESTED, THE DEFENSE HAS
2 RESTED, AND THAT INDICATES TO THE COURT THAT IT IS TIME
3 FOR THE CLOSING ARGUMENTS OF COUNSEL.

4 AS I INDICATED TO YOU IN MY OPENING, PLEASE
5 REMEMBER THIS: THESE ARE CLOSING ARGUMENTS. ARGUMENTS BY
6 COUNSEL ARE NOT CONSIDERED AS EVIDENCE IN THIS CASE. MS.
7 WILLIAMS.

8 MS. WILLIAMS: THANK YOU, YOUR HONOR. MAY IT
9 PLEASE THE COURT. LADIES AND GENTLEMEN, I JUST WANT TO
10 BEGIN BY THANKING YOU. I THINK I SPEAK FOR EVERYBODY WHEN
11 I SAY THAT WE APPRECIATE YOUR PATIENCE AND ALL THE TIME
12 THAT YOU'VE GIVEN US, YOUR ATTENTION TO THE EVIDENCE AND
13 ALL THE TESTIMONY.

14 I'D LIKE TO BEGIN BY GOING OVER SOME OF THE LAW AND
15 GIVING YOU THE STATE'S ARGUMENTS ABOUT THE CASE. AFTER
16 I'M DONE, YOU'RE GOING TO HEAR FROM DEFENSE COUNSEL. I'D
17 LIKE TO TELL YOU THAT IF I TELL YOU SOMETHING ABOUT THE
18 LAW THAT DIFFERS FROM WHAT THE COURT TELLS YOU, ALWAYS
19 DEFER TO THE JUDGE. SHE IS THE FINAL WORD. AND IF I --
20 IF I MISSTATE ANY LAW OR IF THERE'S A SLIGHT VARIANCE IN
21 WHAT I SAY AND WHAT SHE SAYS, DEFINITELY GO WITH HER.

22 TO BEGIN WITH, MR. SALISBURY IS CHARGED WITH
23 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE. THE STATE IS
24 CHARGED WITH PROVING EACH AND EVERY ELEMENT OF CRIMINAL
25 SEXUAL CONDUCT IN THE FIRST DEGREE. A PERSON IS GUILTY OF

1 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IF THEY ENGAGE
2 IN A SEXUAL BATTERY AGAINST THE VICTIM.

3 NOW, WE ALL HAVE OUR PRECONCEPTIONS OF WHAT
4 CRIMINAL SEXUAL CONDUCT MIGHT BE. IT DOESN'T MATTER WHAT
5 I THINK IT IS, IT DOESN'T MATTER WHAT THEY THINK IT IS,
6 IT'S -- THE STATUTE DEFINES WHAT IT IS. AND IN A SECOND
7 I'M GOING TO TELL YOU THE DEFINITION OF THAT. AND THE
8 STATE HAS TO PROVE THAT MR. SALISBURY COMMITTED A SEXUAL
9 BATTERY AGAINST MS. ADAMS, AND THAT HE USED EITHER
10 AGGRAVATED FORCE TO ACCOMPLISH THAT SEXUAL BATTERY, AND
11 THEY'LL BE A DEFINITION FOR THAT, OR THAT THE VICTIM, MS.
12 ADAMS, SUBMITTED TO THE SEXUAL BATTERY UNDER CIRCUMSTANCES
13 WHERE THE VICTIM IS ALSO THE VICTIM OF FORCIBLE
14 CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION, BURGLARY,
15 HOUSEBREAKING OR ANY OTHER SIMILAR OFFENSE OR ACT. NOW,
16 THAT'S A LOT TO THINK ABOUT. SO, I'M GOING TO BREAK IT
17 DOWN A LITTLE BIT.

18 TO BEGIN WITH, WE HAVE TO PROVE THAT MR. SALISBURY
19 COMMITTED A SEXUAL BATTERY. AND I PROMISED YOU THAT I
20 WOULD GIVE YOU A DEFINITION OF WHAT THAT IS. THIS IS VERY
21 IMPORTANT FOR YOU TO LOOK AT IN YOUR DELIBERATIONS,
22 BECAUSE AS I SAID, WE ALL HAVE PRECONCEPTIONS OF WHAT
23 SEXUAL BATTERY IS. AND I'M GOING TO READ YOU THE
24 STATUTORY DEFINITION AND THEN YOU'RE ALSO GOING TO GET
25 THIS FROM THE JUDGE. THE "SEXUAL BATTERY IS A SEXUAL

1 INTERCOURSE, CUNNILINGUS"---

2 COURT REPORTER: I'M SORRY. YOU NEED TO SLOW DOWN
3 PLEASE.

4 MS. WILLIAMS: I'M SORRY -- "FELLATIO, ANAL
5 INTERCOURSE OR ANY INTRUSION", AND THIS IS IMPORTANT, "ANY
6 INTRUSION HOWEVER SLIGHT OF ANY PERSON'S BODY OR ANY
7 OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER
8 PERSON'S BODY". THAT IS MR. SALISBURY'S FINGER IN MS.
9 ADAMS' VAGINA. AND THAT'S JUST THE DEFINITION.

10 AND YOU HEARD TESTIMONY FROM MS. ADAMS THAT WHEN
11 SHE WAS IN THERE AFTER HE REMOVED HER CLOTHING, HE PUT, I
12 THINK SHE SAID, TWO FINGERS IN HER VAGINA.

13 SHE TOLD THE NURSE, THE SEXUAL ASSAULT NURSE
14 EXAMINER, THAT HE PUT HIS FINGERS IN HER VAGINA. YOU
15 HEARD TESTIMONY FROM THAT NURSE PRACTITIONER THAT YOU
16 WOULDN'T EXPECT TO FIND ANY PHYSICAL FINDINGS FROM DIGITAL
17 PENETRATION. SO, IF YOU BELIEVE MS. ADAMS WHEN SHE TELLS
18 YOU WHAT HAPPENED, AND YOU ARE THE SOLE JUDGES OF
19 CREDIBILITY, THEN YOU HAVE TO FIND THAT HE COMMITTED A
20 SEXUAL BATTERY AGAINST HER. BECAUSE THAT IS THE
21 DEFINITION OF SEXUAL BATTERY.

22 IF YOU GET PAST THAT, THEN YOU HAVE TO LOOK AT
23 WHETHER OR NOT AGGRAVATED FORCE WAS USED. NOW, AGGRAVATED
24 FORCE, AS YOU MIGHT GUESS, ALSO HAS A DEFINITION.
25 AGGRAVATED FORCE -- AGGRAVATED FORCE MEANS "THE ACTOR USED

1 PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH AND
2 AGGRAVATED NATURE TO OVERCOME THE VICTIM" --

3 **COURT REPORTER:** I'M SORRY. COULD YOU SLOW DOWN,
4 PLEASE?

5 **MS. WILLIAMS:** AGGRAVATED FORCE MEANS "THE ACTOR
6 USED PHYSICAL FORCE OR PHYSICAL VIOLENCE OF A HIGH AND
7 AGGRAVATED NATURE TO OVERCOME THE VICTIM OR INCLUDES THE
8 THREAT OF THE USE OF A DEADLY WEAPON". A DEADLY WEAPON IS
9 ANYTHING THAT CAN BE USED TO INFLICT INJURY OR DEATH, A
10 SHANK. HER TESTIMONY IS THAT HE PUT THE SHANK UP AGAINST
11 HER NECK, THAT HE THREATENED TO KILL HER. YOU SAW THE
12 SHANK. HE ALSO TOLD -- THE DEFENDANT, HIMSELF, TOLD THE
13 INVESTIGATOR THAT HE HAD A SHANK WITH HIM. SO, THAT IS,
14 WE FEEL, THE EVIDENCE THAT WE WANT YOU TO CONSIDER WHEN
15 YOU THINK ABOUT THAT STATUTORY DEFINITION.

16 IF YOU FIND, FOR SOME REASON, THAT AGGRAVATED FORCE
17 WAS NOT USED, AND YOU'VE ALREADY FOUND THAT THERE WAS A
18 SEXUAL BATTERY, YOU CAN ALSO LOOK TO (B), WHICH IS "THE
19 VICTIM SUBMITS TO SEXUAL BATTERY BY THE ACTOR UNDER
20 CIRCUMSTANCES WHERE THE VICTIM IS ALSO THE VICTIM OF
21 FORCIBLE CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION,
22 BURGLARY, HOUSEBREAKING OR ANY OTHER SIMILAR OFFENSE OR
23 ACT". WHEN HE DRAGGED HER INTO THAT BATHROOM AND LOCKED
24 THE DOOR BEHIND HIM, BOTH OF THEM, HAD THAT SHANK IN HIS
25 HAND AND PREVENTED HER FROM LEAVING, THAT'S FORCIBLE

1 CONFINEMENT.

2 SO, PLEASE CONSIDER ALL THE EVIDENCE YOU HEARD AND
3 THINK OF THE PHYSICAL EVIDENCE AND CONSIDER THAT WHEN YOU
4 LOOK AT THAT STATUTE. AND YOU WILL GET THOSE INSTRUCTIONS
5 FROM THE JUDGE.

6 I'M NOT SURE IF THE OVERHEAD IS REALLY HELPING US.
7 THE NEXT CHARGE THAT YOU'RE GOING TO SEE IS TAKING OF
8 HOSTAGES. AND, AGAIN, YOU'RE GOING TO GET THIS FROM THE
9 JUDGE. "AN INMATE OF A STATE, COUNTY OR CITY CORRECTIONAL
10 FACILITY OR A PRIVATE ENTITY THAT CONTRACTS WITH THE
11 STATE, COUNTY OR CITY TO PROVIDE CARE AND CUSTODY OF
12 INMATES, WHO BY THREATS, COERCION, INTIMIDATION OR
13 PHYSICAL FORCE TAKES, HOLDS, DECOYS, OR CARRIES AWAY ANY
14 PERSON AS A HOSTAGE, OR FOR ANY OTHER PURPOSE WHATSOEVER."
15 IF YOU FIND THAT MR. SALISBURY WAS AN INMATE AT MACDOUGALL
16 CORRECTIONAL FACILITY, AND THAT HE WENT IN THERE WITH A
17 SHANK, AND HE GRABBED HER AND HE DRAGGED HER INTO THAT
18 BATHROOM FOR SOME PURPOSE, LOCKED THE DOOR AND PREVENTED
19 HER FROM GETTING OUT, THEN HE IS GUILTY OF TAKING OF A
20 HOSTAGE.

21 AND I'M GOING TO PUT THAT UP THERE, BUT I'M NOT
22 SURE IF IT'S GOING TO BE -- YOU'RE GOING TO BE ABLE TO SEE
23 IT. IF YOU EVER HAVE ANY QUESTIONS ABOUT THESE
24 INSTRUCTIONS OR THESE STATUTES, THEN YOU CAN CERTAINLY ASK
25 THE COURT.

CLOSING ARGUMENTS BY MS. WILLIAMS

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1 THE THIRD CHARGE THAT MR. SALISBURY IS CHARGED WITH
2 IS ASSAULT UPON A STATE OR LOCAL FACILITY EMPLOYEE. IF
3 YOU FIND THAT HE ASSAULTED MS. ADAMS WHILE SHE WAS ON DUTY
4 AS A CORRECTIONS OFFICER AT MACDOUGALL, THEN HE IS GUILTY
5 OF ASSAULT ON A CORRECTIONS OFFICER. AND YOU JUST HAVE TO
6 CONSIDER THE TESTIMONY AND THE PHYSICAL EVIDENCE THAT YOU
7 SAW. THE BRUISES ON HER. THE TESTIMONY THAT YOU HEARD
8 FROM WITNESSES AND FROM THE VICTIM HERSELF.

9 THE JUDGE IS ALSO GOING TO INSTRUCT ON A LESSER
10 INCLUDED OFFENSE ON ONE OF THESE STATUTES, AND YOU'RE --
11 AND SHE'S ALSO GOING TO TELL YOU THAT YOU CAN'T CONSIDER
12 THE LESSER INCLUDED OFFENSE UNLESS YOU DECIDE THAT HE IS
13 NOT GUILTY OF THE GREATER OFFENSE. SO, IF YOU DECIDE THAT
14 HE IS NOT GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE FIRST
15 DEGREE, YOU CAN THEN CONSIDER THE SECOND OFFENSE, THE
16 LESSER OFFENSE OF CRIMINAL SEXUAL CONDUCT IN THE SECOND
17 DEGREE.

18 NOW, YOU ARE THE SOLE JUDGES OF CREDIBILITY. I
19 WANT YOU TO THINK ABOUT THE WITNESSES THAT YOU SAW TODAY.
20 THE MOST IMPORTANT THING THAT YOU BRING TO THIS PROCESS IS
21 YOUR COMMON SENSE. AND WHEN YOU LOOK AND THINK BACK ON
22 THE WAY THAT THOSE WITNESSES TESTIFIED, YOU ARE THE SOLE
23 JUDGES OF WHETHER THEY WERE TELLING THE TRUTH. IF YOU
24 THINK SARA ADAMS GOT UP HERE AND WASN'T RELIVING THAT
25 EVENT WHEN SHE WAS TELLING IT, THE INMATES, EVALUATE THEIR

1 TESTIMONY, WHAT THEY SAID, WHAT THEY REMEMBER. HOW
2 DIFFERENT WITNESSES' DETAILS OF THE EVENTS CORROBORATE
3 EACH OTHER. HOW THE PHYSICAL EVIDENCE, LIKE THE SHANK,
4 THE RIPPED SHIRT SARA ADAMS WAS WEARING THAT DAY,
5 CORROBORATES HER VERSION OF THE STORY.

6 CONSIDER THE EVIDENCE OF THE EXPERTS. YOU HEARD
7 EVIDENCE FROM THE HANDWRITING EXPERT AND YOU READ THE
8 LETTER THAT MR. SALISBURY WROTE. YOU ALSO HEARD EVIDENCE
9 FROM JJ EVANS, FROM SLED, WHO COLLECTED THE LETTERS. HE
10 TALKED ABOUT WHERE HE COLLECTED THEM FROM THE BATHROOM
11 FLOOR, WHICH WAS THE CRIME SCENE, AND ALSO FROM MR.
12 SALISBURY'S CELL.

13 WHEN I TALK TO YOU ABOUT COMMON SENSE, YOU DON'T
14 NEED A FLOW CHART TO FIGURE OUT THAT WHEN A WOMAN RUNS OUT
15 OF A BATHROOM HALF NAKED, PLEADING HELP ME, HELP ME, YOU
16 DON'T NECESSARILY NEED CSI TO COME IN AND DO SALIVA TESTS
17 ON SOMEONE'S HAND TO SEE IF THEY WERE BITTEN.

18 THERE IS EVIDENCE THAT HAS BEEN PRESENTED IN THIS
19 CASE THAT IS EYE WITNESS TESTIMONY, PHYSICAL EVIDENCE.
20 AND WHEN YOU CONSIDER ALL OF THAT EVIDENCE, YOU CAN ALWAYS
21 HAVE MORE EVIDENCE. BUT THIS IS WHAT HAS BEEN PRESENTED
22 TO YOU AND WE JUST ASK THAT YOU LOOK AT IT CAREFULLY AND
23 THINK ABOUT WHAT YOU SAW AND EVALUATE WHETHER OR NOT IT
24 PROVES OUR CASE.

25 THE JUDGE IS ALSO GOING TO TALK TO YOU ABOUT

1 REASONABLE DOUBT. REASONABLE DOUBT IS NOT -- IN FACT, THE
2 JUDGE IS GOING TO GIVE YOU INSTRUCTIONS THAT BASICALLY
3 SAYS, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
4 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE
5 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
6 CERTAINTY. AND IN CRIMINAL CASES, THE LAW DOES NOT
7 REQUIRE US TO OVERCOME ALL POSSIBLE DOUBT. AND YOU'RE
8 GOING TO LOOK AT THAT INSTRUCTION. IT IS NOT -- WE DON'T
9 HAVE TO PROVE THAT THERE IS NO DOUBT.

10 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE,
11 YOU ARE FIRMLY CONVINCED THE DEFENDANT IS GUILTY OF THE
12 CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. AND,
13 AGAIN, I WOULD ASK YOU TO DEFER TO THE JUDGE IF THERE IS
14 ANY DIFFERENCE BETWEEN WHAT I SAY AND WHAT THE JUDGE SAYS.

15 YOU SAW EVIDENCE, BESIDES THE TESTIMONIAL EVIDENCE,
16 YOU SAW EVIDENCE OF THE SHANK IN THIS CASE. AS I SAID,
17 YOU SAW EVIDENCE OF THE VICTIM'S RIPPED SHIRT. AND YOU
18 ALSO HEARD THE MOST IMPORTANT EVIDENCE OF ALL, AND THAT IS
19 THE DEFENDANT'S OWN STATEMENT TO THE INVESTIGATOR, WHERE
20 HE APOLOGIZED ABOUT WHAT HAPPENED TO THE VICTIM. AND HE
21 SAID THAT WHEN HE LOOKS AT THE VICTIM, HE SEES HIS
22 EX-WIFE.

23 YOU ALSO SAW A VERY DISTURBING LETTER. A LETTER
24 THAT BASICALLY SAID, KEEP YOUR HANDS ON THE DESK, I HAVE A
25 SHANK. THREATENED TO KILL HER. THINK ABOUT HOW THOSE

1 THREATS AND THOSE CLAIMS MATCH UP WITH WHAT SARA ADAMS
2 SAID HAPPENED.

3 YOU KNOW WHAT HAPPENED THAT NIGHT BECAUSE YOU HEARD
4 THE EVIDENCE ALL DAY, PART OF YESTERDAY. MS. ADAMS WAS AT
5 A PRISON, IT WAS NOT THE KIND OF PRISON THAT WE ALL THINK
6 OF. IT WASN'T A CONVENTIONAL PRISON. IN SOME WAYS, SHE
7 WAS IN A VERY VULNERABLE POSITION. THAT EVENING THE
8 DEFENDANT MADE A CHOICE WHEN HE SAW HER IN A VULNERABLE
9 POSITION. HE MADE A CHOICE TO ATTACK HER. THANK
10 GOODNESS, LATER THAT EVENING THOSE OTHER INMATES SAW HER
11 IN THE SAME VULNERABLE POSITION, MAYBE EVEN MORE OF A
12 VULNERABLE POSITION, THEY MADE A DIFFERENT CHOICE. THEY
13 MADE A CHOICE TO PROTECT HER.

14 NOW, YOU HAVE A CHOICE TO MAKE. AND WE WOULD JUST
15 ASK THAT YOU THINK ABOUT THE EVIDENCE, LOOK AT THE
16 EVIDENCE AND CAREFULLY CONSIDER WHETHER OR NOT WE HAVE
17 PROVEN OUR CASE BEYOND A REASONABLE DOUBT. AND WE WOULD
18 ASK THAT YOU COME BACK WITH A GUILTY VERDICT ON CRIMINAL
19 SEXUAL CONDUCT IN THE FIRST DEGREE, ASSAULT ON A
20 CORRECTIONS OFFICER, AND THE TAKING OF A HOSTAGE. THANK
21 YOU.

22 **THE COURT:** MS. KENNEDY.

23 **MS. KENNEDY:** THANK YOU, YOUR HONOR. I'M THE
24 PUBLIC DEFENDER. WE DON'T HAVE OVERHEADS. YOUR HONOR, IF
25 I MAY JUST HAVE A MINUTE. (PAUSE.)

1 GOOD AFTERNOON. THIS IS THE FIRST TIME, OBVIOUSLY,
2 THAT I'VE HAD THE OPPORTUNITY TO ADDRESS YOU DIRECTLY.
3 AND LIKE THE ASSISTANT SOLICITOR, I WANT TO THANK YOU,
4 EACH AND EVERY ONE OF YOU FOR YOUR PATIENCE. AND I WANT
5 TO THANK YOU FOR YOUR ATTENTIVENESS, BECAUSE I KNOW THAT
6 EACH OF YOU HAS PAID CAREFUL ATTENTION AND LISTENED TO
7 EVERYTHING THAT HAS GONE ON IN THIS TRIAL.

8 AND ONE OF THE REASONS I KNOW THAT IS BECAUSE WHILE
9 YOU WERE WATCHING US, WE WERE WATCHING YOU. AND I KNOW
10 THAT YOU HAVE BEEN DILIGENT IN YOUR DUTIES TO DO THAT.

11 I ALSO KNOW PROBABLY GIVEN THE NATURE OF THE
12 CHARGES AND THE PARTICULAR CIRCUMSTANCES OF THIS CASE,
13 THAT YOU ALL HAVE BEEN EXPOSED TO THINGS THAT MOST PEOPLE
14 DON'T WANT TO HEAR ABOUT, MUCH LESS HAVE TO THINK ABOUT
15 IT.

16 THINGS ABOUT PRISON, THINGS ABOUT PRISON LIFE.
17 THINGS ABOUT WHAT WE CALL SEXUAL ASSAULT, DIGITAL
18 PENETRATION, ALL THOSE THINGS THAT WE JUST KIND OF TOSS
19 AROUND BECAUSE WE'RE FAMILIAR WITH THEM AND WE KNOW THAT,
20 WE KNOW WHAT THEY MEAN.

21 BUT THESE ARE THE THINGS, HOWEVER YOU LABEL THEM,
22 ARE THE THINGS THAT YOU HAVE TO THINK ABOUT DURING YOUR
23 DELIBERATIONS. AND YOU HAVE TO CONSIDER ONE BY ONE AND
24 GIVE SERIOUS THOUGHT TO EACH ONE OF THEM. BECAUSE IT'S
25 LIKE THE ASSISTANT SOLICITOR SAID, EACH OF THE ELEMENTS

1 HAS TO BE PROVEN BEYOND A REASONABLE DOUBT.

2 NOW, HER HONOR, JUDGE HARRINGTON, IS GOING TO
3 CHARGE YOU ABOUT WHAT'S REASONABLE DOUBT. SHE IS GOING TO
4 CHARGE YOU ON THE ELEMENTS OF THE LAW. REASONABLE DOUBT
5 IS NOT ANYTHING THAT'S REALLY ALL THAT COMPLICATED. THE
6 BEST DEFINITION I CAN GIVE IS THAT IN -- AGAIN, JUDGE
7 HARRINGTON, WILL CHARGE YOU ON THE LAW, THAT IT'S A DOUBT
8 THAT WOULD GIVE YOU PAUSE. IT'S THE KIND OF DOUBT THAT
9 YOU WOULD HAVE TO THINK -- FOR INSTANCE, IF YOU HAD TO
10 PLACE AN ELDERLY RELATIVE IN A NURSING HOME, OR IF YOU HAD
11 A YOUNG CHILD WHO NEEDED SURGERY, AND THE DOCTOR SAYS WE
12 CAN DO THIS NOW OR WE CAN DO IT LATER, BUT THESE ARE ALL
13 THE THINGS YOU HAVE TO CONSIDER. AND WHEN YOU THINK ABOUT
14 THOSE KINDS OF THINGS, THEN YOU KNOW THAT'S THE DOUBT THAT
15 WILL GIVE YOU PAUSE.

16 NOW, WHEN MR. SHELTON FIRST ADDRESSED YOU, I THINK
17 HIS DESCRIPTION OF THIS CASE WAS, YOU KNOW, THINGS ARE
18 MIXED AND THINGS ARE MESSED UP AND I -- MY INTERPRETATION
19 OF THAT IS, THERE ARE A LOT OF THINGS ABOUT THIS SITUATION
20 THAT WE WILL NEVER KNOW.

21 AND LIKE THE ASSISTANT SOLICITOR, I WOULD SUGGEST
22 TO YOU THAT IF THERE'S SOMETHING THAT I'M SAYING THAT
23 DOESN'T MEET WITH YOUR RECOLLECTION OF WHAT YOU'VE HEARD
24 OR WHAT YOU SAW, YOU DEFER TO YOUR JUDGEMENT, NOT MINE.

25 BUT EVIDENCE IN A CASE AND REASONABLE DOUBT IS NOT

CLOSING ARGUMENTS BY MS. KENNEDY

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1 ONLY ESTABLISHED BY THE EVIDENCE THAT YOU SEE, IT'S ALSO
2 THE EVIDENCE THAT YOU DON'T SEE. INVESTIGATOR POWELL
3 TESTIFIED THAT SLED WAS THE LEAD INVESTIGATING AGENCY IN
4 THIS CASE. THAT SLED WAS SUPPOSED TO DO FINGERPRINTS.
5 THAT SLED WAS SUPPOSED TO TAKE THE VAGINAL -- I MEAN, THE
6 -- THE SWAB FROM MR. SALISBURY'S FINGERS. THAT SLED WAS
7 SUPPOSED TO DO THE SALIVA. WE DIDN'T HAVE ANY OF THAT.

8 WHAT WE HAVE IS A DESCRIPTION OF A CRIME SCENE THAT
9 BY THE TIME SLED GOT THERE, WASN'T A CRIME SCENE ANYMORE.
10 YOU HAVE 96 INMATES IN CUBICLES, 48 ON EACH SIDE. WHAT'S
11 CLEAR FROM WHAT HAPPENED THAT NIGHT, IS THAT THERE WAS
12 TOTAL MAYHEM THERE. AND UNFORTUNATELY FOR OFFICER ADAMS,
13 THERE WERE PEOPLE STANDING AROUND WHO DIDN'T COME TO HER
14 AID. PEOPLE WHO SAW EVERYTHING, WHAT WAS GOING ON, BUT
15 ALSO PEOPLE WHO WERE TAKING ADVANTAGE OF THAT SITUATION.
16 IF YOU RECALL, I THINK IT WAS INMATE STAGGERS WHO SAID, A
17 LOT MORE PEOPLE OUT THERE THAN SHOULD HAVE BEEN. AND NOT
18 ONE OF THOSE PEOPLE WERE DOING ANYTHING TO HELP ANYBODY.

19 YOU HEARD THAT -- THAT OFFICER ADAMS TRIED TO REACH
20 PEOPLE WITH HER MIKE. YOU HEARD INMATE STAGGERS TESTIFY
21 THAT WHEN THEY TRIED TO ALERT THE PRISON PERSONNEL TO COME
22 TO THEIR ASSISTANCE, THEY COULDN'T GET ANYBODY. THE MIKE
23 WAS ON THE TABLE. SOMEBODY HAD ALREADY PICKED IT UP, I
24 GUESS, BUT WE DON'T KNOW. AND SOMEHOW OR ANOTHER IF YOU
25 ACCEPT OFFICER ADAMS' EXPLANATION, IT GOT FROM THE

1 BATHROOM, THROUGH THE DORM OFFICE, TO THE TABLE. SOMEBODY
2 PICKED IT UP. THE SAME THING WITH THE RADIO. WE DON'T
3 KNOW WHERE IT IS. THE SAME THING WITH THE PEPPER SPRAY,
4 WE DON'T KNOW WHERE IT IS. NO FINGERPRINTS FROM ANY OF
5 THAT CRIME SCENE, AND I PUT THAT IN QUOTATION MARKS, TO
6 ESTABLISH THAT THE SEQUENCE OF EVENTS WAS EXACTLY AND IS
7 EXACTLY AS OFFICER ADAMS CLAIMS THEM TO BE.

