

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

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S.C. Supreme Court

MILCIADES ALCANTARA

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001317

APPENDIX

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INDEX

INDEXi

TRIAL TRANSCRIPT DATED FEBRUARY 8-10, 20101

APPLICATION FOR POST-CONVICTION RELIEF300

RETURN309

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED SEPTEMBER 16, 2014314

APPLICANT EXHIBIT #1358

ORDER OF DISMISSAL359

INDICTMENTS369

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Mendoza Miliciades Alcantara,) 2009-GS-42-4456-4460
6 Defendant.) February 8 - 10, 2010
7) Spartanburg, South Carolina
8
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12

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1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	MIKE WEST (SW)	
4	Direct examination by Ms. Crick	66
5	Cross-examination by Mr. Whelchel	67
6	JAMES MICHAEL CROWE (SW)	
7	Direct examination by Ms. Crick	68
8	Cross-examination by Mr. Whelchel	79
9	Redirect examination by Ms. Crick	82
10	Recross-examination by Mr. Whelchel	83
11	AHMAD SALEH (SW)	
12	Direct examination by Mr. Gowdy	84
13	KATHERINE RUMLEY (SW)	
14	Direct examination by Mr. Crick	89
15	Cross-examination by Ms. Jones	105
16	Redirect examination by Ms. Crick	123
17	ROBERT SHAFFER (SW)	
18	Direct examination by Mr. Crick	134
19	Cross-examination by Mr. Whelchel	163
20	AMANDA COOPER (SW)	
21	Direct examination by Mr. Gowdy	164
22	Cross-examination by Mr. Whelchel	168
23	CHRISTY SANDERS (SW)	
24	Direct examination by Mr. Gowdy	168
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	TERRY LANE (SW)	
4	Direct examination by Mr. Gowdy	172
5	Cross-examination by Mr. Whelchel	176
6	LAURI MONSERATTE (SW)	
7	Direct examination by Mr. Gowdy	177
8	MICHAEL SEAN NIX (SW)	
9	Direct examination by Ms. Crick	184
10	JESSICA BURTON (SW)	
11	Direct examination by Ms. Crick	187
12	Cross-examination by Ms. Jones	195
13	JOHN DAVID WESTMORELAND (SW)	
14	Direct examination by Ms. Crick	196
15	Cross-examination by Ms. Jones	200
16	NICOLE RENEE PERRY (SW)	
17	Direct examination by Ms. Crick	200
18	Cross-examination by Mr. Whelchel	203
19	AMY STEPHENS (SW)	
20	Direct examination by Ms. Crick	204
21	ROBERT SHAFFER (SW)	
22	Direct examination by Ms. Crick	208
23	PAUL MEEH (SW)	
24	Direct examination by Ms. Crick	209
25	Cross-examination by Ms. Jones	217

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESSES

PAGE

DR. LAURA MILLS (SW)

Direct examination by Ms. Crick

219

Cross-examination by Ms. Jones

230

JOHN DAVID WESTMORELAND (SW)

Direct examination by Ms. Crick

232

Cross-examination by Ms. Jones

233

1	Jury qualification	10
2	Jury sworn	47
3	Opening statements	53
4	Closing arguments	243
5	Jury charge	264
6	Verdict	290
7	Sentence	294
8	Certificate	299
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>EXHIBITS</u>		<u>ID.</u>	<u>EV.</u>
2	<u>NO.</u>	<u>DESCRIPTION</u>		
3	S-1	CD (not transcribed)	66	67
4	S-2	CD (not transcribed)	66	67
5	S-3	DVD (not transcribed)		73
6	S-4	DVD (not transcribed)		73
7	S-5	CD (not transcribed)	85	86
8	S-6	Statement (D-1)		122
9	S-7	Photograph		136
10	S-8	Photograph		136
11	S-9	Photograph		136
12	S-10	Photograph		136
13	S-11	Photograph		136
14	S-12	Photograph		136
15	S-13	Photograph		136
16	S-14	Photograph		136
17	S-15	Photograph		136
18	S-16	Photograph		136
19	S-17	Photograph		136
20	S-18	Photograph		136
21	S-19	Photograph		136
22	S-20	Photograph		136
23	S-21	Photograph		136
24	S-22	Photograph		136
25	S-23	Photograph		136

EXHIBITS

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-24	Photograph		136
4	S-25	Photograph		136
5	S-26	Photograph		136
6	S-27	Photograph		136
7	S-28	Photograph		136
8	S-29	Photograph		136
9	S-30	Photograph		136
10	S-31	Photograph		136
11	S-32	Photograph		136
12	S-33	Photograph		136
13	S-34	Photograph		137
14	S-35	Photograph		137
15	S-36	Photograph		137
16	S-37	Photograph		137
17	S-38	Photograph		137
18	S-39	Photograph		137
19	S-40	Photograph		137
20	S-41	Photograph		137
21	S-42	Photograph		137
22	S-43	Photograph		137
23	S-44	Photograph		137
24	S-45	Photograph		137
25	S-46	Photograph		137

	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	S-47	Swabs	141	142
4	S-48	Knife	153	160
5	S-49	Application	154	160
6	S-50	Jacket	159	
7	S-51	Backpack and mask	159	161
8	S-52	Dufflebag	161	
9	S-53	Brown bag	161	
10	S-54	Shirt	161	
11	S-55	Photograph	170	170
12	S-56	Photograph	170	170
13	S-57	Photograph	170	170
14	S-58	Photograph	170	170
15	S-59	Photograph	173	174
16	S-60	Box of sexual assault kit	185	186
17	S-61	Diagram	191	
18	S-62	Swab	193	194
19	S-63	Buccal swab	197	209
20	S-64	SLED bag with remains of CSC kit	198	
21				
22				
23				
24				
25				

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Statement (Changed to S-6)	116	
D-2	SLED report	218	

Jury qualification

1 (Proceedings February 8, 2010)

2 THE COURT: All right. Any matters we need to address
3 before the jury panel is brought around?

4 MR. GOWDY: Not from the state, Your Honor.

5 Would the Court grant me just a moment to get the
6 victim in? I had asked her to wait outside.

7 MR. WHELCHER: They're bringing in my client also,
8 Your Honor.

9 (Pause.)

10 THE COURT: All right. Are we ready for the jury now?

11 MR. GOWDY: Yes, sir, Your Honor.

12 MR. WHELCHER: May we approach, Your Honor?

13 THE COURT: Sure.

14 (Bench conference held off the record.)

15 THE COURT: Okay. Bring the jury around, please, sir.

16 (The following takes place in the presence of the jury
17 venire.)

18 THE COURT: All right. Good morning, ladies and
19 gentlemen.

20 I'm guessing that Judge Hayes introduced me to you.
21 But my name is Derham Cole. I'm a resident judge here in
22 the 7th Judicial Circuit. I'm going to be presiding over a
23 term of general sessions court -- that's the criminal side
24 of the circuit court -- this week for which you have been
25 summoned to potentially serve as jurors in.

Jury qualification

1 The first case that we have that's going to require
2 some of your participation is the case of the State vs.
3 Mendoza Milciades Alcantara.

4 Mr. Alcantara has been charged with seven separate and
5 distinct criminal offenses. They are all alleged to have
6 arisen out of one particular event or course of events
7 which the state alleges occurred back on December the
8 30th of 2008. But they are separate and distinct offenses.
9 And the jury will be called upon to consider each of those
10 separate indictments and offenses separately and to of
11 course render decisions based upon the facts as developed
12 by the evidence in the case and the law that will be
13 applicable as I will provide it to the jury.

14 Before we begin with that jury selection I've got some
15 matters to address with you. I'm going to introduce some
16 people to you that will include lawyers and witnesses.
17 That will also -- I will also explain to you the charges
18 that have been brought against the defendant so that you'll
19 understand what those charges are.

20 And I need to find out if there's any reason why any
21 one of you jurors should not be selected to participate in
22 the trial of this particular case. And so as these
23 questions are asked if you need to respond to them, I would
24 ask that you simply please stand. And I'll address those
25 matters with you individually in case the opportunity

Jury qualification

1 arises.

2 First of all, as I've told you, the defendant in this
3 case is Mendoza Milciades Alcantara.

4 Mr. Alcantara, if you will, please stand and face the
5 jury panel so that they may see who you are.

6 (Whereupon, the defendant stood.)

7 THE COURT: Seated with Mr. Alcantara at the defense
8 table are Richard Whelchel and Tanya Jones. They are his
9 lawyers. They'll be assisting in the trial of the case.

10 (Whereupon, Mr. Whelchel and Ms. Jones stood.)

11 THE COURT: The persons alleged to have been the
12 victims of these particular incidents are Katherine Rumley
13 and Amanda Cooper.

14 If each of you would, please stand.

15 Is Ms. Cooper not available?

16 MR. GOWDY: No, sir, Your Honor.

17 THE COURT: Okay. Presenting the case on behalf of
18 the state are your solicitor, Trey Gowdy, and one of the
19 assistant circuit solicitors, Cindy Crick, of the 7th
20 Judicial Circuit Solicitor's Office.

21 (Whereupon, Mr. Gowdy and Ms. Crick stood.)

22 THE COURT: Now, in this case the defendant,
23 Mr. Alcantara, is charged with the crimes of kidnapping,
24 armed robbery and criminal sexual conduct in the first
25 degree. And that relates to an event that the state

Jury qualification

1 alleges occurred on December 30th of 2008. And I'm going
2 to read the allegations of the indictment to you so that
3 you'll understand what those allegations are.

4 Mr. Alcantara with respect to that event is alleged to
5 have committed the crime of kidnapping in that he did on
6 that day wilfully and unlawfully and with criminal intent
7 seize or confine, kidnap or abduct Katherine Rumley without
8 authority of law.

9 Mr. Alcantara is also charged with the crime of armed
10 robbery in that event, the state alleging that at the same
11 time he did while armed with a knife take, steal and carry
12 away from the person or the presence of Katherine Rumley
13 who was an employee of Ultra Tan, which is located on East
14 Main Street in Duncan, and that's the location this event
15 is alleged to have occurred, and that he did by the means
16 of force or violence and/or intimidation take approximately
17 \$150 in money that belonged to the Ultra Tan business and
18 he intended to deprive the owners of use and possession of
19 that property.

20 And they also allege that he did on that date possess
21 or visibly display a knife during the commission of a
22 violent crime. And they allege that violent crime to have
23 been that of armed robbery.

24 Also with respect to that event he is alleged to have
25 committed the crime of criminal sexual conduct in the first

Jury qualification

1 degree. They allege that he did engage in a sexual battery
2 upon Katherine Rumley and that that sexual battery was
3 accomplished by the use of aggravated force, and/or
4 Ms. Rumley was also the victim of a forcible confinement, a
5 kidnapping, a housebreaking, a burglary or other similar
6 criminal acts.

7 There was a second event that occurred that night that
8 related to Amanda Cooper who is alleged to be the victim.
9 And by way of two indictments Mr. Alcantara is charged with
10 three separate criminal offenses.

11 They allege that he committed the crime of kidnapping
12 in that he did wilfully and unlawfully and with criminal
13 intent seize, confine, kidnap or abduct Amanda Cooper
14 without authority of law.

15 By way of a second indictment the defendant is charged
16 with having committed the crime of armed robbery in that he
17 did while armed with a knife take, steal and carry away
18 from the person or presence of Amanda Cooper who was an
19 employee of the Subway restaurant located on Highway 101 in
20 Greer, South Carolina, and that he committed those acts by
21 the use of force or violence and/or intimidation and that
22 he did, in fact, take, steal and carry away \$924 in monies
23 that belonged to the Subway with an intention of depriving
24 the true owner of use and possession of their property.

25 And he's also charged with possession of a knife

Jury qualification

1 during the commission of a violent crime in that he did
2 possess or visibly display a knife during the commission of
3 a violent crime, that violent crime alleged to be the armed
4 robbery.

5 Now, as to all of those allegations and as to each of
6 the charges and as to each of the indictments, the defendant
7 has entered a plea of not guilty. And that plea of not
8 guilty therefore places upon the state, because they've
9 brought the charges against him, to prove the allegations
10 contained in those indictments, to prove each of the
11 essential elements of the crimes which are alleged in each
12 of those indictments; and therefore the burden is upon the
13 state to establish the defendant's guilt to the
14 satisfaction of 12 jurors beyond a reasonable doubt before
15 any verdict of guilty could be returned as to any of the
16 separate charges set forth in each of the separate
17 indictments.

18 And so now comes the time that I'm going to ask you
19 those questions in order to determine whether or not there
20 is some reason why any one of you jurors should not be
21 selected to participate in the trial of this case. And so,
22 as I say, if you need to respond, please stand, and we'll
23 address those matters with you.

24 I've already introduced the defendant to you and the
25 two persons alleged to be victims. I've also introduced

Jury qualification

1 each of the lawyers that are involved in the case.

2 There are additional other persons who are potential
3 witnesses, and I'm going to recite an entire list of
4 potential witnesses. All of these people may not be called
5 to testify, but they potentially have some information that
6 they might be called upon to share and to present to the
7 jury.

8 And the witness list includes Mike West from the
9 Spartanburg County Communications Department; James Crowe.

10 And as I call these names there might be a name that's
11 a common name and you might think that you know a person or
12 you do know a person by that name but you don't know if
13 it's the same person.

14 If that's the case if you'll stand while, when that
15 name is called, and then I'll address with you and we'll
16 try to identify if that's the same person that you know.

17 Continuing with the list are Ahmad Saleh; Katherine
18 Rumley who has already been introduced; Brianna McCunn;
19 Shonda Moore.

20 The following five individuals are employed with the
21 Spartanburg County Sheriff's Department. They include
22 Robert Shaffer; Kevin Bobo; Megan Woody; Anthony Hawkins;
23 and Lorin Williams.

24 Also, we have Terry Lane who is employed with the
25 Duncan police department; Amanda Cooper who has already

Jury qualification

1 been introduced, or at least identified; Christy Sanders;
2 Luari Monseratte; Jessica Burton employed with the
3 Spartanburg Regional Medical Center; Micah Roy, physician,
4 Spartanburg Regional Medical Center; Sean Nix with the
5 sheriff's department; Robert Rosenberg and Jack
6 Westmoreland with the sheriff's department.

7 And the following five individuals are employed with
8 the state law enforcement division. They include Nikki
9 Perry; Amy Stephens; Laura Mills; Paul Meeh; Betty Butler.

10 And we also have Linda Prince employed by the
11 Spartanburg Regional Medical Center.

12 Now, is there any member of the jury panel who is
13 connected in any way by blood or by marriage, or whether or
14 not you have any personal, social, business or professional
15 relationship with any of these individuals that have been
16 identified this morning, as well as whether or not you just
17 met them some place in some way.

18 If so, please stand, if you know any person who has
19 been identified or introduced to you this morning.

20 (No response.)

21 THE COURT: Nobody. Okay.

22 As I told you, these are events which the state
23 alleges occurred back on December the 30th of 2008. One
24 event is alleged to have occurred at the Ultra Tan tanning
25 business at Main Street in Duncan. The other is alleged to

Jury qualification

1 have occurred at the Subway Station in Greer.

2 Is there any member of the jury panel who believes
3 that you may have heard, seen or read something that
4 relates to this particular case?

5 In other words, have you been exposed to any type of
6 information that relates to this particular case from any
7 person or any other source, including television, radio or
8 newspaper? If so, please stand.

9 All right. And if you will, give me your name and
10 your juror number, please.

11 JUROR NO. 42: Juror 42.

12 THE COURT: All right. And your name is what?

13 JUROR NO. 42: Alan Foessel.

14 THE COURT: All right. And you believe you've been
15 exposed to some type of information that relates to the
16 case?

17 JUROR NO. 42: Yes. I work for --

18 THE COURT: Just yes or no.

19 JUROR NO. 42: Yes.

20 THE COURT: And from what source did you receive that
21 information? Was it from some type of media or was it from
22 an individual?

23 JUROR NO. 42: Media.

24 THE COURT: Media.

25 JUROR NO. 42: And individual.

Jury qualification

1 THE COURT: Okay. Let's get this lady a drink of
2 water or something before she passes out.

3 (Pause for coughing.)

4 THE COURT: All right. And was the media source a
5 television, radio or newspaper?

6 JUROR NO. 42: Television.

7 THE COURT: Do you recall what channel it was?

8 JUROR NO. 42: Seven.

9 THE COURT: And when were you exposed to that
10 information? Was it recently or remote?

11 JUROR NO. 42: On and off just through my
12 employment -- marriage to my wife who is the person --

13 THE COURT: Your wife who works where?

14 JUROR NO. 42: Who we are employed there.

15 THE COURT: At WSPA.

16 JUROR NO. 42: Yes, sir.

17 THE COURT: All right. So you have been exposed to a
18 lot of information that's been carried on the television.

19 JUROR NO. 42: Yes.

20 THE COURT: And do you recall the information that you
21 were exposed to?

22 JUROR NO. 42: Not in particular, no.

23 THE COURT: All right. Is there anything about what
24 you were exposed to or the information that you do have
25 that you have received from those sources that would in any

Jury qualification

1 way impair your ability to be fair and impartial if you
2 were selected to serve as a juror in the case?

3 JUROR NO. 42: Nothing that I've heard I think would
4 affect that.

5 THE COURT: And would you be able to put aside
6 anything that you might have seen or heard about the case
7 and not allow it to influence your judgment in the case?

8 JUROR NO. 42: Yes, I would.

9 THE COURT: All right. Thank you. You may be seated.
10 That's Juror 42.

11 Anyone else believe that you have been exposed to any
12 type of information about the case from any source
13 whatsoever -- television, radio or newspaper or individual?
14 If so, please stand.

15 (No response.)

16 THE COURT: Is there any member of the jury panel who
17 knows any person --

18 (Pause for coughing.)

19 JUROR NO. 60: Can I be excused?

20 THE COURT: Ma'am, I know you can't help what you're
21 doing. Is there anything we can do to help you?

22 JUROR NO. 60: Not really.

23 THE COURT: Ma'am?

24 JUROR NO. 60: I said not really.

25 THE COURT: Okay. Do you think it's going to improve

Jury qualification

1 or have you had this for some time now?

2 JUROR NO. 60: It comes and goes.

3 THE COURT: It just comes and goes.

4 All right. Well, would you prefer to be excused?

5 JUROR NO. 60: Yes, sir.

6 THE COURT: All right. And tell me what your juror
7 number is, please, ma'am.

8 JUROR NO. 60: Sixty.

9 THE COURT: Sixty. And your last name was what?

10 JUROR NO. 60: Hunter.

11 THE COURT: All right. Let's excuse Ms. Hunter so she
12 can recover.

13 All right. Ms. Hunter, thank you for coming. You
14 won't need to come back. Okay.

15 JUROR NO. 60: Okay.

16 THE COURT: Good luck.

17 JUROR NO. 60: Okay.

18 THE COURT: Now, is any member of the jury panel -- I
19 want y'all to understand, now, that was a good excuse, but
20 that only works once. You have to come up with something
21 else if you want to be excused.

22 All right. Now, my question was going to be is there
23 any member of the jury panel who knows anyone who is
24 employed in the 7th Judicial Circuit Solicitor's Office,
25 the 7th Judicial Circuit Public Defender's Office, the

Jury qualification

1 Spartanburg County Sheriff's Department or the state law
2 enforcement division. Do you know any person employed in
3 any of those offices, agencies or departments? If so,
4 please stand -- as well as the Spartanburg Department of
5 Public Safety.

6 Okay. All right. Let me -- is everybody standing
7 that needs to respond to that? I need to know if you know
8 anybody in the solicitor's office, the public defender's
9 office, the sheriff's department, the city police
10 department or the state law enforcement division.

11 MR. WHELCHER: Your Honor, we also have a Duncan
12 officer involved.

13 THE COURT: And the Duncan police department. I tell
14 you what. Or any law enforcement agency or department. If
15 you know someone in any law enforcement agency, department.

16 Okay. All right. I'll start to my right. I'll work
17 row by row going front to back. And then I'll skip the
18 aisle and start on the second row and work my way back.

19 If you'll give me your name and your juror number,
20 please, and then tell me who you know and what that
21 connection is.

22 And I'll start with you, ma'am.

23 JUROR NO. 131: Yvonne Thomas, Juror 131. Captain
24 Randy Hardy.

25 THE COURT: All right. And would that in any way

Jury qualification

1 impair your ability to be fair?

2 JUROR NO. 131: No.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 106: Tonya Prince. I'm Juror 106. Officer
6 Saxton.

7 THE COURT: With what department?

8 JUROR NO. 106: Spartanburg County.

9 THE COURT: And what's the connection?

10 JUROR NO. 106: Just friends.

11 THE COURT: Okay. Would that affect your judgment in
12 this case?

13 JUROR NO. 106: No. It shouldn't.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 146: Juror 146, Sandra Williams. I know
17 Mark Morglow (sic), city police department. I go to church
18 with him. And I know Harry Cline with the county. And I
19 also go to church with him, and have dealings with Trey
20 Gowdy and Ms. Crick. And I know -- trial that I served,
21 had to testify.

22 THE COURT: Okay. And would any of those facts or
23 connections impair your ability to be fair in this case if
24 you were selected?

25 JUROR NO. 146: No, sir.

Jury qualification

1 THE COURT: All right. Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NO. 52: I'm Juror No. 52, and I know of a Jerry
4 Fowler who is a police officer. I graduated with him and I
5 went to church with him for years.

6 THE COURT: And would that in any way impair your
7 ability to be fair?

8 JUROR NO. 52: No.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 23: Juror 23, Kent Cavendish. I know
12 Richey McSwain with the county sheriff's office and
13 Brendall Mathis with the city police.

14 THE COURT: And would that in any way affect your
15 ability to be fair?

16 JUROR NO. 23: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 88: Juror 88, William Miller. I know Chuck
20 Wright. I grew up in the same neighborhood with him.

21 THE COURT: And would that have any bearing upon your
22 decision in the case if you were selected?

23 JUROR NO. 88: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 144: Jerrilyn Wilkes, Juror 144. I know
2 Bill Robinson, Tommy Brooks who are both with, I believe,
3 Duncan. They are actually resource officers. And also
4 acquainted socially with Larry Powers.

5 THE COURT: And would any of those connections have
6 any bearing upon your decision in this case?

7 JUROR NO. 144: No, sir.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 150: Porsche Wrenix, Juror 150. Sherry Ann
11 McIntyre at the county.

12 THE COURT: And would that have any bearing upon your
13 decision?

14 JUROR NO. 150: No, sir.

15 THE COURT: Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 78: Sandy Sutton. I think it's the
18 prosecutor's office and Ryan Wilkins.

19 THE COURT: And your number, please.

20 JUROR NO. 78: I'm sorry. It's Cynthia Lynch, No. 78.

21 THE COURT: And would any of those facts have any
22 bearing upon your decision?

23 JUROR NO. 78: No.

24 THE COURT: Or connections?

25 JUROR NO. 78: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NO. 74: My son, Les Lindsey, is with the city,
4 an officer with the city. Our son, Reid Lindsey, is an
5 investigator with the sheriff's office. And my future
6 daughter-in-law is with Mr. Gowdy's office.

7 THE COURT: And would that have any bearing upon your
8 decision in this case?

9 JUROR NO. 74: No.

10 THE COURT: And your future daughter-in-law's name is
11 what?

12 JUROR NO. 74: Christy Bell.

13 THE COURT: All right. And your name is what, and
14 number?

15 JUROR NO. 74: Carol Lindsey.

16 THE COURT: And your number?

17 JUROR NO. 74: Seventy-four.

18 THE COURT: Seventy-four. All right. And it wouldn't
19 affect your judgment.

20 JUROR NO. 74: No.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 83: I'm No. 83, Shelia McAbee. I worked at
24 a law office in town. So there's numerous people that we
25 have been associated with in the law enforcement.

Jury qualification

1 THE COURT: And would that have any bearing upon your
2 decision in this case?

3 JUROR NO. 83: No, sir.

4 THE COURT: Thank you. Be seated.

5 Yes, sir.

6 JUROR NO. 94: No. 94, Fred Nesbitt. I know Hugh
7 Bishop with Spartanburg County. We used to attend the same
8 church.

9 THE COURT: And would that have any bearing upon your
10 decision if you were selected?

11 JUROR NO. 94: No, sir.

12 THE COURT: Thank you. Be seated.

13 Has any member of the jury panel or -- well, has any
14 member of the jury panel ever been employed as a law
15 enforcement officer? Have you or are you now or have you
16 ever been employed as a law enforcement officer of any
17 kind, civilian or military? If so, please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel or any
20 member of your immediate family -- and let me define an
21 immediate family member as a parent, a spouse, a child or a
22 sibling -- a parent, a spouse, a child or a sibling. I
23 need to know if you or any members of your immediate family
24 as I just defined it have ever been the victim of any type
25 of violent crime, as well as have you or that family member

Jury qualification

1 ever been accused of having committed any type of violent
2 crime.

3 And let's describe a violent crime as being something
4 like murder, manslaughter, burglary, criminal sexual
5 conduct, armed robbery, criminal domestic violence of a
6 high and aggravated nature or any other similar type of an
7 offense.

8 I need to know if you or an immediate family member
9 has ever been the victim of or have ever been accused of
10 having committed any type of violent crime. If so, please
11 stand.

12 All right. I have four. I'm going to ask you again
13 to give me your name and your juror number. And you can
14 answer the question where you are or you can step down here
15 and I'll discuss it with you privately if you'd prefer.

16 JUROR NO. 106: May I come up to you?

17 THE COURT: You may if you'd like. I mean, if you had
18 rather you may.

19 (Bench conference held off the record with counsel and
20 Juror No. 106.)

21 THE COURT: Juror 106 is excused from serving.

22 THE BAILIFF: No. 94.

23 (Bench conference held off the record with counsel and
24 Juror No. 94.)

25 THE BAILIFF: No. 113.

Jury qualification

1 (Bench conference held off the record with counsel and
2 Juror No. 113.)

3 THE BAILIFF: No. 40.

4 (Bench conference held off the record with counsel and
5 Juror No. 40.)

6 THE COURT: Next.

7 THE BAILIFF: 150.

8 (Bench conference held off the record with counsel and
9 Juror No. 150.)

10 THE COURT: Next.

11 THE BAILIFF: Forty-nine.

12 (Bench conference held off the record with counsel and
13 Juror No. 49.)

14 THE COURT: Anyone else need to respond to that
15 question? If so, please stand or come forward.

16 (No response.)

17 THE COURT: Has any member of the jury panel ever been
18 employed at or do you have any financial interest in either
19 Ultra Tan tanning salon or Subway sandwich shops? If so,
20 please stand.

21 (No response.)

22 THE COURT: Any member of the jury panel ever been
23 employed in a retail business establishment? If so, please
24 stand.

25 All right. As you stand, I'll start on the corner.

Jury qualification

1 You're 131?

2 JUROR NO. 131: Yes.

3 THE COURT: I'll start with you. And you tell me your
4 name and your number. Tell me what business that you have
5 been employed at. Okay.

6 JUROR NO. 131: Yvonne Thomas, 131. I was employed at
7 Motel 6 and Ingles.

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

9 Yes, ma'am.

10 JUROR NO. 66: Juror 66. I was employed at Myers
11 Arnold back in --

12 THE COURT: Okay. Yes, ma'am.

13 JUROR NO. 146: 146, Sandra Williams. I used to work
14 at Sky City.

15 THE COURT: Thank you.

16 JUROR NO. 3: Melissa Alexander, No. 3. I used to
17 work at Target.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 52: No. 52, Robin Coker. I used to work at
21 Community Cash stores.

22 THE COURT: Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 23: No. 23, Kent Cavendish. I used to work
25 at Winn-Dixie.

Jury qualification

1 THE COURT: What's your number?

2 JUROR NO. 23: Twenty-three.

3 THE COURT: Yes, sir.

4 JUROR NO. 98: Warren Osment, 98. I worked at Best
5 Buy.

6 THE COURT: Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 14: Katherine Bradburn, No. 14. I worked
9 for Aldi and Wal-Mart.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 58: Briana Hollis, No. 58. I worked at J.
13 D.'s Fashions.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 31: Janice Dantin, No. 31. Fields of
17 Dreams and Theodore Morris:

18 THE COURT: Thank you, ma'am.

19 Yes, ma'am.

20 JUROR NO. 134: Pam Tinsley, 134. I worked at Belk's
21 Department Store.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 109: Alicia Rice, 109. K-Mart.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 9: Christine Bigos, nine. Rite Aid.

3 THE COURT: Thank you. Be seated.

4 All right. Ladies and gentlemen, I have given you a
5 brief explanation by reading the indictments as to what the
6 case is about, told you where it is alleged to have
7 occurred. I've introduced all of the witnesses to you and
8 I have introduced the lawyers to you.

9 So now I need to find out if anybody on the panel,
10 understanding what the state case is about and who is
11 involved, if anyone has any reason whatsoever why you think
12 you could not be fair and impartial if you were called upon
13 to serve as a juror in the case. If so, please stand.

14 (No response.)

15 THE COURT: Has any member of the jury panel already
16 made up your mind or formed an opinion as to how you think
17 the case ought to be decided based upon what you've heard
18 this morning or based upon any other consideration? I just
19 need to know if any juror has already made up your mind as
20 to how you think the case ought to be decided. If so,
21 please stand.

22 (No response.)

23 THE COURT: Any other questions requested by the
24 state?

25 MR. GOWDY: No, sir, Your Honor.

Jury qualification

1 THE COURT: By the defendant?

2 MR. WHELCHER: None, Your Honor.

3 THE COURT: Okay. Your names will be selected
4 randomly by the computer.

5 As your name is called you'll be asked to come
6 forward. You can see hanging from the middle of the
7 ceiling a microphone. And I want you to come back towards
8 me about two steps from that microphone.

9 Each side has an opportunity to have you seated for
10 service in the case or to have you excused from service.

11 If either side asks that you be excused from serving
12 in the case you can simply go back and have a seat where
13 you are now.

14 If both agree to have you seated for service in the
15 case you'll be having a seat in that jury box to your right
16 and to my left.

17 We're going to select 14 of you. There'll be 12
18 primary jurors. And we'll have two additional jurors to
19 serve as alternates in the event somebody gets sick or is
20 unable to continue for some reason.

21 THE CLERK: Juror No. 27, Beatrice Coble.

22 THE COURT: Ma'am, as I indicated, if you'll please
23 come forward, and you'll see where the bailiff is. If
24 you'll just stand near that bailiff -- please come. Please
25 stand next to the bailiff. Thank you, ma'am.

Jury qualification

1 THE CLERK: What say the state?
2 MR. GOWDY: Present the juror.
3 THE CLERK: What say the defense?
4 MR. WHELCHER: Please seat the lady.
5 THE CLERK: No. 26, Jerry Clayton.
6 What say the state?
7 MR. GOWDY: Present the juror.
8 THE CLERK: What say the defense?
9 MR. WHELCHER: Seat Mr. Clayton.
10 THE CLERK: Juror No. 88, William Miller.
11 What say the state?
12 MR. GOWDY: Present the juror.
13 THE CLERK: What says the defense?
14 MR. WHELCHER: Seat Mr. Miller.
15 THE CLERK: Juror No. 94, Fredrick Nesbitt.
16 What say the state?
17 MR. GOWDY: Please excuse the juror from service in
18 this case.
19 THE CLERK: Juror No. 118, Brenda Seay.
20 What say the state?
21 MR. GOWDY: Present the juror.
22 THE CLERK: What say the defense?
23 MR. WHELCHER: Please seat Mr. Seay.
24 THE CLERK: Juror No. 141, Carolyn Watkins.
25 What say the state?

Jury qualification

1 MR. GOWDY: Present the juror.
2 THE CLERK: What say the defense?
3 MR. WHELCHER: Seat Ms. Watkins.
4 THE CLERK: Juror No. 89, Debbie Moore.
5 What say the state?
6 MR. GOWDY: Present the juror.
7 THE CLERK: What say the defense?
8 MR. WHELCHER: Seat Ms. Moore.
9 THE CLERK: Juror No. 119, Samuel Shackelford.
10 What say the state?
11 MR. GOWDY: Present the juror.
12 THE CLERK: What say the defense?
13 MR. WHELCHER: Please excuse Mr. Shackelford from the
14 trial of this case.
15 THE CLERK: Juror No. 78, Cynthia Lynch.
16 What say the state?
17 MR. GOWDY: Present the juror.
18 THE CLERK: What say the defense?
19 MR. WHELCHER: Please excuse Ms. Lynch from the trial
20 of this case.
21 THE CLERK: Juror No. 98, Warren Osment.
22 What say the state?
23 MR. GOWDY: Present the juror.
24 THE CLERK: What say the defense?
25 MR. WHELCHER: Please seat Mr. Osment.

Jury qualification

1 THE CLERK: Juror No. 149, Jackie Worthy.

2 What say the state?

3 MR. GOWDY: Please excuse the juror from service in
4 this case.

5 THE CLERK: Juror No. 101, Janet Parker.

6 What say the state?

7 MR. GOWDY: Present the juror.

8 THE CLERK: What say the defense?

9 MR. WHELCHER: Please excuse the juror.

10 THE CLERK: Juror No. 23, Kent Cavendish.

11 What say the state?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What say the defense?

14 MR. WHELCHER: Please excuse the juror.

15 THE CLERK: Juror No. 36, Judy Dumars.

16 What say the state?

17 MR. GOWDY: Present the juror.

18 THE CLERK: What say the defense?

19 MR. WHELCHER: Please excuse the juror.

20 THE CLERK: Juror No. 134, Pamela Tinsley.

21 What say the state?

22 MR. GOWDY: Present the juror.

23 THE CLERK: What say the defense?

24 MR. WHELCHER: Please seat Ms. Tinsley.

25 THE CLERK: Juror No. 42, Alan Foessel.

Jury qualification

1 What say the state?
2 MR. GOWDY: Present the juror.
3 THE CLERK: What say the defense?
4 MR. WHELCHER: Please excuse the juror from the trial
5 of this case.
6 THE CLERK: Juror No. 43, Douglas Forbis.
7 What say the state?
8 MR. GOWDY: Present the juror.
9 THE CLERK: What say the defense?
10 MR. WHELCHER: Please seat the juror.
11 THE CLERK: Juror No. 6, Joanne Bergen.
12 What say the state?
13 MR. GOWDY: Please excuse the juror from service in
14 this case.
15 THE CLERK: Juror No. 150, Porsche Wrenix.
16 What say the state?
17 MR. GOWDY: Present the juror.
18 THE CLERK: What say the defense?
19 MR. WHELCHER: Please excuse the juror.
20 THE CLERK: Juror No. 14, Katherine Bradburn.
21 What say the state?
22 MR. GOWDY: Present the juror.
23 THE CLERK: What say the defense?
24 MR. WHELCHER: Please seat the juror.
25 THE CLERK: Juror No. 144, Jerrilyn Wilkes.

Jury qualification

1 What say the state?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What say the defense?

4 MR. WHELCHER: Please excuse the juror from the trial
5 of this case.

6 THE CLERK: Juror No. 46, Robert Gibson.

7 What say the state?

8 MR. GOWDY: Present the juror.

9 THE CLERK: What say the defense?

10 MR. WHELCHER: What was the number again?

11 THE CLERK: 46.

12 MR. WHELCHER: Please excuse the gentleman from the
13 trial of this case.

14 THE CLERK: Juror No. 131, Yvonne Thomas.

15 What say the state?

16 MR. GOWDY: Present the juror.

17 THE CLERK: What say the defense?

18 MR. WHELCHER: Please swear the lady.

19 THE CLERK: Juror No. 113, James Rivers.

20 What say the state?

21 MR. GOWDY: Present the juror.

22 THE CLERK: What say the defense?

23 MR. WHELCHER: Please excuse the juror from the trial
24 of this case.

25 THE CLERK: Juror No. 115, Nancy Rolander.

Jury qualification

1 What say the state?

2 MR. GOWDY: Present the juror.

3 THE CLERK: What say the defense?

4 MR. WHELCHER: Seat the juror.

5 THE COURT: This will be for the alternate, first
6 alternate.

7 THE CLERK: Juror No. 58, Briana Hollis.

8 What say the state?

9 MR. GOWDY: Present the juror.

10 THE CLERK: What say the defense?

11 MR. WHELCHER: Please seat the juror.

12 THE CLERK: Juror No. 112, Sandra Rigsby.

13 What say the state?

14 MR. GOWDY: Present the juror.

15 THE CLERK: What say the defendant?

16 MR. WHELCHER: Please excuse the juror from the trial
17 of this case.

18 THE CLERK: Juror No. 99, Joshua Padgett.

19 What say the state?

20 MR. GOWDY: Present the juror.

21 THE CLERK: What say the defense?

22 MR. WHELCHER: Please seat Mr. Padgett.

23 (Whereupon, a jury was impanelled.)

24 THE COURT: All right. Let me ask those who have been
25 selected if you'll please go with a bailiff to a jury room.

1 And I'll bring you back in just a few minutes.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed regarding jury selection by the state?

6 MR. GOWDY: No, sir, Your Honor.

7 THE COURT: By the defendant?

8 MR. WHELCHER: Beg the Court's indulgence, Your Honor.
9 (Pause.)

10 MR. WHELCHER: No, sir.

11 (Whereupon, the remaining members of the jury venire
12 were excused.)

13 THE COURT: Let me see y'all just a minute, please.

14 (Bench conference held off the record.)

15 THE COURT: All right. Bring the jury back, please.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Ladies and gentlemen, this is a convenient
19 time for us to recess for lunch, so we'll do that before we
20 begin with the trial of the case.

21 Before I let you go however let me caution you and
22 provide you with an instruction that you are obligated to
23 follow as jurors.

24 And that is from this point on you are to have no
25 discussions about this case with any person whatsoever in

1 any fashion whatsoever. That includes your fellow jurors.
2 You can't talk about the case.

3 The only time that you are permitted to talk about the
4 case before you reach a decision is while you are engaged
5 in jury deliberations. And that of course won't happen
6 until after all of the evidence has been received and I've
7 instructed you on the law that's applicable and have asked
8 you to go back and begin with your deliberations.

9 When that time comes you're permitted to discuss the
10 case. That's how you arrive at your decision. But until
11 that time comes you are not permitted in any way whatsoever
12 to discuss this case with any person whatsoever. And
13 that's because your decision in any case has to be based
14 strictly upon the testimony and evidence received during
15 the trial of the case and then your discussions with your
16 fellow jurors at the trial's conclusion.

17 You cannot permit yourselves to be influenced by any
18 outside consideration. That's why you can't talk about the
19 case until deliberation time.

20 That also means that you are not permitted to allow
21 yourselves to be exposed to any type of media coverage that
22 relates to the case. The media may have an interest.
23 There may be something on the television, may be something
24 on the radio, may be something appearing in a newspaper
25 about the case. You are to avoid that entirely. Do not

1 permit yourselves to be exposed to any type of media
2 coverage that relates to the case.

3 Again, that's because your decision has to be based
4 upon what you see and hear as it relates to evidence and
5 not what somebody else might think they saw or heard that
6 relates to the case. Every case has to be based upon
7 what's presented in court.

8 You're also not permitted to engage in any type of
9 research, whether it be internet or otherwise. You're not
10 permitted to try to obtain information about anything that
11 relates to this case. That would simply be inappropriate.
12 It would be a violation of your duty as a juror. So no
13 discussions, no research, no media exposure.

14 Do have a good lunch, and please report to your jury
15 room at 2:00 o'clock this afternoon, 2:00 o'clock this
16 afternoon.

17 Now, the jury room you'll be reporting to is the one
18 that you've just been introduced to after you were selected
19 and taken to a jury room. That's where you are to report.

20 Please be there not later than 2:00 o'clock this
21 afternoon. Have a good lunch.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: All right. Court is in recess until
25 2:00 o'clock.

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Any matters to be addressed
3 before the jury is brought in?

4 MR. GOWDY: Your Honor, just by way of motions in
5 limine and-or in-camera matters, the victim had a medical
6 condition which we think is irrelevant to be questioned
7 about.

8 She also tested positive for marijuana when she was
9 tested at the emergency room after this. Absent any
10 evidence that she was under the influence at the time that
11 she perceived events that she testified to, we would move
12 to exclude that, and also rape shield, Your Honor.

13 THE COURT: Mr. Whelchel.

14 MR. WHELCHER: Any plan on our part to bring out
15 anything to do with marijuana and rape shield or -- what's
16 the third?

17 MR. GOWDY: Medical condition.

18 MR. WHELCHER: Medical condition, no, sir.

19 THE COURT: You don't intend to go into it?

20 MR. WHELCHER: No, sir.

21 THE COURT: Okay. Bring the jury in, and ask
22 Ms. Moore to take the foreperson's seat -- Ms. Moore.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Good afternoon, ladies and gentlemen.

1 We are ready to begin with the trial of the case for
2 which you have been selected.

3 And, Ms. Moore, I'm going to ask you to serve as the
4 foreperson of the jury. As the foreperson you're going to
5 three specific duties that none of the other jurors will
6 have.

7 No. 1, you're going to be asked to serve as the
8 spokesperson for the jury. And that just means if
9 something arises during the course of the trial, you or one
10 of your fellow jurors has some difficulty or problem or
11 question, if you'll let the bailiff know of that fact,
12 he'll let me know it, and I will address it.

13 Secondly, you'll be called upon to preside over jury
14 deliberations when the times comes. That of course will
15 not be until the end of the trial after all the evidence
16 has been received and I have instructed you on the law
17 that's applicable in this case.

18 But when the time does come for the jury deliberations
19 you are called upon to preside over that process in the
20 jury room simply to ensure that those deliberations are
21 carried out in some orderly fashion.

22 And, thirdly, you'll be asked to actually write the
23 decisions of the jury. You'll do that on verdict forms
24 that I'll provide you at the trial's conclusion on which
25 you will indicate the jury's unanimous decision as to that

1 particular charge.

2 Now, the foreperson has those specific duties that I
3 have just indicated. That does not however mean that she
4 is any more important than any of you other jurors because
5 the decision of a jury is the unanimous consensus opinion
6 of all 12 jurors. And so all of you will have an equal say
7 and an equal vote in what the ultimate decisions will be in
8 this case.

9 Someone simply has to be delegated those
10 responsibilities that I have just indicated, and I have
11 delegated those to Ms. Moore in appointing her as the
12 foreperson. But each of you jurors are equally important
13 so far as the ultimate decisions are concerned because, as
14 I've stated, any decision a jury reaches has to be
15 unanimous. All 12 of you must be in agreement.

16 Now, Mr. Osment and Ms. Bradburn, each of you have
17 been selected as alternate jurors. And the function of an
18 alternate juror -- where is Mr. Bradburn, I mean, excuse
19 me, Ms. Bradburn and Mr. Osment?

20 All right. Let me ask. The alternates always sit on
21 the back row. I will take care of it. Mr. Osment and
22 Ms. Bradburn are the seat on the back two seats.

23 THE BAILIFF: He says he's not an alternate.

24 THE JUROR: We were called as alternates this morning.

25 THE BAILIFF: Hollis and Padgett.

1 THE COURT: Well, I've got the wrong -- okay. I used
2 my list.

3 All right. Ms. Hollis and Mr. Padgett --

4 THE JUROR: Right.

5 THE COURT: -- each of you are alternates. The
6 function of alternate jurors are to take the place of one
7 of the original 12 if during the trial one of these 12
8 cannot continue to serve for some reason. And so if one of
9 the jurors is unable to continue, then one or both of you
10 would take those persons' places depending on how things
11 developed.

12 If when the time comes for jury deliberations all of
13 the original 12 are able to participate in jury
14 deliberations, then your service will end. And you would
15 not be permitted to participate any further, because the
16 decision of a jury is that of 12. And no more than 12 are
17 permitted to engage in that deliberation process.

18 But it is important that each of you pay just as
19 careful attention as we ask of all of the jurors in the
20 case because it does occur from time to time for one reason
21 or another one or more of these jurors may be unable to
22 continue. And in that event one or both of you would be
23 called upon to be their replacement.

24 So we do appreciate your participation as alternate
25 jurors, just as we appreciate the participation of each of

Jury sworn

1 you jurors who have been selected for the purpose of
2 deciding the verdict in this particular case.

3 You may swear the panel.

4 (Whereupon, the jury was duly sworn.)

5 THE COURT: -Now, ladies and gentlemen, as you know,
6 each of you have been selected to decide verdicts in the
7 case of the State vs. Mendoza Milciades Alcantara.

8 As you know, he has been accused by the state of
9 having committed separate and distinct offenses, although
10 they are all alleged to have arisen out of the course of
11 events which the state alleges occurred back on
12 December the 30th of 2008.

13 And by way of these indictments which I read from
14 prior to your selection the defendant has been charged with
15 the crimes of kidnapping, armed robbery, criminal sexual
16 conduct and possession of a weapon during the commission of
17 a violent crime. And the indictments arise from two
18 separate events occurring on December the 30th of 2008.

19 And as I previously stated, the state is alleging that
20 he committed the crimes of kidnapping in that he abducted
21 two separate individuals on that day.

22 He's also charged with the crimes of armed robbery and
23 possession of a weapon during the commission of a violent
24 crime, that violent crimes being alleged to be armed
25 robbery, which involves two separate persons alleged to be

1 the victims.

2 And he's also charged with in one of those events
3 having committed the crime of criminal sexual conduct in
4 the first degree.

5 Now, as I also told you, as to those allegations and
6 those charges he's entered a plea of not guilty. That plea
7 of not guilty therefore places upon the state the burden of
8 proving the allegations that they have set forth in each of
9 these indictments, the burden of proving each of the
10 essential elements that make up the crimes of kidnapping,
11 armed robbery, criminal sexual conduct in the first degree
12 and possession of a knife during the commission of a
13 violent crime; and therefore the burden is upon the state
14 to establish his guilt to the satisfaction of you 12 jurors
15 beyond a reasonable doubt before any verdict of guilty
16 could be returned as to any of the separate charges set
17 forth.

18 Every person who is accused of a crime is under the
19 law presumed to be innocent. And that presumption of
20 innocence remains with every defendant, as it does with
21 this defendant, from the time that he is placed under
22 arrest and throughout the course of the criminal process
23 and even throughout the course of the actual trial in the
24 case.

