

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Honorable G. Thomas Cooper, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL ANTWON FULLER,

APPELLANT

APPELLATE CASE NO. 2016-000672

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State’s Exhibits No. 1-3 (CDs); State’s Exhibits No. 17, 18, and 19 (photographs); State’s Exhibit No. 28 (photograph); State’s Exhibit No. 29(CD); State’s Exhibit No. 30 (Video from Gas Station); State’s Exhibit No. 31 (Video from Hotel); State’s Exhibit No. 32 (Audio from 911 call)

1 We'll have a bailiff walk out with you, obviously
2 you can't do it in the building, but, let's try
3 to reconvene around -- we'll call you when we're
4 ready but probably around 3:15, 3:20, something
5 like that. At least give you a chance to stretch
6 your legs and maybe walk around the courthouse or
7 something, walk outside. I hope it's a pretty
8 day. None of us have been out so so we don't
9 know.

10 Don't discuss the case amongst yourselves
11 while you're in the jury room.

12 THE CLERK: You said 3:15.

13 THE COURT: I'm sorry. 2:15. Sorry.

14 (Jury exits courtroom at 1:47 p.m.)

15 THE COURT: You can't talk to anybody.

16 THE WITNESS: Yes, sir.

17 THE COURT: Stand at ease until 2:15 or
18 thereabouts.

19 (Lunch break taken. The trial resumed at
20 2:19 p.m.:)

21 THE COURT: State ready to proceed?

22 MS. BODMAN: We are, Your Honor.

23 THE COURT: Defense ready to proceed?

24 MS. ALVES: Yes, sir.

25 THE COURT: Bring the jury, please.

WILLIAM R ROYSTER, III - CROSS BY ALVES

(Jury enters courtroom at 2:20 p.m.)

THE COURT: All right. Ms. Alves, you may cross-examine.

CROSS-EXAMINATION

BY MS. ALVES:

Q. Investigator Royster, during your investigation of this case, you talked to Dominique Paige on more than one occasion; is that correct?

A. Yes, ma'am.

Q. And you talked to him about that gun that was found in Ms. Schlinger's car, didn't you?

A. Yes, ma'am.

Q. And when you talked to him the first time, do you remember what day that was?

A. I believe it was in February.

Q. Okay. The very first time?

A. Yes.

Q. Okay. And when you talked to him that first time, you told him that Michael said that the gun was, that the gun was in the pocket of the jacket that Michael borrowed from Dominique; is that correct?

A. Yes, ma'am.

Q. And Dominique was upset about that?

A. Yes.

Q. And then you talked to him a second time. When was

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 that?

2 A. Within a day or two of the first one.

3 Q. Okay. And the second time you talked to him you
4 were actually with another person?

5 A. Yes. Steve Miano from the solicitor's office.

6 Q. An investigator with the solicitor's office?

7 A. Yes, ma'am.

8 Q. And when you talked to Dominique about the gun, he
9 told you that he knew about the gun from another person?

10 A. Yeah. He gave -- yes.

11 Q. In fact, he said somebody else told him that
12 Michael stole the gun.

13 A. Yes, ma'am.

14 Q. And at one point he told you that the gun had been
15 taken, like, about two weeks before?

16 A. Yes, ma'am.

17 Q. And he said he knew all about it because somebody
18 else told him about it?

19 A. Yes.

20 Q. And on another occasion he told you that Michael
21 told him that he stole the gun?

22 A. Yes.

23 Q. But when you were talking to him those times,
24 initially when you were talking to him he never said he
25 was with Michael when he stole the gun?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. That's correct.

2 Q. So what he told you today -- what he said here
3 today is different from what he initially told you when
4 you interviewed him the first, those two times?

5 A. That's correct.

6 Q. And, going back to the morning of December the
7 20th, you got -- you were awoken because you were --
8 around five, something around five in the morning?

9 A. About five, 5:30, yes, ma'am. Jeremy Hembree asked
10 that I come out and assist him on it.

11 Q. Okay. So you were called out to assist --

12 A. At the scene.

13 Q. -- in this investigation?

14 A. Yes.

15 Q. And what's the first thing you did?

16 A. I went to where the crash was.

17 Q. Okay.

18 A. And photographed it.

19 Q. So you took the photographs that we see here in
20 State's Number 17?

21 A. Yes, ma'am.

22 Q. And State's Number 18?

23 A. Yes, ma'am.

24 Q. And State's Number 19?

25 A. Yes, ma'am.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. And those are all the photos at the scene?

2 A. Yes.

3 Q. I believe they're also shown in --

4 A. If they're of that scene taken in the dark, then I
5 took them.

6 Q. You took all those pictures?

7 A. Yes, ma'am.

8 Q. Okay. So what did you know about this case when
9 you were taking those pictures at the scene?

10 A. Not a whole lot. The officers there told me that
11 there was a female at the hospital giving informing of an
12 assault, possible kidnapping, that she was going up that
13 road, somehow the car ended up in the tree.

14 I mean, they didn't have a whole lot of
15 information. They told me that the person they found in
16 the car was inconsistent with his stories as to how he
17 got there and to who was driving that car.

18 So I had limited information at the very first.

19 Q. Okay. What did you do -- how long were you at the
20 scene taking these photographs?

21 A. Probably not even an hour because I was back at
22 headquarters by 6:30.

23 Q. Okay. So we know it was 6:30 when you were back
24 because that's when you started the interview with
25 Mr. Fuller?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. Yes.

2 Q. And according to State's Exhibit Six that interview
3 started at 6:31?

4 A. Yes, ma'am. I wrote it on the form for the time.

5 Q. Okay. So were you down at the scene the whole time
6 before you went back to public safety?

7 A. Yes, ma'am.

8 Q. Okay. So at no point had you talked to
9 Ms. Schlinger about this?

10 A. I did not get an opportunity to talk to her for a
11 week or more. About, almost a week.

12 Q. About a week?

13 A. And that was very limited.

14 Q. So you didn't know her side of the story?

15 A. Not completely, no. Not from her.

16 Q. So when you talked to Michael at the police
17 station -- I want to be clear. You talked to him at
18 public safety down here on Laurens Street?

19 A. Yes, ma'am.

20 Q. Okay. And when you talked to him you didn't know
21 Ms. Schlinger's side of the story?

22 A. No.

23 Q. And you didn't know -- beg the Court's indulgence
24 one moment.

25 (Pause.)

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 So you didn't know -- did you know all the details
2 of her story?

3 A. Just -- no, ma'am. I did not know all the details.

4 Q. So on the video where you're telling Michael that
5 your story differs from hers a little bit, you didn't
6 actually know what her story was?

7 A. Not her whole complete story. No, I did not.

8 Q. And when you're telling him her story's a little
9 different than yours, you didn't actually know what her
10 story was?

11 A. No, I did not.

12 Q. Okay. And on the video Michael was insisting to
13 you that she was under the influence?

14 A. That's what he kept --

15 Q. That's what he told you, right?

16 A. Yes, that's what he said.

17 Q. And he told you a story about how she just crashed
18 into a tree with no provocation from him. That's what he
19 said on the video?

20 A. That's what he said.

21 Q. Did you ever think to investigate further whether
22 or not Ms. Schlinger was, in fact, under the influence?

23 A. No.

24 Q. Even though you had not had her side of the story
25 at that point?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. That's correct.

2 Q. Okay. And that was because, as you said, her story
3 made more sense than his?

4 A. The scope of my investigation was a kidnapping and
5 an assault, not a DUI.

6 Q. Okay. So you already knew it was a kidnapping and
7 an assault but -- at that point based --

8 A. Based on what I was told, yes, I felt like that's
9 what I had.

10 Q. Did you know it was a sexual assault at that point?

11 A. Yes.

12 Q. Now when you were interviewing Mr. Fuller and he
13 was saying that he didn't do anything sexual to that
14 girl, you said that she never said that.

15 A. I -- yes, I said that.

16 Q. And you said -- and he said that's what the other
17 guy said. And you said, well, she didn't say that. Is
18 that what you told him?

19 A. That's what I said.

20 Q. Okay. Now when you were talking to Michael Fuller,
21 were you aware that he had just been woken up unconscious
22 in the car?

23 A. Yes.

24 Q. And you knew that the officers had shined their
25 lights -- were you aware that they had to shine their

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 lights and make noise in order to rouse him out of the
2 vehicle?

3 A. I didn't know how they got him out.

4 Q. The only thing you knew he was unconscious?

5 A. That's what I was told. He was found laying across
6 the back seat.

7 Q. Do you know if he was given any medical treatment
8 prior to talking to you, you or any of the officers at
9 the scene?

10 A. No.

11 Q. You don't know or he wasn't?

12 A. I didn't know.

13 Q. Do you know whether or not he suffered from a
14 concussion?

15 A. No, I do not.

16 Q. Do you know if anybody checked to see whether he
17 suffered from any kind of concussion or anything else
18 when he was taken out of the vehicle?

19 A. No, I do not.

20 Q. Okay. Now, you searched -- now, after, after you
21 took these pictures, did you have an opportunity to
22 photograph this car again?

23 A. Yes. It was taken to the sheriff's department.
24 They have a garage used for processing of vehicles. And
25 it was taken there, and that's where we went through it.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Okay. I'm showing you -- whoops. State's Number
2 20.

3 A. Yeah. Picture on the bottom was -- the other one.
4 Yeah. Both of those were taken inside that garage.

5 Q. Okay. So you took the car there to check out the
6 car further and see?

7 A. Yes, see what we could find in it.

8 Q. Okay. Did you also go back out to the accident
9 scene?

10 A. Yes.

11 Q. And you did in the daylight?

12 A. Yes.

13 Q. And you checked around in the daylight as well as
14 in the evening?

15 A. Yes. We were looking around because the way the
16 car hit that tree a lot of items in the car was ejected
17 from the car.

18 Q. A lot of the items in the car were ejected?

19 A. Yes, ma'am.

20 Q. And, in fact, you went out and looked all around
21 the area, around the area around the tree --

22 A. Yes.

23 Q. -- to see what property was out there?

24 A. Yes.

25 Q. And you took pictures of the items that you found?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. Yes.

2 Q. And a lot of the items that you found, some of
3 these was, like, pieces of the car were pretty much
4 everywhere?

5 A. Yeah.

6 Q. And you found some items in the daytime that you
7 hadn't seen in the night?

8 A. Some.

9 Q. And you took pictures of those and collected what
10 you could?

11 A. What was needed to be collected. It wasn't much
12 left out there.

13 Q. Okay. Well, I'm showing you what's marked as
14 Defense Number 10.

15 A. Yes.

16 Q. That's the picture of the inside of Ms. Schlinger's
17 car?

18 A. Yes. That's at the passenger door.

19 Q. And that was taken, that picture was taken in the
20 evening, that night, wasn't it?

21 A. That morning, yes. It was still dark. You can see
22 by the asphalt on the road.

23 Q. Oh, I'm sorry. I meant while it was still dark
24 outside.

25 A. Yes.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Okay. And in that picture it shows one mini bottle
2 of wine?

3 A. Yeah. There was a small bottle of wine in the car.

4 Q. Okay. And you saw the video from the BP station?

5 A. Yes.

6 Q. And on that video it showed Ms. Schlinger buying a
7 little four-pack?

8 A. I don't recall what it showed her buying. I don't.

9 Q. Okay.

10 A. I was told that that's what it was, but I don't
11 recall seeing that.

12 Q. Okay. But you were told that that's what she in
13 fact bought was a little four-pack of wine?

14 A. That's what I was told.

15 Q. Where are the other three bottles?

16 A. Ma'am, I don't know. I did not find them.

17 Q. Even though you looked all through the car?

18 A. Looked all through the car and the area around it
19 where it crashed.

20 Q. Okay. And you didn't find the other three bottles?

21 A. No, ma'am.

22 Q. And you didn't find the little carton that the four
23 bottles would have come in?

24 A. No, ma'am.

25 Q. But you did find this one bottle. Did you ever ask

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Ms. Schlinger about this bottle of liquor?

2 A. I did not ask her, no.

3 Q. So you didn't ask about the other three bottles,
4 either?

5 A. No.

6 MS. ALVES: Beg the Court's indulgence one
7 minute.

8 (Pause.)

9 Q. All right. Investigator Royster, I'm showing you
10 what's been marked as Exhibits 13 through 19 for the
11 Defense. Do you recognize these?

12 A. 13, 14 and 15 appear to be photographs that I took
13 when the car was at the sheriff's department's garage.
14 16, 17, 18 and 19 are photographs of the crash scene when
15 I went back out there in the daylight.

16 Q. Okay. So all of those accurately reflect how these
17 looked at the scene and the car looked when you took the
18 pictures?

19 A. Yes, ma'am.

20 Q. That was the day after this incident?

21 A. Yes, ma'am.

22 Q. Okay. Thank you. And -- oh. And this area
23 surrounding this tree and this area in -- Your Honor, at
24 this time I move 13 through 19 into evidence.

25 MS. BODMAN: No objection.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 THE COURT: Without objection.

2 (Defendant's Exhibit Nos. 13, 14, 15, 16, 17, 18
3 and 19, photographs, received into evidence 14

4 BY MS. ALVES:

5 Q. Look at Number 16. This shows the tree that was
6 hit?

7 A. Yeah. It shows right at the curb, you can see
8 where the grass is messed up where the car went over the
9 curb. And if you look closely you can see the bark off
10 the tree that was hit.

11 Q. That's the tree in the far distance in the photo?

12 A. Yeah.

13 Q. But this shows the area surrounding before the tree
14 was struck?

15 A. Yes.

16 Q. And between the street and the tree?

17 A. Yes.

18 Q. And, showing you what's in Number 17. That's
19 another area between the street and the tree?

20 A. That's basically the same view, just closer.

21 Q. And 18 is?

22 A. Looking from the tree back towards where these two
23 photographs were taken. I'm standing near the tree. And
24 these markers I have here, that's where the tires came
25 over the curb.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Okay. I think you can see them better in 19.

2 A. Yes, you can. Yes.

3 Q. Okay. So this is the area you searched when you
4 were looking --

5 A. That and behind, because this area is where the car
6 came from, but once it hit the tree there was no debris
7 here. It would have been all behind the tree and there
8 was some bushes behind the tree where a lot of debris
9 went.

10 Q. Okay. So you searched the bushes behind the tree?

11 A. Yes.

12 Q. You searched the area surrounding the tree?

13 A. Yes.

14 Q. And then the area between the tree and the street?

15 A. Yes.

16 Q. What about the area between the tree and the
17 parking lot behind it?

18 A. Yeah, we looked all in the parking lot because the
19 tree wasn't very far from the parking lot.

20 Q. And you didn't see three other bottles that matched
21 this?

22 A. No, ma'am, I did not.

23 Q. Now, Investigator Royster, how long have you lived
24 in Aiken?

25 A. A long time.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. A long time. How long have you worked for Aiken
2 City?

3 A. 24 years.

4 Q. Would you say you're familiar with the streets
5 around the hospital?

6 A. Yes.

7 Q. Very familiar?

8 A. Yes.

9 Q. Okay. And part of your job, you actually ride
10 around those areas on a regular basis?

11 A. Oh, yes. I did on patrol.

12 Q. On patrol?

13 A. Yes.

14 Q. Okay. Now, we've heard a lot of Iroquois Street.

15 A. Yes.

16 Q. Where is Iroquois Street in relation to the
17 hospital?

18 A. Not very far. As the crow flies, not very far. It
19 would be less than a half mile.

20 Q. Okay. And actually you can get to Iroquois Street
21 if you go through the hospital and through a couple of
22 those back streets behind the hospital.

23 A. Yeah, cut over to Hudson. That's the road that
24 runs behind the hospital off Medical Park Drive.

25 Q. And then Hudson, you turn down?

WILLIAM R ROYSTER, III - CROSS BY ALVES

- 1 A. You got over to Trolley Line and you're right,
2 Iroquois's not far..
- 3 Q. So to get to Trolley Line Road from the hospital
4 you said you go down Medical Park Drive?
- 5 A. You can, yes.
- 6 Q. And --
- 7 A. Make a left.
- 8 Q. I'm just going one way.
- 9 A. Okay.
- 10 Q. Just one way you can get there is to go down the
11 hospital?
- 12 A. Yes.
- 13 Q. Down Medical Park Drive?
- 14 A. Yes.
- 15 Q. Pass where this tree that was hit, the tree on your
16 right?
- 17 A. Yes.
- 18 Q. Then you drive down till you get to the stop sign?
- 19 A. Yes.
- 20 Q. At Hudson?
- 21 A. Yes.
- 22 Q. Turn left on Hudson?
- 23 A. Yes, ma'am.
- 24 Q. Go straight down a short ways?
- 25 A. Yes.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Turn right on Trolley Line?

2 A. That's correct.

3 Q. And then if you go straight on Trolley Line, what
4 road did you run into?

5 A. Well, it changes name.

6 Q. And what name does it become?

7 A. It becomes Hampton Avenue. The intersection at
8 traffic light it changes names to Hampton.

9 Q. So that's -- I want to put a picture in everybody's
10 mind at this intersection. You kept going down Trolley
11 Line, and is that the intersection -- they call that area
12 Six Points?

13 A. Yes.

14 Q. And, it's like a weird, a split where there's --

15 A. That's why they call it Six Points.

16 Q. Yes. And it goes one direction toward -- it
17 changes to Hampton?

18 A. Yes.

19 Q. And then the other direction it changes to
20 Vaocluse?

21 A. Vaocluse to your left or to your right, Hampton
22 straight ahead, and then there's a couple other little
23 roads that fork into it. It's kind of weird.

24 Q. Yeah, and it's like a gas station on the corner?

25 A. Yes.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Don't remember what the name of it is but there's a
2 gas station right there on the corner.

3 A. Well, it's a repair shop now but it was gas
4 station.

5 Q. Okay. And so, and then if you keep traveling down
6 Hampton you get -- do you eventually get to the corner of
7 where Hampton and Sumter intersect?

8 A. Yes. Right, just past the sheriff's office.

9 Q. Okay. So you can get to Hampton Avenue going
10 through the hospital down Medical Park Drive?

11 A. Yes.

12 Q. You can also get to Hampton if you drive straight
13 down University Parkway?

14 A. Yes.

15 Q. And then make --

16 A. Make a right on Vaucluse I mean on Trolley Line
17 right there at the traffic light.

18 Q. You can make a right on Trolley Line?

19 A. Yes.

20 Q. And then go straight down Trolley Line?

21 A. You'll end up the same way you did if you cut
22 through on Hudson.

23 Q. Okay. So there is more than one way to get to
24 Hampton Avenue from the hospital, from the area where the
25 tree was struck?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. Yes. I would say that would probably be about the
2 only two.

3 Q. The only two?

4 A. Shortest ways, yes.

5 Q. The two shortest routes to get to Hampton Avenue?

6 A. Yeah.

7 Q. Other than go all the way through town and hit
8 every light in town.

9 A. Yeah.

10 Q. Okay. But the route going through the hospital,
11 you actually avoid a couple of the lights that you would
12 hit if you went down University, and then had to --

13 A. You'd avoid one light.

14 Q. You'd avoid a light?

15 A. Yes.

16 Q. Okay. So, I'd like you to step down. I'm going to
17 show you this map which is marked as Defense Number
18 Four.

19 A. (Complying.)

20 Q. I know we've looked at this before, but can you
21 orient us again. Where is the Quality Inn?

22 A. Right over here.

23 Q. Okay. So going to the hospital, the Quality Inn on
24 the route that Ms. Schlinger said she took, she came out
25 of the Quality Inn?

WILLIAM R ROYSTER, III - CROSS BY ALVES

- 1 A. Yeah.
- 2 Q. And she went up University Parkway -- excuse me,
- 3 I'm sorry. Richland Avenue?
- 4 A. Richland to University.
- 5 Q. Now Richland Avenue is also Highway 1?
- 6 A. Yes, US 1.
- 7 Q. Can we move that over a little bit so everybody can
- 8 see? So went up Richland Avenue. Where's Richland
- 9 Avenue?
- 10 A. Right here.
- 11 Q. And so then, where is University?
- 12 A. Right here at this intersection.
- 13 Q. And that's the intersection where the BP is?
- 14 A. The BP's right here.
- 15 Q. That's Wal-Mart across the street there?
- 16 A. Wal-Mart down here.
- 17 Q. Okay. So traveling up University show us where the
- 18 hospital is.
- 19 A. Hospital's here. Come all the way down to here.
- 20 Q. And can you show us on this map where the first
- 21 entrance to the hospital is. The main entrance.
- 22 A. Right here. The little road coming in. You come
- 23 back to the doctors' offices here or it forks off to the
- 24 parking area here.
- 25 Q. And that's the one that's actually labeled as the

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 main entrance?

2 A. Yes, it is.

3 Q. Okay. Can you hold this a moment?

4 A. Yes, I got it.

5 Q. Thank you. And that is the entrance shown in
6 Defense Number Two?

7 A. Yes, it is.

8 Q. The main entrance?

9 A. Yes.

10 Q. You said it forks off to the doctors' offices?

11 A. Yes.

12 Q. You keep going around you go to the hospital?

13 A. Yes. It has -- where it's labeled here Physician
14 Drive.

15 Q. Yes, sir.

16 A. That's where the doctors office are. The road here
17 is onto Trolley Line.

18 Q. Okay. And I'm showing you what's marked as Defense
19 Exhibit Number Three which is the emergency exit. I
20 mean, the emergency entrance.

21 A. Yes.

22 Q. That's the one that's called the emergency
23 entrance?

24 A. Yeah, it says that way.

25 Q. And this shown in Defense Exhibit Number Three --

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. Yes.

2 Q. -- is the entrance that's at the red light?

3 A. That's the road at the red light to go up by the
4 hospital.

5 Q. And this entrance is at the road at the red light?

6 A. Well, actually the entrance, what I would call the
7 entrance is when you turn up Medical Park Drive, get past
8 the pond, there's a road, a drive that cuts to the right
9 leads up to the hospital. Medical Park Drive continues
10 on.

11 Q. Well, I'm talking about the entrances to the
12 hospital that are off of University Parkway.

13 A. That point at Medical Park Drive, a road that goes
14 up to a way to turn into the hospital.

15 Q. I want to be clear. The picture shown in Defense
16 Two is off of University Parkway?

17 A. Correct.

18 Q. And that's the first entrance to the hospital.

19 A. That's the first way to get in. Yes, ma'am.

20 Q. And going down University Parkway, this shown in
21 Defense Number Three, is the second entrance to the
22 hospital, going down?

23 A. Toe-may-toe toe-mah-toe. It's a road that goes up
24 past the hospital. There is a road that turns to the
25 right that I would call the entrance to the hospital.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. Okay. you're going down University Parkway, the
2 road that we're talking about going down University
3 Parkway?

4 A. Yes.

5 Q. Is this the second road that turns into the
6 hospital?

7 A. Yes, it is.

8 Q. So Defense Exhibit Number Two is the first road
9 that turns into the hospital?

10 A. Yes.

11 Q. Defense Number Three is the second road that turns
12 into the hospital?

13 A. Goes up to it, yes.

14 Q. And this road that we're showing in Defense Number
15 Three actually is Medical Park Drive?

16 A. Yes, ma'am.

17 Q. Then once you get into Medical Park Drive there's a
18 couple of different entrances that actually take you
19 into, like, where -- right next to the hospital, to the
20 hospital parking lot?

21 A. Yes.

22 Q. Okay. All right. Now -- I'm sorry. I lost track
23 of where I was.

24 Where is it first entrance shown?

25 A. Right here.

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 Q. At Physicians.

2 A. Physicians Drive. Right here. That road turns off
3 to it.

4 Q. And the second road that leads into the hospital
5 from University Parkway?

6 A. Right between this office building and that pond.

7 Q. And that is Medical Park Drive?

8 A. Yes, ma'am.

9 Q. And then the hospital is right here?

10 A. The big building here. Yes, ma'am.

11 Q. Okay. And then Aurora Pavilion is where?

12 A. That would be this building here.

13 Q. And then the Wound Care Center is?

14 A. That is this small building here.

15 Q. Okay. The small building here above the hill from
16 Aurora?

17 A. Yes.

18 Q. A little further up the hill from the hospital?

19 A. Yes.

20 Q. And the tree that we're talking about is?

21 A. Right here at the Wound Center.

22 Q. Right here?

23 A. What was then known as the Wound Center, right
24 about here.

25 Q. Right here in front of the Wound Center?

WILLIAM R ROYSTER, III - CROSS BY ALVES

1 A. Yes.

2 Q. And travel -- but going down this road where the
3 Wound Care Center is --

4 A. Yes.

5 Q. -- this is still Medical Park Drive?

6 A. Yes. It's Medical Park Drive all the way until it
7 gets up to Hudson.

8 Q. So Hudson is right here, this red line?

9 A. Yes, ma'am.

10 Q. This road with the red line?

11 A. Yes, ma'am.

12 Q. And that's the road that you were talking about
13 that if you turned left on Hudson?

14 A. Yeah, turn -- medical Park Drive, Hudson, and then
15 right here is Trolley Line.

16 Q. Okay. And if you go further up Trolley Line --

17 A. Yes.

18 Q. -- then you get to the intersection at Six Points.
19 And I guess it's up here?

20 A. Way on up, yes, ma'am, off the map.

21 Q. And then back there is Hampton?

22 A. Yes, ma'am.

23 Q. And Michael Fuller lived on Hampton Avenue?

24 A. Yes, ma'am.

25 Q. At the point where Hampton and Sumter intersect?

WILLIAM R ROYSTER, III - REDIRECT BY BODMAN

1 A. Yes.

2 Q. At the street that's right past the sheriff's
3 office?

4 A. Just past the sheriff's office.

5 Q. Thank you. Thank you.

6 Beg the Court's indulgence one moment.

7 (Pause.)

8 I don't have any further questions. Thank you?

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. BODMAN:

12 Q. Did Mr. Fuller ever complain to you about having a
13 headache?

14 A. No.

15 Q. Did he ever complain to you about lack of
16 coordination?

17 A. No.

18 Q. Did he exhibit any lack of coordination?

19 A. No.

20 Q. Did he ever complain to you about any nausea?

21 A. No.

22 Q. Did he throw up when you were with him?

23 A. No.

24 Q. Did he ever complain to you about vomiting?

25 A. No.

WILLIAM R ROYSTER, III - RECROSS BY ALVES

1 Q. Did he ever complain to you about dizziness?

2 A. No.

3 Q. Did he exhibit any dizziness?

4 A. No.

5 Q. Did he ever complain about any ringing of the
6 ears?

7 A. No.

8 Q. Did he ever ask you for any medical attention?

9 A. No.

10 Q. While you did not interview, yourself, Katie, did
11 you get information from your law enforcement team that
12 did interview Katie?

13 A. Yes.

14 MS. BODMAN: Nothing further.

15 THE COURT: Anything further?

16 RECROSS-EXAMINATION

17 BY MS. ALVES:

18 Q. You didn't ask Mr. Fuller if he was suffering from
19 any ill effects from being unconscious in the car, did
20 you?

21 A. No, I didn't.

22 Q. And you don't know if anybody else asked him?

23 A. No, I don't.

24 MS. ALVES: No further questions.

25 THE COURT: You may come down, sir. Thank

1 you very much.

2 MS. BODMAN: Your Honor, at this time the
3 State of South Carolina rests its case against
4 Michael Fuller.

5 THE COURT: That's the State's case, ladies
6 and gentlemen.

7 Now, as I told you earlier, the Defendant
8 has the opportunity to put on a defense at this
9 time. And but before that takes place, before
10 that happens I need to take up a matter of law
11 with the attorneys and that will take about five
12 or 10 minutes.

13 So just go to your jury room, please, and
14 relax and we will continue with the trial in
15 about 10 minutes.

16 (Jury exits courtroom at 2:53 p.m.)

17 THE COURT: Motions on behalf of the
18 Defendant?

19 MS. ALVES: Yes, sir.

20 Your Honor, taking the evidence in the
21 light most favorable to the Defendant, I'd move
22 for a directed verdict of all charges against
23 Michael Fuller.

24 Judge, specifically I'd move that there's
25 been no evidence presented that Michael Fuller

1 knew that the gun was stolen when he had it in
2 the vehicle. The only evidence of that is the
3 statements by Dominique Paige who on multiple
4 occasions has given different statements about
5 that gun. He admits -- Dominique Paige admitted
6 that he told Investigator Royster first he didn't
7 know anything about the gun. Then he told --
8 based on Investigator Royster's testimony he told
9 Investigator Royster first somebody else told him
10 about this gun. Then he says that Michael told
11 him about the gun.

12 I think those inconsistent statements and I
13 know that the credibility is in the purview of
14 the jury but I think that his credibility here,
15 based on that and the fact that he is facing some
16 charges for this which he says he's not guilty
17 of, and the fact that his credibility is clearly
18 in question here, would show that there is no
19 credible evidence whatsoever that can be
20 presented to the jury on that ground. And I'd
21 move for a directed verdict on that.

22 THE COURT: All right. Did you want to
23 proceed with all of them and then I'll -- are
24 there others?

25 MS. ALVES: I don't have -- I'm just making

1 a general motion in regards to the evidence.

2 THE COURT: All right. I didn't know
3 whether you were go to go through each
4 indictment.

5 MS. ALVES: No, Your Honor.

6 THE COURT: All right. What's the State's
7 position?

8 MS. BODMAN: Your Honor, in the light most
9 favorable to the State we did present evidence of
10 it. Both Dominique Paige who's credibility is up
11 to the jury, along with accompanying
12 circumstantial evidence that the couple that
13 owned the gun said it was stolen that night and
14 it is on the Defendant's person in the car and he
15 admitted having it. So those two things
16 together.

17 THE COURT: Didn't he say he saw him steal
18 it?

19 MS. BODMAN: Yes. I said, with Dominique
20 Paige's evidence in addition to the testimony
21 that it was stolen that night. So in the light
22 most favorable to the State we did present
23 sufficient evidence.

24 THE COURT: All right.

25 MS. BODMAN: and on all the rest of the

1 charges as well.

2 THE COURT: All right.

3 As -- Ms. Alves, as to the motion, the
4 general motion for directed verdict and the
5 specific motion with regard to the possession of
6 a stolen pistol, I find the evidence goes beyond
7 that of mere conjecture or suspicion. That there
8 is circumstantial evidence either direct or --
9 there is evidence, either direct or
10 circumstantial or some combination of both which
11 reasonably tends to prove the guilt of the
12 Defendant or from which that guilt might be
13 logically and reasonably deduced if that evidence
14 is taken in the light most favorable to the
15 State.

16 So I must respectfully deny your motions
17 for summary judgment.

18 Now I would like to advise your client of
19 his Fifth Amendment rights at this time.

20 Mr. Fuller.

21 Mr. Fuller, at this time I'm going to
22 advise you of certain of your rights. If you do
23 not understand anything I say, please let me
24 know. If you want me to explain anything in more
25 detail, please let me know.

1 Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We've now reached the stage of
4 trial where you may present your defense. You
5 have the right to claim the protections given to
6 you by the Fifth Amendment to the Constitution of
7 the United States.

8 This amendment states in part: No person
9 shall be compelled in any criminal case to be a
10 witness against himself. This means that you
11 cannot be required to testify in this case. You
12 have the right to testify on your own behalf.
13 However, no one can make you testify. This is a
14 personal right. No one can waive this right
15 except you.

16 If you decide to testify you'll be subject
17 to the same rules that govern other witnesses and
18 you may be examined and cross-examined on any
19 relevant issue in this case.

20 In addition, if you have any convictions
21 involving dishonesty or false statement or for
22 crimes punishable by imprisonment for more than
23 one year and this Court determines that the
24 probative value of admitting this evidence
25 outweighs its prejudicial effect to you, the

1 solicitor will be able to introduce your record
2 to attack your credibility.

3 If you decide to testify this decision on
4 your part must be freely, voluntarily and
5 intelligently made with knowledge of the
6 protections given to you by the Fifth Amendment
7 to the Constitution and the consequences of your
8 decision to testify.

9 If you decide to testify, I will instruct
10 the jury that they cannot give the fact that you
11 did not testify any consideration whatsoever, and
12 that there is to be absolutely no prejudice to
13 you because you did not testify. It's left
14 entirely up to you whether or not you testify.

15 You may talk with your attorney, your
16 family and friends, or anyone else, but the final
17 decision will be left entirely up to you.

18 Do you understand what I've explained to
19 you?

20 THE DEFENDANT: Yes, sir. I do.

21 THE COURT: Do you have any questions about
22 what I've explained to you?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you discussed with your
25 lawyer whether or not you should testify?

1 THE DEFENDANT: Yes, sir. We discussed it.

2 THE COURT: You have discussed it with your
3 lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now, before I ask
6 the Defendant if he plans to testify I need for
7 him to be advised and his counsel to be advised
8 of any impeachable offenses that the State might
9 use to impeach his credibility.

10 MS. BODMAN: Judge, I'm asking that a new
11 rap be run because -- I wasn't in chambers
12 earlier, but when Ms. Alves said that he has a
13 burglary conviction and I didn't see that on his
14 rap sheet. So I want to run it to see that. But
15 the one that I have, there was a burglary arrest.

16 THE COURT: What year?

17 MS. BODMAN: But --

18 THE COURT: What year?

19 MS. BODMAN: 2012 was the arrest, September
20 24th of 2012.

21 But my recollection of asking about that
22 was that it was resolved by some other type of
23 plea or conviction. It's not a burglary
24 conviction. So.

25 THE COURT: I don't know.

1 MS. BODMAN: Wallis, do you know when he
2 pled to that?

3 MS. ALVES: Judge, he pled guilty to --
4 hang on.

5 I can tell you as an officer of Court I
6 represented him and he pled guilty to a
7 burglary. I just don't remember the exact
8 details of it. I'd have to look it up.

9 MS. BODMAN: It's being run right now.

10 THE COURT: That's the only one we're aware
11 of?

12 MS. BODMAN: (Nods head). Yes, sir.

13 There's -- I mean, a misdemeanor. It's not
14 an impeachable offense. A forgery that doesn't
15 have a disposition on it. A failure to comply
16 with direction of the police, so it's a
17 misdemeanor as well.

18 So, it looks like there's an out-of-state
19 contempt of Court. So, nothing ...

20 MS. ALVES: Judge, Mr. Fuller pled guilty
21 to burglary third on March 13th, 2013, in front
22 of Judge Early. I represented him then. So, I'm
23 not disputing that.

24 MS. BODMAN: And what was that date of
25 conviction? I'm sorry.

1 MS. ALVES: March 13th, 2013.

2 MS. BODMAN: Okay. Thank you.

3 THE COURT: All right. That's a five-year
4 offense. All right.

5 Mr. Fuller, you understand what I just
6 found out, that your counsel tells me you pled
7 guilty to a --

8 THE DEFENDANT: Yes, sir.

9 THE COURT: -- burglary third sometime ago,
10 less than 10 years ago. And if the State chooses
11 to they could bring that up if they, if you
12 testify. Do you understand that?

13 THE DEFENDANT: Yes, sir. I understand.

14 THE COURT: Okay. Now, do you want -- do
15 you wish to talk to your attorney anymore about
16 this decision?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. Do you wish to
19 testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. That's fine. Thank
22 you very much.

23 Ms. Alves, do you need any time?

24 MS. ALVES: I just need, like, a minute or
25 two, Judge.

JEREMY DIXON - DIRECT BY ALVES

1 THE COURT: All right. Let's make it five.

2 MS. ALVES: Thank you.

3 (Break taken at 3:04 p.m. The trial
4 resumed at 3:15 p.m.:)

5 THE COURT: State ready to proceed?

6 MS. BODMAN: We are, sir.

7 THE COURT: Defense ready proceed?

8 MS. ALVES: Yes, sir.

9 THE COURT: All right. Bring the jury,
10 please.

11 (Jury enters courtroom at 3:15 p.m.)

12 THE COURT: All right. Ms. Alves, you may
13 proceed.

14 MS. ALVES: Call Jeremy Dixon.

15 JEREMY DIXON, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Have a seat in the witness box,
18 stating your full name, spelling your last.

19 THE WITNESS: Jeremy Dixon, D-I-X-O-N.

20 DIRECT EXAMINATION

21 BY MS. ALVES:

22 Q. Mr. Dixon, were are you employed?

23 A. Aiken Regional Medical Center in the emergency
24 department.

25 Q. In the emergency department?

JEREMY DIXON - DIRECT BY ALVES

- 1 A. Correct.
- 2 Q. And how long have you been employed there?
- 3 A. Four years.
- 4 Q. And you are a nurse there?
- 5 A. Correct.
- 6 Q. And how long have you been a nurse?
- 7 A. Four years.
- 8 Q. Where did you go to school?
- 9 A. Aiken Technical College.
- 10 Q. And you graduated with a?
- 11 A. Associate's degree in nursing.
- 12 Q. In nursing?
- 13 A. Correct.
- 14 Q. Did you work at any other hospitals?
- 15 A. Just Aiken Regional.
- 16 Q. And for the last four years you said you worked in
- 17 the emergency room?
- 18 A. Correct.
- 19 Q. Were you working in the emergency room on December
- 20 the 20th, 2013?
- 21 A. Per the charts, I was.
- 22 Q. And you don't -- you see a lot of people in the
- 23 emergency room?
- 24 A. Multiple people on a daily basis.
- 25 Q. And do you remember specifically -- do you remember

JEREMY DIXON - DIRECT BY ALVES

1 specifics about what happened on December 20th, 2013?

2 A. No, ma'am.

3 Q. Do you remember specifics about a particular
4 patient?

5 A. No, ma'am.

6 Q. Do you remember treating Ms. -- or caring for
7 Ms. Katie Schlinger on that day?

8 A. Do you remember it? No. I couldn't, I couldn't
9 remember it, but the chart that you showed me says that I
10 was there.

11 Q. You have reviewed the medical records from that
12 day?

13 A. Correct.

14 Q. And you would agree that you were, in fact, a nurse
15 on duty on December 20th, 2013?

16 A. Correct.

17 Q. In the early-morning hours?

18 A. Starting at 6:45.

19 Q. 6:45. And you were, in fact, one of the nurses who
20 treated Ms. Katie Schlinger?

21 A. Correct.

22 Q. And you, in fact, came on duty after Mallory
23 Harmon?

24 A. Correct.

25 Q. And you took over Ms., I think she's now Mallory

JEREMY DIXON - DIRECT BY ALVES

1 Smith?

2 A. No.

3 Q. A nurse named Mallory?

4 A. Correct.

5 Q. And you took over Ms. Schlinger's care from Nurse
6 Mallory?

7 A. Correct.

8 Q. And would looking at the records help you to be
9 able to testify about your treatment and care of
10 Ms. Schlinger on that day?

11 A. Yes.

12 Q. Is that the record of Ms. Mallory's care on
13 December 20th, 2013, at the Aiken Regional Medical
14 Center?

15 A. Yes, ma'am.

16 Q. And let me ask you this. When you come on duty as
17 a nurse in the emergency room, in general, what do you do
18 first?

19 A. You get a report from -- whatever assignment that
20 you get that day, you get a report from that nurse.

21 Q. So you were assigned to care for a particular
22 patient?

23 A. Correct.

24 Q. And then the nurse who's caring for that patient
25 before gives you a report?

JEREMY DIXON - DIRECT BY ALVES

1 A. That is correct.

2 Q. And what type of information is in the report that
3 you are given?

4 A. It just depends on the patient. But most -- you
5 get all the important information, the planned care
6 basically is what we call it.

7 Q. Do you also review the notes from, if somebody's
8 already in the middle of their care that means they've
9 already been through triage?

10 A. If somebody's in the middle of their care?

11 Q. Yes.

12 A. Yes. They've already been through triage.

13 Q. And what is triage?

14 A. Just ask basic questions. To get the patient
15 triaged in, the primary complaints, the main thing, and
16 then you get your initial vital signs and there's just a
17 list of questions that are asked.

18 Q. So if someone complains of an assault you'd get at
19 least the bare-bones details of the assault?

20 A. Yes, just a couple sentences usually what you put
21 into a triage note.

22 Q. Why do you need this information?

23 A. To treat the patient.

24 Q. So in order to adequately treat them you need to
25 know what happened to them?

JEREMY DIXON - DIRECT BY ALVES

1 A. Correct.

2 Q. So if someone is sexually assaulted, is that
3 information you would obtain in triage?

4 A. Yes, ma'am.

5 Q. And is that information that would important for
6 you to have?

7 A. Yes, ma'am.

8 Q. Why?

9 A. To properly treat the patient.

10 Q. Can you tell based on the notes -- well, let me ask
11 you this. How do you keep your notes? I mean, what do
12 you do when you're caring for somebody? Do you make
13 notes about your care and what's going on with them?

14 A. Yes, ma'am.

15 Q. And how -- where do you log those in?

16 A. Where do I log those in?

17 Q. Yes. How do you keep those notes?

18 A. In the computer. You can physically type it in.
19 There's actually quick boxes that you can check or
20 un-check depending on your assessment.

21 Q. Now, back in the day, back when the nurses would
22 write their notes down on a medical chart --

23 A. Not anymore. We don't do that anymore.

24 Q. Okay. So we don't have to worry about having to
25 read handwriting?

JEREMY DIXON - DIRECT BY ALVES

1 A. That's correct.

2 Q. Everything's on the computers?

3 A. Yes, ma'am.

4 Q. And so when you come on duty, if you take over for
5 a nurse such as Mallory, is it standard practice for you
6 to review her nurse's notes?