8 NOW, I'M NOT -- PLEASE DON'T MISUNDERSTAND, I'M NOT
9 CRITICIZING HER IN ANY WAY. OBVIOUSLY THERE WAS A LOT
10 GOING ON. BUT WHEN YOU, AND THE STATE, SEEK TO PUT
11 SOMEBODY -- FIND SOMEBODY GUILTY OF THE SERIOUS CHARGES
12 THAT HE'S FACING, IT'S IMPORTANT. IT'S IMPORTANT TO GET
13 IT RIGHT. BECAUSE IF YOU DON'T GET IT RIGHT, YOU DON'T
14 HAVE THE INFORMATION YOU NEED TO MAKE AN INFORMED
15 DECISION, WHICH IS YOUR JOB, ABOUT WHAT SHOULD HAPPEN.

16 NOW, AS YOU MAY RECALL WHEN I SPOKE WITH -- MY
17 CROSS EXAMINATION OF OFFICER ADAMS, SHE INDICATED THAT SHE
18 HAD ON THIS JACKET. SHE ALSO INDICATED THAT SHE HAD ON
19 THIS SHIRT -- EXCUSE ME -- AND THIS T-SHIRT AND THESE
20 LEGGINS AND THESE SOCKS.

21 NOW, WHEN YOU GET THIS BACK TO YOUR JURY ROOM, I
22 WANT YOU TO LOOK AT EACH OF THESE ITEMS. IT'S TRUE THAT
23 THE SHIRT IS TORN. YOU CAN'T DISPUTE THAT IN ANY WAY.
24 BUT THERE'S NO BUTTONS. THERE ARE BUTTONS MISSING.
25 ANOTHER THING THAT WASN'T RECOVERED FROM THE CRIME SCENE.

CLOSING ARGUMENTS BY MS. KENNEDY

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1 IF YOU REMEMBER INMATE STAGGERS, HE SAYS HE GAVE
2 HER HIS SHIRT TO PUT ON AT SOME POINT. AND OFFICER ADAMS
3 ALSO TESTIFIED THAT MR. SALISBURY WAS ABLE TO GET -- GET
4 HER PANTS OFF. AND, AGAIN, WE WENT THROUGH THE NINE BELT
5 LOOPS HERE. GET HER BELT OFF AND REMOVE ALL OF HER
6 CLOTHING, PUSHING HIS FOOT DOWN WHEN HE GOT TO A CERTAIN
7 POINT, BUT ALSO SUPPOSEDLY HOLDING A SHANK. AND, ALSO,
8 BEING -- ACCORDING TO THE PICTURES, ABLE TO HAVE HER BY
9 THE ARM, GRAB HER ARM AND BE ABLE TO COMMIT THE ALLEGED
10 ASSAULT.

11 WHAT'S MISSING FROM THE BELT, THE PEPPER SPRAY.
12 ALL OF THESE THINGS YOU HAVE TO TAKE INTO ACCOUNT, BECAUSE
13 ALL OF THESE THINGS GO TO THE INTEGRITY OF THE CRIME
14 SCENE, WHICH WASN'T PRESERVED. AND IF ANY OF THAT HAD
15 BEEN DONE, YOU WOULD BE FACING AN ENTIRELY DIFFERENT
16 QUESTION IN TERMS OF YOUR DELIBERATION, BECAUSE IT WOULD
17 HAVE -- YOU -- ABSOLUTE CERTAINTY. DNA, SALIVA, ALL OF
18 THAT, TESTED, CHEMICAL TESTING, FORENSIC TESTING.

19 NOW, THE ASSISTANT SOLICITOR BROUGHT TO YOUR
20 ATTENTION THE LETTER THAT WAS INTRODUCED INTO EVIDENCE,
21 SUGGESTING IN SOME WAY THAT MR. SALISBURY HAD FORMED SOME
22 SORT OF PLAN TO ATTACK OFFICER ADAMS. I WOULD ASK THAT
23 YOU KEEP IN MIND THAT THE TESTIMONY WAS ALSO THAT MS.
24 ADAMS WAS ON THAT UNIT ONE DAY PRIOR TO THIS. THIS WAS
25 ONLY HER SECOND NIGHT THERE.

1 I WOULD ALSO ASK THAT YOU KEEP IN MIND THAT THERE'S
2 NO DATE ON THAT LETTER. THERE IS NOTHING TO SUGGEST IN
3 THAT LETTER THAT HIS INTENTION TO -- TO ASSAULT OFFICER
4 ADAMS. IT'S JUST A LETTER TALKING ABOUT HE IS -- HIS LIFE
5 IS OVER. BEING IN PRISON. HE'S GOING TO, YOU KNOW, HURT
6 SOMEBODY. IT DOESN'T SAY OFFICER ADAMS. IT DOESN'T SAY
7 THAT AT ALL.

8 AND IF THERE WAS A PLAN FOR HIM TO DO THIS, THEN
9 WHY IS HE TELLING INVESTIGATOR POWELL IN A STATEMENT, I'M
10 REALLY SORRY THIS HAPPENED. BECAUSE IF YOU'VE GOT THE
11 PLAN AND THAT'S YOUR INTENTION TO DO IT, THEN YOU'RE
12 REALLY NOT SORRY. YOU'RE REALLY NOT SORRY AT ALL. SO,
13 THOSE ARE THE KINDS OF THINGS YOU HAVE TO THINK ABOUT.

14 I WOULD ALSO ASK THAT YOU LOOK CAREFULLY AT THE
15 PICTURES. THE PICTURES SHOW BRUISING TO OFFICER ADAMS'
16 FACE. THE PICTURES SHOW BRUISING TO HER ARMS.

17 THERE'S A PICTURE THAT SHOWS MR. SALISBURY'S TWO
18 FINGERS. THE SIGNIFICANCE OF THAT PICTURE IS SIMPLY THIS:
19 SHE TESTIFIED THAT SHE BIT HIM SO HARD THAT SHE COULD --
20 SHE COULD TASTE HIS FLESH.

21 WHEN DR. BABB CAME IN TO TESTIFY, I ASKED HIM, DID
22 YOU NOTICE ANYTHING PECULIAR ABOUT HIS FINGERS, NO. NO.
23 HAD SOME BRUISING, LACERATION, BANDAGE OVER HIS HEAD, BUT
24 NOTHING ABOUT HIS FINGER.

25 AND THOSE -- THOSE ARE JUST SOME OF THE ISSUES.

1 NOBODY IS ABLE TO EXPLAIN WHY, AS I SAID, SALIVA SWAB'S
2 WEREN'T TAKEN. ANY -- I MEAN YOU HAD ONE, TWO, THREE, I
3 THINK FOUR, ACCORDING TO INVESTIGATOR POWELL, FOUR PEOPLE
4 THERE FROM SLED. ANY ONE OF WHOM WAS ABLE TO DO THAT. I
5 MEAN, THEY WERE CAREFUL ENOUGH TO TAKE THE LETTERS, BUT
6 NOT CAREFUL ENOUGH TO GET THE FORENSIC EVIDENCE THAT WOULD
7 HELP PROVE SEXUAL ASSAULT. AND THOSE ARE THE KINDS OF
8 THINGS, LADIES AND GENTLEMEN, I WOULD ASK YOU TO CONSIDER.

9 THERE'S A LOT OF DISCREPANCY IN THE EVIDENCE. AND
10 IT'S UP TO YOU TO DECIDE WHAT WEIGHT YOU GIVE IT AND WHO
11 YOU BELIEVE AND THE SIGNIFICANCE OF IT AS IT RELATES TO
12 EVERYTHING THAT YOU'VE HEARD.

13 THE ASSISTANT SOLICITOR MENTIONED THE NURSE
14 PRACTITIONER, MS. LEOEUF, SAID IT WASN'T UNCOMMON NOT TO
15 FIND TRAUMA. THE OTHER SIDE OF THAT, IT'S NOT UNCOMMON
16 NOT TO FIND TRAUMA.

17 SO, YOU -- THE -- LITTLE THINGS, LITTLE THINGS MAKE
18 A DIFFERENCE. EACH LITTLE THING WHEN TAKEN IN THE
19 TOTALITY OF THE CIRCUMSTANCES SHOULD GIVE YOU PAUSE. THAT
20 PAUSE SHOULD MEAN THAT YOU HAVE REASONABLE DOUBT.

21 THE IRONY OF THIS WHOLE THING IS, NOBODY REALLY
22 KNOWS WHAT HAPPENED THAT NIGHT, EXCEPT OFFICER ADAMS AND
23 MR. SALISBURY. INMATE STAGGERS TESTIFIED HE SAW HER -- HE
24 DIDN'T SEE HER, HE SAW MR. SALISBURY.

25 MR. WALDRUP TESTIFIED THAT HE SAT WITH HER ON THE

1 BENCH. MR. STAGGERS SAYS HE SAW A SHANK. MR. WALDRUP
2 SAYS HE DIDN'T SEE A SHANK. WHAT IS ABSOLUTELY CLEAR WHEN
3 YOU LOOK AT THE SHANK IS THAT IT WAS TAKEN. THAT'S IT.
4 THEY RECOVERED A SHANK. MR. SALISBURY SAYS I HAD A SHANK
5 FOR MY PROTECTION, THOUGH NO INMATE BOTHERED ME. MR.
6 SALISBURY DID NOT SAY TO INVESTIGATOR POWELL THAT HE HAD A
7 SHANK IN HIS POSSESSION AT THE TIME HE WENT INTO THE DORM
8 OFFICE. THAT'S A DISTINCTION AND IT MAKES A HUGE
9 DIFFERENCE.

10 HAVING A SHANK IN YOUR POSSESSION IN YOUR CUBICLE
11 IS NOT THE SAME AS HAVING A SHANK IN YOUR HAND WHEN YOU
12 ENTER A DORM OFFICE.

13 AND THAT'S ALL I WOULD ASK OF YOU TO DO, IS TO TAKE
14 YOUR OATH, ABIDE BY YOUR OATH, WHICH I KNOW YOU'RE GOING
15 TO DO BECAUSE YOU HAVE ALL ALONG, THE PAST COUPLE OF DAYS,
16 AND APPLY THE EVIDENCE TO -- TO WHAT YOU'VE HEARD AND TO
17 THE -- TO HER HONOR'S JURY CHARGE.

18 BECAUSE -- AND THAT'S THE ONLY WAY YOU CAN GET A
19 FAIR VERDICT. THAT'S THE ONLY WAY YOU CAN DETERMINE WHAT
20 REALLY HAPPENED HERE, BECAUSE YOU ARE THE DECIDER OF THE
21 FACTS. AND IT'S LIKE THE ASSISTANT SOLICITOR MENTIONED,
22 YOU ARE THE -- YOU ARE THE PEOPLE WHO GET TO DECIDE THE
23 CREDIBILITY OF THE WITNESSES. YOU ARE THE PEOPLE WHO GET
24 TO DECIDE THE QUALITY OF THE INVESTIGATION.

25 YOU GET TO ACCESS WHAT THEY'VE OFFERED, AND YOU GET

1 TO FIGURE OUT AND NOTICE WHAT THEY HAVEN'T OFFERED. AND I
2 SUBMIT TO YOU, LADIES AND GENTLEMEN, WHEN YOU DO THAT,
3 THAT YOU WILL RETURN A PROPER VERDICT. AND IN THIS
4 INSTANCE, I THINK IT WILL BE A VERDICT OF NOT GUILTY.
5 THANK YOU, YOUR HONOR.

6 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, WE
7 HAVE REACHED THE POINT OF THE TRIAL THAT I AM NOW GOING TO
8 INSTRUCT YOU ON THE LAW.

9 IF YOU'D LIKE TO TAKE A MOMENT AND JUST STRETCH,
10 WIGGLE ABOUT IF YOU NEED TO, BEFORE I GIVE YOU MY
11 INSTRUCTIONS, NOW WOULD BE AN APPROPRIATE TIME TO DO SO.

12 LADIES AND GENTLEMEN OF THE JURY, I REMIND YOU THAT
13 DURING THIS TRIAL YOU AND I HAVE HAD CERTAIN DUTIES TO
14 PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO
15 PRESIDE OVER THE TRIAL IN THIS CASE, AND I ALSO HAVE THE
16 DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED
17 DURING THIS TRIAL.

18 YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE
19 BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN
20 FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST
21 DISREGARD IT. YOU ARE TO CONSIDER ONLY THE TESTIMONY THAT
22 HAS BEEN PRESENTED FROM THE WITNESS STAND, ANY EXHIBITS
23 WHICH HAVE BEEN MADE PART OF THE RECORD, AND ANY
24 STIPULATIONS OF COUNSEL.

25 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU ON THE LAW

1 APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE
2 SOLE JUDGE OF THE LAW OF THIS CASE. IT IS OUR DUTY AS
3 JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATED TO YOU.

4 IF YOU ALREADY HAVE AN IDEA AS TO WHAT THE LAW IS
5 OR WHAT THE LAW OUGHT TO BE, AND IT DOES NOT AGREE WITH
6 WHAT I TELL YOU NOW, YOU MUST ABANDON YOUR IDEA BECAUSE
7 YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY
8 AS I STATE IT TO YOU NOW.

9 IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY,
10 THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS
11 IN A CASE. A TRIAL JUDGE CANNOT COMMENT ON, MAKE ANY
12 STATEMENT TO THE TRIAL JURY ABOUT THE FACTS IN THIS CASE.
13 SINCE YOU, THE JURY, ARE THE SOLE JUDGES OF THE FACTS IN
14 THIS CASE, YOU ARE NOT TO INFER FROM ANYTHING THAT I HAVE
15 SAID OR DONE DURING THE PROGRESS OF THIS TRIAL IN RULING
16 UPON ADMISSIBILITY OF EVIDENCE OR OTHERWISE, OR ANYTHING
17 THAT I SAY TO YOU NOW THAT I HAVE ANY OPINION ABOUT THE
18 FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN
19 OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER
20 SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS
21 YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT AND TRUTH
22 OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

23 THE INDICTMENTS CHARGE THE DEFENDANT WITH CRIMINAL
24 SEXUAL CONDUCT IN THE FIRST DEGREE, TAKING OF A HOSTAGE BY
25 AN INMATE AND ASSAULT UPON A CORRECTIONAL OFFICER. I

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1 REMIND YOU THE FACT THAT THE DEFENDANT WAS ARRESTED,
2 CHARGED AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS
3 CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF ANY
4 GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR
5 INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL,
6 WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST
7 THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS
8 CASE IS BROUGHT INTO COURT.

9 THE INDICTMENT IN THIS CASE ALLEGES SEVERAL
10 DIFFERENT OFFENSES AGAINST THE DEFENDANT. THE CHARGES ARE
11 INDICTMENT NUMBER ONE, CRIMINAL SEXUAL CONDUCT IN THE
12 FIRST DEGREE. INDICTMENT NUMBER TWO, TAKING OF A HOSTAGE
13 BY AN INMATE. INDICTMENT NUMBER THREE, ASSAULT UPON A
14 CORRECTIONAL OFFICER.

15 EACH INDICTMENT CONTAINS A SEPARATE AND DISTINCT
16 OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON
17 THE EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY
18 YOUR DECISION AS TO ANY OTHER INDICTMENT.

19 THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON ANY
20 OR ALL OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO
21 WRITE A SEPARATE VERDICT OF GUILT -- GUILTY OR NOT GUILTY
22 FOR EACH INDICTMENT.

23 THE DEFENDANT HAS PLED NOT GUILTY TO EACH OF THESE
24 INDICTMENTS. THAT PLEA PUTS THE BURDEN OF PROOF ON THE
25 STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED

1 WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA, IS
2 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU
3 THAT IT IS AN IMPORTANT RULE OF LAW THAT THE DEFENDANT IN
4 A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE
5 CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
6 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED, UNLESS
7 GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT
8 GUILT BEYOND A REASONABLE DOUBT.

9 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
10 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT
11 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT
12 BASED UPON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
13 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS LIKE A
14 ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
15 DEFENDANT, WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS
16 BEEN STRIPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU
17 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

18 THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL
19 THEORY, IT IS JUST NOT A LEGAL PHRASE, IT IS A SUBSTANTIAL
20 RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE
21 JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S
22 GUILT BEYOND A REASONABLE DOUBT.

23 THE STATE HAS THE -- HAS THE BURDEN OF PROVING THE
24 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU
25 MAY HAVE SERVED AS JURORS BEFORE IN A CIVIL TRIAL WHERE

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1 YOU WERE TOLD IT WAS ONLY NECESSARY THAT A FACT MUST BE
2 PROVED LIKELY TRUE THAN NOT TRUE, SUCH AS BY GREATER
3 WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL
4 CASES, THE STATE'S BURDEN MUST BE MORE POWERFUL THAN THAT.
5 IT MUST BE BEYOND A REASONABLE DOUBT.

6 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
7 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT..
8 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
9 ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT
10 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

11 IF, BASED UPON YOUR CONSIDERATION OF THE EVIDENCE,
12 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
13 THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY.
14 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
15 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST
16 GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM
17 NOT GUILTY.

18 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
19 PRESENTED DURING A TRIAL, DIRECT EVIDENCE AND
20 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
21 OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT
22 SUCH AS AN EYE WITNESS. IT IS EVIDENCE WHICH IMMEDIATELY
23 ESTABLISHES THE MAIN FACT TO BE PROVED.

24 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF
25 FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A

1 FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
2 COLLATERAL FACTS FROM WHICH THE MAIN FACTS MAY BE
3 INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE
4 AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

5 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
6 WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR
7 CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
8 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
9 DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN
10 THIS CASE. AND AFTER WEIGHING ALL THE EVIDENCE OF -- IN
11 THE CASE, YOU ARE NOT CONVINCED OF THE GUILT OF THE
12 DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE
13 DEFENDANT NOT GUILTY.

14 NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF
15 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY
16 SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY, AS
17 JURORS, TO ANALYZE AND EVALUATE THE EVIDENCE AND DETERMINE
18 WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

19 IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO
20 HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS
21 OVER SEVERAL WITNESSES. YOU MAY BELIEVE PART OF THE
22 TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF
23 THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE
24 TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE
25 TESTIMONY OF A WITNESS IN ITS ENTIRETY.

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1 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED
2 TO YOU ANY INTEREST, BIAS, PREJUDICE OR OTHER MOTIVE IN
3 THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND
4 MANNER OF THE WITNESS WHILE TESTIFYING ON THE WITNESS
5 STAND.

6 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
7 WITNESSES TO TESTIFY TO OPINIONS OR TO CONCLUSIONS. AN
8 EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL EXPERT
9 WITNESSES. A WITNESS WHO BY EDUCATION AND EXPERIENCE HAS
10 BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION OR CALLING,
11 MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS,
12 IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT AND MAY ALSO
13 STATE THE REASONS FOR THE OPINION.

14 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
15 EVIDENCE IN THIS CASE, AND LIKE ANY OTHER EVIDENCE, GIVE
16 IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT
17 THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON
18 SUFFICIENT EDUCATION OR EXPERIENCE, OR IF YOU CONCLUDE
19 THAT THE REASONS GIVEN FOR THE -- GIVEN IN SUPPORT OF THE
20 OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED
21 BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

22 AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO
23 GREATER WEIGHT THAN THAT OF ANY OTHER WITNESS, SIMPLY
24 BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT
25 REQUIRED TO ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS

1 NOT CONTRADICTED.

2 I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT THE
3 DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED
4 BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR
5 CONSIDERATION ON THE QUESTION OF THE GUILT OR INNOCENCE OF
6 THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY
7 MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL
8 RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT
9 MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I
10 REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION
11 WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE
12 DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT
13 TESTIFY, SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM.
14 THE BURDEN OF PROOF, AS I STATED TO YOU, IS ON THE STATE.
15 THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE
16 BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND
17 A REASONABLE DOUBT.

18 AN ISSUE IN THIS CASE IS THE IDENTIFICATION OF THE
19 DEFENDANT AS THE PERSON WHO COMMITTED THE CRIME. THE
20 STATE HAS THE BURDEN OF PROVING THE IDENTITY BEYOND A
21 REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A
22 REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF
23 THE DEFENDANT BEFORE YOU MAY CONVICT THE DEFENDANT.

24 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF
25 OR IMPRESSION BY A WITNESS. YOU MUST DETERMINE THE

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1 ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT. YOU MUST
2 CONSIDER THE BELIEVABILITY OF EACH IDENTIFICATION
3 WITNESSES IN THE SAME WAY AS ANY OTHER WITNESS. YOU MAY
4 CONSIDER WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY
5 TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE. THIS
6 WILL BE AFFECTED BY THINGS LIKE HOW LONG OR SHORT A TIME
7 WAS AVAILABLE, HOW FAR OR CLOSE THE WITNESS WAS, THE
8 LIGHTING CONDITIONS AND WHETHER THE WITNESS HAD A CHANCE
9 TO SEE OR KNOW THE PERSON IN THE PAST.

10 ONCE AGAIN, I INSTRUCT YOU THE BURDEN OF PROOF ON
11 THE STATE EXTENDS TO EVERY ELEMENT OF THE CRIME CHARGED
12 AND THIS SPECIFICALLY INCLUDES THE BURDEN OF PROVING
13 BEYOND A REASONABLE DOUBT THE IDENTITY OF THE DEFENDANT AS
14 THE PERSON WHO COMMITTED THE CRIME.

15 IF, AFTER EXAMINING THE TESTIMONY, YOU HAVE A
16 REASONABLE DOUBT AS TO THE ACCURACY OF THAT
17 IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY.

18 IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL
19 INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE
20 REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME
21 MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS OR
22 CRIMINAL NEGLIGENCE.

23 CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND
24 A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER
25 THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES

1 SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE
2 INTENT BY MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL
3 SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT
4 THAT PERSON HAD IN MIND. SO, THE LAW SAYS THAT THE
5 CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES
6 SHOWN TO EXIST.

7 THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR
8 NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. IT IS NOT
9 NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE
10 EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN
11 THE SAME WAY AS ANY OTHER FACT TAKING INTO CONSIDERATION
12 ACTS OF THE PARTIES, AND ALL THE FACTS AND CIRCUMSTANCES
13 OF THE CASE.

14 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS
15 WRONG DOING. IT IS UP TO YOU TO DETERMINE WHAT THE
16 DEFENDANT INTENDED TO DO BASED UPON THE CIRCUMSTANCES
17 SHOWN TO HAVE EXISTED.

18 CRIMINAL INTENT CAN RISE FROM ACTION OR A FAILURE
19 TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS OR A
20 AN INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT IS
21 CONSIDERED BY LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT.

22 A STATEMENT ALLEGED TO HAVE MADE BY THE DEFENDANT
23 HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE
24 COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I
25 INSTRUCT YOU THAT YOU, THE JURY, MAKE THE ULTIMATE

1 DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE
2 STATEMENT.

3 IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST
4 DETERMINE WHETHER OR NOT THE STATEMENT WAS MADE BY THE
5 DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS
6 MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE,
7 FORCE, FEAR, THREATS, COERCION, INTIMIDATION OR BY HOPE OR
8 PROMISE OF LENIENCY, OR A REWARD OF ANY KIND.

9 IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY,
10 YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE
11 DEFENDANT AND THE DETAILS OF THE QUESTIONING.

12 SOME OF THE FACTORS THAT YOU MAY CONSIDER, THE AGE
13 OF THE DEFENDANT; THE DEFENDANT'S EDUCATION OR LACK OF
14 EDUCATION; THE DEFENDANT'S MENTAL ABILITY OR CAPACITY; THE
15 DEFENDANT'S IQ OR INTELLIGENCE; THE DEFENDANT'S BACKGROUND
16 AND ENVIRONMENT; THE PLACE AND LENGTH OF DETENTION; THE
17 NATURE OF THE QUESTIONING; THE ADVICE OR LACK THEREOF TO
18 THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT
19 NOT LIMITED TO THE RIGHT TO REMAIN SILENT, THAT ANY
20 STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW, THE
21 RIGHT TO HAVE A LAWYER PRESENT. THAT IF HE COULD NOT
22 AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED AND THAT HE
23 COULD STOP MAKING A STATEMENT AT ANY TIME.

24 YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING
25 CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED

1 STATEMENT. THE STATE HAS THE BURDEN OF PROVING BEYOND A
2 REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY.
3 IF YOU DETERMINE THAT IT WAS, YOU MAY GIVE THE STATEMENT
4 ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER.

5 YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE
6 GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THAT THE
7 ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT
8 OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT
9 ALL.

10 THE DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL
11 CONDUCT IN THE FIRST DEGREE. THE FIRST ELEMENT WHICH THE
12 STATE MUST PROVE BEYOND A REASONABLE DOUBT, IS THAT THE
13 DEFENDANT ENGAGED IN A SEXUAL INTERCOURSE, CUNNILINGUS,
14 FELLATIO, ANAL INTERCOURSE OR ANY INTRUSION, HOWEVER
15 SLIGHT, OF ANY PART OF A PERSON'S BODY, OF ANY OBJECT INTO
16 THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY,
17 EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FROM MEDICALLY
18 RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

19 IF YOU FIND THAT THE STATE HAS NOT SHOWN BEYOND A
20 REASONABLE DOUBT THAT A SEXUAL BATTERY OCCURRED, YOU WOULD
21 STOP DELIBERATING AND YOUR VERDICT WOULD HAVE TO BE NOT
22 GUILTY.

23 IF YOU FIND THAT A SEXUAL BATTERY DID OCCUR, YOU
24 MUST THEN DECIDE THAT THE STATE HAS PROVEN BEYOND A
25 REASONABLE DOUBT THAT THE DEFENDANT USED AGGRAVATED FORCE

1 TO ACCOMPLISH THE SEXUAL BATTERY.

2 AGGRAVATED FORCE MEANS THE USE OF PHYSICAL FORCE OR
3 PHYSICAL VIOLENCE OF A HIGH AND AGGRAVATED NATURE TO
4 OVERCOME THE VICTIM. THIS INCLUDES THE THREAT OF USING A
5 DEADLY WEAPON, OR THE VICTIM SUBMITTED TO SEXUAL BATTERY
6 WHILE THE VICTIM WAS ALSO THE VICTIM OF FORCIBLE
7 CONFINEMENT, KIDNAPPING, ROBBERY, EXTORTION, BURGLARY,
8 HOUSEBREAKING OR OTHER SIMILAR ACT OR OFFENSE.