25 That presumption of innocence will be with him as you

1 go back to begin with your deliberations at this trial's
2 conclusion. And that presumption of innocence will be with
3 him in that jury room, and it'll be with him forever unless
4 you 12 jurors determine that he's no longer entitled to
5 that presumption of innocence.

6 That is after you have carefully considered all of the
7 evidence presented in the case, and from that evidence you
8 have determined what you believe to be the true facts as
9 they relate to this matter, and upon deciding those facts
10 after you have applied the law that I will have provided
11 you, if you 12 jurors unanimously determine that his guilt
12 has been proven beyond a reasonable doubt as to a
13 particular charge, then he would no longer be entitled to
14 the presumption of innocence as it relates to the charge.
15 But it's only if, unless and until you are satisfied of his
16 guilt beyond a reasonable doubt that the presumption of
17 innocence would no longer be applicable.

18 Now, the way the trial will proceed is that in a
19 moment the lawyers are going to address you in what are
20 called opening statements.

21 There are two occasions in the trial of a case where
22 the lawyers are permitted to address the jury, and that is
23 at the beginning of the trial before any evidence has been
24 introduced and then again at the conclusion of the trial
25 after all of the evidence has been received.

1 Please keep in mind however that the lawyers'
2 statements are not evidence. They are not evidence upon
3 which you will decide any fact or form any opinion or
4 conclusion in the case.

5 And that's because the lawyers aren't witnesses to
6 anything. If they were they wouldn't be participating as
7 lawyers in the case.

8 They're not going to be testifying under oath.
9 They're not going to be subjected to direct and
10 cross-examination as witnesses will be. And so what they
11 tell you in their statements is not to be considered by you
12 as any evidence upon which you will base your decision.
13 But you should listen to what the lawyers have to say
14 because the statements do serve a purpose.

15 The opening statements will serve to provide you with
16 a basic understanding as to what this case is about from
17 the perspective of the state and of the defense so that
18 you'll have some context in which to place the evidence
19 that we will be receiving shortly thereafter.

20 The closing statements occur after all of the evidence
21 has been received. And, again, while those statements are
22 not evidence it does afford the lawyers an opportunity to
23 discuss with you the evidence that you have seen and heard
24 during the trial of the case. And through that discussion
25 each will have an opportunity to try to persuade you or to

1 convince you that the evidence in the case does or does not
2 support a particular decision.

3 And it's in between those opening and the closing
4 statements of the lawyers that we actually receive the
5 evidence upon which you will make your decision.

6 The state, as you know, has the burden of proof. The
7 state has an obligation to present evidence because they
8 have to satisfy you of a defendant's guilt beyond a
9 reasonable doubt.

10 After the state has concluded with their presentation
11 of evidence the defendant has the same opportunity to
12 testify and to present evidence if a defendant wishes to do
13 so.

14 But a defendant is under no obligation to testify or
15 to present evidence. The burden is not upon a defendant to
16 prove that he is not guilty or to prove that he is innocent
17 because in some cases that might not even be possible.

18 If a defendant chooses not to take the witness stand
19 or call any witnesses or offer any evidence that is not a
20 fact or circumstance which may be considered by you 12
21 jurors in your determination as to whether or not his
22 evidence has been proven beyond a reasonable doubt.

23 You may not draw any inference from such a fact or
24 reach any conclusion as a result of it. But, as I say, a
25 defendant is afforded an opportunity to present evidence

1 should he or she wish to do so.

2 And after all of the evidence has been received and
3 you've heard the final summations of the lawyers I will
4 then instruct you fully on the law as it relates to the
5 criminal law in general and as it relates to these specific
6 crimes particularly, and then you will be asked to go back
7 and to begin with your deliberations.

8 Through that process you're simply going to be called
9 upon through the exercise of good judgment and common sense
10 conscientiously applied to the testimony and evidence
11 received in the case to decide what you believe to be the
12 true facts as they relate to this particular matter and
13 these allegations.

14 Once you decide the facts, you'll then apply the law
15 that I will have given you, and you will arrive at a fair
16 and just decision in the case.

17 Now, it is important that you give every witness the
18 same degree of attention as they testify, because in some
19 cases there is a conflict in testimony. And where there's
20 a conflict in testimony and a resolution of that conflict
21 is necessary in order for you to arrive at a decision, you
22 are the persons who will resolve the conflict.

23 In other words, you get to judge the credibility and
24 the believability of each witness that has testified. So
25 it's important that you give every witness the same degree

Opening statements

1 of attention so that when you go back to begin with your
2 deliberations in the case you'll be in a proper position to
3 fairly evaluate and assess each witness' testimony in light
4 of not just that witness' testimony but in light of all of
5 the testimony and all of the evidence received during the
6 trial of the case.

7 And of course it's also important that you keep an
8 open mind throughout the course of the trial. And that
9 just means that you are not to begin making up your minds
10 or formulating your opinions as to what you think the
11 ultimate decisions in this case ought to be until all of
12 the evidence has been received, until I have instructed you
13 on the law that's applicable and until you've been asked to
14 begin with your deliberations. That is the process that is
15 designed for you 12 jurors to arrive at a fair and just
16 decision in the case.

17 So I do want to thank you in advance for your
18 participation, as well as for your careful attention. I
19 would ask that you please give the lawyers your attention
20 now as they give you their opening statements.

21 Ms. Crick.

22 MS. CRICK: Thank you, Your Honor. May it please the
23 Court.

24 Ladies and gentlemen, it's December 30th of 2008 when
25 a 9-1-1 call comes into the dispatch from a lady named

Opening statements

1 Katherine Rumley close to 8:00 p.m.

2 You're going to find out that Katherine Rumley is the
3 young lady who at the time was working at Ultra Tan, which
4 is a tanning salon that was located in Duncan, South
5 Carolina.

6 And at around 7:40 or so that night she had begun to
7 do some of her closing duties. She had cleaned out some of
8 the tanning beds. And she was up front now folding some of
9 the towels used by the customers when she heard a noise
10 coming from the back of the tanning salon.

11 She looked down the long hallway toward the back door
12 where she had heard the noise. She saw that the door was
13 ajar. So she started walking down the hallway to see what
14 was going on. But before she could make it to the door --

15 MR. WHELCHER: Objection, Your Honor. Sounds to me as
16 if she's testifying. I hear no remarks that there will be
17 testimony to this fact. It's just that we're going to hear
18 this story. I would object.

19 THE COURT: Overrule your objection.

20 MS. CRICK: Thank you, Your Honor.

21 As she goes toward the back of the door you're going
22 to find out that a man merges from one of the tanning
23 bedrooms. He's wearing a red hoody type jacket, jeans. He
24 has a blue ski hat pulled over his face with two eye holes
25 cut out in it.

Opening statements

1 And you're going to find out that in one hand he's
2 carrying a black backpack and that in the other hand he's
3 carrying a knife.

4 He tells Katherine to go to the front door and lock
5 it. And then he goes over to the cash register and gets
6 all the money, the cash, that he can out of the cash
7 register. But he's not done just yet.

8 You're going to find out that the next thing he does
9 is direct her to a washer. It's an area at Ultra Tan where
10 they have a washer and a dryer where they can clean the
11 towels that have been used.

12 He takes her into that wash room. When he gets in
13 there he tells her to take off her pants. He bends her
14 over a dryer and he rapes her.

15 And after he's finished he pauses a moment and grabs a
16 mop that's nearby and tries to clean something up off the
17 floor. And then he grabs his bag and he runs out the door.

18 Not too much longer after that just up the road
19 another 9-1-1 call comes into dispatch from the Subway
20 sandwich shop. Two young ladies who are working at Subway,
21 Amanda and Christy, are doing their duties cleaning up
22 trays when a man comes into the Subway. He's wearing a red
23 hoody jacket and jeans. He's got a blue ski cap pulled
24 down over his face with the eyes cut out.

25 In one hand he's got a black bag and in the other hand

Opening statements

1 he's got a knife. And he holds the knife toward one of the
2 ladies while he tells the other lady to empty the cash from
3 the register into his bag.

4 And while he's stealing the money these ladies notice
5 something else. You'll find out they saw a star tattoo on
6 the side of his neck. And just like Katherine, they call
7 9-1-1. And they give the best description they can of the
8 guy and also this time of the car he was driving.

9 While all of this is going on back at Ultra Tan the
10 Spartanburg County Sheriff's Office has arrived on the
11 scene to process the crime scene.

12 You're going to hear from the I. D. officer who
13 actually went to Ultra Tan who took pictures, who looked
14 around for evidence. He'll tell you what he saw, what he
15 collected.

16 And specifically one thing that caught his eye when he
17 went into that wash room, he observed on the floor a clear
18 sticky substance that he thought might be important. So
19 he's going to tell you how he got some swabs and took
20 samples of that area on the floor of that wash room near
21 the dryer, how he sealed all of those up and sent them off
22 to SLED in Columbia to be tested by D. N. A. experts in the
23 hope that they might find something.

24 And while he's collecting his evidence there at Ultra
25 Tan you'll find out that Katherine was over at the

Opening statements

1 emergency room having what is normally referred to as a
2 rape exam. And she was submitting to having her body, just
3 like the crime scene is analyzed, her body was analyzed.
4 Her body was scoured for evidence.

5 The nurse is going to come who did that exam, and
6 she'll explain to you exactly what's involved in that
7 process. Every orifice of the body is swabbed -- the
8 rectum, the vaginal area. Oral swabs are taken in the
9 hopes that she's going to find some D. N. A. evidence.

10 And she'll tell you what she did and how she sealed
11 all of her evidence up and sent it down to SLED to be
12 tested by their D. N. A. experts.

13 While all of this is going on not too far away later
14 that night a Duncan police officer happens to be out on
15 patrol, has heard some of the descriptions given earlier by
16 these victims. And he notices something strange.

17 He sees a car in the general area where the robberies
18 and the rape had occurred. He sees a car that matches the
19 description given by the victims.

20 As he gets closer and looks in he sees the driver and
21 notices he matches the description given by the victims.
22 And as he asks the guy to step out of the vehicle he sees
23 something else, a star tattoo on the side of the guy's
24 neck. And that guy was the defendant.

25 And when the police officers go over to his apartment

Opening statements.

1 to search you're going to find out that they found a red
2 hoody jacket, a black backpack, a black duffle bag, a blue
3 ski hat with the eyes cut out, a knife and a lot of cash.
4 All of it matched the descriptions given by the victims.
5 All of it matched what the police officer saw on
6 surveillance videos from the Ultra Tan and the Subway.

7 But there was one more thing. You know, D. N. A. is
8 being used a lot these days. It's on T. V. everywhere.
9 It's a wonderful scientific tool. There's scores of crimes
10 that have been solved using D. N. A. evidence and there are
11 a lot of people who have been found innocent using D. N. A.
12 evidence.

13 And you're going to hear from an expert in this
14 particular case who is going to explain to you that D. N.
15 A. is like a genetic fingerprint. Just like all of us have
16 different fingerprints, we all have our D. N. A.
17 fingerprint.

18 The only two people that have exactly the same D. N.
19 A. are identical twins. And I'll tell you what you
20 probably already know and the expert will tell you what you
21 probably already know. You can get that D. N. A. from
22 saliva, blood, body fluids, including semen.

23 In this case the evidence collected from the floor of
24 the Ultra Tan, the evidence collected from Katherine's body
25 at the emergency room, it turns out there was something on

Opening statements

1 those swabs. Specifically, it was semen.

2 And from that semen the D. N. A. experts at SLED were
3 able to develop a D. N. A. profile, the D. N. A.
4 fingerprint. And they were able to compare it to the
5 defendant's D. N. A. profile or D. N. A. fingerprint.

6 And what you're going to find out is that the swabs
7 taken by the nurse and the swabs from the floor, that D. N.
8 A. matched the defendant 84 quadrillion to one.

9 So it's going to be my job, along with Trey Gowdy, to
10 bring forth all of this important evidence during this
11 trial and present it to you. And your job truly is the
12 most important job of anyone else in this courtroom today,
13 because you alone have to decide what happened December the
14 30th of 2008. And we're going to give you almost every
15 single tool you need to make that decision.

16 But there's one thing we're not going to be able to
17 give you. Luckily, it's something you already have, and
18 that is good old-fashioned common sense. Truly, especially
19 in this case, that is the tool that will serve you best as
20 you sit on this jury and listen to the testimony and look
21 at the evidence and you go deliberate.

22 If you use common sense in this case I know justice
23 will be done. And that's all we're asking you. We are
24 asking that you be fair to the defendant. We are asking
25 that you be fair to the state. But at the end of the day

Opening statements

1 we're asking that you simply do justice.

2 THE COURT: Mr. Whelchel.

3 MR. WHELCHER: My name is Dick Whelchel, and I am
4 Mitch Alcantara's attorney. Tanya Jones is also his
5 attorney. With a name like Miliciades and the other name,
6 he goes by Mitch. You can understand why.

7 Everything is not as clear as the state would have you
8 believe in their opening remarks. And you've got to
9 understand that's simply what it is, opening remarks,
10 because you don't have any evidence of any of this. You
11 may receive some evidence. I don't know. The reason I
12 don't know is this.

13 The burden of proof, the burden of providing to you,
14 and you, and you individually and as a collective body, the
15 12 of you once that finding of 12 is determined, have to
16 act as one, because and I think the judge has already told
17 you, and I'm sure he'll tell you again at the close of this
18 case, your verdict, whatever it is, must be unanimous.

19 Twelve of you must agree after you've heard all of the
20 evidence that's presented, all the testimony, the 12 of you
21 must agree that either this happened as they say it
22 happened or it didn't or even this.

23 Maybe something did happen but there's not sufficient
24 proof to prove to me, to us as the jury in this case, that
25 it happened beyond a reasonable doubt. You have already

Opening statements

1 heard that from the judge.

2 The duty of convincing you that this happened the way
3 you just heard rests here at this table with the state.
4 Look. All of the SLED agents, all of the policemen, it is
5 their duty to bring before you evidence sufficient to
6 convince you beyond a reasonable doubt. You heard what the
7 judge said. They don't have to convince you half way
8 through the trial.

9 Mitch Alcantara is not guilty of these charges.
10 Throughout this trial he and every person in this state and
11 this country who are brought into a courtroom by the state
12 of South Carolina -- he didn't just say, hey, let's go have
13 a trial. We're here today because of the actions of the
14 State of South Carolina bringing these charges against him.

15 Okay. That's why the burden of proof rests with the
16 state. It always has, it always will, it always shall.
17 That's the way it should be.

18 When I was prosecuting these kind of cases I can't
19 remember how many years ago, but you can look at me and
20 tell it's been a while, it was our burden too when I was a
21 prosecutor. I'm not a prosecutor any longer, and I don't
22 have that burden.

23 My client doesn't have any burden. What burden does
24 my client have -- Mitch Alcantara? None. Technically, he
25 doesn't have to show up. We could do this in his absence.

Opening statements

1 You've got to understand how important that is. Who
2 has the burden of proof? Who has the burden of producing
3 evidence? Who has the burden of convincing you
4 individually and collectively beyond a reasonable doubt
5 that this happened this way?

6 You may get tired of hearing beyond a reasonable
7 doubt. As a prosecutor I had a friend of mine who was also
8 a prosecutor, and he used to count how many times a judge
9 said in his charge beyond a reasonable doubt.

10 There's a reason you hear it so often. It is a
11 fundamental basic tentative of our law that you must be
12 convinced beyond a reasonable doubt by the evidence
13 presented to you by the state.

14 Remember, there is no burden whatsoever on Mitch
15 Alcantara or anybody else who sits at that table. The
16 burden of proof is beyond a reasonable doubt, with evidence
17 so strong and so convincing as to remove the cloak of
18 innocence.

19 Everyone to include, as the judge has already told
20 you, to include my client, specifically to include my
21 client, but every one of us in this state and in this
22 country are presumed innocent. Thank God. There are other
23 countries it's not that way, just the opposite.

24 But you heard what the judge said. Unless and until
25 you receive evidence that convinces you beyond a reasonable

Opening statements

1 doubt of some guilt, or guilt that matches the elements of
2 these alleged crimes, until and unless that happens Mitch
3 Alcantara is presumed innocent by the State of South
4 Carolina.

5 What do you use to determine whether somebody is
6 guilty or not guilty, whether somebody has met, whether the
7 state has met their burden of proving to you individually
8 and collectively of someone's guilt?

9 The judge referred to it earlier. It's called common
10 sense. And when I was growing up it was even called horse
11 sense. You use that same God-given ability every day. You
12 use it so much you don't even think about it.

13 When you hear husband, wife, brother, sister,
14 coworker, child, say this and this happened, and then you
15 go, well, that doesn't sound just quite right, I don't know
16 the whole story, but there's something missing here, that's
17 the same thing that we're asking you use during this trial.

18 Just listen to the evidence or the lack of evidence or
19 the witnesses and judge their demeanor. Determine who and
20 what you believe, whether or not you can believe what that
21 person is telling you, not whether or not these are serious
22 offenses, no question; but whether or not you can believe
23 what you're being told by that particular individual.

24 That's how you use your common sense, your horse
25 sense. You've seen the shows that are all over T. V. now,

Opening statements

1 all of this evidence they're producing, N. C. I. S. and all
2 of those crime shows. Makes for great T. V. It doesn't
3 happen that often here.

4 I want you to listen to the testimony that they may be
5 presenting, and you decide does this and this equal that,
6 because one and one is always two. If it's something other
7 than two, that's math I don't know, and math I ain't
8 taking. Sometimes people would have you believe that one
9 and one equals three. One and one is innocent.

10 Your oath, your duty, your solemn obligation is to
11 listen to this testimony and determine what you believe,
12 who you believe and whether or not that matches the law as
13 the judge will tell you it is and render a verdict.

14 The word verdict comes from the combination of two
15 words, vere and dicto. It means literally to speak the
16 truth. That's all I ask of you.

17 Listen to the testimony, and then you'll get a chance
18 to deliberate. You get to decide what and who you believe.
19 Thank you.

20 THE COURT: Ms. Crick.

21 MS. CRICK: Thank you, Your Honor. The state calls
22 Mike West.

23

24

25

Mike West
Direct examination by Ms. Crick

1 Q You're able to pull those phone calls up --

2 A Yes, ma'am.

3 Q -- if they're needed for court? I'm going to show you
4 what I'm going to have marked.

5 (CD marked State's Exhibit No. 1 for Identification; CD
6 marked State's Exhibit No. 2 for Identification.)

7 Q I'm going to show you what has been now marked as
8 State's 1 and 2 and ask if you can identify those.

9 A The printout is a CAD printout of a call that came
10 into our 9-1-1 center from Ultra Tan in Duncan at about
11 7:50 on December the 30th of 2008.

12 Q And that's No. 1, State's 1.

13 A That's No. 1. And it's a recording that was made
14 from -- that, when the call came in on 12/30/2008, and it
15 was made on 1/23 of 2009.

16 Q And do you recognize No. 2?

17 A Again, it's a CAD printout that came in from the
18 Subway in the Greer community on Highway 101 on
19 December the 30th of 2008, and, again, recording that came
20 in on 12/30/2008 references that call.

21 Q And although that's Greer, it came to Spartanburg
22 County because that's in the county?

23 A Yes, ma'am. If it's in the Greer community it still
24 would come to us unless it's in the Greer city.

25 Q Gotcha.

Mike West
Cross-examination by Mr. Whelchel

1 MS. CRICK: Your Honor, at this time I'd like to enter
2 these into evidence.

3 MR. WHELCHER: Just the disc?

4 MS. CRICK: Just the disc.

5 MR. WHELCHER: No objection.

6 (CD marked State's Exhibit No. 1; CD marked State's
7 Exhibit No. 2.)

8 (Whereupon, State's Exhibit No. 1 and State's Exhibit
9 No. 2 were published for the jury.)

10 MR. GOWDY: Your Honor, I have nothing further of this
11 witness.

12 THE COURT: Mr. Whelchel.

13 MR. WHELCHER: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WHELCHER

16 Q Mr. West --

17 A Yes.

18 Q -- your job and the people who work for or with you at
19 9-1-1 is to record and take those phone calls when they
20 come in, is that correct?

21 A Yes, sir, yes, sir.

22 Q And you have no way of knowing at the time that you
23 receive the call whether this incident actually occurred.

24 A No, sir.

25 Q So all you do is receive the phone call --

James Michael Crowe
Direct examination by Ms. Crick

1 A Yes, sir.

2 Q -- and take down what you've been told.

3 A Yes, sir.

4 Q And then come to court and testify and --

5 A Yes.

6 Q Okay. Thank you, sir.

7 THE COURT: You may step down.

8 MS. CRICK: Your Honor, the state calls James Crowe.

9 JAMES MICHAEL CROWE, having

10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. CRICK

12 Q Could you please give the jury your full name?

13 A Sure. It is James Michael Crowe.

14 Q Do you work?

15 A I do.

16 Q Where do you work and what do you do?

17 A I work for Ultra Tan. I am the director of
18 information systems. Basically, I handle all of their
19 computer systems.

20 Q How long have you been with Ultra Tan?

21 A I've been there just over seven years.

22 Q Do you with your computer system, do you also monitor
23 things like inventory, cash receipts, all of that kind of
24 stuff with the computer system?

25 A Yes. Most of that information is stored in the

James Michael Crowe
Direct examination by Ms. Crick

1 computer system. I'm responsible for backing up the
2 records, the data that we need to run our business.

3 Q How often does the computer track the inventory and
4 the cash in the store?

5 A The inventory and cash is checked after every sale.
6 The computer has account of how much we should have. And
7 then whenever something is sold it tracks how much cash or
8 check or credit card should come in with that. And then
9 the employees at the end of every shift have to do a
10 physical count, and it has to match up with what the
11 computer says we should have.

12 Q So the employees know how much would be in there.

13 A Yes. The, the employees know how much cash they
14 should have there because they have to count it and compare
15 it with what's physically there.

16 Q Now, in December do you generally show a lot of cash
17 in the drawers?

18 A Not a large amount. Our business, springtime is our
19 main businesses. December, it's pretty slow. We don't
20 have a whole lot of people that tan that time of year.

21 Q Do you know whether or not Ultra Tan makes an effort
22 to video tape any part of the store in Duncan?

23 A We do. We have sur -- surveillance in the front of
24 the store, basically the counter where tractions take
25 place, sales that kind of thing. And the front door is

James Michael Crowe
Direct examination by Ms. Crick

1 people walk in or out of the front door.

2 Q So you can see what's going on at the register itself,
3 that area?

4 A Yes, that's correct.

5 Q And you can see the front door.

6 A That's correct.

7 Q Do you monitor every store?

8 A Yes, we do.

9 Q In the Ultra Tan area?

10 A Yes.

11 Q Okay. Can you explain just real briefly to the jury
12 how your video system works?

13 A It's tied into a computer. That's why it kinda falls
14 under my job. And as the cameras record the computer
15 checks the video. And when it detects movement or motion,
16 that's the only video that it stores.

17 We do that just because it's -- we don't have the space
18 to store it all of the time. But as movement is detected
19 with the video it records that video and only the portion
20 where there's actual movement.

21 Q Are the cameras that you have set up in the Ultra Tan,
22 are those visible? Like if I'm a customer there or an
23 employee can I look and see that, yeah, there are cameras
24 here?

25 A Yes. They are a black dome, and they're mounted at

James Michael Crowe
Direct examination by Ms. Crick

1 the ceiling like this. It's a black dome bigger than my
2 fist and, you know, a white ceiling, a black dome, you
3 can't miss them.

4 Q And could an employee if they wanted to disable the
5 video camera itself?

6 A The employees could turn the power off. That's about
7 the only thing that they could do.

8 Q Were you asked at some point to review and capture
9 video surveillance from December the 30th of 2008 from that
10 Duncan Ultra Tan store?

11 A I was. My boss called me about, I think it was about,
12 15 minutes till 10:00 that night, and he told me something
13 had happened at Duncan. And he said grab every bit of the
14 video that we have. And so I started to process and made a
15 backup of it. And I believe I gave the first copy of that
16 to the police the next day.

17 Q Would you consider yourself the records custodian for
18 Ultra Tan?

19 A Yes, as far as any, the computer files, yes.

20 Q Now, did we request that you make some copies of video
21 that pertains specifically to two different time segments
22 from that day at Ultra Tan?

23 A You did. I was given a couple of timeframes a few
24 minutes each and asked to make a video of those times.

25 Q And did you make that available to both us and the

James Michael Crowe
Direct examination by Ms. Crick

1 defense attorney prior to coming to court?

2 A I gave the solicitor's office multiple copies, and I
3 believe I gave one to the defense.

4 Q And you have seen those videos obviously.

5 A Yes, I have.

6 Q Do you feel that they fairly and accurately depict
7 what would have happened in that store December the 30th of
8 2008?

9 A Yes.

10 Q Did you bring those with you today, the copies?

11 A I did, yes.

12 Q Can I take a look?

13 MS. CRICK: I'm going to show these to the defense
14 attorney.

15 Q And these are the same ones that you allowed us to
16 review --

17 A Yes. That's correct.

18 Q -- prior to coming to court.

19 A Yes.

20 MS. CRICK: Your Honor, may we approach quickly?

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 MS. CRICK: Your Honor, I'll have these marked State's
24 3 and 4 which is the video surveillance from Ultra Tan. At
25 this time I would like to move these into evidence.

James Michael Crowe
Direct examination by Ms. Crick

1 THE COURT: Any objection?

2 MR. WHELCHER: No, sir.

3 THE COURT: They are admitted.

4 (DVD marked State's Exhibit No. 3; DVD marked State's
5 Exhibit No. 4.)

6 MS. CRICK: Your Honor, may I publish those to the
7 jury?

8 THE COURT: You may. Which one is first?

9 MS. CRICK: It will be No. 3.

10 Q And right before she -- as she's loading that up, can
11 you explain to the jury a little bit, again, how the camera
12 system works? When we see this does it record every single
13 second?

14 A No. As it's recording the computer saves the date and
15 time stamp of when something happens.

16 If I were to walk across the room here it would record
17 the movement of someone walking. And then when they stop it
18 stops recording, so only when there's actually someone
19 moving, or doesn't have to be a person, but some movement
20 does it record the video.

21 (Whereupon, State's Exhibit No. 3 was published to the
22 jury.)

23 Q And would you be able to look at the times and tell
24 the jurors when the camera stops and picks up again?

25 A I can give you, in fact, if you look on the screen

James Michael Crowe
Direct examination by Ms. Crick

1 here, the start time is below each video there. And that
2 will give you when the video starts. And then the length
3 of the video will tell you when it stops.

4 Q Do you have audio?

5 A There is no audio. It's video only.

6 Q Okay. So we're going to now look at this video, and
7 if you can just kind of tell the jury what they're seeing.

8 A Okay. I don't know if you can see that but it's --

9 Q We'll play it.

10 A Okay. We've got it pulled up. This is going to be
11 the front of the Ultra Tan. That's the counter where the
12 computers are. There is a cash drawer behind the counter.
13 The products that we sell at the Ultra Tan are up there.
14 And that's maybe a customer. I'm not sure who that is.

15 Q And according to that, that was around 7:10.

16 A That -- yes. That's correct.

17 Q Now, while they're off camera after a certain amount
18 of time it will stop recording until someone comes back?

19 A Yes. After, I believe it is five seconds, it stops
20 the recording. If someone walks back on screen it
21 continues to record.

22 Q This was part of the video you were asked to pull.

23 A It is, yes. This was a video from December the
24 30th of '08.

25 Q Earlier in that --

James Michael Crowe
Direct examination by Ms. Crick

1 A Yes. This is -- we would have to go back to the other
2 screen for me to give you the exact time, but somewhere
3 around 7:15, 7:20, I believe.

4 Q Mr. Crowe, you pulled this particular segment of that
5 day because you were asked to --

6 A Yes.

7 Q -- because this was the defendant --

8 A This individual went behind the counter or took a look
9 behind the counter. A customer should not be back there.

10 And the cameras were installed because of theft. The
11 products that we sell get stolen. And so any time that,
12 that happens we try to record it. It doesn't appear that he
13 actually took anything, but we still want to, you know, make
14 sure that we have video of that.

15 And these videos, there's actually a bit of time in
16 between each one that we don't see because there's nothing
17 happening. And so they don't actually record in between
18 each video there.

19 Q Are you familiar with who that individual is?

20 A That is the, the employee there, Ms. Rumley.

21 Q And the videos that you captured, they just sort of
22 run through one after the other so we're seeing --

23 A Yes. If we were to stop this we could see the time of
24 each exact video.

25 Q Okay. We'll stop it. I'm going to let you. We'll go

James Michael Crowe
Direct examination by Ms. Crick

1 back to the main.

2 Now, is this the same thing we just saw but from the
3 front-door angle?

4 A Yes. This is -- the cameras are both in the same
5 area. One faces towards the display that we just saw. The
6 other faces toward the front door. This looks out from the
7 front door of the Ultra Tan out to the parking lot.

8 Q So we're going to be seeing the same thing we just saw
9 but from the different angle.

10 A Yes. That's correct.

11 (Whereupon, the video was played for the video.)

12 A And this is the last video that we can see. This
13 actually would show the cash drawer and the safe in the
14 salon.

15 Q So, again, this is the same time at around
16 7:10-7:15 timeframe but from a, still a, different frame
17 of --

18 A Yes. There are a total of three in the front of the
19 salon. We've seen the first two. This is the third from
20 the front.

21 Q You may or may not know the answer to this. Do you
22 know what she was giving that individual?

23 A I don't know.

24 Q That's okay.

25 A I don't know. I can't tell from the video there.

James Michael Crowe
Direct examination by Ms. Crick

1 (Whereupon, the video was played for the jury.)

2 Q Okay. That's the first segment from that date around
3 7:10.

4 A Yes, yes. The first video was at 7:10, the last one
5 1727, maybe a little after that, excuse me, not 17 --
6 7:27 p.m.

7 Q And I want to refer, because this on this screen it
8 says 11/30/08. That's not correct, is it?

9 A No, that is not correct.

10 Q The day you actually pulled footage for was?

11 A 12/30/08.

12 Q December the 30th. Okay. So the next segment you got
13 was from a different, a little bit later in that day.

14 A Yes. That's correct. I think about 15 minutes until
15 8:00.

16 MS. CRICK: Your Honor, at this time I'm going to
17 publish State's 4.

18 (Whereupon, State's Exhibit No. 4 was published to the
19 jury.)

20 Q And the time on this?

21 A It starts at 7:45 p.m. And it looks like the last
22 video is about 8:00 p.m. And, again, we have three
23 different angles.

24 Q So we're going to be seeing the same thing but from
25 three different angles.

James Michael Crowe
Direct examination by Ms. Crick

1 A That's correct.

2 Q And, again, this is the front-desk area.

3 A Yes. That's correct.

4 Q And she goes off. And it stops for a moment and then
5 starts when she comes back, is that correct?

6 A I don't believe the video -- well, no. It does not
7 look like it stopped right there.

8 Q At that point the video would have stopped recording.

9 A Yes, the video would have stopped right there.

10 Q Until she came back.

11 A Yes.

12 (Whereupon, the video was played for the video.)

13 Q Same thing, different angle?

14 A Yes. This is, again, the front door to the salon.

15 Q And of course some time had passed.

16 A Yes. There was a break in there. And I believe
17 that's the blue lights of the police officers that you can
18 see is a flash in that video.

19 Q And this is the third and final angle.

20 A Yes.

21 Q Looking out at the same thing.

22 A Yes.

23 (Whereupon, the video was played for the jury.)

24 A And, again, this video would have stopped here with no
25 motion.

James Michael Crowe
Cross-examination by Mr. Whelchel

1 MS. CRICK: Your Honor, I don't have any further
2 questions for the witness.

3 CROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q How long have you worked -- excuse me. Mr. Crowe, how
6 long have you worked for Ultra Tan?

7 A A little over seven years.

8 Q Okay. And your job is to oversee this entire system?

9 A Yes, part of my job.

10 Q I think you said earlier there were three cameras in
11 the front part of the store.

12 A Yes.

13 Q I want you to correct me if I'm wrong. I don't want
14 to put words in your mouth.

15 A Okay.

16 Q Let's assume that you're behind the counter.

17 A Okay.

18 Q There's that one camera that shows from this direction
19 back that way the person behind the counter and whoever
20 walks up to the camera.

21 A Yes. It shows like the face of the person behind the
22 counter.

23 Q And whoever might be standing in front of it.

24 A Yes. It shows the back.

25 Q Yeah, the back. And then there's another camera

James Michael Crowe
Cross-examination by Mr. Whelchel

1 essentially over here and up in the ceiling that shines or,
2 excuse me, pointed directly down on the cash register.

3 A Yes. That's correct.

4 Q And the third camera is pointed out towards the door.

5 A Yes.

6 Q So you can see who --

7 A Walks through the front door.

8 Q -- essentially comes and goes through the front door.

9 A Yes. That's correct.

10 Q How many other cameras are there?

11 A None. That's it.

12 Q So those are the only three cameras there are.

13 A Yes. That's it.

14 Q Okay.

15 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

16 (Pause.)

17 Q All of these cameras are on simultaneously, correct?

18 A Yes, yes. They are on, but they have power. They are
19 not recording at all times.

20 Q Okay. So if somebody's coming in the front door or
21 somebody is behind the counter, then those two cameras from
22 behind the counter are going to be operating because
23 they're moving...

24 A Yes.

25 Q And the one with somebody coming in the door.

James Michael Crowe
Cross-examination by Mr. Whelchel

- 1 A As they open the door and walk up to the door it would
2 start to record.
- 3 Q Okay. And you've been in this Ultra Tan store.
- 4 A I have, yes.
- 5 Q How many times?
- 6 A Three or four times.
- 7 Q Okay. And there's plate glass all the way across the
8 front, is that correct?
- 9 A Yes, that's correct.
- 10 Q Okay. So if you're behind the counter you can see
11 who's coming in the door.
- 12 A Yes.
- 13 Q And you can see the parking lot.
- 14 A Yes.
- 15 Q Okay. And you can see across the street where the
16 Ingles is and all the traffic is on 290.
- 17 A I think there's an Ingles across there. I don't
18 recall.
- 19 Q Okay. And how many tanning rooms are there in that
20 particular Ultra Tan?
- 21 A That I don't know. Probably 13 to 15.
- 22 Q So there's -- would it surprise you -- I think there's
23 six doors on each side of the hall as you walk towards --
- 24 A That sounds about right.
- 25 Q Okay. Is there an alarm on the door?

James Michael Crowe
Redirect examination by Ms. Crick

1 A The building is or has an alarm. It's set at night
2 when the employees leave. And when -- you know, it's
3 turned off in the morning when they get to the salon.

4 Q Is there a chime on the back door?

5 A That I don't know.

6 Q There could be. You just don't know.

7 A Yes, there could be. I don't know.

8 Q I don't know this, so I'm going to ask you. How many
9 Ultra Tans are there?

10 A Sixty-five.

11 Q Is that just in and around the upper South Carolina?

12 I don't know where all they are.

13 A Carolinas. We go Asheville, Wilmington, Charlotte,
14 Charleston, Myrtle Beach.

15 Q All right. Thank you, sir.

16 MS. CRICK: Just briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. CRICK

19 Q Do people -- and I hope this is not too personal -- do
20 people sometimes tan with no clothes on at all?

21 A I would have to assume yes. I'm not there, so I don't
22 know for sure.

23 Q So probably back there where the undressing may occur
24 is not the place you may put a camera necessarily because
25 of privacy issues.

James Michael Crowe
Recross-examination by Mr. Whelchel

1 A Exactly. Of course not.

2 Q Thank you, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q Is there a camera on the back door?

6 A No, there is not.

7 Q Are you familiar with the back door?

8 A Not really. I have only been there a couple of times.

9 Q Is the back door directly down that hall that we saw?

10 A I'm not a hundred percent sure. I don't think it is.

11 Q Okay. Either way, you can't see the back door from
12 any of those three cameras Ultra Tan has installed.

13 A No, you cannot see the back door, no.

14 Q Okay. And no cameras on the outside.

15 A No. We don't have control of the outside. We can't
16 install anything out there.

17 Q All right.

18 MS. CRICK: Nothing further Your Honor.

19 THE COURT: You may step down.

20 MS. CRICK: Your Honor, may he be excused? I think he
21 wants to return to work.

22 THE COURT: You may be.

23 (Whereupon, the witness was excused.)

24 THE COURT: We are going to take a short break.

25 I'll ask the jury to please go to your jury room. Do

Ahmad Saleh
Direct examination by Mr. Gowdy

1 not discuss the case in any fashion. I'll bring you back
2 after that short break.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Court is in recess for 15 minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right. Bring the jury in, please.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: We will continue with the state's
11 presentation of evidence.

12 MR. GOWDY: May it please the Court, Your Honor.

13 THE COURT: Solicitor.

14 MR. GOWDY: The state would call Mr. Ahmad Saleh.

15 AHMAD SALEH, having been first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. GOWDY

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q I'm going to get you to speak in a good strong voice
21 where the last two ladies in the jury box can hear you.

22 Okay?

23 A Okay.

24 Q Introduce yourself to the jury and tell them where you
25 work.

Ahmad Saleh
Direct examination by Mr. Gowdy

1 A My name is Ahmad Saleh. I'm a computer technician and
2 I have a part-time job at Subway as a manager over there.

3 Q What are some of your responsibilities at Subway with,
4 specifically with, respect to computers?

5 A Well, basically we have alarm system. And any, any
6 technical issues appears there because of my knowledge I
7 have in computers, I deal with it when, when, then the
8 owner asks me to do it.

9 Q Is it fair to say that there are surveillance cameras
10 in the Subway in Greer, South Carolina?

11 A Yes.

12 Q And at the request of either somebody with Subway or
13 law enforcement did you retrieve the surveillance footage
14 from December 30th, 2008?

15 A Yes.

16 Q And what did you put it on?

17 A I put it on a CD media, and also I have copy in my
18 thumb drive, the USB drive, as well because it's the way to
19 take it through the USB drive and then put it on the media.

20 Q Okay.

21 (CD marked State's Exhibit No. 5 for Identification.)

22 Q I want to show you what's been marked as State's
23 Exhibit 5 and ask you whether or not you are familiar with
24 that and whether or not you put the surveillance footage on
25 the Subway in Greer on that CD at the request of someone.

Ahmad Saleh
Direct examination by Mr. Gowdy

1 A Yes. I did per the request of the owner of Subway. I
2 put it here to provide to law enforcement.

3 Q And that would be the evening hours of
4 December 30th of 2008.

5 A Yes.

6 MR. GOWDY: Your Honor, we would move State's 5 into
7 evidence at this time.

8 MR. WHELCHER: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (CD marked State's Exhibit No. 5.)

11 MR. GOWDY: Your Honor, permission to publish to the
12 jury.

13 THE COURT: You may.

14 Q I'm going to get you to step down, but please keep
15 your voice up where madam court reporter can hear. Step
16 down here with me so you can give the jury a sense of the
17 different camera angles and what they're looking at. We've
18 just got to keep our voice up where madam court reporter
19 and the jury can hear you. Okay?

20 A All right.

21 (Whereupon, the witness left the stand.)

22 Q How many cameras are there at this particular Subway?

23 A Okay. We have four cameras, as you can see. Like the
24 top left one shows the front camera and the sandwich in it.
25 The one right below it shows the cash register and from

Ahmad Saleh
Direct examination by Mr. Gowdy

1 like a different angle. And the one beside it at the
2 bottom, it shows like closer to the cash register. And the
3 top right one, it shows the back area.

4 Q All right. If you wanted to see someone walking to or
5 from the front door which camera would you want to pay
6 particular attention to?

7 A Coming from the front door?

8 Q Coming from the front or walking towards the front.

9 A I will pick camera No. 3.

10 Q Camera No. 3. All right. Well, let's see how many of
11 these we can play. Okay.

12 (Pause.)

13 Q Do you know how to use one of these laser pointers?

14 A Yeah.

15 Q Show the jury where the cash register is.

16 A Here is the cash register.

17 Q And orient the jury to where the front door will be.

18 A It will be like all the way here.

19 Q Okay.

20 A So customers usually come in from here.

21 Q Okay.

22 A And go in through this line. They get sandwiches and
23 then go to the cash register.

24 Q All right.

25 MR. GOWDY: Bear with us. We're trying to fast

Ahmad Saleh
Direct examination by Mr. Gowdy

1 forward a little bit. Let's maybe go to a different camera
2 angle. That one seems to be frozen temporarily. Let's go
3 to three. There it is.

4 A It's going to happen right now.

5 Q All right. Okay. I'm going to stop it and see if
6 there are any other cameras angles that might be
7 constructive.

8 (Pause.)

9 Q I'm going to ask you to take your seat. And I'll take
10 that from you.

11 (Whereupon, the witness returned to the stand.)

12 Q December 30th of 2008 surveillance video from the
13 Subway in Greer, correct?

14 A Yes.

15 Q Please answer any questions the defense attorney may
16 have for you.

17 A All right.

18 MR. WHELCHER: No questions, Your Honor.

19 THE COURT: You may step down.

20 MR. GOWDY: Your Honor, may it please the Court. We
21 would ask Mr. Saleh be excused.

22 THE COURT: He may be.

23 (Whereupon, the witness was excused.)

24 MS. CRICK: Your Honor, the state calls Katherine
25 Rumley.

Katherine Rumley
Direct examination by Ms. Crick

1 KATHERINE RUMLEY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. CRICK

4 Q Katherine, make sure that you speak -- that's a
5 microphone right there in front of you -- so that they can
6 hear you, the jury can hear you.

7 A That's fine.

8 THE COURT: The black one.

9 THE WITNESS: The black one. Okay.

10 A Okay.

11 Q Can you tell the jury your full name?

12 A My name is Katherine Rumley.

13 Q How old are you, Katherine?

14 A I'm 20 years old now.

15 Q Do you work?

16 A I do. I am an orthodontic technician.

17 Q Do you -- up until recently had you lived with your
18 parents out of state?

19 A Yes.

20 Q At the time this occurred in December of 2008 where
21 were you living?

22 A I was living in Spartanburg.

23 Q Do you remember where in Spartanburg you were living?

24 A I actually had just moved the day that it happened.

25 So I had moved from campus suites off Valley Falls Road.

Katherine Rumley
Direct examination by Ms. Crick

1 And I moved to Fairforest, to a townhouse in Fairforest.

2 Q Are you originally from Spartanburg?

3 A No.

4 Q What brought you to Spartanburg?

5 A School.

6 Q College?

7 A Uh-huh.

8 Q Were you working in December of 2008?

9 A Yes. I was working at Ultra Tan.

10 Q About how long had you been at Ultra Tan?

11 A Just a few weeks.

12 Q Not too long at all.

13 A About three weeks.

14 Q I'm going to stop for a second. You were present in
15 the courtroom when two surveillance videos were shown from
16 Ultra Tan.

17 A Yes.

18 Q Did you recognize that that was you on the videos?

19 Was that you?

20 A Yes, that was me.

21 Q In both of those?

22 A Both of those videos, yes.

23 Q In the first video we see something that was handed to
24 an individual. What was that, do you remember?

25 A Handed to me?

Katherine Rumley
Direct examination by Ms. Crick

- 1 Q No. That you handed to someone else.
- 2 A Oh, a job application.
- 3 Q And in the second video that we saw, that was also
- 4 you --
- 5 A Yes.
- 6 Q -- in that particular video. Can you describe for the
- 7 jury just a little bit of the area around that Ultra Tan in
- 8 Duncan where you were working?
- 9 A Around that Ultra Tan it's, it was a new, just a
- 10 little strip mall at the time.
- 11 Next door was the pharmacy, which closed at I think
- 12 6:00. They closed early.
- 13 And then there was a nail salon on the other side that
- 14 closed early as well.
- 15 So we were the only thing open until 9:00 o'clock every
- 16 night.
- 17 And then across -- not directly across the street but
- 18 at an angle, at a diagonal, I'd say you'd have to walk a
- 19 good couple of minutes to get -- there's an Ingles over
- 20 there as well.
- 21 Q So far at this time of night, which would have been
- 22 what, like 7:00, after 7:00 --
- 23 A Yeah.
- 24 Q -- no other businesses were open in that same area --
- 25 A No.

Katherine Rumley
Direct examination by Ms. Crick

1 Q -- at all. Just you.

2 A Yes. Not that I know of.

3 Q Who else was working in Ultra Tan that night?

4 A When I worked, I worked alone.

5 Q What time normally was closing time for you?

6 A We would close at 9:00.

7 Q I want to talk specifically about December the 30th.

8 Had you driven your car to work that day?

9 A Actually I had friends that were in from out of town.

10 So they dropped me off to work that day, and I let them

11 have my car to have while I was at work. So I did not have

12 my car while I was there.

13 Q And did you have any customers in the store right

14 before this happened?

15 A There were a few, but, I mean, it's been a year. So

16 from what I remember there, there really weren't that many

17 customers immediately before the incident occurred.

18 Q So when this -- immediately before it occurred would

19 there have been any cars in that parking lot?

20 A No.

21 Q Including yours.

22 A Including mine, yeah. I didn't have a car.

23 Q Do you normally keep the back door locked?

24 A Yes.

25 Q What happened on this particular night?

Katherine Rumley
Direct examination by Ms. Crick

1 A On this particular evening I went out back to smoke.
2 And when I came back in I left the door unlocked just by
3 accident.

4 Q When did you first notice that something was going on?

5 A When I first noticed that something was going on I
6 heard a ding. The door actually makes like a dingdong
7 noise when it's opened. And, you know, when you hear
8 something like that and you're alone and you're scared, you
9 do a double take. And I looked and I didn't see any, but I
10 saw the door was wide open. So that's when I proceeded to
11 walk back to the door. And I just thought, you know, I
12 must have not closed it all of the way, the wind blew it
13 open. And so then that's when I started walking back to go
14 shut the door.