7 A. Yes, ma'am.

8 Q. And why would you review her notes?

9 A. To properly treat the patient.

10 Q. So you can see what happened?

11 A. Exactly.

12 Q. And is that something you do every day, every time
13 you come in?

14 A. Every time.

15 Q. Did you review -- so can you tell us whether you
16 reviewed notes in this situation?

17 A. I can tell you from my notes that I received a
18 report from Mallory.

19 Q. Okay. And you're referring to -- your notes are in
20 the nurse's notes?

21 A. That is correct.

22 Q. And those start on page 77 of the medical records;
23 is that right?

24 A. That starts Mallory's notes.

25 Q. Okay. I'm sorry. So the nurse's notes start on

JEREMY DIXON - DIRECT BY ALVES

1 page 77?

2 A. I don't see -- yeah, there is some, there is some
3 -- there's a primary pain comment and there's some stuff
4 on here.

5 Q. So you would have reviewed those notes of Mallory's
6 that are in that record?

7 A. That's correct.

8 Q. Do you see in those notes anywhere where Mallory
9 notes that Ms. Schlinger was complaining of having been
10 sexually assaulted or forced to perform oral sex?

11 A. No, ma'am. Not reading through this.

12 Q. Have you looked at your notes from the care of this
13 patient?

14 A. I have.

15 Q. And did you in any place indicate that the patient
16 told you or that you were given information that she was
17 sexually assaulted or forced to perform oral sex?

18 A. No, ma'am.

19 Q. And caring for Ms. Schlinger did you review the
20 triage notes?

21 A. I would have.

22 Q. And in the triage notes, does it say in any place
23 where Ms. Schlinger was sexually assaulted complained to
24 have been forced to perform oral sex?

25 A. No, ma'am.

JEREMY DIXON - DIRECT BY ALVES

1 Q. Is that information that you would -- that would
2 have been obtained from her in triage?

3 A. There would have been a question if she was
4 physically assaulted or felt safe at home. Always that
5 we ask every time, you have to ask to get through the
6 triage part a question if she feels safe at home or if
7 she had been assaulted in any way, shape or form and that
8 would have dropped down a box.

9 Q. Okay. Now, in your care of Ms. Schlinger, you
10 cared for her the entire time that she was present until
11 she was actually transferred to the next hospital?

12 A. Not the entire time. Just, I think she -- I don't
13 know what exact time she got there, but from 6:45 until
14 the time she was transferred I was the nurse in charge.

15 Q. I'm sorry. Let me clarify. You were the nurse --
16 6:45 when Mallory went off duty and you came on?

17 A. Correct.

18 Q. Until she was transferred to the next hospital?

19 A. That is correct.

20 Q. Okay. And during your time in your nursing care of
21 Ms. Schlinger, you gave her several medications?

22 A. Yes, it does appear so.

23 Q. Okay. Now, when you give a patient a medication,
24 what, how is that reported?

25 A. How is that recorded?

JEREMY DIXON - DIRECT BY ALVES

1 Q. Yes.

2 A. You go into the patient's room, name, date of
3 birth, ask the patient's name, date of birth. You verify
4 it with the order, you scan the patient's wristband, it
5 pops up on the computer screen. You scan the medications
6 to make sure it's logged into the computer correctly. If
7 they all match up it will let you administer the
8 medication. If not, you have to go back and change
9 medications.

10 Q. Okay. So once you performed your patient
11 identification process, you were able to determine you
12 had the correct person with the correct medication and
13 you administered, and you gave her the medication that
14 was prescribed?

15 A. Correct.

16 Q. And that medication would have been prescribed by
17 the doctor on duty?

18 A. Absolutely.

19 Q. Who at the time that you were on was Dr. Eaves?

20 A. That is correct.

21 Q. Okay. And where -- once you give a patient a
22 medication, are those medications listed anywhere?

23 A. In the MAR.

24 Q. The MAR is the medication administration record?

25 A. Record. Correct.

JEREMY DIXON - DIRECT BY ALVES

1 Q. Okay. And do you ever give any medications that
2 are not on the MAR?

3 A. No, ma'am.

4 Q. So every medicine that you gave Ms. Schlinger that
5 day would be listed on that MAR?

6 A. Absolutely.

7 Q. And can you tell -- do you see the MAR?

8 A. I'm looking at it.

9 Q. Okay. And can you tell us what medications you
10 gave Ms. Schlinger and what time you gave those
11 medications? Just the ones that you gave.

12 A. Okay. Dilaudid at 7:35, one milligram;
13 Promethazine 12.5, 7:35 as well; a steroid called
14 Prednisolone mixed with sodium chloride, 100 milliliter
15 bag at 7:57; another dose of Dilaudid at 8:05; Ativan at
16 8:21; and Ativan 8:36, at 8:36.

17 Q. Are there any other medications listed on the MAR
18 that you gave her?

19 A. There is another dose of Prednisolone that I
20 already mentioned that I gave and that was at 8:22.

21 Q. Okay. Even when you gave her a second dose of the
22 medication, it's listed on that MAR?

23 A. I'm sorry?

24 Q. Every medication that you gave, even if it was a
25 second dose is listed on the MAR?

JEREMY DIXON - DIRECT BY ALVES

- 1 A. It would be listed on the MAR.
- 2 Q. And there's no medications -- you wouldn't have
3 given her any other medications?
- 4 A. No, ma'am.
- 5 Q. And is every medication that she would have taken
6 from anyone listed on the MAR?
- 7 A. Correct.
- 8 Q. Or rather, anyone at the hospital that morning
9 would be listed on the MAR?
- 10 A. It would be in this packet, yes, ma'am.
- 11 Q. Okay. And in your nursing duties in caring for
12 Ms. Schlinger, you also drew some urine from
13 Ms. Schlinger; is that correct?
- 14 A. That is correct.
- 15 Q. Now that was at the request of the doctor?
- 16 A. That is correct.
- 17 Q. And, I mean, what specifically did the doctor ask
18 you to do?
- 19 A. Collect a urine, send it to the lab and they'll get
20 the results.
- 21 Q. Okay. And tell me, how did you draw the urine from
22 Ms. Schlinger?
- 23 A. From her Foley catheter bag.
- 24 Q. So she had a catheter?
- 25 A. Correct.

JEREMY DIXON - DIRECT BY ALVES

1 Q. And so what did you do?

2 A. You drain the catheter bag down at the bottom and
3 put it in a cup and send it over to the lab.

4 Q. Okay. And what procedure do you do to make sure
5 that the urine that you get in the cup and take to the
6 lab is actually Ms. Schlinger's?

7 A. It's similar to the medication. Whenever you're
8 administering medication, go through name, date of birth,
9 scan the patient's wristband, scan the patient's labels,
10 and then send it over to the lab. You put it in a
11 biohazard bag after you collect it in the proper specimen
12 cup and take it to the lab.

13 Q. So do you know -- did you actually walk that urine
14 to the lab?

15 A. I, I'm assuming so. Yes. If I collected it, yeah,
16 I walk it over to the lab.

17 Q. Okay. But you didn't do the testing on it?

18 A. No, ma'am.

19 Q. So you collected the urine, you made sure that the
20 proper identification was on the cup?

21 A. Correct.

22 Q. And you checked it against the barcode on
23 Ms. Schlinger's wristband?

24 A. Correct.

25 Q. And then you took the cup that was labeled with

JEREMY DIXON - DIRECT BY ALVES

1 Ms. Schlinger's information to the lab?

2 A. Correct.

3 Q. And that barcode would have also included what
4 tests were to be run?

5 A. Correct.

6 Q. And let me ask you this. When there is a -- when
7 somebody comes into the hospital and they are complaining
8 of a sexual assault, is there a procedure that the
9 hospital follows?

10 A. You call in the sexual assault team.

11 Q. And they -- and they're the ones who then work with
12 the patient?

13 A. Correct.

14 Q. Was a sexual assault team called in in this case?

15 A. Not to my knowledge. Not per these notes.

16 Q. Okay. Do you know whether -- and also, when
17 someone comes into the hospital, complaining of sexual
18 assault, aren't there -- would it be -- are you aware of
19 drugs that they're offered or post-exposure medications
20 that they are offered to try to combat sexually-
21 transmitted diseases or HIV or anything like that?

22 A. I'm not understanding your question.

23 Q. When someone comes into the hospital and they claim
24 sexual assault, do you -- are you familiar with the drugs
25 that they're offered to try to -- antibiotics and plan B

JEREMY DIXON - CROSS BY BODMAN

1 drugs that they're offered?

2 A. No.

3 Q. You're not familiar?

4 A. I'm not familiar with any of that.

5 Q. But as far as you know, you don't have any
6 information in those medication records that you reviewed
7 that night to start your care of Ms. Schlinger that she
8 was sexually assaulted?

9 A. No, ma'am.

10 MS. ALVES: Thank you. No further
11 questions, please. Any the solicitor might have.
12 Okay?

13 THE WITNESS: Okay.

14 CROSS-EXAMINATION

15 BY MS. BODMAN:

16 Q. Make sure I have of this correct. At the time you
17 came in at 6:45, so I guess your shift starts at seven?

18 A. Yeah. 6:45.

19 Q. So the doctors also change shifts. Dr. Garrett was
20 working with Mallory Harmon and then you started working
21 with Dr. Eaves?

22 A. That's correct. Usually they, their shift starts
23 at six at morning. So usually that would be kind of when
24 their shifted off, I do believe.

25 Q. Okay. I don't know if you had a look through any

JEREMY DIXON - CROSS BY BODMAN

1 more of the records but was it about the time that you
2 came on shift that the fractures in Ms. Schlinger's neck
3 had been discovered?

4 A. Looking through, I guess that was the reason why we
5 transferred. I haven't dug deeply into this.

6 Q. Okay.

7 A. But, yeah, it would have been during that time.

8 Yes, ma'am.

9 Q. Okay. And the time that you were with her I
10 counted was about eight separate medications that
11 Dr. Eaves prescribed?

12 A. Correct.

13 Q. So all these medications that you gave Katie were
14 at Dr. Eaves' direction.

15 A. That is correct.

16 Q. Okay. And, what did I just say, I'm sorry, eight
17 or nine?

18 A. That's what you said. Yes, ma'am.

19 Q. One, two, three, four, five, six, seven. Sorry.

20 A. I think a lot of them were the same ones but dosing
21 wise, yes, ma'am.

22 Q. Dosing wise. And these are all different times.
23 So starting at 7:35 Dilaudid; 7:35 Promethazine?

24 A. Promethazine, yes

25 Q. 7:57, the Prednisolone, whatever.

JEREMY DIXON - CROSS BY BODMAN

1 A. Yes, ma'am.

2 Q. 8:02, Hydromorphone. What's the 8:21, Lorazepam?

3 A. Ativan.

4 Q. Ativan. Another dose of the Prednisolone at 8:22
5 and another dose of Ativan at 9:56. So that was all of
6 your care with Dr. Eaves?

7 A. That would have been correct, yes.

8 Q. Okay. You also were -- part of your duties and
9 responsibilities is to do a pain assessment with the
10 patient?

11 A. Yes, ma'am.

12 Q. Do you remember that?

13 A. Yes, ma'am.

14 Q. If you can you look at page 97?

15 A. I'm there.

16 Q. Do you see that you did one around 7:35?

17 A. Yes, ma'am.

18 Q. And what did she say that her pain level was?

19 A. 10.

20 Q. Okay. Now, we're talking a little bit about triage
21 is when you're changing care over from one nurse to the
22 other, triage has already happened, right?

23 A. Correct. Yes, it's done.

24 Q. So are you going to go back in and ask Katie to
25 explain what happened to her?

JEREMY DIXON - CROSS BY BODMAN

1 A. You're not supposed to do that. Yes, ma'am.

2 Q. Okay. And the other thing is you were kind of
3 saying there's certain questions, I guess, you're going
4 to ask at this triage phase. In the emergency room I can
5 imagine that all kinds of things walk through the door,
6 right?

7 A. Yes, ma'am.

8 Q. And you are assessing the priority of those.
9 Somebody may be just, I guess, kind of have the flu but
10 then somebody else comes in with a stab wound, right?

11 A. Yes, ma'am.

12 Q. Now you're not going to stop the stab wound person
13 and say, hey, do you feel safe at home and chase them
14 down the hall and do those kind of questions, are you?

15 A. No, ma'am.

16 Q. Okay.

17 A. Okay.

18 Q. You're going to get those people in and start
19 treating them?

20 A. (Nods head.)

21 Q. Okay. And you were not there when Katie initially
22 came through that front door?

23 A. No, ma'am.

24 Q. To know what her status or demeanor was for anybody
25 to sit down and ask her questions, like, hey, do you feel

JEREMY DIXON - CROSS BY BODMAN

1 safe at home.

2 A. No, ma'am. I was not there.

3 Q. Okay. And you said that, you know, if somebody
4 comes in with a complaint of sexual assault, is -- a team
5 is called in. But that team really is it's called a
6 sexual assault nurse examiner, correct?

7 A. Yes, ma'am.

8 Q. So it's a nurse just like yourself that has just
9 gotten some additional training on how to collect
10 evidence from a sexual assault victim, correct?

11 A. Yes, ma'am.

12 Q. And with that, that patient still has to go through
13 a clearance to then go to or with the sexual assault
14 nurse examiner, right? They have to be medically
15 cleared?

16 A. If they say sexual assault then that team would be
17 called in.

18 Q. Okay.

19 A. Yeah.

20 Q. Well --

21 A. But if -- you would treat the victim's worst
22 conditions first.

23 Q. Right. So they come in with a head injury --

24 A. You would treat that.

25 Q. -- you need to make sure that this person isn't

1 going isn't going to bleed out?

2 A. Yes, ma'am.

3 Q. Or if they had been shot and sexually assaulted, we
4 need to deal with the gunshot wound, right?

5 A. Absolutely.

6 Q. Okay.

7 MS. BODMAN: No further questions. Thank
8 you very much.

9 THE WITNESS: Thank you.

10 MS. ALVES: Nothing further, Judge.

11 THE COURT: You may come down.

12 MS. ALVES: Judge, I'd ask Mr. Dixon be
13 excused.

14 THE COURT: Any objection?

15 MS. BODMAN: No, sir.

16 THE COURT: Without objection, you're free
17 to go sir.

18 Next witness.

19 MR HAYES: The defense calls Deanna Acosta.

20 DEANNA ACOSTA, having been duly sworn, was
21 examined and testified as follows:

22 THE CLERK: Have a seat in the witness box,
23 stating your full name, spelling your last.

24 THE WITNESS: My name's Deanna Acosta,
25 A-C-O-S-T-A.

DEANNA ACOSTA - DIRECT BY HAYES

DIRECT EXAMINATION

BY MR. HAYES:

Q. Good afternoon.

A. Good afternoon.

Q. Ms. Acosta, how are you doing? Were do you work?

A. I work at Aiken Regional Medical Centers in the laboratory.

Q. How long have you worked at Aiken Medical?

A. For three years.

Q. How long have you been in the laboratory?

A. Three years.

Q. Okay. Before you were working at Aiken Regional, what was your education?

A. I completed high school and I completed some certifications with Aiken Technical College.

Q. Okay. When you say certifications, what do you mean?

A. I have certification as a certified nursing assistant, certified phlebotomy technician and certified EKG technician.

Q. On December 20th, 2013, what exactly was your job description?

A. Phlebotomist. So my primary job was to collect blood specimens from patients.

Q. Did you work in the ER?

DEANNA ACOSTA - DIRECT BY HAYES

1 A. Not primarily. My main duties are to the patients
2 that are in-house on the other floors of the hospital. I
3 go over to the emergency room when they have difficulty
4 collecting a blood sample.

5 Q. Okay. On December 20th, 2013, do you recall an
6 occasion to draw blood from Ms. Katie Schlinger?

7 A. I do.

8 Q. How did you end up involved in drawing the blood
9 from Ms. Schlinger?

10 A. The nurse, not necessarily Jeremy because it could
11 have been the charge nurse on duty, somebody from the
12 emergency department would have called over to the
13 laboratory requesting assistance in a blood specimen
14 selection. So they would have called me over to get her
15 blood.

16 Q. Okay. Do you just -- somebody tells you to go get
17 the blood or how do you know you need to go draw blood?

18 A. They tell me to come get it.

19 Q. Is that an order?

20 A. Yeah. Well, they would call over. Say, we have a
21 patient in whatever room it's in. We need somebody from
22 the laboratory team to come collect the blood. And it's
23 whoever is available at the time goes and collects it.

24 Q. Would that be from a doctor's order?

25 A. Yes.

DEANNA ACOSTA - DIRECT BY HAYES

1 Q. Do you know when the order from the doctor was
2 placed to draw Ms. Schlinger's blood?

3 A. Not off the top of my head.

4 Q. Would looking at the records refresh your memory?

5 A. Yes, sir. According to this the order for her
6 blood work was dispatched at 8:07 a.m. on the 20th of
7 December.

8 Q. At 8:07 a.m., that's when the order went out?

9 A. Correct.

10 Q. When did you actually collect the blood?

11 A. I collected the blood at 8:43.

12 Q. Why the difference in the time?

13 A. The difference in the time could be from the order
14 getting put in. The nurses in the emergency department
15 are supposed to initially attempt to acquire the blood.
16 If they are unsuccessful in doing so they then call the
17 laboratory to come over.

18 Q. Okay. When you were collecting the blood what is
19 your process?

20 A. I make sure I do my patient identification. I ask
21 them their name, date of birth. I also scan the
22 wristband that they have. And it will print the,
23 printout some partial labels with the orders on them as
24 well. I look at what tubes they need, what tests they
25 have, gather my supplies, go to the patient, apply the

DEANNA ACOSTA - DIRECT BY HAYES

1 tourniquet, find a vein, get the blood and --

2 Q. In this case what tests were ordered?

3 A. In this case for blood work she -- a test was
4 ordered for CBC with dif, CMP, an alcohol level and a
5 PTIR.

6 Q. Okay. For -- before drawing the blood are there
7 procedures as to whether you're using alcohol versus
8 iodine for any of these blood draws?

9 A. There is. For the alcohol level using an alcohol
10 swab on the skin or any sort of cleaning agent on the
11 skin that includes alcohol in it could give a false
12 positive. So I make sure I look at the orders before I
13 complete the blood work.

14 Seeing that she had an alcohol level in the lab
15 work that was ordered, I would have used an iodine
16 solution pad to cleanse the skin before acquiring the
17 blood.

18 Q. And this is something you would do every time there
19 is an alcohol test --

20 A. That's correct.

21 Q. -- ordered?

22 A. That's correct.

23 Q. And that's the standard procedure?

24 A. Yes, sir.

25 Q. Once you draw the blood, what do you do with it?

DEANNA ACOSTA - DIRECT BY HAYES

1 A. Once it's drawn and I make sure that the patient is
2 bandaged up, I label the blood with the patient's label
3 that would have come out when I scanned the bracelet.
4 Label them, put them in a biohazard bag, take them over
5 to the laboratory with me, scan them in so that they're
6 in the lab and give them to the technicians to run the
7 tests on them.

8 Q. It's checked into a laboratory, is what you're
9 telling us?

10 A. Correct.

11 Q. And at that point the technician would do the
12 testing?

13 A. That is correct.

14 Q. You didn't do any testing in this case?

15 A. No, sir. I just collected the sample.

16 Q. Your only involvement was collecting the samples?

17 A. Yes, sir.

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

19 (Pause.)

20 Q. I just want to make sure. You collected
21 Ms. Schlinger's blood on December 20th, 2013?

22 A. That is correct.

23 MR. HAYES: Thank you. Please answer any questions
24 they may have for you.

25

DEANNA ACOSTA - CROSS BY POTTS

CROSS-EXAMINATION

BY MR. POTTS:

Q. Good afternoon, Ms. Acosta.

A. Good afternoon.

Q. Was a phlebotomist -- can you tell me what's the difference between -- I mean, are there different kinds of blood you draw?

A. Well, blood is blood but there's different tests and different procedures that -- different procedures for different tests --

Q. Okay.

A. -- that are ordered.

Q. So what's -- I've heard this thing called serum. What's that? Do you know what that is?

A. I do. When you collect blood into one of our tubes specifically a serum separator tube it has an amount of gel at the bottom of it. And when the specimen is put into a centrifuge it spins it at a high speed in order to separate the red blood cells from the serum that's in the blood. And the serum is what the tests get run on.

Q. Okay. so that's kind of what serum is. It's a special gel you keep in the blood. How about plasma?

A. Plasma we would extract from using a different sort of tube and then run the tests on the plasma as well.

Q. What about whole blood, what's that?

DEANNA ACOSTA - CROSS BY POTTS

1 A. Whole blood is going to be a different tube
2 collection. I'm not very sure on the specifics of the
3 difference between the plasma and whole blood.

4 Q. Do y'all use whole blood very often at the
5 hospital?

6 A. That's a question better for the technicians. I
7 don't deal too much with the processing of the
8 different --

9 Q. Okay. So the tube you're talking about isn't a
10 tube you put the blood in when you draw it?

11 A. Uh.

12 Q. Or would you use a serum this time or the whole
13 blood next time or is it just --

14 A. It depends on the test. For example, her CBC would
15 have been drawn into into a lavender tube which would be
16 run on the whole blood. And then her, the CMP and the
17 alcohol levels are run on the serum. So that's in the
18 serum separator tube.

19 Q. So that's in that weird serum separator tube rather
20 than the whole blood?

21 A. Correct.

22 Q. Okay. And then you take this serum blood you're
23 going to run for her alcohol. And that's what you turn
24 into the lab, right?

25 A. I turn in the whole tube to the lab and they would

PATRICIA RADFORD - DIRECT BY ALVES

1 spin it and use the serum that's on it.

2 MR. POTTS: Okay. Thank you.

3 THE WITNESS: Uh-huh.

4 MR. POTTS: Thank you. No further
5 questions.

6 THE WITNESS: Thank you.

7 THE COURT: Redirect?

8 MR. HAYES: I would just ask for her to be
9 excused, Judge. I have no redirect.

10 THE WITNESS: Thank you.

11 THE COURT: You're free to go. Thank you
12 very much.

13 THE WITNESS: Thank you.

14 THE COURT: You're free to go. Next
15 witness.

16 MS. ALVES: I call Patricia Radford.

17 PATRICIA RADFORD, having been duly sworn,
18 was examined and testified as follows:.

19 THE CLERK: Have a seat in the witness box,
20 stating your full name, spelling your last.

21 THE WITNESS: My name's Patricia Radford,
22 R-A-D-F-O-R-D.

23 DIRECT EXAMINATION

24 BY MS. ALVES:

25 Q. Ms. Radford, where are you employed?

PATRICIA RADFORD - DIRECT BY ALVES

- 1 A. Aiken Regional Medical Center in the laboratory.
- 2 Q. And what is your job?
- 3 A. I'm a medical technologist. I perform testing on
- 4 laboratory specimens.
- 5 Q. You perform testing on laboratory samples?
- 6 A. Correct.
- 7 Q. And how long have you been working at Aiken
- 8 Regional Medical Center?
- 9 A. Since August of 2013. Excuse me. 2003.
- 10 Q. And, can you tell us what are your qualifications
- 11 to run the laboratory tests?
- 12 A. I have a bachelor's of science degree in medical
- 13 technology from the Medical University of South Carolina
- 14 in Charleston.
- 15 Q. And how long have you worked in the medical
- 16 technology field?
- 17 A. Since 1986.
- 18 Q. And all of that time you worked at Aiken Regional
- 19 continuously since 2003?
- 20 A. That's correct.
- 21 Q. In the medical lab?
- 22 A. Correct.
- 23 Q. And do you work in various parts of the lab?
- 24 A. Yes, I do.
- 25 Q. Do you recall whether you were working on December

PATRICIA RADFORD - DIRECT BY ALVES

1 20th, 2013?

2 A. According to medical records, I was.

3 Q. Okay. So you don't have any independent knowledge
4 of anything that happened on December 20th of 2013?

5 A. No, ma'am.

6 Q. But in the regular course of business in the
7 hospital they keep detailed records of, the lab keeps
8 detailed records of what goes on in the lab?

9 A. Correct.

10 Q. And those are detailed medical records?

11 A. Correct.

12 Q. And have you had an opportunity to review those
13 records?

14 A. Yes, I have.

15 Q. And review the work you did that day?

16 A. Yes.

17 Q. In regards to this particular patient?

18 A. Yes, ma'am.

19 Q. And would looking at those records while you
20 testify help you to remember what happened on that day?

21 A. Yes, it would.

22 Q. (Documents handed to witness.)

23 A. Thank you.

24 Q. You're welcome. What I handed you, those are the
25 lab records for December 20th, 2013, in regards to

PATRICIA RADFORD - DIRECT BY ALVES

1 Ms. Katie Schlinger?

2 A. Correct.

3 Q. And what was your job on December 20th, 2013?

4 A. I was working in the chemistry department.

5 Q. Inside the lab there are numerous different
6 departments?

7 A. Correct.

8 Q. And there are different machines for the different
9 departments?

10 A. Correct.

11 Q. But you were specifically running the machine for
12 the chemistries?

13 A. Correct.

14 Q. And the chemistry machine, it doesn't run if
15 somebody -- like, for example, we just heard testimony
16 from Ms. Acosta about the different tests run on, the
17 different tests requested for Ms. Schlinger's blood. She
18 said a CBC with dif and a PT test and a metabolic panel.
19 Those aren't all -- and the alcohol analysis. Those
20 aren't all run on the chemistry machines, are they?

21 A. No, ma'am.

22 Q. So you didn't do all of the testing on her blood?

23 A. No, I did not.

24 Q. And you didn't do all the testing on her urine?

25 A. No, I did not.

PATRICIA RADFORD - DIRECT BY ALVES

1 Q. So you would only test those items that are
2 requested for chemistry testing?

3 A. Correct.

4 Q. And those would be -- I guess, chemistry testing
5 would be what?

6 A. The urine drug screen, the comprehensive panel and
7 the alcohol.

8 Q. So in this situation you would have only tested the
9 urine for the urine drug screen?

10 A. Yes.

11 Q. The comprehensive panel on which item?

12 A. The comprehensive panel in the alcohol.

13 Q. The comprehensive panel on the blood or urine?

14 A. Is on blood.

15 Q. On the blood. And then you would have tested the
16 blood for the blood-alcohol test?

17 A. Correct.

18 Q. So you would have done three tests out of all the
19 tests that were requested on her blood or urine?

20 A. Correct.

21 Q. Let's talk about the blood first. Ms. Acosta just
22 testified that she drew the blood and brought it to the
23 lab. Do you keep -- does your lab keep detailed records
24 about who would have handled the samples?

25 A. Yes, it does.

PATRICIA RADFORD - DIRECT BY ALVES

1 Q. And, who would have handled the blood sample after
2 Ms. Acosta brought it to the lab?

3 A. The person who would be running the tests would be
4 the person who would be handling the sample.

5 Q. Okay. And when you get a blood sample -- in
6 general, when you get a blood sample for an alcohol
7 analysis, what do you do with that sample?

8 A. When the sample comes in in the tube the first
9 thing we have to do is put it in the centrifuge which
10 will separate the red cells from the serum portion of the
11 sample.

12 Q. Why do you do that?

13 A. I beg your pardon?

14 Q. Why do you do that?

15 A. Because the analyzer only uses the serum to do the
16 analysis, so we don't need the red cells.

17 Q. All right. Is that the procedure that would have
18 been done on Ms. Schlinger's blood sample that was
19 brought in to you that day?

20 A. Yes.

21 Q. And can you tell us how is that done?

22 A. We have this big centrifuge that has buckets in it
23 and you put your sample in these buckets and turn the
24 centrifuge on. It runs 3,000 revolutions per minute for
25 10 minutes.

PATRICIA RADFORD - DIRECT BY ALVES

1 Q. And that's how you separate the serum from?

2 A. From the red cells.

3 Q. From the red cells?

4 A. Correct.

5 Q. And then what do you do with the sample after the
6 serum has been separated from the red cells?

7 A. We remove the sample from the centrifuge and put it
8 in an adapter which actually goes on the analyzer. We
9 have to take the top off of the tube. We put it in the
10 adapter, put the adapter on the analyzer. And then the
11 analyzer takes the sample and brings it into inside of
12 the analyzer, does the test, the necessary testing and
13 then it will take that out of the analyzer and we can
14 remove it from the analyzer.

15 Q. Is that what was done with Ms. Schlinger's sample?

16 A. Yes.

17 Q. And then after that's done what, what do you do
18 with it at that point?

19 A. We would cap the sample and put in a rack which
20 indicates that the sample has already been processed.

21 Q. Is it tested?

22 A. Yes.

23 Q. And then how do you get the results from the
24 testing?

25 A. When the testing is complete on the analyzer it

PATRICIA RADFORD - DIRECT BY ALVES

1 transmits the information to the laboratory information
2 system by a computer. We would review the results on our
3 computer screen, and then verify that those results are
4 within the normal limits or within the analyzer's
5 capability and release the information to the doctor and
6 the nursing staff.

7 Q. And so was this -- so this whole process to analyze
8 and to verify the results, was that done in this case
9 regarding the sample given to you --

10 A. Yes.

11 Q. -- of Katie Schlinger?

12 A. Yes, it was.

13 Q. And you tested her, you did the analysis for the
14 blood-alcohol analysis?

15 A. Correct.

16 Q. And what were the test results?

17 MR. POTTS: Your Honor, I object to
18 relevancy in this witness. She's not a
19 toxicologist. She doesn't know what the
20 results --

21 THE COURT: All right. I understand.

22 Overruled. Overruled.

23 BY MS. ALVES:

24 Q. What results did you get when you did the blood-
25 alcohol analysis on Ms. Schlinger?

PATRICIA RADFORD - DIRECT BY ALVES

- 1 A. 65.
- 2 Q. 65, what?
- 3 A. Listed on here as 65 milligrams per deciliter.
- 4 Q. 65 milligrams per deciliter?
- 5 A. Correct.
- 6 Q. Now you also did testing on Ms. Schlinger's urine?
- 7 A. That is correct.
- 8 Q. Now, there were -- and the lab does keep records.
- 9 And it's the same as the blood. They keep records, the
- 10 lab keeps records as to the testing done on urine?
- 11 A. Correct.
- 12 Q. And on this day what were you given to test?
- 13 A. I was given a urine sample to test for urine, drugs
- 14 of abuse or a drug screen.
- 15 Q. So you were asked to do a urine drug screen?
- 16 A. Correct.
- 17 Q. And tell us what happens when you get a request to
- 18 do a urine drug screen.
- 19 A. The urine sample is delivered to the laboratory.
- 20 It is -- we ensure that the sample is labeled correctly
- 21 or completely with the test and the patient's name. We
- 22 generate a control to put on our al-pot tube or the tube
- 23 that we would have to pour some off, we don't put the
- 24 entire sample on our analyzers.
- 25 Again, we put it in a rack with, that has adapters

PATRICIA RADFORD - DIRECT BY ALVES

1 on it. We put it on our analyzer. And the analyzer
2 would take it in to its internal parts, do the sampling
3 and the analysis and would put it back out through the
4 exit.

5 Q. And what do you do with the sample after it's been
6 analyzed?

7 A. It is capped and put in our rack to indicate that
8 it is finished.

9 Q. And, do you do anything with the test rules once
10 you get those?

11 A. Again, those are transmitted by the laboratory
12 information system to the computers. The results come up
13 on a computer screen. We review them and then release
14 them into the system for the nurses and the physicians.

15 Q. Is that the procedure that you do every time you
16 get a sample for a urine drug screen?

17 A. Yes, it is.

18 Q. And is that the procedure that you followed on
19 December 20th, 2013?

20 A. Yes, it would be.

21 Q. In regards to Ms. Schlinger's blood -- I mean,
22 urine sample?

23 A. Yes.

24 Q. Now you talked about when you get a urine sample
25 and a blood sample, you said that you verify the labels?

PATRICIA RADFORD - DIRECT BY ALVES

- 1 A. Correct.
- 2 Q. And the labels would have, would have the patient's
3 name?
- 4 A. It would have patient information. It has the
5 name, the date of birth, the medical record number, and
6 also the tests that have been ordered on that sample.
- 7 Q. So you don't -- so the tests that have been ordered
8 are also on the barcode?
- 9 A. That is correct.
- 10 Q. And that's how they know whose test results to send
11 to where and whose test results those are and what tests
12 to run?
- 13 A. Correct.
- 14 Q. And when you tested Ms. Schlinger's urine on the
15 drug screen, for the drug screen what results did you
16 get?
- 17 A. According to this it says that there were three
18 results out of eight that there were positive.
- 19 Q. And what were those three positives?
- 20 A. Urine amphetamines, urine cannabinoids and urine
21 opiates.
- 22 Q. And you testified that -- you said cannabinoids,
23 opiates and amphetamines what the urine tested positive
24 for?
- 25 A. That is what this paper, says.

PATRICIA RADFORD - DIRECT BY ALVES

1 Q. The paper you're looking at are the test results
2 from Katie Schlinger's urine testing?

3 A. Correct.

4 Q. And you specifically ran the drug screen test on
5 the urine?

6 A. That's what it's listing in the computer record.

7 Q. Okay. And that's based on the computer records?

8 A. Correct.

9 Q. Because you don't have any personal memory of every
10 single test you run?

11 A. No, ma'am.

12 Q. You run a lot?

13 A. Yes, ma'am.

14 Q. And those results, that paperwork is kept as a
15 regular course of business for the lab?

16 A. Correct.

17 Q. Okay. Now, the machine and the analyzer that is
18 used to test the blood-alcohol and the drug screen, you
19 said, you testified that they were different machines
20 used in the lab. What can you tell us about the analyzer
21 that tests the blood and the urine? The blood -- let me
22 make it a little clearer.

23 Are there multiple machines that are used in the
24 lab to do analysis on blood?

25 A. Yes.

PATRICIA RADFORD - DIRECT BY ALVES

1 Q. And there are multiple machines that are used to do
2 different analysis on urine?

3 A. Correct.

4 Q. And that's based on the testing that's requested by
5 the doctor?

6 A. Correct.

7 Q. So when you're doing a blood analysis, what machine
8 is used to do the testing, the analyzing?

9 A. It depends upon what test.

10 Q. I'm sorry. Blood-alcohol.

11 A. Blood-alcohol would be run on our Dimension Vista
12 by Siemons.

13 Q. And what about the urine drug screen, what would
14 that be?

15 A. That would also be on the Dimension Vista by
16 Siemons.

17 Q. So would -- the blood-alcohol and the urine blood
18 screen would be run on the same machine?

19 A. Correct.

20 Q. And are there quality control measures taken to
21 ensure that the machine is working properly?

22 A. Yes, there were.

23 Q. And what are those measures?

24 A. The analyzers are run, quality control samples
25 either every 24 hours or every eight hours depending upon

PATRICIA RADFORD - DIRECT BY ALVES

1 the chemistry analytes that you're looking for.

2 Q. Can you tell us more about what the quality control
3 measures are?

4 A. We have samples with known quantities of analytes
5 in them. And we run these known samples on our analyzers
6 for various analytes or for various chemistries. And
7 there are specific things that are acceptable that prove
8 that the analyzer is still working correctly.

9 Q. So every 24 hours or every eight hours depending on
10 what machine we're talking about you said there were
11 quality control practices done to the machine?

12 A. Correct.

13 Q. To make sure that the machine is still running
14 properly?

15 A. Correct.

16 Q. And giving accurate results?

17 A. Correct.

18 Q. Now do you have any specific results for the amount
19 for the marijuana, the opiates and the amphetamines or
20 did it just show a general positive?

21 A. It shows either a positive or not detected or
22 negative.

23 Q. So it's either not detected or positive?

24 A. Correct.

25 Q. And in this case for the urine drug screen, the

PATRICIA RADFORD - CROSS BY POTTS

1 three results that you told us about were positive?

2 A. Correct.

3 MS. ALVES: I don't have any further
4 questions. Please answer any that the solicitor
5 may have.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. POTTS:

9 Q. Just very briefly, Ms. Radford.

10 A. Uh-huh.

11 Q. Do you know what the threshold is for these various
12 drugs on these machines?

13 A. Not offhand.

14 Q. So you couldn't tell me any sort of level of any of
15 these things?

16 A. Not without the reference information from the
17 manufacturer.

18 Q. Okay. But just as far as your testimony today, you
19 just have -- something was a tech?

20 A. Correct.

21 MR. POTTS: Thank you. No further
22 questions.

23 THE COURT: Is that it?

24 MS. ALVES: Yes, sir.

25 THE COURT: You may come down, ma'am.

1 Thank you very much.

2 THE WITNESS: Thank you.

3 MS. ALVES: Judge, may I approach?

4 THE COURT: Approach the bench, counsel.

5 (Off-the-record discussion.)

6 THE COURT: Ladies and gentlemen of the
7 jury. The next witness is a doctor. Now, all
8 doctors are not the same. Some doctors don't
9 like to come to court. They tell me they have
10 gone to check on him. He was supposed to be here
11 at four o'clock. So, we'll just be at ease. If
12 you want to stand up or need to go to the
13 restroom or something, please do.

14 Trying to see what our schedule here is.

15 MR. HAYES: May I approach?

16 THE COURT: Yes, sir.

17 (Off the record.)

18 THE COURT: I'm told that the doctor is
19 leaving the hospital. Now, I think I'm the only
20 one in this room that does not know where the
21 hospital is.

22 THE JUROR: Here's a map.

23 (Laughter.)

24 THE COURT: But it's going -- you can gauge
25 since you know about how long it will take him to

1 get here. He said 20 minutes.

2 THE JUROR: Less than that.

3 THE COURT: Less than that?

4 THE JUROR: (Nods head.)

5 THE COURT: All right. Would you rather go
6 to the jury room, get all those good refreshments
7 back there?

8 THE JUROR: Water.

9 THE COURT: Bread and water.

10 THE JUROR: Yeah.

11 THE COURT: I tell you what, show them
12 their new jury room for tomorrow.

13 THE JUROR: Oh, that didn't sound good.

14 THE COURT: Let them visit their new jury
15 room for tomorrow. We're going to have to bring
16 all of this evidence in to you. We're going
17 as -- what was his name, Jimmy.

18 MR. POTTS: Jimmy Stewart?

19 THE COURT: No. Moving on Up Jimmy.

20 MR. POTTS: Oh. Walker.

21 THE COURT: Walker. Moving on Up. Just
22 take them to the new jury room for a few
23 minutes.

24 (Jury exits courtroom at 4:09 p.m. At
25 4:27 p.m., the trial resumed:)

AARON GARRETT - DIRECT BY ALVES

1 THE COURT: State ready to proceed?

2 MS. BODMAN: We are, sir.

3 THE COURT: Defense ready to proceed?

4 MS. ALVES: Yes, sir.

5 THE COURT: Bring the jury, please.

6 THE BAILIFF: Bring them in, please.

7 (Jury enters courtroom at 4:28 p.m.)

8 THE COURT: Call your next witness.

9 MS. ALVES: Call Dr. Aaron Garrett.

10 AARON GARRETT, having been duly sworn, was
11 examined and testified as follows:

12 THE CLERK: Please have a seat in the
13 witness box, state your full name for the Court
14 and spell your last.

15 THE WITNESS: My name's Aaron Garrett,
16 G-A-R-R-E-T-T.

17 DIRECT EXAMINATION

18 BY MS. ALVES:

19 Q. Dr. Garrett, where are you employed?

20 A. Aiken Regional Medical Center.

21 Q. What is your job?

22 A. Emergency room physician.

23 Q. And how long have you been working as an emergency
24 room physician at Aiken Regional?

25 A. About four years.

AARON GARRETT - DIRECT BY ALVES

- 1 Q. Four years?
- 2 A. Yeah.
- 3 Q. And how long have you been a doctor?
- 4 A. Almost 13 years, 14 years.
- 5 Q. 14 years.
- 6 A. I graduated in 2003.
- 7 Q. From where?
- 8 A. Ohio University.
- 9 Q. Medical School?
- 10 A. Yes.
- 11 Q. And have you always worked as an emergency room
- 12 doctor?
- 13 A. Yes.
- 14 Q. For all 13 of the years since you graduated?
- 15 A. Between residency and attending, yes.
- 16 Q. But four years for Aiken Regional?
- 17 A. Correct.
- 18 Q. And you were working as a doctor in the emergency
- 19 room on December 20th, 2013?
- 20 A. Yes.
- 21 Q. You see a lot of the people in the emergency room?
- 22 A. Yes, I do.
- 23 Q. Do you remember every single one?
- 24 A. No.
- 25 Q. And do you remember every single person from back

AARON GARRETT - DIRECT BY ALVES

1 in December of 2013?

2 A. No.

3 Q. So in order to look at this case you had to review
4 your notes?

5 A. Correct.

6 Q. In reviewing them and hearing what this case was
7 about, do you remember Ms. Schlinger?

8 A. Very little.

9 Q. You remember a little?

10 A. A little bit, yeah, after reading my notes.

11 Q. It jogged your memory?

12 A. Yeah.

13 Q. Okay. Now, were you the doctor who saw
14 Ms. Schlinger in the emergency room?

15 A. Yes.

16 Q. Initially?

17 A. Initially, correct.

18 Q. You worked -- at that point, at that time you were
19 working what shift?

20 A. I would have been getting off at six in the
21 morning. It looks like she came in around 4:48.

22 Q. So you would have been her doctor stating at 4:48
23 when she came in?

24 A. Correct.

25 Q. Until six in the morning when you got off duty?

AARON GARRETT - DIRECT BY ALVES

1 A. Correct.

2 Q. And then what did you do with her care?

3 A. Transferred it to Dr. Eaves.

4 Q. He would have been the doctor that came on at six?

5 A. Correct.

6 Q. All right. During triage, who would have been the
7 doctor who would have been working with the team doing
8 the triage and taking the initial information regarding
9 Ms. Schlinger?