9 IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
10 BEYOND A REASONABLE DOUBT, THAT THE DEFENDANT IS GUILTY OF
11 FIRST DEGREE CRIMINAL SEXUAL CONDUCT, YOU MAY THEN
12 CONSIDER WHETHER THE STATE HAS PROVEN THAT THE DEFENDANT
13 IS GUILTY OF SECOND DEGREE CRIMINAL SEXUAL CONDUCT.

14 SECOND DEGREE CRIMINAL SEXUAL CONDUCT CONTAINS ALL
15 OF THE ELEMENTS OF FIRST DEGREE CRIMINAL SEXUAL CONDUCT,
16 EXCEPT FOR THE CIRCUMSTANCES OF AGGRAVATION. INSTEAD THE
17 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
18 DEFENDANT USED AGGRAVATED COERCION TO ACCOMPLISH THE
19 SEXUAL BATTERY.

20 AGGRAVATED COERCION MEANS THAT THE DEFENDANT
21 THREATENED TO USE FORCE OR VIOLENCE OF A HIGH AND
22 AGGRAVATED NATURE TO OVERCOME THE VICTIM OR ANOTHER PERSON
23 IF THE VICTIM REASONABLY BELIEVED THE DEFENDANT HAD THE
24 PRESENT ABILITY TO CARRY OUT THE THREAT. AGGRAVATED
25 COERCION MAY ALSO EXIST IF THE DEFENDANT THREATENED TO

1 RETALIATE IN THE FUTURE BY THE INFLECTION OF PHYSICAL
2 HARM, KIDNAPPING, OR EXTORTION UNDER CIRCUMSTANCES OF
3 AGGRAVATION AGAINST THE VICTIM OR ANY OTHER PERSON.

4 THE DEFENDANT IS ALSO CHARGED WITH THE TAKING OF A
5 HOSTAGE BY AN INMATE. A PERSON IS IN VIOLATION IF HE IS
6 AN INMATE IN A STATE CORRECTIONAL FACILITY AND ACTING
7 ALONE OR IN CONCERT WITH OTHERS, WHO BY THREATS, COERCION,
8 INTIMIDATION OR PHYSICAL FORCE, TAKES, HOLDS, DECOYS OR
9 CARRIES AWAY ANY PERSON AS A HOSTAGE FOR ANY REASON
10 WHATSOEVER.

11 THE DEFENDANT IS ALSO CHARGED WITH ASSAULT UPON A
12 CORRECTIONAL OFFICER. A PERSON IS IN VIOLATION IF HE
13 COMMITS AN ASSAULT UPON AN EMPLOYEE OF A STATE OR LOCAL
14 CORRECTIONAL FACILITY PERFORMING JOB RELATED DUTIES.

15 AN ASSAULT IS THE INTENTIONAL CREATION OF FEAR OF
16 IMMEDIATE BODILY HARM. IT IS NOT NECESSARY THAT THE
17 ATTEMPTED INJURY OR HARM ACTUALLY TAKE PLACE. FOR
18 EXAMPLE, IF I WALK UP TO YOU AND WHEN WE ARE WITHIN ARM'S
19 REACH, I DRAW BACK TO HIT YOU, THAT IS AN ASSAULT. WHILE
20 WORDS ALONE DO NOT CONSTITUTE AN ASSAULT, IF BY WORDS AND
21 CONDUCT A PERSON INTENTIONALLY CREATES A REASONABLE FEAR
22 OF BODILY HARM, IT IS AN ASSAULT.

23 EXAMPLES OF ASSAULTS INCLUDE ANY ATTEMPT TO DO
24 VIOLENCE IN A RUDE, ANGRY OR RESENTFUL MANNER, RAISING A
25 STICK OR FIST WITHIN STRIKING DISTANCE, POINTING A GUN

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1 WITHIN THE DISTANCE IT WILL CARRY AND SPITTING IN
2 ANOTHER'S FACE.

3 LADIES AND GENTLEMEN, THERE ARE THREE INDICTMENTS
4 AND ACCORDINGLY THERE ARE THREE VERDICT FORMS
5 CORRESPONDING TO THE INDICTMENT. THERE IS ABSOLUTELY NO
6 SIGNIFICANCE WHATSOEVER IN THE WAY THAT I INSTRUCT YOU ON
7 THESE VERDICT FORMS, SIMPLY ONE VERDICT MUST GO FIRST.

8 INDICTMENT 2008-GS-08-1687, THE STATE OF SOUTH
9 CAROLINA VS. GEORGE SALISBURY. NUMBER ONE, WE, THE JURY,
10 FIND THE DEFENDANT NOT GUILTY, OR WE, THE JURY, FIND THE
11 DEFENDANT GUILTY OF CRIMINAL SEXUAL CONDUCT FIRST DEGREE
12 OR CRIMINAL SEXUAL CONDUCT SECOND DEGREE.

13 MADAM FOREPERSON, YOU WILL CHECK THE APPROPRIATE
14 BOX ONCE THERE IS A UNANIMOUS DECISION OF THE JURY, YOU
15 WILL SIGN THE VERDICT FORM AND DATE THE VERDICT FORM.

16 INDICTMENT 2008-GS-08-1074, THE STATE OF SOUTH
17 CAROLINA VS. GEORGE SALISBURY. NUMBER ONE, WE, THE JURY,
18 FIND THE DEFENDANT NOT GUILTY OR WE, THE JURY, FIND THE
19 DEFENDANT GUILTY OF TAKING OF A HOSTAGE BY AN INMATE.
20 AGAIN, MA'AM FOREPERSON, YOU WILL SIGN THE VERDICT FORM,
21 DATE THE VERDICT FORM INDICATING THAT YOU CERTIFY THAT
22 THIS IS THE DECISION AND IT IS THE UNANIMOUS DECISION OF
23 THE JURY.

24 VERDICT FORM FOR INDICTMENT 2008-GS-08-1688, THE
25 STATE OF SOUTH CAROLINA VS. GEORGE SALISBURY, WE, THE

1 JURY, FIND THE DEFENDANT NOT GUILTY OR WE, THE JURY, FIND
2 THE DEFENDANT GUILTY OF ASSAULT ON A CORRECTIONAL OFFICER.
3 AGAIN, MADAM FOREPERSON, YOU WILL SIGN THE VERDICT FORM
4 AND DATE IT INDICATING THAT THIS IS THE UNANIMOUS DECISION
5 OF THE JURY AND THAT YOU ARE CERTIFYING AS SUCH.

6 ONCE YOU HAVE REACHED A VERDICT, YOU WILL KNOCK ON
7 THE JURY ROOM DOOR, INFORM THE BAILIFF THAT YOU HAVE
8 REACHED A VERDICT. AND AT THAT TIME, WE WILL RECEIVE YOU
9 BACK INTO THE COURTROOM.

10 I ASK THAT YOU GO NOW IN -- BACK INTO YOUR JURY
11 ROOM. DO NOT BEGIN YOUR DELIBERATIONS. DO NOT BEGIN
12 DISCUSSING THIS CASE. THERE ARE SOME MATTERS OF LAW THAT
13 I MUST TAKE UP OUTSIDE OF YOUR PRESENCE AS WELL AS WE WILL
14 GET THE VERDICT FORMS AND THE INDICTMENTS AS WELL AS THE
15 EXHIBITS THAT HAVE BEEN INTRODUCED INTO EVIDENCE. YOU
16 WILL HAVE THOSE IN YOUR JURY ROOM DURING YOUR
17 DELIBERATIONS.

18 PLEASE DO NOT BEGIN YOUR DELIBERATIONS UNTIL YOU
19 ARE INSTRUCTED TO DO SO BY THE BAILIFF. MR. RIVERS AND
20 MR. ARCHER, AS ALTERNATES, YOU HAVE COMPLETED YOUR SERVICE
21 FOR -- FOR THIS TRIAL. I ASK THAT YOU REMAIN. AND IF YOU
22 WILL -- JUST PUT THEM IN A SEPARATE ROOM. AGAIN, UNTIL
23 YOU ARE TOLD TO DO SO, DO NOT DISCUSS THIS CASE AMONGST
24 YOURSELVES EITHER OR WITH ANY INDIVIDUAL UNTIL I HAVE
25 INSTRUCTED YOU OR THE BAILIFF HAS INSTRUCTED YOU THAT YOU

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1 MAY DO SO. AGAIN, I THANK YOU FOR YOUR SERVICE.

2 PLEASE RISE FOR THE JURY.

3 (WHEREUPON, JURY LEFT THE COURTROOM AT 4:15 P.M.)

4 **THE COURT:** THANK YOU. BE SEATED. MS. WILLIAMS,
5 YOU HAVE A PROBLEM?

6 **MS. WILLIAMS:** YES, YOUR HONOR. THERE IS JUST ONE
7 WORD THAT'S MISSING FROM THE JURY INSTRUCTION FOR TAKING
8 OF HOSTAGES, BUT IN MY OPINION IT'S A CRITICAL WORD. IT'S
9 ON THE SECOND TO LAST LINE, IT SAYS "CARRIES AWAY ANY
10 PERSON"---

11 **COURT REPORTER:** I'M SORRY. THE SECOND TO LAST
12 LINE WHAT?

13 **MS. WILLIAMS:** THE SECOND LINE, THE LAST LINE ON
14 TAKING OF HOSTAGES, IT SAYS "CARRIES AWAY ANY PERSON AS A
15 HOSTAGE OR" -- AND IT DOESN'T HAVE "OR", IT JUST HAS "AS A
16 HOSTAGE FOR ANY REASON WHATSOEVER". AND IT SHOULD BE "OR
17 FOR ANY REASON WHATSOEVER". SO, I JUST DON'T WANT THE
18 JURY TO BE LEFT WITH THE IMPRESSION THAT -- THAT YOU HAVE
19 TO CARRY SOMEONE AWAY AS A HOSTAGE, "IT'S HOLDS, DECOYS OR
20 CARRIES AWAY ANY PERSON FOR ANY REASON WHATSOEVER OR FOR A
21 HOSTAGE", AND THAT "OR" IS MISSING FROM THE INSTRUCTIONS.

22 **THE COURT:** HOW SHOULD IT READ, MS. WILLIAMS?

23 **MS. WILLIAMS:** IT SHOULD READ -- AND I'M JUST
24 READING STRAIGHT FROM THE STATUTE, "THROUGH BY THREATS,
25 COERCION, INTIMIDATION OR PHYSICAL FORCE, TAKES, HOLDS,

1 DECOYS OR CARRIES AWAY ANY PERSON AS A HOSTAGE OR FOR ANY
2 OTHER REASON WHATSOEVER."

3 THE COURT: WE'RE PULLING THE STATUTE RIGHT NOW,
4 MS. WILLIAMS.

5 MS. WILLIAMS: I'M SORRY. I SHOULD HAVE CAUGHT IT.
6 I'M SORRY THAT WE DIDN'T SEE IT.

7 THE COURT: MR. SHELTON? MR. SHELTON?

8 MR. SHELTON: YES, YOUR HONOR.

9 THE COURT: YOUR RESPONSE?

10 MR. SHELTON: I'M TRYING --

11 THE COURT: WE'RE LOOKING SPECIFICALLY ON MY PAGE
12 24, WHICH IS HOSTAGE TAKING BY AN INMATE.

13 MR. SHELTON: IT'S THE ALL CAPS IN YOURS THAT'S
14 PLAYING WITH MY EYES RIGHT NOW, YOUR HONOR, SORRY.

15 THE COURT: MY QUESTION TO YOU IS -- WELL, LET ME
16 ASK YOU, MS. WILLIAMS, ARE YOU REQUESTING THAT I BRING THE
17 JURY BACK IN AND GIVE THEM THE OR?

18 MS. WILLIAMS: I AM. AND I WOULDN'T ASK THE COURT
19 TO DO THAT IF I DIDN'T THINK IT MADE A DIFFERENCE. BUT IT
20 SETS UP THAT THEY CAN FIND HIM GUILTY OF DOING THIS OR
21 THAT, AND I DON'T WANT THEM TO THINK THAT FOR ANY REASON
22 WHATSOEVER, IT'S JUST MODIFYING HOSTAGE, IT'S OR FOR ANY
23 OTHER REASON. AND IT GOES BACK TO THE VERB.

24 THE COURT: MS. CROSS, CAN YOU GO BACK AND SEE IF I
25 STATED FOR, OR DID I SAY OR FOR. MS. WILLIAMS, DID YOU

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1 HEAR ME SAY JUST "FOR" OR DID I ---

2 MS. WILLIAMS: JUST "FOR", NO "OR", I DON'T THINK
3 YOU SAID "OR" AT ALL. I THINK ---

4 THE COURT: DO YOU -- ARE YOU -- DO KNOW OR DO YOU
5 THINK, OR DO YOU NOT KNOW FOR SURE?

6 MS. WILLIAMS: I KNOW. I KNOW.

7 THE COURT: OKAY. PLEASE BRING IN THE JURY, AND
8 OUR TWO ALTERNATES.

9 MR. SHELTON: YOUR HONOR?

10 THE COURT: PLEASE RISE FOR THE JURY.

11 THE BAILIFF: THEY NEED ONE MORE MINUTE.

12 THE COURT: ALL RIGHT. PLEASE BE SEATED. LET ME
13 KNOW WHEN THEY'RE READY. MR. SHELTON, YOU WERE NOT -- OH,
14 PLEASE RISE FOR THE JURY.

15 (WHEREUPON, JURY ENTERED THE COURTROOM AT 4:21
16 P.M.)

17 THE COURT: Y'ALL MAY BE SEATED. THANK YOU, BE
18 SEATED. LADIES AND GENTLEMEN OF THE JURY, I MUST CLARIFY
19 PART OF MY INSTRUCTION.

20 THE DEFENDANT IS CHARGED WITH THE TAKING OF
21 HOSTAGES BY AN INMATE. A PERSON IS IN VIOLATION IF HE IS
22 AN INMATE IN A STATE CORRECTIONAL FACILITY AND ACTING
23 ALONE OR IN CONCERT WITH OTHERS, WHO BY THREATS, COERCION,
24 INTIMIDATION, OR PHYSICAL FORCE, TAKES, HOLDS, DECOYS, OR
25 CARRIES AWAY ANY PERSON AS A HOSTAGE OR FOR ANY REASON

1 WHATSOEVER.

2 LADIES AND GENTLEMEN, I AGAIN -- WE ARE IN THE
3 PROCESS OF COLLECTING THE EXHIBITS TO GO BACK TO YOU.
4 AGAIN, PLEASE DO NOT BEGIN YOUR DELIBERATIONS. DO NOT
5 BEGIN DISCUSSING THIS CASE AMONGST YOURSELVES UNTIL YOU
6 ARE TOLD TO DO SO BY THE BAILIFF. THANK YOU. PLEASE RISE
7 FOR THE JURY.

8 (WHEREUPON, JURY LEFT THE COURTROOM AT 4:23 P.M.)

9 **THE COURT:** THANK YOU. BE SEATED.

10 **MS. WILLIAMS:** THANK YOU SO MUCH.

11 **THE COURT:** ANY OTHER -- I'M ASSUMING, MS.
12 WILLIAMS, THAT THAT WAS THE ONLY PROBLEM YOU HAD WITH THE
13 COURT'S CHARGE?

14 **MS. WILLIAMS:** YES, YOUR HONOR.

15 **THE COURT:** MR. SHELTON?

16 **MR. SHELTON:** I HAD NO PROBLEMS, YOUR HONOR.

17 **THE COURT:** ALL RIGHT. THANK YOU. WE HAVE
18 ALREADY, I'M ASSUMING, GATHERED THE EXHIBITS THAT ARE TO
19 GO BACK, THAT HAVE BEEN INTRODUCED INTO EVIDENCE.

20 **COURT REPORTER:** NO, YOUR HONOR. THEY HAVEN'T.

21 **THE COURT:** ALL RIGHT. WE HAD A CHARGE -- JUST FOR
22 THE RECORD, WE HAD A CHARGE CONFERENCE IN WHICH WE WENT
23 OVER THE COURT'S CHARGES. WE ALSO WENT OVER THE THREE
24 VERDICT FORMS. WERE THERE ANY OBJECTIONS TO THE VERDICT
25 FORMS FROM THE STATE?

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

2 THE COURT: FROM THE DEFENSE?

3 MR. SHELTON: NONE FROM THE DEFENSE.

4 THE COURT: ALL RIGHT. THEN THESE WILL GO BACK.

5 (WHEREUPON, EXHIBITS WERE REVIEWED BY COUNSEL.)

6 THE COURT: BEFORE YOU TAKE THOSE OUT, I WANT IT ON
7 THE RECORD ON WHICH ONES ARE GOING BACK SO THE RECORD IS
8 CLEAR. MS. WILLIAMS.

9 MS. WILLIAMS: YES.

10 THE COURT: OR -- I AM STILL ON THE BENCH AND WE
11 ARE TRYING TO PUT ON THE RECORD THE EXHIBITS THAT ARE
12 GOING BACK. MS. WILLIAMS, IF YOU WILL STATE FOR THE
13 RECORD -- THERE HAS BEEN NO OBJECTION TO THE COURT'S
14 VERDICT FORMS. I NEED TO KNOW WHICH EXHIBITS ARE GOING
15 BACK FOR THE RECORD.

16 MS. WILLIAMS: THANK YOU, YOUR HONOR. 1-A.
17 EXHIBITS 2 THROUGH 20. EXHIBIT 23. EXHIBIT 27. EXHIBIT
18 28. EXHIBIT 29. AND EXHIBIT 32.

19 THE COURT: MR. SHELTON, YOU ARE STANDING NEXT TO
20 MS. WILLIAMS. YOU AGREE THAT THOSE ARE THE EXHIBITS THAT
21 ARE GOING BACK TO THE JURY ROOM?

22 MR. SHELTON: YES, YOUR HONOR. NO OBJECTION.

23 THE COURT: NO OBJECTION. MR. PONTIFF, MS. SMITH,
24 YOU MAY TAKE ALL OF THE EXHIBITS BACK TO THE JURY ROOM.
25 PLEASE ENSURE THAT THE TWO ALTERNATES ARE NOT IN THE JURY

1 ROOM WHEN THEY GO BACK. AND HAVE ALL THE JURORS COME BACK
2 FROM SMOKING?

3 BAILIFF: YES, MA'AM. THEY'RE BACK.

4 THE COURT: ALL RIGHT. TELL THEM THEY MAY BEGIN
5 THEIR DELIBERATIONS. THANK YOU. ANYTHING FURTHER FROM
6 THE STATE BEFORE WE RECESS AWAITING THE VERDICT?

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

8 THE COURT: FROM THE DEFENSE?

9 MR. SHELTON: NO, NOT AT THIS TIME, YOUR HONOR.

10 MS. KENNEDY: YOUR HONOR, I JUST HAVE A QUESTION
11 ABOUT THE --

12 THE COURT: YES, MA'AM.

13 MS. KENNEDY: I'M NOT -- WE WERE HANDED THE
14 SUBPOENAS. I DON'T KNOW IF THESE ARE OUR COPIES.

15 MS. WILLIAMS: I CAN MAKE YOU COPIES.

16 MS. KENNEDY: I JUST --

17 MS. WILLIAMS: I'M HAPPY TO MAKE YOU COPIES.

18 MS. KENNEDY: I DON'T KNOW IF THE COURT HAD BEEN
19 PROVIDED THOSE TO -- AS PART --

20 THE COURT: I JUST TOOK ORAL TESTIMONY, I DID NOT
21 NEED TO SEE A COPY OF THE SUBPOENA. BUT THANK YOU FOR
22 BRINGING THAT TO THE COURT'S ATTENTION, MS. KENNEDY.

23 ANYTHING FROM THE DEFENSE BEFORE RECESS AWAITING A
24 VERDICT?

25 MR. SHELTON: NOTHING, YOUR HONOR.

STATE VS. SALISBURY JURY CHARGE

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1 **THE COURT:** ALL RIGHT. WE WILL BE IN RECESS. MR.
2 ALFARO, ANYTHING UNRELATED TO THIS CASE THAT WE CAN DO
3 WHILE WE'RE WAITING ON A VERDICT?

4 **MR. ALFARO:** WE MIGHT HAVE A BOND---

5 **THE COURT:** ALL RIGHT. IF YOU'LL LET THE COURT
6 KNOW, I'LL BE MORE THAN HAPPY TO DO ANY BONDS OR ANY PLEAS
7 IF WE HAVE ANYTHING READY.

8 **MR. ALFARO:** OKAY.

9 **THE COURT:** ALL RIGHT. THANK YOU.

10 (WHEREUPON, THE COURT RECESSED AT 4:30 P.M.)

11 (WHEREUPON, THE COURT RECONVENED AT 5:40 P.M.)

12 **THE COURT:** THANK YOU. BE SEATED. I UNDERSTAND WE
13 HAVE A VERDICT. ANYTHING FROM THE STATE BEFORE WE BRING
14 IN THE JURY?

15 **MS. WILLIAMS:** NOTHING FROM THE STATE, YOUR HONOR.

16 **THE COURT:** FROM THE DEFENDANT?

17 **MR. SHELTON:** JUST BRIEFLY, YOUR HONOR, THAT WE DID
18 HAVE -- THAT THE JURY HAD ONE QUESTION ABOUT, I THINK,
19 CRIMINAL SEXUAL CONDUCT SECOND IN CHAMBERS -- IN CHAMBERS.
20 YOUR HONOR HAD COME TO -- OVER MY OBJECTION -- TO GIVE THE
21 COMPLETE PACKET OF JURY INSTRUCTIONS TO THE JURY.

22 **THE COURT:** THANK YOU, MR. SHELTON. WE DID, DURING
23 THE BREAK, RECEIVE A NOTE FROM THE JURY. I RESPONDED --
24 THE QUESTION -- AND IT WILL BE MARKED WHATEVER IS THE NEXT
25 NUMBER FOR THE COURT'S EXHIBIT -- MY RESPONSE WAS TO SEND

1 BACK THE ENTIRE JURY INSTRUCTIONS. I NOTE YOUR OBJECTION,
2 MR. SHELTON.

3 (COURT'S EXHIBIT NO. 2 RECEIVED INTO EVIDENCE.)

4 **THE COURT:** ANYTHING ELSE?

5 **MS. WILLIAMS:** NOTHING FROM THE STATE.

6 **THE COURT:** PLEASE BRING IN THE JURY. PLEASE RISE
7 FOR THE JURY. I REMIND EVERYONE IN THE AUDIENCE, I KNOW
8 THIS MAY BE AN EMOTIONAL VERDICT, BUT PLEASE REMEMBER THAT
9 YOU ARE IN A COURTROOM.

10 (WHEREUPON, JURY ENTERED THE COURTROOM AT 5:41
11 P.M.)

12 **THE COURT:** THANK YOU. PLEASE BE SEATED. MADAM
13 FOREPERSON, I UNDERSTAND THAT YOU HAVE REACHED A VERDICT.

14 **MADAM FORELADY:** YES, WE HAVE, YOUR HONOR.

15 **THE COURT:** IF YOU WILL PLEASE HAND THE VERDICT
16 FORMS TO THE BAILIFF.

17 (FORMS GIVEN TO BAILIFF.)

18 **THE COURT:** WOULD THE DEFENDANT PLEASE RISE.

19 **THE CLERK:** THE STATE OF SOUTH CAROLINA VS. GEORGE
20 SALISBURY, INDICTMENT NUMBER 2008-GS-08-1074. WE, THE
21 JURY, FIND THE DEFENDANT GUILTY OF TAKING OF THE HOSTAGE
22 BY AN INMATE. SIGNED BY FOREPERSON, DEBORAH ROYAL.

23 INDICTMENT GS-08-1688, WE, THE JURY, FIND THE
24 DEFENDANT GUILTY OF ASSAULT ON A CORRECTIONS OFFICER.
25 SIGNED BY FOREPERSON, DEBORAH ROYAL.

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1 INDICTMENT NUMBER 2008-GS-08-1687, WE, THE JURY,
2 FIND THE DEFENDANT GUILTY OF CRIMINAL SEXUAL CONDUCT FIRST
3 DEGREE. SIGNED BY FOREPERSON, DEBORAH ROYAL.

4 MADAM FORELADY AND LADIES AND GENTLEMEN OF THE
5 JURY, IF THIS IS YOUR VERDICT, PLEASE SIGNIFY BY RAISING
6 YOUR RIGHT HAND AT THIS TIME.

7 (WHEREUPON, ALL JURORS RAISED THEIR RIGHT HANDS.)

8 THE CLERK: THANK YOU.

9 THE COURT: THANK YOU. PLEASE BE SEATED. ANY
10 MATTERS -- MS. WILLIAMS, ANY MATTERS BEFORE I RELEASE THE
11 JURORS?

12 MS. WILLIAMS: NOTHING FROM THE STATE, YOUR HONOR.

13 THE COURT: ANY MATTERS FROM THE DEFENSE?

14 MR. SHELTON: YOUR HONOR, WE REQUEST THAT THE JURY
15 BE POLLED.

16 THE COURT: MADAM CLERK, PLEASE POLL THE JURY.

17 THE CLERK: JUROR NUMBER 127, DEBORAH ROYAL. IS
18 THIS YOUR VERDICT?

19 MS. ROYAL: YES.

20 THE CLERK: IS IT STILL YOUR VERDICT?

21 MS. ROYAL: YES.

22 THE CLERK: JUROR NUMBER 101, DAVID C. MYERS, II.
23 IS THIS YOUR VERDICT?

24 MR. MYERS: YES.

25 THE CLERK: IS IT STILL YOUR VERDICT?

1 MR. MYERS: YES.

2 THE CLERK: JUROR NUMBER 76, SUSAN G. JOHNSON. IS
3 THIS YOUR VERDICT?

4 MS. JOHNSON: YES.

5 THE CLERK: IS IT STILL YOUR VERDICT?

6 MS. JOHNSON: YES.

7 THE CLERK: JUROR NUMBER 104, CYNTHIA J. NELSON.
8 IS THIS YOUR VERDICT?

9 MS. NELSON: YES.

10 THE CLERK: IS IT STILL YOUR VERDICT?

11 MS. NELSON: YES.

12 THE CLERK: JUROR 109, TRACY L. PATRICK. IS THIS
13 YOUR VERDICT?

14 MS. PATRICK: YES.

15 THE CLERK: IS IT STILL YOUR VERDICT?

16 MS. PATRICK: YES.

17 THE CLERK: JUROR NUMBER 26, CYNTHIA P. DAHLMAN.
18 IS THIS YOUR VERDICT?

19 MS. DAHLMAN: YES.

20 THE CLERK: IS IT STILL YOUR VERDICT?

21 MS. DAHLMAN: YES.

22 THE CLERK: JUROR 159, JOHN B. WADE. IS THIS YOUR
23 VERDICT?

24 MR. WADE: YES.

25 THE CLERK: IS IT STILL YOUR VERDICT?

1 MR. WADE: YES.

2 THE CLERK: JUROR 136, ADAM W. SHEELER. IS THIS
3 YOUR VERDICT?

4 MR. SHEELER: YES.

5 THE CLERK: IS IT STILL YOUR VERDICT?

6 MR. SHEELER: YES.

7 THE CLERK: JUROR 40, PATRICK L. FOURNIER.

8 MR. FOURNIER: YES.

9 THE CLERK: IS THIS YOUR VERDICT?

10 MR. FOURNIER: YES.

11 THE CLERK: IS IT STILL YOUR VERDICT?

12 MR. FOURNIER: YES.

13 THE CLERK: JUROR 150, SHIRLEY G. THOMPSON. IS
14 THIS YOUR VERDICT?

15 MS. THOMPSON: YES.

16 THE CLERK: IS IT STILL YOUR VERDICT?

17 MS. THOMPSON: YES.

18 THE CLERK: JUROR 23, MARK A. COLSON. IS THIS YOUR
19 VERDICT?

20 MR. COLSON: YES.

21 THE CLERK: IS IT STILL YOUR VERDICT?

22 MR. COLSON: YES.

23 THE CLERK: JUROR NUMBER 88, ROGER L. LITTLE, JR.
24 IS THIS YOUR VERDICT?

25 MR. LITTLE: YES.

1 **THE CLERK:** IS IT STILL YOUR VERDICT?