15 Q When you started walking, what is it, like a hallway
16 that goes down?

17 A It's a hallway. There's about five doors on each
18 side. It's a really small hallway.

19 Q And you started walking down the hallway. What
20 happened as you were walking?

21 A When I was walking down the hallway about the second
22 or third room on my right, out walks a man with a red
23 hooded sweatshirt, jeans, a blue ski mask, which you saw in
24 the videos. And immediately your mind is in shock. And I
25 couldn't even control it coming out of my mouth. I just

Katherine Rumley
Direct examination by Ms. Crick

1 said do you want money, and the man said yes. So I --- do
2 you want me --

3 Q Well, I'm going to ask you a quick question right
4 here. Did you know him?

5 A No. I never -- I mean, I obviously couldn't recognize
6 him if he had a ski mask on. But I'd never met him or seen
7 him in my life.

8 Q To your knowledge, a total stranger.

9 A A total stranger and no idea who he is.

10 Q Did you notice a weapon when he stepped out?

11 A Yes.

12 Q What did you notice?

13 A In one hand there was a black backpack, and then in
14 the other hand there was a knife, a very large knife.

15 Q When you say knife, I mean, can you describe
16 generally? Was it a switchblade or a pocket knife or a
17 kitchen --

18 A Like a kitchen knife, like a large kitchen knife that
19 you would cut a loaf of bread with or a head of lettuce or
20 something like that.

21 Q And he had that in one hand.

22 A In one hand, yeah.

23 Q And at that point you asked him --

24 A Asked him do you want money.

25 Q What was going through your mind to make you ask that

Katherine Rumley
Direct examination by Ms. Crick

1 at that point?

2 A Well, I mean, when you see somebody dressed as a
3 robber you automatically assume that they want money. So
4 that's why I asked him that.

5 Q And what did he do after you asked him about whether
6 he wanted the money?

7 A He answered me, and he said yes. So I proceeded to go
8 to the front and went to the cash register and got all of
9 the cash out.

10 I, I don't know if you can see on the video or not, but
11 I asked if he wanted the change, and he said no. And then
12 he started to walk away from the counter after I had given
13 him all the cash and started to walk to the back.

14 Q Let me ask you a quick question before we get away
15 from that part.

16 You had access to the cash where, in the drawer?

17 A In the drawer. Now, there's also a safe. I don't
18 know what was in the safe, nor do I know the code to get in
19 the safe. I don't think he saw the safe because he never
20 asked anything about it thankfully.

21 Q So it didn't come up. But you wouldn't have known how
22 to get in the safe.

23 A No. I would have no idea.

24 Q So after he got the money, after you put the money in
25 his bag, what happened after that?

Katherine Rumley
Direct examination by Ms. Crick

1 A After I put the money in his bag he told me to lock
2 the front door. And it is at this point 8:00 o'clock,
3 8:30, at night. Everything else is closed. And he starts
4 walking towards the back.

5 Q Did you actually go lock the door?

6 A Yes. But the minute in between him saying go out the
7 door and me locking the door felt like, you know, an hour.

8 Q What did you do in between that time?

9 A What I did was he started to walk towards the back.
10 And he was walking in and out of the rooms looking for --
11 to make sure there weren't people in there. I don't know.

12 So I went to the front. First I went to my purse
13 because I'm not thinking straight. I'm digging through my
14 purse trying to find my car keys because I'm thinking I
15 can't run from this guy. He has a knife, you know. I mean,
16 you fear for your life.

17 Q So when we see the video of you walking over to the
18 side, were you going towards your purse?

19 A I was, I was trying to look for my keys. And then it
20 dawned on me, oh, my gosh, I don't even have my car. Now
21 it's too late. What do I do? I go to the door. I
22 hesitated for another second. And I thought at this point
23 I can't run. I mean, I've wasted too much time. He has a
24 knife. I'd have to run, I'd say, three or four minutes,
25 maybe two or three minutes, to get to the Ingles across the

Katherine Rumley
Direct examination by Ms. Crick

1 road.

2 Q So at that point you went ahead and locked the door.

3 A Yeah. I figured at that point being cooperative I had
4 more of a chance to live.

5 Q What happened after you locked the door?

6 A I locked the door. He told me -- he pointed, and he
7 said go this way towards the back door. So I start walking
8 towards the back door. And then he points to the laundry
9 room. And he said go in there.

10 Q What did he do once you -- well, did you go into the
11 laundry room?

12 A Yes.

13 Q And what happened once you got in there?

14 A When I got in the laundry room, the best way to
15 describe it is I literally backed up in the corner like a
16 dog, you know. And he said take your pants off. And I'm
17 crying. And I said why. And he just kept repeating
18 himself, take your pants off. So I did. Obviously he has
19 a knife.

20 Q Did you ever at any point tell him just to do whatever
21 we wanted?

22 A No. Never would I say that.

23 Q So he told you again to take your pants off.

24 A Yes.

25 Q What did you do then?

Katherine Rumley
Direct examination by Ms. Crick

1 A At that point I took my pants off. He had the knife
2 in his hand. He had my back. He moved me in front of the
3 dryer and he put me face first like this down on the dryer
4 so I couldn't see what was going on. I could just see the
5 floor.

6 And from there he proceeded to put his backpack on top
7 of the washer, which is next to the dryer. And then at that
8 point all I can see is the floor. So I hear -- do you want
9 me to keep going?

10 Q Well, let me ask you this because you mentioned a
11 knife. Was your shirt on or off?

12 A My shirt was on, as well as my coat.

13 Q So but you could feel, what, the pressure?

14 A The pressure of an arm. And, you know, he had the
15 knife in his hand as well with the arm on my back which was
16 holding me down on top of the dryer.

17 Q But the only thing you could see was the floor at that
18 point?

19 A Uh-huh.

20 Q So what did you do?

21 A I could see knees down, is all I could see on the
22 floor.

23 Q What happened next?

24 A From there I heard him unbutton his pants and
25 fidgeting for something. And I heard like a crinkling

Katherine Rumley
Direct examination by Ms. Crick

1 noise like a wrapper or like a, you know, plastic wrapper.
2 And I heard a rip in the wrapper. And then I look and I
3 see on the ground, as well as I hear, a condom wrapper drop
4 on the floor. And then a few seconds later a condom
5 dropped on the floor as well.

6 Q So at that point had there been any kind of
7 penetration?

8 A Not at that point.

9 Q But you're seeing a wrapper and a condom had fallen to
10 the floor.

11 A Yes.

12 Q What did he do after that?

13 A At that point is when he started to rape me and --

14 Q And I apologize because we have to be kind of
15 specific. Specifically, did he have ahold of you?

16 A The only way he had ahold of me is he had his arm like
17 this on my back with the knife in his hand.

18 Q And then he did what specifically?

19 A From there he proceeded to rub his penis in between my
20 butt cheeks. And then from there is when he started
21 penetration.

22 Q In your vaginal area?

23 A Yes.

24 Q With what you perceived to be his penis.

25 A Yes.

Katherine Rumley
Direct examination by Ms. Crick

1 Q What happened after that?

2 A After that he stopped. I heard him button up his
3 pants. And he grabbed the mop and started to mop up the
4 floor and grabbed his bag and ran out of the back door.

5 Q What were you doing while he was grabbing the mop?

6 A He still had me down on the washer like this, so, or
7 the dryer, so, I mean, there was nothing I could really do.

8 Q And the mop?

9 A The mop. You know, he switched hands or however he
10 did it, had the mop and was cleaning the floor with the
11 mop.

12 Q And then he left.

13 A And then he left.

14 Q What did you do after he left?

15 A After he left I immediately pulled my pants up. I
16 didn't even waste time to button them. And I locked the
17 back door and then I ran to the front and I grabbed my cell
18 phone.

19 I was looking for something, because I had only worked
20 there three weeks. I didn't really know the address by
21 heart. I was looking for something that would have the
22 address on it. I found a pencil that was on the counter,
23 and I dropped it. And then I hid under the counter. You
24 know, I didn't know at that point if he was going to try and
25 come through the front window or something. And I called

Katherine Rumley
Direct examination by Ms. Crick

1 9-1-1. And from there they sent the police over to me.

2 Q So the officers came out. Did you tell the officers
3 where everything had happened?

4 A Yes. An officer came in. And obviously the first
5 thing he wanted to see was the laundry room in the back.
6 And then that's when they started putting caution tape up
7 so they run tests and that kind of stuff.

8 Q Was that condone wrapper still on the floor or had
9 he --

10 A No. He had taken those with him.

11 Q Did you have some concerns at first about going to
12 have a rape exam done?

13 A Yes. At the time I didn't have any health insurance.
14 And obviously this is not a normal thing that happens to
15 everybody.

16 I didn't know if I went to the hospital if I was going
17 to have a huge bill to face or what was going to go about
18 that. And on top of all of that the last thing I wanted at
19 that point was anybody in that area that I don't know at
20 all.

21 Q When you say in that area, your private?

22 A Yes.

23 Q Had you ever been to a gynecologist before?

24 A No.

25 Q So this was your first experience. Were there folks

Katherine Rumley
Direct examination by Ms. Crick

1 there from the news media?

2 A Yes. They actually had to put me in the back seat of
3 a detective car because they, they wanted a picture of me
4 that bad, so.

5 Q At some point you spoke with Detective Bobo.

6 A Yes.

7 Q Did he explain to you more about the rape exam?

8 A Yeah, after he talked to me and explained to me the
9 details, you know. It's just human nature when you're not
10 literate, you know, on the subject you automatically just
11 say no. So I -- he explained to me what was going to
12 happen and how important it was to do it.

13 The only reason I did it is because he said if you do
14 this we can find him, we can catch him, this is evidence,
15 this is proof. And all I wanted was my safety.

16 Q So you did.

17 A So I automatically did that, yes.

18 Q And you found out that you wouldn't have to pay for
19 it.

20 A Yes.

21 Q Did they tell you when you got to the hospital what
22 all was going to be involved in the examination itself?

23 A Yes.

24 Q And after hearing all of that you agreed to do it.

25 A Yes.

Katherine Rumley
Direct examination by Ms. Crick

1 Q You spoke to an officer at the hospital.

2 A Yes.

3 Q Did you tell the officer what happened?

4 A Yes.

5 Q Did you give a written statement to the officer at
6 that time?

7 A No, I did not.

8 Q At some point later did you give a written statement?

9 A I, I did not. Actually, they gave me medication.

10 There are certain medications that you have to take after
11 that. And the medication actually made me very, very sick.
12 And I was up vomiting all night long.

13 Q Because of what had happened they gave you medication
14 to deal with any side effect or consequences that might
15 come?

16 A Right. And so after I took the medication and stopped
17 vomiting I slept. I mean, they really make you very tired.
18 I slept for a long time.

19 Then Megan Woody came to my townhouse. And she
20 actually brought me a paper to fill out and write up the
21 statement.

22 At this point I had already had to tell the story so
23 many times I just wanted a break. I just didn't want to
24 talk about it any more, but I had to.

25 I would sit there with a pen in my hand and I wouldn't

Katherine Rumley
Direct examination by Ms. Crick

1 even know where to begin. How do you write something like
2 that on paper?

3 So I met with Megan Woody, and I just asked her. I
4 preferred to tell the story and her just write it for me.

5 Q And did you continue to work at Ultra Tan after that?

6 A No.

7 Q Did you ever go back?

8 A No.

9 Q This was not somebody that you knew.

10 A No.

11 Q This was obviously not somebody you had any kind of
12 relationship with.

13 A No.

14 Q Can you explain to the jury how this has, how your
15 life has changed as a result of what happened?

16 A How my life has changed, you don't want to be alone
17 ever. You don't want to sleep alone. You don't want to
18 shower in your house if nobody is there.

19 You lock every door that if you're in a room, you're
20 going to lock the door. You're not going to be in there by
21 yourself with the door unlocked.

22 You'll just be paranoid for the rest of your life, and
23 it doesn't go away.

24 MS. CRICK: Your Honor, nothing further at this time.

25 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

Katherine Rumley
Cross-examination by Ms. Jones

1 CROSS-EXAMINATION

2 BY MS. JONES

3 Q Do you recall what time of night this happened?

4 A It was around 8:00 o'clock.

5 Q Around 8:00 o'clock. And from the time that this
6 happened to the time that it ended, what time? How much
7 time would have elapsed?

8 A It felt like five hours, but I don't know, maybe 30
9 minutes.

10 Q So about 30 minutes.

11 A Do you mean from the time that he came in to when the
12 cops came or the time that he came in --

13 Q Right. From the time he entered and you noticed that
14 he entered --

15 A The time that he left?

16 Q -- until the time he left.

17 A Thirty minutes.

18 Q About 30 minutes.

19 A Twenty or 30 minutes.

20 Q And you testified today that you were out smoking a
21 cigarette, you came in. You forgot to lock the door and
22 you heard the door ding, is that correct?

23 A Yes.

24 Q And you walked then to the back door, correct? How
25 far did you get, do you recall?

Katherine Rumley
Cross-examination by Ms. Jones

1 A Before he walked out of the room?

2 Q Yes.

3 A He was, he was probably in the second or third tanning
4 bed on the right of the hallway. So I got about less than
5 half way down.

6 Q Okay. So you actually took strides down the hallway
7 after you heard a ding, correct?

8 A Right.

9 Q Okay. And do you recall when you initially spoke with
10 an officer? You indicated that you just -- when you came
11 around the corner you actually saw somebody? Do you recall
12 that?

13 A I saw somebody once I had taken a few steps to the --
14 once he walked out. He walked out of a tanning bedroom.

15 Q Okay. So you're saying, now, that you did --

16 A When I turned the corner I didn't see anybody. Or
17 else if I would have seen somebody I wouldn't have walked
18 back there.

19 Q Okay. And you testified earlier you talked with
20 Investigator Woody, correct?

21 A Uh-huh.

22 Q Okay. And you don't recall telling Investigator Woody
23 that you heard the back door ding, looked down the hall and
24 saw a man wearing a red sweatshirt and some dirty jeans?

25 A Yes. That happened, but in between that I took

Katherine Rumley
Cross-examination by Ms. Jones

1 strides down the hallway. At the time I was traumatized.

2 So story is not going to come out with every single detail.

3 Q Okay. So you're going to add details, is that
4 correct?

5 A Right. Once you sit down and think about it and
6 recall certain things that happened and talk about it, then
7 you start to pick up the details and pick up the pieces and
8 put them in place.

9 Q And, in fact, when according to the video, when you
10 asked him if he wanted money, you actually left him in the
11 back and went around to the counter area, correct?

12 A Right.

13 Q And started walking up to the cash register, is that
14 correct?

15 A Right.

16 Q You walked.

17 A Right. He was -- if you were him and I was me, I said
18 do you want money. He said yes. I turned 180 and walked
19 to the cash register and started getting the money out as
20 fast as I could.

21 Q And, in fact, it takes a few seconds for him to come
22 around the corner. And he's got his bag open, correct?

23 A Uh-huh.

24 Q Okay. And you just put it in.

25 A Uh-huh.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q And you ask him if he wants the change.

2 A Right.

3 Q And he says no.

4 A Uh-huh.

5 Q Shuts his bag. And he actually walked and goes down
6 the hall, starts walking down the hall, correct?

7 A Right.

8 Q Okay. And you don't run for the door, correct?

9 A No.

10 Q In fact, you walk to the door. You lock it. And then
11 you double check it to see if it did lock, correct?

12 A No, that is not correct. The first thing I did is I
13 went to my purse. And I was looking for my car keys,
14 because my mind was like scrambled eggs. I mean, I
15 couldn't even think straight at all. So I'm looking. And
16 I realize I don't have my car keys.

17 So then I go to the door. And that camera with the
18 motion sensor, it doesn't really give you a good view of how
19 long I was standing there, but I was standing there
20 hesitating, should I run, can he catch up with me, can he
21 stab me, is my life this important to me. Yes, it is. Am I
22 going to cooperate and have a chance to live? Yes, I am.
23 And I locked the door.

24 Q So you're saying that the camera doesn't capture
25 everything.

Katherine Rumley
Cross-examination by Ms. Jones

1 A I mean, if you're standing still --

2 Q So when the camera -- let me finish.

3 MS. CRICK: Your Honor, if she could actually answer
4 the question she asked before she goes on I think that
5 would work better.

6 THE COURT: Okay. But she's telling what he said.

7 Go ahead.

8 MS. JONES: Thank you.

9 Q So you're basically saying when the camera shows you
10 walking up to the door, locking it and double checking it,
11 that camera's wrong, it's lying?

12 A I'm not saying it's lying or it's wrong. I'm just
13 saying it's motion-detected. So I --

14 Q Did you -- let me ask you this. Did you double check
15 that door to make sure it was locked?

16 A I have -- this was over a year ago. I have absolutely
17 no idea. I do not remember.

18 Q You could have checked that door, double checked it to
19 make sure it's locked, correct?

20 A Right. That's a possibility.

21 Q And at the time you're way up here. You're right by
22 that door and your alleged rapist is back here, isn't that
23 correct, in the hallway?

24 A Yes.

25 Q And, in fact, you just walk, and you actually walk by

Katherine Rumley
Cross-examination by Ms. Jones

1 him. And he comes around you, correct?

2 A I walk. He's standing in mid-hallway, and he's
3 pointing to keep continuing to walk back all the way to the
4 last door on the left. And when I get all the way to the
5 back he points and goes, "Go in there."

6 Q And you go in there, correct?

7 A Right.

8 Q Okay. And after some time you come out, correct?

9 A Right.

10 Q And you go and you get on your cell phone and you call
11 9-1-1, correct?

12 A Right. Now, that trip I ran from the back to the
13 front.

14 Q Correct. And you get on the phone and you dial 9-1-1,
15 correct?

16 A Right.

17 Q And you crouch down and start playing with your hair,
18 correct, when you're talking on the phone to 9-1-1?

19 A Correct.

20 Q Also, when the officers came you gave them your old
21 address of 201 Camera (sic) Street, correct?

22 A Right.

23 Q And you didn't want to go to the hospital, correct?

24 A Not until I was given information and I knew what
25 exactly, what was going on.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q My question was you didn't want to go to the hospital,
2 correct?

3 A Initially, no.

4 Q You gave them your wrong address. You don't want to
5 go to the hospital.

6 A I just moved that day. I had no idea what my new
7 address was.

8 Q Did you, did you call them and tell them, hey, by the
9 way, I gave my wrong address? You didn't do that, did you?

10 A We eventually got it sorted out. The current address
11 was on the police report or the statement.

12 Q And, in fact, your friends, they had to go to your old
13 address, correct; some --

14 A Well, it still -- both were currently my address
15 because my property was still at the other apartment.

16 Q They went through two friends to finally track you
17 down at 303 Town Court, Apartment 26, correct?

18 A Yes.

19 Q Then they gave you a statement to fill out, correct?

20 A Correct.

21 Q You didn't want to do that either. You didn't fill
22 out that statement, did you?

23 A I was sick vomiting after that. I was exhausted,
24 sleeping, traumatized. And I did want a break from
25 repeating the story.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q The officer then came to your house, correct? And
2 then you went down to the station, correct? And you wrote
3 out a statement -- or I'm sorry. Investigator Woody filled
4 out a statement for you. I understand you didn't bother to
5 sign that statement, correct?

6 A That statement is signed. Is it not? It's signed.

7 MS. JONES: Your Honor, may we approach?

8 THE COURT: Yes.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 THE COURT: All right. Ladies and gentlemen, I've got
12 one matter I'm going to have to address, and it'll
13 necessarily have to be outside of your presence for right
14 now.

15 Because of the hour we'll just stop. This is
16 convenient. We'll resume in the morning.

17 So remember my caution previously given you. No
18 discussions about the case with any person whatsoever in
19 any fashion whatsoever. No research, no investigation, no
20 exposure to any type of media coverage -- television, radio
21 or newspaper. Avoid it entirely.

22 Okay. Do have a good evening, and please report to
23 your jury room by 9:30 in the morning, 9:30 in the morning.
24 Have a good evening.

25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: All right. Any matters to address before
3 we recess?

4 All right. Ms. Rumley, you can step down from the
5 witness stand, but you are still on the witness stand for
6 purposes of your examination, which means from now until we
7 resume in the morning at 9:30 you're not permitted to
8 discuss your testimony with any person whatsoever. Okay?

9 THE WITNESS: Okay.

10 THE COURT: You can step down. And that means
11 anybody. That includes the solicitor's office or anybody.
12 You can't discuss it.

13 Okay. All right. Court is in recess until 9:30 in
14 the morning.

15 END OF PROCEEDINGS FEBRUARY 8, 2010

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Katherine Rumley
Cross-examination by Ms. Jones

1 (Proceedings February 9, 2010)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters we need to address before the
5 jury is brought in?

6 MR. GOWDY: Not from the state, Your Honor.

7 THE COURT: Okay. . . Bring them in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday the state had
12 begun with their presentation of evidence.

13 A witness, Ms. Rumley, was on the witness stand. She
14 was at that time undergoing cross-examination by defense
15 counsel. So we will continue with that cross-examination
16 this morning.

17 Ms. Rumley, if you will, please, come back around and
18 take your place on the witness stand. You're still under
19 oath of course.

20 Ms. Jones.

21 MS. JONES: Thank you, Your Honor.

22 BY MS. JONES

23 Q All right. Ms. Rumley, now that we've gotten your
24 statement, you filled that out on January the 6th, is that
25 correct?

Katherine Rumley
Cross-examination by Ms. Jones

1 A Yes.

2 Q And you had Megan Woody fill that out for you, is that
3 correct?

4 A Yes.

5 Q And how many days after the incident would you say
6 that was?

7 A It was January 6th, so it was seven days after.

8 Q Okay. Now, you testified yesterday that you heard the
9 door ding, you peeped around, you took a few steps and you
10 saw somebody, correct?

11 A Correct.

12 Q Okay. Do you recall writing your statement that you
13 heard the door ding, you turned and you looked and the door
14 was wide open? Do you recall that in your statement?

15 A Yes. In my statement I heard the door ding.

16 Q Okay. And do you also recall writing that you peeped
17 your head around the corner and you saw that the door was
18 open?

19 A Yes.

20 Q Okay. You didn't say that yesterday, correct, that
21 the door was wide open?

22 A I don't recall.

23 Q So let me ask you this. Was the door open or was the
24 door closed?

25 A The door was open.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q Okay. You also indicated yesterday that you thought
2 it was Room 2 or 3 that the person was in, the stranger.

3 A I'm trying to recall the details as best as I can,
4 yes.

5 Q Well, this is your testimony, right?

6 A Right.

7 Q Okay. And this happened to you, right?

8 A Right.

9 Q Okay. So now today you're having some confusion as to
10 remembering what you exactly said yesterday and what your
11 testimony is going to be today?

12 A No. The incident occurred over a year ago. So it is
13 hard to remember every single detail.

14 Q But you can't recall testifying yesterday that the
15 perpetrator was in Room 2 or 3.

16 A Yes. I said that yesterday.

17 Q Okay. But in your statement you indicated he came out
18 of Room 5, correct, Room 5?

19 A Oh, that I'm assuming that's what's in there if that's
20 what you're saying.

21 Q You don't recall writing Room 5?

22 A No, I do not recall.

23 Q Thank you.

24 (Statement marked Defendant's Exhibit No. 1 for
25 Identification.)

Katherine Rumley
Cross-examination by Ms. Jones

- 1 Q I'm handing you something labeled as Defendant's
2 Exhibit 1. Do you recognize that?
- 3 A Yes.
- 4 Q I'm going to point you to this area right here.
- 5 A Uh-huh.
- 6 Q Okay. Now do you recall writing in your statement
7 that you thought the perpetrator came out of Room 5?
- 8 A Yes. That's what it says.
- 9 Q That's what it says, correct?
- 10 A Correct.
- 11 Q And this hallway is about from the, the entryway, you
12 know, the main room, and then there's that hallway where
13 all the tanning beds are, correct?
- 14 A Correct.
- 15 Q It's about 35 and a half feet, correct?
- 16 A Well, yeah.
- 17 Q Okay. And I think you testified there's rooms on each
18 side. How are those rooms labeled?
- 19 A I don't, I don't exactly remember. It's been over a
20 year since I worked there. But I do remember, I think,
21 that six or seven was the last room on the right.
- 22 Q Okay. So do you remember if it went Room 1, Room 2,
23 Room 3, Room 4? Was it one, two, three, four?
- 24 A I really do not remember how the rooms were labeled.
25 I only worked there for about three weeks.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q Now, when you came in for this meeting with Ms. Woody,
2 okay, did -- and you indicated you just told your story.
3 Was it more in a question-and-answer type of forum or did
4 you just narrate and she's typing away?

5 A I narrated and she typed.

6 Q She didn't ask you any questions?

7 A No.

8 Q And had you seen the surveillance video prior to?

9 A No.

10 Q When was the first time you saw that surveillance
11 video?

12 A The first time I saw that surveillance video was the
13 second week in December when I came down for when the trial
14 was originally supposed to start.

15 Q So then you saw the surveillance video. Did you read
16 over your statement again?

17 A Yes.

18 Q Okay. And, in fact, yesterday you were reading it
19 over during jury qualifications, correct?

20 A Yes.

21 Q And when you came down in December who did you speak
22 with?

23 A I spoke with Ms. Cindy Crick and Ms. Carey Hall and
24 Mr. Trey Gowdy.

25 Q Did you speak with anybody else?

Katherine Rumley
Cross-examination by Ms. Jones

- 1 A Not that I recall, no.
- 2 Q Okay. And then yesterday did you speak with anybody?
- 3 A Yesterday morning I spoke with Ms. Cindy Crick.
- 4 Q Okay. Did you talk about your testimony?
- 5 A No.
- 6 Q Did you talk about what questions --
- 7 A Yesterday morning I hadn't testified yet. Yeah. We
- 8 run over everything.
- 9 Q Okay. Questions she was going to ask and things along
- 10 those lines?
- 11 A Right.
- 12 Q Okay. Did you talk to her last night?
- 13 A No.
- 14 Q Now, you indicated in your -- yesterday that when you
- 15 were in the laundry room he pushed you over the dryer, is
- 16 that correct?
- 17 A Correct.
- 18 Q Okay. And on the night of the incident do you recall
- 19 talking to Officer Hawkins?
- 20 A No. I do not remember. The only officer's name I
- 21 remember is Detective Bobo.
- 22 Q Do you recall telling Officer Hawkins that it was
- 23 actually the washer he put you over on?
- 24 A Honestly, I was so traumatized I really do not
- 25 remember what I said that night.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q Okay. Do you recall telling the nurse that it was the
2 washer?

3 A No. The washer and dryer are side by side. And I
4 honestly don't remember which one was which, which was
5 where.

6 Q Okay. Well, which was it? Was it the washer or was
7 it the dryer?

8 A Well, in my statement it says the dryer.

9 Q Okay. I'm asking you.

10 A Well, like I just said, I do not remember whether the
11 washer was on the right or the left, or whether the dryer
12 was on the right or the left, but they were side by side.

13 Q And are you saying he bent you over on this side
14 though?

15 A On the right.

16 Q Or this side?

17 A On the right.

18 Q So you're saying it was on the right side.

19 A On the right.

20 Q Okay. And do you also recall when the nurse asked you
21 your pain scale telling the nurse zero out of ten? Do you
22 recall telling her that?

23 A Right. He was not physical or rough.

24 Q In fact, didn't you know Mitch?

25 A No. I have never met him in my life.

Katherine Rumley
Cross-examination by Ms. Jones

1 Q And, in fact, isn't it true that you arranged this
2 robbery with Mitch?

3 A No. I've never seen or spoken to him before in my
4 life.

5 Q And, in fact, you two were sort of seeing each other,
6 isn't that correct?

7 A I have never seen the gentleman in my life.

8 Q And, in fact, isn't it true that the reason why even
9 on the 9-1-1 tape you didn't want to go to the hospital is
10 because it was an inside job?

11 A No. I have never met this gentleman in my life. The
12 reason I did not want to go to the hospital is because I
13 did not have health insurance or family in South Carolina
14 to help me out if I had a medical bill that was expensive.

15 Q And isn't it true that you gave the officer your old
16 address because you didn't want to be found because it was
17 an inside job?

18 A The reason I gave the officer my old address is
19 because I currently still lived there. My property was
20 still at that location. And I had just moved that day. I
21 was in the process of moving.

22 Q And isn't it true that you didn't bother to give the
23 officer your new address because it was an inside job but,
24 in fact, the officer had to track you down through friends
25 because it was an inside job, isn't that correct?

Katherine Rumley
Cross-examination by Ms. Jones

1 A No, no.

2 Q And isn't it correct that your pain scale was zero out
3 of ten because this was an inside job?

4 A No.

5 MS. JONES: I have nothing further, Your Honor.

6 MR. GOWDY: One moment, Your Honor.

7 (Pause.)

8 MS. CRICK: You don't object to us entering it into
9 evidence, do you, since you marked it?

10 Your Honor, at this time I'd like to enter Defendant's
11 1 into evidence.

12 THE COURT: Any objection?

13 MR. WHELCHER: It would be Plaintiff's 1 into
14 evidence, Your Honor, Plaintiff's 1.

15 MS. CRICK: Right.

16 THE COURT: But this is not your witness. This is Ms.
17 Jones' witness.

18 MR. WHELCHER: Oh, excuse me, Your Honor.

19 MS. JONES: We have no objection, but it would be the
20 prosecution entering it into evidence.

21 THE COURT: I understand.

22 (Statement previously marked Defendant's Exhibit 1 for
23 Identification marked State's Exhibit No. 6.)

24

25

Katherine Rumley
Redirect examination by Ms. Crick

1 REDIRECT EXAMINATION

2 BY MS. CRICK

3 Q Katherine, you were in the courtroom when the 9-1-1
4 call was played earlier.

5 A Yes.

6 Q Okay. I'm going to have you listen to that again.
7 (Whereupon, the CD was played for the jury.)

8 Q All right. Katherine, you made that 9-1-1 call.

9 A Yes.

10 Q That was the first person you told immediately after
11 this happened.

12 A Yes.

13 Q So you told the 9-1-1 operator what happened.

14 A Yes.

15 Q And when the officer got there you told the officer
16 what happened.

17 A Yes.

18 Q Investigator Bobo came to the scene. And then again
19 you had to tell Investigator Bobo what happened, is that
20 correct?

21 A Yes.

22 Q They took you to the hospital. And you had to tell
23 again to the nurse what happened, is that right?

24 A Yes.

25 Q Did you tell your friends what happened?

Katherine Rumley
Redirect examination by Ms. Crick.

1 A Yes.

2 Q And then they wanted you to talk to Investigator Woody
3 at the hospital. And you told her what happened, correct?

4 A Yes.

5 Q And then after that they wanted you to again write
6 down in a written statement what happened.

7 A Yes.

8 Q Is it fair to say at that point you were kind of tired
9 of talking about it?

10 A Yes.

11 Q And the nurse at the E. R. had given you some
12 medication to prevent pregnancy and that sort of thing.

13 A Yes.

14 Q And I think you testified yesterday that it made you a
15 little sick the next day.

16 A Yes.

17 Q At some point you did talk to Investigator Woody
18 again.

19 A Yes.

20 Q And you asked her. Well, I guess she got in touch
21 with you because you had given her your phone number,
22 right?

23 A Yes.

24 Q So she did get in touch with you. You were in the
25 process of moving. But you did give her another statement

Katherine Rumley
Redirect examination by Ms. Crick

1 that she wrote down for you.

2 A Yes.

3 Q You gave her your new address.

4 A Yes.

5 Q I'm going to show you what's now in evidence as

6 Exhibit 6, which is what Ms. Jones was showing you. And

7 I'm going to ask you if that's your statement.

8 A Yes.

9 Q Could you read that to the jury for me?

10 A "This statement is written by Megan Woody at the

11 request of Katherine Rumley. On December 30th of 2008 I

12 went to work at Ultra Tan at 3:00 p.m. My friends dropped

13 me off at work and were going to use my car because they

14 were out of town and then pick me back up when I got off

15 work about 9:00 p.m. I had gone out back to smoke about

16 8:00 p.m. And when I came back in I forgot to lock the

17 back door. I came, I came up to the front desk to wait for

18 customers. The front and back door both dingdong when they

19 are opened, and I heard the ding on the door. When I heard

20 the dingdong I peeped my head around the corner, down the

21 hallway and I saw the back door was opened. I thought the

22 wind had blown the door open or something. I started

23 walking back to the door to close it. And when I walked

24 down the hallway I saw a guy with a black backpack

25 (inaudible with witness crying) another. He had dirty

Katherine Rumley
Redirect examination by Ms. Crick

1 jeans like with dirt all over them, a bright red sweatshirt
2 and a (inaudible) ski mask. And I'm pretty sure it was
3 only the eyes cut out. And the ski mask and brown type
4 tennis shoes, not like working-out tennis shoes, and he
5 came out of one of the tanning rooms on the right side of
6 the hallway. I think room No. 5. He started walking down
7 the hall toward the front door. Once we both saw each
8 other I asked him did he want money, and he said yes. I
9 walked back to the front and opened the cash register and
10 gave him all the cash. He put the cash in his back pocket.
11 And I asked him did he want the change and he said no.
12 Then he told me to go lock the front door. And at that
13 point I remember him walking back down the hallway. I
14 looked in my purse for my car keys but my head was spinning
15 and I didn't even remember that I didn't have my car. But
16 I couldn't find my car keys. So I went and locked the
17 front door. I thought about running out the door, but I
18 thought what if he's faster than me, he has a knife, what
19 if he stabs me. And then when I locked the door he said
20 come in here. And he started walking towards me. So I
21 started walking. And he's pointing to the back laundry
22 room and said go in there. So I walked past him and go in
23 the laundry room first. And I'm standing in the corner of
24 the laundry room and he's standing by the door. He said
25 take your pants off and I said why. He said take your

Katherine Rumley
Redirect examination by Ms. Crick

1 pants off. So I took my pants off. When I took my pants
2 off I was in the left-hand corner and the washer and dryer
3 were to my left. And he said come here. He pointed to the
4 dryer. He grabbed the back of my head and pushed me down
5 on the dryer. He had the knife in my back but I didn't
6 have -- but didn't have it pointing to my back. He had it
7 like sideways to my back. He put his book bag on the
8 washer. From there he -- I remember hearing him unzip his
9 pants, but he was still holding me with his left hand. I
10 didn't hear him open a condom wrapper but I saw a condom
11 wrapper hit the ground and I saw a condom hit the ground.
12 From that point he raped me while he was standing behind
13 me. He came on the floor. And then while he was still
14 penning me down on the dryer he zipped his pants. He
15 grabbed the mop and tried to mop the floor. When he
16 grabbed his backpack and walked out the back door he left.
17 I ran to the back door and locked it. And then I ran to
18 the front and crouched behind the front counter and grabbed
19 one of the pamphlets with the address. And I called 9-1-1
20 from my cell phone. End of statement."

21 Q And that's the statement you gave Megan Woody.

22 A Yes.

23 Q Had you thought about before this -- well, had
24 anything like this ever happened to you before?

25 A No.

Katherine Rumley
Redirect examination by Ms. Crick

1 Q Had you ever thought about what your reaction would be
2 if something like this ever did happen to you?

3 A Yes.

4 Q Was it the way you actually did react when it did
5 happen?

6 A Not at all.

7 Q How is it different?

8 A Any person when they think that something like that
9 can happen to them, you think why run. You know, and you
10 don't realize that if you run there's less of a chance of
11 you still living if somebody has a weapon.

12 Q And is that what was going through your mind when you
13 were looking for your keys and locking that door?

14 A Yes.

15 Q You were in the courtroom when two surveillance videos
16 were played from Ultra Tan.

17 A Right.

18 Q Did you see both of them on the screen? There was one.
19 in the beginning where you were in it, and you said that
20 you were giving an application to an individual. Did you
21 recognize that individual?

22 A No.

23 Q To this day do you know who that individual --

24 A No.

25 Q If I told you that individual was the defendant would

Katherine Rumley
Redirect examination by Ms. Crick

- 1 you have known that at the time?
- 2 A No.
- 3 Q And would you have known that was the same individual
4 that came back in on the second video in a ski mask and so
5 on?
- 6 A No.
- 7 Q So you, in fact, did not know him from anybody at that
8 point.
- 9 A No.
- 10 Q You called 9-1-1 immediately.
- 11 A Yes.
- 12 Q Gave a full description. Would you agree that's
13 probably not something you do when it's an inside job?
- 14 A No.
- 15 Q You also went to the hospital and submitted to an
16 entire rape exam.
- 17 A Yes.
- 18 Q Did they swab every orifice of your body?
- 19 A Yes.
- 20 Q And your sole reason for doing that was what?
- 21 A Because I wanted them to catch him.
- 22 Q He came in in a mask covering his face, and a knife.
- 23 A Yes.
- 24 Q Would you agree that probably wouldn't be necessary if
25 it was an inside job?

Katherine Rumley
Redirect examination by Ms. Crick

1 A No.

2 Q There wasn't a whole lot of money in that cash drawer,
3 was there?

4 A No.

5 Q And you are aware of how much money was in the drawer.

6 A Yes.

7 Q You didn't have access to the safe, did you?

8 A No.

9 Q You didn't even know what was in that safe.

10 A No.

11 Q You mentioned to the operator on the 9-1-1 that there
12 was possibly semen on the floor.

13 A Yes.

14 Q That maybe they would want to look at that.

15 A Yes.

16 Q Probably wouldn't have mentioned that if it was an
17 inside job, would you?

18 A No.

19 Q I'm going to show you one last thing, Katherine. It's
20 going to be two videos.

21 (Pause.)

22 Q While she's getting that ready, you never told the
23 police that he had been in there just minutes prior to
24 coming back in a mask, did you?

25 A No.

Katherine Rumley
Redirect examination by Ms. Crick

1 Q In fact, you didn't know that was him getting that
2 employment application, did you?

3 A No.

4 Q You didn't have a long conversation.

5 MS. JONES: I am going to object, Your Honor. She's
6 going over things that were not contained in my
7 cross-examination. She's essentially redirecting and going
8 through her whole direct examination again, Your Honor.

9 THE COURT: Well, they are leading questions. I'll
10 sustain it on that ground.

11 Q The second video that we're going to see, did you
12 realize at that point it was the same person?

13 A No.

14 Q And, again, you didn't tell the officers that it was
15 the same person.

16 A No.

17 Q All you had was a description of the --

18 MS. JONES: I am going to object again, Your Honor.
19 She's leading.

20 THE COURT: Sustained.

21 Q What was all you knew about --

22 A All I knew was that he was tall and that he was either
23 like foreign or black or mixed or something, because all I
24 could see was his neck.

25 (Pause.)

Katherine Rumley
Redirect examination by Ms. Crick

1 Q If you will take a look at the screen, Katherine, we
2 are going to watch this.

3 (Whereupon, the CD was played for the jury.)

4 Q Could you tell the jury what area that is?

5 A This is the front desk or the front lobby.

6 THE COURT: Excuse me.

7 You'll have to speak into that microphone. You have
8 your back to the court reporter. And while I know you're
9 looking at the screen to answer the question, when you
10 answer the question you need to answer through the
11 microphone.

12 THE WITNESS: Okay.

13 Q Do you recognize who that is?

14 A No.

15 Q Do you recognize who the female is?

16 A Yes. The female is me.

17 MS. JONES: Your Honor, I'm going to object to this.
18 This is not responsive to the cross-examination, and she's
19 limited to what I brought up on cross-examination, and I
20 didn't offer any of this stuff. She doesn't get a second
21 chance at direct simply because she missed it.

22 THE COURT: I understand the objection.

23 Let me see y'all just a minute.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Katherine Rumley
Redirect examination by Ms. Crick

- 1 THE COURT: All right. Overrule the objection.
2 You may continue.
3 Q Do you know who that individual was at the time?
4 A No.
5 Q Do you know what he asked about?
6 A He asked for a job application.
7 Q And what are you doing right there?
8 A Handing him a job application.
9 Q What are you doing on the computer?
10 A Checking which beds I need to go clean.
11 Q And then what are you going to do?
12 A Going to clean the beds.
13 Q Did you have any conversation with him other than
14 handing him an application?
15 A No.
16 Q Do you remember seeing him go behind that counter like
17 that?
18 A No.
19 Q And did he leave the application, or do you remember?
20 A He, ah, left with the application.
21 Q Katherine, I'm going to ask you one last time to tell
22 this jury whether you knew the defendant or had ever seen
23 the person before in your entire lifetime.
24 A I have never, ever seen or met or spoke with this
25 person in my entire life.

Robert Shaffer
Direct examination by Ms. Crick

1 MS. CRICK: I have nothing further, Your Honor.

2 THE COURT: Okay. You may step down.

3 MS. CRICK: Your Honor, the state calls Robert
4 Shaffer.

5 ROBERT SHAFFER, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. CRICK

8 Q Can you please tell the jury your full name and where
9 you work?

10 A My name is Robert Shaffer. I'm an investigator with
11 the Spartanburg County Sheriff's Office.

12 Q How long have you been with the sheriff's office?

13 A Be 11 years this May.

14 Q What kind of things do you do there at the sheriff's
15 office? What are your duties?

16 A I'm currently with the forensics department.

17 Q When you say forensics department, in just everyday
18 talk what is that?

19 A The I. D. department. We process crime scenes.

20 Q So you essentially look for evidence.

21 A Evidence.

22 Q And you can get called out to any crime scene, or how
23 does it work?

24 A Yeah. We get called out pretty much.

25 Q And your sole purpose in going to the crime scene is

Robert Shaffer
Direct examination by Ms. Crick

1 to collect any evidence that might be there.

2 A Yeah, collect and photo.

3 Q Did you respond to Ultra Tan in Duncan on December the
4 30th of 2008?

5 A Yes, I did:

6 Q And your job that night was to do what?

7 A Was to process the crime scene.

8 Q And collect evidence?

9 A Collect evidence.

10 Q When you got there, going into the crime scene did you
11 have a general idea of what happened?

12 A Yeah. I talked with the victim.

13 Q So you had a general concept of where to look and that
14 sort of thing?

15 A Yes, I did.

16 Q When you first go into a crime scene do you start
17 touching and collecting stuff first, or what do you do?

18 A I usually, as I said, I interview the officers and the
19 victim. I go in with my camera and I photograph what I see
20 before anything gets disturbed.

21 Q So you take pictures first of everything at the crime
22 scene.

23 A Yes, I do.

24 MS. CRICK: Your Honor, I am showing defense counsel
25 photographs.

Robert Shaffer
Direct examination by Ms. Crick

1 (Pause.)

2 MS. CRICK: Your Honor, may we approach?

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 (Photographs marked State's Exhibits Nos. 7 through
6 33.)

7 THE COURT: All right. Do I understand that
8 photographs marked as State's Exhibits 7 through 33 are not
9 objected to?

10 MR. WHELCHER: Are admitted or not?

11 THE COURT: Are not objected to.

12 MR. WHELCHER: No, sir. Not objected to.

13 THE COURT: All right. Let me see y'all just a
14 minute.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 MR. GOWDY: Your Honor, these are 34 through 46.

18 THE COURT: All right. State's Exhibits 34 through 46
19 also photographs are objected to by the defense?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: All right. They're admitted over
22 objection.

23 MS. CRICK: Thank you, Your Honor.

24 THE COURT: Let me see y'all for one other thing
25 before you go through the photographs.

Robert Shaffer
Direct examination by Ms. Crick

1 (Photographs marked State's Exhibits Nos. 34 through
2 46.)

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 Q Officer Shaffer, I'm going to show you first what has
6 been marked as State's 7 through 22. Actually let me do 7
7 through 18 first and ask if you recognize what that is.

8 A These are photographs I took that night.

9 Q At which location?

10 A They're at Ultra Tan.

11 MS. CRICK: Your Honor, may I publish those to the
12 jury at this time?

13 THE COURT: You may.

14 Q All right. Can you tell the jury what this is in this
15 photograph?

16 A That's the photograph of the front of the business.

17 Q Of Ultra Tan?

18 A Of Ultra Tan.

19 Q So that would be the front door where you entered the
20 building.

21 A Yes, it is.

22 Q And what is this?

23 A That's behind the business of Ultra Tan, the back
24 door.

25 Q That would be the back door of Ultra Tan.

Robert Shaffer
Direct examination by Ms. Crick

1 A Yes, it is.

2 Q And I apologize. That was seven and eight. I'm going
3 to show you now No. 9. You went into the building. And
4 what is this area here?

5 A That's the front counter of the front of the business
6 there.

7 Q This is state's 10. What did you photograph in this
8 picture?

9 A That's behind the counter, the cash register and the
10 computer works of the business.

11 Q State's 11, what does the jury see in that photograph?

12 A That's the hallway leading from the -- taken by the
13 counter area looking straight back into the back-door area.

14 Q And on the sides are all little rooms?

15 A The other rooms.

16 Q So what they're seeing in the far background is the
17 back door?

18 A Yes, it is.

19 Q And you're standing in the front-counter area.

20 A Yes.

21 Q I show you State's 12. What is this?

22 A That's the door going into the wash room.

23 Q The back door or to the wash room?

24 A That's incorrect. That is the back door.

25 Q Now, I'm going to show you State's 16. What is this

Robert Shaffer
Direct examination by Ms. Crick

1 room?

2 A That's the wash room they washed their clothes at.

3 Q And did you investigate and look for evidence in that
4 particular room?

5 A Yes, I did.

6 Q What did you see in that room?

7 A Up initially walking in saw there were some sandals on
8 the floor. And from what the reports of what happened,
9 down in the area kinda like in front of the washer, kinda
10 between the washer and the dryer I observed a clear sticky
11 substance on the floor.

12 Q I'm going to show you what's marked as State's 14.
13 Can you tell the jury what we're looking at right here?

14 A The area where I marked, you see on the marker pen is
15 where I saw the -- about in the center of it is where the
16 clear sticky substance is. And over here, far left, is the
17 washer and over here is the dryer. And the door is right,
18 the door's right here.

19 Q When you say you observed a clear sticky substance,
20 you observed that initially with your naked eye?

21 A Yes, I did.

22 Q I'm going to show you State's 13. Is that a closer up
23 of it?

24 A Yes, it is.

25 Q Now, would you ever have occasion to use a special

Robert Shaffer
Direct examination by Ms. Crick

1 tool to see further evidence in that area?