10 A. That would be me.

11 Q. You?

12 A. Yes.

13 Q. And would you have been working with a nurse,
14 Mallory Harmon?

15 A. If she was on, yes.

16 Q. Okay. And during the initial -- would you have
17 been doing the initial triage?

18 A. Not necessarily the initial triage. I would have
19 done the initial physician assessment.

20 Q. So the initial -- what's done during the initial
21 physician's assessment?

22 A. Take a look at the patient, try to get as much
23 information as possible, and try to determine if there's
24 any emergent condition that I can intervene on.

25 THE COURT: Doctor, could you speak just up

AARON GARRETT - DIRECT BY ALVES

1 a little bit?

2 THE WITNESS: Yes, sir.

3 THE COURT: So the lady over there in the
4 back can hear you.

5 THE WITNESS: Okay. Sure.

6 BY MS. ALVES:

7 Q. Tell us what you do during the initial physician's
8 assessment.

9 A. Initially we interview the patient, try to get as
10 much information as we can at the time, and determine if
11 there's any emergent condition that be can intervened on.

12 Q. And did you interview Ms. Schlinger?

13 A. Briefly, yes.

14 Q. And what do you do with the information that you
15 obtain from the patients?

16 A. I determine what kind of testing I need to do or
17 what kind of treatment I need to do to stabilize the
18 condition.

19 Q. Okay. I mean, is that information written down
20 anywhere?

21 A. Some of it. Typically, I don't write down every
22 single thing that's said or every single thing I do.

23 Q. But where do you put the highlights of the notes
24 you take?

25 A. Typically in the physician's chart under the

AARON GARRETT - DIRECT BY ALVES

1 initial history of present illness and review of systems
2 and physical assessment.

3 Q. Okay. And those notes are kept in the computers at
4 the hospital?

5 A. Now they are, yes.

6 Q. Now they are?

7 A. Yes.

8 Q. So you don't actually write your notes anymore?

9 A. Correct.

10 Q. And on this date, December 20th, 2013, did you put
11 notes into the computer?

12 A. Yes.

13 Q. Now, for -- you said that you would take notes
14 listed under the heading of patient, history of present
15 illness?

16 A. Yep.

17 Q. And did you take a history of present illness in
18 this case?

19 A. Yes, I did.

20 Q. And can you tell us what the history of present
21 illness that you took in this case says?

22 A. I can. Do you want me just to read what it says?

23 Q. Well, did you -- are those your notes?

24 A. Yes. This is my notes.

25 Q. Okay. Now, it says that you were assigned to the

AARON GARRETT - DIRECT BY ALVES

1 case but then it says that the author is Dr. Charles
2 Eaves.

3 A. Correct. What he would have done is taken over the
4 chart to finish up when the patient was discharged or
5 transferred in this case.

6 Q. Okay. But the notes that were initially for the
7 history of present illness are your notes?

8 A. Correct.

9 Q. Tell us what you wrote.

10 A. The patient presents to the emergency department
11 and reports being assaulted. The onset was just prior to
12 arrival. Injury to the scalp, a direct blow type
13 injury. Degree of the pain is moderate degree. Bleeding
14 is moderate. The exacerbating factor is none. Relieving
15 factor is none. Risk factors consistent with alcohol
16 intoxication. Prior episodes, none. Therapy today,
17 none. Associated symptoms, none. Patient presents
18 status-post head injury. The patient states she picked
19 up somebody to drive him to the hospital and he assaulted
20 her. She states he hit her in the back of the head with
21 a gun. She states that he {sic} was wrestling with him
22 in the car and got out and crawled across the ground.
23 She complains of scrapes to her hands as well. No LOC
24 which means loss of consciousness. The patient admits to
25 drinking alcohol tonight.

AARON GARRETT - DIRECT BY ALVES

1 Q. Well, you haven't noted in there that she says that
2 she was sexually assaulted?

3 A. That's not noted. Correct.

4 Q. Why didn't you note that?

5 A. I don't know if that information was available to
6 me at the time.

7 Q. Is information about whether or not someone is
8 sexually assaulted important information to you?

9 A. It can be, sure.

10 Q. Is that something that you would have noted in your
11 records if you were told that?

12 A. At the time I don't know that.

13 Q. Okay. But is that something you would possibly
14 note in your records in general?

15 A. At some point.

16 Q. At some point. But you never noted it in these
17 records?

18 A. Not in the initial assessment.

19 Q. And, in the initial assessment she told you that --
20 did you also take information or were you there when
21 information was given about her social history?

22 A. The social history?

23 Q. Yes.

24 A. Just as far as I -- I'll kind of determine what the
25 social history is. In this she's admits to drinking

AARON GARRETT - DIRECT BY ALVES

1 alcohol or drinks alcohol and then put down yes.

2 If he can deny drug use I put yes. Some of this is
3 taken from the nurse's notes, however, it's asked
4 directly to the patient.

5 Q. But in the information that you had that she gave
6 when she was initially brought into the emergency room
7 department, she admitted that she does have alcohol use?

8 A. Yes.

9 Q. And she denied drug use?

10 A. Correct.

11 Q. And you were not told that she might have any type
12 of drugs in her system?

13 A. I don't recall.

14 Q. Based on those notes?

15 A. Based on these notes, no.

16 Q. Now you put in your notes that risk factors consist
17 of alcohol intoxication. What does that mean?

18 A. What that means, either the patient appears
19 intoxicated or smells of alcohol.

20 Q. Do you know which it was in this case?

21 A. I don't recall.

22 Q. You don't recall?

23 A. Huh-uh.

24 Q. So the only thing that you can go by are these
25 notes which you would have written down when you were

AARON GARRETT - CROSS BY BODMAN

1 immediately assessing the patient?

2 A. Correct.

3 Q. And you put down there was a risk factor consisting
4 of alcohol intoxication?

5 A. Yes.

6 Q. And you did not note anything regarding sexual
7 assault?

8 A. I did not note anything.

9 MS. ALVES: Thank you. No further questions.
10 Please answer any the solicitor may have.

11 THE COURT: Cross-examination?

12 MS. BODMAN: Yes, sir.

13 CROSS-EXAMINATION

14 BY MS. BODMAN:

15 Q. How many pages of the records do you have there?

16 A. I have three. It's just the physician record.

17 Q. Okay. Katie was diagnosed, actually diagnosed with
18 a scalp laceration. Do you have that in your records?

19 A. Yes.

20 Q. Okay. And, when we're talking about medical
21 treatment, would you agree with me that it is history
22 driven?

23 A. Yes, most of the time.

24 Q. And the history, I guess, in terms of the medical
25 profession. History means, what is your complaint, what

AARON GARRETT - CROSS BY BODMAN

1 happened to you, how can we -- so that you can treat that
2 injury, correct?

3 A. Correct.

4 Q. And, I guess kind of semi-related to this is are
5 you aware or have you ever heard of Maslow's hierarchy of
6 needs?

7 A. No, I haven't heard that.

8 Q. Never?

9 A. No.

10 Q. And that essentially human beings have, we have
11 different levels of needs. And our basic need is food,
12 water, and air. If those things are met then we kind of
13 move to the next one. Because if we can't breathe,
14 right, that's the first thing we want to do is get air.
15 If we don't have food we will starve to death, or if we
16 don't have water we'll die. Right?

17 A. Correct.

18 Q. And then the next level is safety, is our
19 protection. If somebody is out to get us, you know, we
20 want to survive that.

21 Did you know that Katie came into the ER screaming
22 and fearful that somebody was out to kill her?

23 A. I just remember that she was very anxious and upset
24 and screaming and was difficult to get a full history.

25 Q. Okay. And so she was, she was frantic and

AARON GARRETT - CROSS BY BODMAN

1 screaming?

2 A. Yeah. And it looks like I had to order something
3 to help calm her down.

4 Q. Okay. And, screaming, you know, there is someone
5 that is trying to kill me. So assuming that she could
6 breathe, her next kind of fear was my life is in danger.

7 And so at that point she's also complaining of
8 severe neck pain?

9 A. At some point, yes.

10 Q. Okay. And I think the records, there's a couple
11 places that it reports that her pain level is at a 10 on
12 a scale of one to 10.

13 A. I don't have that in my notes. It's probably in
14 the nurse's notes.

15 Q. Okay. Because that's something the nurses, I
16 guess, regularly go in and say --

17 A. It's something they're required to ask them because
18 of the pain scale.

19 Q. I'm sorry. Keep your voice up. I want to make
20 sure everybody hears. What you have to say is very
21 important.

22 On a scale of one to 10, it's a nine or a 10. So
23 that basic -- I mean, that's incredibly -- it sounds
24 incredibly painful. She needs that to be dealt with and
25 in fact it turned out that she had a broken neck?

AARON GARRETT - CROSS BY BODMAN

1 A. Yeah, it appears that way. That was determined
2 after I had transferred the care. I had -- looking back,
3 I had ordered the CAT scan that ultimately found the
4 fractures.

5 Q. Right.

6 A. Dr. Eaves was the one that got the report and then
7 took over from there.

8 Q. So y'all were able to find the source of her pain?

9 A. Correct.

10 Q. That she was suffering from that pain while y'all
11 were trying to figure out, oh my gosh, what happened,
12 correct?

13 A. Right.

14 Q. So she's, oh my gosh, somebody's trying to kill me,
15 and I have a pain scale of 10, right?

16 A. If that's what documented. I don't know the pain
17 scale. I don't typically go by it.

18 Q. Okay. Now, you all -- do you have sexual assault
19 nurse examiners at your hospital?

20 A. Correct. Most of the time. I don't know what
21 their availability is. I think now -- I don't know when
22 this occurred, but now we have much more availability to
23 that.

24 Q. And it's an area that a lot of hospitals are still
25 developing. Some hospitals around the nation still don't

AARON GARRETT - CROSS BY BODMAN

1 have SANES.

2 A. Correct.

3 Q. And we're getting them in other hospitals. Was
4 there a time that you would conduct sexual assault
5 examinations to collect the evidence?

6 A. Myself?

7 Q. Uh-huh.

8 A. I don't do any of the collection.

9 Q. But had you ever done that in your career if there
10 wasn't a sexual assault nurse examiner available?

11 A. I don't do the collecting of the samples. It's
12 usually just a nurse would do that.

13 Q. Right. And I'm just asking, have you ever done it
14 in your career?

15 A. I don't believe so.

16 Q. Okay. And those also would be, I mean, they're
17 going to be history driven, right?

18 A. Correct.

19 Q. And so if the person says that they were vaginally
20 penetrated, we're going to collect swabs from the genital
21 area, right? And if the person reported an oral assault,
22 it would be history driven and an oral swab would be
23 collected, right?

24 A. Correct. In coordination with law enforcement. I
25 mean, it's more of a criminal legal issue than it is an

AARON GARRETT - CROSS BY BODMAN

1 emergent treatment issue.

2 Q. Right. But the hospitals have joined efforts with
3 law enforcement so that we have trained nurses that know
4 to follow the history that the patient has given. So
5 we're not just swabbing head to toe when they only said
6 one assault, type of assault happened. We're not
7 swabbing head to toe, right?

8 A. Correct.

9 Q. Okay. And, before a patient goes to, I guess, is
10 sent to the sexual assault nurse examiner, they have to
11 be medically cleared first by a doctor?

12 A. Correct. The emergent stuff needs to be
13 stabilized.

14 Q. The emergent stuff needs to be stabilized. And
15 would you agree that Katie's situation was emergent?

16 A. Cervical fracture, yes.

17 Q. She was not going to be able to stand up and go to
18 an examination with a sexual assault nurse examiner?

19 A. Correct.

20 Q. And those examinations, they do things, like,
21 they'll have the patient stand on a white cloth and
22 disrobe so any debris would land on that white cloth?

23 A. That sounds typical.

24 Q. Okay.

25 A. I don't know the full procedure because I'm not in

AARON GARRETT - CROSS BY BODMAN

1 the room when that goes on.

2 Q. Okay. but we're not going to be have to have Katie
3 stand up on a white cloth and collect her debris because
4 she could become a quadriplegic?

5 A. Yeah. She wouldn't need to be moved around with a
6 cervical fracture.

7 Q. She would not need to be moved around. And any
8 report that Katie gave of being orally sexually assaulted
9 could still be handled as she's laying in a gurney?

10 A. Probably, yes.

11 Q. And an oral swab around the mouth would be a pretty
12 simple procedure to do?

13 A. Correct.

14 Q. Okay. I would imagine, I don't know, that there
15 are a number of patients that come in with a complaint of
16 being sexually assaulted in the emergency room?

17 A. Yes.

18 Q. And, is it necessarily an easy thing for a sexual
19 assault victim to disclose to you?

20 A. No.

21 Q. And one of the reasons why we have sexual assault
22 nurse examiners is because they are specially trained to
23 conduct that interview in a comfortable and professional
24 manner, correct?

25 A. Correct.

AARON GARRETT - CROSS BY BODMAN

1 Q. And would you agree with me that it is also
2 probably embarrassing for a female to disclose that to a
3 male that they don't know?

4 A. I couldn't tell you, but I could see how that could
5 be.

6 Q. Okay. Do you remember Mallory Harmon, the nurse
7 that worked at the hospital?

8 A. Yes.

9 Q. Okay. And she was the nurse that was working with
10 Katie while she was there at the hospital?

11 A. I don't know that from looking at my record.

12 Q. Okay. And would you agree with me that probably
13 not all patients when they come into the ER know that
14 there's something like a sexual assault nurse examiner,
15 correct?

16 A. I don't know that.

17 Q. Okay. And, would a person, A, they're dealing
18 with, I'm scared for my life, B, I have pain scale of 10
19 and I am starting to lose feeling, would probably not be
20 prioritizing, hey, someone needs to swab my mouth?

21 A. I would agree to that. And that wouldn't be my
22 priority, either.

23 MS. BODMAN: Thank you very much.
24
25

AARON GARRETT - REDIRECT BY ALVES

REDIRECT EXAMINATION

BY MS. ALVES:

Q. Dr. Garrett, you have had -- you have in the course of your experience in the emergency room you have treated people who have come in with their complaint being that they have been sexually assaulted?

A. Yes.

Q. And, when someone comes in with a complaint of sexual assault, are their medications that they are given or at least offered to try to prevent STDs, and infectious diseases?

A. Yes. Usually the nurse will talk with them about that. And if, you know, if I can answer any questions then I'll talk to them about offering birth control prevention, hepatitis prevention, HIV prevention.

Q. So when someone comes into the emergency room and they've complained of sexual assault, you offer them. They don't have to take the drugs?

A. Correct.

Q. But you offer them the opportunity to take the antibiotics, and the plan B drugs and to prevent pregnancy and other drugs to prevent the risk of sexually transmitted disease?

A. Yes.

Q. They don't have to take it?

AARON GARRETT - REDIRECT BY ALVES

1 A. Correct.

2 Q. But it's a standard policy to offer those --

3 A. Correct.

4 Q. -- to a sexual assault victim?

5 A. Correct.

6 Q. And whether they take them or not is the fact that
7 they've been offered them noted in their records?

8 A. I don't know that it's noted in the records. The
9 SANE nurse might note it in their note.

10 Q. The nurse would note that?

11 A. Yes.

12 Q. Now you said you're not sure -- when you were
13 talking about the SANE nurse, and that's the sexual
14 assault nurse?

15 A. Correct.

16 Q. You said that you're not sure of their hours?

17 A. Correct.

18 Q. So, in the emergency room there's not a SANE nurse
19 available 24 hours a day?

20 A. I don't know if there is. Typically we usually
21 call and see if there's one available.

22 Q. And if there's not a nurse available, a SANE nurse
23 available, what nurse treats the person who comes in
24 claiming sexual assault?

25 A. Usually the patient's nurse.

AARON GARRETT - REDIRECT BY ALVES

1 Q. So in this case it would have continued to be
2 Mallory Harmon or Jeremy Dixon, whichever one of them was
3 on duty at the time treating the patient?

4 A. As far as what?

5 Q. Treating her. I'm just asking you in general.
6 When a sexual assault victim comes in and there's no SANE
7 nurse available, you said that the -- if there's no SANE
8 nurse available the patient's nurse would continue to
9 treat them?

10 A. Typically, yes.

11 Q. So in this situation with Ms. Schlinger, if there
12 was no SANE nurse available when she came into the
13 hospital, then she would have continued to be treated by
14 the nurses who were on duty and assigned to her case?

15 A. I'm not sure I follow, follow where you're going
16 with this or what you're trying --

17 Q. I'm just saying. If she had claimed she had a
18 sexual assault.

19 A. Okay.

20 Q. If she had claimed a sexual assault and there was
21 no SANE nurse available, she would have been treated and
22 offered the drugs that we discussed by her regular
23 nurse?

24 A. I don't know in this case, just because the sexual
25 assault part as far as all of that stuff would have been

AARON GARRETT - REDIRECT BY ALVES

1 much secondary to the emergent condition of the cervical
2 fracture.

3 Q. Okay. So you would have ignored the fact that she
4 would have needed the drugs?

5 A. Under the circumstances it's something that needed
6 to be done within an hour of when she was there.

7 Q. Okay. But there's no mention of it at all in the
8 records that you have.

9 A. Correct. I, I don't know anything about the sexual
10 assault in this case.

11 Q. Okay. But -- and when you were treating her and
12 you did your assessment and you said you have your
13 physician record. So you noted things, you noted things
14 like her general skin and her name and her
15 gastrointestinal findings, her neurological findings, her
16 psychiatric findings?

17 A. Yes.

18 Q. And even though you said she was upset, I think you
19 said she was anxious and upset?

20 A. Uh-huh.

21 Q. And, I don't remember what other words you used but
22 she was very upset?

23 A. Yes.

24 Q. But she was cooperative with trying to answer your
25 questions?

1 A. Well, she answered some questions, yes.

2 Q. I her psychiatric you put that she was cooperative
3 and intoxicated and anxious?

4 A. Uh-huh.

5 Q. So was as cooperative as she could be? She was
6 cooperative?

7 A. She was cooperative as far as I could tell. I
8 ordered something to calm her down, so she was very
9 anxious. I don't typically do that in a trauma case.

10 Q. But you also noted that she was intoxicated?

11 A. Yep.

12 MS. ALVES: Thank you. No further questions.

13 THE COURT: Anything?

14 MS. BODMAN: Nothing further.

15 THE COURT: All right. You may come down,
16 Doctor. Thank you very much.

17 MS. ALVES: Judge, I'd ask Dr. Garrett be
18 excused.

19 THE COURT: You're free to go, sir. Thank
20 you. Without objection.

21 Approach the bench, counsel, please. Just
22 checking on the schedule.

23 (Off-the-record discussion.)

24 THE COURT: Ladies and gentlemen, the next
25 witness again is another doctor. And he's coming

1 from Charleston.

2 So, I'm going to ask you to be back in the
3 jury room at 9:30 tomorrow. A little later than
4 today. And as I say, we're going to wind this
5 case up tomorrow.

6 So, I promise you a number of witnesses but
7 we winnowed it's down to --

8 THE JUROR: You did say 9:30, correct?
9 9:30 or nine?

10 THE COURT: 9:30.

11 THE JUROR: As many ways as you can give me
12 the information, just let me know

13 THE COURT: That's all right. Just doing
14 the best I can with what I got.

15 THE JUROR: That's right.

16 THE COURT: All right. Again, do not --
17 please do not -- you know, there was, I shouldn't
18 even mention this. Apparently there was some
19 press involved with this case when it happened,
20 but nobody's told me there was any press that's
21 been generated by this trial.

22 But if there were, I would ask you just put
23 it down and save it for Saturday morning. Please
24 don't get into, read it. I tell the juries all
25 the time, that's somebody else's opinion of

1 what's going on in here.

2 And to my knowledge I haven't seen anybody,
3 any press in here trying to keep up with the
4 facts of the case. You know the facts of this
5 case. At least they've been presented to you as
6 any trial. So, I'd ask you not to read it if
7 there was anything. I doubt there will be if
8 they haven't picked it up so far.

9 Anyway, have a pleasant evening. Don't
10 discuss the case among yourselves when you return
11 to the jury room or with anyone else other the
12 evening hours. And please return to your new
13 jury room, your spacious and comfortable jury
14 room for at least one more day.

15 Thank you very much, ladies and gentlemen

16 (Jury exits courtroom at 4:56 p.m.)

17 THE COURT: All right. Assuming there's --
18 the defense has one more witness; is that
19 correct?

20 MS. ALVES: Yes. Yes, sir.

21 THE COURT: We have been working on jury
22 charges and Ms. Patterson's asked if either side
23 had any proposed charges at this point. We don't
24 have from either side but we've done a fairly
25 extensive set of jury charges which are, we are

1 going to share with you.

2 I'm wondering if there are any specific
3 requests with regard to the -- well, let's start
4 with this. Is the State going forward on all six
5 indictments?

6 MS. BODMAN: Yes, sir.

7 THE COURT: All right. And of course we've
8 got to deal with a directed verdict motion, too.
9 But, does the State have anything in particular
10 they would request?

11 MS. BODMAN: I would like to ask for the
12 testimony of the victim in a CSC need not be
13 corroborated.

14 THE COURT: I think that's the law.

15 MS. BODMAN: Thank you, sir.

16 THE COURT: All right. Ms. Alves?

17 MS. ALVES: Yes, sir. Judge, I would ask
18 that you charge the law under the statute of
19 56-5-2930 which is the law on DUI.

20 THE COURT: 56?

21 MS. ALVES: 5 dash 2930.

22 THE COURT: Well, okay. I mean, I
23 understand but at this point I don't know that
24 there's a sufficient amount of evidence to grant,
25 to give that charge. You may have a witness

1 tomorrow that may bolster your position on that.

2 MS. ALVES: Yes, sir.

3 THE COURT: All right. Other than that?

4 MS. ALVES: Just the law, the charge on the
5 Defendant not testifying.

6 THE COURT: Oh, yeah. Got that.

7 MS. ALVES: And I don't have anything
8 specific other than that at this time. And I
9 know my requests would probably make more sense
10 after the doctor testifies tomorrow.

11 THE COURT: Well, I understand that. But
12 there's a big sort of an elephant in the room up
13 here. And that's the potential for a lesser-
14 included offense.

15 MS. ALVES: Judge, I would ask, I mean --

16 THE COURT: Do you want to think about
17 that?

18 MS. ALVES: I do. I do want to think about
19 that one.

20 THE COURT: I will tell you it gets
21 complicated.

22 MS. ALVES: I'm aware.

23 THE COURT: At least according to our
24 research on LIU -- LIOS.

25 So with that said, here.

1 (Documents handed to the attorneys.)

2 Thank you. Thank you very much.

3 THE COURT: We'll stand at least until 9:30
4 if there's nothing else to come before the Court.

5 MS. BODMAN: Thank you. No, sir.

6 END OF DAY: 5:00 P.M.

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1 ON FRIDAY, FEBRUARY 19, 2016 AT 9:37 A.M.:

2 THE COURT: Any -- State ready to proceed?

3 MR. POTTS: Yes, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. HAYES: We are, Your Honor.

6 THE COURT: Any housekeeping matters that
7 need to be brought to the Court's attention?

8 MR. HAYES: Yes, sir. I have one matter.

9 The defense intends to call Dr. Robert
10 Bennett as their next witness. It is my
11 understanding after talking with the State that
12 there is an indictment for Dr. Bennett from about
13 six months ago from an arrest. It is my
14 understanding that they intend to ask him about
15 this indictment.

16 I would argue, Judge, to suppress this and
17 limit them from asking this. Under 609,
18 impeachment of evidence of conviction of a crime
19 would be allowed. However, he is not convicted
20 of anything at this point in time. As well as
21 specific incidents of conduct under 608, of
22 character evidence. Under that, Judge, I would
23 say that this indictment for conspiracy does not
24 go toward the tendency for preponderance of
25 truth, such as a shoplifting or a false

1 information.

2 THE COURT: All right. What's the State's
3 position?

4 MR. POTTS: Your Honor, we believe that it
5 is a specific instance of alleged misconduct. He
6 was accused not just of conspiracy but conspiracy
7 and his practice and his expertise, in fact. He
8 is accused of taking confidential information
9 from the State's prescription drug database and
10 sharing it with potential clients against the
11 rules of the database.

12 THE COURT: Potential clients of?

13 MR. POTTS: Of his, Your Honor. His
14 potential clients.

15 THE COURT: You mean patients?

16 MR. POTTS: Not his patients. Other
17 patients. Other people. And sharing that with
18 his clients slash patients.

19 So for instance he's hired by -- he's
20 accused of being hired by a defense attorney and
21 then sharing with them information about, say,
22 the accused in that case, or something like that.

23 So that is what the indictment is about which I
24 think goes very, very clearly with his testimony
25 today.

1 He is accused of breaking the law to help
2 out the people who hire him to testify as an
3 expert.

4 THE COURT: Any indication that this case
5 is involved?

6 MR. POTTS: No, Your Honor, not this case
7 in particular. I can't tell you -- not having
8 access to the State's encryption database, Your
9 Honor --

10 THE COURT: You've seen the indictment?

11 MR. POTTS: No, Your Honor, but I do have a
12 Post and Courier article on the arrest and on the
13 charges.

14 And I think ultimately, Your Honor, the
15 credibility and what he's doing for his clients
16 is an issue for the jury.

17 THE COURT: Well, I'm going to grant the
18 defense motion to suppress that information. I
19 don't -- it's certainly not under 609.

20 MR. POTTS: No, Your Honor.

21 THE COURT: And, he's entitled to the same
22 presumption as this Defendant at this point. So,
23 I'm going to deny -- I'm going to grant the
24 motion of the Defendant to suppress it.

25 MR. POTTS: If the door is opened, Your

1 Honor, appropriately, may I --

2 THE COURT: If the door is opened that's a
3 different situation. You know, if they -- we'll
4 take that up at that time.

5 MR. POTTS: Thank you, Your Honor.

6 THE COURT: All right. Other than that
7 anything at this stage of the proceedings?

8 MR. POTTS: Nothing from the State, Your
9 Honor.

10 MR. HAYES: No, sir.

11 THE COURT: All right. Ready for the
12 jury?

13 MR. POTTS: State's ready.

14 THE COURT: Bring the jury, please.

15 (Jury enters courtroom at 9:41 a.m.)

16 THE COURT: Good morning, ladies and
17 gentlemen.

18 THE JURY (COLLECTIVELY): Good morning.

19 THE COURT: We're now ready to continue
20 with the trial. Solicitor?

21 MR. POTTS: Your Honor, I do think we have
22 an issue that just came out that we might need to
23 take up outside of the presence of the jury.

24 Request to approach, Your Honor.

25 THE COURT: I asked them a few minutes ago,

1 was there anything else that we needed to talk
2 about before the jury comes in. And I was
3 advised there's not so, but apparently
4 something's come out.

5 So, go finish your coffee. Bailiff said
6 that -- you got them some coffee, don't you?

7 Again, don't discuss the case among
8 yourselves.

9 (Jury exits courtroom at 9:43 a.m.)

10 THE COURT: What's --

11 MR. POTTS: Your Honor, as the jury was
12 walking in defense counsel approached me -- as
13 the jury was walking in, Your Honor, defense
14 counsel approached me and handed he what I
15 consider a written report by this expert. We
16 filed a reciprocal in this case or the Second
17 Circuit did over a year ago. We have just now
18 received this report.

19 And, Your Honor, I move to exclude it under
20 Rule Five. He had way more time to give it to me
21 than as the jury is walking in before the expert
22 testifies.

23 THE COURT: Well, they haven't offered it.

24 MR. POTTS: Well, Your Honor, he's going to
25 testify about his calculation found in his report

1 that he just handed to me. I think it's -- he's
2 had it for months. And he turned it over as the
3 jury is walking in.

4 THE COURT: Is that the retrograde
5 analysis?

6 MR. POTTS: Yes, Your Honor. It's the
7 entire basis of his testimony.

8 THE COURT: But you knew he was going to --
9 that's what he was going to testify about, didn't
10 you?

11 MR. POTTS: I guessed that's what he was
12 going to testify about, Your Honor, but I was not
13 sure. They never told me explicitly what he was
14 going to testify about it.

15 THE COURT: How about it, Mr. Hayes?

16 MR. HAYES: Judge, this is the calculations
17 that he has done. I was handed it this morning
18 and I handed it to the State as we walked in.

19 It would be used for him to refresh his
20 memory as to the math that he used for each one
21 of the three different levels of intoxication for
22 individuals. There are different levels; there's
23 alcoholic, social drinker, and non-drinker.

24 THE COURT: Well, he's smart enough to do
25 that without looking at a chart.

1 MR. HAYES: Yes, sir. It's not a chart.
2 It's the actual math problems that he used to
3 work out the different levels. It's his notes.

4 MR. POTTS: And, Your Honor --

5 THE COURT: I know what it is. I mean, but
6 --

7 MR. POTTS: The fact that he handed it me
8 as the jury is walking in, Your Honor.

9 THE COURT: I take it you were surprised.

10 MR. POTTS: I was very surprised, Your
11 Honor.

12 THE COURT: All right.

13 MR. POTTS: These are the actual
14 calculations. This is what he --

15 THE COURT: He can get up there and do
16 calculations. If that's his testimony and we have
17 some idea that that's what he was going to
18 testify about, what I'm -- the only thing I can
19 do is prevent him from using that sheet. And see
20 if he can do it from, in his own mind.

21 MR. POTTS: Certainly, Your Honor.

22 THE COURT: I can't stop him from
23 testifying. If he's an expert on retrograde
24 analysis --

25 MR. POTTS: If he can do it from his head,

1 Your Honor, I guess that's what I'd ask for.

2 MR. HAYES: Judge, I'm not intending to
3 actually introduce this document. This would be
4 his notes --

5 THE COURT: Well, you couldn't introduce it
6 anyway because it doesn't comply with Rule Five.

7 MR. HAYES: It would only be used to refresh
8 his memory and that the State was aware that he
9 was going to be testifying about retrograde
10 extrapolation.

11 MR. POTTS: No. We talked about
12 toxicology.

13 MR. HAYES: Blood-alcohol.

14 THE COURT: How was he identified in the
15 Rule Five, reciprocal Rule Five?

16 MS. BODMAN: It's asking for any reports or
17 documents that they intend on --

18 THE COURT: No, how was he identified?
19 Just by name?

20 MS. BODMAN: He -- they never responded.

21 MR. POTTS: They didn't respond to our Rule
22 Five until we received their witness also list,
23 Your Honor. That's when, the first time I was
24 made aware of any particular witness they may
25 have, the identity thereof.

1 THE COURT: But they identified him as a
2 witness?

3 MR. POTTS: As a witness, yes. Not -- they
4 didn't tell us he was a toxicologist. When we
5 asked yesterday when I got his CV, when I asked
6 specifically yesterday, when they told me they
7 were going to call a toxicologist.

8 MS. ALVES: Judge, if I may.

9 We did have discussions that this witness
10 was going to testify about retrograde
11 extrapolation. In fact, we had a discussion, I
12 believe it was in chambers, when we mentioned
13 retrograde extrapolation. And in fact that the
14 witness was going to be testifying that she was
15 over the legal limit.

16 THE COURT: I agree with you.

17 MS. ALVES: Yes, sir. So this was
18 information they had before today.

19 These are just his notes that he's using to
20 refresh his memory. It's not a report. It's not
21 a formal report. We don't have a formal report.

22 THE COURT: I understand that, but what
23 he's going to do, he's going to get up here and
24 he's going to read it which is the same thing as
25 introducing it into evidence.

1 So, because it comes so late I'm going to
2 prevent him from using that document to support
3 his testimony. He can -- if he's an expert he
4 ought to be able to reproduce his calculations
5 without the use of notes. I mean, it's not like
6 he needs to refresh his memory from something
7 that he did or was done a long time ago.

8 This is, there's no difference in him
9 getting up here and reading that than him and you
10 introducing it into evidence because it's coming
11 into evidence.

12 MR. HAYES: Yes, sir.

13 THE COURT: So we'll just see how -- if
14 he's an expert, then he ought to be able to do
15 that.

16 MR. HAYES: Yes, sir.

17 THE COURT: Without the use of that
18 document or any other document that he may have
19 with him that is a duplicate of what he's handed
20 you.

21 MR. HAYES: Yes, sir.

22 THE COURT: All right.

23 MR. POTTS: Thank you, Your Honor.

24 THE COURT: Now, anything else?

25 MR. HAYES: No, sir.

ROBERT BENNETT - DIRECT BY HAYES

1 THE COURT: Let's try again.

2 (Jury enters courtroom at 9:49 a.m.)

3 THE COURT: All right. Mr. Hayes, call
4 your first witness.

5 MR. HAYES: The defense calls Dr. Bennett.

6 ROBERT BENNETT, having been duly sworn, was
7 examined and testified as follows:

8 THE CLERK: Have a seat in the witness box,
9 stating your full name, spelling your last.

10 THE WITNESS: My name is Robert Bennett.
11 Spelling of the last name is B-E-N-N-E-T-T.

12 DIRECT EXAMINATION

13 BY MR. HAYES:

14 Q. Good morning.

15 A. Good morning.

16 Q. Dr. Bennett, where did you go to school?

17 A. I went to school at the College of Charleston as
18 well as the Medical University of South Carolina.

19 Q. What degrees do you hold, Dr. Bennett?

20 A. I have a pharmacy degree from the Medical
21 University of South Carolina that I got in 1980. And
22 also I have a graduate degree, a Ph.D. degree in
23 pharmaceutical sciences from the Medical University of
24 South Carolina which I received in 1991.

25 Q. Have you held any professional license in South

ROBERT BENNETT - DIRECT BY HAYES

1 Carolina?

2 A. Yes. I passed the state boards for pharmacy and
3 achieved a pharmacy license.

4 Q. And is it current?

5 A. It is. It's currently in an inactive state because
6 I don't fill prescriptions anymore with that license, but
7 the license is still a valid license in the State of
8 South Carolina. There's been no disciplinary actions or
9 suspensions of the license.

10 Q. Okay. What is your work history?

11 A. I established a business that performed drug-free
12 workplaces which include employee drug testing, a
13 business that does private employed drug testing as well
14 as drug testing under federal regulations, specifically
15 49 CFR part 40.

16 I held that business for approximately 10 years and
17 then sold that business and practiced full-time on
18 forensics. I also did forensics while I had that
19 business but in -- I've been, for the past 10 or 12 years
20 been focusing 100 percent on forensic work. Forensic
21 toxicology is my main specialty.

22 Q. Currently what is the type of business that you're
23 running?

24 A. Currently I am a forensic toxicologist and also
25 provide laboratory testing services for the courts of

ROBERT BENNETT - DIRECT BY HAYES

1 South Carolina and other agencies.

2 Q. Okay. How long have you been doing that?

3 A. Essentially been doing it since graduation in 1991,
4 but focusing full-time on it in the past 10 to 12 years.

5 Q. During your education did you have opportunities to
6 study the effects of alcohol and drugs on the human body?

7 A. Yes, extensively, both in pharmacy school as well
8 as in graduate school. The main focus of the study was
9 the effects of drug and alcohol on the body. That was a
10 major component of all the education.

11 Q. All right. Since school, have you had an
12 opportunity to continue education?

13 A. Yes, I've taken many courses by the National
14 Institute of Justice on forensic work.

15 Q. Have you had any publications published?

16 A. Yes.

17 Q. Or any articles published?

18 A. Yes.

19 Q. When was the last publication?

20 A. 2014, I believe, in which I was -- I had written a
21 paper, an international paper on alcohol and was
22 published in a compendium for international publication.

23 Q. Have you taught any classes about the effects of
24 drugs and alcohol on the human body?

25 A. Yes. As a graduate -- in the graduate program I

ROBERT BENNETT - DIRECT BY HAYES

1 taught undergraduates for several years. After
2 graduation I provide many continuing legal education
3 courses where I teach attorneys on the effects of drug
4 and alcohol on the human body.

5 Q. Were they accredited by the South Carolina Bar?

6 A. Yes, they were.

7 Q. Can you explain to the jury what is the field of
8 forensic toxicology?

9 A. Toxicology is the study of the effects of drugs and
10 alcohol and other chemicals on the human body with an
11 emphasis on the damaging effects. Specifically, for
12 example, poisons would be one that is very familiar.
13 Forensic means applying that information to legal cases.

14 So a forensic toxicologist is a person who provides
15 information on the damaging effects of drugs and alcohol
16 on the human body in legal cases.

17 Q. Currently what is the source or main source of your
18 income?

19 A. The work of forensic toxicology.

20 Q. Okay. Are you hired at times as an expert witness?

21 A. Many times I'm hired as an expert witness.

22 Q. How often are you hired by the State and the
23 defense as an expert?

24 A. In reviewing all the times that I have been hired
25 as an expert, the percentage that I've worked for the

ROBERT BENNETT - DIRECT BY HAYES

1 defense versus the plaintiff is approximately 50-50.

2 Q. In doing this kind of work, has there been any
3 controversies?

4 A. The type of work is very, very controversial
5 because the function of my job is to reveal through
6 laboratory testing and evaluation of cases whether
7 someone is abusing drugs or alcohol. That's a main
8 component of the work that I do. And when I through
9 laboratory testing, for example, show that a person is
10 abusing drugs or alcohol, then I become a target for
11 attack.

12 It's just the nature of the business. The work is
13 attacked by those that have been damaged by that
14 information. They attempt to attack the work that was
15 done. If that's unsuccessful they attempt to attack me
16 personally as well as my credibility in performing the
17 work.

18 It's just part of the business and so it's
19 something that I have to deal with on an ongoing basis.

20 Q. Currently do you have a private lab?

21 A. Yes, I do.

22 Q. And that's where you would do your testing?

23 A. Correct.

24 Q. Do you share any other labs?

25 A. Yes. I also share a laboratory at the Medical

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1 University of South Carolina with a physician who's an
2 expert in alcohol.

3 Q. Do you have any contracts with other labs?

4 A. Yes. I have numerous contracts with laboratories
5 that specialize in various types of testing. There are
6 laboratories that offer the testing of certain situations
7 in which I don't have the capability to do and then I
8 would contract with those laboratories to provide the
9 testing services using their capabilities.

10 Q. How many drugs and alcohol tests have you performed
11 or directly reviewed in the past?

12 A. It's been over 45,000 drug and alcohol tests.

13 Q. Have you been qualified as an expert in the State
14 of South Carolina as a forensic toxicologist and
15 pharmaceutical toxicologist in the past?

16 A. Yes.

17 Q. Do you know how many times?

18 A. Numerous times over the course of my career.

19 MR. HAYES: Judge, at this time I would
20 move to qualify Dr. Bennett in the fields of
21 forensic and pharmaceutical toxicology as an
22 expert.

23 THE COURT: Any voir dire or objection?

24 MR. POTTS: Some voir dire, Your Honor. I
25 do want to approach about one matter.

ROBERT BENNETT - DIRECT BY HAYES

1 THE COURT: Go ahead with your voir dire.

2 VOIR DIRE

3 BY MR. POTTS:

4 Q. Thank you, Dr. Bennett.

5 Now, I have a copy of what the defense provided me
6 as your CV. What's a CV, do you mind just telling the
7 jury what that is?

8 A. Sure. CV stands for curriculum vitae. It's
9 similar to a resume but geared toward more for a
10 professional who is providing consultation services for
11 example.

12 Q. And you have lots of education in pharmacy, right?

13 A. Correct.

14 Q. But there's a big difference between pharmacy and
15 toxicology.

16 A. There's not a big difference, no.

17 Q. Well, there's a -- okay. Explain to me the
18 difference.

19 A. Okay. The field of pharmacy is the study of drugs.
20 A pharmacist is a drug expert. A pharmacist is who the
21 physician and other health care professionals rely upon
22 to get information about drugs. Simplistically put a
23 pharmacist is a drug expert. That also includes alcohol
24 because alcohol a major component of the study that we do
25 in pharmacy school. A toxicologist is a specialist --

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1 excuse me, letting over a cold -- is a specialist who
2 looks specifically at the damaging effects of drugs and
3 other substances on the human body.

4 Q. Are all pharmacists toxicologists?

5 A. No.

6 Q. Are all toxicologists pharmacists?

7 A. No.

8 Q. Okay. Now maybe you can just help me out here.
9 I'm going to show you a copy of your CV. Just show me
10 where you studied forensic toxicology.

11 A. Now your specific question is to show you where I
12 studied forensic toxicology?

13 Q. I'm wondering where you get your knowledge from.
14 Because as you said pharmacists aren't toxicologists and
15 I might have missed it. I'm just really just curious.

16 A. All right. Well if you see under the education
17 there's two degrees obtained. One is a degree in
18 pharmacy.

19 Q. Right.

20 A. Which a major component in pharmacy school is to
21 study the side effects and adverse reactions of all
22 drugs. The side effects and adverse reaction of drugs is
23 toxicology.