2 **MR. LITTLE:** YES.

3 **THE CLERK:** YOUR HONOR, I HAVE POLLED THE JURY AND
4 THE VERDICT STANDS.

5 **THE COURT:** THANK YOU. ANYTHING FURTHER, MR.
6 SHELTON?

7 **MR. SHELTON:** NOT AT THIS TIME.

8 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, THIS
9 COMPLETES YOUR SERVICE IN THIS TRIAL. IT ALSO COMPLETES
10 YOUR SERVICE FOR THE WEEK. I WILL -- YOU WILL BE ESCORTED
11 TO YOUR JURY ROOM. AND I WILL BE IN THERE MOMENTARILY TO
12 PERSONALLY SHAKE YOUR HAND.

13 YOU ARE FREE AT THIS POINT TO DISCUSS THIS CASE
14 AMONGST YOURSELVES AGAIN, WITH FRIENDS, FAMILY MEMBERS OR
15 ANYONE ELSE. BUT YOU ALSO HAVE THE RIGHT NOT TO DISCUSS
16 THIS CASE WITH ANYONE.

17 IF ANYONE CONTINUES TO CONTACT YOU AND YOU FEEL
18 THAT YOU ARE BEING HARASSED, PLEASE CALL THE NUMBER ON THE
19 -- TO THE CLERK AND I WILL HANDLE THE MATTER PERSONALLY.

20 AGAIN, I THANK YOU FOR YOUR SERVICE TO BERKELEY
21 COUNTY. PLEASE RISE FOR THE JURY.

22 (WHEREUPON, JURY LEFT THE COURTROOM AT 5:46 P.M.)

23 **THE COURT:** THANK YOU. THANK YOU. PLEASE BE
24 SEATED. ANY MATTERS REQUIRING THE JURY BEFORE I RELEASE
25 THE JURY, FROM THE STATE?

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

2 **THE COURT:** FROM THE DEFENSE?

3 **MR. SHELTON:** NOTHING REQUIRING THE JURY, YOUR
4 HONOR.

5 **THE COURT:** ALL RIGHT. ARE THERE ANY MATTERS
6 BEFORE I RELEASE THE JURY, BEFORE I IMPOSE SENTENCE?

7 **MS. WILLIAMS:** YES, YOUR HONOR. THE STATE WOULD
8 LIKE TO -- WELL, PRIOR TO SENTENCING.

9 **MR. SHELTON:** YOUR HONOR, AT THIS TIME, WE WOULD
10 LIKE TO RENEW OUR MOTIONS FOR A DIRECTED VERDICT. WE
11 WOULD ALSO LIKE TO RENEW ALL OUR OBJECTIONS STATED AND
12 ARGUED, BOTH PRETRIAL MOTIONS AND DURING THE TRIAL, YOUR
13 HONOR.

14 **THE COURT:** BASED UPON ALL OF THE REASONS THAT THE
15 COURT HAS ARTICULATED AND ADDRESSED IN EACH OF YOUR
16 MOTIONS, AS WELL AS YOUR MOTIONS FOR A DIRECTED VERDICT, I
17 RESPECTFULLY DENY ALL OF YOUR MOTIONS TO -- THAT -- AND
18 SPECIFICALLY THE MOTION FOR A DIRECTED VERDICT, AND ALL
19 THE MOTIONS. PREVIOUSLY THE MOTION TO COMPEL, WE HAVE
20 ALREADY ADDRESSED AS WELL AS THE MOTION FOR A CONTINUANCE.
21 ANY OTHER MOTIONS SPECIFICALLY, MR. SHELTON?

22 **MR. SHELTON:** YES, YOUR HONOR. ALL THE OBJECTIONS
23 THAT TOOK PLACE, BOTH PRETRIAL AND TRIAL, YOUR HONOR.
24 JUST RENEW THOSE.

25 **THE COURT:** THANK YOU, MR. SHELTON.

1 **MR. SHELTON:** FOR PURPOSES OF THE RECORD.

2 **THE COURT:** THANK YOU. ANYTHING -- ANYTHING
3 FURTHER? ARE YOU READY FOR THE COURT TO IMPOSE SENTENCE
4 AT THIS TIME?

5 **MR. SHELTON:** YES, YOUR HONOR.

6 **THE COURT:** DOES THE -- IS THE STATE PREPARED WITH
7 THEIR SENTENCING SHEET OR DO YOU NEED SOME ADDITIONAL TIME
8 TO PREPARE---

9 **MS. WILLIAMS:** WE NEED A FEW MINUTES.

10 **THE COURT:** IS THERE ANYTHING BEFORE YOU PREPARE
11 THE SENTENCING SHEET?

12 **MS. WILLIAMS:** YES, YOUR HONOR. I JUST WOULD -- WE
13 WOULD JUST OFFER THE PRIOR CONVICTIONS THAT IS ALREADY
14 REFERRED TO IN THE LWOP NOTICE. IF WE CAN HAND THAT IN
15 WITH THE SENTENCING SHEET, BUT WE HAVE CERTIFIED COPIES OF
16 THE PRIOR CONVICTIONS.

17 **THE COURT:** IF YOU WILL HAND THOSE UP, I BELIEVE
18 DURING THE COURT'S INQUIRY OF THE DEFENDANT, THAT MR.
19 SHELTON DID AGREE THAT HE HAD A PRIOR CONVICTION FOR A
20 CSC. BUT IF YOU WISH TO HAND IT UP---

21 **MS. WILLIAMS:** WE'D JUST LIKE IT TO BE ENTERED---

22 **THE COURT:** AND I'D ALSO LIKE A COPY OF THE LIFE
23 WITHOUT PAROLE NOTICE THAT YOU SERVED. WE'LL BE IN
24 RELEASE. I'M GOING TO RELEASE THE JURY. AND HOW LONG
25 WILL IT TAKE YOU FOR -- TO PREPARE THE SENTENCING SHEET,

STATE VS. SALISBURY

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1 TEN MINUTES?

2 MR. ALFARO: FIVE MINUTES.

3 THE COURT: IF YOU'LL JUST LET THE COURT KNOW WHEN
4 YOU'RE READY, AND I'LL IMPOSE SENTENCING UNLESS THERE IS
5 ANY OBJECTION AT THIS TIME, MR. SHELTON?

6 MR. SHELTON: NO OBJECTION.

7 THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

8 (WHEREUPON, COURT RECESSED AT 5:50 P.M.)

9 (WHEREUPON, COURT RECONVENED AT 5:57 P.M.)

10 THE COURT: PLEASE BE SEATED.

11 MS. WILLIAMS: YOUR HONOR, MR. ALFARO IS ON HIS WAY
12 BACK UP. HE SHOULD BE HERE ANY SECOND WITH THE SENTENCING
13 SHEET.

14 COURT REPORTER: I'M SORRY. I DIDN'T HEAR THAT.

15 MS. WILLIAMS: I'M SORRY. MR. ALFARO IS ON HIS WAY
16 BACK UP WITH THE SENTENCING SHEET. HE SHOULD BE HERE ANY
17 SECOND.

18 (PAUSE.)

19 THE COURT: MS. WILLIAMS, I HAVE HEARD THE FACTS AS
20 PRESENTED BY THE STATE. I'LL BE HAPPY TO HEAR FROM THE
21 VICTIM, IF SHE WISHES TO ADDRESS THE COURT.

22 MS. ADAMS: YOUR HONOR, I JUST WANTED TO LET YOU
23 KNOW THAT THIS HAS AFFECTED MY ENTIRE LIFE. I HAVE BEEN
24 IN LAW ENFORCEMENT MY WHOLE LIFE AND I CAN'T GO BACK TO
25 THAT NOW. MY 15 YEAR OLD WON'T LEAVE ANYWHERE WITHOUT ME.

1 HE'S AFRAID THAT I WON'T COME HOME. THIS HAS SEVERELY
2 AFFECTED MY 12 YEAR OLD. WHEN MY FIANCEE WORKS NIGHT
3 SHIFTS, I CAN'T EVEN SLEEP IN A ROOM BY MYSELF. AND
4 THAT'S NOT THE PERSON THAT I WAS BEFORE THIS.

5 I'VE NEVER BEEN A WEAK PERSON. AND I JUST DON'T
6 WANT HIM TO EVER, EVER BE ABLE TO DO THIS TO SOMEBODY ELSE
7 AGAIN. AND I HOPE, YOUR HONOR, YOU TAKE THAT INTO
8 CONSIDERATION. THANK YOU.

9 THE COURT: THANK YOU. MS. WILLIAMS, I HAVE A
10 CERTIFIED COPY OF MR. SALISBURY'S PREVIOUS CONVICTION IN
11 2001-GS-08-928, CRIMINAL SEXUAL CONDUCT WITH A MINOR
12 SECOND DEGREE, WHICH IS A VIOLENT AND A MOST SERIOUS
13 OFFENSE. PURSUANT TO THAT, YOU FILED A NOTICE TO SEEK
14 LIFE WITHOUT PAROLE BASED ON THESE CHARGES THAT MR.
15 SALISBURY IS FACING, IS THAT CORRECT?

16 MS. WILLIAMS: THAT IS CORRECT, YOUR HONOR.

17 THE COURT: AND ARE THERE ANY OTHER CONVICTIONS
18 THAT YOU WISH THE COURT TO BE AWARE OF?

19 MS. WILLIAMS: MR. SALISBURY HAS A CONVICTION FOR
20 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE. AND
21 HE WAS CONVICTED ON THAT CHARGE JANUARY 20TH OF 2000.

22 THE COURT: ANYTHING FURTHER FROM THE STATE?

23 MS. WILLIAMS: NO, YOUR HONOR.

24 THE COURT: MR. SHELTON, I'LL BE HAPPY TO HEAR FROM
25 YOU REGARDING SENTENCING.

1 **MR. SHELTON:** THANK YOU, YOUR HONOR. MAY IT PLEASE
2 THE COURT, AT THIS TIME WE WOULD NOT LIKE TO SAY ANYTHING.
3 THERE IS -- STATUTORILY, YOU HAVE TO SENTENCE ONE WAY.
4 SO, THAT'S ALL WE WOULD LIKE TO SAY.

5 **THE COURT:** MR. SHELTON, MY ONE QUESTION, LIFE
6 WITHOUT PAROLE IS A PRETTY OBVIOUS STATUTE. HOWEVER, THE
7 HOSTAGE TAKING CANNOT BE CONCURRENT WITH THE SENTENCE THAT
8 HE IS CURRENTLY SERVING. CAN YOU ASSIST THE COURT IN HOW
9 I AM TO FASHION THAT SENTENCE?

10 **MR. SHELTON:** WELL, I -- I -- YOUR HONOR, I DON'T
11 KNOW. THAT'S WHY YOU'RE THE COURT. BUT THE HOSTAGE
12 TAKING IS ALSO MORE SERIOUS, SO THAT WOULD ALSO BE
13 CONSIDERED UNDER LIFE WITHOUT PAROLE.

14 **THE COURT:** SO, IS IT THE STATE'S POSITION THAT THE
15 IMPOSITION OF LIFE WITHOUT PAROLE IS CONSECUTIVE TO THE
16 SENTENCE THAT HE IS CURRENTLY SERVING?

17 **MS. WILLIAMS:** YES, YOUR HONOR. AND -- WELL, IT'S
18 OUR POSITION THAT THE TWO SENTENCES FOR LIFE WITHOUT
19 PAROLE ARE CONSECUTIVE TO EACH OTHER. I THINK THAT IS IN
20 THE HOSTAGE TAKING STATUTE. IN THAT ANY SENTENCE IMPOSED
21 FOR ASSAULT ON CORRECTIONS OFFICER WOULD, AS UNBELIEVABLE
22 AS THAT SOUNDS, WOULD HAVE TO BE CONSECUTIVE TO THE LIFE
23 SENTENCES.

24 **THE COURT:** MS. -- MS. WILLIAMS, CAN YOU STATE THAT
25 AGAIN? I THINK YOU -- YOU GOT -- MR. SHELTON?

1 **MR. SHELTON:** YOUR HONOR, I DON'T BELIEVE THERE'S
2 GOING TO BE TWO LIFE SENTENCES. I THINK THERE'S ONLY --
3 WOULD BE ONE LIFE SENTENCE, YOUR HONOR, BASED ON -- BOTH
4 CONVICTIONS ARE AT THE SAME TIME, SO IT'S CONSIDERED ONE
5 MOST SERIOUS CHARGE. IT'S NOT---

6 **THE COURT:** MR. SHELTON, DO YOU KNOW -- DO YOU HAVE
7 ANY IDEA WHEN HE IS TO MAX OUT ON HIS CURRENT SENTENCE?

8 **MR. SHELTON:** I BELIEVE IT WAS 15 YEARS WHEN HE WAS
9 SENTENCED IN 2001, YOUR HONOR.

10 **THE COURT:** THE STATUTE FOR HOSTAGE TAKING AND THE
11 STATUTE ON THE ASSAULT ON A CORRECTIONAL OFFICER ARE
12 CLEAR, THAT IT CANNOT BE -- NOT BE SERVED CONSECUTIVELY TO
13 THE SENTENCE THAT HE'S CURRENTLY SERVING. SO, I MUST
14 IMPOSE THE LIFE SENTENCE CONSECUTIVE TO WHAT HE IS
15 SERVING. HE CANNOT BEGIN SERVING THIS LIFE SENTENCE UNTIL
16 HE HAS SERVED HIS SENTENCE ON THE CRIMINAL SEXUAL CONDUCT;
17 IS THAT YOUR UNDERSTANDING, MS. KENNEDY?

18 **MS. KENNEDY:** YES, YOUR HONOR. MY UNDERSTANDING,
19 JUST FOR PURPOSES OF THE RECORD IS, HE DOES HAVE TO FINISH
20 THE SENTENCE THAT HE'S CURRENTLY SERVING AND THEN START
21 SERVING LIFE WITHOUT PAROLE.

22 **THE COURT:** THE ISSUE THAT -- THAT MS. WILLIAMS RAISED IS THAT
23 THEY'RE -- SOMEHOW THAT THERE'S THE SUGGESTION THAT HE
24 SHOULD HAVE TWO LIFE SENTENCES. AND THAT'S SIMPLY NOT
25 APPROPRIATE. BECAUSE BOTH OF THE -- BOTH -- EACH OF THE

1 CHARGES WERE THE RESULT OF A SINGLE ACT, AND THEREFORE
2 SHOULD BE COUNTED EVEN THOUGH THERE ARE TWO CONVICTIONS
3 FOR PURPOSES OF LIFE WITHOUT PAROLE, IT'S ONE SENTENCE.

4 THE COURT: I THINK THAT MS. WILLIAMS MISSPOKE AND
5 GOT CONSECUTIVE AND CONCURRENT -- I'M ASSUMING THAT'S WHAT
6 HAPPENED WHEN SHE INDICATED -- I THINK THAT IS CONFUSING
7 IS WHEN ACTUALLY DOES THE LIFE WITHOUT PAROLE SENTENCE IS
8 GOING TO START.

9 MS. KENNEDY: YOUR HONOR, IN RESPONSE TO YOUR
10 QUESTION, I BELIEVE THAT -- MY UNDERSTANDING IS THAT IT'S
11 CONSECUTIVE TO HIS CURRENT SENTENCE.

12 THE COURT: ALL RIGHT.

13 MS. KENNEDY: AND I'M LOOKING VERY DILIGENTLY FOR
14 THE EXACT DATE.

15 THE COURT: WELL, AS WE HAVE ALL STATED MANY TIMES
16 IN THIS COURT, I DO NOT UNDERSTAND DOC MATH, SO IT IS NOT
17 GOING TO BE THE COURT'S INTERPRETATION AT THIS POINT. MY
18 SENTENCE WILL BE CLEAR.

19 MR. SALISBURY, PLEASE RISE. IT'S THE ORDER OF THE
20 COURT ON INDICTMENT 08-GS-08-1687, THAT YOU BE SENTENCED
21 TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF LIFE
22 WITHOUT THE POSSIBILITY OF PAROLE.

23 IT'S THE ORDER OF THE COURT ON INDICTMENT
24 2008-GS-08-1688, THAT YOU BE SENTENCED TO THE DEPARTMENT
25 OF CORRECTIONS FOR A TERM OF LIFE WITHOUT THE POSSIBILITY

1 OF PAROLE.

2 THE ORDER OF THE COURT ON INDICTMENT

3 2008-GS-08-1074, THAT YOU BE SENTENCED TO THE DEPARTMENT

4 OF CORRECTIONS FOR A TERM OF -- FOR A TERM OF FIVE YEARS.

5 THOSE THREE INDICTMENTS ARE CONCURRENT ONE TO ANOTHER, BUT

6 THEY ARE TO RUN CONSECUTIVE TO THE SENTENCE THAT YOU ARE

7 SERVING ON INDICTMENT 2001-GS-08-928.

8 MR. SALISBURY, YOU HAVE THE RIGHT TO APPEAL THIS

9 TRIAL AND THE SENTENCE THAT I IMPOSE, BUT YOU OR YOUR

10 ATTORNEY MUST DO SO WITHIN TEN DAYS. DO YOU UNDERSTAND

11 YOUR APPELLATE RIGHTS?

12 MR. SALISBURY: YES, MA'AM.

13 THE COURT: THANK YOU. GOOD LUCK TO YOU, SIR.

14 MS. KENNEDY: THANK YOU, YOUR HONOR.

15 THE COURT: ALL RIGHT. MR. SHELTON, MS. WILLIAMS,

16 ANYTHING FURTHER FOR THE RECORD?

17 MS. WILLIAMS: NOTHING FROM THE STATE, YOUR HONOR.

18 THE COURT: ANYTHING FURTHER, MR. SHELTON?

19 MR. SHELTON: NOTHING FURTHER, YOUR HONOR.

20 (WHEREUPON, THE HEARING ADJOURNED AT 6:15 P.M.)

21

22 END OF TRANSCRIPT

23

24

25

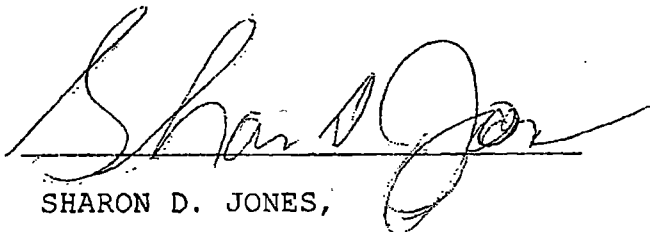
CERTIFICATE OF REPORTER

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I, SHARON D. JONES AND VIVIAN CROSS, OFFICIAL COURT REPORTERS FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR BERKELEY COUNTY, SOUTH CAROLINA, ON THE 26TH, 27TH, 28TH AND 29TH DAY OF JANUARY 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

AUGUST 3, 2009



SHARON D. JONES,

OFFICIAL COURT REPORTER

FORM 5

2013 CP-08-204

STATE OF SOUTH CAROLINA)

COUNTY OF)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2013 JAN 25 PM 4:58
CLERK OF COURT
BERKELEY COUNTY SC**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Department of Correction: (Lee Correctional Institution)
2. Name and location of Court which imposed sentence Berkeley County, Court of General Sessions,
9th Judicial Circuit
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-GS-C8-1687, Criminal sexual Conduct 1st Degree.
 - (b) 08-GS-C8-1074, Prisoners/Taking of a Hostage by an inmate.
 - (c) 08-GS-C8-1688, Assault upon Corrections officer.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-29-09, Life without Parole
 - (b) 1-29-09, Life without Parole

- (c) 1-29-89, 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. South Carolina Court of Appeals
- iii. South Carolina Court of Appeals
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. Denied
- iii. Denied
- (c) the date of each such result:
- i. 5-25-12
- ii. 5-25-12
- iii. 5-25-12
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of Counsel

- (b) Prosecutorial misconduct / Subject matter Jurisdiction
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) See attached Issues
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. South Carolina Court of Appeals.
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina Court of Appeals.
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: ?

(a) Ineffective assistance of Counsel

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Chad Shelton - 219 N. Hwy. 52, Suite E, Post Office box 1687 Moncks corner S.C. 29461 Co. Counsel Patricia Kennedy Address Same as Chad Shelton's & Public Defender as
- ii. Elizabeth A. Franklin - Best & Division of Appellate Defense 1330 Lady street, Suite 401. Columbia S.C. 29201-3332
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Chad Shelton: Pre-trial & trial; Patricia Kennedy, co counsel, trial
- ii. Elizabeth A. Franklin - Best & South Carolina Court of Appeals,
- iii. _____

19. State clearly the relief you seek in filing this application:

Conviction Vacated and Case Remanded for New trial

20. Are you now under sentence from any other court that you have not challenged?

Yes

2013-CP-08-204

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Berkeley)

George Salisbury
 I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

George Salisbury 203724

SWORN to and subscribed before me this _____
 day of *January*, 20*13*.

Mamie W. (L.S.)
 Notary Public

My Commission Expires: *3/8/2020*

FILED
 2013 JAN 25 4:58
 CLERK OF COURT
 BERKELEY COUNTY, SC

2013 CP-08-204

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

George Salisbury
I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

George Salisbury
Applicant

SWORN or affirmed to and subscribed before me this

18 day of January, 2013

Mamie Anne
Notary Public

My Commission Expires: 3/8/2020

2013 JAN 25 PM 4:58
 MAJOR COUNTY
 CLERK OF COURT
 BERKELEY COUNTY, SC

FILED

In "Effective Assistance of Trial Counsel" (1)

It is the duty of the lawyer to conduct a prompt investigation of all the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction.

The investigation should always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exist regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty. 1 American Bar Association Standards for Criminal Justice, 4-4.1 (2d ed. 1982 Supp.) Counsel has the duty to make reasonable investigations or to make a reasonable decisions that makes particular investigations unnecessary. Kimmelman v. Morrison, 477 U.S. 365 (1986). The Sixth amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. Strickland v. Washington, 466 U.S. 668 (1984).

Applicant argues that trial counsel failed to investigate the law enforcement authorities files until time of trial, where it was revealed there was information that defense was not aware existed. As a result of trial counsel's neglecting to properly investigate the circumstances of the case and to explore all avenues leading to facts relevant to the case, Counsel was not prepared to provide Applicant a proper defense. Trial counsel was not aware of all the facts and evidence, to include state witnesses, as a result of failing to investigate and analyze the readily available evidence in the case before you. Trial Counsel tried to cover the fact a proper investigation was not done, by seeking an order to compel discovery and continuance. The order to compel discovery was granted, revealing that counsel was provided everything in the prosecution's file. It revealed that evidence did exist that trial counsel was not aware of, as a result of failing to investigate all avenues in the case before you, leaving counsel not prepared to provide Applicant a proper defense. The continuance was denied by the trial Judge, leaving Applicant with trial counsel who was not prepared to properly defend him in the case before you, as a result of failing to investigate, leaving Applicant forced to be tried before a jury with the assistance of ineffective counsel. Whereas, Applicant was denied effective assistance of trial counsel, denying him to properly receive his Sixth amendment right to counsel. The right to effective assistance of counsel is entailed by the right to counsel and the abridgement of the former is equivalent to the abridgement of the latter. The Sixth and fourteenth amendments guarantee a person accused of a crime the right to aid of a lawyer in preparing and presenting his defense. It has been settled that the right to counsel is the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970). A proceeding in which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute due process guaranteed by the fourteenth amendment. It was held that a showing that the performance of a defendant's lawyer departed from constitutional prescribed standards requires a new trial regardless of whether the defendant suffered demonstrable prejudice thereby. Strickland v. Washington, 466 U.S. 668 (1984). See, Tr. p. 65, Line 22 - p. 129, Line 18

Ineffective Assistance of Counsel to Counsel (2)

Trial counsel was ineffective for failing to disclose to the trial court factual mitigating evidence.

Trial counsel was ineffective for failing to present the victim's prior statement under Rule 801 5C.R.E.; during cross-examination of the victim, being mitigating evidence that could have changed the outcome of the trial.

Applicant was charged and tried for the accused accusation of assault on a correctional officer 09-05-09-1688. There were testimony and evidence presented at trial related to bruises located on the victim; presented before the jury and accused to have come by Applicant. See, Tr. p. 230, line 1 - p. 231, line 4. Tr. p. 235, line 15 - p. 236, line 11. Tr. p. 315, line 19 - p. 316, line 13.

The victim testified that after being assaulted by the Applicant, she was picked up by inmate Christopher Simmons, who assisted in her safety. See Tr. p. 223, line 18-24. Prior statements of the victim state that four (4) or five (5) black hands reached in the bathroom and grabbed her out.

Trial counsel was ineffective by failing to present the victim's prior statement during cross-examination. The statement could have shown the jury and court that the bruises that were located on the victim could have been the result of the four to five black hands that reached in the bathroom and grabbed her out, not from the result of an assault.