2 A Yes, we did.

3 Q Can you tell the jury what sort of tool you would use?

4 A It's called an alternate light source.

5 Q Did you use that in this case?

6 A Yes, I did.

7 Q Was it used to help you see things that you might not
8 be able to see with the naked eye?

9 A Yes, it is.

10 Q Did you use that light in the same area where you saw
11 the sticky substance?

12 A Yes, I did.

13 Q I'm going to show you what's marked as State's 15.
14 That's just kind of funky, but tell the jury what that is.

15 A We look for like a glow, like a light greenish kinda
16 in the center there. That's where the substance was.

17 Q So when you see that glow, what do you do?

18 A I normally mark it and collect a sample.

19 Q Is that what you did in this particular case?

20 A Yes. I did.

21 Q Now, did you see anything else in that room?

22 A No, I did not.

23 Q Any other substances, or was that it?

24 A That was it.

25 Q And did you see a mop in that room?

Robert Shaffer
Direct examination by Ms. Crick

1 A Yes, I did.

2 Q I'm going to show you State's 18. Can you tell the
3 jury what that is?

4 A That's a mop that was in the washing room.

5 Q And what did you do with that mop?

6 A I collected it.

7 Q And what did you do with the flip-flops or the sandals
8 that you saw?

9 A I collected those also.

10 Q And what did you do with regard to the substance you
11 saw on the floor?

12 A I took on two cotton swabs, and I swabbed a sample.

13 Q What area, specially in that area, did you swab?

14 A I collected a sample of the sticky substance and the
15 area around the substance also on a separate...

16 Q I'm going to show you what we will mark.

17 (Swabs marked State's Exhibit No. 47 for
18 Identification.)

19 MS. CRICK: Your Honor, I've marked an item, No. 47.

20 I am going to show these to Officer Shaffer and ask if he
21 recognizes those.

22 A Yes, I do.

23 Q Can you tell the jury what those are?

24 A These are the swabs I collected of the, off, from the
25 floor.

Robert Shaffer
Direct examination by Ms. Crick

1 Q And how do you know those are the same swabs?

2 A Because it's my handwriting and I see my initials on
3 them.

4 Q And did you document the date and time you collected
5 them?

6 A Yes, I did.

7 MS. CRICK: Your Honor, at this time I'd like to enter
8 State's 47 into evidence.

9 MR. WHELCHER: For identification.

10 MS. CRICK: Subject to the chain.

11 MR. WHELCHER: No objection subject to the chain.

12 THE COURT: It is admitted.

13 (Swabs marked State's Exhibit No. 47.)

14 Q What do you do after you collected the individual
15 swabs? Do you seal them?

16 A Yeah, I seal them. I take them -- they're sealed and
17 secured.

18 Q And what do you do with them?

19 A I secure them in the -- our evidence room and then
20 take them into evidence once everything's completed.

21 Q So you took everything to the evidence room. But what
22 did you do with the mop?

23 A I put it in the drying room because it still was damp.

24 Q And after it was dried what did you do with that?

25 A I packaged it and secured it in the evidence room.

Robert Shaffer
Direct examination by Ms. Crick

- 1 Q Next did you get information that a suspect had been
2 stopped?
- 3 A Yes, I did.
- 4 Q And what did you do after you got that information?
- 5 A I responded to that incident location.
- 6 Q And was that a traffic stop somewhere?
- 7 A Yeah. Duncan made a traffic stop.
- 8 Q What did you do when you got there?
- 9 A I talked with the detective on the scene, and he
10 wanted a buccal swab collected.
- 11 Q From the defendant?
- 12 A Yeah.
- 13 Q All right. Tell them what exactly that is.
- 14 A It's buccal cells, some that we collect to compare for
15 D. N. A.
- 16 Q Where do you collect them?
- 17 A From the mouth.
- 18 Q So basically you take a swab, a swab inside somebody's
19 cheek, to get a D. N. A. sample?
- 20 A Yeah. We take two sterile cotton swabs and swab each
21 cheek.
- 22 Q And that was your -- that's why they had you come out
23 to the traffic stop yourself, to do that.
- 24 A Yes, it was.
- 25 Q Did you talk to him first about what you were going to

Robert Shaffer
Direct examination by Ms. Crick

1 do?

2 A I advised him when I was going to collect a buccal
3 swab.

4 Q Did you also advise him of anything else?

5 A Yeah. I advised him of his rights..

6 Q All right.

7 MS. CRICK: I'm going to show defense attorney,
8 Mr. Whelchel.

9 Your Honor, may we approach?

10 THE COURT: Yes.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, I've got
14 one matter I'll need to address, so I will ask you to
15 please go to your jury room. Do not yet discuss the case.

16 I'll bring you back in just a few minutes hopefully.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Mr. Whelchel, the issue is
20 what?

21 MR. WHELCHER: Beg the Court's indulgence for a
22 moment, sir.

23 (Pause.)

24 THE COURT: All right. What's the issue?

25 MR. WHELCHER: Your Honor, I believe the state is

1 going to attempt to put into evidence a
2 permission-to-search and a preinterrogation waiver form
3 that was presumably done by this officer.

4 I did not receive either one of these items in
5 discovery, Your Honor.

6 THE COURT: All right.

7 MR. WHELCHER: I am informed that they came out of the
8 evidence room. But they weren't, is that correct? These
9 were in evidence?

10 THE COURT: All right. Who wants to address that for
11 the state?

12 MR. GOWDY: Your Honor, could I have just a moment?

13 (Pause.)

14 MR. GOWDY: Your Honor, these are the originals.

15 It's the same issue that we addressed earlier this
16 morning. We have copies of them.

17 I can't tell you whether or not Mr. Whelcher got them
18 or not. He says he did not. I mean, I can't answer that.

19 Your Honor's point is well taken that there has to be
20 a better way of ensuring this. I can tell you that
21 throughout the supplementals' references to his client's
22 admissions, to his clients' confessions, he's had every
23 copy that his client has written us from jail where he
24 admitted to everything except the sexual assault.

25 I don't know how some of this can be catching him off

1 guard, but I believe him if he says he doesn't have it in
2 his file. It is in our notebook. The notebook was given
3 to him. I can't, I can't answer. He says he doesn't have
4 it. I can't answer that.

5 THE COURT: Well, but there's no record of what was
6 provided?

7 MR. GOWDY: There are summaries, Your Honor, yes. And
8 I'm happy to give them to the Court. There are summaries
9 prepared by an administrative assistant in our office of
10 what was provided to the defense.

11 THE COURT: Well, I don't really think a summary's
12 going to help, I mean, unless there's a list of those
13 things provided, I mean.

14 MR. GOWDY: Some of them are vague such as
15 supplemental page one through seven.

16 THE COURT: Well, that would identify something if
17 it's a supplemental report page one through seven, but my
18 concern is if you have an advisement-of-rights form and a
19 consent-to-search form or a consent-to-provide-a-buccal-
20 swab form, then I don't know how you can summarize that
21 unless it is consent forms for buccal swabs.

22 Do you have something like that? I mean, how do we
23 identify those documents?

24 While he's looking through that, Mr. Welchel, do I
25 understand -- am I to understand correctly that you weren't

1 aware based upon discovery or otherwise, you weren't aware
2 that your client had been subjected to an advisement of
3 rights and consented to a search or provided a buccal swab?

4 MR. WHELCHER: I was aware he had provided a buccal
5 swab, Your Honor. I was unaware of there being any right
6 to advise to him at that time.

7 THE COURT: You thought he volunteered it or it was
8 requested of him?

9 MR. WHELCHER: Yes, sir.

10 THE COURT: Well, so you were aware that the officers
11 had requested a buccal swab from your client?

12 MR. WHELCHER: Yes, sir, Your Honor.

13 THE COURT: Did you inquire of the prosecution if they
14 had some basis for that request or if they had some
15 advisement form or they had some consent form from your
16 client?

17 MR. WHELCHER: No, sir. I asked for discovery. When
18 I asked for discovery that was not included in any of the
19 discovery, Your Honor.

20 THE COURT: All right. Well, I understand your
21 position is was not -- you never received it.

22 MR. WHELCHER: No, sir, no, sir.

23 THE COURT: So what I'm saying is in your
24 investigation and preparation of the trial of this case did
25 you say, look, now, I understand you gave a swab, do y'all

1 have some kind of consent form or did he just volunteer it?
2 I'm satisfied he didn't keep them in his pocket. Does he?
3 I mean, he wouldn't have.

4 MR. WHELCHER: No, sir.

5 THE COURT: So, I mean, if you were preparing a case
6 for trial wouldn't that be an obvious question, is I
7 haven't received any consent form, did y'all do a consent
8 form or did you advise him or how is it that y'all took
9 that buccal swab?

10 MR. WHELCHER: I didn't ask them that, Your Honor.

11 THE COURT: You didn't ask them that?

12 MR. WHELCHER: No, sir.

13 THE COURT: All right. We'll take a short break. And
14 y'all try to see if y'all find out where the notification
15 was to the defense on this. And we'll address what
16 remedies we need to take in order to allow you the proper
17 examination of the witness.

18 All right. The witness can step down. Don't discuss
19 your testimony with anyone during this break.

20 We'll take 15 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Bring the jury in.

23 MS. CRICK: Your Honor, if he's going to continue
24 testifying can we go ahead and not to mention waivers or
25 forms and that kind of thing? I just don't want him to

Robert Shaffer
Direct examination by Ms. Crick

1 blurt out.

2 THE COURT: Well, just don't ask him about it.

3 Just answer the questions you are asked.

4 THE WITNESS: Yes, sir, Your Honor.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Ms. Crick.

8 MS. CRICK: Thank you, Your Honor.

9 BY MS. CRICK

10 Q I'm trying to remember. I think where we left off was
11 that you had collected swabs and turned in everything to
12 evidence, including the mop and the flip-flops.

13 A Yes.

14 Q And then you had been called out to a traffic stop.

15 A Yes.

16 Q And you got a swab from the defendant.

17 A Yes, I did.

18 Q And those were turned into evidence.

19 A Yes. I did.

20 Q At some point did you also photograph the defendant?

21 A Yes, I did.

22 Q I'm going to show you State's 19, 20, 21 and 22. And
23 just tell me if you recognize those.

24 A Yes, I do.

25 Q What are those?

Robert Shaffer
Direct examination by Ms. Crick

1 A Photographs of the defendant.

2 MS. CRICK: And I guess these have already been
3 entered into evidence.

4 THE COURT: What numbers are they?

5 MS. CRICK: They're 19, 20, 21 and 22.

6 THE COURT: They're in.

7 MS. CRICK: Your Honor, may I publish those to the
8 jury?

9 THE COURT: You may.

10 Q What is this a photograph of?

11 A Photograph of the defendant.

12 Q And did you also take photographs of tattoos on his
13 body?

14 A Yes, I did.

15 Q What is this?

16 A That's a photograph of one of his wrists -- some
17 common name in cursive.

18 Q Did you photograph his neck area?

19 A Yes, I did.

20 Q And can you tell the jury what they're seeing in this
21 photograph?

22 A Photograph of a star on the right side of the neck.

23 Q And this is State's 21. Is that just a closeup of
24 that?

25 A Yes, it is.

Robert Shaffer
Direct examination by Ms. Crick

1 Q And that's the same individual, the defendant, that
2 you took this swab from.

3 A Yes. They are.

4 Q Next did you get a request to respond out to his
5 apartment?

6 A Yes, I did.

7 Q And what was your purpose in going there?

8 A Going to collect some evidence, some clothing and a
9 knife.

10 Q And I'm going to show you what's been marked as
11 State's 23 through 46 and ask you if you recognize those.
12 What are they?

13 A They're photographs I took at the residence.

14 Q At the defendant's apartment?

15 A Yes.

16 MS. CRICK: Your Honor, may I publish those? I
17 believe they've been entered already.

18 THE COURT: They are in, yes, ma'am.

19 Q This is State's 23. What is this?

20 A That's the number for the complex, duplex.

21 Q So that's the actual apartment that you searched.

22 A Yes.

23 Q And when you went inside the apartment, where is the
24 first place you searched? Did you go generally through
25 everywhere?

Robert Shaffer
Direct examination by Ms. Crick

1 A I did an initial walk-through for the investigators to
2 tell them what they had.

3 Q And you took photographs. Did you go into the kitchen
4 area?

5 A Yes, I did.

6 Q When you got into the kitchen area what did you
7 observe?

8 A There's a knife laying on the kitchen counter by the
9 sink.

10 Q And I'm going to show you what's marked as State's 46.
11 Can you tell the jury what that is?

12 A That was a knife I observed on the kitch -- on the
13 counter by the sink.

14 Q Did you observe any other knives, knives, excuse me,
15 in the kitchen area?

16 A No, I didn't.

17 Q Did you open up drawers?

18 A Yes, I did.

19 Q Look around the kitchen?

20 A Yes, I did.

21 Q Did you see utensils?

22 A Utensils, butter knives, you know.

23 Q But no other knife like this.

24 A Not -- no..

25 Q And so you took a photograph of it.

Robert Shaffer
Direct examination by Ms. Crick

1 A Yes, I did.

2 Q And did you eventually collect that knife?

3 A Yes, I did.

4 Q I'm going to have something marked and ask if you
5 recognize State's 48.

6 (Knife marked State's Exhibit No. 48 for
7 Identification.)

8 A Yes, I do.

9 Q And what is it?

10 A It's a knife I collected from the kitchen.

11 Q The same knife you saw better --

12 A Yes.

13 Q Next I'm going to show you State's 43, a photograph.
14 And it may be kind of hard to turn it. If you can see
15 that, can you tell the jury what that is?

16 A That was a wrinkled-up application that was located in
17 the trash can underneath the sink.

18 Q In the same kitchen area?

19 A Yeah, the same kitchen area.

20 Q And so it's the employment application?

21 A Yes, it was.

22 Q Do you recall where the business location was for
23 that?

24 A Ultra Tan.

25 Q Did you also collect that and turn it into evidence?

Robert Shaffer
Direct examination by Ms. Crick

- 1 A Yes, I did.
- 2 Q This is going to be marked as State's 49.
- 3 (Application marked State's Exhibit No. 49 for
- 4 Identification.)
- 5 Q And ask if you recognize that.
- 6 A Yes, I do.
- 7 Q What is it?
- 8 A It's an Ultra Tan application.
- 9 Q The actual one that we see in the photograph?
- 10 A Yes.
- 11 Q And you turned that into evidence.
- 12 A Yes, I did.
- 13 Q Anything else in the kitchen, or did you go on?
- 14 A Nothing further from the kitchen, but we continued on.
- 15 Q And where did you go next?
- 16 A To the front back-bedroom area.
- 17 Q And what did you observe in that area?
- 18 A On the chair in the bedroom area there was some shirts
- 19 and duffle bags and --
- 20 Q In that area in the bed --
- 21 A Yeah.
- 22 Q I'm going to show you what's marked as State's 32 and
- 23 ask you if this is what you're referring to.
- 24 A Yes, they are.
- 25 Q And this is a chair in the bedroom?

Robert Shaffer
Direct examination by Ms. Crick

- 1 A Yes.
- 2 Q And the jury is seeing what in the chair?
- 3 A Like a black duffle bag and like a red shirt and a
4 white and red and yellow stripe shirt.
- 5 Q And there's an item over to the right on the floor.
- 6 A There's another black duffle bag.
- 7 Q I'm going to show you what's been marked as
8 State's 31. Is that just a closeup of the duffle bag?
- 9 A Yes, it is.
- 10 Q And I also show you what's marked as State's 30. Is
11 that a closeup of the clothing?
- 12 A Yes, it is.
- 13 Q And you initially photographed these exactly as you
14 found them.
- 15 A Yes. They are.
- 16 Q Did you also take some photographs closer up after you
17 kind of moved the items to get closeup photos?
- 18 A Yes, I did.
- 19 Q Okay. I'm going to show you what's been marked as
20 State's 45. Can you tell the jury what this is?
- 21 A It is a closeup of the symbol on one of the shirts.
- 22 Q That we saw in the previous photograph?
- 23 A Yes. It is.
- 24 Q I'm also going to show you what's marked as
25 State's 34.

Robert Shaffer
Direct examination by Ms. Crick

- 1 A That's of the closeup of the shirt.
- 2 Q Another shirt that was found?
- 3 A Yes, on the palm.
- 4 Q That we saw in that initial photograph. And then you
5 made reference to a backpack. This is State's 33. Is that
6 also a closeup?
- 7 A Yes, it is.
- 8 Q Did you at some point look inside that bag?
- 9 A Yes, I did.
- 10 Q And I'm going to show you State's 44. Is this what
11 you found inside that backpack?
- 12 A Yes, it is.
- 13 Q Did you also take a closer photograph of this item?
- 14 A Yes, I did.
- 15 Q I'm going to show you what's been marked as State's 26
16 now. And explain to the jury what they're seeing.
- 17 A It's like a blue hood mask with eye-hole-cuts cut
18 out.
- 19 Q And that's --
- 20 A That was from that bag, that black book bag.
- 21 Q Found inside that book bag.
- 22 A Yes.
- 23 Q Did you find anything else in that particular room?
- 24 A No.
- 25 Q Where did you go next?

Robert Shaffer
Direct examination by Ms. Crick

- 1 A Into the living room.
- 2 Q And what did you observe in the living room?
- 3 A One of the investigators located a box underneath a
4 Christmas tree.
- 5 Q I'm going to show you State's 24. Can you just
6 describe generally? Is this the Christmas tree you're
7 referring to?
- 8 A Yes, it is.
- 9 Q When you say it was found underneath, this is how you
10 saw the room when you initially went in?
- 11 A When I did my photographs, yes.
- 12 Q Your photographs. It was -- can we see the box in
13 this photograph?
- 14 A No.
- 15 Q Okay. Let me show you then what's been marked as
16 State's 25. You have obviously moved some things in this
17 photograph during your search.
- 18 A Yeah.
- 19 Q And can you describe what's seen in this photo for the
20 jury?
- 21 A It's a black like a honey-well money box or like a
22 safe box.
- 23 Q And that was found underneath this basket and red
24 drape?
- 25 A Yes, it was.

Robert Shaffer
Direct examination by Ms. Crick

1 Q What was inside the money box?

2 A U. S. currency.

3 Q I'm going to show you State's 27. Did you take a
4 closeup photograph of what was found in that?

5 A Yes, I did.

6 Q And is this what you found?

7 A Yes. I did.

8 Q Did you inventory all of that money and take
9 photographs of it?

10 A Yes, I did.

11 Q All right. Let me quickly show you State's 35. You
12 found rolls of money?

13 A Yes, I did.

14 Q And is this a photograph of some of that?

15 A Yes, it is.

16 Q You also found loose change. I'm going to show you
17 State's 36.

18 A Yes. I did.

19 Q There are other rolls of coins that you found in
20 addition to some cash.

21 A Yes.

22 Q I'm going to show you State's 41. Did you inventory
23 all of that cash?

24 A Yes, I did.

25 Q And is that what the jury is seeing in this

Robert Shaffer
Direct examination by Ms. Crick

1 photograph?

2 A Yes.

3 Q And this is State's 40. Did you separate the bills?

4 A Yes, I did.

5 Q And State's 42.

6 A Yes.

7 Q Once you collected the money, what did you do with it
8 ultimately?

9 A I secured it and put it in the evidence room.

10 Q I'm going to show you a couple of things real quick,
11 as quick as I can, and ask if you recognize them after I
12 mark them.

13 (Jacket marked State's Exhibit No. 50 for
14 Identification; backpack and mask marked State's Exhibit No.
15 51 for Identification.)

16 Q These have been marked. Let me start with State's 50.
17 I'm going to show you first State's 50, and ask if you
18 recognize it.

19 A Yes, I do.

20 Q What is it?

21 A American Eagle triple-X size jacket.

22 Q Do you know the color of the jacket?

23 A Yes. It's red.

24 Q Is that the one we saw the photographs of setting on
25 the top of the backpack?

Robert Shaffer
Direct examination by Ms. Crick

1 A Yes.

2 Q You collected it and put it in this bag and turned it
3 into evidence.

4 A Yes, I did.

5 MS. CRICK: Your Honor, at this time I'd like to enter
6 State's 50 into evidence.

7 MR. WHELCHER: No objection.

8 THE COURT: Forty-eight and 49 have not been admitted.
9 They have been marked but they weren't offered -- 48 is the
10 knife and 49 is the application.

11 MS. CRICK: Okay, all right. Your Honor, at this time
12 I would like to offer 48 and 49 into evidence. I thought I
13 had done that.

14 THE COURT: Okay.

15 MR. WHELCHER: No objection.

16 THE COURT: They're admitted.

17 (Knife marked State's Exhibit No. 48; application
18 marked State's Exhibit No. 49.)

19 Q I'm going to show you now what's marked as State's 51.
20 Can you tell us what that is?

21 A Yes. I do.

22 Q What is it?

23 A It's a Nike black backpack. There is one Urin black
24 face mask and one blue hat with eye-hole cuts in it.

25 MS. CRICK: Your Honor, at this time I'd like to offer

Robert Shaffer
Direct examination by Ms. Crick

1 State's 51 into evidence.

2 THE COURT: It is admitted.

3 (Backpack and mask marked State's Exhibit No. 51.)

4 (Duffle bag marked State's Exhibit No. 52 for

5 Identification; brown bag marked State's Exhibit No. 53 for

6 Identification.)

7 Q I'm going to show you now what's been marked as
8 State's 52. I'm sure you do. You tell me if you recognize
9 what that is.

10 A Yes, I do.

11 Q What is it?

12 A A Nike Air black duffle bag.

13 Q And is that the duffle bag we saw in the photographs
14 that you recovered from the bedroom?

15 A Yes, it is.

16 Q And what did you do after you recovered that?

17 A I sealed it and secured it in the evidence room.

18 Q I've got one more to get marked.

19 (Shirt marked State's Exhibit No. 54 for

20 Identification.)

21 Q And the last one I'm going to show you is 54 which
22 is -- and ask if you recognize what this one is.

23 A Yes, I do.

24 Q What is it?

25 A It's a reddish-whitish-yellowish stripe shirt, Tommy

Robert Shaffer
Direct examination by Ms. Crick

1 Hilfiger, size X-L.

2 Q And is that the shirt that we saw that you
3 photographed a minute ago?

4 A Yes, it is.

5 Q You recovered that from the bedroom and entered it
6 into evidence.

7 A Yes, I did.

8 Q At some point did you also look through a vehicle at
9 that residence?

10 A Yes, I did.

11 Q And you searched the vehicle. And what did you find,
12 if anything, in the vehicle?

13 A In the back of the trunk area that was a like a
14 brownish on the cross -- like a bag there was full of an
15 assortment of condoms.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 Q Officer Shaffer, after you collected the clothing, the
19 backpacks and all of that did that essentially end your
20 involvement in the case?

21 A Yes. It is.

22 Q When you went out to the traffic stop you mentioned
23 earlier, that that was in Duncan.

24 A Yes. It was.

25 Q Is that Spartanburg County?

Robert Shaffer
Cross-examination by Mr. Whelchel

1 A Yes, it is.

2 Q And when you went to the Ultra Tan, that was also in
3 Duncan.

4 A Yes, it is.

5 Q And was that also Spartanburg County?

6 A Yes, it is.

7 Q And then when you responded to the Subway -- well, you
8 didn't respond to the Subway. When you went to the
9 apartment, that was also in Spartanburg County.

10 A Yes. It is.

11 MS. CRICK: I have nothing further, Your Honor.

12 MR. WHELCHER: Beg the Court's indulgence.

13 CROSS-EXAMINATION

14 BY MR. WHELCHER

15 Q Mr. Investigator Officer, I didn't get your title.

16 A Investigator Robert Shaffer.

17 Q Okay. Investigator Shaffer, when you went to the
18 Ultra Tan did you make any measurements, sir?

19 A No, I didn't.

20 Q So you don't know how far it is from this counter
21 right in the front to the front -- to the back door.

22 Excuse me.

23 A No. I don't.

24 Q But that's the only door in the back, is that correct?

25 A Yes, sir.

Amanda Cooper
Direct examination by Mr. Gowdy

1 Q And you don't know how far it is from that counter to
2 the front door.

3 A Could you repeat that again?

4 Q Do you know how far it is from that counter in that
5 picture --

6 A Not exactly.

7 Q Okay. I'm looking for the photograph. You didn't
8 take one of the front door from the inside out not included
9 in these.

10 A Not in these.

11 Q All right. Thank you, sir.

12 MS. CRICK: Nothing further, Your Honor.

13 THE COURT: You may step down.

14 MR. GOWDY: Your Honor, may it please the Court. The
15 state would call Ms. Amanda Cooper.

16 AMANDA COOPER, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GOWDY

19 Q Good morning, Ms. Cooper.

20 A Good morning.

21 Q I'm going to get you to speak up in as a good and
22 strong and clear voice as you can so the last two ladies in
23 the jury box can hear you. Okay?

24 A Okay.

25 Q How old are you?

Amanda Cooper
Direct examination by Mr. Gowdy

- 1 A Seventeen.
- 2 Q Seventeen. I want to go back with you to December of
3 2008. Okay. Where were you working?
- 4 A Subway.
- 5 Q And do you know which county that Subway is in?
- 6 A Greer. I'm pretty sure. On 101.
- 7 Q Do you know if it's in Spartanburg County?
- 8 A Yeah.
- 9 Q Okay. And how long had you been working there as of
10 December of 2008?
- 11 A Almost a year.
- 12 Q Almost a year. All right. I want to fast forward to
13 kind of the evening hours on December the 30th of 2008.
14 The jury has seen a video or surveillance tape from that
15 night. Tell the jury which of the two young ladies you
16 were.
- 17 A What are you asking?
- 18 Q Tell the jury what happened.
- 19 A Okay. I was working, and I walked out to the lobby to
20 get the trays off the trash can. That's when I seen
21 somebody.
- 22 They walked in and grabbed me. They had a knife in
23 their hand. Walked me up to the cash register and basically
24 insinuated that he wanted the money. He didn't say a word.
25 And I stood there in shock watching the whole thing.

Amanda Cooper
Direct examination by Mr. Gowdy

1 Finally, I realized that I should go call the cops. So
2 I walked around to the back where the alarm system was and
3 pressed the button for the cops to come.

4 Q You said he was armed.

5 A Yes. He had a knife in his hand.

6 Q He had a knife. And where was that knife while he was
7 walking you?

8 A He kind of had his arm around me. He never actually
9 held it up to my neck or anything. But the, the hand that
10 the knife was in, like the arm was around me holding it,
11 yeah.

12 Q And as best you can recall tell the ladies and
13 gentlemen of the jury what he had on.

14 A He had a red hoody on and a blue ski mask. And I'm
15 pretty sure he was wearing jeans.

16 Q Were you able to determine the race or ethnicity of
17 this person?

18 A I was so scared the only thing that I saw was his
19 neck. I figured he could have been black or had a really
20 good tan or something. But I knew like I didn't think he
21 was white.

22 Q And he never said a word?

23 A No.

24 Q And once he got to the cash register, what happened?

25 A He let go of me when he got to the cash register and

Amanda Cooper
Direct examination by Mr. Gowdy

1 pointed to Christy with the knife. And she just started
2 putting the money in the bag. And after that like when I
3 walked to the back, he had already left by the time I got
4 back to the front.

5 Q Did you see any identifying marks on his body?

6 A Yes. I saw a star tattoo on the side of his neck.

7 Q What's a star tattoo? Describe that for me. Just a
8 star? Is it any special kind of scar?

9 A It's called a -- it's a nautical star. It's not just
10 a regular star, but it has like a design in it, like half
11 of it's shaded and half of it's not shaded, all the way
12 around.

13 Q Okay. And it was where on his body?

14 A On the side of his neck.

15 Q On the side of his neck.

16 A It was on the right side of his neck.

17 Q Right side of his neck.

18 A Yeah.

19 Q He never took his mask off.

20 A Uh-uh.

21 Q Never said a word.

22 A No.

23 Q Ms. Cooper, thank you. Please answer any questions
24 the defense attorney may have for you.

25 A Okay.

Amanda Cooper
Cross-examination by Mr. Whelchel

1 CROSS-EXAMINATION

2 BY MR. WHELCHER

3 Q Are you still working in Subway, ma'am?

4 A No.

5 Q Did you quit because of this or did you keep working?

6 A No. I worked after that happened.

7 Q Thank you, ma'am.

8 THE COURT: Step down.

9 MR. GOWDY: Your Honor, may it please the Court. The
10 state would call Ms. Christy Sanders.

11 CHRISTY SANDERS, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. GOWDY

14 Q Good afternoon, Ms. Sanders.

15 A Hey.

16 Q I'm going to get you -- I said good afternoon. I'm
17 going to get you to speak in as good and strong and clear
18 voice as you can so the last two ladies can hear you.

19 A Okay.

20 Q Tell us your full name.

21 A Christy Sanders.

22 Q And you live where, Ms. Sanders?

23 A I live in Lyman.

24 Q In Lyman. I want to go back with you to December the
25 30th of 2008. Tell the jury where you were working.

Christy Sanders
Direct examination by Mr. Gowdy

- 1 A Subway on 101.
- 2 Q 101. Do you know which county that's in?
- 3 A Spartanburg.
- 4 Q In Spartanburg County. How long had you been working
5 at Subway?
- 6 A Seven years.
- 7 Q Seven years.
- 8 A Yes.
- 9 Q Who was working with you in the early evening hours?
- 10 A Amanda.
- 11 Q All right. I want you to tell for the jury what
12 happened.
- 13 A She was out there getting trays and a guy walked in
14 with a sweatshirt and mask on and grabbed her with a knife
15 and walked her up to the counter and pointed the knife at
16 me. I guess he wanted money, so he got money and put it in
17 the bag. And that was it.
- 18 Q Did he ever say anything?
- 19 A No.
- 20 Q Were you able to tell the race or ethnicity of the
21 person?
- 22 A He either looked mixed or foreign to me.
- 23 Q Did you see any identifying marks on him?
- 24 A Tattoo on his neck.
- 25 Q I want to have these exhibits marked if I can.

Christy Sanders
Direct examination by Mr. Gowdy

1 (Photographs marked State's Exhibits Nos. 55 through 58
2 for Identification.)

3 Q I want to show you what's been marked 55 through 58
4 inclusive and ask you whether or not you recognize what is
5 depicted in those four photographs.

6 A Yes. That is our cash register that I dumped into his
7 bag.

8 Q Okay. Bear with me just one second.

9 (Pause.)

10 MR. GOWDY: Your Honor, we would move 55 through 58
11 inclusive into evidence at this point.

12 MR. WHELCHER: No objection.

13 THE COURT: They are admitted.

14 (Photographs marked State's Exhibits Nos. 55 through
15 58.)

16 MR. GOWDY: Permission to publish to the jury, Your
17 Honor?

18 THE COURT: You may.

19 Q Let me start with No. 58. What's the jury looking at?

20 A The front door of the Subway, the entrance.

21 Q When you were describing what happened, where was your
22 co-employee? Where had Amanda walked to?

23 A She was standing right there where that green trash
24 can is. That's where our trays were. And that's the door
25 he came into.

Christy Sanders
Direct examination by Mr. Gowdy

- 1 Q Okay. All right. Let me show you what's been
2 admitted as State's 57. What's the jury looking at there?
- 3 A That is our cash register and that is the drawer that
4 I dumped into the bag.
- 5 Q Okay. State's 55.
- 6 A That is the cash drawer.
- 7 Q And finally, ma'am, State's 56. Tell the jury what
8 they are looking at there.
- 9 A That's behind the counter, change that fell on the
10 floor.
- 11 Q And that was change that fell on the floor when?
- 12 A When I dumped the bag into the -- drawer into the bag.
- 13 Q Okay. I believe you and Ms. Cooper both talked with
14 the 9-1-1 operator, is that correct?
- 15 A Yes.
- 16 Q And if I understand my voices correctly, it may have
17 been you that was able to identify for 9-1-1 the make and
18 model of the automobile.
- 19 A Yes, because I saw it pass through several times. And
20 I seen it when he got in it.
- 21 Q And you identified it as what kind of car?
- 22 A I identified it as a burgundy Camry or something. I
23 didn't give an exact make.
- 24 Q Okay. Thank you, ma'am. Please answer any questions
25 the defense attorney may have for you.

Terry Lane
Direct examination by Mr. Gowdy

1 MR. WHELCHER: No questions, Your Honor.

2 THE COURT: You may step down.

3 MR. GOWDY: Your Honor, may it please the Court. The
4 state would call Officer Terry Lane.

5 TERRY LANE, having been first
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. GOWDY

8 Q Good afternoon, sir.

9 A Good afternoon.

10 Q Could you please introduce yourself to the ladies and
11 gentlemen of the jury? Tell them where you work. How long
12 have you been there?

13 A I'm Officer Terry Lane with the Duncan police
14 department. I've been in Duncan four years.

15 Q Four years?

16 A Yes, sir.

17 Q What is your position or title with the Duncan police
18 department, sir?

19 A I am a patrol officer.

20 Q Patrol officer. I want to go back with you if I can,
21 Officer, to December the 30th of 2008. Were you on patrol
22 in Duncan?

23 A Yes, sir.

24 Q And in your patrol car is there a radio?

25 A Yes, sir.

Terry Lane
Direct examination by Mr. Gowdy

1 Q And were you looking for a certain type car in the
2 evening hours of December the 30th?

3 A Yes, sir. A broadcast was put out from Spartanburg
4 communications that a robbery and a rape had happened at
5 Ultra Tan in Duncan. And then also they said they believed
6 the same subject had went to the Subway on 101. And they
7 put out a description of a burgundy Toyota or burgundy
8 Camry or Honda with a Hispanic male or black male driving.

9 Q All right. So you were looking specifically for a
10 burgundy Toyota Camry with either an African-American or
11 Hispanic male driving it.

12 A Yes, sir.

13 Q Did you see something on December the 30th that met
14 all of the above criteria?

15 A Yes.

16 Q And what did you do?

17 A I, I proceeded to make a traffic stop on the vehicle.

18 Q All right. I want to show you and get them marked
19 first.

20 (Photograph marked State's Exhibit No. 59 for
21 Identification.)

22 Q Let me show you State's 59 and ask you whether or not
23 you recognize that.

24 A Yes, sir.

25 Q What is that?

Terry Lane
Direct examination by Mr. Gowdy

1 A That's the vehicle I stopped that night.

2 MR. GOWDY: Your Honor, we would move State's 59 into
3 evidence.

4 MR. WHELCHER: No objection..

5 THE COURT: It is admitted.

6 (Photograph marked State's Exhibit No. 59.)

7 MR. GOWDY: Permission to publish, Your Honor.

8 THE COURT: You may.

9 Q Officer Lane, that is the car you stopped?

10 A Yes, sir.

11 Q And who was driving that car?

12 A Mr. Ter -- I can't pronounce his name, but Mr. Anterio
13 Formechez (sic) the defense called him earlier.

14 MR. GOWDY: Bear with me just one second.

15 (Pause.)

16 Q I show you State's 19 which has already been admitted
17 and State's 20 and ask you if you recognize what is
18 depicted in those two exhibits.

19 A Yes, sir.

20 Q Are you familiar with it?

21 A Yes, sir.

22 Q Let me publish State's 19, or republish it. Is that
23 the person you arrested driving the Toyota Camry?

24 A Yes, sir.

25 Q And did you see any identifying marks on his body at

Terry Lane
Direct examination by Mr. Gowdy

1 the time you encountered him?

2 A When I first encountered him, I didn't. But once I
3 took him out of the vehicle, because he was driving under
4 suspension, and got him out of the vehicle and he proceeded
5 to make his turn so I could walk him to the back; that's
6 when I noticed a star on the right side of his neck.

7 Q State's 20. Star tattoo on the side of the driver's
8 neck?

9 A Yes, sir.

10 Q Where did this stop take place, Officer Lane?

11 A I was coming westbound on 290 and the vehicle was
12 traveling eastbound at the intersection of East Main and
13 South Main (sic). And I flipped around on him in the
14 intersection and he pulled into the B. P. parking lot.

15 Q How far away would the Ultra Tan in Duncan be from
16 where this car-stop took place?

17 A I'd say probably around three, three and a half miles
18 maybe.

19 Q Are you familiar with the Subway in Greer on 101?
20 Have you ever been there?

21 A Yes, sir.

22 Q Do you know about how far away this car-stop would
23 have been from the Subway in Greer?

24 A There's a couple of different directions you can go.
25 If you went down, and went down Rogers Bridge Road, it'd

Terry Lane
Cross-examination by Mr. Whelchel

1 probably be maybe 6 miles. And if you go down 85 to 101
2 probably five, give or take.

3 Q Thank you, Officer Lane. Please answer any questions
4 the defense attorney may have for you.

5 A Yes.

6 CROSS-EXAMINATION

7 BY MR. WHELCHER

8 Q What time was it when you made this traffic stop, sir?

9 A I'd say around 9:00 o'clock, somewhereabouts. I
10 can't remember the exact time, but it was.

11 Q Okay. Thank you, sir.

12 MR. GOWDY: Nothing on redirect, Your Honor.

13 THE COURT: You may step down.

14 MR. GOWDY: Your Honor, would the Court be gracious
15 enough to allow me to approach with defense counsel on a
16 scheduling matter?

17 THE COURT: Sure.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen, we are
21 going to recess for lunch now. We will resume this
22 afternoon at 1:45, at 1:45.

23 Keep in mind my caution previously given you. No
24 discussions about the case, no research, no investigation,
25 no media exposure.

Lauri Monseratte
Direct examination by Mr. Gowdy

1 Do have a good lunch. Please report to your jury room
2 at 1:45, 1:45.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Court is in recess until 1:45.

6 We'll need the defendant back in the courtroom at
7 1:45.

8 (Whereupon, a recess was taken.)

9 THE COURT: All right. Are we ready for the jury?

10 MR. GOWDY: The state is, Your Honor.

11 MR. WHELCHER: Yes, sir.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good afternoon, ladies and gentlemen.

15 We're going to proceed with or continue with the
16 state's presentation of evidence.

17 MR. GOWDY: May it please the Court, Your Honor. The
18 state could call Ms. Lauri Monseratte.

19 LAURI MONSERATTE, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. GOWDY

22 Q Good afternoon, ma'am.

23 A Good afternoon.

24 Q I'm going to get you to keep your voice up good and
25 strong where the last two ladies in the jury box can hear

Lauri Monseratte
Direct examination by Mr. Gowdy

- 1 you. Okay?
- 2 A Okay.
- 3 Q Introduce yourself to the jury. Tell them your name
4 and where you live.
- 5 A I'm Lauri Monseratte and I live in Greenville, South
6 Carolina.
- 7 Q How old are you?
- 8 A I'm 19, about to be 20.
- 9 Q Okay. I want to go back with you to December of 2008.
10 Where were you living in December of 2008?
- 11 A Duncan, South Carolina.
- 12 Q Duncan?
- 13 A Uh-huh.
- 14 Q And with whom were you living?
- 15 A The defendant.
- 16 Q And what did you call him? What did he go by?
- 17 A Mitch -- Mitch Alcantara.
- 18 Q And how long had you -- and I apologize for asking you
19 personal questions -- but how long had you and he been
20 boyfriend and girlfriend?
- 21 A A little over a year.
- 22 Q So December of 2007 until December of 2008 you and the
23 defendant were boyfriend and girlfriend.
- 24 A Yes, sir.
- 25 Q And for what period of time were you living together?

Lauri Monseratte
Direct examination by Mr. Gowdy

- 1 A Probably nine months at the most.
- 2 Q And do you see the person that you know as Mitch
3 Alcantara in the courtroom?
- 4 A Yes.
- 5 Q Will you point to him?
- 6 A Right there.
7 (Whereupon, the witness pointed to the defendant.)
- 8 Q Blue shirt sitting in between Mr. Whelchel --
- 9 A Yes, sir.
- 10 Q All right. I want to show you some footage that has
11 already been introduced. In fact, this is State's Exhibit
12 No. 5.
- 13 A Okay.
- 14 Q The jury has seen it. I don't know whether you have
15 or not.
- 16 MR. GOWDY: But I want, I want to dim the lights maybe
17 just a hair, sir. Thank you.
- 18 Q I don't know if we can pause it or not. If we can, do
19 you recognize that jacket?
- 20 A Yes, sir.
- 21 Q How do you recognize that jacket?
- 22 A That was my boyfriend's jacket.
- 23 Q Okay.
- 24 MR. GOWDY: Keep going.
- 25 Q Did you and he have knives in the home that you

Lauri Monseratte
Direct examination by Mr. Gowdy

1 shared?

2 A Yes. I had one kitchen knife and the regular just
3 like utensils like butter knives and stuff.

4 Q Okay.

5 MR. GOWDY: Go back. See if you can get a clear shot
6 of the bag.

7 Q Have you ever seen that mask before?

8 A Not as a mask, as a hat, yes.

9 Q Okay. I want to move now, Ms. Monseratte, to State's
10 Exhibit No. 4. But I am going to give this young lady a
11 chance to switch out the video. So let me ask you a couple
12 of other questions.

13 December of 2008. Would you tell the jury what
14 financial condition you were in individually and what
15 financial condition as a couple you and the defendant were
16 in?

17 A Me individually, I was broke. I had recently quit my
18 job. So of course I didn't have a lot of money, and
19 neither did he.

20 Q Did you have hundreds of dollars of cash in a cash box
21 underneath the covering of a Christmas tree in your home?

22 A Not to my knowing.

23 Q Had you ever seen that before?

24 A No, sir.

25 Q So on December 29th you didn't know that y'all had

Lauri Monseratte
Direct examination by Mr. Gowdy

- 1 hundreds of dollars of cash in the house.
- 2 A No, sir.
- 3 Q On December the 30th were you in the car with the
4 defendant when Officer Terry Lane stopped you in Duncan?
- 5 A Yes, sir.
- 6 Q And did you provide permission to law enforcement to
7 come back to that home?
- 8 A Yes, sir.
- 9 Q And, and did the defendant stay every night there?
10 How frequent?
- 11 A Yes. We lived there.
- 12 Q You lived there.
- 13 A Yeah.
- 14 Q I want you to look at another video with me, please,
15 ma'am.
- 16 (Whereupon, the CD was played for the jury.)
- 17 Q Do you recognize that shirt?
- 18 A Yes, sir.
- 19 Q How do you recognize that shirt?
- 20 A That belonged to my boyfriend.
- 21 Q Do you recognize the person that the shirt is on?
- 22 A Yes, sir.
- 23 Q Who is that?
- 24 A That's Mitch.
- 25 Q All right.

Lauri Monseratte
Direct examination by Mr. Gowdy

1 MR. GOWDY: Let's move to State's Exhibit No. 5.

2 (Pause.)

3 MR. GOWDY: Can you pause that please, ma'am?

4 Q Ms. Monseratte, do you recognize the jacket in that
5 surveillance video?

6 A Yes, sir.

7 Q Do you recognize the book bag -- whose jacket does it
8 belong to? Whose jacket is that?

9 A Mitch.

10 Q Do you recognize the book bag?

11 A Yes, sir.

12 Q Did your then boyfriend, now defendant, have a black
13 book bag?

14 A Yes, sir.

15 Q Do you recognize the stocking hat but not as a mask?

16 A Yes.

17 MR. GOWDY: You can keep going.

18 Q Do you notice anything else distinctive about it?

19 A Not really.

20 Q Did you ever see him walk?

21 A Yeah, of course.

22 Q Does he walk like Mitch Alcantara?

23 A There's not enough for me to see. Like I would have
24 to get a better angle.

25 MR. GOWDY: Stop it.

Lauri Monseratte
Direct examination by Mr. Gowdy

- 1 Q You gave the police permission to come into your home.
2 Were you with them the night that they searched it?
- 3 A Yes.
- 4 Q Did you see the mask in the home?
- 5 A Yes.
- 6 Q Did you see the red hoody with the emblem on it in the
7 home?
- 8 A Yes, sir.
- 9 Q Did you see the shirt that he had on when he was going
10 to get an employment application?
- 11 A Yes, sir.
- 12 Q Did you see the black book bag?
- 13 A Yes, sir.
- 14 Q I think you testified, Ms. Monseratte, you described
15 yourself as broke.
- 16 A Yes, sir.
- 17 Q And as a couple you were broke.
- 18 A Yes, sir.
- 19 Q If you would, answer any questions the defense
20 attorney may have for you.
- 21 A Okay.
- 22 MR. WHELCHER: No questions.
- 23 THE COURT: You may step down.
- 24 THE WITNESS: Thank you.
- 25 MS. CRICK: Your Honor, the state calls Sean Nix.

Michael Sean Nix
Direct examination by Ms. Crick

1 MICHAEL SEAN NIX, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. CRICK

4 Q Can you please introduce yourself to the jury and let
5 them know where you work?

6 A Yes, ma'am. Deputy Michael Sean Nix, Spartanburg
7 County Sheriff's Office.

8 Q How long have you been with the sheriff's office?

9 A I've been with the sheriff's office almost nine years
10 this coming April.

11 Q What do you do there?

12 A I work in the crime scene unit at the sheriff's
13 office.

14 Q Can you explain what you do as your duties at the
15 crime scene unit?

16 A Yes, ma'am. Our duties are we're tasked to document
17 and collect evidence at crime scenes.

18 Q At some point were you, did you become involved with
19 this case on December 30th of 2008?

20 A Yes, ma'am.

21 Q Can you tell the jury what your involvement was
22 initially?

23 A Initially my involvement was to respond to a robbery
24 out at the Subway at Highway 101. Later in my shift I had
25 to go to Spartanburg Regional to pick up a sexual assault

Michael Sean Nix
Direct examination by Ms. Crick

1 kit.

2 Q So you responded to the Subway first. Is that
3 Spartanburg County?

4 A Yes, ma'am.

5 Q What did you do at the Subway?

6 A Upon arriving there I spoke with the deputy on the
7 scene, and he advised they had just had a robbery at the
8 Subway.

9 I proceeded to take photographs. And I was going to
10 collect the video if it was available, and it was. And I
11 collected the video from the Subway.

12 Q After you finished taking photographs that the jury
13 has already seen of the Subway did you have any other
14 involvement in evidence collection in this case?