24 Q. Okay. So all pharmacists are toxicologist?

25 A. In a sense, yes.

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1 Q. Okay. So you're telling me that your forensic
2 toxicology expertise is that you are a pharmacist and
3 every pharmacist can basically be a forensic
4 toxicologist?

5 A. They could, yes. Now in addition my Ph.D. degree
6 went to a graduate level of the study of the damaging
7 effects of drugs and chemicals on the body.

8 Q. Okay. But you haven't had any specific education
9 in forensic toxicology.

10 A. Well there's no school for toxicology if that's
11 what you're asking.

12 Q. Have you been to any classes?

13 A. Yes. I take classes on a -- voluntarily on
14 forensics and a major component of that is toxicology.

15 Q. Now once again -- I'm just looking for it.

16 A. Okay. I can show you on the CV.

17 Q. Yeah. Show me.

18 A. In the section of my CV entitled certification
19 which is education to achieve a certain level of gaining
20 knowledge to where a certificate is received, there's a
21 program in which, is entitled laboratory orientation and
22 testing of body fluids and tissues for forensic analyst.
23 That is essentially toxicology.

24 Q. Okay. And did you that one on October 22nd, 2014?

25 A. Correct. That's one that was geared specifically

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1 towards that.

2 Q. And so the October 22nd, 2014, that was the same
3 day you were certified as a firearms instructor?

4 A. I completed a number of courses on that day, yes.

5 Q. That's the same day you were certified as a DNA
6 expert?

7 A. Correct.

8 Q. The same day you were certified as, let's see, what
9 non-STR DNA markers mean.

10 A. Correct.

11 Q. For collecting DNA at crime scenes?

12 A. Yes.

13 Q. Population genetics for forensic analysts?

14 A. Correct.

15 Q. A prosecutor's practice notebook. I don't know
16 what certification that means but that's the same day you
17 were certified in that, too?

18 A. Correct.

19 Q. The same day you were certified in amplified DNA
20 product separation for forensic analysts?

21 A. Yes.

22 Q. STR -- there was 20 things you got certified for in
23 that same class on the same day, correct?

24 A. No. It's an ongoing education process.

25 Q. Okay. And they certified you in these classes on

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1 this day?

2 MR. HAYES: Objection. He didn't allow him to
3 finish his answer.

4 THE COURT: Let him answer the question.

5 BY MR. POTTS:

6 Q. Okay.

7 A. These courses are an ongoing type of strategy. The
8 date that you're referring to is the date that I
9 completed the courses and received a certification. It's
10 not the day that I got the complete education.

11 Q. Okay.

12 A. In other words, some of those courses took weeks or
13 months or maybe even longer study to get to the point
14 where I received a certification from them.

15 Q. Are these boards that certify you?

16 A. Well, they're from the National Institute of
17 Justice. I don't know if you call that a board.

18 Q. Okay. So it's the National Institute of Justice?

19 A. Correct.

20 Q. Did you do this online?

21 A. Yes.

22 MR. POTTS: Your Honor, I have no objection
23 to this expert being qualified as an expert in
24 pharmaceutical toxicology. I do have an
25 objection to him being certified as an expert in

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1 forensic toxicology.

2 THE COURT: Overruled. I'm certifying him
3 in both fields.

4 You may proceed, Mr. Hayes.

5 BY MR. HAYES:

6 Q. Dr. Bennett, I'm going to start with, at any time
7 did you actually physically examine Ms. Schlinger?

8 A. I have not. I've never met her.

9 Q. In this case, what did you -- have you reviewed any
10 documentation?

11 A. Yes. I reviewed certain medical records that were
12 provided by you, your office.

13 Q. All right. Were those medical records the medical
14 records of Ms. Schlinger?

15 A. Yes.

16 Q. In the medical records, was there a blood-alcohol
17 test and a urine screen?

18 A. Yes.

19 Q. Did you review both of those?

20 A. I did.

21 Q. And in reviewing both of those did you review the
22 full record?

23 A. I did.

24 Q. In that record her whole blood was measured at 65
25 milligrams per deciliter?

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- 1 A. Correct.
- 2 Q. And that blood was drawn at 8:43?
- 3 A. Correct.
- 4 Q. From knowing that information, is there a process
5 to go back in time and find out what somebody's
6 blood-alcohol would have been earlier in time?
- 7 A. There is.
- 8 Q. What is the name of that process?
- 9 A. It's a calculation, a mathematical calculation in
10 which one can extrapolate to a previous point in time
11 what someone's blood-alcohol concentration would have
12 been at that previous time based on scientific
13 publications of known alcohol elimination rates for
14 humans.
- 15 Q. All right. Now, explain what elimination rate is,
16 please.
- 17 A. Elimination rate is when a substance is consumed by
18 the body, that substance does not stay in the body. That
19 substance is metabolized and excreted. That process of
20 metabolism and excretion is called elimination.
- 21 Just about every substance that's put into the body
22 is in some way, shape or form eliminated from the body.
23 And depending on the substance that has -- that substance
24 has a certain elimination rate.
- 25 Q. Does alcohol also have an elimination rate?

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1 A. It does.

2 Q. And it is known?

3 A. Correct. It's published in scientific journals
4 what the elimination rate for alcohol is in the human
5 body.

6 Q. In reviewing the records were you able to form an
7 opinion as to the level of intoxication?

8 A. Yes.

9 Q. Can you tell us to a reasonable scientific
10 certainty what her level of intoxication would have been
11 at the time she was admitted in the hospital between 4:30
12 and 4:35?

13 A. Well, when she was admitted in the hospital at
14 4:30, the amount of time that had passed between that
15 admission and the time a blood sample was taken and a
16 blood-alcohol concentration was measured was
17 approximately, well, exactly 4.217 hours.

18 Q. Knowing that information, would you be able to use
19 it and extrapolate back to find out what the blood-
20 alcohol content level was?

21 A. Yes.

22 Q. Do you know what that level would have been for an
23 average person?

24 A. Well, the calculated amount that I did resulted in
25 a blood-alcohol concentration of above .08, as high as a

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1 .10, to the best of my recollection of the calculations
2 that I did.

3 Q. Would any factors such as somebody admitting that
4 they were an alcoholic affect this calculation?

5 A. Yes. Someone who is an alcoholic has an increased
6 level of metabolizing enzyme in their liver, and they
7 will metabolize alcohol faster which means the
8 extrapolated blood-alcohol would be higher than a normal
9 person.

10 Q. When you say that somebody would be able to
11 metabolizes alcohol faster, what exactly do you mean?

12 A. That means as time goes by more alcohol is
13 eliminated from the body than from a non-drinker, for
14 example. So the extrapolated blood-alcohol level would
15 be higher as compared to a person who was not a heavy
16 alcohol user.

17 Q. All right. And in doing the mathification {sic},
18 are there different known variables that you would use
19 and formulas for each of these known items?

20 A. Yes. I would use the published elimination rates
21 of alcohol that are, that is in the scientific literature
22 of which I have references to, that I brought with me.
23 What the elimination rates are of non-drinkers versus
24 social drinkers versus alcoholic drinkers.

25 Q. If somebody was an alcoholic, do you remember what

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1 your calculation would have been?

2 A. Yes. It results in a blood-alcohol concentration
3 of above .10.

4 Q. Do you know how much above; do you remember?

5 A. I would have to review the file to be able to see
6 what the amount of alcohol was that I calculated. The
7 exact amount can be redone.

8 Q. Okay.

9 A. But I would have to go through the entire
10 calculations here.

11 Q. How long would that take you?

12 A. Probably 30 minutes.

13 Q. Okay. Was it above a .08; do you recall?

14 A. In -- yes. In the instances where I calculated the
15 blood-alcohol concentration at approximately 4:30 a.m.,
16 in all instances, whether it was an alcoholic, a
17 non-drinker or a social drinker, in all instances the
18 amount of alcohol in the system was above .08. The
19 lowest possible blood-alcohol level that I calculated was
20 a .098, I believe.

21 Q. Okay. Now, when she was admitted into the
22 hospital, she was given a total of five different drugs.

23 Lorazepam, Methoprednizene, Hydrazine, Promethazine and
24 Hydromorphone?

25 A. Yes.

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1 Q. Would any of those drugs that was given to her by
2 the hospital affect the elimination rate or, and/or
3 whether somebody tests positive for alcohol?

4 A. They would not.

5 Q. While in the hospital her urine was taken?

6 A. Correct.

7 Q. And it was drawn at 8:43. And it tested for
8 amphetamine, cannaboids {sic} and opiates?

9 A. Correct.

10 Q. Would that have any effect on the alcohol
11 extrapolation rate?

12 A. It would not.

13 Q. While she was in the hospital she was given those,
14 Lorazepam, Methoprednizene, Hydrazine, Promethazine and
15 Hydromorphone. Would any of those items cause her to
16 test positive for amphetamines, cannaboids or opiates?

17 A. She was given hydromorphone. That is an opiate and
18 that potentially could cause a positive reading for
19 opiates on a drug test, but that's the only one.

20 Q. So it would not have caused her to test positive
21 for amphetamine?

22 A. No.

23 Q. How about cannaboids?

24 A. No.

25 Q. If somebody had taken an Adderall, would that cause

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1 somebody to test positive for amphetamine?

2 A. It could, yes. Adderall is an amphetamine
3 compound.

4 Q. Would a blood-alcohol of above a point, I think you
5 said 98, 098?

6 A. .09-something, yes, I believe it was.

7 Q. Can the combination of these drugs affect
8 somebody's ability to drive?

9 A. Yes, it would significantly.

10 Q. Would it materially and appreciably affect their
11 ability to drive?

12 A. Yes, it would.

13 Q. How it would affect their ability to do so?

14 A. Alcohol as well as some of the other drugs that you
15 mentioned, in fact all of the drugs except methyl
16 Prednisolone which is a steroid, that would not affect
17 someone's cognitive or mental abilities.

18 The effect of the alcohol and the other drugs,
19 especially the level of alcohol that was calculated to be
20 in that person's system at the time, would dramatically
21 affect that person's ability to make rational decisions,
22 dramatically affect that person's ability to make sound
23 judgments, dramatically affect that person's ability to
24 have a normal reaction time, affect that person's memory.

25 It's well documented in the scientific literature

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1 that alcohol and these other drugs, but specifically
2 alcohol, can impair someone's memory and recall of events
3 that happened while under the influence of alcohol.

4 Q. How about, how would the combination of alcohol,
5 marijuana and amphetamines affect somebody?

6 A. Alcohol is a central nervous system or brain
7 functioning depressant. Marijuana as well depresses the
8 functioning of the brain. Amphetamine conversely is
9 actually a stimulant and would hyper excite the brain and
10 cause the brain to be more focused and more alert.

11 Q. How would the combination then affect somebody?

12 A. They somewhat offset each other. Since the alcohol
13 and marijuana depresses the brain and the amphetamine
14 would stimulate the brain, then the offset would be, the
15 extent of the offset and the total effect would be based
16 solely on the dose of the drugs given.

17 Now, you mentioned earlier Adderall. If someone is
18 taking Adderall at normal doses the amount of stimulation
19 would be minimal compared to the amount of CNS depressant
20 effect at a blood-alcohol concentration of .08 or higher.

21 Q. In your experience, are you familiar with the
22 Siemons Dimension Vista?

23 A. The Siemons Dimension Vista is a standard clinical
24 chemistry analyzer used by many hospitals around the
25 country. I'm very familiar with that. In fact, I

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1 operated a machine very similar to that when, in my
2 laboratory previously.

3 Q. Do you know what the cutoffs are on that machine
4 for having a positive test versus a negative test?

5 A. Yes, I do.

6 Q. Do you know what it is for a marijuana test?

7 A. Yes. The cutoff for a positive is 50 nanograms of
8 THC per milliliter of urine or higher, would cause a
9 reading of a positive finding. anything below 50 would
10 result in a negative.

11 Q. So you would be -- all we know it's above 50
12 nanograms per milliliter?

13 A. Correct. A positive on that instrumentation
14 indicates that the concentration of marijuana present is
15 at 50 nanograms per milliliter or higher.

16 Q. What effect would 50 nanograms per milliliter of
17 marijuana in somebody's bloodstream, how would it affect
18 them?

19 A. That's a level that is established mainly by the
20 federal government under the Regulation 49 CFR Part 40
21 for a level at which above would cause impairment to the
22 point that the regulations state that that person must be
23 immediately removed from their job involving any
24 safety-sensitive issues.

25 Q. The federal government established that cutoff?

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- 1 A. Correct.
- 2 Q. And what kind of jobs was this?
- 3 A. These are jobs such as truck drivers, airline
4 pilots, railroad operators, law enforcement, coast
5 guard. Any agency that is under the control of the
6 federal government has to perform drug testing. And the
7 federal government established that cutoff as a level of
8 above which the person would have to be removed from
9 their job immediately and not even wait on a report.
10 Even the regulations under 40.23 specifically state that
11 a person has to be removed immediately from their job
12 function and not wait for a report of any further
13 testing.
- 14 Q. As to the amphetamine do you know what the cutoff
15 in that machine would have been?
- 16 A. To the best of my recollection it's 500 nanograms
17 per milliliter.
- 18 Q. And who set that standard?
- 19 A. That's set by the federal government under 49 CFR
20 Part 40.
- 21 Q. What effect of 500 nanograms per milliliter would
22 that have on somebody?
- 23 A. Above that level is indicative that the person is
24 under the influence of amphetamine to the point that it
25 could affect their ability to be different from what is

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1 normal. In other words, they might be more excited, more
2 hyper, more under the influence of the stimulant to the
3 point to where they could make rational decisions or
4 impulsive-type behavior.

5 MR. HAYES: Beg the Court's indulgence.

6 (Pause.)

7 Q. I just want to make sure that you can tell us to a
8 reasonable scientific certainty what her blood-alcohol
9 level is when she was admitted into the hospital.

10 A. Yes.

11 Q. And --

12 A. And that calculated level was above .10.

13 MR. HAYES: I have nothing further at this time.
14 Please answer any questions that the State may have.

15 MR. POTTS: Your Honor, I did want to
16 approach about one matter real quick.

17 THE COURT: All right

18 (Off-the-record discussion.)

19 CROSS-EXAMINATION

20 BY MR. POTTS:

21 Q. Now, Doctor, you were describing, I think, a
22 level -- I'm going to start kind of at the end because
23 there was some important things I think you said there
24 that I think the nuance might have been missed.

25 A. Okay.

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1 Q. You're talking about 50 nanograms per milliliter of
2 marijuana in the bloodstream, correct?

3 A. No, 50 nanograms per milliliter in the urine.

4 Q. Well, when you're talking about the federal
5 government having to take people off jobs, right, that's
6 for their impairment, that's for blood, correct?

7 A. No, that's urine.

8 Q. So you're telling -- so, so how long does marijuana
9 stay in the urine?

10 A. It varies depending on the dose and the frequency
11 of use.

12 Q. Okay.

13 A. And I can extrapolate on that if you want.

14 Q. We can go there in a minute.

15 A. All right.

16 Q. Now she didn't actually test positive for THC in
17 her urine, did she?

18 A. I would have to review my notes.

19 Q. It was cannabinoids, right?

20 A. Cannaboids is --

21 Q. Cannabinoids is THC which is a type of cannabinoid,
22 correct?

23 A. Yes.

24 Q. There are actually different metabolites of THC.

25 As THC is removed from your system, right, you hydroxy

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1 THC first, right, your body breaks down THC into what we
2 call hydroxy THC, right?

3 A. Correct.

4 Q. And then your body breaks it down into carboxy-THC,
5 correct?

6 A. Correct.

7 Q. Now carboxy-THC, that gets stored in the fat of
8 your body?

9 A. It could.

10 Q. Right? That's generally where your body likes to
11 store some of that carboxy-THC, isn't it?

12 A. Let me clarify the answer. You're on the right
13 track in that the substances that's actually measured by
14 the Siemons analyzer that was used in this case, measures
15 specifically Delta-9 Tetrahydrocannabinol acid which is
16 its water-soluble component of THC.

17 Q. That's what I'm calling carboxy-THC.

18 A. Right. The THC is stored in the fat but the
19 carboxy-THC is eliminated.

20 Q. Right. So that's what's coming out of a
21 person's body is carboxy-THC?

22 A. Right.

23 Q. I know it's Delta-9, you know, Tetrahydrocannabinol
24 but I'm a lawyer.

25 A. Sure.

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1 Q. Right?

2 A. Yeah.

3 Q. Carboxy-THC. Now Carboxy-THC, does it have any
4 impairment effect --

5 A. It does not.

6 Q. -- on the human body? So, Doctor, if you can't
7 understand me, please ask me to slow down.

8 A. Okay.

9 Q. So, does carboxy-THC which the body eliminates,
10 right?

11 A. Correct.

12 Q. That has absolutely no impairment effect?

13 A. Relative to THC, you're correct. I can't say it
14 has absolutely no effect but relative to THC, it's
15 insignificant.

16 Q. Okay. So in the field of forensic toxicology when
17 someone tests positive for carboxy-THC, does law
18 enforcement consider that an impaired driver?

19 A. They do.

20 Q. They do?

21 A. If someone is positive for carboxy-THC, folks in
22 law enforcement as well as the federal government as
23 established under 49 CFR part 40, the presence of
24 carboxy-THC in the urine is per se evidence of
25 impairment.

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1 Q. When? Of impairment when?

2 A. It doesn't specify.

3 Q. Okay. So, I can eliminate this carboxy. I can
4 smoke a joint right now, right, and I'd still be having,
5 my urine would still have carboxy-THC for days?

6 A. It depends on how much you have smoked before. Let
7 me extrapolate on that.

8 Q. Hold on.

9 MR. HAYES: Object. I'd like him to let
10 him finish his answer?

11 THE COURT: Well, let him answer if he
12 wants to extrapolate.

13 BY MR. POTTS:

14 Q. Sure. Extrapolate.

15 A. If you take a person that has never smoked
16 marijuana before in the past --

17 Q. Uh-huh.

18 A. -- and that person smokes a marijuana cigarette,
19 then the detection of that use of that drug will be
20 detected probably no longer than a day or two.

21 Q. Okay.

22 A. However, the converse of that, if someone is a
23 regular smoker of marijuana, then essentially they
24 saturate their fat cells with THC. If that person stops
25 all consumption of marijuana, then at that point the body

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1 starts eliminating what's been stored in the fat cells.
2 And that can take up to 30 to 45 days before that urine
3 is no longer free of drugs and essentially a positive
4 drug test in urine could still be obtained even 30 days
5 or more after use.

6 Q. Right. So are you telling me they are under the
7 influence for that entire 30 to 45 days?

8 A. Well, that's a philosophical question for forensic
9 scientists that we do discuss. And the mechanism of that
10 is THC is in the fat cells.

11 Q. Uh-huh.

12 A. Now this is THC which is the active component of
13 marijuana.

14 Q. Well, we're talking about the carboxy-THC?

15 A. No.

16 Q. Okay?

17 A. The carboxy-THC is not total fat solution. That
18 gets eliminated.

19 Q. That's what gets eliminated. Okay.

20 A. In the water of the urine. The THC itself which is
21 fat soluble gets stored in the fat cells of the whole
22 body and the brain is fatty. It's one-third fat so a lot
23 of stored there.

24 The THC is the active component that causes the
25 pharmacological effect of the central nervous system

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1 depressant. Now if the THC is stored in the fat cells of
2 the body, for example, it's gradually being released over
3 time and excreted. That's why it can still be detected
4 30 to --

5 Q. 45 days.

6 A. Yes. But when that THC is released from the fat it
7 has to be released into the bloodstream. That's the only
8 way it can get out of the body. Once it's released into
9 the bloodstream it circulates into the brain. There's no
10 way to avoid that. So there can be some degree of
11 impairment from that elimination rate over that 30-day
12 time period, albeit relatively small.

13 Q. So you're saying 45 days later someone's still high
14 from the joint they had?

15 A. I didn't say they were high.

16 Q. Oh, I'm sorry. They're still impaired but not
17 high?

18 A. They were under the influence of THC. That degree
19 of impairment has to be quantified. And I did state that
20 the amount, in my opinion, would be relatively low, maybe
21 even imperceptible.

22 Q. Maybe, but, I mean, could be perceived, couldn't
23 it?

24 A. It could be.

25 Q. It still might be 50 micrograms or nanograms per

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1 milliliter, right?

2 A. Correct.

3 Q. So 45 days later under your testimony is we still
4 might have this level of THC which you said is still
5 impairing?

6 A. So some degree, yes.

7 Q. Has this been quantified by forensic toxicologists?

8 A. I'm not sure of the nature of your question.

9 Q. Well, for instance, you know, there are alcohol
10 studies, right?

11 A. Uh-huh.

12 Q. Alcohol has been very well tested?

13 A. Yes.

14 Q. Right?

15 A. Yes.

16 Q. We have different places who, you know, they give
17 you, I guess, drinks and then they have you perform field
18 sobriety tests and such, correct?

19 A. Yes.

20 Q. And this is how we know how alcohol affects the
21 body over a period of time?

22 A. Correct.

23 Q. Have there been any studies like this with this 50
24 micrograms per milliliter level of THC 30 days later that
25 have demonstrated still an impairment?

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1 A. Well, there has been some studies in trying to
2 determine what level of marijuana, THC, in the blood
3 causes impairment. There has been some studies on that
4 to try to get to a point if a threshold can be
5 established similar to alcohol.

6 Q. Right. And that's important for places like
7 Colorado?

8 A. Exactly. Yes, and some of these studies have been
9 in Europe as well.

10 Q. But, so you would agree with me that there's some
11 level of THC you can have in your system and not be
12 impaired?

13 A. Not be perceptibly impaired.

14 Q. Not be perceptibly impaired. That's what we're
15 talking about here. We're talking about perceptive
16 impairment. If someone can't notice you're impaired,
17 right, I understand that scientifically you might testify
18 that they're still impaired, but if you can't see it then
19 how does it affect you?

20 A. Well, it may not be overtly noticeable. For
21 example, somebody may be under the influence of marijuana
22 to a small degree to the point where in casual
23 conversation or even in driving it may not be noticeable,
24 however, if you did a test such as measuring their
25 reaction time --

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- 1 Q. Uh-huh.
- 2 A. -- then you would, could see a difference.
- 3 Q. But you don't know about that?
- 4 A. You wouldn't know unless you do the test.
- 5 Q. Right. In fact, you have no idea how much THC,
- 6 carboxy, hydroxy or otherwise, was in her system that
- 7 night?
- 8 A. Correct.
- 9 Q. All you know is what came out in the urine?
- 10 A. Correct.
- 11 Q. Okay. Now, let's talk about the Adderall, right?
- 12 A. Okay.
- 13 Q. What's the half life of Adderall?
- 14 A. Relatively short. Less than a day.
- 15 Q. So less than a day. So if I take, let's say I take
- 16 an Adderall pill on Friday, right, on Saturday I'll have
- 17 half that much in my system?
- 18 A. Correct.
- 19 Q. And then on Sunday I'll have one quarter of what I
- 20 originally had in my system?
- 21 A. Correct.
- 22 Q. And then on Monday I'll have one-eighth?
- 23 A. Correct.
- 24 Q. And then 1-16th and so forth until it basically
- 25 becomes nothing?

ROBERT BENNETT - CROSS BY POTTS

1 A. Correct.

2 Q. Now -- so in this case, can you tell me -- now
3 clearly the effects of Adderall don't last until that
4 Monday, that Tuesday, that Wednesday, does it?

5 A. Well not to a perceptible level, no.

6 Q. Okay. So you're telling me that there's some level
7 you're going to testify to that these things, I mean,
8 even now if I ever took Adderall, theoretically the way
9 half lives work there might still be some left in me?

10 A. Well you can reach a point of diminishing returns,
11 yes.

12 Q. Diminishing returns. But is there any -- you know,
13 you talked about there being studies based on super low
14 levels can still affect people.

15 A. Yes.

16 Q. What level was that?

17 A. Well, it depends on the drug and the person. There
18 are a lot of variables.

19 Q. Okay. So it depends a lot on the person?

20 A. Absolutely, yes.

21 Q. Right? So, you know, when we have these tests for
22 urine, which is not blood?

23 A. Correct.

24 Q. Right? And blood is clearly the better thing?

25 A. Correct.

ROBERT BENNETT - CROSS BY POTTS

1 Q. Right? When a drug is in someone's bloodstream
2 it's going through the brain and their body?

3 A. Correct.

4 Q. When it's in their urine, it's just being disposed
5 of, it's gone?

6 A. Correct.

7 Q. Right?

8 A. Correct.

9 Q. If I haven't gone to the bathroom in a while,
10 right, my bladder is storing up a whole bunch of urine.
11 That's something that can be eliminated from my body but
12 still in there, correct?

13 A. That's right.

14 Q. So you can't really tell this jury anything about
15 how much marijuana, how much THC or Adderall were in her
16 bloodstream?

17 A. I can't tell how much, no.

18 Q. Okay. And it could be zero?

19 A. It could not be zero because it's in her urine, and
20 the only way to get there is from her blood.

21 Q. But you just told me, didn't you just testify that
22 if I haven't gone to the bathroom in a while, if I've
23 been holding it in, it can be eliminated from my
24 bloodstream and still in my urine?

25 A. Well, that's only for a few hours so theoretically

ROBERT BENNETT - CROSS BY POTTS

1 there could be a point of a few hours because someone
2 can't hold their bladder for days or weeks.

3 Q. Right.

4 A. So there could be a point in time of a few hours
5 where it could be theoretically zero in the bloodstream
6 but still be in the urine because she held her urine,
7 yes.

8 Q. Right. You know, when one's in the hospital and,
9 you know, you been doing things, don't necessarily have
10 time to go to the bathroom all the time, do you?

11 A. That theoretically could happen, yes.

12 Q. Right. All I'm saying is you can't tell this jury
13 for certain whether she had any of that in her
14 bloodstream?

15 A. Based on the discussion that there could be a
16 window of opportunity where it was zero in the blood,
17 then the answer to your question is yes.

18 Q. Thank you. Now, the defense also asked you about
19 some whole blood results from the hospital.

20 A. Correct.

21 Q. Is that correct?

22 A. Correct.

23 Q. Now, whole blood, that's a weird term, but that
24 just means, I guess, blood without any other stuff in it,
25 right?

ROBERT BENNETT - CROSS BY POTTS

1 A. Well, it means your entire blood content, whatever
2 it is when it comes out of your body.

3 Q. Right. And serum is something different?

4 A. It is.

5 Q. Right? and serum is some gel at the bottom when
6 they take the blood and they spin it out, right? We
7 heard some testimony about this yesterday, in a
8 centrifuge and take out the red blood cells?

9 A. Right. Serum is the liquid component of blood.

10 Q. Uh-huh.

11 A. And the other portion is the solids such as the red
12 blood cells, and the white blood cells, and proteins, and
13 the solid matter that's floating in the blood.

14 Q. Right. And a blood-alcohol result from serum is
15 very different from a blood-alcohol result of whole
16 blood?

17 A. I wouldn't say very different. It is different.

18 Q. About 20 percent different.

19 A. Based on the research that I've done and the
20 studies that I've read, it's about 15 percent difference.

21 Q. Okay. I'm not going -- 15, 20 percent. Okay.

22 A. Okay.

23 Q. Right? And he told you about the whole blood
24 testing at the hospital, correct?

25 A. Correct, yes.

ROBERT BENNETT - CROSS BY POTTS

1 Q. Now if I told you the doctor testified yesterday,
2 that they didn't take whole blood but they took serum,
3 would that change the levels we're talking about?

4 A. The level that was reported in the medical
5 literature is 65.

6 Q. Right.

7 A. Which is .065 milligrams per deciliter per 100
8 milliliters which is essentially a blood-alcohol
9 concentration of .065. If that was serum, then
10 calculating that to a blood-alcohol concentration of
11 whole blood would result in a blood-alcohol concentration
12 of .0565.

13 Q. Right. So like 05 or so. That's a -- and so your
14 calculations were based on that whole blood number,
15 weren't they?

16 A. Yes.

17 Q. So if we take that .9 I believe said .98, right?

18 A. I think I've answered your question based, previous
19 question based on a misunderstanding of your question.
20 My calculation was based on starting with serum blood-
21 alcohol concentration of .065 and then accounting for the
22 fact that it serum to get a blood-alcohol concentration
23 of .0565. And that's the number I used for my
24 calculation.

25 So to answer your question, the previous testimony

ROBERT BENNETT - CROSS BY POTTS

1 that she had a blood-alcohol concentration above .1 was
2 based on the fact that I already did that conversion from
3 serum to whole blood.

4 Q. You just didn't testify about it?

5 A. Pardon?

6 Q. You just didn't testify about it on direct, right?
7 On direct he asked you about the whole blood and you said
8 the whole blood was .65. I didn't hear you talk about
9 any conversion factor, any 15 percent difference, did
10 you?

11 On cross you did.

12 A. Right. Yes.

13 Q. Right? When I brought it up to you?

14 A. Yes.

15 Q. But on direct you didn't mention that, did you?

16 A. Okay.

17 Q. So, your calculations you testified to were using
18 that .65 number?

19 A. Only initially. My final calculation is based on a
20 blood, whole blood-alcohol concentration of .0565.

21 Q. Now there's also some testimony, you said -- you
22 gave a couple different ranges?

23 A. Yes.

24 Q. Right?

25 A. Uh-huh.

ROBERT BENNETT - CROSS BY POTTS

1 Q. One range you said was greater than .08?

2 A. Greater than .09.

3 Q. Greater than .09?

4 A. Yes.

5 Q. You don't remember saying greater than .08 earlier?

6 A. All the calculations that I did was at a level
7 greater than .08.

8 Q. Okay.

9 A. But in reviewing my memory of all the calculations,
10 the lowest blood-alcohol concentrations that I calculated
11 for a person who was a non-drinker using the fastest
12 elimination rate, the lowest level that could be obtained
13 was a .09.

14 Q. All right. Doctor, can you explain to me how
15 alcohol builds up in bloodstream?

16 A. When you say builds up --

17 Q. If I take a shot of alcohol right now, let's say
18 there were four shots in front of me right here. And I
19 took one, two, three, four, right. That my eventually
20 give me a level of, what, .10?

21 A. Yes.

22 Q. But, right now it would be still a zero zero,
23 wouldn't it?

24 A. You mean immediately after consumption?

25 Q. Right. Immediately after consumption.

ROBERT BENNETT - CROSS BY POTTS

1 A. Yes.

2 Q. I mean, in fact there's some time, there's a lag
3 between drinking alcohol and what it rises to right?

4 A. Yes.

5 Q. I mean, it rises and then it falls?

6 A. Correct.

7 Q. Okay. So we call that the absorption phase and the
8 elimination phase; is that correct?

9 A. We call it the absorption phase.

10 Q. Okay. But there's an elimination phase afterwards?

11 A. Correct.

12 Q. So during this absorption phase -- so did you
13 account for this absorption phase and elimination phase
14 in your calculations or did you just assume she was
15 starting at the peak when you were doing your calculation
16 of four hours earlier?

17 A. The calculations are based on the fact that all the
18 alcohol she had consumed had been absorbed.

19 Q. Okay. So she could have been somewhere else in the
20 cycle and the end result would have been a little bit
21 lower, wouldn't it, it wouldn't be a .09, I could be a
22 .08?

23 A. It's my understanding from the records that when
24 she was admitted to the hospital at approximately 4:30,
25 that the blood was taken for the alcohol measurement at

ROBERT BENNETT - REDIRECT BY POTTS

1 approximately 8:43, that she was not drinking alcohol
2 while she was there.

3 Q. Right. But she could have been drinking before
4 that, right?

5 A. Oh yeah, absolutely.

6 Q. And different things affect how fast alcohol gets
7 into your bloodstream, don't they?

8 A. Yes.

9 Q. Right. Whether you're eating, you know, your
10 height, your weight, all sorts of different things can
11 affect that absorption of rate of alcohol.

12 A. It can.

13 Q. Okay. So I guess what you're talking about is a
14 theoretical peak of what she could have been at at the
15 time of the collision?

16 A. Correct.

17 Q. Okay.

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

19 (Pause.)

20 Thank you. No further questions.

21 THE COURT: Any redirect?

22 MR. HAYES: Just briefly, judge.

23 REDIRECT EXAMINATION

24 BY MR. POTTS:

25 Q. The State asked you about the absorption rate. How

ROBERT BENNETT - REDIRECT BY POTTS

1 would having eaten or not eaten supper affect the
2 absorption rate?

3 A. That would have the most dramatic effect. Chris, I
4 believe, Chris, stated that --

5 MR. POTTS: Carter Potts. Thank you.

6 THE WITNESS: -- had stated that factors
7 can influence the rate of absorption. And he
8 mentioned height and weight and body mass and
9 things like that. But he also mentioned whether
10 there was food or not in the stomach or the
11 digestive system. And that has the most
12 significant effect on the absorption rate.

13 Now alcohol is a substance unlike many
14 other substances. It can be absorbed direct
15 through the stomach. It doesn't have to pass
16 through the GI system to be absorbed. So if
17 someone has an empty stomach then that alcohol is
18 going to be absorbed, for the most part, directly
19 through the stomach, directly into the
20 bloodstream, literally within a matter of
21 seconds, 30 to 60 seconds alcohol is going to be
22 in the bloodstream and go immediately to the
23 brain. So if someone had not eaten then the
24 amount of alcohol consumed would be rapidly
25 absorbed into the bloodstream and that peak would

1 be reached quickly.

2 BY MR. HAYES:

3 Q. What if there was food?

4 A. That would slow the absorption rate down. In other
5 words, the amount of alcohol absorbed would be extended
6 over time and then that would affect the elimination rate
7 as well.

8 MR. HAYES: Beg the Court's indulgence.

9 (Pause.)

10 Nothing further.

11 THE COURT: Anything further?

12 MR. POTTS: No, Your Honor.

13 THE COURT: All right. You may come down,
14 sir. Thank you very much.

15 May this witness be excused?

16 MS. ALVES: Yes, sir.

17 THE COURT: Without objection, you're free
18 to go, Doctor. Thank you very much.

19 Next witness.

20 MS. ALVES: Judge, the defense rests.

21 THE COURT: All right. Any reply?

22 MS. BODMAN: We close.

23 THE COURT: All right. That's it.

24 All right, ladies and gentlemen, that
25 completes the testimony in this case. The

1 remaining portion of the trial consists of the
2 final summations or arguments by counsel and my
3 instructions to you on the law of the State of
4 South Carolina as it applies to this case and as
5 it applies to all of these indictments.

6 Now, before we start that process I need to
7 take up a couple matters with the attorneys and I
8 need to give them a moment to sort of gather
9 their thoughts before they make their final
10 presentations to you. So I'm going to suggest
11 that, ask you to return to the jury room for a
12 few minutes.

13 And just relax. We'll call you when we're
14 ready but we're in the final phases.

15 (Jury exits courtroom at 10:43 a.m.)

16 THE COURT: All right. We passed out a,
17 just a first draft of some charges yesterday that
18 included a number of lesser-included offenses
19 although they weren't, we weren't necessarily
20 proposing to give them. They were just for your
21 perusal. And I think we better have a discussion
22 of those.

23 However, let me ask, at this point in time
24 are there any motions?

25 MS. ALVES: Yes, sir.

1 Your Honor, taking the evidence in the
2 light most favorable to the State, I would move
3 for a directed verdict of all charges against
4 Mr. Fuller. I would renew my arguments regarding
5 the possession of a stolen pistol that I made
6 yesterday.

7 THE COURT: All right. The State's
8 position?

9 MS. BODMAN: In the light most favorable to
10 the State, we presented sufficient evidence on
11 each and every element of each and every
12 indictment, Your Honor.

13 THE COURT: All right. Ms. Alves, I
14 respectfully deny the defense motion. I feel
15 there's sufficient evidence from which the jury
16 could find or not find guilt or innocence on any
17 one of the six different indictments.

18 All right. Now, has the State reviewed the
19 proposed charges? And I would like to hear your
20 comments --

21 MS. BODMAN: I have, Your Honor.

22 THE COURT: -- with regard to that.

23 MS. BODMAN: I have, Your Honor.

24 With regard to the criminal sexual conduct
25 in the second degree, I do not believe that the

1 facts have raised the lesser-included offense.
2 Essentially is, the defense has been that it
3 didn't happen at all. The story that the
4 Defendant gave through his statements to the
5 police as well as the jail phone calls, it is I
6 never touched that girl. He either passed out in
7 the car and suddenly awoke to the car being
8 crashed into the tree, or he said that all of a
9 sudden she got mad and started going backwards
10 and crashed into the tree.

11 There was never, ever any evidence from any
12 witness that -- or through cross, that maybe a
13 sexual assault happened but there wasn't in fact
14 a weapon, or that there was sex and just no
15 kidnapping. It was, I did not touch that girl.

16 Didn't touch her.

17 And so I don't believe the evidence rose a
18 lesser CSC second.

19 With regard to the assault and battery
20 first degree that Your Honor put in there, the
21 subsection one involves the nonconsensual
22 touching of the private parts. That is not a
23 lesser-included offense of CSC. The old common
24 law ABHAN that we used to have was recognized as
25 a lesser through case law.

1 THE COURT: Right.

2 MS. BODMAN: But that has not been
3 established. And so that element that involves
4 the touching of the private parts, I do not
5 believe is a lesser included.

6 THE COURT: Be clear. Say that again. You
7 say A and B first?

8 MS. BODMAN: On the A and B first.

9 THE COURT: Is not. But you got an A and B
10 first indictment.

11 MS. BODMAN: We do but we alleged bodily
12 injury with a kidnapping, not anything about the
13 nonconsensual touching of the private parts with
14 lewd and lascivious intent.

15 THE COURT: Are you saying it's A and B
16 first or it's ABHAN?

17 MS. BODMAN: No, I was just comparing the
18 old common law ABHAN that we used to have --

19 THE COURT: Right.

20 MS. BODMAN: -- where an older person beat
21 up on a younger person or a man on a woman.

22 THE COURT: Which was a lesser included of
23 CSC first.

24 MS. BODMAN: That was but only under case
25 law, but not under the Blockburger test. It

1 wasn't by the elements are included in one and
2 not the other. They just recognized it by case
3 law and said we'll call an ABHAN a lesser
4 included. The A and B first nonconsensual
5 touching aspect is not a lesser under our facts.

6 THE COURT: Okay. But separately there's
7 an A and B first charge.

8 MS. BODMAN: Correct. The subsection one
9 should be eliminated and he should just be
10 charged on injury to another person and it
11 occurred during the commission.

12 THE COURT: Oh, I see what you're saying.
13 You're saying the definition of A and B first
14 should be changed.

15 MS. BODMAN: Correct. So it's just
16 submitted as injury and it occurred during the
17 commission of robbery, burglary kidnapping or
18 theft.

19 THE COURT: I see. I misunderstood you.

20 MS. BODMAN: I apologize.

21 In addition in the next paragraph down you
22 charged --

23 THE COURT: Just hold on.

24 All right. Go ahead.

25 MS. BODMAN: On that same page you charged

1 that, or Mr. Fuller unlawfully offered or
2 attempted to injure another person with the
3 present ability to do so and the acts
4 accomplished were likely to produce death or
5 great bodily injury. We did not allege that in
6 our indictment. We're only going under injury
7 that occurred during the commission of
8 kidnapping.

9 THE COURT: Okay. How about A and B
10 second?

11 MS. BODMAN: I'm sorry?

12 Oh. So, same thing as A and B second I do
13 not believe is a lesser that applies to this
14 because since we didn't allege under A and B
15 first the great bodily injury, then A and B
16 second does not arise, the moderate bodily
17 injury.

18 Really the only lesser included under our A
19 and B first that we've alleged would be an A and
20 B third. So we have an injury with a kidnapping
21 under A and B first. If they decide there wasn't
22 a kidnapping, they could just say that he injured
23 her.

24 THE COURT: All right. So you say -- why
25 do you say the moderate bodily injury does not

1 apply?

2 MS. BODMAN: I don't. Because we didn't
3 allege great bodily injury in the indictment
4 under the A and B first.

5 THE COURT: Okay.

6 MS. BODMAN: So moderate would be a
7 lesser. We've alleged it but it's not in our
8 facts. So I think the CSC comes out. The ABHAN
9 comes out. And the A and B lesser included would
10 be a third.

11 Following with that on page 25.

12 THE COURT: Just let me ...

13 MS. BODMAN: Okay.

14 THE COURT: All right. Go on.

15 MS. BODMAN: On page 25 when you instruct
16 the jury with regard to the commission of a
17 violent crime, then towards the bottom if --

18 THE COURT: Wait. Just what section are
19 you in? I've got misnumbered pages.

20 MS. BODMAN: Okay. Possesses of a weapon
21 during the commission of or attempt to commit a
22 violent crime.

23 THE COURT: Oh. I'm with you.

24 MS. BODMAN: When you give them the
25 definition of violent crime you said kidnapping

1 and CSC in the first degree. If the Court is
2 going with my request to take out the others,
3 then we just need to remove second degree CSC and
4 the assault and battery of a high and aggravated
5 nature. So just instruct them kidnapping, CSC
6 first.

7 THE COURT: I see.

8 MS. BODMAN: And I just did not see the
9 Court's instruction with regard to the testimony
10 of a victim of a CSC need not be corroborated.