Mitigating Circumstances as such do not constitute a justification or excuse for the offense in question, but which in fairness and mercy, may be considered as extenuating circumstances or reduced degree of moral capability. A court may reduce or give a lesser sentence in consideration of certain factors as has been presented. The United States Supreme Court has held that counsel's failure to conduct a reasonable investigation into mitigating circumstances constitutes ineffective assistance of counsel. Wiggins v. Smith, 539 U.S. 510, 511 (2003).

Counsel should offer any material evidence, including witness statements of such substantial probative value that could induce a reasonable doubt in the witness before the jurors to avoid conviction. Miller v. State, 309 F. Supp. 1287, 1290 (1970).

Applicant argues that had counsel presented the mitigating evidence, there is a chance he could have received a much lighter sentence. The right to effective assistance of counsel extends through the sentencing phase of trial, it is a critical stage in criminal proceedings. Memphis v. Ray, 359 U.S. 128 S.Ct. 254 (1967).

Those possibilities contained within the unreasonableness of counsel's failure to present the mitigating evidence in this issue more than sufficiently establishes a clear and plain dangerous violation of Applicant's sixth and fourteenth amendment rights to effective assistance of counsel. The sixth amendment right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, N. 14, 90 S.Ct. 1441, 1449, N. 14, 25 L. Ed. 2d 763 (1970).

1-002

I Effective Assistance of Trial Counsel (3)

In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor. Both clauses are made obligatory on the states by the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 403-406, 85 S.Ct. 1065, 1067-1069, 13 L.Ed. 2d 923 (1965). Washington v. Texas, 388 U.S. 14, 17-19, 87 S.Ct. 1920, 1922-1923, 17 L.Ed. 2d 1019 (1967).

Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Cayler v. Sullivan, *Supra*, at 346. The Sixth and Fourteenth Amendments guarantee a person accused of a crime the right to the aid of a lawyer in preparing and presenting his defense. It has long been settled that the right to counsel is the right to the effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n.14 (1970).

Applicant presents attached Exhibit A, statement of Tyrone Oliver, being a voluntary statement of Tyrone Oliver. Trial counsel was ineffective for failing to subpoena this witness for trial, denying him the right to confront this witness, whose statement would have shown that the crime scene in the case before you was tampered with, denying Applicant his right under the confrontation clause of the Sixth Amendment. Applicant argues that, had trial counsel had subpoenaed this witness it would have shown that the crime scene was tampered with and altered as a result of this witness removing the victim's clothes.

Proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable. Benton v. Pellum, 232, S.C. 26, 100 S.E. 2d 534 (1957), Sligh v. Johnson, 298 S.C. 364, 342 S.E. 2d 620 (Ct. App. 1986). Applicant argues that counsel was ineffective for failing to object and challenge State Exhibits 1 and 20, when the state failed to present chain of custody for the victim's clothes. Applicant moves to state that Tyrone Oliver's statement plainly shows that he removed the victim's clothing from the crime scene; starting a chain of custody that was never presented before the court as he was never called to testify by the state. Had trial counsel subpoenaed this witness; it would have shown that the crime scene was altered and the state failed to provide a proper chain of custody for the victim's clothing, making them not admissible evidence.

A proceeding which the defendant does not receive meaningful assistance in meeting the forces of the state does not constitute due process. In Chapman v. California, 386 U.S. 18, 23 (1967), it is acknowledged that certain constitutional rights are "so basic to a fair trial that these infractions can never be treated as harmless error". Amongst these rights is the right to the effective assistance of counsel at trial. Gideon v. Wainwright, 372 U.S. 335 (1963). The right to assistance of counsel and is entailed by the right to counsel and abridgment of the former is equivalent to the abridgment of the latter. It was held that a showing that the performance of defendant's lawyer departed from constitutionally prescribed standards requires a new trial regardless of whether the defendant suffered demonstrable ^{for} prejudice there to. Strickland v. Washington, 466 U.S. 668 (1984).

Applicant argues that trial counsel was ineffective for failing to object to and challenge the chain of custody of state Exhibit, 1, 20

Proof of chain of custody need not negate all possibility of tampering, but must establish a complete chain of evidence as far as practicable. Benton v. Rellum, 232 S.C. 26, 100 S.E. 2d 534 (1957). Sligh v. Johnson, 283 S.C. 364, 342 S.E. 2d 620 (Ct. App. 1986). Applicant argues that the state failed to present a proper chain of custody at trial for any of the afore listed Exhibits.

Trial Counsel was ineffective for failing to object to, or challenge the chain of custody when the state plainly never presented evidence or witnesses to verify where, when, or how they obtained or came in possession of the evidence presented in these exhibits.

Applicant argues that he was prejudiced and denied the right to a fair trial due to ineffective assistance of trial counsel. Due to ineffective assistance of trial counsel, how can Applicant say if he was or was not convicted as a result of illegally obtained or altered evidence? The question stands open, because trial counsel neglected to check or challenge the chain of custody on the evidence presented in the afore listed Exhibits. In a long line of cases that includes; Lowell v. Alabama, 287 U.S. 45 (1932), Johanson v. Zerbst, 304 U.S. 458 (1933) and Gideon v. Wainwright, 372 U.S. 335 (1963). The court recognized that the 6th sixth amendment right to effective assistance of counsel is needed in order to protect the fundamental right to a fair trial. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. Cayler v. Sullivan, Supra, at 346. Strickland v. Washington, 466 U.S. 668 (1984)

Exhibit-A



VOLUNTARY STATEMENT

CASE #

DC080009

LEAD #

JAN 28 '08 PM 4:32

LAST NAME <u>OLIVER</u>		FIRST NAME <u>TYRONNE</u>		MIDDLE NAME <u>NMN</u>	AGE <u>34</u>	D.O.B.
NICKNAME/AKA		☒ M ☐ F	SSN <u>000-00-0000</u>	STREET ADDRESS		
CITY	STATE	ZIP	MAILING ADDRESS IF DIFFERENT			
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE	OCCUPATION <u>INMATE</u>			
EMPLOYER		EMPLOYER ADDRESS				
DRIVER'S LICENSE NUMBER/STATE		DATE AND TIME OF INTERVIEW				
LOCATION OF INTERVIEW <u>MacDonald Correctional</u>						
INTERVIEWING AGENT <u>J. EUBANK</u>		DEPARTMENT <u>SCS</u>	INTERVIEWING AGENT		DEPARTMENT	

I, TYRONNE OLIVER understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can not read and write and completed the GEN grade in school.

10. I WAS WRITING A LETTER WHEN I HAD FINISHED I CLICKED OFF THE LIGHT TO MY CAMP & PROCEEDED TO USE THE RESTROOM. I THEN WALKED UP ON ANOTHER INMATE & ASKED ABOUT SOME COOKIES WHICH HE TOLD ME "YEAH!" & I FOLLOWED HIM TO HIS CUBICLE TO RETRIEVE THE COOKIES ONLY TO LEAVE FROM HIS CUBICLE & SET THREE INDIVIDUALS CAME FROM THE OTHER SIDE OF THE DORM & STATE THAT THE OFFICER (ADAMS) WAS IN THE OFFICER RESTROOM WITH SOMEONE. AFTER I ASKED "WITH WHO?" THEY PROCEEDED TO LISTEN AT THE OFFICERS STATION DOOR ON THE C-SIDE & THATS WHEN WE HEARD OFFICER ADAM SAY "OKAY! OKAY! SLOW DOWN." AT THIS TIME ME & THE OTHER INMATES TRIED TO GET INTO THE OFFICERS STATION BY FORCE WITH NO AVAL. THATS WHEN WE HEARD OFFICER ADAM SCREAM "HELP! HELP!"

I THEN RAN TO THE D-SIDE OF THE DORM TO TRY & ENTER THE OFFICERS STATION FROM THERE. AFTER BANGING ON THE WINDOW & BREAKING IT, I NOTICED THE OTHER INMATES ON THE C-SIDE ENTERING THE OFFICERS STATION & I WENT BACK OVER TO C-SIDE & SAW OFFICER ADAMS (ROTTEN) DOWN SOBBING, & I CONTINUED ON TOWARD THE OFFICERS BATHROOM & NOTICED OFFICER ADAMS CLOTHES ON THE FLOOR. AFTER THE OTHER INMATES GRABBED & PUSHED ON INMATE SALBARI WHOM I KNOW FROM THE MAC #2 UNIT & WHO WAS THE INDIVIDUAL INSIDE THE OFFICERS BATHROOM ALONE WITH OFFICER ADAMS, I GRABBED HER CLOTHES & PASSED THEM TO ANOTHER INMATE TO GIVE TO OFFICER ADAMS.

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 1-18-08 Time: 3:25 A.M

Signature of person giving voluntary statement

WITNESS:

WITNESS:

I certify that I have been given a copy of this statement consisting of _____ pages.

SLED
CF003 5/95VOLUNTARY STATEMENT
SUPPLEMENTALPAGE NO 2 OF 2 PAGESTyrone Oliver

Statement of, Continued.

G

T.O. With all the other inmates I was screening to see what was going on. I pulled inmate SHISBAR to a corner inside the officer's station & continued to ask him "What's he thinking?" At this point he stayed in the corner until Sgt. Williams entered the officer's station where I was to take over the situation. T.O.

T.O.

Rule 5

SA [Signature]

Tyrone Oliver

Signature of person giving voluntary statement

Prosecutorial misconduct

The fifth Amendment protects a person from being a witness against himself. This right protects a defendant's character from being presented before a jury in a criminal trial. Applicant in the case before you chose to utilize his fifth amendment right to protect his character from being impeached and placed before the jury, by not testifying to contain the cloak of innocence as he sought to obtain due process and equal protection of laws as a U.S. citizen, resident of S.C.

In a criminal case, the state cannot attack the character of the defendant unless the defendant himself first places his character in issue. Rule 404(a) S.C.R.E., Mitchell v. State, 298 S.C. 186, 379 S.E. 2d 123, 125 (1989), State v. McEleven, 280 S.C. 325, 313 S.E. 2d 298 (1984), State v. Swords, 279 S.C. 554, 309 S.E. 750 (1983), State v. Gamble, 247 S.C. 214, 146 S.E. 2d 709 (1966).

Character evidence is not admissible to prove the accused possesses a criminal character or has a propensity to commit the crime which he is charged. Rule 404(a) S.C.R.E., State v. Brown, 344 S.C. 70, 543 S.E. 2d 552 (2001).

This Court has defined the term "character" on the other hand, as "a general description of a person's disposition or a general trait such as honesty, temperance, or peacefulness." State v. Nelson, 331 S.C. at 7, 501 S.E. 2d at 718 (1998)

Applicant argues that the state obtained personal writings of his, related to a book he was writing during the time frame the accused accusations occurred and illegally used it to deceive the jury and poison their minds, to destroy his character, that stripped him of the cloak of innocence, as his constitutional rights were violated. See, state Exhibit 27.

Applicant argues that the prosecutor illegally presented state Exhibit 27 before the jury to attack his character and try to present a false motive, when the evidence was in no way linked to the case before you. There was never a chain of custody presented, neither could the state actually verify where the evidence was obtained from. Whereas, the victim in the case before you was never a witness to the evidence or testify to the claim it ever existed during the time the alleged crime was committed. No one in the case before you ever claimed or testified that state Exhibit 27 was obtained from the crime scene or ever related to the case before you.

The Prosecutor plainly committed misconduct and presented state Exhibit 27 before the jury to kill the Applicant's character, as an attempt to show a false motive, in error of Rule 404(a) S.C.R.E., that burned the cloak of innocence of Applicant. The prosecutor's misconduct violated Applicant's fifth amendment right as his character was before the jury through state Exhibit 27, that was irrelevant and not in anyway linked to the case before you.

Applicant argues that he was denied the right to a fair trial as the prosecutor committed misconduct in error of rule 404(a) S.C.R.E., denying him his Fifth amendment right and denying him due process and equal protection of laws.

guaranteed by the fourteenth amendment.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of such a nature to render the trial fundamentally unfair. Donnelly V. Dechristofaro, 614 U.S. 637, 94 S.Ct. 1969 (1974). While prosecutors may strike hard blows, they are not at liberty to strike foul ones. Berger V. U.S., 295 U.S. 79, 55 S.Ct. 629 (1935). The prosecutor plainly committed misconduct and struck foul blows that violated the Applicants Constitutional Rights.

Furthermore, trial judge committed reversible judicial error in violation of Rule 403 and 404 SCFE, by allowing state exhibit 27 to be admitted and presented to the jury after trial counsel's objection. See, Tr. p. 496, Line 6- p. 503, line 23.

(1)

Prosecutorial Misconduct/subject after Jurisdiction

Applicant argues that the prosecutor committed misconduct in error of Rule - 3 (c)(1) S.C. Rules criminal proc., which states that within (90) days of receipt of an arrest warrant from the clerk of court, the solicitor shall take action on the warrant by preparing an indictment for presentment to the grand jury, which indictment shall be filed with the clerk of court, assigned a criminal case number and presented to the grand jury. Applicant moves to argue that indictments in the case before you were filed by the clerk of court and presented to the grand jury on September 10, 2008, almost Eight (8) Months after receipt of the arrest warrant, dated January 18, 2008.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of a nature to render the judicial process fundamentally unfair. Donnelly V. DeChristofaro, 614 U.S. 637, 94 S.Ct. 1868 (1974). (emphasis added). Applicant argues that the prosecutor exceeded her time frame to file the indictments in the case before you with the clerk of court and presentment to the grand jury, with no excusable reason to justify her actions and misconduct, in error of Rule 3 (c)(1), S.C. rules of crim. Proc., making the indictments insignificant and illegally obtained, outside of the permitted and legal time frame. Applicant argues that as a result of prosecutorial misconduct he was denied due process and equal protection of laws as the indictments in the case before you were not properly processed according to the provided judicial process listed under Rule 3 (c)(1) South Carolina rules of crim. Proc., denying him his Constitutional rights guaranteed by the Fourteenth amendment.

Furthermore, Application argues that as a result of the prosecutor's error, the Ninth Judicial Circuit never formally had Jurisdiction to hear the case before you, ~~due~~ due to the insignificant indictments that failed to be properly processed, that were obtained outside the available time limitation that's permitted by the judicial process under rule 3 (c)(1) South Carolina rule of crim. Proc., while Prosecutor's may strike hard Blows, they are not at liberty to strike foul ones, as Applicant has showing Berger V. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935).

The S.C. Supreme court has found that in order to challenge an indictment and its sufficiency in a P.C.R. action, the Applicant must first have challenged the sufficiency of the indictment before the jury was sworn. State V. Gentry, 363 S.C. 93, 102, 610 S.E. 2d 494 500 (2005). Applicant is in agreement with the S.C. Supreme Court and argues that as observed in, Powell V. Alabama, 297 U.S. 45 (1932), the layman defendant "requires the guiding hand of counsel at every step in the proceedings against him". As Noted: "If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to adequately prepare his defense even though he has a perfect one".

Prosecutorial Misconduct / ineffective assistance of counsel

Applicant argues that Indictments NO. 08-65-08-1074, 08-65-08-1687, 1688 fail to show the Action of the Grand Jury, being "Sham Legal Process". A sham legal process is defined under S.C. Code, § 16-17-135, in relevant part as follows: ...

The issuance, display, reliance on an indictment that is not lawfully issued... which purports to... (ch) assert Jurisdiction or authority over or determines or adjudicate the legal status, right, dispute or privilege of a person...

Applicant argues that the afore listed indictments fail to properly show the action of Grand Jury, making them improper and fails to give the Ninth circuit jurisdiction to hear the case before you, resulting in a trial that should have never been. Please take note that the indictments have a fabricated true bill stamp in place of the Verdict, of the foreperson of petit Jury, which is improper according to the actions that a Petit Jury play in a criminal case and do neglect to present the action of the Grand Jury. Applicant argues that the Indictment are sham legal process, a result of prosecutorial misconduct, which fails to give the Ninth Judicial circuit jurisdiction to hear the case.

Accordingly, the standard for reviewing a claim of prosecutorial misconduct is whether the prosecutor's actions are of such a nature to render the trial fundamentally unfair. Donnelly V. DeChistofaro, 614 U.S. 637, 94 S.Ct. 1868 (1974). Applicant argues that due to the prosecutor's misconduct, he was tried before the Ninth Judicial Circuit, who never had Jurisdiction to hear the case before you, Under improper indictments Presented by the prosecutor, a form of Sham legal process. While prosecutor's may strike hard blows, they are not at liberty to strike foul ones. Berger V. U.S., 295 U.S. 78, 55 S.Ct. 629 (1935). The prosecutor struck real foul Blows by Violating Applicant's Constitutional rights, by denying him due process and equal protection of laws in the case before you, by presenting insignificant indictments before the Court to have him convicted of the accused accusations.

Applicant argues that due to the prosecutor's misconduct, the Ninth Judicial Circuit never had Jurisdiction to hear the case before you, due to insignificant indictments failing to show the action of the grand jury.

The South Carolina Supreme Court has found that in order to challenge an indictment in a P.C.R. action, the applicant must first have challenged the sufficiency of the indictment before the Jury was sworn. State V. Gentry, 363 S.C. 93, 102, 610 S.E. 2d 494, 500 (2005). Applicant is in agreement with the S.C. Supreme court and argues that as observed in, Powell V. Alabama, 287 U.S. 45 (1932), the layman defendant "requires the guiding hand of counsel at every step in the proceedings against him".

As Noted :▶ "If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge to understand the proceedings against him."

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2013-CP-08-204

George Salisbury,
S.C.D.C. No. 263724,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 25, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the September 2008 term of the Berkeley County Grand Jury for prisoner/taking of hostage by inmate (2008-GS-08-1074), criminal sexual conduct, 1st degree (2008-GS-08-1687), and assault on a correctional officer (2008-GS-08-1688). Applicant was represented by Chad Shelton, Esquire, and Patricia Kennedy, Esquire.

The Applicant proceeded to trial and was found guilty of all charges on January 29, 2009. The Applicant was sentenced by the Honorable Kristi Lea Harrington to confinement for a period of life without parole for criminal sexual conduct and prisoner/taking of hostage by inmate and five (5) years for assault on a correctional officer. The sentences are to be served

concurrently to each other, but consecutively to a prior criminal sexual conduct with a minor, end degree sentence (2001-GS-08-0928).

A timely Notice of Appeal was filed on behalf of the Applicant. Elizabeth A. Franklin, Esquire of South Carolina Division of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Salisbury, Op. No. 2012-UP-214, (S.C. Ct. App. March 28, 2012). The Remittitur was issued on June 28, 2012.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel in that:
 - a. Counsel failed to investigate.
 - b. Counsel failed to disclose factual mitigation evidence.
 - c. Counsel failed to subpoena Tyrone Oliver to testify at trial.
 - d. Counsel failed to challenge the chain of custody for State's Ex. 1.
2. Prosecutorial Misconduct
 - a. State obtained personal writing of the Applicant's to deceive the jury and destroy his character.
 - b. State illegally presented State Ex. 27 to attack his character.
 - c. Solicitor committed misconduct in error of Rule 3(c)(i) of the S.C. Rules of Criminal Procedure.
3. Subject Matter Jurisdiction
 - a. Indictments failed to show the action of the grand jury.

III.

The Applicant alleges he was provided ineffective assistance of counsel. The Respondent

asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466

U.S. 668 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

V.

The Applicant alleges the trial court lacked subject matter jurisdiction over his case. The Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343

S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Berkeley County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant here cannot show any irregularity, because the indictment in question is sufficient on their face. The Court should summarily dismiss this allegation.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

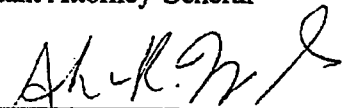
Respectfully submitted,

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Oct. 10, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

GEORGE SALISBURY, #263724

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

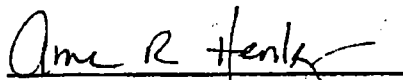
2013-CP-08-0204

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive
 Suite 300
 Charleston, SC 29405

DATED this 11th day of October, 2013


 Anne Henley, Legal Assistant
 For Respondent

1

2 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON) CASE NO. 2013-CP-08-0204

4

5 GEORGE SALISBURY,)
6 Plaintiff,) Transcript of Record

7

vs.

8

THE STATE OF SOUTH) Date: December 18, 2015
CAROLINA,)

9

Defendant.

10 * * * * *

11

12 B E F O R E:

13 THE HONORABLE DEADRA JEFFERSON

14

15

16 * * * * *

17

18 Denise J. Lauder, RPR

19 Ninth Judicial Circuit

20

21

22

23

24

25

1 A P P E A R A N C E S

2

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14 1000 Assembly Street, Room 519

15 Columbia, SC 29201

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1 (The following proceedings were had
2 December 18, 2015, Berkeley County Circuit Court,
3 at 10:08 a.m.)

4 THE COURT: This is George Salisbury
5 versus the State of South Carolina, 2013-CP-08-204.
6 This is before the Court on an application for
7 post-conviction relief filed January 25th of 2013.
8 The return -- the return was filed on October 15th
9 of 2013. Let's see, are you proceeding on all of
10 the grounds in your application, Mr. Davis.

11 MR. DAVIS: Your Honor --

12 THE COURT: Can you maybe narrow the
13 scope for us so we can know -- I need to know what
14 I'm listening for.

15 MR. DAVIS: I can, Judge, and I'll do
16 my best trying to explain it. I spoke with the AG
17 early this morning and showed him my notes.
18 Ultimately, what we'll be arguing, I think, Your
19 Honor, could be summarized in this, and I would
20 just ask that we be able to amend my comments here
21 if the testimony goes slightly different. So I
22 think I can give you two areas that would cover the
23 vast majority: Ineffective assistance of counsel
24 and then --

25 THE COURT: I need to know what's in

1 that. That's a broad statement.

2 MR. DAVIS: I understand.

3 THE COURT: I need to know specifically
4 what it is.

5 MR. DAVIS: The -- the theme of this, I
6 will do it that way. The theme is that this case
7 was scheduled -- was originally anticipated, I
8 believe, to work itself out, but then life without
9 parole notice was served and it became a trial and
10 put on the trial docket rather quickly thereafter.

11 And in an attempt of his trial
12 attorneys to be prepared for trial, we would argue
13 that in the time they were allotted, they had
14 insufficient time to be fully prepared for trial.
15 Failure to fully investigate, failure to fully be
16 informed, failure to be prepared to go forward in
17 the time allotted.

18 Dovetailed in with that was, of course,
19 receiving additional discovery right up until I
20 believe, Your Honor -- I won't testify, but I
21 believe the day before trial, and so that would tie
22 into our argument that there were items of evidence
23 not presented to the defense in a timely manner.

24 THE COURT: Okay. And that's the scope
25 of that in a nutshell?

1 MR. DAVIS: Yes, Your Honor. Yes, Your
2 Honor.

3 MR. JOHNSON: Yes. And, Your Honor,
4 I'm looking at his application. There's a claim of
5 prosecutorial misconduct, I believe that is a
6 direct appeal issue; however, A and B state that
7 the State obtained personal writing of applicant to
8 deceive the jury and destroy his character, and
9 State illegally presented State's Exhibit 27 to
10 attack his character, which is the writing. That
11 was the subject of his direct appeal. The Court of
12 Appeals affirmed that and, therefore, it is not a
13 proper issue before this Court, Your Honor.

14 THE COURT: Mr. Davis, do you all plan
15 to proceed on that?

16 MR. DAVIS: Maybe I'm splitting hairs,
17 Your Honor, but we intend to proceed on items that
18 were not disclosed in a timely manner. That would
19 be our thrust of our argument as grounds for a PCR
20 reversal. We understand the State's -- because we
21 had one earlier this week with evidentiary
22 disclosure issues, and we understand the State's
23 position. We would intend to present similar to
24 what we did earlier this week. We understand the
25 State's position, but we would argue --

1 THE COURT: That's not really an
2 answer. I'm not understanding what you're saying.
3 He's saying that -- that the issues of
4 prosecutorial misconduct are a direct appeal issue
5 and they've already been addressed. So I need to
6 know if you agree with that or if you don't agree
7 with that.

8 MR. DAVIS: I don't agree with that,
9 and we would argue, like we did earlier this week,
10 that it dovetails into the ineffective assistance
11 claim and we would be allowed to present that that
12 way.

13 THE COURT: We'll see. You'll have to
14 make a contemporaneous objection.

15 MR. JOHNSON: Thank you.

16 THE COURT: You're welcome.

17 MR. DAVIS: And, Your Honor, as I
18 requested before, we have talked about it, but if
19 you would advise my client on the record, I would
20 appreciate it, as to risks and benefits of this
21 procedure.

22 THE COURT: And just for the record, he
23 was -- let's see. He was indicted for prisoner
24 taking hostage by inmate, 2008-GS08-1074; criminal
25 sexual conduct, first degree, 2008-GS-08-1687; and

1 assault on a correctional officer, 2008-GS08-1688.
2 He was represented, of course, as we've already
3 indicated for the record, by Mr. Shelton and
4 Ms. Kennedy. Went to trial, was found guilty on
5 January 29, 2009. He was sentenced by Judge
6 Harrington to confinement for life without parole
7 for the criminal sexual conduct, and the prisoner
8 taking hostage inmate five years.

9 And let me look. Okay. He got five
10 years on the assault upon a corrections officer and
11 it was consecutive. For criminal sexual conduct,
12 he received a sentence of life, and the assault on
13 a corrections officer he received -- I can't make
14 out what that is. Is that five years?

15 MR. JOHNSON: Yes, ma'am. Five years.

16 THE COURT: Five years. And she ran
17 one of the sentences consecutive, but the assault
18 on the corrections officer was concurrent, but it
19 was consecutive to 2008-GS-08-928.

20 MR. JOHNSON: Yes, ma'am.

21 THE COURT: Raise your right hand and
22 be sworn.

23 GEORGE SALISBURY,
24 being first duly sworn, testified as follows:

25 THE APPLICANT: Yes, ma'am.

GEORGE SALISBURY - EXAM BY THE COURT

1 EXAMINATION

2 BY THE COURT:

3 Q. You can put it down, sir. State your
4 name for the record.

5 A. George Salisbury.

6 Q. Oh, I see what she did. She ran your
7 sentences consecutive to a prior criminal sexual
8 conduct with a minor second degree charge, which
9 was 2001-GS-08-928. The matter was appealed and
10 that was affirmed in an unpublished opinion
11 2012-214 by the Court of Appeals and remitted or
12 was issued on June 28, 2012.

13 Okay. Sir, do you understand what a
14 post-conviction relief application is?

15 A. Yes, ma'am.

16 Q. And do you understand that this Court
17 can't resentence or anything like that, but the
18 only thing it does is gives you a new trial?