15 A Oh, as, yes. Like I stated earlier, I picked up the
16 sexual assault kit from Spartanburg Regional.

17 Q Okay. I'm going to show you what I'm going to have
18 marked as State's 60.

19 (Box of sexual assault kit marked State's Exhibit No.
20 60 for Identification.)

21 Q I'm going to ask you if you recognize what that is.

22 A Yes, ma'am. That's part of the box that the sexual
23 assault kit, that was contained in it.

24 Q And do you -- when you handle any evidence in a sexual
25 assault kit do you sign this?

Michael Sean Nix
Direct examination by Ms. Crick

1 A Yes, ma'am.

2 Q To indicate that you had it?

3 A Yes, ma'am, a chain of custody.

4 Q And when you got this it had already been sealed by a
5 nurse?

6 A Yes, ma'am.

7 Q And I will give this back to you. Do you remember
8 which nurse it was?

9 A It was Nurse Jessica Burton.

10 Q So you didn't take anything out, you didn't handle
11 anything. You just had the sealed box.

12 A The sealed box and the clothes bag, yes, ma'am.

13 MS. CRICK: Your Honor, at this time I'd like to enter
14 State's 60 into evidence.

15 MR. WHELCHER: Without objection.

16 THE COURT: It's admitted.

17 (Box of sexual assault kit marked State's Exhibit No.
18 60.)

19 Q After you received the sexual assault kit, the
20 collection box, what did you do with it?

21 A I immediately left Spartanburg Regional and returned
22 to the sheriff's office where I then secured the sexual
23 assault kit in an evidence refrigerator which has a padlock
24 on it and is secured.

25 The clothes bag was entered into evidence along -- also

Jessica Burton
Direct examination by Ms. Crick

1 inside an evidence locker, which was also secured by a
2 padlock.

3 Q Was that the end of your involvement as far as this
4 case is concerned?

5 A Yes, ma'am.

6 MS. CRICK: Nothing further at this time, Your Honor.

7 MR. WHELCHER: No questions, Your Honor.

8 THE COURT: You may step down.

9 MS. CRICK: Your Honor, the state calls Jessica
10 Burton.

11 JESSICA BURTON, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MS. CRICK

14 Q Ms. Burton, could you introduce yourself to the jury
15 and let them know where you work?

16 A My name is Jessica Burton. I'm a registered nurse at
17 the Spartanburg Regional.

18 I've been trained in sexual assault cases. I have a
19 certificate in sexual assault nurses. And I've been at
20 Regional for three years.

21 Q And have you been in the emergency room the whole time
22 you've been at Regional?

23 A I have.

24 Q What kind of training did you have to have to become
25 an R. N.?

Jessica Burton
Direct examination by Ms. Crick

1 A It is an extreme training course. It takes about
2 eight months to complete everything. We have to do 20
3 pelvic exams. We have to assist the doctor in learning how
4 to do the pelvic exams. We have to do six rape exams by
5 ourselves with a physician present. And we also have to go
6 to court cases like this.

7 We also have to spend a day with police officers and
8 detectives to learn how their process handles after we give
9 them the rape kit. It's an extensive training.

10 Q So in addition to any training you had just to become
11 a nurse you did additional training to do sexual assault
12 exams specifically.

13 A Yes, ma'am.

14 Q And are you able to actually do the evidence
15 collection with the swabs in the vaginal area and the
16 rectal area and the oral swabs?

17 A I am.

18 Q Would you just in general give the jury an idea of
19 what is involved, not specifically necessarily to this case
20 but what's involved with a sexual assault exam. How do you
21 normally do it?

22 A It is basically a three-to-four-hour course. We have
23 to collect evidence off the body. That makes the victim
24 have to take off their clothes.

25 We have to take hair from their heads, hair from their

Jessica Burton
Direct examination by Ms. Crick

1 pubic area. And we also have to do a pelvic exam, which we
2 have to put a speculum in the vagina and collect evidence
3 from the inside on the cervix. It's a very long and
4 extensive exam. It usually takes three to four hours to
5 complete.

6 Q Before you start an exam like that are you required to
7 explain to somebody that comes in what all is going to be
8 done?

9 A We do. We have to explain to the victim what
10 happened. We have to make them sign four different
11 consents for us, for the state and for the police
12 department and for the county for us to do this exam. They
13 know how humiliating it is before they go into it.

14 Q And they have to agree that --

15 A They have to go to agree to do all of it from the
16 start to the finish.

17 Q Did you specifically perform a sexual assault
18 examination and collect evidence on a patient named
19 Katherine Rumley?

20 A I did.

21 Q And that was December 30th of 2008?

22 A Yes, ma'am.

23 Q Do you recall what her demeanor was like when she came
24 in?

25 A Very tearful. She was cooperative but very tearful

Jessica Burton
Direct examination by Ms. Crick

1 about what occurred that night.

2 Q And when you say about what occurred, what was her
3 chief complaint?

4 A She said she had been sexually assaulted by an
5 individual at her work place.

6 Q Did she generally tell you what had been done so that
7 you knew what areas to examine?

8 A Yes. She told me specifically that he rubbed between
9 her buttocks. He rubbed his penis. So we got a swab from
10 there. And she also said that he penetrated her vagina.

11 Q And so that would lead you to get a swab from there.

12 A Uh-huh.

13 Q After you got all of that information from her did you
14 go over everything, tell her what was going to be done?

15 A Yes, ma'am, I did.

16 Q And she consented to have the exam performed.

17 A She did.

18 Q And you did an exam head to toe. Just doing that
19 initial head-to-toe exam, what did you observe, if
20 anything?

21 A I observed bruising to the bilateral hip area, red and
22 dark in color.

23 Q And I'm going -- did you do a diagram --

24 A I did.

25 Q -- of what you saw with regards to that?

Jessica Burton
Direct examination by Ms. Crick

1 (Diagram marked State's Exhibit No. 61 for
2 Identification.)

3 Q Okay. Let me. I'm going to show you a diagram that's
4 marked as State's 61 and ask if you recognize what that is.

5 A Uh-huh.

6 Q What is it?

7 A This is the diagram where we place on the body where
8 we find any bruising or any evidence anatomical from the
9 body to help with the case.

10 Q Okay. And this is a diagram to document where any
11 injuries would be observed?

12 A Yes, ma'am.

13 Q And so on and so forth.

14 MS. CRICK: Your Honor, can I publish this to the
15 jury? It will just be for demonstrative purposes. I don't
16 necessarily need to move it in.

17 THE COURT: You may.

18 Q All right. Is this the diagram that you would have
19 made notes on at the time --

20 A Yes, ma'am.

21 Q -- of the exam? We see some writing on there. Can
22 you explain to the jury what that indicates?

23 A Just indicates where I found bruising at, which
24 corroborates the victim's story where she was held from
25 behind. It looked like fingerprint grips. And it was kind

Jessica Burton
Direct examination by Ms. Crick

1 of reddish-purple in color, which would indicate a fresh
2 bruise.

3 Q Those are on each side on the hip area.

4 A Of the hip area.

5 Q Did you use any sort of special light to look for
6 fluids or evidence?

7 A I did. It's called a Wood's lamp.

8 Q Did you find anything with that at that time?

9 A No, I did not.

10 Q What did you do after the Wood's lamp?

11 A What I did, we did a pelvic exam with the physician.
12 He did the pelvic exam. I took the swabs and put them in
13 the dryer, and I sealed them up in evidence.

14 Q When you say you did a pelvic exam, do you pull pubic
15 hairs --

16 A Uh-huh.

17 Q -- from the --

18 A Vagina area.

19 Q You collected head hairs that you pulled.

20 A Yes, ma'am.

21 Q Did you do a combing of the area, the pubic area?

22 A I did, yes, ma'am.

23 Q And you said you also did collect swabs. What areas
24 of the body did you collect swabs?

25 A I collected swabs from the back side in the crease

Jessica Burton
Direct examination by Ms. Crick

1 where she specifically told me that he had rubbed his
2 penis, in between. I also did swabs in the vagina, on the
3 vagina walls, on each wall, on each lips of the labia
4 majora and labia minora and then on the cervix. I did two
5 swabs.

6 Q And what did you do with those swabs after you
7 collected them?

8 A We dry them. We put them in a special dryer which
9 dries the evidence of the swabs. And I label them. I put
10 them in the bags, separate bags. I seal them. They get
11 sealed in a box and given to a police officer.

12 Q And in this case you sealed everything up. And you
13 would have handed that over to Officer Sean Nix --

14 A Yes.

15 Q -- in a sealed box --

16 A Yes, ma'am.

17 Q -- for him to take evidence.

18 (Swabs marked State's Exhibit No. 62 for
19 Identification.)

20 Q Okay. I'm now going to show you what has been marked
21 as State's 62. And you can open that and take a look
22 inside and tell me if you recognize what that is.

23 A These are the swabs that I collected from the rectal
24 area, the vaginal area. And we also swiped the oral mucus
25 membranes to make sure no evidence got on there.

Jessica Burton
Direct examination by Ms. Crick

1 Q And how do you know that those are the swabs that you
2 actually did? Is your name on it somewhere?

3 A My name, the date and the time are on there.

4 Q Okay.

5 MS. CRICK: Your Honor, at this time I'd like to enter
6 State's 62 into evidence subject to any chain.

7 MS. JONES: Your Honor, no objection subject to the
8 chain being established.

9 THE COURT: It's admitted.

10 (Swabs marked State's Exhibit No. 62.)

11 Q That box has to stay in your possession until you turn
12 it over to the officer, is that correct?

13 A Yes. That is correct. It does not leave my sight.

14 Q So when it goes on from there it goes to SLED. But
15 that was essentially the end of your involvement --

16 A It is.

17 Q -- with that particular item.

18 I'm going to show you one last thing that's already
19 been entered into evidence as State's 60. Can you tell me
20 if you recognize what that is?

21 A This is the chain of custody. I must sign it and give
22 it to the police officer to take back to the county.

23 Q And is your name on the box?

24 A The name, and the date and the time that I gave it to
25 the officer.

Jessica Burton
Cross-examination by Ms. Jones

1 MS. CRICK: Your Honor, I don't have anything further
2 at this time.

3 THE COURT: Ms. Jones.

4 MS. JONES: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. JONES

7 Q You testified that Ms. Rumley told you she was grabbed
8 from behind --

9 A Yes.

10 Q -- on this area.

11 A No. She -- what she did was that at knife point the
12 assailant made her turn around and grabbed her from behind.

13 Q Okay. And also on this a little farther down you
14 actually indicated no internal trauma seen, correct?

15 A Yes.

16 Q And, in fact, you noted a pain scale of zero to ten,
17 is that correct?

18 A Yes.

19 Q And additionally there was also zero injuries
20 reported, and again no trauma on her medical.

21 A But the bruises also indicating a trauma that did
22 occur to the bilateral hip area.

23 Q Let me ask you this. Did you review the medical
24 documentation prior to coming to court today?

25 A I did.

John David Westmoreland
Direct examination by Ms. Crick

1 Q Okay. And isn't it true on one of her medical
2 documentations a doctor put down no injuries, no trauma?

3 A Yes, ma'am. But in -- also as a rape examiner we're
4 trained that just because there's no internal trauma -- the
5 vagina's very elastic. And most cases you would not see
6 evidence of a trauma happening.

7 Q But you also wouldn't see evidence of trauma with
8 consensual sex, correct?

9 A Yes.

10 Q And, in fact, those weren't your notes. It's a
11 doctor's notes, correct?

12 A Yes, ma'am.

13 Q And you're not a doctor.

14 A No.

15 MS. JONES: Nothing further.

16 MS. CRICK: I don't have anything further, Your Honor.

17 THE COURT: You may step down.

18 MS. CRICK: Your Honor, the state calls Jack
19 Westmoreland.

20 JOHN DAVID WESTMORELAND,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. CRICK

23 Q Could you please give the jury your full name?

24 A My name is John David Westmoreland.

25 Q Where do you work?

John David Westmoreland
Direct examination by Ms. Crick

1 A Spartanburg County Sheriff's Office.

2 Q Can you explain to them what you do there at the
3 sheriff's office?

4 A As the evidence custodian I maintain and keep evidence
5 for court and for anything else.

6 Q Now, are there occasions when you're asked to take
7 evidence to the state law enforcement division to be
8 tested?

9 A Yes.

10 Q And that's part of your duties.

11 A Part of my job, yes, ma'am.

12 Q Now, in this particular case did you take some
13 evidence down to SLED to be tested?

14 A I did.

15 Q You took actually evidence on two occasions. You took
16 some swabs from the defendant, is that correct?

17 A That's correct.

18 Q All right. I'm going to show you. I don't think this
19 has been marked yet. We'll get it marked.

20 (Buccal swab marked State's Exhibit No. 63 for
21 Identification.)

22 Q This is State's 63. Can you tell me if you recognize
23 that?

24 A I do.

25 Q What is it?

John David Westmoreland
Direct examination by Ms. Crick

- 1 A It's where I took to SLED on the, the 7th --
- 2 Q The --
- 3 A -- of January of '09.
- 4 Q And this would be the buccal swabs from the defendant.
- 5 I know it's hard to see through that plastic but --
- 6 A Yes, it is.
- 7 Q All right. And at some point did you also take a
- 8 sexual assault kit down to SLED?
- 9 A I did.
- 10 Q All right. I'm going to show you --
- 11 MS. CRICK: Get this marked --
- 12 (SLED bag with remains of CSC kit marked State's
- 13 Exhibit No. 64 for Identification.)
- 14 MS. CRICK: -- as State's 64 just for identification.
- 15 Q Tell me if you recognize what that is.
- 16 A I do.
- 17 Q What is that?
- 18 A This is the rape kit I took to SLED.
- 19 Q When you actually take it to SLED does it look like
- 20 this?
- 21 A It's in a box when I carry it to SLED.
- 22 Q When you take it to SLED and it's still in the box
- 23 before it gets to SLED is it sealed when you take it?
- 24 A It is sealed, yes. Everything is sealed.
- 25 Q You don't open any of it.

John David Westmoreland
Direct examination by Ms. Crick

- 1 A I do not.
- 2 Q And when you take it to SLED and hand it over to their
3 intake people it remains sealed until they do whatever.
- 4 A It remains sealed. And they put it in a plastic, and
5 I usually sign and initial and date it.
- 6 Q So they put it in this bag and you initialed it.
- 7 A Correct.
- 8 Q And I think the last thing we took maybe was
9 State's 47. These are swabs from the floor at Ultra Tan.
10 Do you recognize that?
- 11 A Yes, I do.
- 12 Q And you also took those down to SLED to be tested?
- 13 A Yes, ma'am.
- 14 Q Would you have opened or unsealed those in any way,
15 shape or form before you took it?
- 16 A No.
- 17 Q So when you took that to SLED and turned it over to
18 their intake people it was still sealed the same way that
19 Shaffer had sealed it when he took it.
- 20 A Yes, sealed. It was also sealed again in the plastic
21 and initialed and signed.
- 22 Q And that was everything as far, I mean, you took other
23 evidence, but that was everything as far as swabs that you
24 took in the sexual assault kit.
- 25 A Yes, ma'am.

John David Westmoreland
Cross-examination by Mr. Whelchel

1 MS. CRICK: Your Honor, I have nothing further.

2 CROSS-EXAMINATION

3 BY MR. WHELCHER

4 Q Tell me, Mr. Westmoreland, how when you took the rape
5 kit or the sexual assault kit -- when was that taken to
6 SLED?

7 A January the 7th of '09.

8 Q And the buccal swabs went at the same time?

9 A Yes, sir.

10 Q Okay. And there was another set of swabs, is that
11 correct, from the floor?

12 A Yes, sir. It went at the same time.

13 Q Okay. Thank you, sir.

14 MS. CRICK: I'm sorry. Your Honor, there is nothing
15 on redirect.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 MS. CRICK: Your Honor, the state calls Nikki Perry.

19 NICOLE RENEE PERRY, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. CRICK

22 Q Could you please tell the jury your full name?

23 A Nicole Renee Perry, P-E-R-R-Y.

24 Q Where do you work?

25 A I'm currently employed with the South Carolina Law

Nicole Renee Perry
Direct examination by Ms. Crick

1 Enforcement Division, commonly known as SLED.

2 Q How long have you been at SLED?

3 A I've been employed with SLED since June of 2006.

4 Q What is your job at SLED?

5 A I'm a forensic technician in the evidence control
6 department. We log in and package evidence brought in by
7 agencies across the State of South Carolina.

8 Q So when anything comes in there you're the person that
9 documents it and sends it where it needs to go within SLED.

10 A Yes, ma'am.

11 Q And do you keep records of everybody who deals with
12 that piece of evidence in SLED?

13 A We have an electronic chain of custody.

14 Q I'm going to show you something that's already been
15 entered into evidence, which is State's 47, floor swabs or
16 swabs from a floor. Can you tell the jury if you recognize
17 that? And you may have to look at the wrapper.

18 A I recognize the yellow label affixed to the front of
19 the heat-sealed pouch. It has SLED Lab No. L0900194. And
20 this is Container A.

21 Q And that -- do you have what that is documented
22 somewhere on a form?

23 A Yes, ma'am. Per our chain of custody, it contains
24 swabs from the washroom floor.

25 Q Do you have documentation of who gave you that piece

Nicole Renee Perry
Direct examination by Ms. Crick

1 of evidence?

2 A On our -- on the chain of custody, I received it from
3 John Westmoreland of the Spartanburg County Sheriff's
4 Office.

5 Q Once you got it from him, do you open up the swabs,
6 the sealed swabs? What do you do with them?

7 A I do not open items of evidence that come into SLED
8 that are sealed.

9 In this case for me they were resubmitted, which means
10 that they were submitted to SLED previously. And they
11 resubmitted them back to the lab maybe for further testing.

12 So they will come back into me in our sealed
13 heat-sealed pouch. I usually will then place it in a fresh,
14 new heat-sealed pouch and reseal it again to have John
15 re-initial and date on that seal so that it'll show that
16 current date that he resubmitted the evidence into the lab.

17 Q And when the swabs come to you, you don't open them,
18 test them, anything. You give them to whom?

19 A When, when they come into the lab sealed I do not
20 break a seal. Then we place, excuse me, after we will seal
21 the bag and give it a lab number, we will place it in our
22 evidence room, in our sealed evidence room, in D. N. A.
23 intake storage, which is a refrigerator inside the locked
24 evidence room.

25 Q So in this particular case after you received these

Nicole Renee Perry
Cross-examination by Mr. Whelchel

1 swabs you sent them to D. N. A. storage.

2 A Yes, ma'am. I put them in the D. N. A. intake
3 storage.

4 MS. CRICK: I have nothing further at this time.

5 CROSS-EXAMINATION

6 BY MR. WHELCHER

7 Q Correct me if I'm wrong, Ms. Perry. You and
8 Mr. Westmoreland do essentially the same thing on different
9 ends of the rope, so to speak. He brings the evidence --
10 or the evidence that's collected and given to him, he
11 brings to SLED and gives to you.

12 A Correct.

13 Q Okay. And then you give that evidence out of SLED to
14 the different technicians and people who do the testing, is
15 that right?

16 A Right. The D. N. A. technician would come down to our
17 evidence room and pick up the evidence from our D. N. A.
18 intake storage.

19 Q Okay. And you went a little fast earlier. Give me
20 that L09.

21 A Our lab number is L0900194.

22 Q And you received that in from Mr. Westmoreland when?

23 A I received it from Mr. Westmoreland on November the
24 20th of 2009.

25 Q Okay. Do you know where it was between January the

Amy Stephens
Direct examination by Ms. Crick

1 9th and November the -- what? November: When did you
2 receive it again?

3 A It was resubmitted to our lab for the second time to
4 me on November the 20th of 2009.

5 Q Okay. Let's back. Do you have records to show that
6 it was initially submitted?

7 A It was originally submitted per our chain of custody
8 on January the 7th of 2009.

9 Q And then resubmitted when?

10 A And it was resubmitted to me on November the 20th of
11 2009.

12 Q When did you give it back to Mr. Westmoreland after he
13 submitted it on January the 7th?

14 A Originally it was returned to Spartanburg County
15 Sheriff's Office to Anita Mullinax on June 17th of 2009.

16 Q Okay. Thank you, ma'am.

17 MS. CRICK: There's nothing further from this witness,
18 Your Honor.

19 THE COURT: You may step down.

20 MS. CRICK: Your Honor, the state calls Amy Stephens.

21 AMY STEPHENS, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. CRICK

24 Q Would you please introduce yourself to the jury and
25 let them know where you work?

Amy Stephens
Direct examination by Ms. Crick

1 A Amy Stephens. I'm employed with the South Carolina
2 Law Enforcement Division.

3 Q What do you do at SLED?

4 A I'm a forensic technician in the evidence control
5 department. We package and log in evidence that we receive
6 from the agencies throughout the State of South Carolina.

7 Q So essentially you do the same thing that Nikki does.

8 A Correct.

9 Q Depending on who's on duty that day.

10 A Correct.

11 Q In this particular case did you receive some evidence
12 from Spartanburg County?

13 A I did.

14 Q I am going to show you several things, first, what's
15 marked as State's 64. Well, let me move this. And I'm
16 also going to show you what probably was initially with
17 that, which is State's 60, and ask you if you recognize
18 what that is.

19 A I recognize this pouch right here which has our lab
20 number, L0900194, item No. 1, which is a C. S. C. kit from
21 the victim.

22 This we actually leave in the C. S. C. kit. And it
23 looks like this was cut off the back of the C. S. C. kit.
24 We did not do this.

25 Q So when you originally get the C. S. C. kit does it

Amy Stephens
Direct examination by Ms. Crick

1 look like this?

2 A We get it in a sexual assault box and we physically
3 pull the evidence out of the box and package it in a
4 heat-sealed pouch.

5 Q Do you open up any of the evidence, open up any of the
6 swabs, do anything to it other than package it?

7 A No. All we did was open the C. S. C. kit box and
8 replace it in the -- inside the box inside of our
9 heat-sealed pouch.

10 Q And then each individual component of the kit, does it
11 go to different sections of SLED?

12 A The D. N. A. evidence in the kit will be sent to D. N.
13 A., our analysis unit, to be analyzed. And then we
14 separate the toxicology to be sent to be analyzed.

15 Q And in this case you received this and put it in this
16 package and sent some of it to the D. N. A. lab.

17 A Correct.

18 Q I'm going to also show you what's been marked as
19 State's 63 and ask if you recognize that.

20 A I recognize the lab number, L0900194, item No. 2,
21 which is a buccal swab, I believe, from the subject.

22 Q And when you receive that swab from the subject you
23 simply put in it a heat-sealed pouch.

24 A Correct.

25 Q Did you open, test, do anything to those swabs?

Amy Stephens
Direct examination by Ms. Crick

1 A No, I did not.

2 Q What did you do after you received that?

3 A I packaged it in a heat-sealed pouch, affixed a label
4 to the outside of the pouch and then placed it in our D. N.
5 A. intake storage refrigerator.

6 Q Do you recall or can you look at your notes and tell
7 us who brought that evidence to you?

8 A Yes. I received this evidence on January the 7th of
9 2009 from John Westmoreland of the Spartanburg County
10 Sheriff's Office.

11 Q And the sexual assault kit that you just looked at
12 previously, who did you receive that from?

13 A John Westmoreland of the Spartanburg County Sheriff's
14 Office.

15 Q And when he brought that to you everything was still
16 sealed in the original condition?

17 A To my knowledge it was, yes.

18 MS. CRICK: Your Honor, I don't believe I have any
19 further questions at this time of her.

20 MR. WHELCHER: No questions, Your Honor.

21 THE COURT: You may step down.

22 MS. CRICK: Your Honor, the state is going to recall
23 Robert Shaffer.

24 THE COURT: Okay. Mr. Shaffer, you are still under
25 oath for the purpose of these questions, having already

Robert Shaffer
Direct examination by Ms. Crick

1 been sworn.

2 THE WITNESS: Sure.

3 ROBERT SHAFFER, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. CRICK

6 Q Investigator Shaffer, when you were on the stand
7 previously you spoke about collecting swabs from the
8 defendant.

9 A Yes.

10 Q I'm not sure if you identified the swabs at that time,
11 so I'm now going to show you what's marked as State's 63
12 and ask you if you recognize that. If you need to take it
13 out, you can.

14 A Yes, I do.

15 Q Can you tell the jury what that is?

16 A These are the buccal swabs I collected from the
17 defendant.

18 Q At that car stop in Duncan?

19 A Yes.

20 Q And after you collected the swabs what did you do with
21 them?

22 A Packaged and sealed them and put them in our evidence
23 room.

24 MS. CRICK: Your Honor, at this time I'd like to enter
25 State's 63 subject to any changes.

Paul Meeh
Direct examination by Ms. Crick

1 MR. WHELCHER: Without objection, Your Honor, subject
2 to the chain.

3 THE COURT: It's admitted.

4 (Buccal swab marked State's Exhibit No. 63.)

5 MS. CRICK: Your Honor, I have nothing further.

6 MR. WHELCHER: No questions, Your Honor.

7 THE COURT: You may step down.

8 MS. CRICK: Your Honor, she stepped out. The next
9 witness is from SLED. It is Mr. Coleman. Your Honor, may
10 I approach briefly?

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 MS. CRICK: The state calls Paul Meeh.

14 PAUL MEEH, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. CRICK

17 Q I probably did not pronounce your last name --

18 A Meeh is correct. That's correct.

19 Q I was going to ask you to introduce yourself to the
20 jury.

21 A My name Paul Meeh. Hi. How are you?

22 Q Where do you work?

23 A I'm a forensic scientist at SLED, South Carolina Law
24 Enforcement Division.

25 Q How long have you been at SLED?

Paul Meeh
Direct examination by Ms. Crick

1 A About two years.

2 Q What do you do specifically there?

3 A I'm a -- I do serological analysis, body fluids, and
4 D. N. A. precisely.

5 Q So anything that comes in that involves D. N. A.
6 body-fluids analysis you would test.

7 A Yes. That's correct.

8 Q In 2008, well, actually January of 2009, were you at
9 SLED? Were you in training? What was your situation?

10 A Yes, I was in training under Laura Mills, Dr. Laura
11 Mills.

12 Q So what were you specifically doing at that time under
13 her kinda of tutelage?

14 A She was supervising me doing case work. I was doing
15 any case work that came in for her. And it just sort of
16 was randomly assigned cases.

17 Q So in this particular case you received evidence. And
18 I'll show you what's been marked now as State's 62. Well,
19 you actually probably need the number. So I'm going to put
20 it inside this bigger pouch, and that's State's 64. Do you
21 recognize that?

22 A Yes, I do. And I can recognize this by my initials
23 here. You can see where I closed it, and the date that it
24 was worked on and closed. So, yes, I did.

25 Q And that particular item is commonly known as a sexual

Paul Meeh
Direct examination by Ms. Crick

1 assault kit?

2 A Yeah. It's sometimes referred to as a C. S. C. kit or
3 a sexual assault kit. And this one has -- this is my
4 handwriting here with the number. And I did most -- I did
5 probably all the work on that.

6 Q Okay. And so that is State's 62. I'm going to ask
7 you to look inside there and tell the jury what that is.

8 A Okay. We have here, it's broken down into pouches of
9 different swabs. It has oral swabs, rectal swabs and
10 vaginal swabs.

11 What happens is if there's a victim of a sexual assault
12 they'll go to a nurse, and the nurse will perform an
13 examination and give us these swabs to test for body fluids
14 such as semen. And then I'll try to identify who the semen
15 is from.

16 Q Now, before you can identify who the semen is from you
17 have to have something else, correct, a sample from a
18 suspect?

19 A That is correct. We usually don't accept cases
20 without a sample from a suspect but we can -- I mean,
21 sometimes we can process them and identify somebody,
22 somebody through a database search. But it's nice to have
23 a sample from the subject; yes.

24 Q I'm going to show you what's been marked as State's 63
25 and ask if you recognize that.

Paul Meeh
Direct examination by Ms. Crick

1 A Yes. I do. Here are my initials here and the date
2 that it was worked on, and also L. H. M.'s initials, Laura
3 Mills' initials.

4 Q So that is specifically a D. N. A. sample or a swab
5 from a suspect.

6 A It's Item No. 2. Yes, that's correct. These are
7 buccal swabs, which are swabs from the inside of your cheek
8 from a suspect.

9 Q And I think you received one more thing in D. N. A.
10 I'm going to show you what's been marked as State's 47.
11 And be careful because this top is open.

12 A Okay. Thank you.

13 Q And ask you if you can identify that.

14 A Actually this may be something that I didn't work on
15 in this case. Some of the items I -- these are not my
16 initials here. Some of the items were processed by Laura
17 Mills herself. They came in after the fact. Like this is
18 marked 1/23/09. And I don't see my initials here, so I
19 don't think I worked this.

20 Q So that's something to ask her.

21 A Yes, please.

22 Q Okay. When these items came in, the sexual assault
23 kit and some other swabs, what's the first thing you do?
24 Are they sealed when you get them?

25 A Yes, absolutely. The first thing I do is check and

Paul Meeh
Direct examination by Ms. Crick

1 make sure that the package has, you know, has complete
2 integrity, it hasn't been compromised in any way.

3 I check the chain of custody to make sure it hasn't
4 been outside of your labs or outside someone's hands in our
5 lab.

6 Q Okay. In this was the chain of custody --

7 A It was solid. And so I proceeded with work, which
8 would consist of cutting that package obviously.

9 The first thing I do is look into the kit and see what
10 all swabs are there, what all. You know, I quantify what's
11 there, how many swabs of each there are. And then I test
12 those for body fluids. And in this case specifically it was
13 tested for semen, I'm sure, but I -- if I may refer to my
14 notes I could find the --

15 Q Yes. Please do.

16 A And so, yeah. I got the -- dated on the 13th, on
17 January the 13th I tested for the vaginal swabs and the
18 rectal swabs for semen from the C. S. C. kit.

19 Q Okay. I'm going back up just a little bit.

20 Can you generally explain to the jury what's D. N. A.,
21 where it's found in the body?

22 A Yeah. Excuse me. That's not a problem.

23 D. N. A. stands for deoxyribonucleic acid. It's in all
24 of your cells. It's, it's the way heredity is passed in
25 humans. That's pretty much it. You get half of it from

Paul Meeh
Direct examination by Ms. Crick

1 your father and half it from your mother.

2 Q Can any two people have identical D. N. A.?

3 A Yes, twins can. But that's pretty much it, I mean:
4 It'd have to be.

5 Q Identical twins?

6 A Identical twins.

7 Q And when you get evidence from somebody can you just
8 look at that D. N. A. and tell you this is who this person
9 is, or do you have to have something to compare it to?

10 A You have to have something to compare it to. I mean,
11 yeah, you have to measure it against them.

12 Q In this particular case can you just walk the jury
13 through exactly what you did after you got this evidence,
14 what you did and what the results were of your testing?

15 A Yeah. That's not a problem.

16 So on the 13th it shows here that I, I got a blood
17 standard, No. 1, from a Katherine Rumley, and excuse the
18 pronunciation.

19 Q That's all right.

20 A That was cut on the 13th, and the vaginal swabs and
21 the rectal swabs.

22 So what I would do is take the, take the blood standard
23 and put it into a tube and set it aside and then take the
24 vaginal swabs and the rectal swabs. I cut a small piece of
25 those and put those into one set and then cut a larger piece

Paul Meeh
Direct examination by Ms. Crick

1 to actually use for identification later. And that's
2 because the smaller piece, the initial piece, is used to
3 test for the presence of semen.

4 I need to make sure that semen is even on there before
5 I move on into the other testing, because it would just be a
6 waste. And in this case I marked down that, yes, it was
7 positive for semen. So I proceeded to do D. N. A. on those
8 after that.

9 Q So when you say it was positive for semen, what
10 specifically -- were those the vaginal and rectal swabs?

11 A Yes. That's correct.

12 Q Okay. So what did you do after you found out that was
13 positive for semen?

14 A So then we do what's called a differential extraction.
15 And that means that we separate the sperm and nonsperm
16 fractions.

17 We need to tell what two people are involved there.
18 And we're able to do that by -- the sperm lights
19 differently. They, they won't break down as easily as the
20 epithelial cells. So we can tell the difference.

21 Q So in this particular case what did you find? Did
22 you -- after you figured it was semen did you develop a D.
23 N. A. profile?

24 A Yes, I did. One second, please.

25 So in this particular case I found that the D. N. A.

Paul Meeh
Direct examination by Ms. Crick

1 profile developed from the semen on Items 1.3 and 1.4, which
2 were those two swabs I was telling you about, the vaginal
3 and rectal swabs, matches the D. N. A. profile of -- you'll
4 have to excuse me -- Miliciades Alcantara, I believe.

5 The probability of randomly selecting an unrelated
6 individual having a D. N. A. profile matching the semen on
7 these items is approximately one in 84 quadrillion.

8 Q So can you just explain in very basic terms what that
9 means, what's a match and what is that statistic?

10 A So what that match means, the D. N. A. that we test,
11 the way we test it, it comes out something similar to a
12 fingerprint, we'll call it. And when we attempt to match
13 those two things it's -- you can mathematically measure how
14 good or how bad that match is. And in this case it was an
15 exact match at every locus and generated that very large
16 number, one in 84 quadrillion.

17 Q And you compared that semen or that D. N. A. you got
18 from the semen to the actual known swabs you received on
19 the defendant, Miliciades Alcantara.

20 A That's correct.

21 Q And that's what you're talking about was a match, his
22 swab of his D. N. A. and the rectal and vaginal swabs
23 collected from Katherine Rumley.

24 A The semen on the rectal and vagina swabs was a match.

25 Q Now, you also tested some floor swabs. Is that -- I

Paul Meeh
Cross-examination by Ms. Jones

1 think I handed those to you.

2 A I'm sorry. I'll have to dig back.

3 Q That's okay.

4 A This case got separated --

5 Q Okay.

6 A -- into two people. On my first sheet here on the
7 13th I have no analysis performed under the washroom floor
8 and the wash -- the two washroom samples, excuse me, Items
9 3 and Items 4. So there's a chance that Laura Mills would
10 have processed that.

11 Q So your findings as far as the vaginal swab and the
12 rectal swab, was that pretty much the end of your testing
13 and analysis of these items?

14 A I'm going to say yes. It appears from my worksheet
15 that those -- that is the extent of the work that I did.

16 Q Okay.

17 MS. CRICK: Your Honor, I have nothing further at this
18 time.

19 CROSS-EXAMINATION

20 BY MS. JONES

21 Q Mr. Meeh, you indicated you were working under
22 Dr. Mills, is that correct?

23 A That's correct.

24 Q Okay. And it's pretty common procedure to get one of
25 those nice little forms, correct, that says the analysis

Paul Meeh
Cross-examination by Ms. Jones

1 you did and the results you get?

2 MS. JONES: I will get this marked.

3 (SLED report marked Defendant's Exhibit No. 2 for
4 Identification.)

5 Q I'm handing you something that's been marked
6 Defendant's Exhibit 2. Do you recognize that?

7 A May I compare it to this other? This is a
8 supplemental report. It was probably processed by, by
9 Laura Mills. As you can see here, it's indicated at the
10 top. It's a supplemental. So, no, this is not my report.

11 Q No. Maybe you misunderstood my question. That's not
12 necessarily your report. But that's what you put your D.
13 N. A. analysis on, correct, a nice little form?

14 A That's correct.

15 Q Okay.

16 A Yeah. That's correct.

17 Q Okay. And did you fill out your own form or did
18 Ms. Mills do that for you?

19 A I would have written this original report, the
20 non-supplemental report. I would have put the text into
21 this and she would have reviewed it and signed it.

22 Q Okay. So you didn't actually submit one of those very
23 formal forms. You had Ms. Mills to do that for you because
24 you were working under her? In other words, she was
25 verifying all of your work, correct --

Dr. Laura Mills
Direct examination by Ms. Crick

- 1 A That's correct.
- 2 Q -- because you were still training?
- 3 A Yeah. That's right. That's what we did, I'm sure.
- 4 Q So all of the, all of the results you got Ms. Mills
5 then verified, is that correct?
- 6 A That's correct.
- 7 MS. JONES: I have nothing further, Your Honor.
- 8 MS. CRICK: Nothing further, Your Honor.
- 9 THE COURT: You may step down.
- 10 THE WITNESS: Thank you.
- 11 Should I leave this for Laura Mills? We're sharing
12 this case. Thank you.
- 13 MS. CRICK: Your Honor, the state calls Laura Mills.
14 DR. LAURA MILLS, having been
15 first duly sworn, testified as follows:
16 DIRECT EXAMINATION BY MS. CRICK
- 17 Q Would you please tell the jury your full name and
18 where you work?
- 19 A Yes. My name is Laura Mills, and I'm employed as a
20 forensic scientist with the South Carolina Law Enforcement
21 Division, which is more commonly referred to as SLED.
- 22 Q What do you do at SLED specifically?
- 23 A I am a forensic scientist, which means I perform
24 serology testing which is the identification of body fluids
25 and D. N. A. analysis which is telling who that body fluid

Dr. Laura Mills
Direct examination by Ms. Crick

1 came from. And I've been doing this for approximately five
2 years now.

3 Q Did you have to have special training to be able to do
4 this?

5 A Yes, I did.

6 Q What did you do?

7 A Well, I have a bachelor's degree in chemistry which I
8 received from Clemson University. I also have a Ph. D.
9 degree in pharmaceutical sciences from the University of
10 South Carolina.

11 Following the completion of these two degrees I was
12 hired on at SLED where I had to train under the direct
13 guidance and supervision of a court-qualified D. N. A.
14 analyst for approximately one year.

15 During the 1-year training I was taught how to perform
16 serology testing, how to perform D. N. A. testing, how to
17 handle evidence and maintain the integrity of the evidence.
18 And I would perform case work under the guidance of this
19 court-qualified analyst.

20 Q Have you ever been qualified as an expert in D. N. A.
21 before in a courtroom?

22 A Yes, I have.

23 Q Do you know about how many times, just the best you
24 can?

25 A I would say somewhere between 15 and 20.

Dr. Laura Mills
Direct examination by Ms. Crick

1 MS. CRICK: Your Honor, at this time I would like to
2 qualify her as an expert in D. N. A. analysis.

3 MS. JONES: No objection, Your Honor.

4 THE COURT: She is so qualified.

5 Q Your SLED lab is accredited.

6 A Yes, it is.

7 Q Do you have yearly reviews and tests and all of that
8 sort of thing that you have to continue to do?

9 A Yes. Every year, we, the forensic scientists in our
10 department, the D. N. A. department, are required to
11 perform two D. N. A. proficiency tests and one serology
12 proficiency test.

13 Those results from those tests are submitted to our
14 accrediting agency, which is the American Society of Crime
15 Laboratory Directors, Laboratory Accreditation Board. And
16 they are notified of our results. And we actually have to
17 pass these results in order to maintain our status as a
18 forensic scientist.

19 Our lab in and of itself is also audited every year,
20 mostly externally, which means an outside agency or outside
21 lab comes in and looks at our work and what, what we do.
22 And we have to successfully pass all of those audits and all
23 of those reaccreditations.

24 Q At any point have you had a trainee under you?

25 A Yes, I have.

Dr. Laura Mills
Direct examination by Ms. Crick

1 Q I'm going to go back to specifically -- I guess it
2 would have been January of 2009. Were you training
3 somebody at that time?

4 A Yes, I was.

5 Q Do you remember who it was?

6 A Yes. I was training Paul Meeh at the time.

7 Q So what was the arrangement? He would do testing but
8 you had to review it?

9 A Right. He would. Once I taught him how to cut out
10 evidence and how to do the testing he would actually take
11 the case and work the case just as if he was the forensic
12 scientist in charge of this case.

13 He would make the cuttings. He would do the
14 extractions, the analysis. I would review what he had done.
15 I would sign off on everything that he had done, look at the
16 data, make sure that the data was correct and that I agreed
17 with what his results were. And then I would actually write
18 the report, take ownership of that case and put my name on
19 the report.

20 Q And that's what happened in this particular case.

21 A Yes, it is.

22 Q So there were four eyes looking at it instead of two.
23 He worked on it, you reviewed it and then you submitted it.

24 A Right. And actually he would have looked at it, and
25 then I looked at it. And then we also to have to have a

Dr. Laura Mills
Direct examination by Ms. Crick

1 technical review, which means another analyst looks at the
2 work, signs off on it. And then we have an administrative
3 review of the report. So we actually have another review.
4 So by the time the report went out there was actually four
5 different people that had looked at it.

6 Q I'm going to show you what I showed him, which is
7 marked as State's 64. I'll show you that first and ask if
8 you recognize that.

9 A Yes, I do. This would have been the sexual assault
10 kit that was submitted. I recognize it because we have a
11 specific lab system that we use at SLED. So the case
12 number would be L09194. And what that means is the L
13 stands for just lab number. 09 would mean that it came in
14 in the year 2009. And 194 means it was the 194-case
15 submitted at SLED. And then No. 1 corresponds to the
16 sexual assault kit. That's just what number it was given
17 when it came in the door.

18 It does have our case number on the components of the
19 kit, as well as the initials. You can see my initials on
20 the yellow tab that says that it was assigned to me.

21 Q All right. And I'm going to show you now what's been
22 marked as State's 63. And tell me if you recognize that
23 one.

24 A Yes. And, again, it's the same way. It's L09194,
25 which is our case number. And then this is item No. 2,

Dr. Laura Mills
Direct examination by Ms. Crick

1 which would be the buccal swabs from Miliciades Alcantara.

2 And, again, it's got my initials.

3 Q So initially both of these came to Paul who just
4 testified.

5 A Right.

6 Q He would have done the testing.

7 A Correct.

8 Q And then you would reviewed the testing --

9 A Correct.

10 Q -- on both of these items.

11 A Correct.

12 Q Now, you received some additional evidence. I'm going
13 to show you what's been marked as State's 47 and ask if you
14 recognize that.

15 A Okay. Yes. And these came in, as it says L09194,
16 container No. A. And you actually have to look at our
17 system to know what two items are present in container A.
18 But I've written them actually on each envelopes with the
19 case number and saying that they're item No. 3 and item No.
20 4. And they've got my initials on them. So, yes, these
21 are the swabs from the washer and floor, which would be
22 item No. 3. And item No. 4 was swabs from washer and floor
23 area.

24 Q When you received those Paul had not tested those.

25 A No. Originally, when we did the kit it was just the

Dr. Laura Mills
Direct examination by Ms. Crick

1 sexual assault kit. A report was written and released.

2 And those swabs were initially not analyzed.

3 It was then determined that those swabs did, in fact,
4 need to be analyzed. So I analyzed those swabs and put out
5 what we call a supplemental report, which just means it's an
6 additional report to the one that's already out.

7 Q And I know you guys get a lot of evidence at SLED, so
8 you have a policy about testing.

9 A We do.

10 Q Can you explain kind of briefly what that is and what
11 came up in this case?

12 A Sure. Just like every other agency, we have budget
13 crunches. What we try to do is once we have established
14 that the suspect is present on a piece of evidentiary item,
15 then we cease with our analysis.

16 We always start with the sexual assault kit first. If
17 we develop a profile from the semen from the sexual assault
18 kit, then we write a report and our analysis ceases on any
19 of the other evidentiary items that remain.

20 It was brought up that they would like these additional
21 items analyzed for the case. And after talking to the
22 solicitor we agreed that, yes, that those items could be,
23 could be analyzed. And I actually have to have a
24 supervisor's okay to go beyond what we're allowed to do.

25 Those additional items were okayed. So then I tested

Dr. Laura Mills
Direct examination by Ms. Crick

1 the additional items since Paul had done the original ones.

2 Q So that would be a reason why you would maybe see two
3 different dates on those items.

4 A Right.

5 Q They may have been resent to be tested.

6 A Right.

7 Q And when you got them they were still sealed in their
8 original containers. You would have made sure that they
9 had not been contaminated or unsealed at that point.

10 A That's correct. And in our case we actually have a
11 work sheet that has a comment section on it. And if
12 anything was messed up with those containers or if it
13 looked like they were tampered with, we would have noticed
14 it in the comments. And the only thing I have on the
15 comments was that there were two swabs and there was a
16 yellowish stain present on one set and a black stain
17 present on the other set.

18 But I would have noticed it. I would have called the
19 solicitor or I'd have called the investigator-officer and
20 said these swabs appear to have been tampered with, what
21 would you like done with them.

22 Q And in this case they did not appear to have been
23 tampered with. They were in the original packaging.

24 A Yes, they were.

25 Q Okay. You did some testing on those yourself.

Dr. Laura Mills
Direct examination by Ms. Crick

1 A Yes. The swabs from the washroom floor, items 3 and
2 4, yeah.

3 Q Can you explain to the jury what you did and what you
4 found?

5 A Yes. So I essentially did the same thing that
6 Mr. Meeh had described earlier. They were swabs from the
7 washroom floor which were submitted for D. N. A., possible
8 semen present on these swabs.

9 So the first thing I did was cut a small piece of each
10 one of these swabs and tested if for the presence of an
11 enzyme that's present in semen. Both of these preliminary
12 tests came up positive, meaning that there's an indication
13 that semen is present.

14 So then I make a larger cutting and proceed with D. N.
15 A. analysis. And how we do this is we take a larger cutting
16 of the swab. We put it in a tube and we put some buffers
17 and some different components in it. And this will take out
18 the D. N. A. from the swab.

19 When you're talking of semen or blood you have a lot of
20 proteins and cells and D. N. A. that's present in there. So
21 we want to just take out the D. N. A. So we actually have
22 some instruments in the lab that we'll put the sample on.
23 And it will take out specifically the D. N. A. So at the
24 end of our analysis what we're left with is just a tube
25 containing purified D. N. A.

Dr. Laura Mills
Direct examination by Ms. Crick

1 Once we determine how much D. N. A. is present, we then
2 proceed further with our D. N. A. analysis. And the end
3 result is hopefully the development of a D. N. A. profile.

4 And with these two items I was able to develop a D. N.
5 A. profile. And because it was a male profile, coupled with
6 the fact that we had an indication of semen, is now semen is
7 identified, because we had an indication of semen present
8 with a male profile. So we know that that D. N. A. came
9 from semen.