11 THE COURT: Well it's in the latest
12 version, let me put it that way.

13 MS. BODMAN: Okay.

14 MS. ALVES: Judge, that is actually in
15 there.

16 THE COURT: Okay. It's in there.

17 MS. ALVES: It is.

18 THE COURT: According to Ms. Alves. And
19 according to my lawyer.

20 MS. ALVES: I specifically recall seeing
21 that.

22 THE COURT: Well, it will be in there.

23 MS. ALVES: Yes, sir.

24 THE COURT: All right. Ms. Alves?

25 MS. ALVES: Judge, my comments are very

1 similar to the solicitor's.

2 I would ask that you not charge a
3 lesser-included offense for the criminal sexual
4 conduct first degree charge. My client has
5 maintained his innocence on that, that he never
6 had any type of sexual intercourse with
7 Ms. Schlinger. And --

8 THE COURT: Okay.

9 MS. ALVES: -- I would ask that the charge
10 just be guilty or not guilty on what he's charged
11 with there.

12 THE COURT: That's fine. And her comments
13 about the A and B first?

14 MS. ALVES: Judge --

15 THE COURT: They were --

16 MS. ALVES: -- as to the charge of assault
17 and battery first degree, I would agree that.

18 THE COURT: It only applies to kidnapping.

19 MS. ALVES: Yes, sir. That's actually, my
20 comments were the same as the solicitor's here.
21 That only applies to the section two that
22 occurred during the commission of a robbery,
23 burglary or kidnapping and I'd ask that the
24 remainder of that language be taken out.

25 THE COURT: All right. How about her

1 comment about A and B two is not appropriate, but
2 A and B three if you want it, the State would
3 agree?

4 MS. ALVES: I agree that A and B second
5 would not be a lesser-included offense based on
6 the indictment that Mr. Fuller is only charged
7 with an assault that occurred during the
8 commission of a robbery, burglary, kidnapping or
9 theft. There's no allegation regarding the
10 severity of injury.

11 THE COURT: Right.

12 MS. ALVES: I would ask, once again, I think
13 this is a case where the jury either believes
14 Mr. Fuller did it or he didn't do what he's
15 charged with, so I would ask for no
16 lesser-included offense.

17 THE COURT: No lesser on assault and
18 battery?

19 MS. ALVES: No lesser.

20 THE COURT: All right.

21 MS. BODMAN: And I actually agree. I was,
22 when I was suggesting the A and B third it would
23 just that that would only be the technical
24 lesser-included offense but I don't think the
25 facts rise to any other options.

1 THE COURT: That's fine.

2 MS. ALVES: Judge, the next charge that I
3 would make comment on is possession of a stolen
4 pistol. I handed up a proposed charge for that.

5 THE COURT: Right. I haven't had a chance
6 to look at it but I will.

7 MS. ALVES: Yes, sir. Judge, my charge
8 just asks that you charge more details that
9 Mr. Fuller had to know that the pistol was
10 stolen.

11 And as for possession of a weapon during
12 the commission of a violent crime, I think my
13 comments on that are, once again, the same as the
14 solicitor's. The charge that you gave us
15 includes the language of the lesser-include
16 offenses, and I would just ask that those be
17 removed.

18 THE COURT: Yes.

19 MS. ALVES: The jury verdict also includes
20 the lesser-included charges, and I would just ask
21 that those be removed from that.

22 THE COURT: Okay. Well, we will modify --
23 we'll work on the jury verdict form.

24 MS. ALVES: Yes, sir.

25 THE COURT: You see what we hand you was

1 possible verdicts.

2 MS. ALVES: Yes, sir.

3 THE COURT: And we'll work on the form once
4 we decide what we're going to put in it. All
5 right

6 MS. ALVES: Yes, sir. Just one other
7 comment, Judge.

8 I did hand up a second proposed charge
9 for -- I'm asking for a charge on driving under
10 the influence.

11 THE COURT: We'll who's charged with
12 driving under the influence?

13 MS. ALVES: No one is, Judge, but I would
14 ask that the jury be charged on what the law is
15 pertaining to driving under the influence.

16 THE COURT: What's the State's position?

17 MS. BODMAN: There has to be an instruction
18 as to what they're supposed to do with that. It
19 doesn't matter, first, if the victim was driving
20 DUI. There's nothing to do with that law. There
21 has to be an application to how they apply it to
22 the verdict, first of all.

23 And secondly is, it was also theoretical,
24 all these ranges. Nobody said at the time she
25 was driving she was DUI. So it just is a

1 complete, just character assassination to tell
2 them that she was committing some type of crime.
3 It does matter. It's not an defense, it's not a
4 --

5 THE COURT: Well, I'm going to let her
6 argue it but I'm not going to instruct it.

7 MS. BODMAN: Yes, sir.

8 MS. ALVES: Judge, I would just ask that my
9 request be made a part of the record and I would
10 just say that it is our defense that she was the
11 one that caused the accident, not my client.

12 THE COURT: I understand. I'll make it
13 part of the record.

14 MS. ALVES: Yes, sir. Thank you.

15 Judge, I'm going back to something we were
16 talking about earlier. I think it's page eight
17 and nine that it refers to that the victim does
18 not need to be corroborated.

19 And one last comment I have about the
20 charge that you gave us is that I didn't see
21 anywhere -- and this might be part of your
22 general comments to the jury, I don't know. But
23 there was nothing in the charge regarding telling
24 the jurors that they all must be present in the
25 room and that they have to stop if someone leaves

1 the room. And I know in the last page you talked
2 about, and you mentioned that they have to wait
3 until -- don't begin deliberations until they're
4 told by the clerk but I didn't see anywhere that
5 you specifically told them they need to all be
6 present and that if anyone leaves the room they
7 have to stop.

8 THE COURT: I'll do that.

9 MS. ALVES: Thank you.

10 THE COURT: What's the State's position
11 with regard to the possession of a stolen pistol
12 suggestion from the Defendant?

13 MS. BODMAN: Well, first of all, it just
14 keeps repeating what is in the first paragraph.

15 THE COURT: That's what Ralph King Anderson
16 does.

17 MS. BODMAN: I think that the Court's
18 instruction as to the law, we have to prove that
19 he knowingly possessed a stolen pistol --

20 THE COURT: Okay.

21 MS. BODMAN: -- is sufficient.

22 MS. ALVES: Judge, if I may. While that is
23 exactly what the statute said, I don't think that
24 that makes it clear to the jury that Mr. Fuller
25 would have had to know that the pistol was stolen

1 at the time that he possessed it.

2 THE COURT: Okay. I'll work on yours.

3 MS. ALVES: Thank you, Judge.

4 THE COURT: I mean, I think you're right.

5 It's his testimony. I mean, his back-door
6 testimony that he didn't, through the telephone
7 conversations, which was an interesting way of
8 providing a defense.

9 MS. ALVES: I objected to every one of
10 those jail calls, Judge. We were here for two
11 hours doing it

12 THE COURT: You got it in front of the
13 jury.

14 MS. ALVES: Yes, sir.

15 MS. BODMAN: You're welcome.

16 THE COURT: All right. Let's take a few
17 minutes and let me try to collect my thoughts,
18 you collect your thoughts and about 15 minutes.
19 Are you ready, counsel?

20 MS. ALVES: Yes, sir, Judge. 15 minutes
21 will be perfect.

22 THE COURT: Thank you

23 MS. BODMAN: Thank you, sir.

24 (Court's Exhibit No. 2, Defendant's request
25 to charge DUI statute, marked and received into

1 evidence.)

2 (Break taken from 11:03 until 11:23 a.m.,
3 and the jury continued:)

4 THE COURT: State ready to proceed?

5 MS. BODMAN: We are.

6 THE COURT: Defense ready to proceed?

7 MS. ALVES: Yes, sir.

8 THE COURT: All right. Bring the jury,
9 please.

10 (Jury enters courtroom at 11:24 a.m.)

11 THE COURT: Ms. Alves?

12 MS. ALVES: May it please the Court.

13 THE COURT: Yes, ma'am.

14 MS. ALVES: Counsel.

15 You know, there was a TV show on, it came
16 on last summer sometime. It was only on for a
17 few weeks because, you know, they put TV shows on
18 and try them out in the summer. It was called
19 the Carmichael Show. And I remember this and I
20 was thinking about this, but on the first episode
21 the star of the show moves in with his
22 girlfriend. But his mother is a real strict
23 Christian and they don't think she'll approve.

24 So they want to try to conceal it from her
25 and try to ease her into it. So they decide, but

1 the girlfriend wants to tell the mother. So when
2 she starts to go and tell the mother the truth
3 Carmichael stands up and he's, like, ma, brother
4 got divorced from his wife. And the mother's
5 like, oh Lord Jesus, what happened. Brother's
6 divorced from the wife. And she carries on.
7 About half the show is about the brother being
8 divorced from the wife. They never get to talk
9 about Mr. Carmichael and his girlfriend living
10 together.

11 Then the next time he's going to tell mom.
12 Carmichael starts out with some other scandalous
13 news from the neighborhood. Mother's like, oh,
14 Lord Jesus, can't believe this happened. They
15 still don't get to talk about it. And that goes
16 on for the whole show, you know. That was the
17 premise of the show, every time he wanted to tell
18 the mom that they were going to be living together
19 he threw a red herring in so the mom would get
20 sidetracked so they couldn't get back to the fact
21 they were living together.

22 Now, this definitely not a 30-minute sitcom
23 on whatever channel that was. This is real life
24 and this is way more serious than the Carmichael
25 Show.

1 But in this case here we have that same
2 premise. We have something was going on and then
3 Ms. Schlinger went to the hospital. Yes, she was
4 upset. She was hysterical. She was hurt.
5 There's no question. But the question is how did
6 that happen. How did she get to that point.

7 But as soon as she told them there's a guy
8 in the car with a gun, and the police all went
9 down and looked down to see what's going on with
10 this man with the gun. And nobody checked to see
11 whether this lady was under the influence. And
12 then when she said, oh, he raped her, that was
13 it. No investigation whatsoever into whether the
14 accident really could have been caused by drunk
15 driving.

16 But, no, we all had to take her word for
17 it. And that's what this case boils down To:
18 Can we believe her word. Has the State proven to
19 you beyond a reasonable doubt that Michael Fuller
20 committed these charges solely based on the word
21 of Ms. Schlinger?

22 Now you got a lot to go through. First
23 thing we want to talk about is her story.

24 Now, there is no doubt in my mind that girl
25 had a hard day. She'd been having a hard time.

1 There's nothing worse than having a loved one in
2 the hospital. I know that. And she had her
3 brother not just in the hospital but with a
4 serious medical condition that they all came from
5 far and wide to see him.

6 And this was a crazy emotional day for her
7 on that night, the night of the 19th, the morning
8 of the 20th. They had gotten good news about her
9 brother and that's, praise God for that.

10 And, her family, she was with her boyfriend
11 prior to that. We know that. Why do we know all
12 of that? Because of the jail calls that Michael
13 Fuller made where he basically told all her
14 business because she had told it all to him. She
15 was having problems with her boyfriend. Her
16 family didn't approve of the boyfriend. He's
17 significantly older than her and we all know, we
18 saw, he heated up on her that day, grabbing her,
19 yanking her around, assaulting her in the room.
20 We didn't see what happened in the room. She
21 pulled out. And we can still see that she has
22 issues with her boyfriend because what did she
23 want to do? No, no, he didn't grab me that
24 hard. You saw what happened. He yanked her in
25 the room and then she comes out and she's pulling

1 away and her shoe's in her hand. No, he didn't
2 hit her that hard. No, he's okay. He, you know,
3 he didn't cause her injuries.

4 It's sad to say but she was in a bad
5 Situation with that boyfriend.

6 She still loved him and made excuses based
7 on what she's telling Michael. And we know all
8 of that because she confirmed all of that, or
9 when she talked to us from the witness stand.

10 And then she told you she had issues. He
11 has some medical issues. She suffers from PTSD
12 and depression. And she's supposed to be taking
13 medication but she's confirmed that she hadn't
14 taken her medication in a few days. Instead she
15 was self-medicating with Adderall that was not
16 even prescribed to her. She was drinking. She's
17 an alcoholic but she lost her period of sobriety
18 and she was unfortunately back to drinking on
19 that day.

20 She was smoking weed. We don't know when.

21 We heard all of that testimony from the doctor
22 this morning. We can't exactly say how much or
23 how that affected her, but we know that she was
24 smoking weed.

25 We know that she was drinking enough to be

1 over the legal limit.

2 And the question is, did she drink the wine
3 that she had bought at the convenience store. We
4 don't know but there are three bottles missing
5 but we'll get to that.

6 And all of those things were going on with
7 this girl this night. Boyfriend had just left.
8 She's having problems. And then Mr. Fuller came
9 up and she and him start having a conversation.

10 Now let's go into her story. She said that
11 she never been to Aiken before but we all know
12 that -- and she told you that she's a seasoned
13 traveler. She'd taught in Syria, I believe, for
14 two years. She said had traveled to 10
15 countries. So she's a seasoned traveler. She
16 knows that you have to pick up pretty quickly how
17 to get around in places.

18 And we've all been somewhere on vacation or
19 to visit somebody for some reason or another
20 where you really don't know the location and the
21 streets but you know you can kind of figure out
22 where to go. When somebody shows you how to go
23 someplace the first time, you know how you always
24 then go back to your same starting point and keep
25 going to different places to branch out because

1 you don't know how to get over to the side
2 streets and the shortcuts that everybody else
3 would know who lives there.

4 So she was able to figure out how to get to
5 the hospital. She didn't know it well but she
6 knew the two entrances that you can get from
7 University Parkway into the hospital.

8 Now she knew the hospital landmark. She didn't
9 know the streets. And that's reasonable to believe. You
10 don't necessarily know the streets, you know landmarks.
11 Now I'm the worst person at directions. You say east or
12 west I'm going to get lost. You better tell me left and
13 right and don't tell me the street, tell me to turn left
14 when you see Wal-Mart and right when you see the BP.
15 Otherwise I'm lost.

16 But she knew, even though she wasn't sure of
17 Medical Park Drive and University and Aurora Place. You
18 know how to get to the hospital because you turn out of
19 the parking lot left, you turn left at the BP, you go
20 straight up. There's two entrances, you pick one.

21 Now, in her story she told us that she went -- I
22 know we've shown that map a lot but we want to see it a
23 little bit more. Let me make sure I have it the right
24 way.

25 She told us that she drove out of the parking lot.

1 Here's the Quality Inn. Here's the McDonald's and the
2 Quality Inn. We know that because this big building is
3 the Wal-Mart. She drove out of the Quality Inn and came
4 down Richland Avenue. And then she says she turned up
5 University Parkway. Right here where the BP is on the
6 corner of University Parkway. She drove down University
7 Parkway, because she didn't know the name of the streets,
8 and she came to the -- this is where she said when she
9 was in the car with Michael Fuller that she went to the
10 first entrance. And that would be this entrance shown in
11 Defense Two. The first entrance to the hospital.

12 Now, ladies and gentlemen, you're not leaving your
13 common sense outside of the courtroom. You're not
14 leaving your experience or your knowledge of Aiken. And
15 in case you forgot about where the hospital is, I think
16 we all know, based on this map and how many times we
17 heard it, the hospital is on University Parkway.

18 She drove up University Parkway. Up this street
19 shown here. She passed this entrance. She says Michael
20 Fuller told her, no, go past this entrance. The first
21 entrance that's marked main. So she did.

22 Then she testified that she came to this entrance,
23 the second entrance. Now this is the entrance at the
24 light where the opposite side of the street is University
25 of South Carolina-Aiken. She says Michael Fuller told

1 her, no, no, go past this entrance. And she says she
2 stopped and hesitated and looked forward because she
3 didn't see another entrance into the hospital.

4 Now that's very important because at no time did
5 this lady ever tell you that she turned right onto
6 Medical Park Drive.

7 She said when she came to the second entrance of
8 the hospital that's when he told her to keep going.

9 That's when she stopped and looked forward, didn't see
10 anything down in the dark. And then she turned back and
11 he had the gun to her face.

12 That's what she testified to.

13 That is also -- and then she said she drove
14 forward, floored the car, she floored the gas pedal,
15 jumped out of the car, rolled, and then, and then jumped
16 up and started running. And she was very specific. In
17 the conversation that she had with Investigator Royster
18 she ran toward buildings and she knew that there was a
19 college. She said she knew there was a university across
20 the street and she ran toward that instead of running
21 toward the hospital. That's what she testified to.

22 That's what she told Investigator Royster. It's in two
23 separate places.

24 But to be clear, when the solicitor was clarifying
25 her testimony all of a sudden, oh, no, she turned onto

1 Medical Park Drive. The reason this is so important is
2 because there's, because the tree that they struck in
3 that car that night is over here by the hospital in front
4 of Aurora. Here's the hospital. And here is, down here
5 is where Aurora is. Aurora. And the pavilion where the
6 tree is where she hit.

7 So, she hit a tree on Medical Park Drive near the
8 hospital. Not in front of the university, the University
9 of South Carolina but that's where she said this
10 happened. Because why? Because she doesn't know the
11 streets. She knows the landmarks. And maybe she got
12 confused about the landmarks but she's very clear.
13 Twice. This is what happened.

14 Now let's look at what's -- going back into the
15 story. She says that she was wearing this pea coat that
16 we can see here. And she scratched up her arms. Now she
17 said she scratched them up from hitting with the gun, not
18 from the road rash. She was very clear about that from
19 the witness stand.

20 And I'm just telling you, take a look at the
21 pea coat. Is this a pea coat that somebody was rushed,
22 that somebody was, jumped out of a car in? Rolled out of
23 a car in? Rolled down asphalt? Was attacked and thrown
24 to the ground? Was fighting for her life? Does that
25 pea coat show any signs of any of that? It does not.

1 Now she also says that Mr. Fuller beat her in the
2 head with a gun, beat her on her hands causing those
3 injuries on her arms with a gun, and that he forced her
4 to perform oral sex.

5 Let's look at what the evidence shows.

6 There's no DNA evidence of any type of Mr. Fuller's
7 skin cells on her face where she says she was turning her
8 head and fighting. There's no sign of her blood or hair
9 or DNA on the gun which she says she was beaten about the
10 head. She says she was beaten on the arms. And she says
11 that he committed these offenses.

12 One thing that's important to know. Take a look at
13 the pictures. She says she was beaten about the head
14 with a gun to the point we know her head was bleeding.
15 We know her head was bleeding when she got to the
16 hospital. Remember her sister talked about how the blood
17 had matted her hair so she had to cut pieces of her hair
18 out. That's a lot of blood.

19 Now, she testified that after being beaten in the
20 head with the gun and he grabbed her by the hair, he
21 dragged her back to the car, she's fighting, dragging, no
22 sign on any of the clothes. But one important thing
23 that's missing. Wouldn't there be blood in the car?
24 She's bleeding because he's beaten her outside the car.

25 Because remember after they got in the car that's

1 when she said she was going to, decided to floor the car
2 for her life. So all the beating that she testified to
3 would have been inside the car or at least outside on the
4 street where she said it happened, whichever street we're
5 going to go with. And then she got forced back into the
6 car.

7 Take a look at the exhibits that Investigator
8 Royster took. We don't have a whole lot of the headrest
9 from the driver's side. We got a few. Look at Defense
10 Exhibit Number Nine and Number 14. These are pictures of
11 the driver's side headrest. Take a look. One thing
12 missing. Blood. Not one single speck of it. Nothing.

13 If she had been in this car in a car accident and
14 had hit her head and cut her head before she says she
15 fell out of the car, wouldn't you expect blood to be all
16 over it particularly, remember, from her story alone,
17 they already just -- he didn't just tell her to get in
18 the car and then drive and everything be honky-dory. She
19 says she was in a fight for her life where he had climbed
20 over the seat, had sat on her, they are fighting over the
21 steering wheel, everything is going crazy. He'd already
22 beaten her. How come there's no blood in this car?

23 Now she says this was on the hospital grounds.
24 Let's talk about that. Ms. Corley told you. Now this
25 lady is working. We know that she got to the hospital at

1 4:35. Not in question because the medical records say
2 that. Ms. Corley is out there driving a bus for the
3 Council on Aging to the hospital to take people to
4 dialysis at four o'clock in the morning.

5 And, remember, she told you people go 24 hours a
6 day and other people go even that she didn't drive.
7 There are all sorts of buildings where you can get
8 medical treatment over there. And this is a Friday
9 night. And this is the road right in front of the only
10 emergency room that would be open with a hospital
11 anywhere around here in Aiken unless you're going to go
12 to Augusta. But if you're going to go to a hospital in
13 Aiken, that's it.

14 Where do all the ambulances go? Right to Aiken
15 Regional Medical Center. Where do the people go?
16 Ms. Corley, other people driving up and down that road.
17 Yet she says that this all happened where he pulled her
18 out and forced her to the ground and forced her to
19 performed oral sex on the main street in front of our
20 only hospital in front of a road that people regularly
21 travel, people that go to dialysis 24-7. Unlikely.

22 Now when she went to the hospital one thing to note
23 is that when, okay, she was hysterical and freaking out
24 and crying. I would have been too.

25 I had my first car accident not long after I got my

1 first car and it was my fault. I hit a tree because I
2 was driving too fast and did whatever. I wasn't drinking
3 but that's what happened. Had to bring it to my dad.
4 Didn't go well. But when it happened, you know what the
5 first thing I did was. I didn't get out of car all
6 calm. I got out of the car running, oh my God, oh my
7 God, what am I going, what am I going to do, my car hit a
8 tree. Crying hysterically in the road.

9 People, somebody stopped and they helped me and
10 they thought I was hurt because I was so hysterical. And
11 I wasn't, but,, and I definitely wasn't, you know, she was
12 hurt. There's no denying that. But that was my instinct
13 to react to that. Started thinking, oh, how could I tell
14 anybody this happened. I better tell the truth. Truth
15 will set me free and things will go on.

16 But what did she do here. She went to the hospital
17 where she tells all of it. Now what about the triage
18 team at the hospital. You heard the triage team. We got
19 common sense, we know what triage team does. They're the
20 first people to see you when you walk into the hospital.
21 You got to sometimes sit there forever waiting for
22 anybody that's sicker than you to go in, while you got to
23 sit there and wait after you've told the nurse all your
24 trouble. Well, she got in pretty fast. And she was,
25 what did they say. Risk factor, intoxication. Why would

1 -- I asked the doctor why would you put that down. Well,
2 she either smell of alcohol or there was obvious signs of
3 impairment. And she told them she was drinking. We just
4 don't know how much.

5 So, we have the doctor's note that she was
6 intoxicated. We have the nurse's note that she was
7 intoxicated. They know all about how she came there and
8 she picked up this man and what happened. But one thing
9 they don't know is they don't know that she's been
10 sexually assaulted because she never told that.

11 Now I understand. I'm the first person to
12 understand that a woman coming into a hospital might be
13 hesitant in telling a male doctor what's happened. But
14 at some appointment you have to.

15 And she also had, remember the treatment team
16 wasn't just male doctors, Dr. Garrett. It was also Nurse
17 Mallory Harmon, and it was also a another nurse. Now we
18 don't know her name but we know that she was a female
19 because Mallory referred to her as she.

20 So, who did she tell she was raped? She didn't
21 tell the doctors. Who did she tell? She told Officer
22 Hembree and Spann, two male police officers.

23 Now, Mallory said she told the police at her bed.
24 Mallory didn't remember exactly when she was told, but it
25 sounds to me from hearing all of this that the first two

1 people she told were the two male police officers.

2 Now the doctors have recognized that you're
3 intoxicated. And they're still trying to calm you down
4 but the police have still come. So now you have to
5 figure out what to do because you sure can't tell the
6 truth because then you might be arrested for DUI. We all
7 got common sense. We all know if you've been drinking
8 too much and you have an accident they could charge you
9 with DUI.

10 And you have to have that little fear. Now I know
11 it's not against law to drink and drive -- to have a
12 drink or two and drive, but it is against the law if you
13 drink to the point that your ability to drive is
14 materially appreciably impaired. And she had to be
15 concerned about whether or not that was because he knew
16 she had something to drink that night.

17 But what do the police do? They heard this
18 very pretty girl. Look at her. She's very
19 pretty. Oh, she's been assaulted, she's been
20 raped in the car with this guy. And they found
21 the guy in the car with the gun. Oh, he must be
22 guilty. And they didn't even bother to
23 investigate further.

24 They didn't ask the doctors and the nurses
25 anything. They didn't know that she had been

1 intoxicated. In fact, Officer Medlin, who was
2 the first officer on the scene, when they asked
3 had she been using alcohol, not was she
4 intoxicated but when he had to note on his form
5 whether she had been using alcohol he put no
6 because he didn't know, didn't bother to go find
7 out any more information.

8 Guy in the car with a gun. Girl saying she
9 was raped. Done.

10 Now, I know that the hospitals do have to
11 prioritize care. You have to. That's why some
12 people get into the emergency room before you and
13 you've been sitting there for two hours and they
14 come in. It happens.

15 Or, in this situation they had to
16 prioritize her care and treat her spinal injury
17 because that was clearly the more serious thing
18 to be treated at that time. No question.

19 But to not even tell them. They gave her
20 medications throughout the night. We heard a lot
21 about the medications that she got. They would
22 have given her or at least offered her the group
23 of medications they give to every sexual assault
24 victim to prevent STDs and pregnancy. Now,
25 clearly, you don't need a pregnancy drug if

1 you're only alleging oral sex, but you do need an
2 antibiotic and the other drugs to prevent HIV or
3 STDs or anything else that you might be at risk
4 for should that have happened.

5 But nobody offered them to her. Why?
6 Because she didn't tell anybody about this until
7 it was too late. Mallory got off. The nurse's
8 notes which are critically important so the next
9 nurse knows what's going on, were read by Jeremy
10 Dixon. And he testified that he knew nothing
11 about anybody being sexually assaulted that
12 night. He didn't know anything about that.

13 And, ladies and gentlemen, that tells you
14 that this didn't happen. Now to go back and tell
15 you all about the DNA evidence. Now, and I just
16 want to point out a few things about that.

17 Only a few things were swabbed. Now, the
18 police told you they swabbed, or excuse me,
19 Ms. Webb told you they swabbed Michael's boxers
20 which are shown here in State's 24. They swabbed
21 his pants which are shown, or portions of his
22 pants which are shown up here in 24-B. They took
23 cuttings from his shorts. And they found
24 something, they were looking for something
25 presumptive of saliva. And they found it. But,

1 oh, that sounds like, oh sweet Jesus, the man
2 must have had her perform oral sex because
3 there's saliva on his pants. Remember. It is
4 not actually saliva. It is a bodily fluid that
5 contains enzymes similar to saliva. And what
6 would you expect to find on your boxer shorts?
7 It very well could have been fecal matter. So
8 they didn't find any saliva. And regardless of
9 what they found, it was none of Katie. So, they
10 didn't find her on his boxers.

11 And remember they checked his pants. Now
12 that's crazy. You can have your own pants on and
13 they didn't find any DNA on his pants of his, on
14 all of the portions of his pants.

15 But what is telling is they didn't find any
16 of Katie's on his pants either. And remember
17 what she testified to. She said that he had
18 been, that he straddled her while she's on the
19 ground. She's fighting for her life. Remember.
20 He was hitting her in the head with a gun,
21 forcing his penis into her mouth, and unbuttoning
22 her pants. And all of this while he is sitting
23 on top of her.

24 But none of her DNA is found on his pants
25 or his boxers.

1 Nobody checked her coat. And that coat
2 does not show that there was signs of a struggle
3 while she was laying on an asphalt ground or a
4 grassy one.

5 That brings us to Michael's story. Now,
6 you didn't hear Michael's story from that chair
7 but we heard plenty of Michael's story. We heard
8 the story.

9 Now the first story we heard was when
10 Michael got out of the car. And let's talk about
11 that real brief. This man has been in a car
12 accident for several minutes. He lays there
13 unconscious we don't know how long before that.
14 And the police get him out of the car. You saw
15 what they did. They had to shine the lights and
16 they're yelling at him. And then they tell him
17 to get out of the car. They weren't going to
18 help him to get out because they suspected him of
19 having a gun and they have their safety. I
20 understand that. So he had to crawl out of car.

21 They didn't stand there and check him out
22 and make sure he was okay. What did they do?
23 They took him to the ground, put the handcuffs on
24 him and stood him back up. So they stood there.
25 nobody checked him out. Nobody made sure he was

1 okay. Did he have a concussion? I don't know.
2 Did he complain of all of the symptoms of a
3 concussion? No. Really. Was he complaining
4 about being sick, going to get him at that
5 point? No. So why bother.

6 He answered questions. Now when he was in
7 the police car talking to Officer Drumming, he
8 answered the questions kind of weird. So
9 Dominique, Dominique was driving. Oh, no, he was
10 in the car with Dominique. No, he was in the car
11 with a girl. Sounds like he's confused.
12 Somebody who has just been woken up from being
13 unconscious, asked a bunch of questions. He was
14 mixing up being with Dominique earlier with being
15 in the car with Katie.

16 So, oh, no, he was lying, he was lying.
17 That's what they want you to believe but was he
18 laying or confused?

19 And then he goes to the police station to
20 talk to Investigator Royster. And he told
21 Investigator Royster who again did not ask him if
22 he was okay, ask him anything about his health.
23 He told Investigator Royster that he and
24 Dominique had gone and were hanging out. They
25 went to McDonald's. Then he went over to the

1 hotel to hook up with somebody. And Dominique
2 left him for a little bit and didn't come back.
3 Then he got a ride with Katie down the street.
4 And where was he going?

5 Well, let's go to the map again.

6 He said he asked her to take him home to
7 his house on Hampton Avenue. Now, Investigator
8 Royster who said he's been a police officer here
9 for over 20 years and he was on patrol here, he
10 knows these streets like the back of his hand,
11 testified that the two shortest routes from the
12 hotel to Hampton Avenue would be to either go
13 down University Parkway to Trolley Line Road, and
14 here's Trolley Line Road, and then you turn right
15 on Trolley Line and come all the way down here.
16 And down here past where the map ends, that would
17 be Hampton.

18 And to put it in perspective if you
19 traveled all the way down here you run into
20 Hampton Avenue and then the sheriff's department
21 would be on one street, and then Michael lived on
22 the next street up from the sheriff's department
23 where Hampton and Sumter meet.

24 So straight line this way. Or the other
25 shortest route commonly taken would be to come

1 down, turn down Medical Park Drive, drive through
2 the back streets. Remember he said you turn left
3 on Hudson and then -- left on Hudson and then
4 right on Trolley Line and then come down. What
5 does that road get you? Save you a light. Might
6 even be faster.

7 But that's not an uncommon ridiculous way
8 to travel to Hampton Avenue to Michael's house
9 from where they were. And why would they need to
10 go there? Well, to look at Michael's story and
11 the State -- and you clearly should. You heard
12 the jail calls. Michael told you that he was
13 going to -- and this is while he's talking with
14 his family and friends. He was arrested, no
15 question, on the 20th. We can agree to that
16 because that's the day Investigator Royster
17 talked to him and told him he'd be arrested and
18 going to jail these charges. The 20th.

19 So all of the jail calls from the 21st, the
20 22nd through the 24th. Right after he got to
21 jail. Before he would have gotten any
22 information any of the police reports, any of the
23 details about Katie. How did he know all of that
24 stuff about her boyfriend being significantly
25 older than her in his 50s, about her family not

1 liking him, about how he was drama and possessive
2 and abusive. Michael wouldn't have seen any
3 videos. Wasn't even there at the point where her
4 boyfriend yanked her into the room if you believe
5 any of what Dominique said.

6 Now, what was Michael doing? Well, Michael
7 told you in those jail calls. Michael and
8 Dominique went -- and listen to the jail calls
9 again. They're in evidence. You can hear them.

10 Michael said that, I was riding around with
11 Dominique and when Dominique took me down there
12 to them room to go get a package with him so I
13 could try to do more extra stuff to get Niya and
14 Zoe some Christmas stuff.

15 So he and Dominique had plans and went down
16 to the room. He goes into that. And that's a
17 call that was made on December 24th with his
18 girlfriend Shay or with some girl named Shay. He
19 also talked about that a little bit more on a
20 call that was made December 22nd at 3:17. And
21 they're all there. He said, I told him to wait
22 in the car because when he took me down there to
23 the hotel room I told him to wait in the car
24 because I was fixing to go in the room with my
25 two homeboys and they had a few other people over

1 there. And they didn't want Dominique to be all
2 in their business because they know Dominique
3 talk too much. So I cut around the corner to go
4 to the room on Dominique and when I came back out
5 Dominique was gone.

6 He talks about this again a third time on December
7 24th at 1647 which would be 4:57 in a conversation with
8 Jayla. Oh, Dominique took me down there. I was going to
9 try to get on and everything with my boys so they could
10 put me on so I could get some extra things going for Niya
11 and Zoe for Christmas and do a little few extra things
12 for myself.

13 So I think it's clear from, if you listen to the
14 jail calls, that Dominique and Michael were going to the
15 hotel to meet up with somebody for some reason in some
16 way in which the two of them believed they could make
17 some money. But Dominique wasn't invited to go to the
18 room. So what did he have to do. He circled and you saw
19 the video where he circled and he circled.

20 And, what happened next. Well, if you piece all
21 the evidence together, and that's what I'm having to do
22 here, I'm having to piece it all from what everybody
23 said. I made a little time line here that I think
24 reflects, actually reflects the evidence. And I'm going
25 to use the map.

1 Now, Dominique says that -- Michael said they were
2 going to get something and then he met Katie. But we
3 need to look at all the evidence as a whole. And 2:22,
4 that's when Kay Katie boyfriend assaults her. How do we
5 know the time. I wasn't testified to but look at the
6 video. The times are marked on the video. Remember the
7 solicitor asked, I forgot who was on the stand, about the
8 times and it was explained that the video skips because
9 it's motion activated. So if nobody's walking they're
10 not just waiting film. 2:22, that's when Katie's
11 boyfriend assaulted her. 2:44, remember, he packed up
12 and left. 3:38. That's when Katie goes to the BP.

13 But now remember Dominique talked about how he and
14 Michael had met up earlier that day, nine o'clock, then
15 changed it to 10, 10:30 and then they went over to his
16 cousin's on Iroquois at the road behind the hospital.
17 And they were there just for a minute. Remember he
18 pinned it down to 15 to 20 and then they went to the BP.
19 Now Dominique, clearly he was wrong on his time. But the
20 video shows that Katie enters the BP at 3:38. You saw
21 the video the whole time because she left at 3:45. Look
22 at the video. Who didn't you see in the BP. You didn't
23 see Michael. Remember Dominique says that Michael stops
24 over at the BP and goes into the store. Dominique is
25 clear, Michael went into the store. Katie came in behind

1 him. Michael came out before Katie.

2 Well, that's awfully funny. They have a video of
3 the door and you don't ever see Michael entering or
4 leaving that store. You don't see him in the store. You
5 can see Katie walking around the displays. You see her
6 at the drinks, but no Michael in the store.

7 Dominique -- Michael comes out of the store, says,
8 oh I'm going to get that white girl. He took it to mean,
9 oh, he liked her. And then he said that they went to the
10 bank to sit and watch her. When. When did they even see
11 her in the BP. You don't even see them at all.

12 Dominique's telling a story. Remember he told a
13 different story at first when he first talked to the
14 cops. So now Dominique is charged with a crime involving
15 this which he says there's no crime been committed. So
16 how could he even be an accessory. I agree with him.
17 There's no crime been committed. How is Dominique an
18 accessory. Yet Dominique's got to get his self out of
19 the situation so he tells about this bank and this
20 meeting at the BP because Dominique doesn't know there's
21 no evidence.

22 Now, going back through the video. Katie leaves at
23 3:45. And then at 3:55 an SUV enters the parking lot. I
24 can't say that's her car or not because there are other
25 SUVs. But at 3:56 you see the car stop in the parking

1 lot, a little smaller car. It's not an SUV. And
2 somebody gets out. And we can presume that was Michael.

3 Now one thing of note. I want to point out that
4 from 3:45 to 3:55 there's no SUV. Katie, where is Katie.
5 She might be at the BP. She might be sitting in the
6 parking lot. I don't believe she was in the parking lot
7 of the Quality Inn because if everybody's times line up
8 then the SUV that came in right before they came there
9 was Katie. So the question is, what was she doing for 10
10 minutes.

11 Well, these are not what she bought, clearly. But
12 she went and got one of these. And you know what the
13 problem I had with this is. We know where one bottle is,
14 but we're missing three. She didn't go back in her room.
15 We know that because if you look at the video, nobody in
16 her room. We know that. She and her boyfriend was
17 missing. Because remember the police came and knocked on
18 the door and they were looking for her boyfriend. They
19 didn't know he left.

20 And she testified she didn't want to go back in the
21 room. She sat in her car. Well, if she sat in her car
22 with her little four-pack, where is the other three? The
23 police searched the area and they didn't find anything.
24 They searched high and low to the parking lot of the
25 Aurora, Wound Care Center. They searched to the street.

1 They took pictures. You have the pictures. You have the
2 pictures from the day and night of the scene.

3 You have pictures from in and out of the car.

4 Royster went all through that car. What are we missing.

5 We're missing three bottles of liquor, and we're missing
6 a cardboard box. You're telling me that in this car

7 accident where pieces of the car were everywhere, where

8 her plastic bag of clothes and all the stuff that got

9 ejected out is still right there. This a good distance

10 from the car from the parking lot to the street but we

11 can't find three liquor bottles. Now it's sad to say but

12 perhaps they were all opened back there during these 10

13 minutes and drank them. She doesn't want to say because,

14 why, it's a sad thing to have an addiction. It's a sad

15 thing. And she told you she's an addict. She's addicted

16 to alcohol.

17 And what do addicts do, they lie about how much

18 they take. They drink in secret. And they drink to

19 excess.

20 She had three glasses, or excuse me, two glasses of wine

21 and a fireball. And now we're missing these three. I

22 can't say she drank them but I know they're not there.

23 Not where they're supposed to be.

24 Now, coming down you see the person get out of the

25 car. You see at 3:56, watch both tapes. You're going to

1 have to watch them both to make sure that I'm right
2 though I know I am. I went through those videos a long
3 time between the time I got them and today. 3:56. You
4 don't see the whole person but you see a person walk on
5 the other side of the hotel.

6 And to explain that I'm going to use this exhibit
7 here. This is State's 22, the hotel. Now this is the
8 second floor. This is the first floor. The odd side,
9 this is the side toward McDonald's on the even side where
10 the swimming pool is. And this is the side where Katie
11 was. Now when the car stops you see the car stop right
12 around here somewhere and then the person walks down and
13 walks through this walkway.

14 Then if you look at the video, you'll see the
15 person stop at a room, bright light. And they stop at a
16 room and they hesitate there for a little bit, like
17 they're knocking for somebody on a room. Watch the
18 video. Don't take my word for it. And then you see
19 their feet walk away. You don't see their body. The
20 bright light was blocking the view and they walk away.

21 That's the point where Michael in his calls where
22 he's telling his story has had Dominique circling. And,
23 look, Dominique circles at 3:58, four o'clock, 4:02,
24 4:14, 4:25, and then 4:39. Michael has Dominique
25 circling while he's going to meet up with whoever he's

1 meeting up at the room. And then he meets up with
2 Katie. Remember Katie was over here in Room 129. She
3 said she was parked in front of her and then they get
4 into their conversation. All of this is from the
5 evidence. And then they have good conversations.

6 Remember Dominique is circling and he sees them and
7 he says yeah, they're having a real good conversation
8 like they knew each other. And he figures, you know,
9 Michael's making some kind of connection. You know, your
10 boy meets a pretty girl, you know, you drive around a
11 little bit and let him have time to talk.

12 And, next thing he knows they're getting in the
13 car. Now Dominique says he only circles one more time
14 after because, remember, he was waiting. He said he went
15 to wait because Michael was talking to this girl and he
16 doesn't know what's going on. He's waiting. Well the
17 time when Dominique would have been waiting is right
18 here, 4:14 to 4:25. Because remember the next thing
19 Dominique says they leave out of the parking lot. He
20 sees them go.

21 And then Dominique says well, he didn't know what
22 to do he went to McDonald's and he drove to Wal-Mart and
23 he came back, circled one last time and then was done.
24 Dominique said after they left he only came back one more
25 time. That puts us right here at 4:39.

1 Dominique -- it makes sense. If he only circled
2 one more time and he only came back, because of course
3 he's got Michael's grandmother's car. He came back at
4 4:39. Now we know that was after the accident had
5 already occurred because the police were called at 4:35.

6 And Dominique couldn't reach Michael. Because
7 why? Michael left his cell phone in the car. And he's
8 talking to this girl. Dominique doesn't come. Clearly
9 nobody knows the times and they don't want to wait.
10 Michael gets into this car and drives off with this
11 girl. Maybe he thought he was going to hookup with this
12 girl. I don't know. I don't know what he was thinking.
13 I don't know what she was thinking.

14 But we do know that he asked her for a ride home
15 and based on Michael's story they turned up Medical Park
16 Drive. Now in the time that he was talking to her, she
17 told him her whole life story, about the boyfriend, the
18 parents, the brother, the troubles, everything going on
19 with her. We know she did this because you can hear it
20 on the jail calls. So, what did Michael say. Rude as
21 all get out and I'd have him get out of my car too, but
22 he says, well, hey, I'm sorry to hear about your problems
23 but I just want to get home.