19 A. Yes, ma'am.

20 Q. Do you understand that with a new trial
21 you would be starting from square one?

22 A. Yes.

23 Q. And do you understand the worst-case
24 scenario -- how long have you been in the
25 institution?

GEORGE SALISBURY - EXAM BY THE COURT

1 A. Uh --

2 Q. Since your trial?

3 A. 15 years.

4 Q. Okay. You've been in -- but it was for
5 a previous charge for some of that, wasn't it?

6 A. I've been incarcerated prior to my
7 robbery trial. I've never been on the streets.

8 Q. So you've been in jail six years on
9 this charge?

10 A. Approximately, yeah.

11 Q. You were sentenced on 1/29/2009; is
12 that right?

13 A. Yes, ma'am.

14 Q. Do you understand worst-case scenario,
15 you could lose credit for any of that time towards
16 these sentences?

17 A. Yes, ma'am.

18 Q. Okay. And knowing that, do you still
19 wish to go forward?

20 A. Yes, ma'am.

21 THE COURT: Okay. Was there anything
22 else you felt he needed to be advised of,
23 Mr. Davis?

24 MR. DAVIS: No, Your Honor. Thank you
25 so much.

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 THE COURT: You're welcome. Sir, you
2 may take your seat.

3 Mr. Davis, you may proceed.

4 MR. JOHNSON: We would call Mr. Shelton
5 to the stand.

6 THE COURT: Raise your right hand.

7 CHAD SHELTON,

8 being first duly sworn, testified as follows:

9 THE COURT: You can put your right hand
10 down. Take a seat for me and state your full name
11 for the record.

12 THE WITNESS: Chad Shelton,
13 S-h-e-l-t-o-n.

14 THE COURT: You may proceed.

15 MR. DAVIS: Your Honor, may I be seated
16 to question? The tables are awfully low here.
17 Would that be all right?

18 THE COURT: That's fine.

19 DIRECT EXAMINATION

20 BY MR. DAVIS:

21 Q. Mr. Shelton, were you Mr. Salisbury's
22 attorney from -- from after his arrest?

23 A. I started the representation about June
24 of 2008.

25 Q. And you were the lead attorney on his

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 case throughout the entirety of this case?

2 A. Yes.

3 Q. And you were appointed because you were
4 working in the Public Defender's Office?

5 A. Yes, sir.

6 Q. In the lead-up to this trial, were
7 there discussions with the State about whether this
8 could be worked out other than going to trial?

9 MR. JOHNSON: Objection, Your Honor.
10 That is not -- a plea offer is not in the
11 application, and I would object to any type of
12 testimony towards a plea offer.

13 THE COURT: Would you like to respond
14 to the objection?

15 MR. DAVIS: Yes, Your Honor. The
16 conduct of the attorneys throughout the pendency of
17 the case all goes to the effectiveness or
18 ineffectiveness of counsel.

19 THE COURT: Not necessarily because the
20 standard in this case is whether they performed
21 efficiently such that the Court questions the
22 outcome of the trial. It's not simply that they
23 didn't perform. It's a two-prong test. Whether he
24 was offered a deal or not is not within his
25 application and it's not the scope. And I would

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 assume, based on his charges, he was never made an
2 offer.

3 MR. DAVIS: And, Your Honor, I think
4 we'll move past that quickly. It's not to an offer
5 that was made but the -- again, to the preparation
6 and the work of the attorney.

7 THE COURT: How does that bear on
8 preparation?

9 MR. DAVIS: If I could rephrase?

10 THE COURT: Uh-huh. Yes, you may.

11 BY MR. DAVIS:

12 Q. I will get right to the point,
13 Mr. Shelton. Was there some time close to the
14 trial date, rather than early on in the case, that
15 you were notified the State intended to seek life
16 without parole if convicted?

17 A. I think it was November of 2008 is when
18 we got -- November 12th, I believe -- 13th was when
19 we got the notice to seek life without parole.
20 That notice was based off one charge, the criminal
21 sexual conduct in the first degree. And that's --
22 up until, I think, January of 2009, is what I
23 believed his case was about and that is what I was
24 preparing to go to trial for.

25 January 6th is when we received the

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 first paperwork from the Solicitor's office that
2 indicated that there were other charges that were
3 directly indicted back in September that I was not
4 aware of.

5 Those other charges included a hostage
6 taking, which he was found guilty of. The
7 significance to that is that he was -- that they
8 were seeking life without parole now on a second
9 charge, compared to just the criminal sexual
10 conduct, and that completely changed my strategy
11 from the first time I met Mr. Salisbury and read
12 the discovery in June until January, my strategy at
13 trial was to just look at the criminal sexual
14 conduct and be facing that, versus now having to
15 defend also a hostage taking and assault on a
16 correctional officer; but, more importantly, the
17 hostage taking, because that was another most
18 serious that would lead to life without parole.

19 Q. Were those two charges direct
20 indictments then?

21 A. Yes.

22 Q. Now, how long had you been practicing
23 as of June 2008?

24 A. I was sworn in November of 2007, so
25 June was seven months.

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 Q. Up until this trial, had you had a
2 trial for a most serious offense?

3 A. No. My only other trial prior to this
4 was a drug charge, possession of cocaine.

5 Q. And just to be clear on the record, you
6 had another attorney from your office assist you in
7 this case?

8 A. Yes. Ms. Kennedy helped me.

9 Q. But at any time, was there anyone that
10 was the lead attorney on this case other than you?

11 A. No.

12 Q. Did the facts of this case lead to --
13 lead to there being, other than Mr. Salisbury, one
14 eyewitness to this event; is that fair?

15 A. The victim, yes. Yes, that's true.

16 Q. So the ability to -- was it crucial
17 whether or not the information provided from the
18 victim could be corroborated or not?

19 A. Yes. Especially -- especially with the
20 new charges. The -- the criminal sexual conduct --
21 our strategy going into just the criminal sexual
22 conduct was that it was impossible to have happened
23 based off -- there was an allegation of slight
24 penetration, digital penetration, and so our
25 argument leading up to that was that that didn't

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 happen, didn't get that far. That was going to be
2 our trial strategy, that it would have been
3 impossible based off the time frame, the clothing
4 that was wearing, everything that was happening.

5 But once the hostage taking, the
6 assault on a correctional officer got added, that
7 took away all that -- that strategy. That could
8 still be our strategy toward the criminal sexual
9 conduct, but now we had to go further with the
10 defense as far as trying to prove -- all her
11 credibility, and everything that happened --
12 everything that happened was a lie, and that there
13 was some other -- something else going on as far as
14 a possible relationship, or something to that
15 effect, that we -- that we needed to try to
16 explore.

17 That changed January 6th and we had
18 trial starting January 26th. And we tried in that
19 20 days to investigate the case as fast as possible
20 towards that defense.

21 Q. At trial were there other inmates that
22 testified?

23 A. Yes.

24 Q. Were they helpful to the State or to
25 the defense?

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 A. To the State.

2 Q. At what point would you have been aware
3 of those individual witnesses?

4 A. There was -- most of them were in the
5 discovery, so most of them we could -- have
6 obviously, could have investigated, talked to.
7 There was one person, one witness that was referred
8 to as small black male.

9 THE COURT: Whose phone is that?

10 MS. WILLIAMS: It's mine. I'm sorry.

11 THE COURT: If you would turn it off?

12 MS. WILLIAMS: I will.

13 THE COURT: Mr. Shelton, you may
14 continue.

15 THE WITNESS: There was one that was
16 referred to as a small black male that we didn't
17 know his name until -- I don't know the exact time
18 frame. It would have been late December or early
19 January that we would have found out his name. And
20 I think once we got the witness list is when we
21 found out his name.

22 And so, however, based off the prior
23 strategy, it really didn't matter what they had to
24 say, because they weren't in the closet with
25 Mr. Salisbury and the victim. So those weren't

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 critical witnesses prior to us having to change
2 trial strategy.

3 BY MR. DAVIS:

4 Q. Was there -- was there difficulty in
5 obtaining the State's witness list?

6 A. Specifically, on this case, I don't
7 remember. I know we had difficulties leading up to
8 that, but I can't testify --

9 MR. DAVIS: Your Honor, if I could have
10 just a moment.

11 THE COURT: Uh-huh.

12 BY MR. DAVIS:

13 Q. At some point between -- at some point
14 between receiving notice of the additional charges
15 and the trial date on the 26th, did you request a
16 continuance?

17 A. Yes.

18 Q. Did you request the State to compel
19 certain evidence?

20 A. Yes..

21 Q. And you filed a motion to that effect?

22 A. Yes. I don't know if it was me or
23 Ms. Kennedy. I'm not -- I know Ms. Kennedy was
24 helping with a lot of motions at that time.

25 Q. And do you recall the State filing a

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 written response to that?

2 A. Yes, I remember that.

3 Q. And then so that -- as to the issue of
4 witnesses or witness lists, would reviewing that
5 document refresh your memory?

6 A. Yes.

7 MR. JOHNSON: Well, Your Honor, he has
8 not said that he does not remember the document,
9 plus it would be part of his criminal file.

10 MR. DAVIS: The question is whether he
11 remembers if he had difficulty getting the witness
12 list. He's not sure. He's said seeing this will
13 refresh his memory.

14 THE COURT: He can use it to refresh
15 his memory. It's not coming into evidence.

16 MR. JOHNSON: All right. Thank you,
17 Your Honor.

18 MR. DAVIS: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 (APPLICANT EXH. 1, Copy of witness
21 list, was marked for identification.)

22 MR. DAVIS: May I approach the witness,
23 Your Honor?

24 THE COURT: Yes.

25 BY MR. DAVIS:

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 Q. I'm going to show you what's been
2 marked as Applicant's No. 1 for identification
3 only. Take a second and see if you recognize that
4 document.

5 A. Now I remember.

6 Q. Do you recall now whether there was
7 some dispute over witnesses and witness lists of
8 the State?

9 A. Yes. We had -- we had asked for the
10 witness list prior to trial so that we could
11 interview some of the inmates and interview whoever
12 the witnesses were that the State intended to call;
13 and they refused. And then in their response, they
14 maintained that the witness list was not
15 discoverable, State V Miller and State V Nicholson.

16 They informed me that all the names
17 were on the witness list, however -- were all in
18 discovery; however, we didn't learn about the
19 skinny black male until January 21st.

20 MR. JOHNSON: Your Honor, I will object
21 and ask to strike all that evidence -- or all that
22 the testimony. Christopher Simmons was the
23 inmate's name. He did not testify in this case. I
24 may be -- if counsel can correct me, but I find
25 that to be completely irrelevant if he did not

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 testify.

2 So they cannot prove any prejudicial
3 effect of the State not turning over this witness
4 list in this case.

5 THE COURT: Mr. Davis?

6 MR. DAVIS: We're just now getting into
7 it, Your Honor.

8 THE COURT: It would be a direct appeal
9 issue anyway, and it would have been preserved if
10 they made a motion to compel. So if it was viable
11 and it was worth appealing, appellate counsel would
12 have done it.

13 Ineffective assistance is when you fail
14 to do something and prejudice flows from that.
15 When you pursue a motion to compel, that's not
16 ineffective assistance. You've done your job. He
17 has no control over how the Court responds to it.

18 What he does with it after that may be
19 relevant, whether he called this witness, but I
20 would assume that witness was not beneficial to
21 your client's cause. So the objection is
22 sustained, unless you can prove some connection to
23 make it relevant.

24 MR. DAVIS: I understand, Your Honor.

25 BY MR. DAVIS:

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 Q. Do you recall going to McDougal
2 Correctional Institution to interview witnesses?

3 A. Yes.

4 Q. Do you recall when that was?

5 A. It was in January of 2009. I'm not --
6 I don't have the exact date.

7 Q. Would a fax setting up that arrangement
8 refresh your memory?

9 A. Definitely.

10 MR. DAVIS: Forgive me, I'm trying to
11 find an extra copy.

12 THE CR: Number 2.

13 THE COURT: ID only.

14 (APPLICANT EXH. 2, Copy of fax, was
15 marked for identification.)

16 BY MR. DAVIS:

17 Q. I'm going to show you what's been
18 marked as Applicant's Exhibit 2 for identification
19 only; and see if you recognize that and if it
20 refreshes your memory as to the date that you would
21 have visited witnesses at McDougal Correctional
22 Institution?

23 A. Yes; it was January 21st.

24 Q. And was it just one inmate or were
25 there several?

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 A. There were several. Those were the
2 inmates that were in the incident reports.

3 Q. So you developed that list from
4 discovery, police reports or -- and/or from the
5 State's witness list?

6 A. Discovery and police reports.

7 Q. So not from the State's witness list?

8 A. Not from the witness list.

9 Q. That's the 21st of January?

10 A. Yes, sir.

11 Q. Do you recall now, looking at
12 documents, whether you had the State's witness list
13 as of that date or not?

14 A. I don't believe we did, but I can't
15 remember specifically. But I don't believe we did,
16 because Christopher Simmons is not on that list.

17 MR. JOHNSON: I renew my objection to
18 any talk of Mr. Simmons unless he's here to testify
19 today. It's completely irrelevant to this hearing.

20 THE COURT: Sustained. Proceed.

21 BY MR. DAVIS:

22 Q. Do you remember ultimately receiving a
23 witness list from the State?

24 A. I believe we would have, yes.

25 Q. Do you recall whether Mr. Simmons' name

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 was on the witness list?

2 MR. JOHNSON: Objection, Your Honor.

3 Mr. Simmons again.

4 THE COURT: What is the relevance of
5 this line of questioning?

6 MR. DAVIS: Well, the State's made some
7 -- some presentations on the record, but what
8 counsel says is not evidence, and so if they say
9 it's true --

10 THE COURT: I don't know what
11 presentations you're referring to.

12 MR. DAVIS: He's saying that
13 Mr. Simmons did not testify. Certainly we have a
14 record of that, but whether he was made available
15 or not I think is of issue and -- because certainly
16 The State didn't call him, but we haven't
17 determined yet whether defense --

18 THE COURT: Why don't you just ask that
19 question directly? Because if he wasn't going to
20 help your client, it really doesn't make a
21 difference.

22 MR. DAVIS: Well, I --

23 THE COURT: I would assume if he was
24 beneficial to them, he was at the institution.
25 He's a captive audience. They could have gotten

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 him here if they wanted him here. But, apparently,
2 he did not have anything that was going to
3 exculpate your client.

4 MR. DAVIS: And I don't think --

5 THE COURT: So you need to ask that
6 question directly and cut to the chase instead of
7 going all around John's barn, because they made a
8 motion to compel. They got the list. There's no
9 prejudice in that. You can't establish any. They
10 did what they were supposed to do under the Rules.
11 That's all they can do.

12 MR. DAVIS: Unless he's not on the
13 list. Unless they didn't know.

14 THE COURT: It doesn't matter if they
15 didn't know. That's not something they control.
16 They made a motion to compel. The judge apparently
17 did whatever -- gave whatever relief the judge
18 thought was appropriate. Prosecutorial misconduct
19 is a direct appeal issue. They can only be held
20 accountable for what they knew about.

21 MR. DAVIS: And that's all I want to
22 establish, Your Honor.

23 THE COURT: Then ask that question
24 directly.

25 BY MR. DAVIS:

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 Q. Were you given Mr. Christopher Simmons'
2 name on the State's witness list?

3 A. Yes.

4 Q. Do you recall when you received that,
5 however?

6 A. I do not recall. I do know that the --
7 we did get an extra day to interview people. The
8 judge stepped down the trial for, I believe, a day
9 to interview witnesses. So I believe it would be
10 that Friday or the Monday before the trial that we
11 received the witness list.

12 Q. And so it's clear on the record, was
13 the entire trial delayed a day from starting or was
14 it interrupted during trial?

15 A. It was delayed a day from -- well, I
16 think we picked the jury on Monday, and then we
17 delayed.

18 Q. Given that this happened in a
19 correctional institution, was this investigated by
20 South Carolina Law Enforcement Division?

21 A. Yes.

22 Q. Were you given contact information for
23 any SLED agents that were investigating this case?

24 A. Yes. I did have Agent Chyna's
25 information, and she had the preliminary hearing

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 that we were going to have on the -- in June that
2 we decided to waive when I talked with
3 Mr. Salisbury. And I did then have Agent Chyna's
4 information.

5 Q. What about an Agent Powell?

6 A. Agent Powell, I did -- we did become
7 familiar with Agent Powell. I don't know exactly
8 when. I know that up until January 6th when we got
9 the notice about the -- the new charges, there
10 honestly was not that much investigation that was
11 done in the case, outside investigation, other than
12 preparing for trial.

13 Q. There was -- there was evidence
14 presented at the trial concerning some notes the
15 State attributed to Mr. Salisbury. Do you recall
16 this?

17 A. Yes.

18 Q. Was there any issue, first of all,
19 pretrial in either obtaining those notes or any
20 chain of evidence involved with those notes?

21 A. Not -- I don't believe in obtaining
22 those, because they would have been provided in
23 discovery. As far as chain of evidence, I don't
24 know that they actually specifically had
25 information on where that letter was.

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 Q. That was introduced at trial by the
2 State against Mr. Salisbury?

3 A. Yes. But as far as where the -- how
4 they --

5 MR. JOHNSON: Your Honor, that is a
6 direct appeal issue. The exact issue that was
7 raised on direct appeal, the Court of Appeals
8 affirmed it and, therefore, it's not proper under
9 Ashley or Simmons versus State for the PCR forum.

10 THE COURT: Would you like to respond?

11 MR. DAVIS: Next question was, did you
12 object to it?

13 THE COURT: It's already been preserved
14 and it was ruled on by the Court of Appeals, so the
15 objection is sustained.

16 BY MR. DAVIS:

17 Q. At some point -- let me back up. There
18 was a continuous process of receiving discovery
19 right up until trial; is that fair?

20 A. That's fair.

21 Q. Do you recall receiving discovery on
22 the -- even the Friday before trial?

23 A. Yes.

24 Q. At some point in receiving that
25 discovery, and I just want to clarify here, do you

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 recall finding out about a black male inmate
2 running from the scene?

3 A. Right.

4 Q. Does that correspond with the -- the
5 individual we have already spoken about or is that
6 an unknown individual?

7 A. That was the individual we spoke about.

8 Q. Okay. And just to be clear for the
9 record, not to go into it further, it was
10 Christopher Simmons, correct?

11 A. That's correct.

12 Q. In this process of receiving discovery,
13 at some point were you aware of an inmate who took
14 items of evidence and clothing from the crime
15 scene? A Mr. Tyrone Oliver?

16 A. I don't remember that. I don't recall.

17 Q. At some point in receiving the
18 discovery, were you made aware that witnesses --
19 inmate witnesses, that's a crafty way to say that,
20 but inmate witnesses, were you made aware that
21 because of their testimony, letters were placed
22 into their files, positive letters?

23 A. Yes. We were made aware that they
24 received some type of positive notification that
25 they helped in these -- when the incident occurred,

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 they helped the victim, and so they got a positive
2 letter of appreciation in their files.

3 Q. And that something that -- was their
4 credibility crucial in this case?

5 A. Yes.

6 Q. Is that something that you would have
7 used to impeach them?

8 A. Yes.

9 Q. Is that something that you knew prior
10 to them testifying, or after?

11 A. It was something that we knew about
12 prior, but we didn't -- we weren't able to fully
13 investigate it and determine the impact of it.

14 Q. Can you explain that a little more
15 fully for the Court?

16 A. Well, we weren't -- we weren't
17 completely sure about what it would do, as far as
18 help them out or not, so we weren't able to really
19 get into the cross-examination of it with them
20 because we didn't know what they were going to say.
21 We didn't have any witnesses to back up any type of
22 theory to go along with it.

23 MR. DAVIS: Your Honor, if I can have a
24 moment?

25 THE COURT: Uh-huh.

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 BY MR. DAVIS:

2 Q. I want to circle back to one thing,
3 Mr. Shelton. You testified just a little bit ago
4 about the one-day extension to interview inmates;
5 is that correct?

6 A. Yes.

7 Q. And I believe you testified you recall
8 picking a jury, but then having that day, Monday,
9 to do -- to accomplish that?

10 A. Right. I don't remember exactly what
11 day the trial then started on. I don't know if we
12 started on the Wednesday or if we started that
13 Tuesday.

14 Q. Okay.

15 A. But I know we did have some time.

16 Q. And that would have been in addition to
17 the visit on the 21st you've already testified
18 about?

19 A. Right.

20 Q. And I believe you testified that the
21 week prior -- up to the Friday, the week prior, you
22 were receiving continuous responses to the
23 discovery requests; is that correct?

24 A. That's correct.

25 Q. And so the case was called on Monday,

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 the 26th? That's when the trial was called,
2 correct?

3 A. Yes.

4 Q. Do you recall receiving additional
5 discovery even after the case was called?

6 A. I don't remember.

7 Q. Okay. If you received discovery, the
8 State would have sent you a letter informing you of
9 that?

10 A. That's true.

11 Q. Would that letter refresh your memory?

12 A. Yes.

13 THE COURT: ID only.

14 (APPLICANT EXH. 3, Copy of letter, was
15 marked for identification.)

16 MR. DAVIS: Yes, Your Honor. May I
17 approach the witness?

18 THE COURT: You may.

19 BY MR. DAVIS:

20 Q. I'm going to show you what's been
21 marked as Applicant's No. 3 for identification
22 only, and if you can recognize that document and if
23 it refreshes your recollection as to my question.

24 A. Yes, it does.

25 Q. Okay. Are you now able to answer the

CHAD SHELTON - DIRECT EXAM BY MR. DAVIS

1 question of whether you received discovery after
2 the trial was called?

3 A. Yes. It was received January 27th.

4 Q. And do you recall -- does that document
5 refresh your memory as to what you received?

6 A. No. Actually -- well, it had a --
7 McDougal Correctional inmate correspondence.

8 Q. We've already established that you
9 requested a continuance in this trial; is that
10 correct?

11 A. Yes, we did.

12 Q. If I'm -- and the record may reflect
13 this, so, Judge, I don't mean to belabor this
14 point, but were there more than request -- more
15 than one hearing on that issue?

16 A. Yes.

17 Q. Do you recall how many?

18 A. Two.

19 Q. And other than the one-day delay -- the
20 way I'm describing it, one-day delay -- was the
21 continuance granted or not?

22 A. The first time it was granted for two
23 weeks.

24 Q. And then the second?

25 A. Then the second one was denied.

CHAD SHELTON - CROSS EXAM BY MR. JOHNSON

1 Q. This was a trial before Judge
2 Harrington, correct?

3 A. Yes.

4 Q. And would she have been the judge on
5 the second continuance request?

6 A. Yes. She was the judge on both
7 continuance requests.

8 MR. DAVIS: Thank you. Thank you,
9 Mr. Shelton.

10 THE COURT: Any questions?

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q. Mr. Shelton, I will take these in
16 reverse order, if you don't mind.

17 A. Okay.

18 Q. As far as investigating the inmate
19 witnesses because their credibility was crucial in
20 this case, did you not cross each inmate that was
21 presented to the Court?

22 A. Yes.

23 Q. And you also stated that there was some
24 issue about some letter of appreciation that you
25 did not ask about, correct?

CHAD SHELTON - CROSS EXAM BY MR. JOHNSON

1 A. That's correct.

2 Q. And is it true that you don't want to
3 ask a question you don't know the answer to?

4 A. That's true.

5 Q. Because it could have hurt your
6 client's case and bolstered the witnesses'
7 credibility?

8 A. You don't know the answer to that, so,
9 I mean, you don't -- you don't know how it fits
10 into your theme, if it could, or how to ask that
11 question to fit into your theme. So, I mean,
12 that's the -- that's the crucial part. It
13 doesn't -- I mean, it could hurt, it could help,
14 but the crucial part is how it fits into your theme
15 and how it plays along into your case, and we
16 didn't have an opportunity to investigate that.

17 Q. And so you made a strategic decision
18 not to ask those questions, correct?

19 A. That's true.

20 Q. And concerning the SLED investigation,
21 you said you had the information on Agent Powell?

22 A. Yes.

23 Q. And he's the one that took
24 Mr. Salisbury's statement, correct?

25 I can point you to transcript of the

CHAD SHELTON - CROSS EXAM BY MR. JOHNSON

1 Jackson versus Denno hearing on page 134.

2 A. Yes.

3 Q. And that statement -- you objected and
4 had a Jackson versus Denno hearing and that
5 statement was ruled admissible by Judge Harrington,
6 correct?

7 A. That's correct.

8 Q. And in that statement Mr. Salisbury was
9 very apologetic because he apparently saw his
10 ex-wife in the victim and that that's the reason he
11 acted, correct?

12 A. If that's what's in there, yes.

13 Q. And he also stated that he had a shank
14 for about a week, correct?

15 A. If that's what's in there. I'm sorry.

16 Q. And he never denied his involvement in
17 this case, right?

18 A. Is that -- and that was in his
19 statement?

20 Q. Yes.

21 A. Then, yes.

22 Q. Okay. And that's the statement that
23 the jury heard in this case?

24 A. Yes.

25 Q. Okay. Over your objections?

CHAD SHELTON - CROSS EXAM BY MR. JOHNSON

1 A. That's true.

2 Q. And you also stated that part of your
3 strategy was to disprove the victim's credibility
4 in this case?

5 A. Yes.

6 Q. Because it boiled down to two
7 witnesses, the victim and Mr. Salisbury, in this
8 case?

9 A. Right.

10 Q. In the bathroom?

11 A. In the bathroom, yes.

12 Q. And just a matter -- just a question of
13 common sense. It's pretty hard to disprove her
14 credibility when other inmates testified to her
15 condition afterwards, correct? That she had a
16 ripped shirt, you know, that she came out
17 half-naked from the bottom down, and they clothed
18 her. Right?

19 A. So that would be -- that's -- that's
20 what made the hostage-taking part of it difficult.

21 Q. Right.

22 A. Yes.

23 Q. Okay. And even though you had only
24 been practicing or sworn in for seven months in
25 this case, you had the help of learned counsel in

CHAD SHELTON - CROSS EXAM BY MR. JOHNSON

1 Ms. Kennedy, correct?

2 A. That's correct.

3 Q. Who is a seasoned trial attorney,
4 right?

5 A. That's correct.

6 Q. And, lastly, you said that you were
7 prepared for the life without parole notice on the
8 criminal sexual conduct, first degree charge,
9 right?