10 Q Did you compare that D. N. A. to the defendant's D. N.
11 A.?

12 A Yes, I did.

13 Q Can you tell the jury what you found?

14 A Yes. The D. N. A. profile developed from the semen on
15 items 3 and 4, which were the swabs from the washroom
16 floor, matches the D. N. A. profile of Miliciades
17 Alcantara. And it would be the same statistic.

18 The probability of randomly selecting an unrelated
19 individual having a D. N. A. profile matching the semen on
20 these items is approximately one in 84 quadrillion.

21 And then on item 4 I had to do the exact same
22 extraction method that Mr. Meeh had described earlier where
23 we were trying to separate out the female component from the
24 male component.

25 The female component would be the epithelial cells, the

Dr. Laura Mills
Direct examination by Ms. Crick

1 skin cells. The male component is going to be the semen.
2 And on item 4, the non-small fraction, which is the
3 epithelial cell fraction, was a mixture of at least two
4 individuals.

5 The major contributor, meaning the person whose D. N.
6 A. is in the most quantity, it matched the D. N. A. profile
7 of Miliciades Alcantara. And Katherine Rumley cannot be
8 excluded as the minor contributor to this mixture.

9 Q So essentially some of her body fluids could have been
10 mixed up.

11 A It could have been, yes.

12 Q After you did your own findings you reviewed
13 Mr. Meeh's.

14 A I would have reviewed his first because his is dated
15 before mine. So I would have reviewed his, agreed with
16 his. And then I would have issued my supplemental report
17 and compared my evidence to the evidence and the profiles
18 that he generated from his.

19 Q So the final report is based on what the two of you
20 sort of did as a team.

21 A Well, in this case there's actually not one individual
22 report. It's three different, different reports.

23 Q And your findings as to the vaginal swab from the
24 victim, the rectal swab from the victim and the two swabs
25 taken from the washer and floor all were a match to the

Dr. Laura Mills
Cross-examination by Ms. Jones

1 defendant.

2 A Yes, a full profile match.

3 MS. CRICK: Nothing further at this time, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. JONES

6 Q Dr. Mills, when did you perform your D. N. A. analysis
7 the first time?

8 A It looks like I cut some swabs October 13th of 2009
9 and then some more swabs in November -- November 23rd of
10 '09.

11 Q Okay. And when you were reviewing Mr. Meeh's work,
12 would that have been earlier, or was October of 2009 the
13 first you ever put hands on the evidence?

14 A No. His -- the original report was issued. The issue
15 date is April 17th of 2009. But you can actually look in
16 the case jacket. And actually he ran the data according to
17 the development of the profile January 21st of '09. And
18 January 23rd of '09 is when I reviewed that data and agreed
19 with his conclusions.

20 Q So you didn't necessarily cut new, new -- that thing
21 you were talking about. You didn't necessarily cut new
22 information. You just reviewed Mr. Meeh's information and
23 agreed with what he came up with, is that fair?

24 A Only for, only for the vaginal swabs, the rectal
25 swabs, the blood standard from Katherine Rumley and the

Dr. Laura Mills
Cross-examination by Ms. Jones

1 buccal swabs from Miliciades Alcantara.

2 Q Okay. And then all of that evidence was sent back to
3 Spartanburg County, is that correct?

4 A I would have to look at the chain of custody to make
5 sure it was -- what happened to it once it left our
6 custody.

7 Q Okay. Fair enough. But, ultimately, you got it back.
8 And that's when you did the additional analysis on the
9 washroom floor.

10 A Yes. I don't know if it actually physically left
11 SLED. Or if it left SLED, it had to come back.

12 Q Fair enough. And D. N. A. can't tell whether or not
13 there was actually a sexual assault, correct?

14 A It can't tell if the sex was consensual. It can tell
15 if semen is present on a vaginal swab. But it can't tell
16 how it got there.

17 Q Thank you. Nothing further.

18 MS. CRICK: Nothing further, Your Honor.

19 THE COURT: You may step down.

20 MS. CRICK: Your Honor, may we approach?

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 THE COURT: Ladies and gentlemen, we are going to take
24 a short break.

25 I will ask you to go to your jury room. Do not yet

John David Westmoreland
Direct examination by Ms. Crick

1 discuss the case in any fashion. I will bring you back
2 after that break.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Any matters to address before
5 the jury is brought back in?

6 MS. CRICK: No, sir.

7 MS. JONES: No, Your Honor.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: All right. Ms. Crick.

12 MS. CRICK: Your Honor, the state recalls Jack
13 Westmoreland.

14 THE COURT: Mr. Westmoreland, you remain under oath,
15 having previously been sworn.

16 THE WITNESS: Thank you, sir.

17 JOHN DAVID WESTMORELAND,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. CRICK

20 Q I think you've already introduced yourself to the
21 jury. I'm just going to ask you a quick question.

22 Were you in the courtroom when Dr. Mills testified
23 that some evidence was brought back, the swabs, from the
24 floor of the washroom to SLED?

25 A Correct.

John David Westmoreland
Cross-examination by Mr. Whelchel

1 Q And were you the one that ended up bringing the swabs
2 back for her to do additional testing?

3 A I am.

4 Q Okay. I'm going to show you what's been marked as
5 State's Exhibit 47. That's in a sealed or what was a
6 sealed plastic bag.

7 A Yes.

8 Q When you received that item back from SLED and then
9 took it back to SLED for them to test was it still sealed?

10 A It was still sealed when I carried it back to SLED,
11 yes.

12 Q You didn't open anything, you didn't touch anything.

13 A Oh, no.

14 Q So from the time it left SLED and got to you and went
15 back to SLED it remained in a sealed envelope.

16 A Correct.

17 CROSS-EXAMINATION

18 BY MR. WHELCHER

19 Q Jack, you took it to SLED once.

20 A Twice.

21 Q Well, first you took it to SLED. Somebody else
22 brought it back.

23 A Correct.

24 Q Anita Mullinax.

25 A Correct.

1 Q Okay. The second time you took it down there.

2 A Correct.

3 Q You brought it back.

4 A Yes, I did.

5 Q Okay. That's what I needed to know.

6 THE COURT: You may step down.

7 MR. GOWDY: May it please the Court, Your Honor. The
8 state rests.

9 THE COURT: All right. Ladies and gentlemen, that is
10 all of the testimony or other evidence to be offered by the
11 state, at least in their case in chief.

12 Before we can go further I've got a couple of matters
13 I need to address. It should take only a moment.

14 I'll ask you again to please go to your jury room.
15 I'll bring you back in just a few minutes. Do not discuss
16 the case.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Any motions or other matters
20 to address before we continue?

21 MR. WHELCHER: Your Honor, on behalf of Mr. Alcantara
22 I am making a motion for a directed verdict of not guilty
23 based on the insufficiency of the evidence as presented to
24 the court, and any motions and objections that we have made
25 during the process of the state's evidence.

1 Specifically, Your Honor, there has been no one from
2 Ultra Tan or the Subway that has identified Mr. Alcantara
3 as the person who actually committed this robbery.

4 They've been on the stand. They were never asked if
5 the person who committed the robbery or any of the other
6 alleged offenses was in the courtroom.

7 Those specific alleged victim witnesses, Your Honor,
8 none of them ever identified this individual as the person
9 committing the robbery.

10 I know there's other evidence of his identity, but
11 those, that evidence does not come from the victims in this
12 case -- the victims in this case, Your Honor. Based on
13 that I would make a motion for a directed verdict of not
14 guilty.

15 THE COURT: Solicitor, would you like to respond to
16 Mr. Whelchel's argument?

17 MR. GOWDY: Very briefly, Your Honor, only to point
18 out what I know the Court saw on the two surveillance
19 videos, which is the defendant wore a mask.

20 So it would be well-nigh impossible for any of the
21 victims to identify him. The number 84 quadrillion to one
22 leads to mind, which puts him at Ultra Tan -- the tattoo,
23 the clothing, the surveillance video, the evidence found in
24 the apartment he shared with his girlfriend. And his
25 girlfriend identifying the clothing on the surveillance

1 tape, I think in the light most favorable to the nonmoving
2 party there's sufficient evidence to let a jury decide
3 this.

4 THE COURT: All right. Well, there does appear to be
5 adequate and sufficient direct evidence, as well as
6 substantial circumstantial evidence, to establish all of
7 the essential elements, including the identity of the
8 defendant as the perpetrator of these offenses.

9 So based upon that evaluation I'm going to deny your
10 motion for a directed verdict for insufficiency of the
11 evidence.

12 Are there any other grounds you'd like to address, or
13 other motions?

14 MR. WHELCHER: No, sir.

15 THE COURT: All right. Does Mr. Alcantara intend to
16 take the witness stand?

17 MR. WHELCHER: No, Your Honor.

18 THE COURT: All right. Mr. Alcantara, you have
19 indicated through Mr. Whelchel that you do not intend to
20 take the witness stand and testify in the trial of this
21 case.

22 Do you understand that when you're charged with a
23 criminal offense you have an absolute right to remain
24 silent? In other words, nobody can make you take the
25 witness stand and testify in the trial of this case. No

1 one can require that you ever make a statement or answer
2 any questions that might tend to prove your own guilt.

3 You do have an absolute right to remain silent and to
4 require the state to present sufficient evidence during the
5 trial of this case to convince a jury beyond a reasonable
6 doubt of your guilt. And you never have to assist them in
7 their efforts to convict you to take the witness stand and
8 testify, provide statements or answer questions that might
9 help them do that, that might tend to prove your own guilt.

10 At the same time, if you do wish to testify, you do
11 wish to present any evidence to this jury for their
12 consideration, now is the only opportunity that you will
13 have to present that evidence.

14 In other words, you can't wait until after the jury
15 has reached a decision and then change your mind about your
16 desire not to testify or to present evidence. Now is the
17 time that you have to make that decision and now is the
18 only opportunity that you'll have to testify or present
19 evidence.

20 Now, have you and your lawyers discussed the
21 advantages and disadvantages of testifying, as well as not
22 testifying?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you appreciate what those
25 advantages and disadvantages are?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And have you had time to reflect upon your
3 decision to testify?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And as I've already told the jury, do you
6 understand that I will instruct them they can't hold that
7 against you if you don't testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And of course if you do testify you've got
10 to answer not just your lawyer's questions, but you'll have
11 to answer the solicitor's questions even if the answers
12 might tend to prove you guilty. So have you had time to
13 reflect upon your decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand it's your decision, only
16 you can make it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And have you reached a decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And what is it?

21 THE DEFENDANT: Not testifying.

22 THE COURT: Sir?

23 THE DEFENDANT: I'm not testifying.

24 THE COURT: You will not testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is that a decision that you reached of
2 your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you had plenty of time to reflect
5 upon it, talk to your lawyers or anybody else you wish to
6 discuss that issue with?

7 THE DEFENDANT: Yes, sir, yeah.

8 THE COURT: Has anybody forced you into that decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: Anybody pressured you into that decision?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anybody suggested to you that that's
13 the decision that you ought to make?

14 THE DEFENDANT: No, sir.

15 THE COURT: And that's a decision that you made on
16 your own?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you're satisfied with it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any other witnesses you want
21 your lawyers to call?

22 THE DEFENDANT: No, sir.

23 THE COURT: Have any other evidence that you need to
24 have them introduce?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay. Do either of you, the state or the
2 defense, have instruction requests?

3 MR. GOWDY: Your Honor's standard jury instructions
4 will be sufficient for the state, Your Honor.

5 THE COURT: Okay.

6 MR. WHELCHER: Likewise for the defense, Your Honor.

7 THE COURT: Okay. How much time do y'all think you'll
8 need to present your final summations?

9 MR. GOWDY: Just maybe 20 minutes, Your Honor. If the
10 Court would be gracious enough, maybe just a couple of
11 minutes to set the courtroom up and back some things up
12 beforehand would be much appreciated.

13 THE COURT: All right. What about the defense?

14 MR. WHELCHER: May we approach, Your Honor?

15 THE COURT: Yes.

16 (Bench conference held off the record.)

17 THE COURT: Bring the jury back, please.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: All right. Ladies and gentlemen, as you
21 know, the state has rested in their presentation. So we'll
22 now proceed with any additional evidence to be offered by
23 the defense if they wish to do so.

24 Mr. Whelcher.

25 MR. WHELCHER: The defense rests, Your Honor.

1 THE COURT: All right. That is all of the testimony
2 and evidence to be offered in the trial of this case. And
3 therefore what remains to be done are the lawyers' final
4 summations, after which I'll instruct you on the law, and
5 then you'll begin with your deliberations.

6 Now, that's going to take some time. I don't want to
7 scare you as to the length. It's not going to be that
8 lengthy. But, nevertheless, it would take us up into the
9 evening. And I try not to impose upon a jury's evening
10 hours like we do your daytime hours if we can help it. And
11 more often than not we can.

12 And so what I'm proposing is that we simply recess for
13 today. We will begin in the morning at 9:30.

14 The lawyers will provide you with their final
15 summations. I'll provide you with the legal instruction on
16 the law that you are to apply. And then you can begin with
17 your deliberations in the case. So you're going to be
18 excused now. You'll be asked to return at 9:30 in the
19 morning.

20 Keep in mind the instruction that you've received on
21 more than one occasion from me, and that is do not discuss
22 the case with any person whatsoever, including your fellow
23 jurors.

24 Don't conduct any research or do your own
25 investigation into any issue that might have arisen or

1 relates to the case. And do not permit yourselves to be
2 exposed to any type of media coverage, whether it be
3 television, radio or newspaper.

4 Do have a good evening, and please report to your jury
5 room at 9:30 in the morning, 9:30 in the morning.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Court is in recess until 9:30 in the
9 morning.

10 END OF PROCEEDINGS FEBRUARY 9, 2010

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Closing arguments

1 (Proceedings February 10, 2010)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters that need to be
5 addressed before the jury is brought in?

6 MR. GOWDY: None on behalf of the state, Your Honor.

7 MR. WHELCHER: None from the defense, Your Honor.

8 THE COURT: Okay. Bring them in.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, all of the evidence has been received,
13 and therefore what remains to be done are the lawyers'
14 final summations, after which I'll instruct you on the law.
15 And then you can begin with your deliberations.

16 So please give the lawyers your attention now as they
17 give you their final summations.

18 Solicitor.

19 MR. GOWDY: May it please the Court, Your Honor.

20 THE COURT: Yes, sir.

21 MR. GOWDY: Madam forelady and ladies and gentlemen of
22 the jury, this will be the last time anyone from the State
23 of South Carolina has the pleasure of standing before you.
24 So let me start by simply saying thank you for your
25 patience and your attention in this case and for your

Closing arguments

1 service.

2 Judge Cole is the judge of the law. He, and he alone,
3 will give you the law at the end of this case. But you are
4 judges too. You don't have on a black robe. This may be
5 the only time that you ever come into a courtroom. But
6 make no mistake about it. You are judges.

7 You, and you alone, will decide what happened on
8 December the 30th of 2008. And at first flush that may
9 seem like it's a daunting task, how do I separate what's
10 true from what's not true, how do I ascertain the
11 credibility or the believability of the witnesses.

12 Ladies and gentlemen, the only thing I can tell you is
13 that you do it every single day of your life. There's not
14 a prosecutor when you make major decisions. You're not in
15 the courtroom and there's not a judge.

16 But your education, your background, your training,
17 your common sense as a parent, as a spouse, as a sibling,
18 as a coworker, you use your training, your education, your
19 background, your common sense to make important decisions
20 every single day. And that same common sense will serve
21 you well as you serve as a jury.

22 December the 30th of 2008 Katherine Rumley was a
23 19-year-old-girl making a living the old-fashioned way.
24 She was actually working.

25 And you can see from the video surveillance that she

Closing arguments

1 is meticulously folding towels. That was one of the things
2 that I noticed the first time I saw the surveillance that
3 here is a brand new employee who is meticulously folding
4 towels.

5 On one occasion she refolded one to make sure that it
6 was just right. And she's clipping the strands from the
7 towels that she's cleaning the tanning beds.

8 And into her life and into the Ultra Tan walks the
9 defendant. And he asked for a job application. And you
10 will remember from the video that there's no interaction
11 whatsoever between the two of them. There's no idle
12 chatter.

13 He asked for an application. She reaches down and she
14 gets it. She reaches for one pen, and perhaps that one
15 doesn't work. So she reaches for another one. And she
16 gets a pen and an application. And then she leaves to go
17 back and do her job. If you remember on that video there
18 is no interaction whatsoever between the two of them.

19 And this defendant stands here at the front of the
20 counter, and then he walks around to the side where he has
21 a better view of where the cash is kept.

22 And then what does he do with that job application,
23 ladies and gentlemen? He takes it with him. It's very
24 tough to apply for a job if you don't leave the application
25 there. He takes the application with him. He balls it up

Closing arguments

1 and he throws it in the trash can at his apartment where
2 law enforcement finds it.

3 You now know that he wasn't there to apply for a job.
4 He was there to case the joint. And you now know that that
5 was not the last time he went to the Ultra Tan in Duncan.

6 He was there about 30 to 45 minutes later. This time
7 he didn't walk in with a stripe shirt and he didn't walk in
8 through the front door. He walked in the back door with a
9 red hoody armed with a knife and a mask.

10 And this little 19-year-old-girl who is living in a
11 new town, struggling to make a living is confronted by a
12 man with a mask, with a knife and a book bag. He asked for
13 the money, and she complies. You can see it on the video
14 tape. She gives him the money. She says do you want the
15 change.

16 And then he says go lock the door. And if you can
17 ever see somebody thinking on a video tape, if you can
18 literally see the act of somebody thinking, that's what she
19 does on that video tape when she walks from the purse. You
20 can see her mind think. And it dawns on her I don't have
21 the car keys, I've loaned my car to my friends.

22 So she's standing there with a purse. And she's got a
23 decision to make. Do I comply? Do I run? She says she
24 thinks he's faster than she is. He's got a weapon. She
25 doesn't. So she does what she's told to do.

Closing arguments

1 Ladies and gentlemen, I can't tell you what I would
2 have done. I'm twice her age. More than that. I can just
3 tell you this. That we teach our children how to react in
4 certain situations. And then fear overtakes them and they
5 don't do what we taught them to do.

6 I've got a 17-year-old that just started driving. I
7 try to tell him how to react if something jolts out in
8 front of his car, if somebody crosses the double yellow
9 line. You try to teach them. But the reality is none of
10 us know how we would react until we come face to face with
11 a robber and a rapist.

12 My grandmother had a lot of old sayings. One of the
13 ones I remember the most that she would tell me and my
14 three sisters is do not ever judge another person until you
15 have walked a mile in their shoes. Do not judge another
16 person until you have walked a mile in their shoes.

17 I can't tell you why people react the way that they
18 do. I'm just a prosecutor. I'm not a psychologist. I
19 can't tell you why half the people at a wedding are smiling
20 and laughing and the other half of the people have tears
21 running down their face.

22 I can't tell you why children who have been physically
23 and sexually abused will still hug the people that did it
24 to them. I can't tell you why people run back in a burning
25 building just to save photo albums. I can't tell you why

Closing arguments

1 Elizabeth Smart and Patty Hearst stayed with the men that
2 kidnapped them when they had opportunities to leave. I
3 can't tell you any of that.

4 What I can tell you is this. This young lady told you
5 on Monday and again on Tuesday about the will to live,
6 which is the strongest instinct that any of us have, the
7 will to survive. And she made the calculus in her mind
8 that she couldn't outrun him, and that's what she did to
9 try to survive, is to do what he asked her to do, which is
10 to lie for him.

11 Ladies and gentlemen, I want you to think back to the
12 video. I want you to think back to that little girl
13 running back down the hall. She doesn't even have her
14 shoes on.

15 She's just been raped. She hasn't even buttoned her
16 pants. She's running down the hall. She's pulling her
17 pants up. She stumbles and she staggers a bit. She
18 doesn't even stop to put her shoes on.

19 And she calls 9-1-1. And she gave an incredibly
20 detailed, accurate, unflinching, polite account to 9-1-1,
21 perfect description. And then after she told 9-1-1 she
22 told the officer who came to the scene, Deputy Hawkins.
23 And then after Deputy Hawkins she told Detective Kevin
24 Bobo, and then after Detective Kevin Bobo, Megan Woody, and
25 then after Megan Woody the doctor at Spartanburg Regional,

Closing arguments

1 and after the doctor at Spartanburg Regional the nurse at
2 Spartanburg Regional, and after that Ms. Crick with my
3 office, and after that you Monday and Tuesday, and after
4 that answering her questions, that's nine times that young
5 woman recounted what happened to her. And I'm here to tell
6 you that that is enough. Nine times is enough.

7 I was struck when she was being cross-examined by some
8 of the questions she was asked. One of them I think the
9 defense attorney was about right here. And there's a
10 19-year-old girl who just talked about things that you
11 wouldn't even discuss in private in front of 14 strangers.

12 And she's questioned about twirling her hair. Not one
13 single word about how wonderful her 9-1-1 description was,
14 no questions about, Katherine, tell me about that 4-hour
15 invasive rape examination that you went through. No
16 questions about, Katherine, tell me why you can't take a
17 shower by yourself any more when you're the only one in the
18 house, why you can't sleep any more, why did you have to
19 leave Spartanburg. Just question about twirling hair.

20 Do not judge another person until you have walked in
21 her shoes. I'm not a psychologist. I'm just a prosecutor.
22 I can tell you this. Everything you would possibly want or
23 need to have to convict that man will be back in the jury
24 room with you. You have a 9-1-1 tape. Then you have a
25 video, which I want you to do them both in your mind at the

Closing arguments

1 same time. I want you to listen and think back to her
2 description to 9-1-1 and then how the visual image of a
3 girl cowering behind the counter waiting to see the blue
4 lights because she's not sure whether or not he's coming
5 back again.

6 And then you've got when Deputy Hawkins came and this
7 young girl had the foresight to remember there might be
8 some evidence on the floor. And guess what? She was
9 right. The police found it and SLED confirmed it. And her
10 description of the clothing, which is perfect.

11 I haven't even gotten to D. N. A. yet, ladies and
12 gentlemen. This is surveillance video, 9-1-1 tape, and her
13 flawless testimony.

14 We leave Ultra Tan and we go to Subway where there are
15 two other young women making a living the old-fashioned
16 way. They're actually working too. They're not out
17 robbing people. They're working.

18 And in walks this defendant with that blue mask on and
19 his jeans and his red hoody and his duffle bag. And he
20 takes Amanda at knifepoint up to the cash register. It's
21 all on video. Don't take my word for it. You've seen it.
22 He walks her up there. They're dumping the money in. The
23 change is falling on the floor. One of the cash boxes
24 winds up going in the duffle bag.

25 Do you want a picture-perfect legal definition of

Closing arguments

1 armed robbery? Think back to those two surveillance tapes.
2 It'll tell you what armed robbery is. You want a
3 picture-perfect legal definition of it? Think back to him
4 standing at a cash register with a knife in his hand making
5 two young Subway employees put cash in.

6 And then we move to Terry Lane, that officer from
7 Duncan. Thank goodness for Terry Lane. Listening to his
8 radio. He's on the lookout for a dark-colored Camry being
9 driven by possibly a Hispanic male.

10 He stops the car. And when this defendant gets out he
11 sees the nautical star tattoo on the side of his neck
12 because the ladies at Subway had said he's got a
13 distinctive tattoo on his neck and he's driving a
14 dark-colored Camry.

15 So from Terry Lane we go to the house that he shared
16 with that young lady that testified yesterday, Luari
17 Monseratte, his girlfriend at the time. And inside that
18 house you find the striped shirt he had on when he applied
19 for the job.

20 When he walked in to case the joint he had on a
21 striped shirt. He found that. He found the red hoody. He
22 found the black book bag; he found the duffle bag; he found
23 the cash drawer; he found the knife; and he found a blue
24 mask.

25 Do you remember what Luari Monseratte said when I

Closing arguments

1 asked her about the blue mask? I've seen it but not worn
2 like that, not with the eye holes cut out and pulled down
3 to cover your face.

4 And then that young woman -- it's not any of my
5 business except for this trial to ask her about her
6 financial state. Remember what she said? Broke. We were
7 broke. Hundreds of thousands of dollars hidden
8 underneath -- hundreds of dollars hidden underneath the
9 Christmas tree, and she thinks they're broke.

10 Everything that you need to convict this defendant was
11 found inside the apartment that he lived in.

12 And then we get to the D. N. A. Katherine told the
13 doctor and the nurse and everyone else. And I'm not going
14 to go through the details of it. You heard it once, and
15 I'm not going to go through it again, because she described
16 what was done to her.

17 And after that 4-hour invasive rape examination on a
18 swab SLED finds semen. And on the floor right where she
19 said it would be SLED finds semen. And it is 84
20 quadrillion to one, 84 quadrillion to one.

21 Surveillance video, 9-1-1 tape. Luari -- and I know
22 it wasn't easy. She's just a child herself. To come in
23 here and have to look at that video and say, yeah, that's
24 my boyfriend's jacket, that's my boyfriend's shirt, that's
25 my boyfriend going into Ultra Tan to get an application

Closing arguments

1 which is found balled up in a trash can in their apartment.
2 Everything that you need to convict this defendant is in
3 this apartment.

4 This case started on a piece of paper. It's the
5 application, application to Ultra Tan. It's the very first
6 time defendant Alcantara ever met that girl, which when she
7 handed him that one piece of paper. You can see it's
8 balled up. It's crumbled up and found in the trash can.
9 It started with a piece of paper.

10 And then we move to the surveillance video. She's got
11 him coming into Ultra Tan, casing the joint, walking around
12 to look at where the cash drawer was and never even leaving
13 his application. And then you've got where he came in with
14 a mask, armed with a knife, with gloves on raping and
15 robbing.

16 And then we move to Subway where he's also on video.
17 Clothes found at his apartment, armed with a knife,
18 nodical-star tattoo on the side of his neck robbing two
19 little girls.

20 There are the clothes. They'll all be back in the
21 jury room with you if you want to see them. If you want to
22 compare them to the surveillance video, you do it.

23 Just like this case started with a piece of paper it
24 is going to end with a piece of paper. You are going to
25 have indictments in the back with you. You will have

Closing arguments

1 indictments for armed robbery. And you listen to what
2 Judge Cole tells you about armed robbery. Don't listen to
3 me; don't listen to the lawyers. He's the judge of the
4 law.

5 What I think he's going to tell you is when you take
6 something of value by force or intimidation from a person
7 or presence of another with an intent to carry away that is
8 armed robbery. Or if you want a layman's definition of it,
9 it's the video from Ultra Tan and Subway. Those are the
10 armed robberies.

11 Then you move to kidnapping. And if you watch movies
12 you have in your mind what you think kidnapping is, that
13 you take somebody and you hold them for ransom and there
14 are phone calls back and forth and you decide whether or
15 not you're going to pay them. That's Hollywood stuff
16 edition of kidnapping. That is not the State of South
17 Carolina's definition of kidnapping.

18 Kidnapping in South Carolina is when you seize,
19 confine, inveigle, decoy. Think about seize. When you
20 seize or restrict the freedom of another person in South
21 Carolina, no matter how long, that's kidnapping.

22 So when you have somebody bent over a dryer with a
23 knife to them that's kidnapping. And when you have a girl
24 at Subway being walked to a cash register with a knife in
25 her side, that's kidnapping under South Carolina law.

Closing arguments

1 You have armed robbery; you have kidnapping; you have
2 criminal sexual conduct, which is more commonly called
3 rape. I'm not going to go through it. Ms. Crick had to do
4 it with Katherine. I'm sure it was -- I can't imagine how
5 hard it would be to tell 14 people that you don't know
6 stuff that you wouldn't even talk about with your family.

7 But suffice it to say, South Carolina law requires
8 penetration. It requires either another crime being
9 committed like armed robbery or kidnapping or force being
10 applied like a knife.

11 There are a half-dozen different ways to get criminal
12 sexual conduct and rape out of these facts. You have a
13 young girl bent over a dryer with a knife. That's rape.

14 You're going to have verdicts in the back. Verdict is
15 a bold, strong word that means to speak the truth. We're
16 not going to ball up your piece of paper and put in it the
17 trash can like Miliciades Alcantara did.

18 It's going to be there for time and memorial for her,
19 for the two little girls at Subway and, frankly, for the
20 rest of the world to come back and see was justice done for
21 what happened on December the 30th of 2008.

22 So all I would ask you is this. When you come back
23 into this jury room make sure your verdicts speak the truth
24 and do justice for what happened.

25 THE COURT: Ms. Jones.

Closing arguments

1 MS. JONES: Thank you, Your Honor.

2 Ladies and gentlemen of the jury, my name is Tanya
3 Jones, and I represent Mitch in this particular case.

4 Ladies and gentlemen, you can go ahead and mark guilty
5 for the Subway. This was never a case about the Subway.
6 Unfortunately, Ultra Tan and Subway were so intertwined
7 that we had to have a trial on both. He is guilty of
8 Subway.

9 He is not guilty of Ultra Tan, ladies and gentlemen.
10 That was an inside job. There was no robbery and there was
11 no rape.

12 Indeed, the victim said it best when I questioned her
13 about the lack of injuries. Well, he wasn't physical. He
14 wasn't violent. When is a rape not physical and when is a
15 rape not violent?

16 Ladies and gentlemen, she was sitting right here, and
17 she said he took her head and pushed it into the dryer.
18 How is that not physical? How is that not violent?

19 She then testified that he forced his way inside of
20 her from behind, ladies and gentlemen. There's no
21 testimony about lubrication or anything. So he takes her
22 head, slams it down on the dryer, forces her apart and
23 rapes her allegedly. That's not violent? That's not
24 physical?

25 No injuries were noted by the doctor who examined her

Closing arguments

1 and no trauma noted by either the nurse or the doctor who
2 examined her.

3 Now, they did note some bruising on the hips. And she
4 apparently told the nurse that he had grabbed her hips.
5 Did you hear any of that testimony from her about grabbing
6 on the hips? You didn't.

7 She testified he had his arm with a knife over her
8 back holding her down and he never left that position. Why
9 is she telling the nurse then something different? There
10 was no robbery and there was no rape.

11 The solicitor indicated this all started with the
12 application form. Let's take a look at that application.

13 (Pause.)

14 MS. JONES: We all know my client came in to get an
15 application form. They're alleging he probably was
16 checking the place out.

17 But note the alleged victim's actions, ladies and
18 gentlemen. She's working in retail, and note her actions.
19 And she also testified when she was working on that
20 computer that she was trying to figure out which cleaning
21 (sic) beds needed to be cleaned. What do we clean cleaning
22 beds with? Our hands, or are we going to use some
23 chemicals?

24 Take a look at what she leaves on the counter. Note
25 the cleaning material and the towel presumably used to

Closing arguments

1 clean things. She testified that that -- at that moment
2 she's checking out which beds need to be cleaned. What
3 does she leave behind? What does she leave behind?

4 How was she going to clean those cleaning beds? And
5 not only that. She's working in retail. The surveillance
6 who set up the surveillance in the store says they were
7 concerned about theft. And she's leaving that counter wide
8 open for him to take things, a person she allegedly doesn't
9 know. Or did she know he really wasn't going to take
10 anything? Because they need to figure out and he needs to
11 see where everything is. Isn't that why she's not on the
12 screen?

13 Now, they can say, well, they didn't have any words,
14 any actions, no i-pods or anything like that. But if it's
15 an inside job and you know you're being recorded are you
16 going to make it obvious? You know each other.

17 Why does she leave the front and why does she leave
18 her cleaning materials, the very thing she said she was
19 going to do, on that counter? Because it's an inside job.

20 And we know that this Ultra Tan is in a strip mall. I
21 think there's some pictures that show the back of this
22 place. Either this man is the most luckiest guy on earth
23 or he knew that the door was going to be unlocked.

24 He goes behind. And low and behold the door is
25 unlocked? Does that make any sense, ladies and gentlemen?

Closing arguments

1 Or did he know it was going to be unlocked?

2 We can talk about actions and we can talk about how
3 people can react differently in stressful situations,
4 ladies and gentlemen. But they always say a picture is
5 worth a thousand words. Well, in this particular case the
6 video is worth a thousand words.

7 And let's watch this again. And you're going to get
8 these videos when you deliberate. And I encourage you to
9 watch them over and over again until you're satisfied.

10 (Whereupon, the tape was played for the jury.)

11 MS. JONES: Because you can tell there. It seems like
12 she hears something, and she actually has an instrument in
13 her hand, a scissors. She puts that scissors back and
14 continues to fold, click, and then peeps around the corner,
15 walks back there casually. There could be a stranger in
16 there and she just walks casually. And watch how she comes
17 back very casually.

18 This is a man she is scared of. She's testified she
19 thinks he's going to stab her in the back. Look how he's
20 just hanging out. She's getting the money. He turns and
21 walks away and she asks do you want the change. He's going
22 off camera.

23 Look how calm and cool and collected she stays. One
24 minute did you see the finger go up? One second. Who does
25 that? Do you do that to strangers or do you do that to

Closing arguments

1 somebody you know? One second please, as she goes and
2 locks the door.

3 And they both go back very casually. It's not
4 hesitating. She's not fearful. And, no, she's not doing
5 this. I mean, she's been allegedly raped at this point.
6 No wiping the face, no tears, just the hair, just the hair.
7 Calm, cool and collected.

8 This is a woman who's allegedly been raped. Look at
9 her demeanor. Are those the actions of somebody who has
10 truly been raped or the actions of somebody who's in on the
11 gig?

12 (Pause.)

13 MS. JONES: She had every chance to run out this door,
14 every chance. He was clearly off screen. You couldn't
15 even see him. And this is a different angle. And note how
16 she grabs it, locks it and kind of shakes it to ensure it's
17 locked.

18 And she testified she was too scared to go out that
19 door. This is a strip mall with an Ingles nearby on Main
20 Street in Duncan. This is a commercial area. There's a
21 parking lot right there.

22 Are we to believe that she was in some desolate area
23 and there was no stores open except for an Ingles? I think
24 she said about ten minutes away. Come on, ladies and
25 gentlemen. Who ensures that the door is locked?

Closing arguments

1 You heard testimony from the person who does all of
2 the surveillance at Ultra Tan, and he indicated that these
3 are timed or should say motion-sensord that do the video
4 recording. In other words, it has to see movement for it
5 to record. She knows that.

6 So now she's got to account from the time that those
7 two go back and are conversing to the time she comes back
8 on screen, because there's a lapse. How is she going to
9 come up with that? Because they obviously went to the back
10 and had sex.

11 So what does she do? She gets on that phone. And
12 she's got confidence. Time's going. She needs to call the
13 police and they need to get there. Oh, I know. I was
14 raped.

15 And listen to that 9-1-1 tape. Does she immediately
16 come out and say, oh, God, I was raped? No. I was robbed,
17 oh, and raped.

18 There's no denying that that 9-1-1 tape you can hear
19 some emotion on it. We all know teenagers and know they're
20 good actresses. And they can put on a show.

21 Ladies and gentlemen, there is a disconnect between
22 that video and the 9-1-1 tape. You can't fake actions. Is
23 that a scared woman or a woman in on the gig?

24 She also noted on that 9-1-1 tape she didn't want to
25 go to the hospital. Don't call the ambulance. I don't

Closing arguments

1 need one, because she testified it was because, you know,
2 in this frame of mind and all I was scared and frightened
3 and you might go, oh, she's just been raped. She was
4 thinking about insurance, oh, I don't have insurance
5 coverage, I can't.

6 She testified she's an out-of-state college student,
7 college student. Her parents are paying out-of-state
8 tuition for a college student. They didn't keep her on
9 their insurance policy? Does that make any sense, ladies
10 and gentlemen, or is she trying to come up with a reason
11 not to have to go?

12 Indeed when the officer first gets there, no, I don't
13 want to go to the hospital, I don't want an ambulance ride.
14 Does that make sense? Does that sound like a rape victim?
15 She's been raped, brutalized allegedly. She could have
16 picked up something. She doesn't want to go get checked
17 out to make sure she's okay? No. I don't want to do that.
18 Is that consistent with the actions of somebody who's truly
19 been raped?

20 You heard the solicitor talk about she gave a perfect
21 description, perfect description of the alleged attacker.
22 Ladies and gentlemen, she was missing one key aspect that
23 the ladies at Subway picked up in less than a minute, and
24 that was the star tattoo.

25 In fact, one Subway girl testified that she could tell

Closing arguments

1 it was a nautical-star tattoo because some of it was filled
2 in.

3 Ms. Rumley testified on the stand that the only thing
4 she could see was his neck. And she was with him for 30
5 minutes. And she had nine different times to tell an
6 officer or the police or the nurse about that tattoo, and
7 she never did. With him for 30 minutes.

8 And doesn't it make sense that she understands that
9 there is surveillance and that they're going to see a red
10 jacket with a blue ski mask?

11 I mean, it doesn't make sense for her then to say,
12 well, he's got a perfect jumpsuit on. No. She's going to
13 go with what the surveillance picked up because otherwise
14 suspicion might be pointed at her. But she missed a key
15 detail, and that's that tattoo. Why would she do that?
16 Inside job, not raped?

17 Ladies and gentlemen, we're here about Ultra Tan.
18 There was no rape and there was no robbery. At most
19 there's a theft. But, unfortunately, he wasn't indicted
20 for theft.

21 You need to find my client not guilty of the rape and
22 armed robbery because there wasn't any. That's why she
23 didn't want to go to the hospital. Refused twice. That is
24 why she gave the officers the wrong home address and didn't
25 bother to fix it. That is why officers had to track her

Jury charge

1 down through friends, give her an application form, or not
2 an application form but a victim form. Didn't fill it
3 out -- didn't fill it out. And, again, the officer had to
4 come out and take her down to the station to finally give
5 her a statement.

6 Are those the actions of a cooperating witness who
7 once, she said, well, that was the reason why I went to the
8 hospital because so the police could catch him. If she was
9 so concerned about catching him wouldn't she want to be
10 cooperative at the end and tell her story to make sure it
11 gets down on paper to convict, or is that the actions of
12 somebody who doesn't really want to be involved?

13 The chips fall where they may, because I don't want to
14 get charged with theft and false information to a law
15 enforcement officer, because that's what happens if she
16 changes her story. So she's going to ride this train to
17 the end.

18 That is why, ladies and gentlemen, he is not guilty of
19 Ultra Tan. Thank you.

20 THE COURT: Madam forelady and ladies and gentlemen of
21 the jury, you of course have heard and seen all the
22 evidence, and now the final summations of the lawyers. And
23 so I am going to instruct you on the law that you are to
24 apply in the case. And then you'll be asked to go back and
25 begin with your deliberations. And through that process

Jury charge

1 you'll examine the evidence, decide the facts, apply the
2 law and arrive at a fair and just decision.

3 It is your exclusive duty to determine what the facts
4 are, and you do that through your own common-sense
5 examination and evaluation of all of the testimony and
6 other evidence received during the trial of this case.

7 You 12 jurors alone will decide what weight, value and
8 effect to give to any particular testimony or other
9 evidence in the case. Your sole objective is to simply
10 reach the truth in the matter, and by doing that you will
11 have fulfilled your obligations as jurors, and that is to
12 simply give both the state and this defendant a fair and
13 impartial trial.

14 Now, in this case, as you know, the defendant has been
15 accused by the state with having committed separate and
16 distinct criminal offenses.

17 They are alleged to have arisen out of a course of
18 events that the state alleges occurred back on December the
19 30th of 2008. And by way of these several indictments he
20 is charged with the crimes of kidnapping, armed robbery,
21 possession of a knife during the commission of a violent
22 crime, that violent crime being armed robbery, and criminal
23 sexual conduct in the first degree.

24 Four of those charges relate to the incident alleging
25 the victim to be Katherine Rumley and the other three

Jury charge

1 relate to the incident alleging the victim to be Amanda
2 Cooper.

3 Now, you will have the indictments in the jury room
4 because the indictments will serve as the verdict forms in
5 the case. In other words, as to each of the separate
6 charges you will be asked, Madam Forelady, to indicate a
7 decision, a unanimous decision of the jury. And so you'll
8 have the indictments in the jury room to serve as the
9 verdict forms. But the indictments serve no other purpose
10 so far as you jurors are concerned.

11 As I believe I told you after your selection, the
12 indictments are not evidence of anything. They're not
13 proof of anything. They don't establish anything.

14 They are simply the means by which any person accused
15 of a crime is brought into the general sessions court. And
16 it serves to put the defendant on notice as to what crime
17 or crimes the state alleges that the defendant has
18 committed. So they'll be in the jury room, but they'll be
19 there solely to be used as the verdict forms.

20 Now, as you know, the defendant is charged with the
21 crime of kidnapping involving Amanda Cooper. And by way of
22 the indictment the state alleges that on December the
23 30th of 2008 he did wilfully and unlawfully with a criminal
24 intent seize, confine, inveigle, decoy, kidnap, abduct or
25 carry away Amanda Cooper without authority of law.

Jury charge

1 A separate indictment alleges that the defendant did
2 also commit the crime of armed robbery in that he did while
3 armed with a knife take, steal and carry away from the
4 person or presence of Amanda Cooper, an employee of the
5 Subway store, by using force or violence and-or
6 intimidation, that he took approximately \$924 that belonged
7 to the Subway and he intended to deprive the owner
8 permanently of that property.

9 A second count of that particular indictment also
10 alleges that he did possess or visibly display a knife
11 during the commission of a violent crime, that violent
12 crime alleged to be the crime of armed robbery.

13 The other event the state alleges involves Katherine
14 Rumley. And, again, he's charged with kidnapping, which
15 are the same allegations as just read from the other
16 indictment except you have a different person alleged to be
17 the victim.

18 There's also an indictment for armed robbery and
19 possession of a knife during the commission of the violent
20 crime, that crime being armed robbery. Those allegations
21 are similar as to those already read, at least so far as
22 they allege the crime of armed robbery, simply stating a
23 different person to be the victim and a different amount of
24 money.

25 The remaining indictment charges the defendant with

Jury charge

1 the crime of criminal sexual conduct in the first degree.
2 And it alleges that the defendant did here in Spartanburg
3 County on or about December the 30th of 2008 engage in a
4 sexual battery with Katherine Rumley and that that sexual
5 battery was accomplished by the use of aggravated force,
6 and/or the victim was also the victim of a forcible
7 confinement, a kidnapping, housebreaking, burglary or any
8 other similar offense or act.

9 Now, as to those allegations and as to each of those
10 charges contained in each of the indictments the defendant
11 has entered a plea of not guilty. And as I told you, that
12 plea of not guilty has therefore placed upon the state the
13 burden of proving the allegations that they have set forth
14 in each of those indictments, the burden of proving each of
15 the essential elements that make up each of the crimes
16 alleged in those indictments; and therefore the burden is
17 upon the state to establish the defendant's guilt as to a
18 particular charge to the satisfaction of you 12 jurors
19 beyond a reasonable doubt before any verdict of guilty
20 could be returned as to a particular charge.

21 The burden is never upon a defendant or a person
22 accused of a crime to prove that he or she is not guilty or
23 that he or she is innocent because in some cases that might
24 not be possible.

25 The burden is always upon the state because they have

Jury charge

1 brought the charge against another to establish that
2 person's guilt beyond a reasonable doubt.

3 You are instructed that it is a vital, important and
4 cardinal rule of law that every defendant in a criminal
5 trial, no matter how great or serious the offense might be
6 for which that person stands charged, that person shall
7 always be presumed innocent of that charge.

8 That presumption of innocence remains with every
9 defendant, as it does with this defendant, from the time
10 that he is placed under arrest and throughout the course of
11 the criminal process and even throughout the course of the
12 actual trial in the case.

13 As I told you, that presumption of innocence will be
14 with this defendant even as you go back to begin with your
15 deliberations in this case. And that presumption of
16 innocence will be with him in that jury room, and it will
17 remain with him forever unless you 12 jurors determine that
18 he is no longer entitled to that presumption of innocence.

19 That is after you've carefully considered all of the
20 evidence in the case, and from that evidence you have
21 determined what you believe to be the true facts as they
22 relate to these allegations, and upon deciding those facts
23 you apply the law that I will have provided you as it
24 relates to a particular charge, if you 12 jurors
25 unanimously determine that the defendant's guilt has been

Jury charge

1 proven as it relates to a particular charge, then the
2 defendant would no longer be entitled to that presumption
3 of innocence as it relates to that charge. But it's only
4 if, unless and until you are satisfied of his guilt beyond
5 a reasonable doubt that the presumption of innocence would
6 no longer be applicable.

7 Now, while the state does have the burden of proving
8 the defendant's guilt to your satisfaction beyond a
9 reasonable doubt, that doesn't mean that the state has to
10 prove his guilt beyond all doubt or beyond any possible
11 doubt. But it does require that the state prove his guilt
12 to your satisfaction beyond a reasonable doubt.

13 The term reasonable doubt should be given its plain
14 and ordinary meaning. A reasonable doubt is the kind of
15 doubt that would cause a reasonable person to hesitate to
16 act upon the information provided.

17 A defendant in a criminal trial is entitled to any
18 reasonable doubt that arises from the evidence or lack of
19 evidence in a case. And if upon any factual issue
20 essential to a finding of a verdict of guilty you have some
21 reasonable doubt as to how that issue should be resolved it
22 would be your duty to resolve that reasonable doubt in
23 favor of the defendant.

24 And therefore if upon your consideration of the whole
25 case, if you have a reasonable doubt as to the defendant's

Jury charge

1 guilt as it relates to a particular charge, you must
2 resolve that reasonable doubt in his favor and return a
3 verdict of not guilty.

4 At the same time, after you've considered all of the
5 evidence, decided the facts and applied the law if you have
6 no reasonable doubt as to the defendant's guilt, then it
7 would be your corresponding duty to convict the defendant
8 or to find him guilty of any crime that has been
9 established to your satisfaction beyond a reasonable doubt.

10 Now, the same law that provides that you are the
11 judges of the facts also provides that I am the judge of
12 the law. And that simply means that nobody is going to
13 tell you how to arrive at your determination of fact in
14 this case.

15 You do that, as I have stated, through the exercise of
16 good judgment and common sense conscientiously applied to
17 the testimony and evidence received during the trial of the
18 case. And you 12 jurors alone will decide what weight,
19 value and effect to give to any particular testimony or
20 other evidence in the case.