24 Now let's think about it from her point of view in
25 Michael's story. You're giving this guy a ride. You're

1 telling him your tale of woe and he doesn't want to
2 listen. Please. I would have stopped that car and told
3 you to get your hiney out. And that's what Michael says
4 she did. She stopped the car. Then when she started the
5 car he didn't want to get out because he wanted to, he
6 just wanted his ride. He was telling her, I just want a
7 ride home.

8 And then she starts the car back up. At that point
9 I would have been mad about it because he disrespected
10 me. And she starts the car up and she puts the foot on
11 the gas really hard and next thing you know the car is in
12 reverse and it slams into the tree. When Michael
13 realizes the car is going in reverse he grabs the wheel.
14 But, bam, they hit the tree. I'm not making this up.
15 Listen to the jail calls.

16 And that is how this accident happened. Michael's
17 knocked unconscious. She climbs out of the car. She
18 very likely climbed out of the window, fell on the
19 ground, maybe she couldn't get to the door because the
20 way Michael's body was across from her -- across hers.

21 Now Michael says he had a gun in his possession but
22 it was in Dominique's coat which he had borrowed when he
23 got out of the car. Is that so ridiculous to believe.
24 This is December 20th, late at night and you don't have
25 your own coat. So you borrow your boy's coat. Then you

1 realize he's got that really tiny gun, it's really small,
2 in his pocket.

3 Well, what are you supposed to do with it. Do you
4 throw it on the street, throw it on the ground. No. You
5 put it in your pocket and hope for the best. Now, I
6 can't deny it, it is against the law to carry a pistol
7 about your person unless you have a concealed weapons
8 permit. But what was Michael supposed to do with this
9 gun. He said he found it in his pocket of Dominique's
10 coat.

11 Now going back to Dominique. Dominique, when he
12 talked to the police first said, oh, no, I don't know
13 nothing about a gun. Then second he said, well,
14 Michael's cousin told me that Michael stole the gun.
15 Then third he said, no, no, Michael told me he stole the
16 gun. And now he says, I saw Michael steal that gun
17 because I was at the hospital that day.

18 Well if you listen to Dominique's time line there's
19 no way they could have been at that hospital during the
20 time the nurse was there because she was only there from
21 six till shortly after 11. And if you listen to
22 Dominique's story, they were long gone before that. But
23 if you believe Dominique's story he's the one that's
24 cousin lives around the corner. Is it possible that
25 Dominique could have stolen that gun.

1 Now the law is that Michael must be guilty -- if
2 he's guilty of possession of a stolen pistol, he must
3 have known that the pistol was stolen. If he just put on
4 Dominique's coat and found the gun in his pocket, well
5 technically he's guilty of unlawful carrying of a
6 pistol. If you're just going to read the letter of the
7 law in black-and-white of the law because he did have a
8 pistol in his pocket. He doesn't have a concealed
9 weapons permit. There's no testimony about that.

10 But what are you supposed to do if you find it in
11 your pocket well, you can't just throw it away. You have
12 to deal with it until your friend comes back. And how
13 would he have known it was stolen. If you believe
14 Dominique, well, then he knew it was stolen. If you
15 don't believe Dominique that's a whole different story.

16 Another thing about Dominique. Dominique's going
17 to tell whatever he has to tell to get himself not only
18 out of this situation but Dominique's the one that has
19 three pending charges for breaking and entering a motor
20 vehicle. Got to work a deal some kind of way for
21 something. Might as well get yourself out of a whole
22 bunch of stuff.

23 And he's also the one with the record for
24 stealing. Remember. The two petty larcenies and the
25 receiving stolen goods. He was more likely to have

1 stolen that pistol.

2 Now, Dominique also said the gun was stolen two
3 weeks earlier when he talked to Investigator Royster one
4 time. Then it was earlier in the week. We don't even
5 know when the gun was stolen. And even the Goodwins
6 don't know when the gun was stolen. Mr. Goodwin's a
7 deputy and he hadn't seen his gun since August and so
8 that's a truck that they don't often use. And
9 Ms. Goodwin never looks for it. So we don't know when it
10 was stolen. We can't even say it was stolen that day.

11 And if the State hasn't proven to you beyond a
12 reasonable doubt that Michael knew he had a stolen gun
13 and that he was in possession of a gun, then he's not
14 guilty on those two charges.

15 Now, I want to go back to these 10 minutes here.
16 And what were they doing. Well, it's unlikely that they
17 were in a parking lot sitting there watching this girl
18 from a bank. Because, remember, what Michael said and
19 what Dominique said is they went to McDonald's. So what
20 were Michael and Dominique doing in these 10 minutes
21 while Katie was somewhere else after she left the store.
22 3:45 and 3:55. McDonald's. Right next door. And then
23 Michael came over to go meet his boys. And the fact that
24 he met up with Katie and she had just been at the BP,
25 even if he was at the BP or even if that's something that

1 Dominique made up, we don't know if Michael was at the
2 BP. We have to take Dominique's word for that. But even
3 if he was at the BP, do you know what that is? That's a
4 coincidence.

5 Last Christmas I went to the Columbiana Mall to go
6 shopping. After I left the mall I went to Target which
7 is down the street and up a ways. Saw the same lady.
8 Same kid. I'm, like, oh hi. I just saw you at the
9 mall. Then I went to Kohl's which is further up from
10 Target if anybody knows anything about Columbiana and I
11 saw the same lady. I'm, like, oh, we're following each
12 other. We had a good laugh and we moved on. That's a
13 coincidence.

14 They were both going to same place at the same time
15 if that's in fact what happened. Now, I know you're
16 sitting here listening to me going I haven't told you why
17 this girl is going to lie. I think I have. She was an
18 alcoholic. She knew she drank too that much night.
19 We're missing three of these. She just had an
20 unconscious man in her car. She's got a jealous
21 boyfriend who acted crazy over her hugging her step daddy
22 for God's sakes so what would he have done if she had --
23 as it turned out, she had been drinking in a car and
24 found with some guy that she just met. It would have
25 been problems for her. We saw what happened he was just

1 mad about the step daddy.

2 Now we heard from the doctor this morning about her
3 impairment rating. And I'm not going to go into that
4 because all that's fresh in my mind about what he said.
5 But I will take this away from what he said. At the time
6 that she entered the hospital, around 4:30, her
7 impairment was over a .08. Now that's over the legal
8 limit. We heard testimony from multiple police officers
9 who work here on the streets patrolling who investigate
10 DUIs and they told you what the law is. That, the law on
11 DUI is that you are -- there's an inference that you are
12 driving under the influence, that you are materially and
13 appreciably impaired if you test over a .08.

14 Now they can arrest over a .05 if they have more
15 information that shows that you're impaired.

16 Now regardless of the how the doctor calculated
17 those numbers, every single time he calculated them they
18 were over a .08. That girl was under the influence and
19 nobody investigated it. And why not. She didn't -- I
20 mean, because she says she was raped. That's why. They
21 failed -- and I understand. If I'd be the police I'd be,
22 like, oh my goodness. Especially if there's a man in the
23 car with a gun. I'd be, like, oh poor girl.

24 And what's the result of her story. I mean, what
25 resulted from her story here. Well, Medlin comes, he

1 says, no alcohol involved. Spann and Hembree talking
2 about, oh, that poor girl, how sad it was. I believe
3 that one of them even felt sorry for her that the doctor
4 was too rough when he pulled her collar off. They just
5 felt sorry for her. They didn't bother to question
6 further to see whether she had been using alcohol.

7 And Royster woke up at five a.m. He got the
8 bare-bones details because, remember, he didn't even have
9 all of the details for what happened. And Royster talked
10 to Michael. Now you have the whole video, I'm clearly
11 not going to play that but look what happens here when
12 Royster talks to Michael and Michael asks him about
13 kidnapping.

14 (From audio:)

15 THE DEFENDANT: How was it, how was I
16 kidnapping her when I was in her car and she was
17 giving me a ride?

18 INVESTIGATOR ROYSTER: Well, like I said,
19 your story differs from hers a little bit. She says
20 you approached her at the store.

21 THE DEFENDANT: At the store.

22 MS. ALVES: Royster didn't even have all of
23 the information and yet Michael's story differs
24 from hers. And her story's more believable. How
25 can that be. He already knows, yeah, you pulled

1 a gun on her at the store. No, he didn't. None
2 of the evidence shows that. Yet Royster is
3 telling Michael that.

4 And look what else he says:

5 (From audio:)

6 THE DEFENDANT: Kidnapping, I didn't
7 even, I didn't kidnap her. I had a ride. She
8 offered me a ride. After, after I told her that I
9 was sitting there waiting for a friend.

10 INVESTIGATOR ROYSTER: Like I said, her
11 story is a little different than yours.

12 THE DEFENDANT: I'm just trying to
13 figure out how come it's just her story being heard.

14 INVESTIGATOR ROYSTER: Her story makes a
15 little more sense than yours.

16 MS. ALVES: How does her story make a more
17 sense? Her story makes a little more sense.
18 Investigator Royster hadn't even heard her story
19 yet. He has heard Michael's story. He's only
20 heard what other people said and he doesn't even
21 have the information correct. Yet Michael is
22 condemned by Investigator Royster right then and
23 there. Done.

24 And what else did Investigator Royster tell
25 him. And Michael kept trying to tell him, she's

1 under the influence, sir, she was under the
2 influence. She was driving. He tells how, yeah,
3 he says that he was, that he was drunk or he was
4 passed out in the car. There's no denying that
5 Story is different from what Michael told his
6 people on the phone. But what reason could had
7 have been lying. He and Dominique are going to
8 meet some guys to get some package to try to make
9 some money. I don't know what that sounds like,
10 but I don't think that's something you're going
11 to be telling Investigator Royster. You already
12 know you're not guilty in this, why tell him
13 something that you might actually go to jail for.

14 And what did Investigator Royster Tell tell
15 him.

16 (From audio:)

17 INVESTIGATOR ROYSTER: That's where we
18 stand.

19 THE DEFENDANT: She was under the
20 influence. I haven't drank anything. She'd been
21 drinking and my word doesn't mean anything.

22 INVESTIGATOR ROYSTER: I know.

23 MS. ALVES: His word doesn't mean anything.
24 She's the one drinking. She's the one that
25 crashed in the car yet nobody listening to

1 Michael when he's trying to explain.

2 And what evidence do we have that Michael
3 might have been telling the truth. The wine
4 bottle. She's seen buying it on video.
5 Investigator Royster said he didn't see that on
6 the video. Take a look. We can see it.

7 The doctor smelled her breath and asked for
8 a blood-alcohol and a urine drug screen, even
9 though she had lied to the doctor and told the
10 doctor she hadn't taken any drugs. What did the
11 doctor see. Because the doctor was paying
12 attention. The police weren't.

13 We have a pretty young, very injured girl
14 crying rape, a man in the car with a gun found
15 under him and why investigate further. She must
16 be telling the truth.

17 And Investigator Royster promised Michael
18 that he would look into this further. He
19 promised. And Michael took his word because,
20 remember, in the jail call, Michael is telling
21 his family about how, oh, everything's going to
22 be okay and he's not worried about it. And it's
23 all good. Nothing is equal.

24 (From audio:)

25 **INVESTIGATOR ROYSTER: We'll be checking the**

1 cameras at the store. We'll be checking the cameras
2 at the hotel. That hotel got more cameras than you
3 can imagine outside. So everything that goes on in
4 that parking lot is on video. And I think the BP up
5 there has got cameras. So the part of the story
6 where you say she approached you at the hotel and she
7 says he approached me at the store, right there is
8 going to tell us who's telling the truth.

9 THE DEFENDANT: Yeah, and I mean...

10 MS. ALVES: And Investigator Royster goes
11 on to tell him, don't worry, Michael, I'll look
12 into this. And Michael had faith that he would
13 look into it. But yet nobody did.

14 I know I'm beating a dead horse here and
15 I'm going to wrap up but, this is about do you
16 believe this girl. I have sympathy for her
17 injuries. I'm glad that she's doing a lot
18 better. I'm glad she's getting help for her
19 problems and that she says she's sober now. I'm
20 glad she is.

21 But on December 20th, 2013, she wasn't
22 sober. She caused an accident. Now we here in
23 the news all the time about drunk drivers causing
24 injuries to other people. But in this situation
25 she caused injury to herself. Michael's just

1 lucky he wasn't the one hurt along with her.

2 Now, the Judge told you that my client is
3 presumed innocent until he's proven guilty. And
4 he sits right there, still an innocent man.

5 He, his innocence is wrapped around him
6 like a robe. It cannot be pierced. The only way
7 that changes is if you find that the State has
8 met their burden to find him guilty of all of the
9 charges beyond a reasonable doubt. But I'm
10 confident if you look at this evidence and go
11 back and take a close look, do the investigation
12 that nobody else did, you will see that the State
13 has not met their burden. Michael is not guilty
14 of what he's being accused of.

15 Now, the State has charged -- excuse me,
16 Michael's been charged with six charges.
17 Criminal sexual conduct, which means that
18 basically in plain English they're saying that
19 Michael sexually assaulted Katie by forcing his
20 penis into her mouth. That didn't happen.

21 Michael's was charged with kidnapping
22 Katie. Now like were you told earlier,
23 kidnapping is not like we see on TV where you
24 kidnap a child, you kidnap someone, you tape a
25 cutout newspaper letter. That's not, you know,

1 that can be kidnapping but that's what they
2 charged here. They're saying that he confined
3 her in her car or he took her someplace she
4 didn't want to go or held her basically against
5 her will by using a gun.

6 That didn't happen.

7 He's charged with assaulting Katie during
8 the commission of a kidnapping.

9 That didn't happen.

10 He's charged with possession of a firearm
11 during the commission of a violent crime.

12 Now you heard testimony that violent crimes
13 are kidnapping and criminal sexual conduct. So
14 to find him guilty of those, you can find him
15 guilty of possession of a weapon during the
16 commission of a violent crime but, you know what,
17 those violent crimes didn't happen.

18 He's charged with possession of a stolen
19 pistol. And the Judge will tell you that Michael
20 had to have known at the time he possessed the
21 pistol that the pistol was stolen. That didn't
22 happen.

23 He's also charged with carrying a pistol
24 unlawfully. That's up to you to decide whether
25 Michael should be found guilty on that because,

1 like I said, if he had on Dominique's coat and
2 didn't know he had the gun there, should he be
3 found guilty if he didn't know when he put the
4 coat on that the gun was there. That's up to you
5 to decide.

6 Now, ladies and gentlemen, I'm confident
7 that if you go back and do the investigation that
8 nobody else bothered to do, look at all the
9 evidence, you have everything to make your
10 decision on, I'm confident that you, too, will
11 realize that what Katie says happened on December
12 20th, 2013, did not happen and Michael Fuller is
13 not guilty.

14 Thank you for listening to me.

15 THE COURT: Move your exhibits, please.

16 MS. ALVES: Yes, sir.

17 THE COURT: Ms. Bodman?

18 MS. BODMAN: The gift of fear. It is
19 why -- or, it is one of the mechanisms that our
20 bodies have that enable us to survive. It is why
21 we tell our children that nothing good happens
22 after midnight. It is why we lock our doors at
23 night.

24 Fear. Fear of the evil that lurks
25 outside. But it is a gift. It is a gift because

1 it is what triggers our desire to survive, and it
2 triggers our fight or flight.

3 Now you may think, one may think that Katie
4 became a victim when he stuck that gun in her
5 cheek and said, drive or I will kill you. You
6 may think that she became a victim when she
7 agreed to give him a ride and he got in her car.

8 But Katie became his victim when he saw her
9 at that gas station. He had Dominique follow
10 her. He stalked her from the top of that hill at
11 the bank. He had Dominique drive him over to
12 that hotel. He got out of Dominique's car, and
13 he walked over to where Katie was still sitting
14 in the car.

15 Katie's gift of fear had not triggered.

16 Katie had a lot going on. She had not slept.

17 She was dealing with her brother having
18 open-heart surgery. She had a fight with her
19 boyfriend.

20 Katie did not go home and lock her door.

21 When the Defendant stuck that gun in her cheek
22 and said, drive or I will kill you, that is when
23 her gift of fear was triggered. Katie initially
24 decided to flee, jump out of that car and run.

25 And flight is what got her raped.

1 When she got back into that car she decided
2 she was going to fight. And she started that
3 fight to survive, to live and to walk. And this
4 week she walked those steps from right there up
5 to this witness stand, and she continued her
6 fight and was able to tell you of the horrors
7 that this Defendant committed upon her.

8 It has been our honor and privilege to
9 continue this fight and to seek justice this week
10 on behalf of the State of South Carolina and the
11 County of Aiken.

12 I want to talk to you a little bit about
13 the law that the Judge is going to charge you,
14 tell you about.

15 First of all is kidnapping. I can
16 understand that Michael Fuller had some questions
17 about how is it that I'm charged with kidnapping
18 because I wasn't the one driving the car.
19 Because we all have our preconceived notions
20 about what the law may be. And typically when we
21 think of kidnapping we think of somebody that
22 grabbed a child off the street, stuck them in the
23 trunk and drove them across state lines. But
24 that is not the law of State of South Carolina.
25 The law of South Carolina is that if you do any

1 one of these things, any one of them, that is
2 kidnapping.

3 So you basically, essentially either grab
4 hold of somebody without the authority of law and
5 you don't let them take a step to the left or a
6 step to the right. You make them, without
7 authority of law, to take a step to the left or a
8 step to the right.

9 So, you take hold of or suddenly or
10 forcibly, confine, in that car, inveigle, lure,
11 entice or lead astray by false representations or
12 promises. That could be, could I have a ride to
13 the hospital. My uncle is sick and I just need
14 to get around the corner. He is lying to her in
15 order to get into that car, to then pull out his
16 gun and make her go where he wants her to go, not
17 where she wants to.

18 Remove a person against his will by force
19 or fraud. So he is with the gun saying, you will
20 drive. I am going to drag you back into the
21 car. You are going with me.

22 That is the law of South Carolina. That is
23 kidnapping.

24 Criminal sexual conduct in the first
25 degree. So you engage in a sexual battery and

1 aggravated force is used. So either physical
2 force or physical violence of a high and
3 aggravated nature, or just the threat of a deadly
4 weapon. So the presence of the deadly weapon is
5 what you are using in order to commit the sexual
6 battery.

7 The gun. Or there is no weapon but are you
8 also the victim of forcible confinement,
9 kidnapping, robbery, extortion, burglary. So
10 when he says, drive or I will kill you, she
11 flees. He chases her down. She is a victim of
12 kidnapping when he commits that.

13 Sexual battery. Sexual battery.
14 Penetration into the mouth with a penis. Can be
15 any of these types of intrusions. The one that
16 applies to our case is the penetration into the
17 mouth with a penis. So that act occurred and the
18 victim of a kidnapping where there was a weapon
19 that was involved in order to complete this act.

20 Assault and battery in the first degree is
21 you cause injury which is essentially ouch and
22 that you are, it is during the commission of a
23 kidnapping. So he is using that gun. He's got
24 her confined in that car. You will stay with
25 me. He's hitting her in the head. He is

1 dragging her back, pulling her hair, causing just
2 ouch. Ouch is all the injury you need. But

3 We have much more. She was diagnosed,
4 right, with a laceration to the back of her head.

5 The doctor says that the one injury, the C-3
6 injury is most consistent with blunt force
7 trauma. That weapon. Ouch in the commission of
8 a kidnapping.

9 Possession of a stolen pistol. You
10 knowingly possess a stolen firearm. The Goodwins
11 came and told you, that is our weapon. That is
12 our pistol. And it was stolen from our car. And
13 you knowingly possess it. He says at one point
14 he knows that it's in the jacket that he has. He
15 says multiple times on the phone calls, yeah, I'm
16 guilty of possessing that firearm.

17 And Dominique tells you that they stole it.

18 The Defendant stole it from the truck in the
19 hospital parking lot that night. Well, excuse
20 me. He says it was another time. I'll deal with
21 that, but that it was the Defendant, the
22 Defendant who took it out of the truck. So, he
23 knows it's stolen.

24 Possession of a weapon during the commission of a
25 violent crime. The Judge is going to explain to you that

1 both criminal sexual conduct in the first degree and
2 kidnapping are violent crimes.

3 And he has that pistol. Clearly meets the
4 definition of firearm. Revolver, pistol, any weapon
5 which is designed to be or readily converted to expel a
6 projectile. This is clearly a weapon.

7 Kidnapping, CSC first are both violent crimes. And
8 he has a gun in his possession and is using it to commit
9 the sexual assault and to commit the kidnapping.

10 Unlawful carrying of a pistol just that he has it
11 on or about his person so it is readily accessible and
12 convenient for immediate use. Whether it's concealed or
13 not concealed, it's on or about his person. It's in his
14 jacket he says and it's found under him when he gets out
15 of that car.

16 The testimony of a victim in a criminal sexual
17 conduct case need not be corroborated. As long as you
18 believe just that testimony, the victim's testimony
19 beyond a reasonable doubt her testimony alone, alone is
20 sufficient to find him guilty. You don't need DNA
21 evidence if you believe that he put his penis in her
22 mouth. She told you that.

23 Our legislature in our infinite wisdom, I can't
24 believe I just said that, recognize that sexual assault
25 cases are different than other crimes. They are crimes

1 of secrecy. They happen in the dark. The perpetrator
2 gets the victim alone and so there are not going to be
3 eyewitnesses to sexual assaults. And that oftentimes
4 there is not physical evidence to back up what the victim
5 said. And so our legislature wants you to understand
6 that. That if a victim comes forward and tells you about
7 a sexual assault and you believe them beyond a reasonable
8 doubt, that alone, alone is the basis for conviction.

9 I submit to you that in this case that we have
10 brought to you evidence waiting of an iron animal. There
11 is more than substantial evidence for you to convict.

12 There are two types of evidence. Basically it's
13 direct evidence, a person who has actual knowledge of a
14 fact. The eyewitness, the person that saw it; the victim
15 who describes everything that happened to her along the
16 way; the nurses; the hospital people who saw her in a
17 frantic state telling what happened to her; Betty
18 Corley. These people have actual knowledge of what they
19 saw. They witnessed it.

20 Circumstantial evidence is just a proof of chain
21 and facts and circumstances that indicate the existence
22 of a fact. So the Goodwins haven't driven the car to the
23 hospital since August. We know that the car is in
24 disarray the next day. The gun is gone. The amp is
25 gone. My sunglasses are gone. Circumstantial evidence

1 that that gun was stolen that night. Not a previous
2 night. Keep their truck in their garage, locked up. She
3 doesn't drive it to the hospital and hadn't in a very
4 long time.

5 She had gone out to the parking lot at some point
6 to go get something for a going away party. Went back in
7 to the hospital. The next day the car is in disarray.

8 That is circumstantial evidence.

9 The law does not differentiate the weight that you
10 give direct and circumstantial evidence. The weight can
11 be exactly the same. Direct is no more important than
12 circumstantial evidence. Cases could be proved just on
13 circumstantial evidence alone.

14 But here we also have Dominique who says that gun
15 was stolen from that truck. Not any other truck. They
16 didn't get it from somewhere else, anyone else. Nobody
17 transferred it to them, sold it to them. It was from
18 that truck in the parking lot.

19 Now you have a statement that the Defendant has
20 given. You have two. One is the dash-cam on the side of
21 the road and the other one is to Detective Royster at
22 headquarters. And you can decide the voluntariness of
23 this statement. But when you look at that you, listen to
24 both Drumming and Royster giving the Defendant his ...
25 Miranda rights, they're both very calm, very

1 professional, very nice with him. They say, we need to
2 give you your rights. They read them out. Do you
3 understand them. Okay. Hey, tell me what's going on,
4 you know. We want to hear your side of the story.

5 So, really the circumstances of giving it is really
6 the strongest because you have it actually on tape
7 yourself to know that nobody beat these statements out of
8 him. Nobody coerced him. Nobody threatened him. He was
9 completely, yeah, I want to talk to you and I want to
10 give you my side of the story.

11 Now deciding the truth of his statement is what
12 your job is. Was he truthful with the officers when he
13 gave this voluntary statement, these voluntary
14 statements.

15 Credibility of witnesses. This is your job. You
16 did not leave your common sense outside of that door when
17 you came in here to serve as jurors. And you are not
18 going to leave your common sense in this courtroom when
19 you go out that door to go deliberate. You're going to
20 use the same tools that you use to decide whether your
21 kid stole the cookies from the cookie jar. Is, does this
22 make sense, what are their motivations, what are their
23 biases, why would they have a reason to tell the story
24 that they are telling us.

25 Proof beyond a reasonable doubt. Proof beyond a

1 reasonable doubt is a doubt -- proof that leaves you
2 firmly convinced of the Defendant's guilt. There are
3 very few things in this world we know with absolute
4 certainty. And in criminal cases the law does not
5 require proof that overcomes every possible doubt.

6 If, based on your consideration of the evidence,
7 you are firmly convinced that the Defendant is guilty of
8 the crime charged, you must find him guilty. If on the
9 other hand you think there is a real possibility that
10 he's not guilty you must give him the benefit of the
11 doubt and find him not guilty.

12 There are few things in this world that we know
13 with absolute certainty. The law does not require we
14 have to prove to you with absolute certainty, just beyond
15 a reasonable doubt. Because if the law required me to
16 prove it with absolute certainty, you would have had to
17 have seen it yourself. And then you would not be sitting
18 as a juror in this case, you would be sitting in this
19 chair as a witness. I have to prove to you beyond a
20 reasonable doubt.

21 The investigation. First of all the videos. The
22 Quality Inn has two views. There's the parking lot view
23 and the, basically the sidewalk view. We're looking down
24 the aisle that's right outside the room. The parking lot
25 view. 3:56:12 the silver Dodge Neon stops and a shadow

1 appears and the car circles six more times. All of this
2 corroborates exactly what Dominique said. Exactly. I
3 pulled up. He got out. He walked around through the
4 breezeway. I pulled around, went around, saw them
5 talking, went around, saw them leaving. I waited around
6 for another, like, 30 minutes waiting for him to come
7 back, couldn't get ahold of him. That's Dominique
8 circling around.

9 The sidewalk view corroborates everything, backs up
10 everything that Katie told you. We had been at the hotel
11 bar. We went back to our rooms. My boyfriend got into a
12 fight with me. I got my bag. I left. Then it's the,
13 what am I going to do now, should I go back to the room with
14 him. I'm not going to wake up my mom. They have a kid.
15 Going back and forth and having that argument. She is
16 not intoxicated in that video. She is walking fine. She
17 is not stumbling. She is not falling down. She is very
18 steady and stable and having this walking around, up and
19 down.

20 The Kangaroo Express. Same thing. Backs up
21 everything that Katie told you about that night. Then
22 she goes through her car, she's mad, she's upset. She
23 sees her boyfriend leave, get in the truck. Oh, great.
24 That's just something else. You know, here I am dealing
25 with my brother having this surgery. And now I don't

1 even him have him for support. I can't believe he's even
2 mad about this stuff. This is stupid. And decides to go
3 over and get some cigarettes and something else to
4 drink. She's walking in that gas station perfectly fine.

5 She walks over to the refrigerator. She's deciding
6 what she's going to drink. She gets something, she puts
7 it back, she selects something else. She is thinking,
8 talking to her friend on the phone. She goes over, she
9 is able to pay. She is functioning perfectly, perfectly
10 well. And these are minutes, minutes before that
11 Defendant gets into her car and this horror starts.

12 That is evidence to rely on. That is evidence to
13 rely on.

14 DNA. This is not CSI on TV. No, not every case
15 ends up with a DNA profile. It just doesn't happen. It
16 just doesn't happen. The Defendant's own DNA on his own
17 pants that you see on the video. He gets out of that
18 car, that dash-cam has him stepping out of that car. He
19 is wearing those clothes and his own DNA is not on his
20 own pants.

21 And if you listen to a lot of what he says he says
22 he's been up for hours and hours and hours and hours
23 and. This is four o'clock in the morning. 4:30 in
24 morning he's pulled out of that car. And he's been
25 wearing those clothes.

1 So let's talk about a swab from the mouth. Where
2 we're talking about Katie has described a short, although
3 horrific, sexual assault. It is short in time. She
4 never describes that he finished the act. She is
5 struggling with him. She is fighting off. I am sure she
6 is trying to keep -- or trying to get the penis out of
7 her mouth. And she says, I'm able to save \$1,000 in my
8 ATM. And he quickly takes her up on that offer. So the
9 act has not progressed very far.

10 And then we're talking about crying, talking. She
11 is talking rapidly and trying to tell everybody what has
12 happened to her, what has happened to her. In the
13 background of that 9-1-1 call you can hear her non-stop
14 screaming, saying her name, her social security number,
15 he's going to kill me, my family. She's talking,
16 talking, talking, talking. That means swallowing. And
17 anything that may have been there is not going to be
18 there.

19 They did an excellent job of taking the swab to see
20 if maybe we can, but we understand or we know why it's
21 not going to be there.

22 The firearm. .25 caliber pistol. Stolen from
23 Mike and Tiffany Goodwin. And on that seat, on the seat
24 where he is pulled out of that car. Excellent job. We
25 have it on the videotape of him coming out of that car

1 and then Medlin going in, putting on those gloves going
2 in and pulling it out.

3 The investigation. Kenyetta Corley, Chris Medlin,
4 Drumming, Spann, Hembree and Royster. Cannot say enough
5 wonderful things about them. They did not hesitate to
6 act.

7 That call is made and Medlin is on top of that car
8 with his video camera going. And he is getting backup
9 and they are going to get to the bottom of this.

10 Drumming and Corley. Come over here, talk to us.
11 Here's your Miranda rights. We're going to do this
12 right. Here are your rights. Tell us what's going on.

13 Wait a minute, you know. We're trying to get to
14 the bottom of this. Where were you going. What were you
15 doing. Now, wait a minute. You just said Dominique was
16 driving. Did you have a girl in this car. No, sir.
17 Okay. Well, I mean, I'm open, like, tell me the story.

18 Daymon Spann who goes over to that hospital to
19 start talking to Katie to find out what happened. What
20 do we need to be looking for, what do we need to about
21 doing. Hembree who goes back over there to collect her
22 clothes and to do the swab on her mouth.

23 And Detective Royster who is getting up five
24 o'clock in the morning to go to headquarters to sit down
25 and start taking a statement, hitting the ground to go

1 get the video that you have to know that Katie was
2 telling you the truth about everything that happened that
3 night. Collecting all the clothes, collecting the swabs,
4 getting them to SLED so that can you have this evidence
5 to base your verdict on.

6 Betty Corley. I mean, talk about a good
7 Samaritan. What a wonderful woman. She says a car's in
8 the roadway and the door's open. You know, our memories
9 are very interesting things. Betty Corley is not giving
10 herself the credit that she deserves because she didn't
11 stop in that roadway because she couldn't get through.

12 She stopped in that roadway because there was a vehicle
13 crunched up on the side of the road. And she stopped to
14 get out to get her phone and to call 9-1-1.

15 And that's when Katie runs up to the window. Help
16 me, help me, help me, he's going to kill us, he's going
17 to kill us. And Betty Corley gets back in the car. And
18 Betty Corley does not hesitate to act. Betty Corley
19 turns that car around and drives Katie to the hospital so
20 that she can get the help that she needs. And as Katie
21 walks into that hospital she crumbles down on the ground
22 and starts saying she can't feel her legs.

23 If Betty Corley had not come upon the scene and
24 stopped, Katie could be a quadriplegic today. Dr. Dillon
25 said that this is an, oftentimes is a progression. The

1 spinal fractures, that second one at C-6 would lead to
2 paralysis. Betty Corley saw her immediately after this
3 happened and she did not hesitate to act.

4 Mike and Tiffany Goodwin. They are on top of
5 life. They know what is going on. They know when they
6 drive their cars. They know where it's locked, where
7 everything is kept. And Mike Goodwin hears on the news
8 what had happened: So he's noticed, my car is disarray,
9 this isn't right. I go ask my wife, were you messing
10 around with all of the stuff in the car. No. Goes
11 back. The pistol is missing. He hears something
12 happened over at Medical Park Drive last night and it's a
13 .25. I wonder if that could be our weapon. Did somebody
14 take it and do something. And he calls and starts
15 putting those pieces together.

16 Dr. Dillon, so he tells us about the two fractures,
17 the fractured left-hand side, a joint, the C-3, that is
18 more consistent with blunt-force trauma. Blunt-force
19 trauma. Being hit in the back of a head with a gun. And
20 the C-6 is more likely from a car crash. He didn't
21 hesitate to act. He saw those fractures, said we need to
22 get to her to another hospital to get her treatment.

23 Oh Dominique Paige. Dominique is clearly off on
24 his times. I mean, you saw his -- weigh his
25 credibility. Ask why is he testifying. Is it

1 necessarily because he's lying that he's testifying
2 certain ways and saying certain things or is it just
3 Dominique Paige's way that he processes information. I
4 said to him, how long have you known the Defendant and he
5 said six months. Well this happened December 20th, 2013.

6 So we know he hasn't known the Defendant for six months.

7 I said, no, Dominique, I'm sorry, bad question. I
8 meant the date that this happened, how long had you known
9 him. And had looked at me and he said all day. That was
10 his answer. He goes all day. Okay. Dominique. Yeah.
11 Let's step back. You really have to, poor guy, walk him
12 through what we're talking about.

13 You know, he is processing the best that he can.
14 The time line of -- actually Dominique and saying, oh,
15 it's, like, what did he say, like, 10, maybe 11, really
16 wasn't sure. It was late. That the Defendant came over
17 to get him and then they went over the somebody else's
18 house and goes for, he goes, a minute. You know, some
19 people say a minute, like, hey, we stayed a minute.
20 That's just for a period of time, not literally means,
21 you know, 60 seconds.

22 But if you think about time line that time line is,
23 explained Dominique and the Defendant then going over to
24 the hospital parking lot and driving around that hospital
25 parking lot, breaking into a truck, stealing that gun,

1 getting back into that car. They're driving around up to
2 who knows what. Who knows how long they drove around the
3 parking lot looking for a car that was unlocked.

4 And it just so happens Tiffany, right, comes out
5 sometime, did she say something around 11 or so to go out
6 to the car or sometime that night to go out to the car to
7 get something because they were having a going away party
8 for the doctor. I bet Tiffany accidentally left the
9 truck unlocked. She doesn't like it. She's hoping that
10 somebody is going to steal the truck and they can get a
11 new one. And that time line fits, then, with the
12 Defendant and Dominique driving around and stealing that
13 gun that night. That night.

14 And the amp.

15 But you don't have to just rely on his testimony
16 because the Quality Inn video and the Kangaroo Express
17 videos, both of those, both of those videos tell you that
18 Dominique is telling the truth. Because the Quality Inn
19 has that car pulling up, right, Katie at the BP
20 convenience store 3:45, an SUV coming back in five
21 minutes later entering the hotel parking lot, a person
22 gets out of the silver Neon in the hotel parking lot.
23 Remember I froze the frame. There was a car that
24 stopped. I froze the frame and you could see the shadow
25 of the person.

1 Walks in the opposite direction and then Dominique
2 starts circling the hotel. One time. Two minutes, he's
3 circling back around. He's seeing them talk. He also
4 said, this is, you know, assessing Dominique's
5 credibility is that he's not necessarily lying to you, he
6 is processing the evidence and the information that he
7 has in his own head the way that he does. Because he
8 says that they're both outside the car talking and
9 neither the Defendant in any of his statements ever, in
10 any of his phone calls, does he ever say that they
11 chatted outside that car. And Katie doesn't say that
12 either. He sees them chatting. He's going around and
13 then he sees the car leave.

14 Right. So he's circling around and he says maybe
15 for around 30 minutes. He kind of waited there, waiting
16 for him to come back. And then he finally just, like, I
17 left, I went to McDonald's. I decided to go wait over at
18 Wal-Mart for a while. Went back and then went on home.

19 That time line fits exactly what they're telling
20 you happened.

21 In the phone call, okay. So the phone calls are
22 labeled by month, day, year and time. All the phone
23 calls are chronologically marked. So the earliest phone
24 call starts December 21st, 2013, at 1727. It's in
25 military time. And so they're all chronologically marked

1 here. The 12-22-13 2128 the Defendant is having just
2 this ever-so-pleasant conversation with Dominique and
3 they're saying, hey, I got your amp, your amp. The
4 Defendant never gets grandma's car back, right. Because
5 the Defendant is pulled out of the back seat of Katie's
6 car. So Dominique has the silver Neon. They've just
7 committed the auto breaking over in the parking lot where
8 they got the amp and sunglasses and the gun and he was,
9 like, hey, I got your amp. Don't sell my X-Box 360 and,
10 hey, thanks for taking my grandma's car back. Appreciate
11 it. That's not somebody that's, like, dude, there was a
12 gun in your jacket and now I am in trouble. Where did
13 you get that gun. Hey, buddy. Thanks. Appreciate it.
14 Yeah. Keep my amp.

15 That same phone call he goes everything, bro, that
16 was going on amongst us, bro, that stuff stays between
17 you and me. That's what the Defendant says to Dominique
18 Paige. Because Dominique knows everything that happened.
19 I'm going to get that white girl. Follow her over
20 there. Take me to the hotel. I'm getting out. He knows
21 that he stole that gun from the parking lot of the
22 Goodwin's truck. Stays between me and you.

23 The defense. There was a lot of things that she
24 was talking about. One is this issue of the entrance and
25 whether or not Katie says, yeah, then he told me to go to

1 a second entrance. She's not from here. She doesn't
2 know if that's really an entrance or an exit or if it
3 goes to someplace else. That's why she got into this
4 situation. She goes to turn into what she knows to be
5 the entrance. He says, no, go around the corner. If she
6 lived here, right, she'd go, no, dude, this is the only
7 entrance, I'm taking you here. Why are you going around
8 the corner. She doesn't know. So he's able to say no,
9 no, no, no, no. There's no entrance, just drive over
10 here. So she says I went to go into the second
11 entrance. Whether or not it's an entrance, you got to be
12 an kidding me. You've got to be kidding me.

13 Her coat. She says she rolled. She grabbed that
14 car, she said the car wasn't really going that fast, she
15 grabbed the door and she fell out and she rolled. There
16 is not necessarily going to be anything on her jacket or
17 skid marks or torn up. Stop, drop and roll. She
18 rolled. She's not going to just flail herself out and
19 there hurt herself more.

20 This time line that they give is excellent. I love
21 this time line. It fits exactly, exactly what happened.

22 So she gets back. Katie leaves the BP convenience
23 store in an SUV, comes in at 3:55. Two minutes later,
24 two minutes later the Defendant's being dropped off.
25 She's not chugging four bottles of wine in two minutes.

1 He's walking through the breezeway, going over to her car
2 and that's where the interaction starts. There's no
3 chugging of four or three bottles of wine. That is
4 ridiculous.

5 The blood. That there's no blood in the car, in
6 Katie's car where the accident happened. First of all,
7 we know from just cutting ourselves that the bleeding
8 doesn't happen immediately. Right. I mean, we cut
9 ourselves we go, oh no, that's going to be bad. And then
10 it takes a little bit for that blood to start coming
11 out.

12 The other thing is she's got her hair. The hair is
13 soaking up the blood. She doesn't stay in that car very
14 long. She wants to get out. He has a gun and he's
15 passed out. And she wants to get out of the car before
16 he wakes up. So her hair is absorbing the blood.

17 And that's what her sister saw. That's what the
18 nurses saw, the matting of the hair. And the doctors
19 diagnosed her with a laceration in the back of the
20 scalp.

21 The other bottles of wine. They could be anywhere.
22 They are projectiles. In looking at the scene and where
23 all this debris landed, that is a bag of clothes. A bag
24 of clothes. That bag of clothes is there, a soft,
25 probably fairly lightweight object. She hits that tree.

1 It lands way over there. Those bottles of wine they
2 could have fallen out when she jumped out of the car the
3 first time and she says the car is moving and she jumps
4 out. Some of those could have fallen out right there and
5 rolled. Rolled whatever direction. The others could
6 have been, as I said, projectiles outside the back of the
7 back of that car and landed anywhere.

8 And remember, Royster says yesterday when he
9 testified, he goes, to this day I didn't know what, what
10 she bought or how much she bought. So, yeah, they're
11 looking around the bushes and looking around places for
12 things but those could be anywhere. Somebody could have
13 run over them. I'm sure if some of them hit the pavement
14 maybe they cracked, they broke. You've got the cars, the
15 police cars coming up, the fire engine coming there. Who
16 knows what happened to those. She didn't chug them in
17 two minutes.

18 But I want to say that by them talking about Katie
19 being an alcoholic, you know, and trying to say that she
20 did chug these, they are trying to tell you to issue a
21 verdict of not guilty and say to her it is your fault
22 that you got raped. You were drinking.

23 We as citizens of the United States of America when
24 we say the pledge of allegiance we put our hand over our
25 heart and we say, and justice for all. If there is not

1 justice for all of us, there is justice for none of us.

2 We do not tell sexual assault victims that it is
3 their fault they got raped. We should not, we do not and
4 we will not.

5 What we do know is that Adderall and alcohol affect
6 our ability to make sound judgments and rational
7 decisions. And so when we're sitting in a dark parking
8 lot in a strange city by ourselves and a strange man
9 comes up to the car and says, will you give me a ride,
10 you say yes. You are not listening to your gift of
11 fear.