10 A. Yes.

11 Q. And that late in the game, you got
12 another LWOP notice based on the taking the hostage
13 charge, right?

14 A. That's correct.

15 Q. By that time you knew the facts of the
16 case broadly, right?

17 A. Yes.

18 Q. So you were prepared and he was
19 prepared that he was facing life without parole in
20 this case?

21 A. On -- up until that point on the
22 criminal sexual conduct. I --

23 Q. But, in general, you knew that he was
24 facing life without parole?

25 A. Right.

CHAD SHELTON - REDIRECT EXAM BY MR. DAVIS

1 Q. Based on his prior criminal sexual
2 conduct with a minor, second degree, 2011
3 conviction, correct?

4 A. Right. Yes.

5 MR. JOHNSON: Okay. That's all I have
6 at this time, Your Honor. Thank you.

7 THE COURT: Any redirect of the
8 witness?

9 MR. DAVIS: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q. Mr. Shelton, you're aware of the
13 ethical duty not to file frivolous claims, correct?

14 A. Yes.

15 Q. You filed for a continuance twice in
16 this case, correct?

17 A. Yes.

18 Q. And what would you have done with more
19 time if granted the second request for a
20 continuance?

21 A. I would have -- I would have gone and
22 investigated more of the inmates. Mr. Salisbury
23 was able to give me a couple of inmate's names
24 that could possibly verify a relationship, and so
25 that -- a relationship between Mr. Salisbury and

CHAD SHELTON - REDIRECT EXAM BY MR. DAVIS

1 the victim. And so I could have went and tried to
2 find those persons and investigate and talk with
3 them.

4 In addition, I could have looked into
5 -- obviously, we tried to get into her previous
6 employment and maybe try to find more information
7 about that previous employment, and looked into her
8 credibility on that.

9 We really didn't get a chance to really
10 hit in on her credibility in that 20 days. It was
11 more, let's interview all of these witnesses and
12 see what they're going to say, instead of really
13 investigating to get into impeachment material.
14 That would have helped with the credibility.

15 MR. DAVIS: Thank you, Mr. Shelton. No
16 other questions.

17 MR. JOHNSON: Just one follow up.

18 THE COURT: Uh-huh.

19 RECROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q. Mr. Shelton, would you agree with me
22 that even if you had time to investigate these
23 things and nothing had panned out, you'd still be
24 back in the seat you were the day the trial
25 started, right?

CHAD SHELTON - RECROSS EXAM BY MR. JOHNSON

1 A. I guess if nothing panned out, but then
2 we would have had some more information that we
3 could have generated some cross-examination, some
4 impeachment-toned questions.

5 Q. But hindsight is always 20/20; is it
6 not?

7 A. True.

8 MR. JOHNSON: No further questions,
9 Your Honor.

10 MR. DAVIS: Nothing further.

11 THE COURT: Sir, you may step down.
12 Thank you.

13 MR. DAVIS: All right. If I could have
14 one moment, I think it would help us decide on
15 calling other witnesses.

16 MR. JOHNSON: We'd also ask that
17 Mr. Shelton be released by the State Subpoena, Your
18 Honor.

19 THE COURT: Certainly.

20 MR. DAVIS: No objection.

21 EXAMINATION

22 BY THE COURT:

23 Q. Mr. Shelton, nobody asked you this
24 question or maybe I missed it. What date were you
25 appointed to represent Mr. Salisbury?

CHAD SHELTON -- EXAM BY THE COURT

1 A. June 2000 -- June 10th -- Your Honor,
2 can I ask for a clarification? Is it appointed or
3 when I first met with him?

4 Q. When you were appointed and when you
5 first met with him and how many times you met with
6 him.

7 A. Yes, Your Honor. I met with him first
8 June 4th of 2008.

9 Q. June 4th, 2008?

10 A. Yes, ma'am. He was brought over to our
11 detention center in Berkeley County for a
12 preliminary hearing that was held the next day, and
13 I talked to him about the preliminary hearing, got
14 brief information from him at that point in time.

15 And I think Ms. Kennedy might be a
16 better witness on this, but I believe it was at the
17 request of the Solicitor that we talk with him,
18 because I don't know if he was officially --

19 Q. Appointed yet?

20 A. -- filed the paperwork at that point in
21 time.

22 Q. Okay.

23 A. And so then I met with him one other
24 time at the detention center prior to trial. And
25 then we had him transported the week prior to trial

CHAD SHELTON -- EXAM BY THE COURT

1 and probably met with him at least two times the
2 week prior to trial, maybe three.

3 Q. So two to three times you met with him
4 at the institution; is that what you're telling me?

5 A. Once at -- he was at Lieber. I went
6 to Lieber one time and met with him, and then prior
7 to trial maybe two or three times at our detention
8 center. We had him transported to our detention
9 center.

10 We did correspond, I think it was three
11 letters. I do have numerous letters that he sent
12 me.

13 Q. And when were you actually appointed to
14 represent him?

15 A. We do have -- I'm sorry. I misspoke.
16 May 13th is when the waiver for the application fee
17 was done by the clerk of courts. So that is when
18 our office would have first gotten notice.

19 Q. And then you would have been appointed
20 when?

21 A. Then I --

22 Q. Is that when you considered yourself
23 appointed?

24 A. That was when the office was
25 technically appointed.

CHAD SHELTON -- EXAM BY THE COURT

1 Q. Okay. So that would have been 5/13/08.

2 A. Yes, ma'am.

3 Q. And then you met with him 6/4/08?

4 A. Yes, ma'am.

5 Q. And did you go over all the discovery
6 with him?

7 A. I did not have the discovery at that
8 time.

9 Q. I mean, in general.

10 A. In general, I --

11 Q. Not on that date. Prior to trial, did
12 you go over all the discovery with him?

13 A. I gave him a copy of the discovery. I
14 sent it to him at the detention center as I got it.
15 And then prior to trial as much as we got, we would
16 go over it with him.

17 THE COURT: Any questions as a result
18 of the Court's questions from the Applicant?

19 MR. JOHNSON: None from the State.

20 MR. DAVIS: No, Your Honor. Thank you.

21 THE COURT: Mr. Shelton, you are
22 excused from your Subpoena if you would like to
23 leave.

24 Anything further from the Applicant?

25 MR. DAVIS: Yes, Your Honor, if I could

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 have just one moment, please.

2 THE COURT: Uh-huh.

3 MR. DAVIS: Thank you very much. We
4 would call Mr. Salisbury to the stand.

5 THE COURT: Sir, you can stand at
6 counsel table. I will remind you that you were
7 already sworn. You may take your seat and state
8 your full name for the record.

9 THE APPLICANT: You don't want me to go
10 up there?

11 THE COURT: No, sir, I do not. I want
12 you to testify at counsel table. Thank you. You
13 can take your seat and state your full name for the
14 record.

15 THE APPLICANT: George Salisbury.

16 THE COURT: George you said?

17 THE APPLICANT: Yes, ma'am.

18 MR. DAVIS: May I be seated, Your
19 Honor?

20 THE COURT: Yes, sir.

21 MR. DAVIS: Thank you.

22 DIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q. Mr. Salisbury, I want to ask you a few
25 questions about your PCR complaint. Your complaint

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 is against your attorney's performance in this
2 case?

3 A. Yes.

4 Q. Okay. Were you -- were you aware that
5 your attorneys attempted to get continuances in
6 your trial?

7 A. Yes.

8 Q. Did you agree with their request for a
9 continuance at trial?

10 A. Yes.

11 Q. To your understanding or to your
12 belief, why was more time needed?

13 MR. JOHNSON: Your Honor, I will
14 object.

15 THE COURT: Sustained. They preserved
16 the record by making a motion for continuance;
17 therefore, they can't be deficient in that regard.
18 They have no control over what a court will do.
19 That's a direct appeal issue that was preserved
20 contemporaneously. As we know, it is highly
21 unlikely that a judge's ruling on something
22 discretionary will be overturned on appeal, and it
23 was viable.

24 And just as an observation, they had
25 represented him for more than a year and a half.

GEORGE SALISBURY -- DIRECT EXAM BY MR. DAVIS

1 That's more than adequate time to be prepared and I
2 would have denied his request for continuance as
3 well, probably, based on his record. So we can
4 move on. The objection is sustained.

5 MR. JOHNSON: Thank you, Your Honor.

6 BY MR. DAVIS:

7 Q. I want to get into something we haven't
8 had testimony on yet. Were you made aware --

9 THE COURT: That's less than a year.
10 I'm sorry. I'm not good at math.

11 MR. DAVIS: Correct, Your Honor.

12 THE COURT: I'm the person that sent
13 the jury to lunch for two hours. I can't tell
14 time, but go ahead.

15 (Off-the-record conference.)

16 THE COURT: But even under those
17 circumstances, it was more than adequate time under
18 the facts of the case and the record, and the judge
19 gave them adequate time to interview witnesses in
20 between, to cure any potential defects.

21 You may proceed, Mr. Davis.

22 BY MR. DAVIS:

23 Q. I was specifically talking about
24 information you received about a potential witness,
25 Tyrone Oliver. Do you recognize that name?

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 A. Yes.

2 Q. And what was his role or his importance
3 as a witness?

4 MR. JOHNSON: And, Your Honor, I'm
5 going to object again. Unless he's here to
6 testify, this is completely irrelevant. He has to
7 be here under Bannister versus State.

8 THE COURT: Would you like to respond,
9 Mr. Davis?

10 MR. DAVIS: Just a little leeway, Your
11 Honor, in what could have been investigated. It
12 goes to ineffective assistance.

13 THE COURT: Well, you have to have the
14 witness here to prove that they would have provided
15 something beneficial, and I assume he's probably
16 still in the institution and a captive audience.
17 You could have subpoenaed.

18 MR. DAVIS: If I could just have a
19 little leeway on the record on this issue, Your
20 Honor.

21 THE COURT: No. The rules are the
22 rules. It's not -- you don't just get to assert
23 it. You have to prove that it would have been
24 beneficial, and that they failed to -- and, Mr. --
25 at this point, I believe the testimony is that they

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 talked to all the witnesses that were available,
2 and if I remember the record -- I don't want to
3 misspeak. I read this a couple of weeks ago. But
4 that witness would have to be present and available
5 to testify to meet the standard.

6 You may continue. The objection is
7 sustained.

8 MR. DAVIS: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 MR. DAVIS: If I could have a moment.

11 BY MR. DAVIS:

12 Q. In leading up to your trial, how many
13 times would you -- do you recall meeting with
14 Mr. Shelton?

15 A. Probably about three or four.

16 Q. Did you ever meet with Ms. Kennedy as
17 well?

18 A. Once before trial.

19 Q. Throughout the entirety of the -- your
20 case Mr. Shelton was your lead attorney, correct?

21 A. Yes.

22 Q. In meetings with Mr. Shelton leading up
23 to trial, did he have an opinion as to whether you
24 should go to trial or not?

25 A. He was the one that suggested it.

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 Q. Suggested what?

2 A. That we go to trial.

3 Q. Were you -- prior to your trial, were
4 you notified that the State intended to seek a life
5 without the possibility of parole sentence if
6 convicted?

7 A. Yes.

8 Q. Were you personally served?

9 A. Yes.

10 Q. In your meetings with Mr. Shelton, did
11 he discuss with you what the charge of criminal
12 sexual conduct meant?

13 A. Yes.

14 Q. Did he review with you the elements of
15 that offense?

16 A. Yes.

17 Q. And as to the charge of -- the assault
18 charge and hostage charge, did he do the same as to
19 those?

20 A. No.

21 Q. In leading up to -- in leading up to
22 trial, did you and Mr. Shelton discuss any
23 potential defenses?

24 A. As far as the criminal sexual conduct
25 was the only defense that I can recall.

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 Q. Ultimately, the case did go to trial in
2 January 26, 2009. Whose decision was it to go to
3 trial?

4 A. Ultimately mine.

5 Q. Mr. Salisbury, other than the
6 complaints about Mr. Shelton that I've already
7 questioned him about, do you have other complaints
8 about his performance in your trial?

9 A. Yes.

10 Q. Can you tell the Court what the
11 complaints are?

12 A. There was information leading up to
13 prove that there were evidence used against me in
14 court that was considered to be contaminated
15 evidence. If it would have been investigated
16 further, it would have been found out.

17 Q. What evidence was that that was
18 contaminated?

19 A. It was the clothing items that was
20 removed from the crime scene by the inmate, inmate
21 Tyrone Oliver.

22 THE COURT: I'm sorry. Please repeat
23 the end of your answer.

24 THE WITNESS: The inmate --

25 THE COURT: The first person's name

GEORGE SALISBURY - DIRECT EXAM BY MR. DAVIS

1 that you said could not -- it was not audible.

2 THE WITNESS: Tyrone Oliver.

3 MR. JOHNSON: I'm going to renew my
4 objection to anything about Tyrone Oliver. If he's
5 here not to testify, it's irrelevant, Your Honor.

6 THE COURT: Well, I think his issue is
7 that he's saying his lawyers did not investigate
8 any contaminated clothing. The fact of who had
9 removed it was fairly -- the objection is
10 overruled.

11 MR. JOHNSON: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 BY MR. DAVIS:

14 Q. That issue as to that evidence is now
15 on the record. Is there any other complaints about
16 Mr. Shelton's performance prior to or during your
17 trial that we have not established on the record?

18 A. No.

19 MR. DAVIS: Your Honor, if I could have
20 a moment?

21 THE COURT: Uh-huh.

22 MR. DAVIS: Mr. Salisbury, that's all
23 the questions I have. The Attorney General may
24 have some questions for you.

25 MR. JOHNSON: None from the State.

ANNE WILLIAMS - DIRECT EXAM BY MR. JOHNSON

1 THE COURT: Okay. You may proceed,
2 Mr. Davis.

3 MR. DAVIS: If I could have a moment?

4 THE COURT: Uh-huh.

5 MR. DAVIS: Your Honor, that's the
6 Applicant's presentation. Thank you.

7 MR. JOHNSON: Your Honor, I would call
8 Anne Williams to the stand.

9 THE COURT: Ms. Williams, if you would
10 come to the stand and be sworn.

11 ANNE WILLIAMS,
12 being first duly sworn, testified as follows:

13 THE WITNESS: I do.

14 THE COURT: Ma'am, have a seat and
15 state your full name for the record.

16 THE WITNESS: Anne Williams.

17 THE COURT: You may proceed.

18 MR. JOHNSON: May it please the Court?

19 THE COURT: Yes.

20 MR. JOHNSON: May I approach the
21 witness?

22 THE COURT: Yes.

23 MR. JOHNSON: Please let the record
24 reflect that I am showing the witness Applicant's
25 No. 3, which is the letter I believe from

ANNE WILLIAMS - DIRECT EXAM BY MR. JOHNSON

1 Ms. Williams.

2 DIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q. Ms. Williams, do you recognize that
5 document?

6 A. I do.

7 Q. And can you describe for the Court what
8 that document describes?

9 A. I can. After we began picking a jury,
10 there were several arguments made by defense
11 counsel and they wanted some records from the
12 Department of Corrections that we did not have in
13 our possession. And those records were the -- the
14 inmate files for each of the witnesses that were in
15 the discovery, and the personnel file of the
16 victim.

17 So we were given, you know, that day to
18 try to get the records. So we contacted the
19 Department of Corrections. The judge ordered them
20 to release those records, and then she reviewed
21 them in camera. The inmate records were given to
22 defense counsel, but she reviewed the personnel
23 file of the victim in camera.

24 So these were not records that we had
25 in discovery the whole time. These were records

ANNE WILLIAMS - DIRECT EXAM BY MR. JOHNSON

1 that the judge ordered the Department of
2 Corrections to release to us after the trial week
3 had begun, and we were able to get those to defense
4 counsel within a day.

5 Q. And is that a fair and accurate copy of
6 the letter?

7 A. Yes.

8 MR. JOHNSON: Your Honor, at this time
9 I would move to admit that letter into evidence.

10 THE COURT: Any objection?

11 MR. DAVIS: Your Honor, please make
12 sure he's using a copy, but if I could clarify.

13 MR. JOHNSON: There it is.

14 THE WITNESS: That's my memory of what
15 that is.

16 MR. DAVIS: You're just moving it into
17 evidence?

18 MR. JOHNSON: Yeah. Making it part of
19 the record.

20 THE COURT: Any objection?

21 MR. DAVIS: No, Your Honor.

22 THE COURT: Marked and admitted without
23 any objection.

24 (APPLICANT EXH. 3 in evidence.)

25 MR. JOHNSON: That's all the questions

1 I have. Thank you, Ms. Williams.

2 THE COURT: Any questions for this
3 witness?

4 MR. DAVIS: If I could have just a
5 moment, Your Honor. No questions, Your Honor.

6 THE COURT: You may step down, Ms.
7 Williams.

8 THE WITNESS: Thank you.

9 MR. JOHNSON: The State has no further
10 witnesses, Your Honor. We rest our case.

11 THE COURT: Is there any argument?

12 MR. DAVIS: Your Honor, there was just
13 two issues we attempted to present. I don't know
14 that we need to rehash the issue. I know you take
15 copious notes and you were paying attention. I
16 think what was presented about the ineffective
17 assistance, and we understand the State's position,
18 and your -- your -- the issue about whether
19 prosecutorial misconduct is A direct appeal issue,
20 we understand that, but we think we've preserved
21 everything we need on the record and we rely on
22 that.

23 MR. JOHNSON: Briefly, Your Honor, may
24 it please the Court?

25 THE COURT: Yes.

1 MR. JOHNSON: First point of
2 contention, Your Honor, is whether or not counsel
3 was adequately prepared to try this case and
4 whether or not he interviewed witnesses. As Your
5 Honor knows, he asked for a continuance; that was
6 denied. That is a direct appeal issue; however,
7 counsel stated that he -- if -- had he been given
8 extra time he could have interviewed witnesses,
9 maybe attacked the victim's credibility, so on and
10 so forth.

11 But Strickland versus Washington, the
12 pinnacle case of post-conviction relief, states
13 that a fair assessment of attorney performance
14 requires that every effort be made to eliminate the
15 distorting effect of hindsight to reconstruct the
16 circumstances of counsel's challenged conduct and
17 to evaluate the conduct from counsel's perspective
18 at the time.

19 That's the whole reason I asked him --
20 hindsight is 20/20. Had he had this? Yes. That's
21 all speculation, though. He did not have that. He
22 did not have the extra time, he had to go with what
23 he was given.

24 Further, we have Ms. Williams
25 testifying as to the prosecutorial misconduct

1 allegation, that this letter was all -- was -- yes,
2 it was prior to the start of trial, but Judge
3 Harrington ordered that these files be turned over.
4 There was nothing that the Solicitor had in her
5 control and so, therefore, there's no prosecutorial
6 misconduct. He's produced -- Mr. Salisbury, that
7 is -- no other evidence of prosecutorial misconduct
8 and he's produced no evidence of what counsel could
9 have done investigation-wise.

10 There's been no witnesses here to
11 testify as to what they would have said, especially
12 Mr. Oliver and Mr. Simmons. There's been no
13 investigation -- a private investigator came in and
14 said, you know, had we done this, had counsel done
15 this, then maybe this was discovered; therefore,
16 he's not met his burden of proving ineffective
17 assistance and, as such, there can be no resulting
18 prejudice in this case. And we ask you to deny
19 this application.

20 THE COURT: Anything further,
21 Mr. Davis?

22 MR. DAVIS: No, Your Honor.

23 THE COURT: Court finds that the
24 Applicant has failed to establish his burden of
25 proof and the application is denied. And I -- I

RULING OF THE COURT

1 really am at a loss as to any allegations that
2 Mr. Shelton was deficient. Everybody has their
3 first serious case and that's not the barometer of
4 whether someone has performed adequately.

5 Frankly, I find that a person who has
6 had their first case is usually more prepared than
7 someone who is seasoned because they don't take
8 anything for granted and they're nervous. They're
9 always trying to make sure they don't fall short
10 and cross every I -- I mean, cross every T and dot
11 every I, because they always want to make sure that
12 they were doing their best. So I don't think that
13 that is dispositive in terms of it being one of his
14 first serious cases.

15 And it appears that they met with him
16 more than adequately. They went over the elements
17 of the offenses with him. I do not find his
18 testimony credible that they went over one set of
19 elements and not the others. That just really
20 doesn't add up and would make no sense and,
21 therefore, I do not find that testimony credible or
22 persuasive.

23 As it regards their preparation for
24 trial, it's within the Court's prerogative whether
25 to grant or deny a continuance and they preserved

RULING OF THE COURT

1 the issue for appeal and, therefore, they cannot be
2 held to be deficient in that regard. And the State
3 is correct; hindsight is always 20/20. There is
4 always something you wish you did better, but that
5 is not the standard.

6 The Court gave them a recess to
7 investigate witnesses, to speak with those
8 witnesses so they could be fully aware of what was
9 presented. And alternatively, while prosecutorial
10 misconduct is a direct appeal issue, there is
11 absolutely no evidence a prosecutorial misconduct
12 in this record. And, therefore, the PCR cannot be
13 sustained on that basis.

14 As a result the Court is denying the
15 application. I'm instructing the State's counsel
16 to provide the Court with a proposed order within
17 20 days to make all findings of fact and
18 conclusions of law consistent with the record, and
19 at that time, I will review it, make my
20 modifications to the order, and it will be signed.

21 And, of course, counsel is to provide a
22 copy of that order to Mr. Davis in the same manner
23 it is provided to the Court.

24 MR. JOHNSON: Yes, ma'am, thank you.

25 MR. DAVIS: Thank you, Your Honor.

1 THE COURT: Thank you very much.

2 (These proceedings were concluded at

3 11:27 a.m.)

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1 CERTIFICATE OF REPORTER

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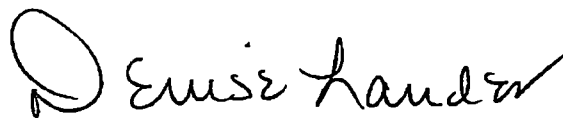
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I, Carol Denise Lauder, Registered

Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 16TH day of AUGUST, 2016 at
Charleston, Charleston County, South Carolina.



S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
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13 Charleston, Charleston County, South Carolina.

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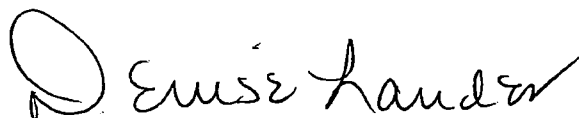
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S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

Case # 2008GS08107

1687, 1688

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Annex 2#14

2013-CP-08-204

EXHIBITS

Plaintiff(s)
vs.
Defendant(s)

State of South Carolina
State George Salasberry
Applicant

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Letter from State	1 State's response to motion ID only	
2	2 Fax ID only	
3	3 Letter from State	3 ID only
4	4	4
5	5	5
6	6	6
7	7	7
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FILED
2013 DEC 18 PM 1:57
CLERK OF COURT
BERKELEY COUNTY, SC

Court
Reporter

Clerk of Court

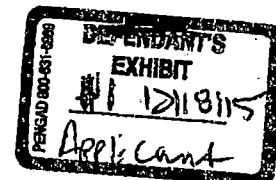
Denise Lander
Jackie Williamson

12-18-15

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
STATE OF SOUTH CAROLINA	)	STATE'S RESPONSE TO MOTION
	)	TO COMPEL and MOTION for
	)	ORDER OF CONTINUANCE
vs.	)	
	)	INDICTMENT #'s: 2008GS081074
	)	2008GS081687; 2008GS081688
	)	
George Salisbury	)	
	)	
Defendant	)	
	)	CHARGES: Criminal Sexual Conduct 1st
	)	Degree; Hostage Taking; Assault Upon A
	)	State or Local Correctional Facility
	)	Employee

The State has complied with Rule 5 of the South Carolina Rules of Criminal Procedure and Defendant's Motion for Discovery and Inspection pursuant to Brady v. Maryland, 373 US 83, 83 S.Ct. 1194, 10 L.Ed.2d.215 (1963). The State has turned over and disclosed all discovery in the above mentioned case.

The Defense in its most recent Motion to Compel and Motion for Continuance has incorporated a letter written to the State on January 23, 2009 which appears to summarize several telephone conversations regarding discovery issues. This letter has not been received by the State to date, appearing first as incorporated in the Defendant's motion. After review of the letter today, the State will clarify several mischaracterizations of its positions by way of this response, and on the record, on the issue of discovery but maintains that it is in compliance with all obligations with regard to discovery and disclosure of evidence.

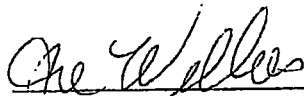


On Wednesday, January 21, 2009 Defense Counsel was given the name of Christopher Simmons an inmate referred to in the victim's statement as "I have no idea who the inmates were but a skinny black male picked me up and carried me to the day room, the inmates were covering me up with their clothes...". The victim's statement has been in the possession of the Defense since May of 2008. Through the State's questioning of the other inmates, it was learned that the "skinny black male" referred to in the victim's statement was Christopher Simmons. His name was subsequently given to defense counsel. ARGUED THAT IT WAS ATTY WORK PRODUCT

On Friday, January 23, the State's entire witness list was turned over to the defense. Previously, the State had maintained that witness lists were not discoverable under State v. Miller, 289 S.C. 316, 345 S.E. 2d 489 (1980) and State v. Nicholson, 366 S.C. 568, 623 S.E.2d 100 (App. 2005)., but informed the defense of all the names of witnesses that were certain anyway, and turned over the full list on January 23, 2008. To date, no defense witness list has been received by the State.

The State respectfully requests the court to deny Defense Motion for Continuance as it is without merit. The State asserts that the Motion to Compel ~~is~~ mute as the State has already turned over the witness list requested.
 met

Respectfully Submitted,


 Anne Williams
 Assistant Solicitor

BERKELEY COUNTY PUBLIC DEFENDER'S OFFICE

PATRICIA A. KENNEDY
 DEBRA K. LITTLEJOHN
 KESHIA V. WHITE
 DAVID P. SCHWACKE
 CHAD D. SHELTON

219 N. HWY. 52, SUITE E • POST OFFICE BOX 1687 • MONCK'S CORNER, S.C. 29461
 TELEPHONE (843) 899-2777 • FACSIMILE (843) 899-2701

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Ms. Ramey (Office of the Warden)	Pam Crabb for Chad D. Shelton
COMPANY:	DATE:
MacDougall Correctional Institute	01/20/09
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
(843) 688-4047	
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
(843)	
RE:	YOUR REFERENCE NUMBER:
Interview list	

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY

NOTES/COMMENTS:

This will confirm that Chad Shelton will be arriving at MacDougall at 1300 hrs (1:00pm) this date to interview the following persons and view the officers' office in Magnolia Two Unit.