21 Under your oath as a juror you must however accept the
22 law as I provide it to you as being the law that is
23 applicable in this particular case. In other words, you're
24 never to concern yourself with what you thought the law was
25 before you came to serve as a juror this week or what you

Jury charge

1 think the law ought to be.

2 You must simply under your oath accept the law as I
3 provide it to you as being the law that you are to apply in
4 this case. And then you simply take that law and you apply
5 it to the facts as you 12 jurors determine those facts to
6 be based upon your common-sense examination of the
7 testimony and evidence received during the trial.

8 Now, as you have been told, you are the sole judges of
9 the facts in this case. And you are therefore necessarily
10 the sole judges of the credibility and the believability of
11 each witness that has testified during the course of this
12 trial. And you alone will decide what weight, value and
13 effect to give to any particular witness' testimony, or
14 even a portion of that testimony.

15 So there are several factors which you should consider
16 in arriving at your assessment as to a witness'
17 credibility, and I'm going to list those factors for you.

18 But you should consider the demeanor of the witness,
19 that is how the witness appeared to you as the witness
20 testified from the stand. Was the witness straightforward
21 in responding to questions, or was the witness hesitant or
22 evasive in responding to questions that you were asked of
23 that witness. Simply put, did a witness appear to you to
24 be telling the truth and to have knowledge of the facts to
25 which that witness has testified.

Jury charge

1 You may also consider whether or not the testimony of
2 a witness is consistent, or is it inconsistent with that
3 witness' own testimony and with any other statements made
4 by that same witness outside of court. And you may
5 consider whether or not the testimony of a witness is
6 consistent or inconsistent with other witnesses' testimony
7 or other evidence received during the trial.

8 You should also consider how the witness came to know
9 the facts to which a particular witness has testified. In
10 other words, what was that particular witness' opportunity
11 to perceive the existence of those facts to which that
12 witness has testified by having previously used his or her
13 senses, and then what is that witness' ability to be able
14 to come into court and to accurately recollect to you as to
15 what they have previously seen or heard, or felt for that
16 matter.

17 You should also consider any bias, prejudice or
18 interest that you find a witness might have in relation to
19 the case. In other words, do you find some reason that a
20 particular witness would come into court and would testify
21 one way or another to help or to hurt one side or the
22 other. And you may consider whether or not a witness has
23 any interest in the outcome of the case, and if you further
24 find that that interest would bear upon that particular
25 witness' credibility.

Jury charge

1 And of course you may consider whether or not the
2 testimony of a witness is strengthened, or was it weakened
3 by other testimony or other evidence received during the
4 trial.

5 Now, because you are the judges of the facts and you
6 are the judges of the credibility of each witness you are
7 permitted to believe as much or as little of what a witness
8 has testified to as you deem is appropriate.

9 Therefore you may believe everything that a witness
10 testified to. You may choose to believe none of it. You
11 may believe one portion of a witness' testimony and reject
12 some other portion of that same witness' testimony.

13 In a given case you could believe one witness as
14 opposed to several, or several as opposed to one. But
15 whatever your good judgment and common sense tells you is
16 the most believable and credible testimony is the testimony
17 you should accept. And you should reject any testimony or
18 other evidence that you find not to be credible and
19 believable.

20 Again, your sole objective is to simply reach the
21 truth in the matter. And by doing that you will have
22 fulfilled your obligations as jurors.

23 Now, while there are various forms of evidence such as
24 photographs, documents and charts and other types of
25 physical exhibits, there are really only two types of

Jury charge

1 evidence. Either or both of those types of evidence may be
2 used independently or in combination to prove any fact in
3 issue. But the two types of evidence are direct evidence
4 and circumstantial evidence.

5 Now, direct evidence is the testimony of a person who
6 testifies from actual knowledge of a fact. It is testimony
7 by a person who has perceived the existence of a fact by
8 means of his or her senses and then comes into court and
9 testifies as to what they have previously perceived.

10 Circumstantial evidence, on the other hand, is the
11 proof of some other fact or set of facts which taken either
12 singly or collectively may prove the existence of a fact in
13 question as a necessary consequence, that is through an
14 inference.

15 An inference is simply a deduction of fact that may
16 logically and reasonably be drawn from the proof of some
17 other fact or set of facts. In other words, it's not a
18 fact proven by the direct testimony of a witness based upon
19 personal perception, but it is a conclusion which might
20 reasonably be drawn from the proof of other facts.

21 In other words, you may infer that a particular event
22 occurred or that a particular fact exists based upon proof
23 of sufficient factual circumstances which would reasonably
24 warrant your arriving at that conclusion.

25 The law however makes absolutely no distinction

Jury charge

1 between the weight or value to be given to direct evidence
2 as opposed to circumstantial evidence, nor is any greater
3 degree of certainty required of circumstantial evidence as
4 opposed to direct evidence.

5 Whatever the type of evidence used to prove any fact,
6 you should consider all of the evidence presented during
7 the trial of this case. And after carefully considering
8 that evidence and weighing it in your minds if you are not
9 convinced of the guilt of the defendant beyond a reasonable
10 doubt, then you must resolve that doubt in his favor.

11 Now, in this case, as you know, there are actually
12 four separate and distinct criminal offenses. So I'm going
13 to instruct you on the law as it relates to the crimes of
14 kidnapping, armed robbery, possession of a knife during the
15 commission of a violent crime and criminal sexual conduct
16 in the first degree.

17 The crime referred to as kidnapping is set forth and
18 defined in Section 16-3-910 of the Code of Laws of South
19 Carolina. And the code of laws are these blue volumes.
20 You may not be able to see them. But every year the
21 legislature meets. And during the course of that session
22 they pass a number of rules and regulations and laws that
23 govern our conduct in a variety of ways.

24 Some of those statutes are criminal statutes, and it
25 just means that they define a criminal offense. And where

Jury charge

1 a person has been found guilty of violating the statute,
2 that is has committed an act prohibited by the statute,
3 then it subjects them to some form of punishment or
4 penalty.

5 Please understand however that the jury is never to be
6 concerned with punishment or penalty. That is not
7 something that a jury decides. Your sole obligation and
8 duty is to determine whether or not a defendant has been
9 proven guilty of some crime beyond a reasonable doubt. And
10 you should do that without regard to any consequence of
11 that decision.

12 Again, Section 16-3-910 is the statute defining
13 kidnapping. And it provides that whoever shall unlawfully
14 seize, confine, inveigle, decoy, kidnap, abduct or carry
15 away any other person by any means whatsoever without the
16 authority of law is guilty of the crime of kidnapping.

17 So in order for the defendant to be found guilty of
18 the crime of kidnapping it would be necessary that the
19 state has proven to your satisfaction beyond a reasonable
20 doubt each of the essential elements of the crime of
21 kidnapping.

22 The essential elements of the crime of kidnapping as
23 provided for by the statute are, No. 1, that the defendant
24 did seize or confine or inveigle or decoy or kidnap or
25 abduct or carry away another person by some means or

Jury charge

1 method, and, secondly, that one or more of the above acts
2 was done without the authority of law.

3 With regard to those acts in the first element there
4 are certain terms that I will define for you as provided
5 for in the statute.

6 And the term seize means to take hold of suddenly and
7 forcibly.

8 The term confine means to imprison or to restrain or
9 to restrict a person's freedom in some significant way.

10 The term abduct means to take a person away against
11 his or her will and without the authority of law.

12 The term carry away means to remove from one place to
13 another without legal authority and without consent of the
14 person being removed.

15 And the term kidnap means to carry a person away
16 through the use of force and against his or her will and
17 without authority of law.

18 And the term without authority of law simply means
19 that the conduct engaged in was not permitted, sanctioned,
20 condoned, allowed or justified under the law.

21 So in order for the defendant to be found guilty of a
22 violation of this particular statute the state need not
23 prove each of the terms seize, confine, kidnap, abduct or
24 carry away. Proof of any one of those prohibited acts is
25 sufficient so long as it was done without authority of law

Jury charge

1 and without the consent of the person who is alleged to
2 have been the victim of the kidnapping.

3 And while the state must prove a kidnapping beyond a
4 reasonable doubt as I have defined that term for you, it is
5 not necessary that the state prove any motive for the
6 conduct, nor is it necessary that any demand for money or
7 other ransom be made in order for a kidnapping to be made
8 out under the statute.

9 The second offense that I will address and instruct
10 you on the law as it relates to is that of armed robbery.

11 The criminal offense known as armed robbery includes
12 the lesser offense of robbery. So I'll first define for
13 you the term robbery. Then I'll define for you the term
14 armed robbery as provided for in the statute.

15 The crime of robbery is commonly referred to and known
16 as a larceny by force. Robbery is defined in the law as a
17 taking, the stealing, the carrying away of the personal
18 property of another having any value whatsoever from the
19 person or from the presence of any person without his or
20 her consent and with an intent to steal and by using force
21 or violence to accomplish the theft or by threatening the
22 use of force or violence in order to accomplish the theft.

23 And a thing is deemed to be in the presence of a
24 person with respect to the crime of robbery when it is so
25 within his or her reach, inspection, observation or control

Jury charge

1 that he or she could if not overcome by violence or
2 prevented by fear retain possession of that property.

3 Forcing a person to surrender property out of fear
4 from intimidation through the use of force or the threat of
5 the use of force or violence with an intent to steal the
6 property constitutes the crime of robbery under the law.

7 And Section 16-11-330 of the Code of Laws of South
8 Carolina provides that a person who commits the crime of
9 robbery as I have just described it while armed with a
10 pistol, dirk, slingshot, metal knuckles, razor or other
11 deadly weapon is guilty of the crime of armed robbery.

12 A deadly weapon is defined in the law as any device or
13 instrument which in the manner it is used or is intended to
14 be used is known to be capable of producing death or
15 serious bodily harm.

16 Ordinary objects such as sticks, tools, implements or
17 even hands or fists which are not generally considered to
18 be a deadly weapon in the ordinary sense of the word may
19 under some circumstances be used in such a fashion or in
20 such a manner as to constitute a deadly weapon. Whether or
21 not an object has been utilized as a deadly weapon depends
22 upon the facts and circumstances of a particular case, and
23 it is an issue of fact to be determined by you jurors.

24 Now, in the -- each of the indictments that charge the
25 defendant with armed robbery, in count two of each of those

Jury charge

1 indictments is also set forth the crime of possession of a
2 firearm or a knife during the commission of a violent
3 crime. And the defendant therefore is also charged in this
4 instance with possession of a knife during the commission
5 of or attempted commission of a violent crime.

6 That's a separate criminal offense, and it's set forth
7 in 16-23-490 of the code of laws. And that statute
8 provides that it shall be an additional criminal offense
9 for a person to be in possession of a firearm or to visibly
10 display what appears to be a firearm or to visibly display
11 a knife during the commission of a violent crime and where
12 the person is found guilty of committing or attempting to
13 commit that violent crime.

14 In that statute a knife is defined as an instrument or
15 a tool consisting of a sharp-cutting blade, whether or not
16 fastened to a handle, which is capable of being used to
17 inflict a cut, a slash or a wound. And Section 16-1-60 of
18 the code of laws defines what crimes are classified as
19 violent crimes. And within that statute the term violent
20 crime includes the crime of armed robbery.

21 And therefore in this particular case before the
22 defendant could be found guilty of the additional crime of
23 possession of or visibly displaying a knife during the
24 commission of a violent crime it would be necessary that
25 the defendant has been found guilty of the crime of armed

Jury charge

1 robbery and that at the time of the commission of that
2 crime of armed robbery he did visibly display a knife
3 during its commission.

4 The remaining indictment charges the crime of criminal
5 sexual conduct in the first degree. That's also a
6 statutory offense. It's set forth in 16-3-652 of the code
7 of laws.

8 That statute provides that a person is guilty of
9 criminal sexual conduct in the first degree if the actor
10 engages in sexual battery with the victim and one or more
11 of the following circumstances are proven: One, if the
12 actor uses aggravated force to accomplish a sexual battery,
13 or the victim submits to a sexual battery by the actor
14 under circumstances where the victim is also the victim of
15 a forcible confinement, a kidnapping, a robbery or any
16 other similar offense or act.

17 And in the definitional section contained in 16-3-651
18 actor is defined as a person accused of criminal sexual
19 conduct. The victim is defined as a person alleged to have
20 been subjected to criminal sexual conduct.

21 Sexual battery is defined as sexual intercourse,
22 cunnilingus, fellatio, anal intercourse or any intrusion,
23 however slight, of any part of a person's body or of any
24 object into the genital or anal openings of another
25 person's body except when accomplished for medically

Jury charge

1 recognized treatment.

2 Aggravated force is defined as the use of physical
3 force of a high and aggravated nature to overcome the
4 victim. And that would include the threat of the use of a
5 deadly weapon as that term has been defined for you
6 previously.

7 And therefore based upon the language of the statute
8 there are two essential elements which have to be
9 established before the defendant could be found guilty of
10 criminal sexual conduct in the first degree.

11 First, it must be proven to your satisfaction beyond a
12 reasonable doubt that the defendant did engage in a sexual
13 battery as that term has been defined with Katherine Rumley
14 who is named as the victim in the indictment.

15 And, secondly, it must be proven to your satisfaction
16 beyond a reasonable doubt that at the time of the
17 commission of any sexual battery the defendant used
18 aggravated force to accomplish the sexual battery, or the
19 victim was also the victim of a forcible confinement, a
20 kidnapping or a robbery or any other similar offense or
21 act.

22 You are further instructed that criminal intent is
23 also a necessary element of any crime that must be proven
24 to your satisfaction beyond a reasonable doubt. Intent
25 refers to the state of a person's mind which directs his

Jury charge

1. actions towards a specific object or goal.

2 Criminal intent is a state of a person's mind that
3 operates jointly with a physical act in the commission of
4 some criminal offense. Criminal intent is a mental state
5 of conscious wrongdoing in contrast to the commission of an
6 act which is the result of accident, inadvertence, mistake
7 or duress.

8 The element of criminal intent may be proven by the
9 acts, declarations and conduct of the defendant, as well as
10 any other circumstances which may be established by the
11 evidence in the case from which you might naturally and
12 reasonably infer such criminal intent beyond a reasonable
13 doubt.

14 Now, ladies and gentlemen, I further instruct you and
15 I emphasize to you that the fact that a defendant does not
16 testify or produce evidence during the trial of a criminal
17 case is not a circumstance that may be considered by the
18 jury in any fashion whatsoever in your deliberations and in
19 your determination as to whether or not his guilt has been
20 proven beyond a reasonable doubt.

21 As you have been previously instructed, the burden is
22 never upon a defendant to prove that he or she is not
23 guilty or to prove that he or she is innocent because in
24 some cases that might not even be possible.

25 The burden is always upon the state because they have

Jury charge

1 brought the charge against another to establish that
2 person's guilt beyond a reasonable doubt. And therefore
3 you may not draw any inference nor reach any conclusion
4 from the fact that a defendant does not testify during the
5 trial of a case, nor may that fact even be discussed by the
6 jury while you are engaged in your deliberations in the
7 case. And it may not in any way be held in the slightest
8 degree against a defendant.

9 Now, ladies and gentlemen, I am not in any way
10 concerned with what your decisions are, but, as I told you,
11 a decision must be unanimous. All 12 jurors must be in
12 agreement before any decision may be reached as it relates
13 to a particular indictment and a particular charge.

14 Madam Forelady, as I told you, you're going to have
15 these indictments in the jury room with you not as evidence
16 but simply to serve as the verdict forms. And you'll see
17 on the back of each of the indictments in the lower
18 left-hand corner there appears the word verdict. And it's
19 beneath that word that you will be indicating the jury's
20 unanimous decision as it relates to that particular charge.

21 The charges are separately stated with the exception
22 of armed robbery and possession of a knife during the
23 commission of the armed robbery. Those two charges are
24 contained in one indictment. So you will render of course
25 separate verdicts as to all and each of the charges. And

Jury charge

1 your verdicts may be the same or they may be different.
2 That of course will depend upon your determination of fact
3 and then your application of the law as it relates to that
4 particular charge.

5 So with respect to each of the charges contained in
6 each of the indictments you have two possible verdict
7 forms. And those two verdict forms are guilty and not
8 guilty.

9 So whatever that decision is as it relates that
10 particular charge, Madam Forelady, I'll ask that you
11 indicate it in the space provided on the back of the
12 indictment. Sign your name as the foreperson and place the
13 applicable date on the -- in the space provided.

14 Now, during your deliberations there may come a time
15 where you have some question about the evidence in the case
16 or the facts of the case or testimony and the like.

17 All of the evidence that is going to be introduced in
18 this case has been introduced. And it will be sent back to
19 the jury room with you when you go back to begin your
20 deliberations. No additional evidence may be received even
21 if something else exists.

22 The reason I say that is don't inquire as to whether
23 or not there's something else that you may have that you
24 don't have back in the jury room, because even if it did
25 exist you can't have it because the case has been closed.

Jury charge

1 All of the evidence has been received that's going to be
2 received. And even if something else exists that you might
3 think would assist you, you can't have it now because
4 it's -- the case is closed.

5 If at any time you have a question about testimony, in
6 other words, you've got 12 jurors, but you may not agree
7 always on what some witness said or what some fact --
8 established by a witness.

9 If you think that question can be resolved by having
10 testimony replayed in whole or in part we can bring you
11 back into the courtroom to have testimony of a witness
12 replayed.

13 I don't have transcripts of a witness' testimony. But
14 if you want to hear the testimony of a witness replayed in
15 whole or in part if you'll let the bailiff know of that
16 fact, then I'll bring you back into the courtroom to
17 accomplish that purpose.

18 If at any time you have a question about the law that
19 is applicable, you need a reinstruction or you need an
20 additional explanation or you need a clarification of the
21 law that I have provided you, I am permitted to respond to
22 those questions.

23 So while I can't answer questions of fact, if you have
24 a question about the law that you are to apply, I can and
25 will always answer those types of questions.

Jury charge

1 I don't know if we have any smokers on the jury. If
2 we do you can smoke during deliberations, but you are not
3 permitted to smoke in the jury room.

4 So if anybody feels the need to smoke, if you'll let
5 the bailiff know he'll take you outside to accomplish that
6 purpose. But you are instructed that if any juror is
7 absent for an authorized purpose the deliberations must
8 stop. And they may only resume when all 12 jurors are
9 present so that all may participate.

10 And it's not lunchtime yet, and I don't know how long
11 your deliberations will take. That obviously will depend
12 upon your sharing of your views and considering all of the
13 evidence.

14 But if you get to a point where you think it's
15 appropriate or you want to order lunch, if you'll let the
16 bailiff know I'll send the clerk back to take the lunch
17 orders. And they'll bring it here to the courthouse.

18 It usually takes about an hour or maybe an hour and
19 ten minutes to have lunch ordered, prepared and brought to
20 the courthouse. So just keep that time in mind as you go
21 back to begin deliberations. And understand that if you do
22 want to order lunch it's going to take a little over an
23 hour to have that accomplished.

24 Well, I think that concludes everything. If it
25 doesn't I'll bring you back. But right now I'll ask you to

Jury charge

1 please go to your jury room.

2 The two alternate jurors can stay here in the
3 courtroom with me. I'll ask the 12 primary jurors to go
4 with the bailiff to the jury room. But do not yet begin
5 your deliberations. I've got some matters I'll need to
6 address with the lawyers.

7 If I do not need to bring you back for any reason,
8 then I'll simply send word by way of the bailiff that you
9 may begin with your deliberations. And in that event he'll
10 bring to the jury room all of the exhibits which have been
11 introduced.

12 And to you, Madam Forelady, he'll also bring the
13 indictments which will serve as the verdict forms.

14 Now, we will also be sending back a device for you to
15 play those videos that were introduced if you wish to. And
16 so if there's some reason there's nobody like me who's
17 literate with respect to working computers -- I'm very
18 challenged in that respect. I'm not proud of it, but I am
19 not ashamed of it either. If I need help I can get a
20 3-year old to do it. So if you can't figure it out for
21 some reason, you let us know. And we'll have somebody to
22 come back and assist you with that.

23 Okay. So please retire to the jury room, but do not
24 begin deliberations as of yet.

25 (Whereupon, the jury retired to deliberate at

Verdict

1 10:55 a.m.)

2 (Whereupon, the alternate jurors were excused.)

3 THE COURT: Are there any exceptions taken to the
4 instruction or requests for additions to the instruction by
5 the state?

6 MR. GOWDY: No objections and no exceptions.

7 THE COURT: By the defendant?

8 MR. WHELCHER: None from the defense, Your Honor.

9 THE COURT: Are all of the exhibits intact from
10 yesterday evening?

11 (Pause.)

12 THE COURT: All right. Tell the jury they may begin
13 their deliberations and notify us when they have concluded.

14 We will be at ease while the jury is deliberating.

15 (Whereupon, a recess was taken.)

16 THE COURT: I'm told that the jury has reached a
17 decision.

18 Are we ready to receive it?

19 MR. GOWDY: The state is, Your Honor.

20 MR. WHELCHER: Yes, sir.

21 THE COURT: Okay. Bring them in, please.

22 (Whereupon, the jury returned to the courtroom at
23 1:25 p.m.)

24 THE COURT: Madam Forelady, have you and your fellow
25 jurors reached a unanimous decision with respect to each of

Verdict

1 the separate charges?

2 THE FOREPERSON: Yes, Your Honor.

3 THE COURT: And have you indicated those decisions on
4 the back of the indictment as requested?

5 THE FOREPERSON: Yes, Your Honor.

6 THE COURT: And did you sign your name as the
7 foreperson and date it?

8 THE FOREPERSON: Yes, Your Honor.

9 THE COURT: If you please would, hand those verdict
10 forms up by way of the bailiff.

11 (Pause.)

12 THE COURT: Ms. Moore, on the two indictments charging
13 the defendant with the crime of armed robbery there was
14 also the second count of that indictment that charged him
15 with possession of a knife during the commission of a
16 violent crime.

17 You have only indicated one verdict, and I'm going to
18 need to have two separate verdicts. I meant to set that
19 out separately for you. I neglected to do that.

20 THE FOREPERSON: We didn't quite understand. The
21 verdicts were the same.

22 THE COURT: So what I need for you to do is for you
23 and your fellow jurors to go back into the jury room. And
24 what you can do is just do a Roman Numeral I and a Roman
25 Numeral II indicating count one and count two. And set

Verdict

1 forth the verdict form as to each of the separate counts.

2 Okay?

3 THE FOREPERSON: Okay.

4 THE COURT: Let me ask you to go back to the jury
5 room. And just let us know when you have concluded with
6 that.

7 THE FOREPERSON: Okay.

8 (Whereupon, the jury retired to deliberate at
9 1:28 p.m.)

10 (Whereupon, a recess was taken.)

11 (Whereupon, the jury returned to the courtroom at
12 1:30 p.m. to report its verdict.)

13 THE COURT: All right. Madam Forelady, have you now
14 completed the verdict forms?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: If you will, please hand those up.

17 All right. You may publish the verdicts.

18 THE CLERK: State of South Carolina, County of
19 Spartanburg, the State vs. Medez Milciades Alcatrina (sic),
20 Indictment No. 2009-GS-42-4456, count one, armed robbery,
21 guilty; count two, possession of a knife during commission
22 of a violent crime, guilty.

23 Indictment No. 2009-GS-42-4457, indictment for
24 kidnapping, guilty.

25 Indictment 2009-GS-42-4460, indictment also for

Verdict

1 kidnapping, guilty.

2 Indictment No. 2009-GS-42-4458, criminal sexual
3 conduct first degree, guilty.

4 2009-GS-42-4459 armed robbery, count one, guilty.
5 Possession of a knife during commission of a violent crime,
6 count two, guilty.

7 Ladies and gentlemen of the jury, is this your verdict
8 and still your verdict? If so, please raise your right
9 hand.

10 (Whereupon, all jurors responded in the affirmative.)

11 THE CLERK: So say you all.

12 THE COURT: All right. Does the defendant wish to
13 have the jury polled?

14 MR. WHELCHER: No, sir, Your Honor.

15 THE COURT: Any other matters we need to address with
16 the jury present?

17 MR. GOWDY: None from the state, Your Honor.

18 MR. WHELCHER: No, sir.

19 (Whereupon, the trial jury was excused.)

20 MR. GOWDY: If I might approach the bench, Your Honor.

21 THE COURT: You may.

22 (Pause.)

23 THE COURT: Defense, completion of the form, please.

24 (Pause.)

25 THE COURT: All right. Anything further to be

Sentence

1 presented on behalf of the state?

2 MR. GOWDY: Your Honor, only that Katherine had asked
3 me to thank the Court for the manner in which you presided
4 over this trial and to thank the jury for giving her peace
5 of mind.

6 And the defendant has no prior record.

7 THE COURT: All right. Thank you.

8 Mr. Whelchel, I'll be glad to hear from you and
9 Mr. Alcantara.

10 MR. WHELCHER: Your Honor, you already know that
11 Mr. Alcantara is 20 years old. You don't know anything
12 about his background, and I'd like to give you some of that
13 information.

14 THE COURT: Okay.

15 MR. WHELCHER: He was born and raised up in
16 Providence, Rhode Island, went to Catholic schools in
17 Providence, Rhode Island, and Greenwich, Rhode Island. He
18 graduated high school at 16.

19 He was offered professional baseball scholarships by
20 places like West Virginia University, Arizona State,
21 several other schools like that that recruited him.

22 He ended up starting out at Cochise Junior College out
23 in Arizona, I believe, and ended up being taken in the
24 supplemental draft by the Florida Marlins baseball
25 organization.

Sentence

1 He was going to, I think, be playing in Greensboro in
2 their league there. And when he was playing, Your Honor,
3 he was making a run into home and collided with a catcher
4 and tore up his, his shoulder -- short stop and tore up his
5 throwing shoulder. And that essentially ended his whatever
6 professional baseball career he may have had.

7 His mother and father moved here, and that's how he
8 ended up in Spartanburg, Your Honor. He came here. He
9 followed them.

10 Once he was here and the baseball career was over,
11 Your Honor, he wanted to attend and tried to attend
12 Spartanburg Methodist College.

13 He also attempted to enlist in the military. He tells
14 me three of the branches told him because of the tattoo on
15 his neck that they would not take him in the military. I
16 asked why. He said he didn't know. But the Army was
17 willing to take him. He was wanting to do that at about
18 the time that this whole episode took place, Your Honor.

19 His mother was here earlier, but she and her husband
20 are struggling to keep a house that they bought here. And
21 Mitch told his mother to go to work, don't come here.

22 He may want to address the Court himself, Your Honor.

23 THE COURT: All right. Mr. Alcantara.

24 THE DEFENDANT: I just want to apologize very deeply
25 from the bottom of my heart and soul. I did make a mistake

Sentence

1 and I, I wish I can go back, but it's too late.

2 I just wish for you to have mercy on me and give me
3 chance down the road to still come home to my family and
4 friends. Thank you.

5 MR. WHELCHER: Excuse me, Your Honor. One thing.

6 THE COURT: Yes.

7 MR. WHELCHER: I would at this time make a motion for
8 a new trial in order to preserve any appellate issues that
9 may exist on behalf of Mr. Alcantara. I wanted to put that
10 on the record. Thank you, sir.

11 THE COURT: Okay. That motion is denied.

12 MR. WHELCHER: Yes, sir.

13 THE COURT: All right. Indictment 2009-4456, that's
14 the indictment for armed robbery and possession of a knife
15 during the commission of a violent crime, wherein you have
16 been found guilty by the jury of that offense, it is the
17 Sentence of the Court that you, Milciades Mendoza
18 Alcantara, be confined as to count two to the South
19 Carolina Department of Corrections, excuse me, as to count
20 one to the South Carolina Department of Corrections for a
21 period of 15 years.

22 As to count two, you're to be confined to the South
23 Carolina Department of Corrections for a period of five
24 years.

25 Indictment 2009-4457, an indictment charging you with

Sentence

1 kidnapping, Sentence of the Court is you, Milciades Mendoza
2 Alcantara, be confined to South Carolina Department of
3 Corrections for a period of ten years.

4 Indictment 2009-4458, an indictment for criminal
5 sexual conduct in the first degree, wherein you have been
6 found guilty by the jury of that offense, the Sentence of
7 the Court is you, Milciades Mendoza Alcantara, be confined
8 to the South Carolina Department of Corrections for a
9 period of 25 years. That sentence is consecutive to that
10 sentence imposed on 2009-4456.

11 Indictment 2009-4459, an indictment for armed robbery
12 and possession of a knife during the commission of a
13 violent crime, wherein you have been found guilty by the
14 jury of each of those offenses, the Sentence of the Court
15 is you, Milciades Mendoza Alcantara, as to count one be
16 confined to the South Carolina Department of Corrections
17 for a period of ten years. That sentence is consecutive to
18 any other sentence imposed today.

19 As to count two, you're to be confined to the South
20 Carolina Department of Corrections for a period of five
21 years.

22 And Indictment 2009-4460, an indictment for
23 kidnapping, wherein you have been found guilty by a jury of
24 that offense, the Sentence of the Court is that you,
25 Milciades Mendoza Alcantara, be confined to the South

Sentence

1 Carolina Department of Corrections for a period of ten
2 years.

3 Now, Mr. Alcantara, you have a right to appeal the
4 verdict of the jury and the Sentence of the Court. You
5 must file any notice of your intention to appeal those
6 decisions within ten days of today's date.

7 END OF REQUESTED TRANSCRIPT OF RECORD

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Certificate

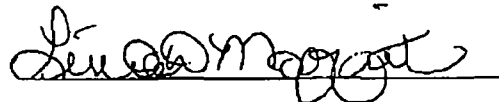
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th, 9th and 10th days of February 2010.

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

July 19, 2010



Linda D. Moffitt
Circuit Court Reporter

DM

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Spartanburg)
)
Milciades Alcantara, #339223)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2013-CP-42-00051

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (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 chr 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, exeise 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 threes 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 Lee CI, 990 Wisacky Highway, Bishopville, SC 29016
2. Name and location of Court which imposed sentence Spartanburg Co. Gen. Sessions
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) 2009-GS-42-4456; Armed Robbery/Possession of Weapon During Commission
 - (b) 2009-GS-42-4457; Kidnapping
 - (c) Please see attached.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Feb. 10, 2010; Armed Robbery: 15 years; Possession of Weapon: 5 years
 - (b) Feb 10, 2010; 10 years

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 SPARTANBURG COUNTY
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- (c) Please see attached.
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty X
 - (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. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal dismissed.
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. February 22, 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2012-UP-108
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see attached.
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

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iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Issue of ineffective assistance not cognizable on direct appeal.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? N/A
- (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. Richard Whelcher, 366 N. Church St., Ste. 3000, Spartanburg, SC 29303
 - ii. Tanya Jones, 366 N. Church St., Ste. 3000, Spartanburg, SC 29303
 - iii. Katherine Hudqins, P.O. Box 11589, Columbia, SC 29211
- (b) the proceedings at which each such attorney represented you:
 - i. Trial and sentencing.
 - ii. Trial and sentencing.
 - iii. Direct appeal.

19. State clearly the relief you seek in filing this application:

I want my convictions vacated, and the case remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

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Application for Post-Conviction Relief
Milciades Alcantara, #339223
Attachment

#11: State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) - Ineffective Assistance of Counsel

1. Counsel failed to diligently pursue any negotiated plea deal despite applicant's repeated requests. Applicant submits that, as he was willing to plead guilty to certain select and lesser offenses of which he deemed himself guilty, he would almost certainly have received a more favorable sentence in a plea proceeding.
2. Counsel failed to move for a change of venue for applicant's trial, which was held in a locale where the charges and allegations had received a disproportionately large amount of negative media attention. Applicant submits that it is unreasonable to conclude, given the nature and quantity of pertinent publicity, that the jury's verdict was the result of impartial factfinding rather than of media sensationalism.
3. Counsel did not come to detention center with intention to speak with applicant regarding the case until approximately two weeks before his trial. Even then, counsel only visited approximately six times for an average of about an hour each time. This lack of investment in the case resulted in numerous deficiencies, including but not limited to counsel's failure to object to apparent tampering with evidence by officials, and failure to uncover and investigate facts which would have proven applicant's legal innocence of several charges.
4. Despite counsel's stated intention to show legal innocence by proving applicant's prior association and conspiracy with one of the alleged victims, counsel failed to demonstrate at trial even such evidence of their association as was within his knowledge and control. Counsel did not question witnesses who could have testified regarding the matter and of whom counsel was made aware. Counsel also failed to investigate other evidence of conspiracy. Most damagingly, counsel strongly advised applicant not to testify - despite the fact that applicant was the only witness at trial who could have articulated the details of their association and conspiracy, and proven through testimony his own innocence.

Applicant submits that any one of these errors and omissions demonstrated deficient performance by an objective standard of reasonableness. He further submits that if any one of these errors had not been made, the jury would likely have returned a verdict of not guilty for the charges affected by such error or omission. But, even if one of these allegations were insufficient to prove ineffective assistance of counsel, the cumulative prejudicial effect upon the result of these proceedings cannot be ignored.

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2013-CP-42-00051

Application for Post-Conviction Relief
Milciades Alcantara, #339223
Attachment

#4: The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) ...
- (b) ...
- (c) 2009-GS-42-4458; Criminal Sexual Conduct, 1st Degree
- (d) 2009-GS-42-4459; Armed Robbery/Possession of a weapon during commission
- (e) 2009-GS-42-4460; Kidnapping

#5: The date upon which sentence was imposed and the terms of the sentence:

- (a) ...
- (b) ...
- (c) Feb. 10, 2010; 25 years
- (d) Feb. 10, 2010; Armed Robbery: 10 years; Possession of Weapon: 5 years
- (e) Feb. 10, 2010; 10 years

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

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SPARTANBURG COUNTY

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

Milciades Alcantara 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.

[Signature] Applicant

SWORN or affirmed to and subscribed before me this 3 day of Jan, 2013.

[Signature] Notary Public

My Commission Expires: 11-4-2015

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SPARTANBURG COUNTY
2013 JAN -7 AM 9:12
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
County of Bishopville)

VERIFICATION

Milciades Alcantara
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.

Milciades Alcantara

SWORN to and subscribed before me this 3
day of Jan 2013

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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SPARTANBURG COUNTY
2013 JAN -7 AM 9:18
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
)	2013-CP-42-0051
Milciades Alcantara, #339223,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed on January 7, 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 Spartanburg County Clerk of Court. He was indicted at the June 2009 term of the Spartanburg County Grand Jury for two counts of armed robbery and possession of a weapon during the commission of a violent crime (2009-GS-42-4456, -4459, counts 1 and 2), two counts of kidnapping (2009-GS-42-4457, 4460), and criminal sexual conduct – 1st degree (2009-GS-42-4458). The Applicant was represented by Tanya Jones, Esquire, and Richard Whelchel, Esquire. On February 9, 2011, the Applicant proceeded to trial, where he was convicted by a jury. The Honorable J. Derham Cole sentenced Applicant to twenty-five years for criminal sexual conduct, concurrent sentences of ten years for each kidnapping charge, and a consecutive fifteen years for armed robbery.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. Applicant also filed a *pro se* brief in support of his appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Alcantara, Op. No. 2012-UP-108 (filed February 22, 2012). The Remittitur was returned on March 12, 2012.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- a. Ineffective assistance of counsel, in that;
 - i. Counsel failed to diligently pursue any negotiated plea deal as requested by Applicant,
 - ii. Counsel failed to move for a change of venue for trial,
 - iii. Counsel did not come to see Applicant regarding the case until two weeks before trial and the visits were short,
 - iv. Counsel failed to effectively cross-examine witnesses at trial,
 - v. Counsel advised Applicant not to testify,
 - vi. Counsel failed to prove defense of innocence by demonstrating a prior association with one of the alleged victims.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application

alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 6, 2014.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

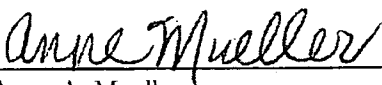
Milciades Alcantara,) 2013-CP-42-0051
)
)
 Applicant,)
)
)
 v.)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,)
)
)
 Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

J. Brandt Rucker, Esquire
 522 N. Church Street
 Greenville, SC 29601



 Anne A. Mueller
 Legal Assistant for the Respondent

DATED this 6th day of June, 2014.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
 4 MILCIADES ALCANTARA,) TRANSCRIPT
 5 APPLICANT,) OF
 6 vs.) RECORD
 7 STATE OF SOUTH CAROLINA,)
 8 RESPONDENT.) 2012-CP-42-51

9
 10 September 16th, 2014
 11 Spartanburg, South Carolina

12
 13 B E F O R E:
 14 THE HONORABLE ROGER L. COUCH, Judge.

15
 16 A P P E A R A N C E S:
 17 J. BRANDT RUCKER
 18 ESQ.
 Attorney for the Applicant
 19
 20 SUZANNE WHITE
 ASSISTANT ATTORNEY GENERAL
 Attorney for the Respondent

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 Seventh Judicial Circuit

	<u>I N D E X O F W I T N E S S E S</u>	
	<u>WITNESSES</u>	<u>PAGE</u>
1		
2		
3		
4	MILCIADES ALCANTARA	
5	Direct examination by Mr. Rucker	5
6	Cross-examination by Ms. white	18
7	RICHARD WHELCHER	
8	Direct examination by Ms. white	26
9	Cross-examination by Mr. Rucker	31
10	MILCIADES ALCANTARA	
11	Direct examination by Mr. Rucker	39
12		
13	Closing by Mr. Rucker	41
14	Closing by Ms. white	41
15	certificate	44
16		
17		
18		
19		
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22		
23		
24		
25		

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Witness List	32	33

P R O C E E D I N G S

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THE COURT: All right. Yes, ma'am, you may call the next case.

MS. WHITE: Thank you, Your Honor.

This is the case of Milciades Alcantara versus the State. It's Case Number 2013-CP-42-0051.

Mr. Alcantara was indicted in June of '09 for two counts of armed robbery, two counts of possession of a weapon during the commission of a violent crime, two counts of kidnapping, and a CSC first degree. He proceeded to trial, was represented by Richard Whelchel and Tonya Jones from the PD's Office. He was convicted February 9th, 2011. An appeal was filed and an Anders brief was filed on his behalf.

He had received sentences of 15 years for one armed robbery, concurrent five years and ten years for the possession of a weapon, kidnapping, 25 years for the CSC, which was consecutive to the first 15, and another ten consecutive for armed robbery. So a total aggregate sentence of 50 years.

He's alleged various complaints of ineffective assistance of counsel in that counsel failed to diligently pursue a negotiated plea deal, failed to move for a change of venue, only came to see the defendant two weeks before

Milciades Alcantara - Direct examination
by Mr. Rucker

1 trial, failed to effectively cross-examine witnesses, advise
2 Applicant did not testify, and failed to prove the defense
3 of innocence by demonstrating a prior association with one
4 of the alleged victims.

5 So, at this point, I will turn it over to Mr. Rucker.

6 THE COURT: Mr. Rucker.

7 MR. RUCKER: Your Honor, I call my client, Mitch
8 Alcantara, to the stand.

9 THE COURT: Come forward, sir, to my left over here and
10 be sworn.

11 MILCIADES ALCANTARA, being first
12 duly sworn, testified as follows:

13 THE COURT: Have a seat please, sir.

14 (Witness complies.)

15 THE COURT: State your name please.

16 THE WITNESS: Milciades Alcantara.

17 THE COURT: All right. Counsel, your witness.

18 MR. RUCKER: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. RUCKER:

22 Q Mr. Alcantara, do you go by Mitch?

23 A Yes, sir.

24 Q Do you mind if I call you Mitch during this case?

25 A I don't mind.

Milciades Alcantara - Direct examination
by Mr. Rucker

1 Q Okay. Mitch, what is your current sentence that you're
2 serving?

3 what were the charges that you were convicted of and
4 what's your actual time you're serving?

5 A I was given sentences of 50 years on two counts of
6 kidnapping, two counts of armed robbery, one CSC first, and
7 two, two weapon charges.

8 Q Okay. And you went forward in a trial in this case?

9 A Yes, sir.

10 Q Was Dick Whelchel your attorney?

11 A Yes.

12 Q How often did you meet with -- how many times did you
13 meet with Mr. Whelchel before your trial?

14 A Not often. Not, not, not very much. I had to write a
15 lot of staff requests to the Public Defender's Office trying
16 to get his attention to come and see me. I have numerous
17 staff requests in my file requesting to see him. He did
18 come to see me prior to our trial about two weeks. Came to
19 see me about three, benefit of the doubt, I'll give him four
20 at the most.

21 Q Okay. And how long would those meetings last when you
22 met with him?

23 A Hour or so on.

24 Q Okay. How long did he represent you before -- between
25 when you first got him and the actual trial?

Milciades Alcantara - Direct examination
by Mr. Rucker

1 A From Monday to Wednesday to, to Wednesday.

2 Q Okay.

3 A Three days trial.

4 Q I'm sorry.

5 when did you first -- when was he first appointed to
6 represent you?

7 A Oh, I had to find out. I had to write a staff request
8 to the Public Defender's Office to find out who was my
9 attorney and I found out maybe three months after I was in,
10 in the County in December. I came in December. I found out
11 about three months later.

12 Q Okay. And how much later after that did -- were -- did
13 you actually have your trial?

14 A About a year.

15 Q Okay. And in the time he met with you four times --
16 roughly three or four times?

17 A Yeah, I had to run into him a few times when he came to
18 see a few clients in the county. So I had to try to force
19 my way to try to talk to him and try to, you know, see who
20 he was to, you know, to talk to him. But he didn't come
21 initially to see me. He came to see somebody else.

22 Q Okay. But you did, in fact, meet with him several
23 times?

24 A Yeah, but not him coming to see me. I just had to find
25 a way, how to talk to him, cause he had to come see somebody

Milciades Alcantara - Direct examination
by Mr. Rucker

1 else. So I asked the officer can I speak to the attorney in
2 the, in the little room and he let me go and talk to him.

3 Q Okay. Did you at -- do you know what discovery in a
4 criminal case is?

5 A Yeah.

6 Q All right. What is that?

7 A That's everything that it was -- that's, that's
8 everything that happened during the trial.

9 Q Is it -- well, is it -- was it evidence that was gonna
10 be used against you from the Sheriff's Office or the
11 Solicitor's Office?

12 A Yeah.

13 Q Okay. Did you go over that material with Mr. Welchel?

14 A No, no, not at all.

15 Q Okay. Did he, did he tell you that y'all were gonna
16 try to get a plea in these cases?

17 A No, I came at him a few times with, you know, asking
18 for some type of plea and never did he ever come and be
19 telling me anything about a plea.

20 Q Okay. Moving directly to your, your application, did
21 you ever -- you're, you're alleging ineffective assistance
22 of counsel, correct?

23 A (Witness nods affirmatively.)

24 Q You need to speak out loud---

25 A Yeah.

Milciades Alcantara - Direct examination
by Mr. Rucker

1 Q ---just for the court reporter.

2 A Yes.

3 Q Okay. Did you ever -- were you tried on all cases --
4 all these charges at the same time?

5 A Uh-huh. (Affirmative).

6 Yeah.

7 Q Okay. And was it -- were there different crimes that
8 occurred at different times?

9 A Yeah, two different crimes, two different counties, two
10 different cities---

11 Q Okay.

12 A ---at different times.

13 Q Did Mr. -- were there different victims as well?

14 A Yeah.

15 Q All right. Did Mr. whelchel ever talk to you about not
16 tying the cases together or the word severance?

17 A No, I never -- I've never heard of that word till, till
18 you -- I just heard about it now.

19 Q Okay.

20 A Never heard of it.

21 Q At -- we've talked about severance before.

22 A Yeah.

23 Q And you, you believe that he should have asked for a
24 severance in the trial---

25 A Yeah.

Milciades Alcantara - Direct examination
by Mr. Rucker

1 Q ---the trial?

2 A Cause it was, it was two different crimes. I mean it,
3 it -- none of them happened at the same time or was just two
4 different crimes. Of course.

5 Q All right. Do you believe that that affected the
6 jury's decision on the, on the -- you being found guilty?

7 A Yeah.

8 Q Okay. Specially how did -- you were accused and
9 convicted of CSC, which is rape basically, and an armed
10 robbery.

11 How far apart in time were those two cases?

12 A Maybe about a hour and a half, two hours from the park.

13 Q Okay. And was this a, was this a identity case where
14 they were trying to identify who did it?

15 A Uh-huh. (Affirmative).

16 Q Is that yes?

17 A Yes, sir.

18 Q well, did -- were there witnesses used against you
19 in -- from both crimes at trial?

20 A Uh-huh. (Affirmative).

21 Yes, sir.

22 Q Okay. All right. And you've asked to have it -- do
23 you believe that affected the jury's outcome in both cases?

24 A Yes, sir.

25 Q All right. Do you -- were you intending to plead to

Milciades Alcantara - Direct examination
by Mr. Rucker

1 some of this without pleading to other parts of the charges

2 --

3 A Yeah.

4 Q -- or some of the charges without other parts of the
5 charges?

6 A Yes, sir.

7 Q which one were you willing to plead guilty to if you
8 could get a negotiated plea?

9 A The Subway. One count of, one count of kidnapping,
10 armed robbery, and one weapon during a violent crime.

11 Q All right. Do you deny the, the CSC case?

12 A Yes, sir.

13 Q Okay. Did you talk to Mr. Welchel about the, the
14 levels of proof necessary to prove you guilty in this case?

15 A Yes, sir.

16 Q Did you tell him that you were willing to plead to the
17 subway case, which included the kidnapping, but not to the
18 CSC rape case?

19 A Yes, sir.

20 Q All right. what did he tell you about that?

21 A Really he didn't tell me nothing about it. He just
22 said they got all evidence on me, that we gonna have to go
23 to trial on both of them cause they happened in the same
24 day, you know, and I was like it shouldn't be like that.

25 Q All right. Did, did he tell you what evidence they had

Milciades Alcantara - Direct examination
by Mr. Rucker

1 against you in the rape case?