12 The Defendant. Oh. First of all, phone call
13 12-22-13, 1517 at 7-10. Grandma, they never questioned
14 me or anything, grandma. They never questioned me.

15 And you have the videotape to prove different. He
16 is lying to grandma. He is fully aware of what's
17 happening. He's not swaying. There's not lack of
18 coordination. He's not displaying any dizziness. Not
19 complaining of any headaches, no nausea, no ringing in
20 the ears, not vomiting. And he doesn't say in any of
21 these things, hey, I have some injuries, I need some
22 help.

23 He knows exactly. He is very deliberate in the answers
24 that he's giving.

25 So first of all is, who was driving. And he says,

1 oh, Dominique was driving. There was no girl. No lady
2 in this car. Then they switches and says, oh yeah, the
3 white girl was driving. So he basically is, you know,
4 just trying to get out of the car. He's trying to just
5 give the officers enough information and then when they
6 start going, wait a minute, we got the girl over here and
7 she's talking. Oh. Right. That girl. Okay. So now
8 his story is having to evolve with what the police know.
9 He's going to have to switch it up.

10 Where was he going. Well, he said at one point,
11 oh, I was going to my grandma's house on Hampton and
12 Sumter. And these things are on that dash-cam interview
13 with Drumming. Then he says, oh, I asked her could she
14 give me a ride here. They're standing in the middle of
15 Medical Park Drive and Aurora. Then he says, oh, I asked
16 her a ride to the GAP, Governor Aiken Park. Then he
17 says, oh, I asked her for a ride to the hospital which is
18 exactly what Katie says. Right.

19 So he is accidentally slipping in the truth in the
20 middle of his I-got-to-figure-out-what-they-know-what-
21 they-don't-know.

22 And then starts repeating he decides, that's where
23 I'm going to stick is I was asking for a ride home.
24 That's where that starts coming in.

25 Why did he even go to the hotel. In the interview

1 with Royster he goes, oh, I had a friend girl there who
2 told me to meet up with her at the hotel. That's why I
3 was sitting over there waiting for her.

4 Then he says, well, I told him, meaning Dominique,
5 to wait in the car. I was fixing to go to the room with
6 my two homeboys. So it's not a friend girl, now it's a
7 couple of homeboys and they had a few people over there
8 and didn't want Dominique in their business so I cut
9 around the corner to go to the room. When I came back
10 Dominique was gone.

11 Someplace else he said I told Dominique to come
12 back in 30 or 45 minutes. Then he says I was riding
13 around with Dominique when he took me down there to them
14 room to get a package so I could try to do some extra
15 stuff to get Niya and Zoe some Christmas stuff. So
16 friend girl, two homeboys, and then went to the room to
17 get a package.

18 How was this encounter negotiated. How was he
19 going to get home. And what exactly happened in the car.
20 As you go through the dash-cam first, then Royster's
21 interview, then the jail calls, you can see how his story
22 is progressing. It's like we said, the first thing was
23 this, you know, Dominique was driving and there was no
24 girl in the car. Royster then, well I seen the girl
25 sitting in the car and she asked me what I was doing. 10

1 minutes went by and I asked her did she mind giving a
2 ride home. She said she wasn't from down here and wasn't
3 familiar with the area.

4 Second thing was, well she was already parked and I
5 just happened to turn around and see you and said what
6 are you doing. I said I'm waiting for a friend to come
7 out.

8 So no friend girl, no homeboys going to the room.
9 Now he's waiting for a friend to come out. 10 minutes go
10 by and after which he asked her would she mind giving me
11 a ride home. She says, where do you live. I tell her.
12 She's okay. And then we leave and I just suddenly, I
13 just doze off. I just pass out in the car. Next thing
14 you know I'm waking up with the police surrounding me. I
15 was just relaxing.

16 Then he says about the gun. Well, Dominique just
17 happened to leave it here with me. Dominique happened to
18 leave it here with me so I just kept it right here in my
19 pocket. So he knows he has it.

20 Then he says, well, she wasn't lost and I was just
21 relaxing in the car while she was driving and I just
22 passed out. Then he says, oh, she was familiar with the
23 area and she knew where Schofield Middle school was
24 located at. So not familiar with the area. I'm helping
25 her. I pass out in the car with his girl driving around

1 not familiar with the area. And then, oh, yeah, sorry
2 about that. I was wrong. She was familiar.

3 Then we start into the phone calls where he's
4 having to answer the questions from people that he's
5 talking to about why were you there. Why didn't you just
6 call me. Where were you going. Why were you there.
7 Where was Dominique. How did you get the gun.

8 So he starts progressing with this story. The
9 first thing is, I passed out last giving Dominique the
10 damn car and then I tried to get a ride from somebody.
11 Where did he pass out. Where was he sleeping. He never
12 said that he passed out anywhere.

13 Then he starts with the, well, she started telling
14 me these stories about her age, where he's from. And she
15 got mad because I said, well, I'm sorry to hear about all
16 that but I'm not really trying to get in that with you
17 but I just want to go home. And then that bitch had done
18 threw the car in reverse and so far on it was just, after
19 that I really don't remember much.

20 So he's not relaxing, chilling in the car, falling
21 asleep and all of a sudden he wakes up with the police.
22 Now it's that they have this conversation and she gets
23 mad and just randomly throws the car into reverse.

24 Then he says, Dominique wasn't picking up the
25 phone. Dominique had claimed he went on a little mission

1 or whatever. And I don't like that shit because I was
2 just sitting at the door waiting for his dumb ass to come
3 back and he ain't come back yet.

4 What door. Dominique left him there because he was
5 doing a mission. What happened to the friend girl and
6 the homeboys and the package.

7 Then he starts, okay, so I was waiting for
8 Dominique to come back to the room to come get me from
9 down there. I happened to see her. I asked her if I
10 could give her gas money to go to Hampton by Schofield.
11 She said she wasn't around here so I started giving her
12 directions. She started talking about how old she was,
13 the boyfriend, and I said I'm just so sorry, I'm not
14 feeling well. And the girl threw the car into reverse
15 and was speeding it backwards, went over the curb,
16 crashed into the tree. Now I passed out. She made that
17 car wreck into the tree.

18 Then he adds this. Oh, all of a sudden, he goes, I
19 was calling Dominique's phone and he wasn't picking up.
20 All of a sudden I seen her and I asked her for a
21 cigarette. I asked her, can I get a ride. And she said,
22 you ain't no killer are you. So I thought somebody was
23 in the car with her. So I opened up the back door and
24 realized that there wasn't nobody in the front seat so I
25 got in the front seat.

1 So now he's trying to get fancy with his story
2 because I guess he feels like if he throws in some
3 details it makes it more believable. Then he goes again,
4 she just puts the car in reverse and steps on the damn
5 gas and then I realize she was fixing to go into the damn
6 tree. Okay. This person is driving backwards. What did
7 you do, look out the back window and suddenly see a tree.

8 So now, I grabbed onto the wheel but me grabbing on
9 the wheel just didn't make it no better because she went
10 over the hump. And that's when the gun came out of my
11 pocket.

12 Then on December 24th, Christmas Eve, at 1747.
13 Dominique. Says, I'm riding around with Dominique so I
14 can go to the room and get a package. They weren't in
15 the room. Dominique drove off. I went to the front
16 office to call on his phone and he wasn't picking up. I
17 told him to come back in about 30 to 35 minutes. So I
18 was sitting on the door, out the door on the curb and I
19 saw her. She stuck her head out the window and looked at
20 me like what the hell. I asked for a cigarette. When I
21 got the cigarette from her I sat back down and some time
22 was just going on. Dominique still wasn't back so I
23 asked her if I could give her six or \$7 in gas so she
24 could drop me off over there on Hampton. He was, like,
25 all right. Cool.

1 So I opened the back seat. No one was there so I
2 went to the front seat. She was taking me home and she
3 turns and she was talking and telling stories. And all
4 of a sudden he stopped the car, put it in reverse. I
5 looked at her. She stepped on the gas. She started
6 speeding backwards so fast for just no odd reason. I
7 grabbed ahold of the wheel, like, damn, what's going on.
8 The car starts turning going over the curb and it hits
9 the curb, the .25 falls out of my pocket and it hits it
10 floor. And I didn't, I didn't pick it up because I was
11 too concerned about getting the car backup right.

12 Christmas Eve. He gives so many different stories
13 about this gun. Dominique initially -- in the dash-cam
14 he says Dominique had the gun in the car. It's
15 Dominique's gun, he just so happened to leave it with
16 me. When I got it in the jacket I realized it was just
17 so small you didn't even realize it was there. So he's
18 walking around and this so-small gun he doesn't know it's
19 there, but apparently when they go backwards in this
20 fight for the steering wheel and crash, he does know that
21 it fell out. And he does know that it fell out on the
22 floorboard.

23 He stole that gun. It was in his pocket. He said,
24 I'm going to get that white girl.

25 So now he's talking to his female friend on these

1 phone calls. And he starts asking for her. I need you
2 to go up to the hospital and look for a video. And
3 starts describing, go up Hampton, look to the buildings
4 on the left and to the buildings on the right. He's
5 giving her these directions. Turn on this street, go up
6 there, there's buildings left, buildings right, look at
7 the back, look at the front. And she goes, why. And he
8 goes 12-21-13 at 1517 at the 12 minute mark. She goes
9 why. And goes, that's going to help me. It's going to
10 really, really help me. And there are six seconds. It's
11 going to really, really help me to prove my innocence.

12 He has to think about why he needs to tell her to go
13 look for that video. He had to stop and think about why
14 he needed her to look.

15 This phone call. One minute into the phone call,
16 1657, he's asking this female friend if she's sure that
17 she did not find any cameras. He's asking about all the
18 buildings. And she says, I looked, I looked at all the
19 buildings and I couldn't find any cameras.

20 Oh my gosh. This should be crushing. Right.

21 These videos were going to prove his innocence. This
22 girl did not jump out of that car. I did not tackle
23 her. I did not sexually assault her. I did not drag her
24 back into that car. I, none of this happened. These
25 cameras are going to prove my innocence. He should be

1 crushed.

2 Christmas Eve. It is a Christmas Eve Miracle.
3 12:05 he goes, yeah, well, I'm going to be good, man,
4 it's just, I'm just going to be, it's just life, I mean,
5 just experience a different feeling inside and
6 everything. I'm discouraged one minute and one minute
7 I'm going to be okay. But with you telling me there
8 ain't no cameras over there, you ain't seen no cameras
9 and stuff, that made me feel a whole lot better. A whole
10 lot better. Because he thinks now that this will be a he
11 said/she said. Those videos would have captured
12 everything, everything that Katie told you happened to
13 her.

14 Katie was the perfect victim. She had a lot going
15 on, a lot. And her gift of fear was not there. She had
16 been up for days, hours. She had taken Adderall. She
17 was stressed out about her brother. Boyfriend gets into
18 a fight with her. He has now left her at the hotel. She
19 is exhausted, upset. She goes over there at that gas
20 station and you see her on that video and she is walking
21 fine.

22 She comes back to the hotel and she is sitting
23 there. Dominique says there at that gas station the
24 Defendant sees her and says, I'm going to get that girl.
25 And as she's leaving they go up and follow her to see

1 where she's going. They're at the high point of that
2 bank. Follow her down, pull into that hotel, Quality
3 Inn, captures it on video him stopping, the shadow
4 getting out of that car. And then she says he
5 approaches. Hey, can I have a cigarette. And they start
6 to chat.

7 She probably was venting and saying, oh bad day,
8 you know, yeah I'm here, too. My brother's here at the
9 hospital. My boyfriend just left. We're having an
10 argument. And he picks that. How can I not, not get her
11 gift of fear to come out. I've got to be friendly.

12 Yeah, me too. I got a family member that's in the
13 hospital, too. Man, do you think can you give me a ride
14 over there to go see him.

15 And Katie's judgment, her judgment is impaired and
16 her gift of fear has not been activated. And she says
17 sure. I'm in the same situation. This is a bad day.
18 Get on in. And she drives him over there. Drives --
19 unfortunately listens to him. Drives around the corner,
20 starts going down that dark street. And then when she
21 says, I don't think there's another entrance that gun is
22 in her cheek and he says, drive or I'll kill you.

23 Jumps out. Flees to the grass. He tackles her,
24 straddles her. Sticks his penis in her mouth after
25 hitting her in back of the head, hitting her in the

1 face. She has the injuries to her hands that would be
2 consistent with being hit. She is trying to protect her
3 face. She says, I have money. That is what she needed
4 to say, I have money.)

5 Okay. Grabs her by the hair, drags her back to the
6 car, gets her in. Drive. Katie now is going to fight.
7 I am not going any further down this dark road. Decides,
8 I am backing up. I'm getting back to that hospital. And
9 they start struggling.

10 And I bet if you are trying to get some leverage
11 with your body to fight somebody off, she probably hit
12 that a gas pedal harder than she meant to. She is trying
13 to get leverage to get this guy off of her and fight him
14 off. And it slams it so hard into that tree her car is
15 crushed. All of that debris goes soaring outwards and
16 her car lands on the opposite side of that street.

17 She is going to fight. She rolls down that
18 window. She doesn't want to wake him up. Gets him off
19 her. Gets out the window. And hides, and then thinks,
20 what am I doing. Crawls to the bushes and hoping that
21 one will come by. Betty Corley does. And Betty Corley
22 sees that emotion, sees everything that Katie has
23 experienced in that second and says get in this car and
24 drives her to the hospital.

25 The 9-1-1 call, you can hear her screaming, what is

1 happening to me. And they are saying, stop, stop or I
2 will make you leave the hospital. But she is continuing
3 to fight, you will listen to me. There is a man with a
4 gun.

5 And then you have the video of him being pulled out
6 of the back seat of that car. And that gun is sitting
7 there. Every single piece of evidence backs up what
8 Katie has told you, everything. Everything. She has
9 absolutely no reason to come in here and tell you a
10 story. None.

11 When we began on Tuesday afternoon selecting you to
12 sit and listen to this case we began a course to seek
13 justice in this case. We stayed on that course with
14 every single piece of evidence that came in. Every
15 witness, every photo, every video, every swab, and the
16 gun.

17 The Defendant's weapon of choice to instill fear in
18 Katie to force her to submit to his violence, to his
19 control.

20 The irony of that gun is that that gun is actually
21 what gave Katie the fight to survive. And it started her
22 fight or flight. And she continued from that moment that
23 that gun was placed in her cheek, she started that fight.
24 And she has been fighting every single day since.

25 She fought very bravely. And it was because of

1 that fight that she was able to come into this courtroom
2 and testify to the horrors that she experienced.

3 Today, we ask you to follow the law and the
4 evidence and justice, and to find him guilty of criminal
5 sexual conduct in the first degree, kidnapping,
6 possession of a weapon during the commission of a violent
7 crime, possession of a stolen pistol, and unlawful
8 carrying of a weapon, and finish this fight for justice.

9 Thank you.

10 THE COURT: We're going to take a brief
11 break. My remarks are going to last about 20
12 minutes and after that your lunch. I believe
13 it's here.

14 THE BAILIFF: Yes, sir.

15 THE COURT: And the case is going to be
16 turned over to you. You can eat lunch while
17 you're discussing it but I guess some of the
18 court people -- we need a short break.

19 (Jury exits courtroom at 1:34 p.m. The
20 jury enters the courtroom at 1:39 p.m., and the
21 trial resumed:)

22

23

24

25

1 JUDGE'S CHARGE TO THE JURY

2 THE COURT: Ladies and gentlemen,

3 Mr. Foreman, you've now heard all the testimony
4 in this case and you've heard the arguments of
5 both the State and the Defendant. And you will
6 take with you to the jury room all of the
7 evidence that has been introduced in this case.

8 And now it's my responsibility to explain
9 the law to you of South Carolina as it applies to
10 this case. Now, some of what I tell you you may
11 have already heard this morning because before
12 all arguments or summations by the attorneys I
13 always give them a copy of what I plan to tell
14 you. So they know pretty much what I will tell
15 you the law is.

16 And if they tell you anything is different
17 than that, then please accept the law as I
18 explain it to you.

19 Now I remind you that during this trial you
20 and I have certain duties or have had certain
21 duties to perform. As the Trial Judge it's my
22 responsibility to preside over the trial. And I
23 also have the duty to rule on the admissibility
24 of the evidence that's offered during the course
25 of the trial.

1 You're only to consider the competent
2 evidence that's been presented to you. If there
3 was any testimony that was, I ordered stricken
4 from the record during the trial of the case, you
5 must disregard that testimony.

6 You're only to consider the testimony which
7 has been presented from this witness stand and
8 any exhibits which may have been made part of the
9 record in this case.

10 I have the additional duty to charge you
11 the law as it's applicable to this case. And as
12 the Presiding Judge I'm the sole judge of the law
13 in this case and it's your duty, as I told you
14 earlier, to accept and apply the law as I now
15 state it to you.

16 If you already have any idea what the law
17 is or what the law ought to be and it does not
18 agree with what I now tell you the law is you
19 must abandon that idea because you're sworn to
20 accept the law and apply it exactly as I state it
21 to you.

22 In every case tried before a jury the jury
23 is becomes sole and exclusive judge of the fact.

24 A trial judge cannot intimate, comment or make
25 any statement to a trial jury about the facts in

1 the case. Since you the jury are the sole fact
2 finders in this case, you're not to infer from
3 anything that I might have said or done during
4 the process of this trial, in ruling upon the
5 admissibility of evidence, or anything else that
6 I say now during the course of this instruction
7 that I have any opinion about the facts in this
8 case.

9 The law does not allow me to have an
10 opinion about the facts of the case. This is a
11 matter solely for you, the jury, to determine.

12 As jurors it's your duty to determine the
13 effect, value, weight, and truth of the evidence
14 presented during this trial.

15 Now I remind you again the fact that
16 warrants were issued and that Mr. Fuller was
17 arrested, charged and indicted in this case is
18 not evidence in this case and cannot be
19 considered by you as any evidence in the case,
20 nor does it create any presumption or inference
21 of guilt. These documents which I showed you
22 earlier are simply the formal written statements
23 which contain the charges against Mr. Fuller.

24 They're the formal documents by which a case is
25 brought into court.

1 The indictments in this case charge several
2 different offenses against Mr. Fuller. And as
3 you know by now, they are: Kidnapping, criminal
4 sexual conduct in the first degree, assault and
5 battery in the first degree, unlawful carrying of
6 a pistol, possession of a stolen pistol, and
7 possession of a weapon during the commission of a
8 violent crime.

9 Now each indictment charges a separate and
10 distinct offense. You must decide each
11 indictment on the evidence and law applicable to
12 that indictment. In other words, Mr. Fuller may
13 be convicted or acquitted on any or all of the
14 offenses charged and you will be asked to write a
15 separate verdict of guilty or not guilty on each
16 verdict.

17 Now Mr. Fuller has pled not guilty to these
18 indictments. And that plea puts the burden on
19 the State to prove the Defendant guilty. I told
20 you before, a person charged with committing a
21 criminal offense in South Carolina is never
22 required to prove himself or herself innocent.

23 And I charge you that's an important rule
24 of law that the Defendant in a criminal trial no
25 matter what the seriousness of the charge may be

1 will always be presumed to be innocent of the
2 crime for which the indictment was issued unless
3 guilt has been proven by evidence satisfying you
4 of that guilt beyond a reasonable doubt.

5 This presumption of innocence does not end
6 when you begin your deliberations but it
7 accompanies the Defendant throughout the trial
8 and until or unless you reach a verdict of guilt
9 based on evidence satisfying you of that guilt
10 beyond a reasonable doubt.

11 It's been said the presumption of innocence
12 is like a robe of righteousness placed about the
13 shoulders of Mr. Fuller which remains with him
14 until or unless it has been stripped of him by
15 evidence satisfying you of his guilt beyond a
16 reasonable doubt.

17 And the presumption of innocence is not a
18 mere legal theory. It's not just a legal
19 phrase. It's a substantial right to which every
20 defendant is entitled unless you, the jury, are
21 satisfied from the evidence of Mr. Fuller's guilt
22 beyond a reasonable doubt. And that applies to
23 each of the indictments charged.

24 What is a reasonable doubt in the law?
25 Well, a reasonable doubt is the kind of doubt

1 that would cause a reasonable person to hesitate
2 to do something. I repeat that. What is a
3 reasonable doubt in the law? A reasonable doubt
4 is the kind of doubt that would cause a
5 reasonable person to hesitate before acting.

6 The State has the burden of proving Mr. Fuller
7 guilty beyond a reasonable doubt. Some of you may have
8 served as jurors in civil cases where you were told that
9 it's only necessary to prove that a fact is more likely
10 true than not true such as by the greater weight or
11 preponderance of the evidence. But in criminal cases the
12 State's proof must be more powerful than that. It must
13 be beyond a reasonable doubt.

14 Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the Defendant's guilt.

16 There are few things in this world that we know with
17 absolute certainty. And in criminal cases the law does
18 not require proof that overcomes every possible doubt.

19 If, based on your consideration of the evidence,
20 you are firmly convinced that the Defendant is guilty of
21 the crime charged, you must find him guilty. On the
22 other hand, if you think there's a real possibility that
23 the Defendant is not guilty, you must give him the
24 benefit of the doubt and find him not guilty.

25 Now as counsel told you, there's two types of

1 evidence which are generally presented during a trial,
2 direct evidence and circumstantial evidence. Direct
3 evidence is the testimony of a person who claims to have
4 actual knowledge of a fact such as an eyewitness.
5 Circumstantial evidence is proof of a series or chain of
6 facts or circumstances indicating the existence of some
7 fact.

8 The law makes absolutely no distinction between the
9 weight or value to be given either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than of
12 direct evidence. You should weigh all of the evidence in
13 the case. After weighing all of the evidence, if you're
14 not convinced of the guilt of the Defendant beyond a
15 reasonable doubt, you must find him not guilty.

16 Now necessarily you must determine the credibility
17 of the witnesses who have testified in this case.
18 Credibility simply means believability. It becomes your
19 duty as jurors to analyze and evaluate the evidence and
20 determine which evidence convinces you of that truth, of
21 its truth. In determining the believability of a witness
22 who testified in this case, you may believe one witness
23 over several witnesses, or several witness over one
24 witness. You may believe a part of the testimony of a
25 witness and reject the remaining part of the testimony of

1 that same witness.

2 You may believe the testimony of a witness in its
3 entirety or reject the testimony of a witness in its
4 entirety. You may also consider whether any witness has
5 exhibited to you any interest or bias or prejudice or
6 other motive in this case. You may also consider the
7 appearance and manner of a witness while on the witness
8 stand.

9 And in criminal sexual conduct cases the testimony
10 of a victim need not be corroborated.

11 Now, the rules of evidence don't ordinarily permit
12 witnesses, what I refer to as lay witnesses, to testify
13 about their opinions. Lay witnesses are general
14 witnesses called to testify as to facts that they
15 witnessed or saw or heard. But we have an exception in
16 our rules for people we call experts. And we allow them
17 if they're duly qualified, and you saw that process here
18 today, to offer their opinions.

19 A witness who by education, experience -- and
20 experience has become an expert in some art or science or
21 profession may state an opinion to you as to relevant and
22 material matters in which the witness claims to be an
23 expert and may also state the reasons for that opinion.
24 But you should consider any expert opinion received in
25 evidence in this case and, like any other evidence, give

1 it the weight you think it deserves. If you decide the
2 opinion of an expert is not based on sufficient education
3 and experience, or if you conclude that the reasons given
4 in support of the opinion are not sound or that the
5 opinion is outweighed by other evidence, you may
6 disregard the opinion of that expert in its entirety.

7 An expert witness, in other words, is to be given
8 no greater weight than that of other witnesses simply
9 because the witness is an expert. Further, you're not
10 required to accept an expert's opinion even though it's
11 not contradicted.

12 Now in this case you have seen what we call a
13 statement that was the video of the Defendant at the
14 detention center that was alleged to have been made by
15 Mr. Fuller. And I admitted it into evidence. And while
16 the Court has determined that the statements made in that
17 statement are admissible, I instruct you that you have to
18 make the ultimate decision of whether or not Mr. Fuller
19 made those statements.

20 If he did make the statements, you must determine
21 whether the statements were made by Mr. Fuller
22 voluntarily and of his own free will. This means that
23 the statements were not caused by pressure or fear or
24 force or threats or coerce or intimidation or by hope of
25 a promise of leniency or a reward of any kind.

1 In determining whether the statement was voluntary
2 you should consider both the characteristics of the
3 Defendant and the details of the questioning. Some of
4 the factors that you can consider are the age of the
5 Defendant, the Defendant's education or lack thereof, his
6 his mental ability or capacity, the Defendant's
7 background, environment and the place and length of the
8 detention, and the lack or advice -- advice or lack
9 thereof, to the Defendant of his constitutional rights
10 including but not limited to the right to remain silent;
11 that any statement could have been used against him in a
12 court of law; the right to have a lawyer present; that if
13 he could not afford a lawyer would be appointed to
14 represent him without any cost; and that he could stop
15 making the statement at any time.

16 You must carefully consider all the surrounding
17 circumstances before you give any weight to the alleged
18 statement.

19 The State has the burden of proving beyond a
20 reasonable doubt that the statement was voluntary.
21 If you determine it was, you may give the statement any
22 further consideration that you deem proper. If you
23 decide any weight -- you must decide what weight, if any,
24 should be given to that statement. If you determine the
25 alleged statement was not the free and voluntary

1 statement of Mr. Fuller, you should not consider it at
2 all.

3 Now in order to establish criminal liability or
4 criminal guilt, criminal intent is required. For
5 example, the mental state required to be proven by the
6 State for a particular crime might be some specific
7 purpose or recklessness or criminal negligence. Criminal
8 intent must be proven by the State beyond a reasonable
9 doubt. Criminal intent is always a matter that must be
10 determined by the jury from the facts and circumstances
11 surrounding the situation. There's no way to prove
12 intent to a mathematical certainty. There's no way
13 medical science can dissect a person's brain to determine
14 what the person had in mind. So the law says that
15 criminal intent may about inferred from the circumstances
16 shown to have existed at the time and place of the
17 event.

18 And this is how you make a determination of whether
19 or not the element requiring intent was present. It's
20 not necessary to establish intent by direct and positive
21 evidence, but intent may be established by inference in
22 the same way as any other fact, taking into consideration
23 the acts of the parties and all the facts and
24 circumstances of the case.

25 In other words, criminal intent is a mental state,

1 a conscious wrongdoing. It's up to you to determine what
2 Mr. Fuller intended to do based on the circumstances
3 shown to have existed in this case.

4 I'm now going to go through the six different
5 charges that the State has brought against Mr. Fuller.

6 Kidnapping is the first of those. Mr. Fuller is
7 charged with kidnapping. The State must prove beyond a
8 reasonable doubt that Mr. Fuller knowingly and unlawfully
9 confined or seized or inveigled or kidnapped or carried
10 away another person without the authority of law.

11 To do a thing unlawfully is to do it willfully and
12 against the law. And not knowingly means with knowledge
13 consciously and not accidentally.

14 To seize someone means to take hold of suddenly or
15 forcibly. And confine means to limit or restrict or
16 enclose within bounds or imprison or shut up, short --
17 shut or keep in.

18 Inveigle means to lure or entice or lead astray a
19 person by false representations, promises or other
20 deceitful means. And decoy means to lure away as to
21 entice a person into a trap. And to kidnap is to remove
22 a person against his or her will by unlawful force or by
23 fraud. To abduct means to carry off secretly or by force
24 for an illegal purpose. And the carrying away obviously
25 means to remove.

1 The State does not have to prove that Mr. Fuller
2 did all of these things. Instead, if you find beyond a
3 reasonable doubt that Mr. Fuller did any of these things
4 you may find him guilty of kidnapping.

5 Something that is done without the authority of law
6 is something which the law does not sanction, permit,
7 allow, condone or provide justification for. Kidnapping
8 does not have to be for any personal or monetary gain or
9 for any illegal purpose, but it may be for any reason
10 whatsoever.

11 Mr. Fuller's charged in the second indictment with
12 criminal sexual conduct in the first degree. The first
13 element that the State must prove beyond a reasonable
14 doubt is that Mr. Fuller engaged in a sexual battery with
15 the victim. A sexual battery is sexual intercourse,
16 cunnilingus, fellatio, anal intercourse, or any
17 intrusion, however slight, upon any part of a person's
18 body or of any object into the genital or anal openings
19 of another person's body except when the intrusion is
20 accomplished for medical purposes.

21 If you find that the State has not shown beyond a
22 reasonable doubt that a sexual battery occurred, you
23 would stop deliberating this charge and your verdict
24 would have to be not guilty of criminal sexual conduct in
25 the first degree.

1 But if you find that a sexual battery did occur,
2 you must then decide whether the State has proven beyond
3 a reasonable doubt that Mr. Fuller used aggravated force
4 to accomplish the sexual battery.

5 Aggravated force means the use of physical force or
6 physical violence of a high and aggravated nature to
7 overcome the victim. And this includes the threat of
8 using a deadly weapon.

9 And, two, the victim submitted to the sexual
10 battery was the State -- the second half of this is the
11 State must prove beyond a reasonable doubt that the --
12 you must decide whether the State has proven beyond a
13 reasonable doubt that the victim submitted to the sexual
14 battery while she was also the victim of a forcible
15 confinement, kidnapping, robbery, extortion, burglary,
16 housebreaking, or any other similar act or offense.

17 The third charge. Mr. Fuller's charged with the
18 offense of assault and battery in the first degree. The
19 State must prove beyond a reasonable doubt Mr. Fuller
20 unlawfully injured another person and the act occurred
21 during the commission of a robbery, burglary, kidnapping
22 or theft.

23 The State may also show that Mr. Fuller unlawfully
24 offered or attempted to injure another person with the
25 present ability to do so, and the act occurred during the

1 commission of a robbery, burglary, kidnapping or theft.

2 The fourth charge. Mr. Fuller's charged with
3 unlawful carrying of a pistol. The State must prove
4 beyond a reasonable doubt that Mr. Fuller carried a
5 pistol about his person whether concealed or not. A
6 weapon about the Defendant's person if it's readily
7 accessible and convenient for immediate use. The pistol
8 need not actually be touching the person of Mr. Fuller.

9 The fifth charge is that he was in possession of a
10 stolen pistol. Mr. Fuller is charged with possession of
11 a stolen pistol. The State must prove beyond a
12 reasonable doubt that the pistol was previously stolen.
13 Mr -- second, Mr. Fuller bought, sold, transported,
14 pawned, received or possessed the stolen pistol. And,
15 three, at the time Mr. Fuller bought, sold, transported,
16 or pawned, or received or possessed the pistol he knew or
17 had reason to believe that it had been stolen.

18 And finally, Mr. Fuller is charged with possession
19 of a weapon during the commission of or attempt to commit
20 a violent crime. The State must prove beyond a
21 reasonable doubt that Mr. Fuller was in possession of a
22 firearm or visible displayed what appeared to be a
23 firearm during the commission of a violent crime.

24 A firearm means any machine gun, automatic rifle,
25 revolver, pistol, or any weapon which will, or is

1 designed to, or may be readily converted to, expel a
2 projectile such as a bullet.

3 In order to find Mr. Fuller guilty of possession of
4 a weapon during the commission of a violent crime, you
5 must first find whether Mr. Fuller -- you must first find
6 Mr. Fuller guilty of either committing a violent crime or
7 attempting to commit a violent crime.

8 And kidnapping and criminal sexual conduct in the
9 first degree are violent crimes.

10 The State must prove beyond a reasonable doubt that
11 the weapon further advanced or helped in the commission
12 of the crime.

13 Now, ladies and gentlemen, I always conclude with
14 this because I think it's a very important point of law.
15 I instruct you and emphasize to you the fact that
16 Mr. Fuller did not testify in this case is not a factor
17 to be considered by you in any in your deliberations or
18 in your consideration on the question of his guilt or
19 innocence. It must not be considered by you in any
20 manner whatsoever.

21 Mr. Fuller has the constitutional right to remain
22 silent. And the assertion of this right must not be
23 considered by you in your deliberations. I repeat.
24 Under your oath you are to draw no conclusion whatsoever
25 from the fact that Mr. Fuller did not testify. The fact

1 that he did not testify should not even be discussed in
2 the jury room. The burden of proof, as I've stated to
3 you, is on the State. Mr. Fuller is not required to
4 prove his innocence. The burden of proof remains on the
5 State to prove guilt beyond a reasonable doubt.

6 Now, I will send to you a verdict form. And the
7 possible verdicts are, and it probably should be pretty
8 offense: They are guilty or not guilty of kidnapping;
9 guilty or not guilty of criminal sexual conduct in the
10 first degree; guilty or not guilty of assault and battery
11 in the first degree; guilty or not guilty of unlawful
12 carrying of a pistol; guilty or not guilty of possession
13 of a stolen pistol; and guilty or not guilty of
14 possession of a weapon during the commission of a violent
15 crime.

16 Now there's no significance whatsoever to the order
17 in which I state these possible verdicts. It's simply
18 one must be stated first. Your verdict must not be based
19 on sympathy or prejudice or any other factor that's not
20 in evidence in this case.

21 Ladies and gentlemen, all 12 of you must agree on a
22 verdict on each of the indictments. In other words, your
23 verdict must be unanimous, a unanimous one. And at any
24 time that all jurors are not present in the jury room,
25 the jury must stop deliberating until all 12 jurors are

1 present.

2 Mr. Foreman, when the jury agrees on the verdict,
3 you would write the verdict on the verdict form and sign
4 your name as foreperson and knock on the jury room door,
5 inform the bailiff you've reached a verdict, and at that
6 time we'll receive you back in the courtroom.

7 I ask you now to return to the jury room. I told
8 you it's up to you whether you deliberate during your
9 lunch period or not. The case is being turned over to
10 you. It's completely up to you how you choose to
11 proceed.

12 I will ask you not to start your deliberations
13 until all of the evidence has been brought to the jury
14 room and the verdict form has been brought to the jury
15 room at which time you may begin your deliberations.

16 Now those of you who have taken notes, I noticed
17 several of you have, those notes can be used for your on
18 recollection of what went on during the course of this
19 trial. They're not to be used to try to convince
20 somebody else that you took a better note than they did,
21 or you wrote something down that they neglected to write
22 down. They're for your own personal benefit. And that's
23 why I allow jurors to take notes, particularly during a
24 lengthy and complicated trial. So, please heed my
25 instructions in that regard.

1 Now these -- the videos, of which there were many,
2 can be played again for you. I think we can get that
3 thing through the door. Oh, let me back up. If you need
4 to see any of them, we're going to send a laptop, a video
5 in there instead of trying to wheel this in. And you can
6 play. And it's, I understand it's a clean laptop
7 shouldn't be anything else on it. So if you put the disk
8 in it ought to play right away. Just let the bailiff
9 know if you wish the see the videos and let them know
10 which -- well, you'll have them in there so you can -- I
11 guess that's about it, ladies and gentlemen.

12 The case is now in your hands. Please retire to
13 the jury room. Thank you very much.

14 (Jury exits courtroom at 2:06 p.m.)

15 THE COURT: Any objection to releasing the
16 alternate at this time?

17 MS. BODMAN: None from the State.

18 MS. ALVES: No, Your Honor.

19 THE COURT: All right. I'll do that in
20 just a moment.

21 Any exceptions to the charge from the
22 State?

23 MS. BODMAN: None from the State, Your
24 Honor.

25 MS. ALVES: Judge, I'm -- just one. And I

1 apologize. I was looking at something else and I
2 may have missed it.

3 But did you tell the jury that they had to
4 wait until all of them were present in the room?
5 Thank you. I missed that. I was looking at
6 something else.

7 And that goes to my second issue that, I
8 know early on in your charge you told them that
9 each indictment was a separate and distinct
10 offense and that they had to decide each one
11 separately. But at the end of your charge, the
12 last thing they heard was that they must agree on
13 the verdict and the verdict must be unanimous.

14 And my concern is that I don't know if they
15 would have clearly understand it has to be
16 unanimous for each individual indictment but they
17 could have different verdicts for each --

18 THE COURT: I thought I said that.

19 MS. ALVES: Well, you said early on in your
20 charge --

21 THE COURT: I mean, in the latter part I
22 thought I said that they had to be unanimous on
23 each of the, each verdict. Maybe I didn't.

24 MS. ALVES: It didn't say for each
25 individual verdict. You just said it had to be

1 unanimous as a whole.

2 THE COURT: I know that's what I read but I
3 think I paraphrased something in there.

4 MS. BODMAN: The last thing you said was
5 what she's saying but just before you said each
6 charge. That's what I heard.

7 THE COURT: I think I did, Ms. Alves.

8 MS. ALVES: Yes, sir.

9 THE COURT: If you want the court reporter
10 to play it back, I'm going to let them start
11 deliberating. They're nowhere near reaching and
12 a verdict. And I'll bring them back out and
13 reinstruct them if I didn't say it.

14 MS. ALVES: Yes, sir. Thank you.

15 THE COURT: All right. Bring Mr. 19.

16 MS. ALVES: Judge, also I don't remember
17 what exhibit the gun is but I think the box with
18 the gun also contains an ammunition clip and
19 ammunition.

20 THE COURT: I won't send the clip in.

21 MS. ALVES: Thank you.

22 THE COURT: But thank you for reminding me.

23 MS. ALVES: Yes, sir.

24 (Alternate juror enters courtroom.)

25 THE COURT: All right. Mr. 19.

1 THE JUROR: Yes.

2 THE COURT: I've got to release you. I
3 know you understand that. I will tell you
4 truthfully we lost one juror. It's very -- it's
5 not very -- it's not unusual to lose jurors.
6 You'd be surprised how many grandmothers get
7 sick, children get sick, cars break down, any
8 number of things. So it's really necessary that
9 we have alternates to serve.

10 And, although you may feel like you'd
11 rather be in there with your fellow jurors in
12 deliberations I obviously can't let you do that.
13 So I'm going to release you. I will tell you
14 that you're certainly welcome to stay. Sometimes
15 alternates wish to stay to see what their fellow
16 jurors do. And it's a public courtroom, you're
17 certainly willing to do that. It may be
18 sometime. I'll tell you that. Trying to get 12
19 opinions to agree on everything sometimes takes a
20 good bit of time.

21 But if you don't stay, I want to thank you
22 for your service and I hope you've seen a little
23 bit about what the judicial system here in Aiken
24 County is like.

25 These things aren't always pretty. It's

1 sort of like making sausage sometimes. We do
2 thank you for your service and you're free to go.

3 THE JUROR: Okay. Thank you.

4 THE COURT: Clerk, does he get a check?

5 THE CLERK: They'll get him an excuse.
6 She's on the way.

7 THE COURT: If you need work excuses or
8 anything like that she's on her way.

9 THE JUROR: Yes.

10 THE COURT: Good luck to you, sir.

11 THE JUROR: Okay. Thank you.

12 THE COURT: Anything further?

13 MS. BODMAN: No, sir.

14 MS. ALVES: No, sir.

15 THE COURT: Stand at ease until we hear
16 from the jury.

17 Let's collect the evidence, please. Verify
18 that it's there.

19 (Attorneys comply. Deliberations commence
20 at 2:12 p.m. At 2:40 p.m., the trial continued:)

21 THE COURT: Bring the jury, please.

22 (Jury enters courtroom at 2:40 p.m.)

23 THE COURT: All right. Ladies and
24 gentlemen, after you left the room the attorneys
25 told me that they thought that I had neglected to

1 explain something clearly to you.

2 And that is that each indictment charges a
3 specific crime and you have a verdict form as to
4 each indictment. Your verdict must be unanimous
5 on -- to find guilt on any one of those or all of
6 those charges. If you don't find guilt
7 unanimously, then it's not guilty.

8 I don't know if I made that clear in my
9 statement to you. You don't have to find him not
10 guilty unanimously but if you cannot find him
11 guilty unanimously that results in a not guilty
12 verdict on that indictment. Is that clear?

13 THE JURY (COLLECTIVELY): Yes, sir.

14 THE COURT: Okay. Now, Mr. Foreman, I
15 heard you mention something to the bailiff when
16 you came in. If you'll put that in writing.

17 Just make a note and let me know exactly what
18 you want, I'll respond to it. Okay?

19 FOREPERSON OF THE JURY: (Nods head.)

20 THE COURT: Okay. Thank you. You can do
21 that in the jury room. They'll bring it to me

22 (Jury exits courtroom at 2:42 p.m.)

23 THE COURT: Any exception from the State?

24 MS. BODMAN: No, sir.

25 THE COURT: From the Defense, Ms. Alves?

1 MS. ALVES: Yes, sir. I'm sorry. One
2 moment.

3 (conferring with Mr. Hayes.)

4 MS. ALVES: No exception, Judge. Thank
5 you.

6 THE COURT: All right. Apparently they're
7 going to -- let me just take this up with you.
8 We apparently are going to get a request from the
9 jury to give them some information about, as the
10 Foreman put it, the laws.

11 What's going to be your position if they
12 ask for the definition of the statute of each
13 indictment, for each indictment? We've printed
14 them on separate pages in anticipation of that
15 but I won't send -- you know, I've got the option
16 of bringing them back in and reading it again or
17 sending -- some judges I find, which I didn't
18 know in South Carolina, send the entire
19 instruction back to the jury room. I've never
20 done that. But I will send each of the six
21 charges back to them on separate sheets of paper
22 only with your consent.