~~Jefferson Waldrop SCD# 244213~~

Richard Singleton SCD# 107312

~~Willie Stiggers SCD# 215244~~

Willie Starnes SCD# 287191

~~Keith Kelly SCD# 257556~~

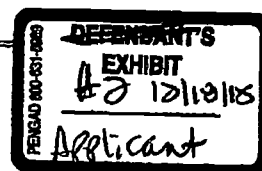
David Darden SCD# 297367

~~Timmy Phillips SCD# 299036~~

Mr. Shelton will return on Wednesday, January 21, 2009 at 0900hrs. (9:00am) if he is not able to conclude all interviews by 1600hrs. (4:00pm) on Tuesday.

Patricia A. Kennedy, our Chief Public Defender will be accompanying Mr. Shelton.

Thank you for your assistance in arranging Mr. Shelton's visit.



REC'D. 1/27/09
3:00 P.M.

The State of South Carolina



Solicitor, Ninth Judicial Circuit

Solicitor

CHARLESTON AND BERKELEY COUNTIES

Scarlett A. Wilson

300-B California Ave
Moncks Corner, SC 29461
TELEPHONE: (843) 723-3800 ext 4529
FAX: (843) 719-4588
www.scsolicitor9.org

January 27, 2009

Chad Shelton, Esquire
Patti Kennedy, Esquire
Moncks Corner, SC 29461

RE: State of South Carolina vs. George Salisbury
Charges: Pending

Dear Chad & Patty:

Please find attached Discovery in reference to the above captioned matter.

If you have any questions, please contact me at (843) 723-3800 ext 4529.

Sincerely,

Anne M. Williams /DB

Anne M. Williams
Assistant Solicitor



Received By: _____

Date: _____

Attached: SCDL Macdougall Corrections Inmate Correspondence



STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

George Salisbury, #263724,

2013-CP-08-0204

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:

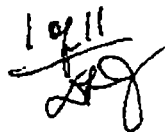
Hon. Deadra L. Jefferson
Rodney D. Davis, Esquire
J. Rutledge Johnson, Esquire
Chad Shelton, Esquire
Patricia Kennedy, Esquire
December 18, 2015
Denise Lauder

FILED
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

16 MAY 19 PM 1:35

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 25, 2013. The State made its Return on October 10, 2013 and filed on October 15, 2013. An evidentiary hearing into this matter was convened on December 18, 2015. The Applicant was present and was represented by Rodney D. Davis, Esquire. The Respondent was represented by J. Rutledge Johnson, Esquire Assistant Deputy Attorney General.

At the hearing, Applicant testified. Chad Shelton, Esquire, and Ann Williams, Esquire, also testified. This Court had before it a transcript of the trial, a copy of the briefs filed on direct appeal, a copy of the Court of Appeals' opinion on direct appeal, a copy of the records of the Berkeley County Clerk of Court regarding the subject conviction, the Applicant's PCR Application, the State's Return, and a copy of the Applicant's records with the South Carolina Department of Corrections.

10/11


PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the September 2008 term of the Berkeley County Grand Jury for Prisoner/Taking of Hostage by Inmate¹ (2008-GS-08-1074), Criminal Sexual Conduct, 1st Degree² (2008-GS-08-1687), and Assault on a Correctional Officer³ (2008-GS-08-1688). Applicant was represented by Chad Shelton, Esquire, lead counsel and Patricia Kennedy, Esquire, second chair.

The Applicant proceeded to trial and was found guilty of all charges on January 29, 2009. The Applicant was sentenced by the Honorable Kristi L. Harrington to confinement for a period of life without parole (LWOP) for Criminal Sexual Conduct and Prisoner/Taking of Hostage by Inmate and five (5) years for Assault on a Correctional Officer. The sentences are to be served concurrently

¹ "An inmate of a state correctional facility, a local detention facility, or a private entity that contracts with a state, county, or city to provide care and custody of inmates, including persons in safekeeper status, acting alone or in concert with others, who by threats, coercion, intimidation, or physical force takes, holds, decoys, or carries away any person as a hostage or for any other reason is guilty of a felony and, upon conviction, must be imprisoned for a term of not less than five years nor more than thirty years. This sentence must not be served concurrently with any sentence being served at the time the offense is committed." S.C. CODE ANN. § 24-13-450 (2012).

² "(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court." S.C. CODE ANN. § 16-3-652 (2012).

³ "An inmate, a detainee, a person taken into custody, or a person under arrest, who attempts to throw or throws body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on an employee of a state correctional facility or local detention facility, a state or local law enforcement officer, a visitor of a state correctional facility or local detention facility, or any other person authorized to be present in a state correctional facility or local detention facility in an official capacity is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years." S.C. CODE ANN. § 24-13-470 (2012).

to each other, but consecutively to a prior Criminal Sexual Conduct with a Minor conviction and sentence (2001-GS-08-0928).

A timely Notice of Appeal was filed on behalf of the Applicant, Elizabeth A. Franklin, Esquire, of South Carolina Division of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Salisbury, Op. No. 2012-UP-214, (S.C. Ct. App. March 28, 2012). The Remittitur was issued on June 28, 2012.

ALLEGATIONS

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel in that:
 - a. Counsel failed to investigate.
 - b. Counsel failed to disclose factual mitigation evidence.
 - c. Counsel failed to subpoena Tyrone Oliver to testify at trial.
 - d. Counsel failed to challenge the chain of custody for State's Ex. 1.
2. Prosecutorial Misconduct
 - a. State obtained personal writing of the Applicant's to deceive the jury and destroy his character.
 - b. State illegally presented State Ex. 27 to attack his character.
 - c. Solicitor committed misconduct in error of Rule 3(c)(i) of the S.C. Rules of Criminal Procedure.
3. Subject Matter Jurisdiction
 - a. Indictments failed to show the action of the grand jury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court has also read the trial transcript, all of which assists the Court in judging their credibility. The Court finds Counsel's testimony persuasive and very credible, while also finding the Applicant's testimony not credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant

3 of 11
[Signature]

to S.C. Code Ann. §17-27-80 (2003).

SUMMARY OF TESTIMONY

At the evidentiary hearing, Counsel Chad Shelton testified he was appointed and was the lead attorney on this case. Counsel also testified the State was seeking life without parole and he received the LWOP notice in November 2008. This was based on Applicant's prior conviction for Criminal Sexual Conduct in the First Degree. Counsel was prepared for trial in January 2009 and received notice of the other charges which were directly indicted on January 6, 2009; after this, Counsel had to change his trial strategy. The first strategy focused on the criminal sexual conduct charge, but then Counsel had to focus also on the hostage taking charge and life without parole notice. Applicant was directly indicted for hostage taking and assault on a correctional officer.

Counsel testified this was his first most serious offense trial and had seven (7) months to prepare for this case. Counsel also testified he was the lead attorney the entire case, but was assisted by Patricia Kennedy, Esquire. Counsel stated the facts of the case included one (1) eyewitness to the crime, which was the Victim; however, crucial information provided by the Victim could be corroborated by other witnesses many of whom were fellow inmates. Counsel stated the trial strategy was that the criminal sexual conduct charge was impossible based on the allegation of digital penetration, the time frame, and the clothing that the Victim was wearing. Counsel also stated that once the hostage taking charge came about, the case going forward was to disprove the Victim's credibility. Counsel stated he only had twenty (20) days to investigate the new charges, and that the witnesses in the case were helpful to the State. Counsel then testified, in his opinion, the witnesses' testimony were not credible because they were not in the closet during the incident.

Counsel did not recall any difficulties getting the witness list. Counsel requested a

Page 11
JSA

continuance and requested a motion to compel; however, the State filed a written response, as there was a dispute over the witness list. Counsel stated he went to McDougall Correctional Institution to interview witnesses. Counsel stated he had a list from the discovery and police reports of potential witnesses; however, Witness Simmons was not on the list, but Counsel received his name before trial. Counsel also stated he investigated the SLED report and waived a preliminary hearing after talking with Applicant. Counsel stated there was not much outside investigation done because all of the information was provided in discovery. Counsel also stated there were notes attributed to Applicant which were provided by the State in a continuous process of receiving discovery.

Counsel testified he received information of a black inmate running from the scene; this turned out to be Witness Simmons. Another witness was Tyrone Oliver, but Counsel did not remember this witness taking evidence from the crime scene. Counsel then stated that the credibility of the inmate witnesses was crucial in this case. Counsel also stated he knew about these inmates prior to the trial, but did not have a chance to fully investigate. Counsel, however, admitted that he had a one day extension to interview these inmates, received continuous responses to discovery requests by the State, and was able to visit McDougall Correctional Institution. Counsel testified he did not recall receiving evidence after the trial started, but received a letter from the Assistant Solicitor concerning discovery after the case was called. Counsel stated he had two (2) hearings on a continuance to interview witnesses: the first request was granted for two (2) weeks by Judge Harrington, but was denied a second request by Judge Harrington.

On cross-examination, Counsel admitted he was prepared for a trial and ready to try this case with a potential life without parole sentence for Applicant. While Counsel stated the hostage taking charge changed his trial strategy, he admitted that he knew the facts of the case before the charge

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ever arose. Counsel also stated that it would be hard to disprove Victim's credibility when the other witnesses/inmates testified as to Victim's condition after the incident. Applicant also admitted the testimony of a Witness describing Inmate Simmons as the "small black male" that ran from the incident was excluded from the testimony at trial. Counsel also admitted that he was able to cross-examine each inmate/witness. Counsel lastly admitted he did not ask certain questions of the inmate/witnesses, as he did not know what the response would be because this could ultimately harm the Applicant's case.

On redirect examination, Counsel testified that if a continuance had been granted, he would have investigated more facts and witnesses in preparation to attack Victim's credibility.

On re-cross examination, Counsel admitted that if he had been granted a continuance and the further investigation proved fruitless, he would have been back to square one. Counsel also admitted that hindsight is always 20/20.

Upon questioning by this Court, Counsel testified that he was appointed on May 13, 2008 and met with Applicant on June 4, 2008; he also met with Applicant around four (4) times in prison or jail. Counsel stated he allowed the Assistant Solicitor to speak with Applicant because the appointment paperwork had not become official at that time. Counsel also stated he discussed discovery with Applicant and gave Applicant a copy of the discovery during their meetings; he also discussed all of the discovery and witnesses prior to trial with Applicant.

Applicant testified he was aware that Counsel attempted to obtain a continuance in his trial and that Applicant agreed with the continuance requests. However, the State objected to this testimony, as it was the subject of Applicant's direct appeal. This Court sustained the objection. Applicant then testified that he received information concerning Tyrone Oliver. The State objected to

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this testimony as well, as Mr. Oliver was not present in the courtroom to testify on Applicant's behalf. This Court also sustained this objection. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial).

Applicant then stated that before trial he met with Counsel three (3) to four (4) times and met with Patricia Kennedy once. Applicant testified that Counsel's opinion was to pursue a trial and that he was notified of life without parole prior to trial, as he was personally served with the notice from the State. Applicant admitted he discussed the charges of criminal sexual conduct in the first degree and the elements thereof; however, Applicant claimed Counsel did not explain the charges of hostage taking and the assault charge to him. Applicant then testified that the only defense Counsel had pertained to the criminal sexual conduct charge. Applicant admitted that it was his decision to go to trial. Applicant lastly stated his other complaints concerned information about contamination of the crime scene and the clothing items removed from the scene.

Assistant Solicitor Ann Williams testified that the letter Counsel mentioned concerning evidence produced after the trial had begun was written because Judge Harrington ordered that the inmate witnesses' files be turned over to Applicant upon Counsel's request. Ms. Williams testified that she did not have possession of these files prior to trial or she would have turned them over pursuant to the discovery request.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence."

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Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See Id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

This Court finds Counsel's representation of Applicant in this case well above the

professional norms. Counsel fully investigated this case and assisted Applicant in his defense. Counsel explained and discussed the elements of each charge with Applicant. Counsel, quite properly, based his investigation on information relayed to him by Applicant and on the facts of the case. "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information." Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066 (1984). Further, Counsel based his trial strategy on the information supplied to him through discovery, namely the witness statements to law enforcement and Victim's statement. Counsel also testified that he was able to cross-examine each witness and did not ask questions he did not know the answer to, as this could potentially harm Applicant's case. "Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel." Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Further, "[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Butler v. State, 286 S.C. 441, 445, 334 S.E.2d 813, 815 (1985). "Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls

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[Signature]

within the range of reasonable professional assistance.” Id. at 445, 334 S.E.2d at 815-16.

While Counsel testified had he been given another continuance, he could have potentially investigated more evidence and witnesses; this Court finds this speculative at best. Applicant provided no evidence or other testimony from witnesses which show that Counsel failed to fully investigate this case. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (“Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result”). Therefore, this Court finds the Applicant has failed to meet his burden of proving Counsel’s performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Applicant also alleged prosecutorial misconduct in this case. This Court finds no evidence of this allegation whatsoever. Assistant Solicitor Ann Williams testified the inmate/witness files were turned over to the defense after Applicant’s trial began on the order of the trial judge. Assistant Solicitor Williams also testified she did not have possession of these files before the trial or she would have turned them over to Counsel. This Court finds this testimony credible and finds that Applicant has failed to meet his burden of proof as to this allegation. Accordingly, this allegation is also denied.

This Court notes that Applicant alleges that the trial court lacked subject matter jurisdiction. No evidence was presented to prove this allegation. Therefore, this Court deems this allegation abandoned.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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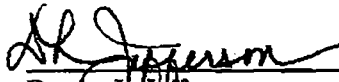
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!


Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

May 16, 2016
Charleston, South Carolina

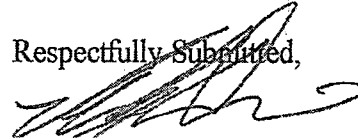
STATE OF SOUTH CAROLINA	)	IN THE SUPREME COURT OF SOUTH CAROLINA
	)	
COUNTY OF BERKELEY	)	CASE NO.: 2013-CP-08-0204
	)	
GEORGE SALISBURY,	)	
	)	REQUEST FOR REPRESENTATION ON APPEAL
Applicant.	)	
-versus-	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


 Rodney D. Davis
 South Carolina Bar #: 12396

Charleston, South Carolina

6/31, 2016.

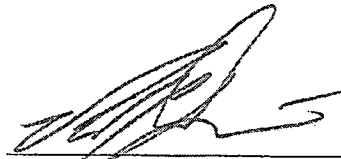
STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

CASE NO: 2013-CP-08-0204)

VERIFICATION

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn, deposes and says that he has read the foregoing *Request for Representation on Appeal* to be filed on behalf of the Applicant-Appellant, **George Salisbury**, and the same is true of his knowledge except those matters alleged on information and belief, and as to those matters, he believes them to be true.



Rodney D. Davis
South Carolina Bar #: 12396

SWORN to and subscribed to me
this 31 day of May, 2016.

Michelle Mace Trumble

Notary Public for South Carolina

My Commission expires 5/26/2026

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2013-CP-08-0204

RECEIVED

JUN 20 2016

S.C. SUPREME COURT

George Salisbury,

Appellant,

v.

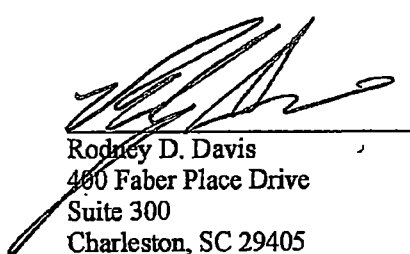
State of South Carolina,

Respondent.

NOTICE OF APPEAL

George Salisbury appeals the denial of his Post Conviction Relief (PCR) application in this case. The application for relief was denied, following an evidentiary hearing before the Honorable Deadra L. Jefferson on December 18, 2015.

May 31, 2016.


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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2013-CP-08-0204

RECEIVED

JUN 20 2016

S.C. SUPREME COURT

George Salisbury,

Appellant,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State by mailing a copy of it to the address of record, J. Rutledge Johnson, P.O. Box 11549, Columbia, South Carolina 29211-1549, on June 3, 2016.

June 3, 2016

Michelle Moore Trimble

Michelle Moore Trimble
Paralegal to Rodney D. Davis
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Attorney for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE SALISBURY,

APPELLANT

FINAL BRIEF OF APPELLANT

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court judge err by allowing into evidence a letter, purported to be a letter written by appellant to the victim immediately before she was assaulted, when the state's expert testified that he could *not* match the handwriting of that letter to the exemplar he also studied, and which was authenticated by a witness who viewed appellant write his name, and when the expert testified, instead, that the handwriting of the letter matched other letters found in appellant's prison cell, letters which were never authenticated and which are not self-authenticating?

II. Did the trial court judge err by allowing this letter into evidence when it was irrelevant because the victim testified she never saw the letter, and when the letter interjected improper character evidence into trial?

STATEMENT OF THE CASE

George Salisbury was indicted by the Berkeley County grand jury on September 10, 2008 for assault on a correctional officer, criminal sexual conduct, first degree, and taking of hostage by an inmate. He was tried before the Hon. Kristi Lea Harrington in the jury between January 26 -- 29th, 2009. He was represented by Patricia Kennedy and Chad Shelton, Esquires. He was convicted and sentenced to life in prison pursuant to S.C. Code Ann. 17-25-45 for the CSC charge and assault on an officer.

This appeal timely follows.

ARGUMENTS

I. The trial court judge erred by allowing into evidence a letter, purported to be a letter written by appellant to the victim immediately before she was assaulted, when the state's expert testified that he could *not* match the handwriting of that letter to the exemplar he also studied, and which was authenticated by a witness who viewed appellant write his name, and when the expert testified, instead, that the handwriting of the letter matched other letters found in appellant's prison cell, letters which were never authenticated and which are not self-authenticating?

Appellant was convicted of sexually assaulting a correctional officer at MacDougall Correctional Institution. According to two inmate accounts, appellant was observed entering an office area where the female correctional officer was located. The inmates later heard the officer yelling for help, and a group of inmates made entrance into the area and found a disheveled and upset correctional officer partially clothed. She was removed by the inmates to a secure dayroom. ROA 348-419. During its case-in-chief, the State sought to introduce State's Exhibit 27, a letter purportedly written by appellant to the victim, into evidence. The unsigned, undated letter stated:

"Keep both hands on your desk while reading this. I have a shank. Read this and read this very carefully. I want you to understand the full meaning of what's happening right now. Made no mistake in what I tell you because if you do it will cost you your life.

I want you to read every word of this request don't try to call for anybody because you will not like the repercussions for doing so. I have a shank I will use it make no mistakes about that. I don't care wether (sic) I live or die because when this little problem is over with I am going to kill myself I'm leaving it up to you on whether I take it you with me or not what I mean is do as I tell you and you will come out of this alive, fail to obey me and I will kill you along with myself with this ordeal is finished (sic) . . ."

ROA 497, ll.3-7 See State's Exhibit 27.

The victim never testified that she even saw or read this letter. According to her testimony:

"I was updating my log when inmate Salisbury came in. I'm trying to remember which side door, because they're confusing, it's the C and the D.

He came in on the left hand side and shut the door behind him. And he walked behind my chair over to the other door, and stood facing me, and he said, "Ms. [DOE], I need to talk to you about something." And he shut that door."

ROA 221, ll.21—p.222, l. 3.

The State called two witnesses to lay foundation for the letter, Linda Dean and Scott Worsham.

Linda Dean

Dean is a case manager at MacDougall. She is responsible for processing inmates into the facility. She testified regarding a classification waiver that appellant signed. The waiver was introduced as State's Exhibit 23. Dean testified she actually remembered appellant being in her office and signing the waiver. ROA 469, l. 17-470, l. 9. This waiver consisted solely of appellant's signature.

Scott Worsham

Worsham was tendered as an expert in "question document examination". ROA 476, ll. 10-13. On January 8th, a few weeks before trial, Worsham received a packet of information from the State. Included in the packet were State's exhibits 27, 23, 24, 21, 22, and 25. These were South Carolina Department of Corrections forms that purportedly contained appellant's signature. Exhibit 23, *supra*, was the sole authenticated document. The State also submitted, and Worsham reviewed, items that had been removed from

appellant's cell. ROA 481, ll. 15-17. Regarding the documents from the cell, they included both hand-printing and writing. There were approximately 6 pages of hand printing that was turned over to Worsham. ROA 481, l.24- p. 482, l.4.

Limits of Worsham's Analysis

Worsham was unable to testify that the letter, State's Exhibit 27, matched the writing exemplar, the sample witnessed by Linda Dean:

A: My conclusion about State's Exhibit 27 was that it was a common authorship as the question documents that were submitted to me to be identified—

Q: Was—

A: -- and the other writings.

Q: Was it a common authorship to State's Exhibit 23, the standard?

A: I can't state that.

ROA 484, ll. 6-13 (emphasis added).

And then,

A: Yes. State's Exhibit 27, my conclusion when I examined the question writing on this particular document, is that it was of common authorship with the hand printing that I found on the letters collected from George Salisbury's cell.

ROA 486, ll. 9-13.

Defense counsel objected when the State then asked Worsham the additional question: "And what is your opinion as to those items authorship compared to the standard?"

Defense counsel objected to the admission of the letter. ROA 493, 11.8-10. As counsel argued, only the one signature had been authenticated. The other letters, found in appellant's cell, and the additional Department of Corrections paperwork, had not been authenticated. ROA 494, 11.6-16. The state also informed the court that the letter may have come from either the bathroom floor or appellant's cell, they did not know which. ROA 492, 11. 18-25. Officer Evans apparently took possession of them, gave them to Agent China, who then gave them to someone at a laboratory, who then gave them to Scott Worsham. ROA 492, 11. 19-25. Since letters are non-fungible items, the State did not believe they needed to carefully document the chain of custody. ROA 492, 11. 18-19; p. 493, 11.1-5.

Defense counsel also objected that the letter was not admissible according to Rules 701 or 602 (SCRE, Opinion testimony by lay witnesses, and Lack of personal knowledge).

The court overruled the objections:

THE COURT: Based upon counsel's argument, I am allowing this witness to testify as to his opinion as to State's 27 based upon this court's reading of Rule 901, 703 (SCRE, Requirement of authentication or identification, and Bases of opinion testimony by experts). ROA 496, 11.2-5.

After clarifying that the State would not be able to testify as to where State's Exhibit #27 was found, the court found the letter admissible anyway. ROA 501, 1. 14- 507, 1. 23.

After the court heard these arguments *in camera*, the trial resumed. The State asked Worsham:

Q: Mr. Worsham, based on all of the comparisons and tests that you ran, what is your opinion as to the common authorship of all of the letters and signatures and writings that you looked at, as far as common authorship?

A: It's my conclusion that the hand printing on the letters is of common authorship. And the signatures on the letters found in the cell were authored by George Salisbury.

ROA 510, ll.15-22.

The State's expert never testified that State's Exhibit 27—an actual letter, and devoid of a signature-- matched the standard—a signature only-- witnessed by Linda Dean. The letter was admitted into evidence anyway, and over defense counsel's objection. ROA 511, ll. 8-13. This was error, because the letter was never authenticated, and its admissibility was proscribed by SCORE, Rule 901:

Requirement of authentication or identification – (a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. (b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule: (3) Comparison by trier or expert witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

Additionally, the letter that the judge admitted into evidence did not fall under SCORE., Rule 902 because the letter was neither a domestic public document, foreign public document, certified copy of a public record, official publication, newspaper or periodical, trade inscription or the like, an acknowledged document, commercial paper or related document, nor is there a statute which would declare it presumptively authentic. The letter was improperly admitted, and appellant asks this Court to reverse his convictions and remand his case for trial.

II. The trial court judge erred by allowing this letter into evidence when it was irrelevant because the victim testified she never saw the letter, and when the letter interjected improper character evidence into trial?

Additionally, the trial court judge erred by allowing the letter into trial when the victim never even saw the letter, and when the letter interjected improper character evidence into appellant's trial.

The State conceded that the victim did not actually see the letter:

"And why he didn't give it to her, we don't know. Maybe she stood up too quickly. Maybe he forgot to get it from his cell, but it's highly probative. And just because something is prejudicial, doesn't mean it gets suppressed. It is just—this is—our argument is that it is more probative than prejudicial.

And there were a lot of very prejudicial letters in that package. This is the only one that we're seeking to introduce because it's so probative."

ROA 497, ll.12-20.

Defense counsel additionally objected that the letter should not be admitted to show that appellant had an intent or motive to attack this particular victim. The letter was undated, and unsigned, and the victim had only been in that particular dorm for 2 days. ROA 497, l. 22- 499, l. 15.

The court then allowed the letter into evidence as being admissible under Lyle¹:

THE COURT: Based on my reading of the letter and the facts that the court has heard so far, the testimony of the victim, the court will allow State's exhibit No.27. I do find it more probative than prejudicial under 404(b), in particular the absence of mistake or accident, and to intent. I note your objection for the record.

ROA 499, l. 24- 500, l. 4.

The letter was not admissible as Lyle evidence either. No evidence was provided to show when this letter was written or where it was located. The testimony at trial established that the victim had only been assigned to this particular dorm for 2 days. Moreover, the victim testified she never even saw the letter. The State failed to prove that this letter had any connection with this crime at all. It failed, then, to be relevant under SCRE, Rule 401. Since it failed to be relevant, it was inadmissible under Lyle. And see State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). Since the State was unable to prove any connection with this crime at all, it was therefore improper to admit it as evidence to prove the absence of mistake or accident, or to prove the intent of appellant. Appellant was prejudiced by the trial court judge's error, and respectfully asks this Court to reverse his convictions and remand his case for trial.

¹ State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

CONCLUSION

For the preceding reasons, appellant respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 9th day of May, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 9, 2011

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

George Salisbury, Appellant.

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2012-UP-214
Submitted March 1, 2012 – Filed March 28, 2012

AFFIRMED

Appellate Defender Elizabeth Franklin-Best, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John
W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Mark Farthing, all of Columbia; and
Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: George Salisbury appeals his convictions for assault on a correctional officer, taking of a
hostage by an inmate, and first degree criminal sexual conduct, arguing the trial court erred in admitting a letter
in which Salisbury explains how the assault will take place. Salisbury argues the handwriting in the letter was
not authenticated, irrelevant, and inadmissible as Lyle^[1] evidence. We affirm^[2] pursuant to Rule 220(b)(1),
SCACR, and the following authority: State v. Anderson, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) ("The
admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of
discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support
or are controlled by an error of law." (citation and internal quotation marks omitted)).^[3]

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

^[1] State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923).

^[2] We decide this case without oral argument pursuant to Rule 215, SCACR.

^[3] In his brief, Salisbury also makes the statement that the letter "interjected improper character evidence into
Salisbury's trial." Salisbury makes no argument nor does he cite any law in support of this conclusory
statement. Accordingly, this argument has been abandoned. See State v. Tyndall, 336 S.C. 8, 16, 518 S.E.2d
78, 282 (Ct. App. 1999) ("Conclusory arguments constitute an abandonment of the issue on appeal.").