2 A Just DNA.

3 Q All right. And did -- you understand that the judge
4 will have the transcript of the trial and will have the
5 evidence so that he can see the evidence that came in?

6 A Yes, sir. Yeah.

7 Q All right. Do you believe that you were improperly
8 identified in that case?

9 A what do you mean by improperly?

10 Q well, you -- did you know the alleged victim before
11 he---

12 A Yeah. Yes, sir. Yes, sir.

13 Q were you -- do you believe you didn't commit any kind
14 of criminal act, but y'all had a consensual relationship?

15 A Yes, sir.

16 Q All right. Did you mention this to Mr. whelchel?

17 A Yes, sir.

18 Q All right. what evidence did you have to suggest to
19 Mr. whelchel that you had a relationship with her before?

20 A I told him about our star matching tattoos. I told him
21 about me being prior to the -- me, prior to this incident
22 happening, me being there before, a couple days before.

23 Me -- I told him about my two witnesses I had.

24 Q who were those witnesses?

25 A Gary Bryant and Nick, Nick Susio and he say that they

Milciades Alcantara - Direct examination
by Mr. Rucker

1 couldn't be used because they was in Spartanburg County
2 Jailhouse too at the same time while I was doing, doing my
3 time at the county. So he said we couldn't use them.

4 Q All right. Did he tell you that he believed that that
5 would affect their credibility?

6 A Because they was locked up, yeah.

7 Q But did you believe they would tell the truth that---

8 A Yes.

9 Q ---about the relationship?

10 A Yes, sir.

11 Q Okay. What were they locked up for?

12 A I don't know. I don't even -- I only -- I don't know.

13 Q Do you know---

14 A I never talked to them.

15 Q I'm sorry. Go ahead.

16 A No, I don't even, I don't even know these guys. I
17 didn't -- they know me and they see me in the past before
18 out there with her, but I, I don't even know them.

19 Q Okay. And when you said you were in that store, what
20 kind of store was it where the alleged CSC happened?

21 A It's a tanning salon.

22 Q Okay. And did the victim work there to your knowledge?

23 A Yes, sir.

24 Q All right. And you had visited with her beforehand a
25 couple days?

Milciades Alcantara - Direct examination
by Mr. Rucker

1 A Yes. Yes, sir.

2 Q Okay. Other than the witness statements, what else --
3 what other evidence did you have that you wanted him to
4 investigate and determine if that would help your defense?

5 A Well, I had told him about the star tattoo that she has
6 that is matching with mine. See he never brought that up
7 during trial.

8 I also told him about investigating the area around
9 because she was saying that the only business around that
10 was close -- open was, you know, the tanning salon, which
11 was not true. You have an Ingle's across the street. You
12 had a Movie Gallery across the street. These businesses
13 were all opened, you know, and I told him if she did really
14 wanted to run out, she could of, but she didn't because, you
15 know, we knew each other and she went to the back towards
16 me. She locked the door. I didn't make her lock the door.

17 I told him all this information and most of it was not
18 used during the trial.

19 Q Okay. And do you think that you were -- you believe
20 there was sufficient evidence on the kidnapping case from
21 the subway?

22 A Yeah.

23 Q All right. And you believe that, based on that
24 evidence, that, that you would of been found guilty if you
25 went to trial on that?

Milciades Alcantara - Direct examination
by Mr. Rucker

1 A Uh-huh. (Affirmative).

2 Q But---

3 A Yes, sir.

4 Q But your issue is that the CSC was combined, and
5 because of the previous kidnapping you think that's why you
6 were found guilty of the CSC?

7 A Yes, sir.

8 Q Okay. All right. Did you testify in this case?

9 A No, sir.

10 Q All right. Why did you not testify?

11 A Right before, right before we came back in from recess,
12 he told me it was best not to testify because he would have
13 to answer questions from the State, and if I must, it was
14 best, in your defense, not to take the stand. I'm not a
15 professional. So I was young. I did not know. So I just
16 went with his advice.

17 Q All right. How old were you at the time of the trial?

18 A Nineteen.

19 Q All right. Did you have a prior adult record?

20 A No, sir.

21 Q Okay. Did he tell you why he didn't think you should
22 testify?

23 A No.

24 Q Did you have any kind of mental issues or something
25 that would affect your ability to tell the truth?

Milciades Alcantara - Direct examination
by Mr. Rucker

1 A No, sir, not, not that I know of, no.

2 Q All right. And if you would of testified, what would
3 you of testified -- would you have testified that y'all had
4 a consensual relationship?

5 A Yes, sir.

6 Q Okay. You would of admitted to the other crime, but
7 you would of -- okay.

8 A (Witness nods affirmatively.)

9 Q Specifically, and I may have already asked this, but
10 just to be clear, why did he tell you not to testify?

11 A He told me that it was not beneficial for me because
12 I'll have to answer questions for the State.

13 Q Did he tell you he didn't believe that you could answer
14 those questions truthfully?

15 A He just -- no, that's not what he said.

16 Q All right. He, he---

17 A That's not what he say. He just felt it was best for
18 me not to take the stand. He felt like we did a good enough
19 job that the defense that he put up was, was good enough.
20 So felt me taking the stand was actually gonna be, you know,
21 against me.

22 Q All right. You've alleged in your application that
23 there was some evidence of a conspiracy.

24 what does that conspiracy -- how does that affect the
25 CSC case?

Milciades Alcantara - Direct examination
by Mr. Rucker

1 A Because I know the alleged victim, Catherine Renee
2 Rumbley, who I know. She had left the door, back, back-door
3 opened for me and I know her. So that, that, that never
4 happened, the, the armed robbery or that occurred, but she
5 tried to say that I had did everything when all -- I didn't,
6 I didn't. She was part of it too.

7 Q All right. When y'all went over the discovery, did you
8 see that the victim was not cooperative for a while?

9 A Yes, sir.

10 Q And did you talk to Mr. Welchel about that?

11 A Yes, sir.

12 Q All right. How did he say that would affect your case?

13 A He say it shouldn't. It was working in my favor
14 because she refused to go through all these documentations
15 and paperwork and statements. That rape exam came out
16 negative, 100 percent good, nothing, like it never happened.
17 So everything was in my favor at the time. But when the
18 trial came, it just absolutely went the other way.

19 Q Did he cross-examine -- well, first of all, were you
20 offered a plea -- were you offered a plea---

21 A No, sir.

22 Q ---in this case?

23 All right. Did he cross-examine the victim properly to
24 establish that you had a prior relationship?

25 A He didn't cross-examine her. Tonya Jones did.

Milciades Alcantara - Direct examination
by Mr. Rucker

1 Q Okay. And did she do that?

2 Did she properly cross-examine him or her?

3 I'm sorry.

4 A I think she did a fair job.

5 Q Okay. Are there other issues you want to bring to the
6 Court's attention about your trial?

7 A No, sir.

8 MR. RUCKER: Okay. No further questions.

9 THE COURT: State.

10 MS. WHITE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WHITE:

13 Q Mr. Alcantara, the, the defense, you said that you were
14 willing to plead to the subway incident, but the, the CSC
15 and the armed robbery at the UltraTan you wanted to go to
16 trial on?

17 A Yeah, because I, I -- that, that never occurred, that
18 never happened the way it was, it was said.

19 Q All right. And you don't deny that you were present
20 with the victim at the UltraTan, that money was taken, and
21 that you had sex with her or your testimony is that it was
22 coordinated together with her?

23 A Yes. Yes, ma'am.

24 Q Okay. And, in fact, you mentioned DNA. The DNA was
25 found and tested from semen that was found on the floor in

Milciades Alcantara - Cross-examination
by Ms. White

1 the laundry room at the tanning salon.

2 Is that right?

3 A Yes, ma'am.

4 Q Okay. And when you say that the rape kit came back

5 good for you, you're testifying that there was no physical

6 trauma necessarily to the victim.

7 Is that right?

8 A Yes, ma'am, no trauma, no sign of entrance or no signs

9 of injuries or anything like that.

10 Q Okay. Now, Ms. Jones did cross-examine the victim and

11 pointed out the fact that she had failed to cooperate for

12 some time, did she not?

13 A Yes, she didn't want to write no statement, did not --

14 refused to give the right address, refused to go to the

15 hospital.

16 Q And all of that was presented to the jury on your

17 behalf by your counsel, is that right?

18 A By Tonya Jones, yes.

19 Q Okay. They also presented and argued about the fact---

20 THE COURT: Just one second.

21 MS. WHITE: I'm sorry.

22 THE COURT: He refers to this person as the Attorney

23 General. That's what he's saying.

24 MS. WHITE: Tonya Jones.

25 THE COURT: Was she with the Attorney General's office?

Milciades Alcantara - Cross-examination
by Ms. White

1 MS. WHITE: No, she was, she was cocounsel with Mr.
2 Wheelchel.

3 THE COURT: She worked for the Public Defender's Office
4 here. Saw -- he's referring -- and I just wondered if
5 there's something I missed, that Tonya Jones may of worked
6 for the Attorney General at some time.

7 MS. WHITE: I don't think so, Your Honor.

8 MR. RUCKER: I don't think -- I think he's saying that
9 Tonya Jones was his public -- one of the public defenders --

10 MS. WHITE: Right.

11 MR. RUCKER: -- that represented him.

12 THE COURT: Okay.

13 Q And did you -- you were also aware that or you were
14 there when she asked the victim about the fact that she had
15 stated that you had told her to go lock the door, but yet
16 she never ran.

17 Is that right?

18 A No, I never told her to lock the door.

19 Q No.

20 But I'm saying you were present at your trial when Ms.
21 Jones cross-examined the witness --

22 A Yes.

23 Q -- about the fact that she had an opportunity to run
24 but did not?

25 A Yes, ma'am.

Milciades Alcantara - Cross-examination
by Ms. White

1 Q Okay. And, in fact, that was brought out on closing,
2 was it not, that Ms. Jones argued that she was in on the gig
3 is what she said --

4 A Yes, ma'am.

5 Q -- and helped coordinate this robbery and consensual
6 sex?

7 A Yes, ma'am.

8 Q So that was presented by the jury, but the jury did not
9 believe that, did they?

10 A Nah, it was all on camera. They did not believe it.

11 Q Okay. And, in fact, you were identified and seen on
12 the video coming into the tanning salon earlier and then you
13 were able to be identified once you went into the Subway
14 later by the tattoo on your neck and the car you were
15 driving?

16 A No, not quite. I was identified at the Subway by a
17 star tattoo. Never, never was because I, prior to the
18 UltraTan. I was only identified because of the car, the
19 burgundy red car that I was driving and she identified a
20 star tattoo on my right-hand side of my neck, which was
21 something that Catherine Renee Rumbley did not do, which she
22 had nine times to do it, to say to a few officers that
23 incident. She never did. I was with her for about -- at
24 least an hour and she never mentioned anything about no star
25 tattoo.

Milciades Alcantara - Cross-examination
by Ms. White

1 But yes, she said that the only thing that she
2 remembered seeing was my neck, and this is what she said
3 during the, during trial.

4 Q Okay. And your girlfriend, at the time of the
5 incident, testified, didn't she?

6 A Yes, ma'am.

7 Q And she was able to identify you from clothing that you
8 were wearing at the UltraTan and connect that to the fact
9 that she knew you had that clothing, is that correct?

10 A Yeah, she said those, those looked like my clothing.
11 She couldn't say it was me because my face was covered, but
12 she said those look like my clothing, yeah.

13 Q Okay. And wasn't there also a search where some money
14 was found in a box at your home?

15 A Yes, ma'am.

16 Q Okay. And that was connected to this as well, is that
17 right?

18 A Yes, ma'am.

19 Q All right. You, you said that the evidence you had was
20 a matching star tattoo.

21 was there any other physical evidence or any direct
22 evidence that you had or mentioned to Mr. Welchel or Ms.
23 Jones that connected you to Mr. Rumbley?

24 A Besides me being with her a few times before this
25 incident, no, because I didn't have a cell phone. I didn't

Milciades Alcantara - Cross-examination
by Ms. White

1 own a cell phone. So I just stopped by a few times and saw
2 that.

3 Q And she had testified she'd only worked there two
4 weeks---

5 A Uh-huh. (Affirmative).

6 Q ---at the time, is that right?

7 A Uh-huh. (Affirmative).

8 That's about how long I knew her.

9 Q Okay.

10 A I met her at a party at Upstate Spartanburg.

11 Q And your attorneys talked with you about it.

12 The judge talked with you about your right to testify,
13 didn't he?

14 A Say, say what?

15 Q Did the judge talk with you about your right to---

16 A Yes, ma'am.

17 Q ---testify?

18 A Yes, ma'am.

19 Q And, on the record, you stated that you did not want to
20 or you were not gonna testify, is that right?

21 A It was not a decision that I come up with myself. I
22 wanted to, but being that the counsel told me it was not
23 best in my interest, I -- he told me not to. So I just went
24 with his advice.

25 Q Okay. So when the, the Court said you had talked with

Milciades Alcantara - Cross-examination
by Ms. White

1 the judge about the advantages and disadvantages and made
2 this decision of your own free will, that wasn't entirely
3 true?

4 A No, ma'am.

5 Q Okay. Nobody has pressured you into that and nobody
6 had forced you into that, but you had made that decision on
7 your own?

8 A No, ma'am, I just went with what the counsel said, what
9 was best for me. I did not know. I was 19 years old. I
10 didn't really know what was going on.

11 Q But the Court asked you also, at the same time, if you
12 had any other witnesses you wanted your lawyers to call or
13 any other evidence you wanted them to introduce. You said
14 no, sir.

15 Do you recall that?

16 A Yes, ma'am.

17 Q Okay. So was that not telling the truth then either?

18 A What do you mean?

19 Q You -- you're saying that you had other witnesses that
20 you wanted them to call in evidence---

21 A Well, I mean---

22 Q ---but you told the Court you didn't---

23 A The witnesses that I had did not come, did not show
24 because they said that they were not, you know, good
25 witnesses because they been also housed in Spartanburg

Milciades Alcantara - Cross-examination
by Ms. White

1 County at the time, and those are my only two witnesses.

2 I -- had it been someone that, besides the bruises that she
3 had on her hips, you know, she said that I was grabbing her
4 from the, from the hips, but she also said I had a knife
5 over her and all these other things, I talked to him about
6 it, but nothing was brought up in trial.

7 Q And so my question was, when you told the Court that
8 there was no other evidence that you wished for your
9 attorneys to produce or no other witnesses you wanted them
10 to call, and you said no, sir, that's not accurate?

11 That was not telling the truth?

12 A It's accurate. That's what I said. But I mean I only
13 said that because that's what the counsel told me to and
14 that's what was best for me at the time.

15 MS. WHITE: Okay. Thank you, Your Honor. That's all I
16 have at this time.

17 MR. RUCKER: No further questions, Your Honor.

18 THE COURT: You may step down.

19 Applicant may call its next witness.

20 MR. RUCKER: Mr. -- Mitch is our only witness.

21 THE COURT: All right. State may call witnesses.

22 MS. WHITE: Thank you, Your Honor.

23 We call Richard Wheelchel to the stand.

24 THE COURT: Come forward, sir.

25 RICHARD WHELCHER, being first duly

Richard whelchel - Direct examination
by Ms. White

1 sworn, testified as follows:

2 THE COURT: Have a seat.

3 (Witness complies.)

4 THE COURT: State your name please.

5 THE WITNESS: Richard whelchel.

6 THE COURT: Your witness, Ms. White.

7 MS. WHITE: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. WHITE:

10 Q Mr. whelchel, do you recall representing Mr. Alcantara
11 in this case?

12 A Yes, ma'am.

13 Q And is it accurate that you represented him for
14 approximately a year prior to trial?

15 A I believe so, yes.

16 Q Do you recall meeting with him and---

17 A Yes, ma'am.

18 Q Do you recall how many times you met with him?

19 A Not exactly, no. But we met sufficiently amount of
20 times. I took the video up there. We looked at the video I
21 know a couple of times, and when I say video, I'm talking
22 about the video that was the discovery of the robbery at the
23 UltraTan.

24 Q And that was -- there were two incidents. One at the
25 UltraTan and then one at a Subway about an hour and a half

Richard whelchel - Direct examination
by Ms. white

1 later.

2 A Exactly.

3 Q Okay. And was there -- there was no video from the
4 Subway incident, is that right?

5 A No, ma'am. Well, wait a minute. I think there may of
6 been some video from the Subway.

7 Q But not enough to fully identify him or---

8 A Well, he had on a mask --

9 Q Okay.

10 A -- and that's when the star tattoo came in to play.

11 Q And he was identified by the victims of the Subway
12 robbery by the tattoo and described the car and clothing, is
13 that right?

14 A Yes, ma'am, and that's what led to -- when the, when
15 the identification, or not the identification, when the
16 description of the car was put out, he was stopped by law
17 enforcement based on the description of the car.

18 Q And are you aware of what evidence, how they were able
19 to connect this UltraTan incident with the Subway or what
20 connection there was?

21 A They were actually going -- I think the -- they were
22 working the Subway first and then noticed the similarities
23 between the descriptions between the two of them, and I
24 think that's how they got from one to the other.

25 Q In regards to the evidence, you and co-counsel

Richard Whelchel - Direct examination
by Ms. White

1 cross-examined a lot of the witnesses and co-counsel
2 cross-examined the victim in this case.

3 Had you spoken with Mr. Alcantara about a defense of
4 the fact that this was a consensual planned event?

5 A Yes.

6 Q And did you feel like there was any other evidence
7 that, other than his statement of or version of these facts,
8 was there anything that he had provided to you that could
9 help support that?

10 A Actually the videotape helped his case in my opinion.
11 That was, that was the best evidence in his case.

12 Q And was that because of the actions or the lack of
13 actions, some on the part of the victim?

14 A Exactly.

15 Q And that was brought up in front of the jury as to how
16 she, I guess, did not cooperate?

17 A Ms. Jones cross-examined her, I thought, quite
18 effectively on that.

19 Q And that was raised also in closing, was it not?

20 A Yes, ma'am.

21 Q Okay. Did you ever talk with Mr. Alcantara -- he
22 mentioned matching star tattoos.

23 was there anything you discussed about that or anyway
24 you thought you would be able to get that into evidence?

25 A He may of said something about it, and if, if it was

Richard whelchel - Direct examination
by Ms. white

1 visible, yes, but I never saw a matching star tattoo.

2 Q Was there any other evidence or witnesses that your --
3 had he mentioned these two witnesses he's mentioned here
4 today to you?

5 A If he did I don't, I don't remember it.

6 Q In regards to any other evidence that could of
7 supported a defense in this charge, was there anything that
8 you were provided or told by him they existed?

9 A No, ma'am.

10 Q In regards to plea offers, he testified that he would
11 of wanted to plead to the subway incident separately and go
12 to trial on the UltraTan.

13 Did you have any discussions with him about that or the
14 possibility of a plea?

15 A We actually discussed that with -- well, we broached
16 that to the state and they said that absolutely not. The
17 state was unwilling to accept his plea on the subway issue
18 and to go forward on trial in the other one.

19 Q Did you ever discuss the possibility of a severance of
20 the charges?

21 A Yes.

22 Q And what was the decision or what was the determination
23 following that discussion?

24 A The decision was to go forward on all of it.

25 Q Was that based on some kind of trial strategy or

Richard whelchel - Direct examination
by Ms. White

1 something?

2 A It was based primarily on the fact that he was charged
3 with criminal sexual conduct, kidnapping, and armed robbery,
4 and then a separate kidnapping and armed robbery, and I did
5 not put it above the State to, if he were convicted of one,
6 to serve life without parole notice on him.

7 Q And did you discuss with him the possibility that there
8 could of been a, a notice of life without parole later?

9 A Yes.

10 Q In regards to testifying, did you talk with him about
11 whether or not he should testify and if it would help his
12 case at all?

13 A Yes, we did.

14 Q And what was the determination of how that could help
15 or hurt his case?

16 A we told him that he didn't have, he didn't have to
17 testify and he could testify. But if he didn't testify, and
18 we didn't put up any evidence, that whoever or whichever one
19 of us would do the closing arguments, we'd get the final
20 argument before the jury.

21 Q And did you feel like that was his decision, once you
22 discussed it with him, as to whether or not he would
23 testify?

24 A Yes.

25 MS. WHITE: One moment please, Your Honor.

Richard Welchel - Direct examination
by Ms. White

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 Q Did you feel like, based on the evidence and, and the
4 information, like you said the videotape from the UltraTan
5 and, and the victim's actions, that there was a chance that
6 this defense would work or did you think it was, it was
7 gonna be a tough, tough case to win or what was your take on
8 it?

9 A It was gonna be a tough case to win. There's no
10 question about that, and there wasn't any question, when
11 dealing with Mr. Alcantara, that the Subway case wasn't any
12 question about that, and when he told us that it was
13 consensual and that it was essentially an inside job and
14 everything, and we got the video, the video went along with
15 his, his version of the facts.

16 Q But there were no phone records, there were no other
17 evidence that he, prior -- in fact, the video, didn't it
18 show him coming in earlier and there being really no, no
19 interaction?

20 A Yeah.

21 Q Okay. All right. Thank you.

22 That's all I have at this time, Your Honor.

23 THE COURT: You may cross-examine.

24 MR. RUCKER: Thank you, Your Honor.

25 CROSS-EXAMINATION

Richard whelchel - Cross-examination
by Mr. Rucker

1 BY MR. RUCKER:

2 Q Mr. whelchel, did you submit a witness list in this
3 case?

4 A No.

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

6 THE COURT: You may.

7 (WHEREUPON, a witness list was marked as Applicant's
8 Exhibit No. 1 for identification purposes only at this
9 time.)

10 Q Mr. whelchel, I'm gonna show you what's been marked as
11 Plaintiff's Exhibit No. 1.

12 A Hang on.

13 Q Do you recognize that document?

14 A Yes.

15 Q All right. what is that document?

16 A It's a proposed witness list. I don't think we ever
17 submitted it.

18 Q All right. Did you have -- is that your signature at
19 the bottom though?

20 A Yes.

21 Q All right. who are -- I move exhibit -- Applicant's
22 Exhibit No. 1 into evidence.

23 MS. WHITE: Your Honor, is -- the State has no
24 objection with the acknowledgment that he doesn't believe it
25 was actually submitted to the Court.

Richard whelchel - Cross-examination
by Mr. Rucker

1 THE COURT: All right. That's his testimony. I'll
2 allow it to come into evidence. It will be received as it's
3 been marked.

4 (WHEREUPON, Applicant's Exhibit No. 1 was received into
5 evidence at this time.)

6 Q Is that your signature on that document?

7 A Oh yes.

8 Q Did you -- who are those two witnesses?

9 A I can't tell you.

10 Q All right.

11 A I mean I just don't remember.

12 Q Could those be the witnesses that he told you about
13 that may of been in jail at the time?

14 A Could be.

15 Q Were you present when he testified earlier?

16 A Yeah.

17 Q Are those the same people he, he referred to by name?

18 A I think so.

19 Q Okay. And you, you say that your -- you didn't want to
20 go forward to move for a severance.

21 Do you think you could of successfully gotten a
22 severance of those two cases?

23 A No.

24 Q Okay. And why do you think that based on the way the
25 law works?

Richard Whelchel - Cross-examination
by Mr. Rucker

1 A Cause they were so closely connected.

2 Q All right. When you say closely connected, how far
3 apart in time were they?

4 A About an hour.

5 Q Okay.

6 A Just over an hour.

7 Q And how far---

8 A I think it's actually an hour and 15 minutes, and space
9 wise, they were like a mile down the road---

10 Q Okay.

11 A ---or something like that.

12 Q But you never actually made a motion, a motion to show
13 they were too close, too similar that it could affect the
14 jury's decision making?

15 A No, sir.

16 Q All right. And -- but your testimony is that you did
17 that because you were afraid that there would be a life
18 without -- the state would seek life without parole?

19 A Yes.

20 Q All right. Did they ever tell you they were gonna do
21 that if you moved to sever?

22 A No, I didn't---

23 Q All right.

24 A I didn't talk to them. I didn't want to bring life
25 without parole up to anybody.

Richard Wheelchel - Cross-examination
by Mr. Rucker

1 Q Yes, sir, but---

2 A That, that wasn't in our defense group.

3 Q Yes, sir.

4 But that was a fear you had and did you convey that
5 information to my client?

6 A Yes.

7 Q Okay. And as far as the -- Ms. Jones
8 cross-examination, you believed that cross-examination
9 helped your case, helped his case as far as the CSC?

10 A Yes, sir.

11 Q All right. And I want to go back before I jump far
12 ahead.

13 If, if he is found not guilty of the CSC, if they tried
14 that case first, then how would they go for life without
15 parole in the kidnapping case?

16 Can you describe that situation?

17 A You mean if they're separate trials?

18 Q Yeah.

19 If they were separated, and he was acquitted of one,
20 and then the separate kidnapping case---

21 A Or they're not.

22 Q But if you -- they were severed, if the cases were
23 severed and he had been acquitted of the CSC case where you
24 had the effective cross-examination, a weaker case, problems
25 with the State's case, if he was acquitted, and then they

Richard whelchel - Cross-examination
by Mr. Rucker

1 went forward, were you still concerned about the life
2 without parole?

3 A No.

4 Q Okay. which case was on the docket first?

5 Do you know?

6 Do you recall?

7 A No, I don't. I don't know that they ever separated
8 them.

9 Q Okay.

10 A They may have. I can't tell you that. Sometimes all
11 of the cases that a client has are on the docket in the slot
12 together.

13 Q Okay.

14 A And I don't know if they were ever separated.

15 Q I -- most of my criminal practice is in Greenville and
16 I know Greenville's run separately than in a different way
17 than Spartanburg as far as the solicitor's office.

18 who controls when the case is called in Spartanburg?

19 A Now it's a judge run docket.

20 Q Okay.

21 A It was the judge.

22 THE COURT: It was the judge then.

23 MR. RUCKER: Yes.

24 And the judge will make the determination of which went
25 forward first of these two cases if they were severed or

Richard Welchel - Cross-examination
by Mr. Rucker

1 would it be the solicitor's office who would make that
2 determination?

3 THE COURT: I can tell you that the administrative
4 order says date of arrest. So if he's arrested on the same
5 date, the solicitor would of had the option of calling which
6 one he wanted to call first.

7 Q Do you believe you could of objected to which one was
8 being called based on the way the system works up here is
9 what I'm getting at?

10 A I don't know. I could of objected. I don't know if it
11 would of worked. I'm not saying it could.

12 Q That -- and I understand that the administrative
13 order -- has there ever been a challenge in a similar
14 situation where the same day arrests and attempts to sever
15 the cases and there was an argument over that?

16 A Not to my knowledge.

17 Q Not to your knowledge?

18 A No, sir.

19 MR. RUCKER: Okay. No further questions.

20 THE COURT: It might of been a 15 percent case.

21 THE WITNESS: Excuse me?

22 THE COURT: It might of been a 15 percent case where
23 the solicitor picks them off.

24 THE WITNESS: Yeah, I don't remember.

25 THE COURT: I will let the counsel know that, that our

1 administrative order also allows for the solicitor to pick
2 the top 15 percent of the cases on the docket, and they set
3 those however they want to set them.

4 MR. RUCKER: Yes, sir, I understand and I'm, I'm simply
5 asking is anybody ever attempted to challenge that when you
6 had a case similar to this.

7 THE COURT: That's what the order provides for. I
8 guess you can go to the Chief Justice and get her to change
9 it.

10 MR. RUCKER: Yes, sir, I mean I'm certainly not arguing
11 with Your Honor. I just---

12 THE WITNESS: The case, the case was actually on the
13 docket before it was tried.

14 THE COURT: Okay.

15 THE WITNESS: It was on the docket in December of -- in
16 the December before it was tried in February, but I had a
17 problem with my back and I was out of work all week, and the
18 only reason I can remember that is when I saw it, I was
19 reviewing the file, that's the week that Wofford beat
20 Carolina in basketball and I didn't get to go to the game.

21 MR. RUCKER: Okay. No further questions.

22 THE COURT: Anything further?

23 MS. WHITE: The State has nothing further, Your Honor.

24 THE COURT: You may step down.

25 MS. WHITE: And the State has no additional witnesses.

1 THE COURT: You wish to call any witnesses in rebuttal?

2 MR. RUCKER: Your Honor, one second please.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. RUCKER: I'd like to briefly recall my client
6 please.

7 THE COURT: Certainly.

8 Come forward, sir.

9 (Witness complies.)

10 THE COURT: Sir, I'll remind you that you're still
11 under oath.

12 Do you acknowledge that fact?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Have a seat please.

15 MILCIADES ALCANTARA, having been
16 previously sworn, testified as follows:

17 THE COURT: You may proceed, counsel.

18 MR. RUCKER: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. RUCKER:

21 Q Mitch, you heard the testimony of Mr. whelchel about
22 talking to you about life without parole.

23 Do you recall that conversation?

24 A No, sir, I don't.

25 Q All right. Did y'all ever talk about life without

Milciades Alcantara - Direct examination
by Mr. Rucker

1 parole?

2 A The -- he had told me, when all these charges were
3 presented to me, say you're looking at a lot of time and he
4 just added all of these years up with this can carry to 25,
5 this can carry to 30 years, and you're looking at a hundred
6 and something years. You know, I was like wow, that's a
7 lot, that's a lot of time. That I do remember and -- but I
8 never remember him saying anything about life without
9 parole.

10 Q All right. Specifically did he tell you if y'all tried
11 to sever the cases that you could be looking at life without
12 parole?

13 So, therefore, strategically, you needed to not do
14 that?

15 A No, sir, I've never heard the word severance till you
16 told me over the phone a few days ago.

17 Q Okay. Well, was that -- that was when we had a
18 conversation.

19 You don't recall talking to Mr. Welchel about it?

20 A Not no severance, no, sir.

21 MR. RUCKER: No further questions.

22 MS. WHITE: Nothing further, Your Honor.

23 THE COURT: All right. You may step down, sir.

24 I'll hear from the Applicant's attorney.

25 MR. RUCKER: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. RUCKER: We argue that Mr. Welchel did not go over
3 the case sufficiently to explain severance and the
4 possibilities of severance. My client's testified that he
5 never talked to him about severance. He doesn't recall or
6 he believes they never talked about life without parole, and
7 that this case, if explained to him properly, he would of
8 chosen to have it severed because he doesn't believe he
9 would of been convicted of CSC but for combining the
10 kidnapping from the subway with that case.

11 Additionally, we also rely on the other issues listed
12 in the application he already testified to.

13 THE COURT: All right. Thank you.

14 Yes, ma'am.

15 MS. WHITE: Thank you, Your Honor.

16 The State would argue that the Applicant's failed to
17 meet his burden of proof of establishing ineffective,
18 ineffective assistance of counsel in regards to any
19 deficiency. He has not shown that there was anything that
20 counsel should have done that would of been performed by
21 reasonable counsel that he did not perform that could of
22 made any kind of difference in the outcome of this trial.

23 Counsel cross-examined the witnesses. Definitely
24 brought up the point of trying to argue that this was some
25 kind of inside job and consensual sexual encounter.

1 However, unfortunately, the jury did not believe that
2 defense and so we would argue that he is failed to meet his
3 burden of proof and the application should be denied.

4 THE COURT: I have not read the transcript. I'll just
5 ask counsel.

6 Counsel, I would assume the jury charge, in the jury
7 charge, the judge would of instructed the jury that each
8 indictment must rise and fall on its own and the jury should
9 decide the cases separately from the other indictments. I
10 have not read the charge, but I would suspect -- that's a
11 standard charge.

12 MS. WHITE: I believe, Your Honor, the charge is Page
13 264 to 289.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. WHITE: And I believe that that was explained. I'm
16 trying to find the actual --.

17 (Pause.)

18 MS. WHITE: 268, he talks about -- the, the judge
19 actually talks about as to these allegations to each of the
20 charges he is pleaded not guilty, the burden of proving each
21 of the elements that makes up each of the crimes as to the
22 particular charge. So he does go through and that's just
23 one, one place.

24 THE COURT: One reference to it.

25 All right. I'll take a look at it.

1 All right. Thank you very much.

2 MS. WHITE: Thank you.

3 MR. RUCKER: Thank you, Your Honor.

4

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6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 16th day of September, 2014.

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

July 9th, 2015



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The State of South Carolina)

Plaintiff)

vs.)

Milciades Alcantara)

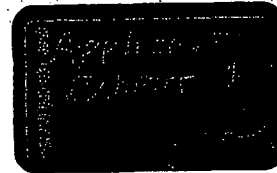
Defendant)

) IN THE COURT OF GENERAL SESSIONS

DEFENDANT'S WITNESS LIST

1. Nick Suchil

2. Gary Bryant



Richard H. Wheelchel

Attorney for the Defendant

Circuit Public Defender

Seventh Judicial Circuit Public Defender Office

366 North Church Street, Suite 3000

Spartanburg, South Carolina 29303

(864) 596-2561

February 8, 2010

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Milciades Alcantara, #339223,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2013-CP-42-0051

ORDER OF DISMISSAL

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 MAY - 8 PM 3: 59
 M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 7, 2013. The Respondent made its Return on or about June 6, 2014. An evidentiary hearing into the matter was convened on September 16, 2014, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Brandt Rucker, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Richard Whelchel, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. He was indicted at the June 2009 term of the Spartanburg County Grand Jury for two counts of armed robbery and possession of a weapon during the commission of a violent crime (2009-GS-42-4456, -4459,



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counts 1 and 2), two counts of kidnapping (2009-GS-42-4457, 4460), and criminal sexual conduct – 1st degree (2009-GS-42-4458). The Applicant was represented by Tanya Jones, Esquire, and Richard Welchel, Esquire. On February 9, 2011, the Applicant proceeded to trial, where he was convicted by a jury. The Honorable J. Derham Cole sentenced Applicant to twenty-five years for criminal sexual conduct, concurrent sentences of ten years for each kidnapping charge, and a consecutive fifteen years for armed robbery.

A timely notice of appeal and Anders brief were filed on Applicant's behalf. Applicant also filed a *pro se* brief in support of his appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Alcantara, Op. No. 2012-UP-108 (filed February 22, 2012). The Remittitur was returned on March 12, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - i. Counsel failed to diligently pursue any negotiated plea deal as requested by Applicant,
 - ii. Counsel failed to move for a change of venue for trial,
 - iii. Counsel did not come to see Applicant regarding the case until two weeks before trial and the visits were short,
 - iv. Counsel failed to effectively cross-examine witnesses at trial,
 - v. Counsel advised Applicant not to testify,
 - vi. Counsel failed to prove defense of innocence by demonstrating a prior association with one of the alleged victims.

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

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 P2

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of Applicant as to all allegations raised.

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." 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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient

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SPARTANBURG COUNTY
2015 MAY -8 PM 3:59
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p3

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).

Applicant testified that he informed Counsel that he was willing to plead guilty to the incident that occurred at the Subway, but not the crimes that occurred at the tanning salon. However, Applicant testified that Counsel did not pursue a negotiated plea deal to that charge. Applicant testified that he did not know at the time of the trial that his charges could be severed, but he believes that would have been to his benefit because the charges involved two separate crimes. Counsel testified that the State was unwilling to allow Applicant to plead guilty solely to the incident at Subway and intended to proceed to trial with both incidents.

Applicant testified that he recalled Counsel advising him that he could face "like a hundred years," but Applicant was never advised of a potential life without parole sentence. Further, Applicant testified that Counsel only visited with him briefly and not until two weeks prior to trial. Applicant testified that he was represented at trial by Counsel and Tanya Jones, Esquire, of the Seventh Circuit Public Defender's office. Counsel testified that he did not believe that the cases could be severed based upon the similarities and the close connection in time. Counsel testified that not filing a motion for severance was a strategic decision because you also run the risk of the State filing a notice to seek life without parole if the cases are severed and Applicant is found guilty of the first charges.

This Court finds that the Applicant's allegations that Counsel did not spend enough time with him, failed to pursue a negotiated plea, and should have made a motion for severance are

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CLERK OF SUPERIOR COURT
SPRINGFIELD, VIRGINIA

without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or spent additional time with the Applicant prior to the case being called to trial. This Court notes that Counsel has years of experience representing clients on similar charges and remains updated on case law through research. Counsel reviewed discovery materials with the Applicant, including the video of both the Ultra Tan incident and the Subway. Counsel also discussed with the Applicant the possibility of presenting a defense that the Ultra Tan incident was planned with the victim. This Court finds Counsel's testimony that the State refused to offer a negotiated plea to the Subway charges only very credible.

As to the failure to move to sever the charges, "charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced." State v. Beekman 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). The Applicant failed to demonstrate any right that was prejudiced from the joinder of the charges in one trial and failed to show that had Counsel made a motion to sever, that the

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 2015 MAY -8 PM 3:59
 M. HOPE BLACKLEY

motion would have been granted or that the severance would have affected the outcome of the trial.

Applicant testified that the alleged victim of the criminal sexual conduct – 1st degree and kidnapping at the tanning salon had been involved in a consensual sexual relationship with Applicant. Applicant testified that he had previously been to the tanning salon and met the victim. Applicant testified that he provided Counsel with the names of two witnesses, Gary Bryant and Nick (no last name), who could corroborate the fact that Applicant had been in the tanning salon before. However, Applicant testified that he did not know the two witnesses, but they had seen Applicant at the tanning salon before. Applicant introduced the signed, but not filed proposed witness list as Applicant's Exhibit #1, as evidence that he informed Counsel of the two potential witnesses. Applicant testified that the robbery of the tanning salon was planned with the victim. The victim left the back door open for Applicant and was the one who locked the door instead of running out of the door. Applicant testified that although his semen was found at the tanning salon, there was no physical trauma to the victim, which supported his defense of a consensual relationship. Although Applicant alleged that Counsel was ineffective for failing to effectively cross-examine the victim as to their alleged relationship, Applicant acknowledged that Tanya Jones thoroughly cross-examined the victim as to the fact that she failed to cooperate with the police and refused to provide a correct address.

Counsel testified that there was a video from the tanning salon incident, which showed the Applicant entering the store, but Counsel believed it helped the Applicant's case because it showed the victim's actions or lack of actions. Counsel testified that Ms. Jones was effective in cross-examining the victim and raised the issues regarding the victim's credibility during closing arguments as well. Counsel also testified that the Subway robbery occurred approximately an

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P 4

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2015 MAY - 8 PM 59
HOPE BLACKLEY

hour and a half after the tanning salon incident. Counsel testified that the Applicant was wearing a mask during the Subway robbery, but was identified by the victims by his clothing, vehicle, and star tattoo on his neck. Counsel testified that he could not recall the names of the two potential witnesses. Counsel acknowledged the signed proposed witness list had two names on it, but could only assume that they might be the names of the men Applicant referenced who were in the County Detention Center.

In regards to the Applicant's allegation that Counsel was deficient in the cross-examination of the State's witnesses, this Court finds that the Applicant has failed to meet his burden of proof. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions Counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. This Court finds that Ms. Jones was effective in her cross-examination of the witness, in particular calling attention to the victim's unwillingness to cooperate. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

Additionally, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony

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 CLERK OF SUPERIOR COURT
 H. HOPE BLACKBERRY

would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The Applicant failed to present any witness testimony to support his claim that Counsel was ineffective for failing to call the two witnesses on Applicant's behalf. This Court would be required to speculate on what those witnesses might have said.

Further, the Applicant alleged that Counsel failed to prove a defense of innocence based upon the Applicant's prior relationship with the victim. Applicant failed to present any testimony or evidence that would support his claim of a prior relationship and which could have been used at trial.

Applicant testified that Counsel advised him not to testify on his own behalf because Applicant would be forced to answer questions from the State, but that Applicant wanted to testify to explain the consensual relationship between the victim and him and had no prior record. Counsel testified that he discussed the right to testify with the Applicant and advised him of the risks, but it was Applicant's decision not to testify.

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances and counsel challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). There is a strong presumption that counsel's conduct falls within the wide range of reasonable

STATE OF SOUTH CAROLINA
 DEPARTMENT OF PROBATION AND PAROLE
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 M. HOSE B. BACHLEY

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professional assistance and the “defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.” Id.

This Court finds that the Applicant has failed to meet his burden of proof as to any allegations that Counsel was ineffective in his representation. Therefore, this claim is denied and dismissed.

This Court also finds that although it was raised in his application, the Applicant did not pursue the allegation of Counsel’s failure to make a motion for change of venue at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this claim.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, Counsel’s testimony was most credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel’s conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland that he was prejudiced by Counsel’s performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLANKLEY

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 application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions 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), SCRPC, 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. Your 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 this 8th day of May, 2015.



 Roger L. Couch
 Presiding Judge

STATE OF SOUTH CAROLINA
 SPARTANBURG COUNTY
 2015 MAY -8 PM 4:00
 M. HOPE BLACKLEY

369

WITNESSES

- 1. SEARCHED
- 2. REPORT ENDED **Computer**
- 3. CARD FILED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURES
- 7. ASSIGNMENT AND FINE CARD MADE **Computer**
- 8. TRAFFIC VIOLATIONS COPY

Spartanburg County Sheriff's Department

ARREST WARRANT NUMBER

M-085528; M-085534

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8-20-09

VERDICT

Guilty I
Guilty II

Debbie W. Moore

Foreperson of Petit Jury

Date: 2/10/2010

DOCKET NO

09-GS-42-4456, A

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

THE STATE

vs.

Mendoza Milciades Alcantara

Indictment for

ARMED ROBBERY AND POSSESSION OF
KNIFE DURING COMMISSION OF A VIOLENT
CRIME

SC Code: 16-11-330 (A); 16-23-490

CDR Code: 139: 1245

Class FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2009 AUG 28 AM 10: 55

MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 20 2009, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE---ARMED ROBBERY

That Mendoza Milciades Alcantara did in Spartanburg County on or about December 30, 2008, while armed with a knife, feloniously take from the person or presence of Katherine Rumley, an employee of Ultratan, located at 2099-F East Main Street, Duncan, South Carolina, by means of force, violence, and/or intimidation, approximately \$150.00 in monies belonging to Ultratan, with intent to deprive the owner permanently of such property, all in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

**COUNT TWO---POSSESSION OF KNIFE DURING
 COMMISSION OF A VIOLENT CRIME**

That Mendoza Milciades Alcantara did in Spartanburg County on or about December 30, 2008, possess or visibly display a knife during the commission of a violent crime, to-wit: ARMED ROBBERY, all in violation of Code §16-23-490, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

371
302

WITNESSES

1. SERVICED MADE *Computer*

2. NOTARIZED *Computer*

Spartanburg County Sheriff's Department

3. INDEXED

4. CHECKED WARRANT

5. CHECKED SIGNATURE

6. ASSESSMENT AND *Computer*

7. TRAFFIC VIOLATIONS COPY

DOCKET NO. **09-GS-42-4457**

The State of South Carolina

County of Spartanburg

Trey Gowdy, *Solicitor*

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2009 AUG 28 AM 10:55

MARC KITCHENS

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

ARREST WARRANT NUMBER

M-085532

THE STATE
vs.

Mendoza Milciades Alcantara

ACTION OF GRAND JURY

Tom Bill

[Signature]

Foreperson of Grand Jury
Date: 8-20-09

VERDICT

Guilty

Debbie W. Moore

Foreperson of Petit Jury
Date: 2/10/2010

Indictment for
KIDNAPPING

SC Code: 16-3-610
CDR Code: 16-3
Class FEL-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 20 2009 the

Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

That Mendoza Milciades Alcantara did in Spartanburg County on or about December 30, 2008, willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Katherine Rumley; without authority of law, all in violation of Section 16-03-910, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Andy Crick
Assistant Solicitor

373
304

WITNESSES

- 1. RETURN MADE
- 2. RETURN MADE
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURES
- 7. ASSESSMENT AND
- 8. CARD MADE
- 9. TELEPHIC VIOLATIONS COPY

Spartanburg County Sheriff's Department

ARREST WARRANT NUMBER

M-085530

ACTION OF GRAND JURY

Tom R. Pitt

[Signature]
 Foreperson of Grand Jury
 Date: 8-20-09

VERDICT

Guilty

Debbu W. Moore
 Foreperson of Petit Jury
 Date: 2/10/2010

DOCKET NO.

09-GS-42-4458
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009 TERM

THE STATE
vs.

Mendoza Milciades Alcantara

Indictment for
 CRIMINAL SEXUAL CONDUCT,
 FIRST DEGREE

SC Code: 16-3-652
 CDR Code: 0160
 Class: FEL-A (V)

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY

2009 AUG 28 AM 10:55

MARC KITCHENS

375
306

WITNESSES

- 1. REPORT MADE
- 2. INDEXED
- 3. CHECKED WARRANTS
- 4. CHECKED SIGNATURES
- 5. ASSESSMENT AND FINE CALCULATED
- 6. TRAFFIC VIOLATIONS COPY

Spartanburg County Sheriff's Department

ARREST WARRANT NUMBER

M-085529; M-085533

ACTION OF GRAND JURY

True Bill

[Signature]

Foreperson of Grand Jury
Date: 8-20-09

VERDICT

Guilt I

Guilt II

Debra W. Moore

Foreperson of Petit Jury
Date: 2/10/2010

DOCK 09-GS-42-4459A

The State of South Carolina
County of Spartanburg
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

THE STATE
vs.

Mendoza Milciades Alcantara

Indictment for

ARMED ROBBERY AND POSSESSION OF
KNIFE DURING COMMISSION OF A VIOLENT
CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR Code: 139: 1245
Class FEL/A; FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 AUG 26 AM 10:55
MARC KITCHENS

308

WITNESSES

1. SENTENCE MADE *Computer*

Spartanburg County Sheriff's Department

4. INDEXED

5. CHECKED WORKSHEET

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE UNITS *Computer*

8. TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

M-085535

ACTION OF GRAND JURY

Home Bill
Handy

Foreperson of Grand Jury
Date: 8-20-09

VERDICT

Guilty

Debra W. Moore

Foreperson of Petit Jury
Date: 8/10/09

DOCKET NO. - **09-GS-42-4460**

The State of South Carolina
County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 24 2009

TERM

THE STATE
vs.

Mendoza Milciades Alcantara

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2009 AUG 28 AM 10:56

MARC KITCHENS