23 We might as well discuss it because it's
24 coming.

25 THE BAILIFF: It's here.

1 THE COURT: Matter of fact it didn't take
2 long.

3 (Document handed to the Court.)

4 MS. BODMAN: My preference would be to send
5 the entire charge back and not just the crimes
6 but either to do, you know, the whole charge or
7 to bring them back and just, if they need the
8 crimes -- because we used the word I'm going to
9 charge you on the law, I'm just concerned about,
10 are they trying to use that same word and what
11 they mean in the same packet versus just the
12 crimes. So.

13 MS. ALVES: Judge, I would object to
14 sending a copy of the entire charge back. And my
15 preference would be if they ask about a specific
16 charge, a specific law to bring them back into
17 the courtroom.

18 THE COURT: Do you want me to reinstruct
19 them every time they want a charge on -- why not
20 send them -- I told you I've got them on a
21 separate sheet. Why not send it to them?

22 MS. ALVES: Can we talk about this for a
23 moment, Judge?

24 THE COURT: Sure.

25 MS. ALVES: Thank you.

1 (Attorneys conferring.)

2 THE COURT: I want to make it as simple as
3 I can for the jury.

4 MS. ALVES: Then that would be easier.
5 Would the charge be the one that you read, the
6 pages that you're sending back would be the ones
7 that you read?

8 THE COURT: Exactly. Right here. I'd
9 send -- I'd send my copy on just the specific
10 charges.

11 MS. ALVES: Just on the specific charges?

12 THE COURT: Not the general charge.

13 MS. ALVES: Not the general?

14 THE COURT: You said you've been doing this
15 a long time?

16 MS. ALVES: I have. And I've never seen
17 anybody do that.

18 THE COURT: Well, okay. I accept that.

19 My lawyer just pulled up a 2013 case from
20 the Court of Appeals: Trial Court acted within
21 its discretion in sending a copy of the entire
22 charge to the jury. Any error in the trial
23 court's decision to supply the jury with only one
24 copy of the charge solely to the foreperson was
25 not prejudicial. Three: Any error in trial

1 court's failure to instruct jurors against
2 picking and choosing from the entire charge was
3 not prejudicial. Four: Any error in trial
4 court's provision of written copy of the entire
5 charge to jury.

6 Covert is the next one which was the Jimmy
7 Williams' case where he sent the entire statute
8 back was not prejudicial. The jury charge on the
9 hand of one hand of all did not
10 unconstitutionally shift the burden of proof.
11 Judge Thomas, that's Seals, Judge Thomas, Judge
12 Lockemy dissented.

13 Trial court acted within its discretion to
14 send a written copy of the entire charge to the
15 jury during its deliberation despite jury's note
16 requesting only a copy of the printout of the
17 statute of the three charges of lynching,
18 pointing and presenting, conspiracy, and already
19 recharged the jury orally on the law of three
20 charged offenses in response to the jury's
21 earlier note requesting clarification on each
22 law.

23 MS. BODMAN: That's my preference. If
24 anything's going back to them then I would want
25 it to be the whole charge so they have all

1 applicable law as opposed to just sections.

2 MS. ALVES: I would definitely oppose the
3 whole charge going back.

4 THE COURT: Well, the Court says it's okay.

5 MS. ALVES: I know but --

6 THE COURT: Unless you can -- sorry?

7 MS. ALVES: They also said it was judicial
8 discretion and if we have to make a compromise on
9 that, I'd rather the individual charges go back
10 rather than the entire charge.

11 THE COURT: Let me read some more.

12 (Pause.)

13 THE COURT: I'll send back the six charges
14 as read from my set.

15 MS. ALVES: Yes, sir.

16 THE COURT: My original set.

17 MS. ALVES: Judge, is this note to give to
18 the court reporter?

19 THE COURT: She's got it marked. by the
20 way that case is State v. L-E-M-I-R-E, Lemire.

21 MS. ALVES: Yes, sir. Thank you.

22 THE COURT: So you won't be surprised next
23 time.

24 MS. ALVES: I won't. I will read it.

25 (Court's Exhibit No. 3, note from jury,

1 received into evidence.)

2 MS. BODMAN: And, Judge, we also have the
3 laptop that can go back with them.

4 THE COURT: Did they ask for it?

5 MS. BODMAN: No, but we just wanted you to
6 know it was here.

7 MR. POTTS: It's here.

8 (Deliberations continued. The trial
9 resumed at 3:55 p.m.:)

10 THE COURT: Counsel, the bailiff informs
11 the Court we've received a verdict. Are you
12 ready to receive the verdict?

13 MS. BODMAN: The victim is coming up from
14 the basement right now, Your Honor.

15 THE COURT: Okay.

16 (Pause.)

17 (At 3:56 p.m., the trial resumed:)

18 THE COURT: Is the State ready?

19 MS. BODMAN: Yes, sir.

20 THE COURT: Is the Defense ready?

21 MS. ALVES: Yes, sir.

22 THE COURT: All right. Bring the jury.

23 (Jury enters courtroom at 3:57 p.m.)

24 THE COURT: Mr. Foreman, has the jury
25 reached a verdict?

1 FOREPERSON OF THE JURY: Yes, Your Honor,
2 they have.

3 THE COURT: Will you hand it to the
4 bailiff, please?

5 FOREPERSON OF THE JURY: (Complying.)

6 THE COURT: Madam Clerk, will you publish
7 the verdict, please?

8 THE CLERK: Your Honor, we have the State
9 of South Carolina versus Michael Fuller,
10 Indictment Number 2014-GS-02-01308 through
11 013113.

12 With respect to the charge of kidnapping,
13 we, the jury, unanimously find the Defendant
14 guilty.

15 With respect to the charge of criminal
16 sexual conduct in the first degree, we, the jury,
17 unanimously find the Defendant not guilty.

18 With respect to the charge of assault and
19 battery in the first degree, we, the jury,
20 unanimously find the Defendant not guilty.

21 With respect to the charge of unlawful
22 carrying of a pistol, we, the jury, unanimously
23 find the Defendant guilty.

24 With respect to the charge of possession of
25 a stolen pistol, we, the jury, unanimously find

1 the Defendant guilty.

2 With respect to the charge of possession of
3 a weapon during the commission of a violent
4 crime, we, the jury, unanimously find the
5 Defendant guilty.

6 Signed by Foreperson Daniel Brown dated
7 February 19th, 2016.

8 Ladies and gentlemen of the petit jury, if
9 this is your verdict, please indicate so by
10 raising your right hand

11 THE JURY (COLLECTIVELY): (Complying.)

12 THE CLERK: Your Honor, all hands are
13 raised.

14 THE COURT: Thank you.

15 Any desire to poll the jury?

16 MS. ALVES: Yes, sir.

17 THE COURT: Please poll the jury, Madam
18 Clerk.

19 THE CLERK: As I call your number, please
20 answer the following.

21 Juror Number 175, is this your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Do you still agree?

24 THE JUROR: Yes.

25 THE CLERK: Juror 96, is this your verdict?

1 THE JUROR: Yes.

2 THE CLERK: And do you still agree?

3 THE JUROR: Yes.

4 THE CLERK: Juror 183, is this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: And do you still agree?

8 THE JUROR: Yes.

9 THE CLERK: Juror 195, is this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: Do you still agree?

13 THE JUROR: Yes.

14 THE CLERK: Juror 29, is this your verdict,
15 and do you still agree?

16 THE JUROR: Yes.

17 THE CLERK: Juror 130, is this your verdict
18 and do you still agree?

19 THE JUROR: Yes.

20 THE CLERK: Juror 128?

21 THE JUROR: Yes.

22 THE CLERK: Is this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: And do you still agree?

25 THE JUROR: Yes.

1 THE CLERK: Juror 191, is this your
2 verdict, and do you still agree?

3 THE JUROR: Yes.

4 THE CLERK: Juror six, is this your verdict
5 and do you still agree?

6 THE JUROR: Yes, yes.

7 THE CLERK: Juror 148, is this your verdict
8 and do you still agree?

9 THE JUROR: Yes.

10 THE CLERK: Juror 26, is this your verdict
11 and do you still agree?

12 THE JUROR: Yes.

13 THE CLERK: Juror 65 --

14 THE JUROR: Yes.

15 THE CLERK: -- is this your verdict, and do
16 you still agree?

17 THE JUROR: Yes.

18 THE CLERK: All jurors have been polled,
19 Your Honor.

20 THE COURT: All right. All right. Ladies
21 and gentlemen of the jury, thank you very much.

22 Now, this proceeding is not quite
23 complete. In South Carolina just because of the
24 volume of cases we have and the fact that most of
25 us who sit on the bench are circuit judges, it's

1 incumbent upon us to, when a guilty verdict is
2 rendered by a jury to proceed with sentencing
3 immediately.

4 Now, you can stay for that if you wish to
5 do so. Some jurors choose to stay and watch the
6 sentencing proceeding. It usually doesn't take
7 very long. There may be a few minutes, we may
8 have to take a few minutes break while the
9 paperwork is being done. And if so, you can tell
10 the bailiffs that you'd like to stay or you're
11 certainly free to leave.

12 But before you make that decision, I do
13 want to thank you for your service. I don't know
14 if you remember that earlier in the week when we
15 had the full jury panel here I told them, and
16 I'll tell you again, that this system can do
17 without me, it can do without these attorneys but
18 it certainly can't do without you. You're such
19 an important part of the judicial system of this
20 county and this state and this nation that your
21 role as jurors was written into the Constitution
22 of the United States some 250 years ago.

23 And we have had people live and die to
24 preserve this system and it's a very valuable
25 part of our system. But it doesn't work without

1 citizens who are willing to come and sit and make
2 these decisions.

3 So I'm going to excuse you now. You are
4 free to go. If you'll go back to your jury room
5 for just a minute, collect your belongings.
6 Those of you who wish to stay, the bailiffs will
7 bring you back in. Those of you who wish to
8 leave certainly are free to leave at this time.

9 So good luck to all of you. Thank you very
10 much.

11 THE JURY (COLLECTIVELY): Thank you.

12 (Jury exits at 4:03 p.m.)

13 THE COURT: Any motions?

14 MS. ALVES: Yes. your honor, taking the
15 evidence in the light most favorable to the
16 State, there was no evidence that would have
17 supported convictions for the charges of
18 kidnapping and possession of a weapon during the
19 commission of a violent crime.

20 Specifically as to the possession of a
21 stolen pistol, the only evidence that would have
22 tended to support that was the testimony of
23 Dominique Paige who, Your Honor, based on the
24 multiple different stories that he gave and even
25 the tenor of his testimony, I don't think that

1 the jury could have -- they didn't have any
2 credible evidence at all that, in which to
3 support that verdict of possession of a stolen
4 pistol against Mr. Fuller.

5 Judge, in addition, I think that with these
6 split verdicts, I think that the jury clearly
7 considered all of the evidence but that they
8 found that Ms. Schlinger's testimony was not
9 credible as to the CSC and how the -- and to the
10 assault and battery first. Since they found that
11 the assault and battery first clearly did not
12 happen and CSC did not happen, Judge, I think the
13 jury's inconsistent verdict would warrant a new
14 trial for Mr. Fuller on those charges, on the
15 charge of kidnapping rather.

16 THE COURT: All right. What's the State's
17 position?

18 MS. BODMAN: The State's position is not
19 only was there -- looking at the State's case in
20 the light most favorable to the State but we
21 certainly proved it beyond a reasonable doubt.
22 And it was more than sufficient evidence to
23 support every crime that was charged and found
24 guilty by the jury.

25 MS. ALVES: Judge, in addition, I'm sorry.

1 One additional thing. I would just, in my motion
2 for a new trial I would incorporate all motions
3 previously made at trial, particularly my motion
4 to suppress the use of the jail calls.

5 THE COURT: All right. Well, considering
6 the evidence in the light most favorable to the
7 State and considering the length of the trial and
8 the fact that the jury obviously deliberated a
9 fair amount of time, I must respectfully deny
10 your motion.

11 Now, is the State prepared to go forward
12 with sentencing?

13 MS. BODMAN: We are getting the sentencing
14 sheets right now, Your Honor.

15 THE COURT: We'll, let's stand at ease for
16 about 10 minutes.

17 (Break taken at 4:09 p.m., until 4:14 p.m.,
18 and the trial resumed:)

19 THE COURT: All right. Solicitor?

20 MS. BODMAN: Your Honor, at this time Katie
21 Schlinger would like to speak to the Court.

22 THE COURT: Yes, ma'am. Be glad to hear
23 from you, Ms. Schlinger.

24 MS. SCHLINGER: Your Honor, I am requesting
25 that you please grant the maximum sentence of 41

1 years to Michael Fuller, and that he be placed on
2 the sex offender registry.

3 What he's done has not only affected me
4 physically but emotionally and will be for the
5 rest of my life. I know that there wasn't
6 adequate enough evidence, but I'm telling the
7 truth on this. And I feel like he needs to be on
8 that list. People need to know. I'm asking if
9 there's anyway you can grant me this.

10 Thank you for everything.

11 THE COURT: All right. Thank you, ma'am.

12 Ms. Bodman.

13 MS. BODMAN: Thank you, Your Honor.

14 The Defendant has from 2008 a conviction
15 for unlawful entry into enclosed places; a
16 conviction from 2013, March of 2013, he pled
17 guilty to a burglary in the third degree, and he
18 was on probation for that when he committed this
19 offense; and, September of 2012; December of
20 2012, a failure to comply with direction of
21 police command.

22 Your Honor, we are asking for the maximum
23 sentence of 41 years. The facts in this case
24 support every single day of that sentence. It
25 was callous. It was violent. And it was

1 targeted. Even if Katie had said, no, I will not
2 give you a ride, he had that gun and he would
3 have committed this offense anyway.

4 In addition, we are asking you to please
5 not make an affirmative finding that this was not
6 related to a sexual assault. The jury's finding
7 that it was not proved beyond a reasonable doubt
8 is a completely different standard than you
9 saying factually as you heard the facts of the
10 case that this was not at all related to a sexual
11 offense.

12 So we ask you to please not make that
13 affirmative finding and keep him on the sex
14 offender registry

15 THE COURT: Anything else?

16 MS. BODMAN: No, sir.

17 THE COURT: All right. Ms. Alves?

18 MS. ALVES: Your Honor, may it please the
19 Court. Your Honor, I would ask that you do make
20 a finding that this was not in relation to a
21 sexual assault. The jury clearly, the jury who
22 were the finders of fact in this case clearly
23 found that there was not criminal sexual conduct
24 or assault and battery in this case.

25 I think that the -- and, Judge, it's clear

1 that the jury found, based their verdict based
2 on, most likely, what was heard in the jail calls
3 from Mr. Fuller about what he most likely didn't
4 get out of vehicle. But they did not find a
5 sexual assault. In fact, they found him not
6 guilty of that.

7 I think based on the statute when there's
8 no sexual assault that there can be a finding
9 that he does not have to register. And I would
10 ask that you not require him to register by
11 making the finding that this was not in relation
12 to sexual assault which is what the jury found
13 here.

14 Mr. Fuller is now 25 years old. He has
15 been in jail for 788 days as of today. And since
16 the date he got to jail he has maintained his
17 innocence on that. Obviously the jury saw things
18 differently and they found their verdicts
19 accordingly. But I would just note in that the
20 jail calls, I think the verdict most likely does
21 go along with what was said in the jail calls but
22 it's clear the jury found that there wasn't a
23 sexual assault and that he was not the cause of
24 the accident which caused the injuries to
25 Ms. Schlinger.

1 Judge, I would ask you to hear from his
2 family members. He's had family in here with him
3 throughout. There's been other family members
4 who have been in and out during this week, but
5 here with him today are both of his grandmothers,
6 Marlene Williams, who was actually the owner of
7 the vehicle, and Ms. Mary Fuller who's the
8 grandmother that he lived with prior to his
9 arrest. And she was the one that we heard on
10 some of the jail calls.

11 Judge, also with him is Chanel Williams who
12 is the mother of his child; his stepmother,
13 Lashawna Williams; his former tennis coach,
14 Donnie Campbell and Mr. Campbell's wife. I would
15 ask you to hear from his grandmother and Mr. and
16 Mrs. Campbell on his behalf.

17 THE COURT: I'll be glad to.

18 MS. ALVES: Mr. Campbell.

19 MR. CAMPBELL: Good afternoon, Judge.

20 THE COURT: Good afternoon, sir.

21 MR. CAMPBELL: Yes. I've known Michael
22 since he was 12 years old. I ran the
23 after-school program. He was one of my
24 participants. He was very good young man. He's
25 always been respectful to me and the people that

1 we dealt with. We traveled out throughout the
2 southeast playing tennis tournaments. He was
3 very well liked and never had any problems with
4 him.

5 And I just ask that the Court that you be
6 lenient on any sentence that you give to him.

7 THE COURT: All right. Thank you,
8 Mr. Campbell.

9 MS. ALVES: Mrs. Campbell.

10 MS. CAMPBELL: Good afternoon.

11 THE COURT: Good afternoon.

12 MS. CAMPBELL: My name is Sharon Campbell.
13 I'm Coach Campbell's wife.

14 I've known Mike since he was 12 years old.
15 And I do love Mike. I always found him to be
16 very respectful. He's been in our home. I've
17 been on trips with him. I've picked him up many
18 times to take him to tournaments and to take him
19 around town. He's been in our home and helped
20 us. I trust him. I've always trusted him. I
21 trusted him with my family.

22 And I just ask that you would have mercy in
23 your sentencing on him. He is not a violent
24 person. I never found him to be one.

25 We've discussed scripture many times. And,

1 like I said, I love Mike. And I don't think he's
2 a violent person.

3 THE COURT: Thank you, ma'am.

4 MS. ALVES: Ms. Williams.

5 MS. WILLIAMS: Hi. Yes. I'm Michael's
6 grandmother.

7 MS. ALVES: State your name.

8 MS. WILLIAMS: Marlene Williams.

9 THE COURT: Ms. Williams, I'll be glad to
10 hear from you.

11 MS. WILLIAMS: Okay. I'm his grandmother
12 on his dad's side. And Michael has never given
13 anybody, since the day he was little boy coming
14 up, there's never been a parent to come up to me
15 and say Michael's caused trouble or he's doing
16 this or doing that. He's very respectful. And
17 he's a Bible believer, and he's a Christian. He
18 goes to church. His character is outstanding.

19 This is all I can say. And, God, he's a very
20 upstanding, outstanding man.

21 THE COURT: All right.

22 MS. WILLIAMS: You know.

23 THE COURT: Thank you, Ms. Williams.

24 MS. ALVES: Thank you.

25 Anybody else want to say anything? Does

1 anybody else want to say anything?

2 Judge, Mr. Fuller would also like to
3 address the Court on his own behalf.

4 THE COURT: I will be glad to hear from
5 you.

6 THE DEFENDANT: First, I'd just like to
7 thank you for taking the time out, Judge, this
8 case and everything. And I'd just like to tell
9 my family and everyone, thank you for supporting
10 me, for being here. And I love y'all and I'll
11 see y'all again one day hopefully. And I just
12 want to say I love them and I just thank you for
13 being here. That's all.

14 MS. ALVES: Judge, if I may.

15 Mr. Fuller's 25 years old. I've told you,
16 he's been in jail since December 20th of 2013,
17 which is 788 days. Prior to his incarceration he
18 did, he was attending Voc Rehab. And he did live
19 with his grandmother and his 12-year-old sister.
20 I think we heard from his sister on one of the
21 phone calls.

22 Judge, during his lifetime his mother has
23 had her share of problems and he's been in the
24 care of his grandmother. At one point he was
25 even helping his grandmother to raise his younger

1 siblings.

2 As Mr. Campbell told you, he's known
3 Michael since he was 12 years old. He was
4 Michael's tennis coach. After Michael graduated
5 and while he was in the program, he also helped
6 to coach younger children in tennis. Actually
7 from people I've talked to, they thought Michael
8 was good, that he could have gone further with
9 that but unfortunately he did not.

10 He has three children who he did, he did
11 try to maintain a relationship with and did
12 support as he was able. We heard about two of
13 them on the tapes, the two daughters that's he
14 was looking for, looking to help for Christmas.

15 Judge, it's been Michael's assertion that
16 he did not intend any harm to Ms. Schlinger on
17 the day in question. It started out with him and
18 his friend and it ended up into a horrible
19 situation. There's really no explanation that I
20 can give for this. And my client has maintained
21 his innocence.

22 I would ask you to take into consideration
23 that fact and the fact of the jury, the split
24 verdict of the jury. And I would ask you to
25 consider sentencing Mr. Fuller to significantly

1 less than the maximum of the 41 years that he is
2 facing.

3 I would just note that and point out that
4 any sentence that he's facing he would have to do
5 85 percent of for the kidnapping. So that's a
6 significant sentence and he does understand
7 that. And then he would be on supervised release
8 for two years.

9 I would also ask you to consider making a
10 finding that allows him to not have to register
11 as a sex offender.

12 Also Mr. Fuller -- probation is here. He
13 is facing a probation violation as a result of
14 these charges and I would ask you to run that
15 sentence concurrent with any that you give for
16 kidnapping.

17 THE COURT: Okay.

18 Yes, sir?

19 THE PROBATION OFFICER: Yes, sir, Your
20 Honor.

21 Mr. Fuller is currently on probation. His
22 Indictment, 2013-GS-02-30. It was a forgery. He
23 received three years suspended to five years of
24 probation. Also 2013-GS-02-31, burglary third
25 degree first offense, three years suspended to

1 five years probation.

2 THE COURT: What was the first one?

3 MS. BODMAN: He said forgery.

4 THE COURT: I know that. What was it,
5 three years?

6 THE PROBATION OFFICER: Three years
7 suspended to five years probation.

8 THE COURT: Three and five?

9 THE PROBATION OFFICER: Yes, sir.

10 THE COURT: Three and five on both of
11 them?

12 THE PROBATION OFFICER: Yes, sir, Your
13 Honor.

14 He was sentenced, that was March 13th,
15 2013. We issued a warrant for Mr. Fuller
16 December the 23rd, 2013, that charged him with
17 failing to report as instructed, failing to pay
18 his financial obligations. That was all included
19 in that warrant.

20 He was located for service of that warrant
21 once he was arrested on these charges here
22 currently. And then we issued a citation
23 charging him with being in possession of a
24 firearm.

25 Those charges were brought for a probation

1 revocation hearing in March 2014 and at that time
2 the violation hearing was continued until
3 disposition of this charge.

4 THE COURT: Of this current charge?

5 THE PROBATION OFFICER: Yes, sir.

6 MS. ALVES: Judge, in regards to the
7 probation violation, I would just note that that
8 was just one month that he was, that he was
9 alleged to have not reported. And at the time
10 that -- at the time of his probation violation he
11 was clearly, you've heard testimony, he was
12 unemployed and he was going to Voc Rehab.

13 And the gun that they're referring to in
14 the violation, Judge, it was a probable cause
15 warrant based on the gun that we had in this
16 charge, not something separate.

17 THE COURT: Ms. Alves, I understand your
18 position with regard to the jury's finding, not
19 finding of guilt on the criminal sexual conduct
20 charge. Do you take the position that that in
21 any way would interfere with the discretion of
22 the Court to impose the registry? I mean, is
23 there any case law that you're aware of that --

24 MS. ALVES: Judge, there isn't any.

25 THE COURT: -- has a holding to that

1 effect?

2 MS. ALVES: I don't have any case law that
3 has a holding to that effect. But my argument is
4 that the jury made a finding that this was not a
5 sexual assault.

6 THE COURT: I understand that.

7 MS. ALVES: I don't --

8 THE COURT: It's my understanding it's
9 still discretionary with the Court after hearing
10 all the evidence.

11 MS. ALVES: I don't have any case law to
12 the contrary.

13 THE COURT: Okay. Ms. Bodman?

14 MS. BODMAN: Well, I don't have any case law
15 but I would just say that if the conviction on
16 the kidnapping required a CSC conviction, then we
17 wouldn't need this affirmative finding because --

18 THE COURT: I think you misspoke.

19 MS. BODMAN: I'm sorry.

20 THE COURT: It would require a registry.

21 MS. BODMAN: No. I was saying that if the
22 kidnapping, in order to be on the registry, if
23 that required that the person also be convicted
24 of a CSC --

25 THE COURT: It doesn't.

1 MS. BODMAN. Right -- then we wouldn't have
2 that because CSC is mandatory registry. And so
3 the kidnapping wouldn't have that issue. I think
4 it is completely within the Court's discretion as
5 written in the statute that you just, you would
6 have to make --

7 THE COURT: Affirmative finding.

8 MS. BODMAN: -- affirmatively that there was
9 not at all sexually related, correct. There's
10 nothing in the statute that says that there has
11 to be a CSC conviction.

12 THE COURT: Even without a finding it's
13 automatic.

14 MS. BODMAN: It is automatic.

15 THE COURT: Is that your understanding?

16 MS. ALVES: It is automatic unless you make
17 a finding.

18 THE COURT: Right. Okay. I just wanted to
19 make that part of the record.

20 Anything further?

21 MS. ALVES: No, sir.

22 THE COURT: No.

23 AS TO THE PROBATION REVOCATION, REVOKE IN
24 FULL.

25 THE PROBATION OFFICER: Yes, sir, Your

1 Honor.

2 THE COURT: Both, both of his warrants.

3 AS TO THE CHARGE OF UNLAWFUL CARRYING OF A
4 WEAPON, A PISTOL, MR. FULLER, THE SENTENCE OF THE
5 COURT IS YOU BE SENTENCED TO THE STATE DEPARTMENT
6 OF CORRECTIONS FOR A PERIOD OF ONE YEAR.

7 AS TO THE POSSESSION OF A WEAPON DURING THE
8 COMMISSION OF A VIOLENT CRIME, THE SENTENCE OF
9 THE COURT IS YOU BE COMMITTED TO THE STATE
10 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF FIVE
11 YEARS.

12 AS TO THE POSSESSION OF A STOLEN PISTOL,
13 THE SENTENCE OF THE COURT IS YOU BE COMMITTED TO
14 THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD
15 OF FIVE YEARS.

16 AS TO THE KIDNAPPING CHARGE, THE SENTENCE
17 OF THE COURT IS YOU BE COMMITTED TO THE STATE
18 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30
19 YEARS.

20 ALL SENTENCES TO RUN CONCURRENT {sic}.
21 YOU'RE GIVEN CREDIT FOR 788 DAYS PRETRIAL TIME
22 SERVED.

23 YOUR NAME WILL BE LISTED ON THE SEX
24 OFFENDER REGISTRY.

25 Good luck to you, sir.

1 MS. BODMAN: Thank you, sir.

2 THE PROBATION OFFICER: Thank you, Your
3 Honor.

4 THE COURT: This Court's adjourned --
5 Ms. Alves, THOSE SENTENCES ARE CONSECUTIVE. I
6 wrote consecutive.

7 MS. ALVES: Even the probation? Would you
8 consider letting the probation violation run
9 concurrent?

10 THE COURT: No, that should run concurrent.
11 Well, yeah, yes, by revoking in full.

12 THE PROBATION OFFICER: It will run
13 concurrent unless you order otherwise.

14 THE COURT: It would run concurrent.

15 MS. ALVES: So the other charges are
16 consecutive but the probation violation is
17 concurrent?

18 THE COURT: Yes. It's on the sentencing
19 sheet. I just --

20 MS. ALVES: He is making these charges
21 consecutive but your probation is concurrent.
22 And I'll explain what that means.

23 END OF CASE: 4:35 P.M.

24 ***

25 CERTIFICATE OF REPORTER

DASH CAMERA - INTERVIEW**00:00:00**

View of the outside – no sound

00:00:39

Switches to view of inside the car

00:00:55

DRUMMING: I'm gonna read you your warnings, alright. Miranda Warnings

You have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have them present with you while being questioned. If you cannot afford to hire a lawyer one will be appointed to represent you before any questions if you wish. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Do you understand your rights?

00:01:16

FULLER: Yes, sir. Am I...

DRUMMING: What, what, what... You are not under arrest, alright. This here is the thing, what happened?

FULLER: My friend.

DRUMMING: Who is your friend?

FULLER: My friend's name is Dominique. He stays right here on Hampton Avenue. Right there beside, uh, Hahn Village.

00:01:30

DRUMMING: Yeah...

**STATE'S
EXHIBIT**

4

FULLER: And, I told him that I needed him to drive so I was in the passenger seat

DRUMMING: Why did he need to drive?

FULLER: Sir

DRUMMING: Why did he need to drive?

FULLER: Oh, sir because I wasn't in the mood to drive I've been up all night like last night I came all the way, I live in out in the GAP and everything and just to drive him around and drop him off (inaudible) so I waited way out to North Augusta for him to do his thing girl she didn't want me in her house at the same time she said she wasn't allowed to have company in her house or anything so I went in

DRUMMING: okay

00:02:01

DRUMMING: So where were ya'all going now? Why did this car end up like this?

FULLER: That is the thing sir. All I can tell you is I was in the car with my friend Dominique and...

DRUMMING: Dominique what, what is his last name?

FULLER: um, I can't even think of Dominique's last name. They stay right there beside Smith Hazel right there down the road, I mean not Smith Hazel, down the road...

DRUMMING: So, there wasn't no girl, no lady, in this car with you?

FULLER: No Sir

00:02:22

DRUMMING: okay. Who's gun is that in there?

FULLER: Whose gun inside the car?

DRUMMING: Yeah

FULLER: It's Dominique's car. Uh, it's Dominique's gun.

DRUMMING: Why did he have a gun on him?

00:02:34

FULLER: Sir.

DRUMMING: Why did he have a gun on him?

FULLER: He claimed up and down he said he be out all the time, so he claim up and down he need one if he gonna be walking through the street and he gonna be walking in the neighborhood he need a gun

DRUMMING: And, where did he go?

00:02:49

FULLER: That's the thing, when I was in the passenger seat sir...

DRUMMING: Well we got you just now you were in the driver's seat.

FULLER: I was in the driver's seat?

DRUMMING: yeah. We just pulled you out of there just now.

00:03:00

FULLER: uh, um I'm being honest with you sir I really don't even recall how I got into the driver's seat

DRUMMING: well, there down there about to talk to a female – she's gonna tell us the whole story

FULLER: oh, okay that's cool.

DRUMMING: Cause whoever messed up, I don't know how you got that car with Florida tags on it, the purse and everything that is in there...

00:03:21

DRUMMING: ... It belongs to this female down there that they are talking to.

FULLER: oh, okay. No, I had asked a female could I get a ride over to the dern uh, over to my grandmother's house on Hampton Avenue and Sumpter

DRUMMING: so, where did you ask for a ride at?

FULLER: over on Hampton Avenue. I asked her could she give me a ride here because my friend had left me at the store by myself.

DRUMMING: What friend left you?

00:03:41

FULLER: My friend Dominique. He was driving my grandmother's car my grandmother wanted her car back around...

DRUMMING: So this isn't your grandmother's car?

FULLER: my grandmother's name is Marlene Wynn(?)

DRUMMING: That aint, that ain't. This car you are driving right here whose car is this?

FULLER: That's uh, this girl's um, that's the girl's car, whatever cause I asked her could she give me a ride over there by the gap? She said okay cool

DRUMMING: How do you know her?

FULLER: She said I don't really don't normally drive no strangers around in my car and I said, okay that's cool with me, I said I just need you to drive me to the hospital cause I know she said she was new down here she wasn't from, uh, Aiken, she is from Florida and she was like can I get a ride or can I, uh, well she asked me did I need a ride and I told her yes, I need a ride from where I was cause I did not feel like walking...

DRUMMING: So, who was driving?

FULLER: The white girl was driving sir

00:04:29

DRUMMING: I thought you said Dominique was driving. You done changed your story...

FULLER: No, Dominique was driving my car. But I was saying the white girl was driving this car when I asked her could she drop me off at home cause Dominique wasn't picking up his phone and my cell phone is inside the car and I asked him could he take me out over there by the gap so I could stay there with my friend girl and he said okay cool. Whenever I get back he said I could drop you off over there so that is who I was waiting for the whole time

DRUMMING: Okay just sit tight man.

00:04:56

00:06:17

FULLER: Excuse me

00:06:22

FULLER: Excuse me, can you get him?

00:06:40

FULLER: Excuse me.

00:06:45

FULLER: Excuse me. Excuse me.

00:06:50

FULLER: Geez. Gotta get outta here

00:07:04

FULLER: Excuse me.

00:07:09

(FULLER knocking on window/door)

00:07:14

FULLER: Excuse me. Excuse me. Excuse me.

00:07:23

(FULLER knocking on window/door)

00:07:34

(FULLER knocking on window/door)

00:07:40

FULLER: Excuse me

00:07:45 door opens

FULLER: Hey, I just want to know I mean you know why am I being held? I wasn't in no driver's seat or anything I just was trying to get a ride home and all of a sudden, I mean honestly I really don't know what's going on right now. I was trying to get home. I told my friend to come back and get me cause I wanted to go see my friend girl and now all of a sudden, you know. I'm here.

00:08:08

CORLEY: (inaudible)

FULLER: there was what?

CORLEY: There was a series of events that lead to

FULLER: a serious event?

00:08:18

CORLEY: A series, a series of events...

FULLER: And so what was,

CORLEY: Sit tight.

FULLER: I just want to know

CORLEY: Sit tight.

00:08:23

FULLER: I just want to know what them events was and am I in any trouble

(door is shut)

00:08:47

(FULLER knocking on door)

00:09:11

Door is opened

FULLER: excuse me.

DRUMMING: Yeah

FULLER: Will you please tell me am I in trouble or something

DRUMMING: Just hold tight, man. We trying to get to the bottom of it.

FULLER: oh, okay.

00:09:36

DRUMMING: Hop on out.

00:10:32

ROYSTER: How are you doing Mr Fuller?

FULLER: Alright how about yourself.

ROYSTER: Oh a little tired.

My name is, uh, Billy Royster, I'm a detective here with Public Safety.

FULLER: uh-huh.

ROYSTER: I want to just talk to you about what happened tonight. They woke me up so I don't have the whole story.

But before I talk to you I need to advise you of your rights, okay? So, if you have any questions, feel free to ask. Alrighty...

1:00

You have a right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer for advise before any questions and have them with you during questioning. If you cannot afford a lawyer the court will appoint one to represent you without cost if you wish. If you decide to answer questions now without a lawyer present you will still have the right to stop answering at any time you also have the right to stop answering at any time until you talk to a lawyer.

Do you understand that?

FULLER: yes sir.

ROYSTER: Do you have any questions about it?

FULLER: no sir.

ROYSTER: All I want you to do is put your initials by these lines and all you are telling me is I understand what my rights are.

1:57

ROYSTER: This bottom part is a waiver. If you are willing to talk to me taking in mind you can stop whenever you want to.

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me. No pressure of any kind has been used against me.

If you are willing to talk to me and answer questions without a lawyer here at this time initial, print your name and sign your name.

STATE'S
EXHIBIT

1

2:38

(signing)

3:30

ROYSTER Alright, you want to tell me what happened tonight?

FULLER I was with my friend Dominique and um I know that I was just feeling so tired we was down in Paces Run for a little while and we left from there and we went out to the South Side for a little bit to a little after party and once we left from the after party he wanted to go by McDonald's on Richland. So once we went by the McDonald's on Richland I had a friend girl who told me to meet up with her at the hotel, that she had got her a room. So while I was sitting over there waiting for her to come she never did call my phone back and I kept calling her and texting her and she never replied. So I seen that girl sitting in the car and she asked me what I was doing. I guess who thought I was her relative. And I told her no I was just waiting on someone. And then as ten minutes went by I asked her do she mind giving me a ride home. And she said she wasn't from down here and she wasn't familiar with the area. So I was like well okay, it's just a straight shot down Hampton. When we got, when we were coming down I don't know the name of that road that go towards USC Aiken, when she decides to cut through the hospital way and after that I just basically, I basically blacked out. I was knocked out.

ROYSTER: So she approached you at the hotel?

5:13

FULLER: At the hotel when she pulled, she was already parked, and she just happened to turn around and see me and was like "what are you doing?" and I said I'm waiting for a friend to come out. And she said "Oh I'm sorry I thought you were someone else." And then I sat there for a little while. She offered me a cigarette. I got the cigarette. And as 10 minutes passed I asked do she mind giving me a ride home. She asked me where I live. I told her I lived on Hampton near Smith Hazel Recreational Center. And she said "okay that's fine." Once we left from there all of a sudden I just dozed off. I passed out in the car. And I was in the car with her.

5:40

ROYSTER: Have you been drinking tonight?

FULLER: No I didn't drink sir.

ROYSTER: You ain't been smoking anything?

FULLER: I have smoked sir. I'm not gonna lie. I smoked once time.

5:50

ROYSTER: What about the gun that was found in the car.

FULLER: The gun that was found in the car that was a friend of mine gun. Um the same person that I just told you. That was Dominique's gun. He just so happened to leave it right there with me so I just kept it right there in my pocket.

6:07

ROYSTER: But you didn't pull it on her?

FULLER: No I never pulled no gun out sir.

ROYSTER: And you didn't assault her?

FULLER: No sir I never did assault her.

6:20

ROYSTER: So as far as you know you're just driving around and she's lost and the net thing you know you're in a wreck?

FULLER: She wasn't lost. She said that um her family was down and that someone in her family was about to get married or whatever. And she started telling me about her boyfriend. Say she's 26 years old and that her boyfriend is like 53 or 54 and that was around the time I was still relaxing in the car while she was driving and I just passed out on her. Like I ain't never put my hand on her or anything wrong.

ROYSTER: She didn't try to wake you up?

FULLER: No

ROYSTER: Well how is she going to take you home if she didn't know where you live and you was passed out?

FULLER: I told her how to get on Hampton. She said she was familiar. She said she knew where Schofield Middle School was located at. And that's all that had mattered. I told her once we get over by Kent's Corner I'm gonna be on the corner of Hampton and Sumpter. I said you're going to see a Cold Creek truck in the yard. And After that I passed out and when I woke up all of a sudden the police was right there.

7:24

ROYSTER: Would it surprise you if I told you her story is slightly different?

FULLER: You said would it surprise me? Yeah, it really do. Because I didn't approach her in any wrong way sir.

ROYSTER: You didn't

FULLER: No sir.

ROYSTER: Okay.

7:38

FULLER: She drank. She was basically was drunk herself. She told me, you know,. Before she gave me a ride, she was hesitant at first, she said that she had done had some drinks or whatever. She said that her people were all in the room sleep and that something about her boyfriend wasn't going to be back in until 7 or 8 in the morning so she had enough time to take me home. And once I told her where I live that's when we were on the way.

ROYSTER: Um until we find out everything that goes on we have to process this car. It's kind of tore up but we gotta process it and one of the things we do is look for DNA.

FULLER: Okay that is cool.

ROYSTER: Would you mind giving me a swab? So that if you were in the car, which you say you were in the car, we expect to find your DNA in the car.

FULLER: How would you find my DNA when I hadn't done...

ROYSTER: Well right now skin cells are falling off your body by the thousands, on that table. And it is possible to swab that table and get your DNA. You can't go anywhere without leaving your DNA behind. Its just a matter of us finding it. It's there.

FULLER: okay and...

ROYSTER: You touch something the oils from your hand has DNA in it so if it's a smudged up fingerprint instead of having a worthless fingerprint we can swab it and get enough of the oils from it from your hand to get DNA. See what I'm saying.

FULLER: well I did touch her passenger door to get in the car.

ROYSTER: well, so we should find your DNA in the car.

9:20

FULLER: Yeah

ROYSTER: What I'd like to have is a sample, a known sample from you so that we can compare to what we find.

FULLER: okay

ROYSTER: That's what I'm asking for. You don't mind doing that?

FULLER: No I don't mind.

ROYSTER: sit tight let me get my stuff real quick \

FULLER: okay

(leaves and comes back with a swab)

9:57

FULLER: Can I ask you a question sir?

ROYSTER: yes sir.

FULLER: I know that they have bond hearing in the morning. Am I not going to be getting a bond?

ROYSTER: uh \

FULLER: Because I was just wondering...my daughter who is coming down next week for Christmas and I was hoping my Christmas was going to be spent with her and not be in jail.

ROYSTER: When they do just a small fish in the bond They do bond hearings twice a day.

FULLER: Yeah that's in the morning and in the afternoon.

10:45 (dna swab is done) Your spit has skin cells and DNA. Appreciate your assistance there.

11:30

ROYSTER: Uh, the only problem you're going to have with bond is one of the charges you are going to be charged with.

FULLER: Which charge would that be sir?

ROYSTER: Kidnapping

FULLER: Kidnapping. How am I charged with kidnapping when I was in her car? She was giving me a ride sir.

ROYSTER: Like I said, your story differs from hers a little bit. She says you approached her up at the store.

FULLER: At the store?

ROYSTER: Yeah, and that you asked for a ride and then you pulled a gun on her. So, you're being charged with kidnapping, carjacking, and felon in possession of a firearm. You're a felon. You're not supposed to possess a pistol. Don't care if you do it for a friend or what. You're not supposed to even possess a bullet.

FULLER: yes sir, but. I understand that.

ROYSTER: That's what you're being charged with. It takes a general sessions judge. I believe, I think, to set a bond for kidnapping.

12:30

FULLER: I'm trying to figure out how I'm going to be charged with kidnapping and I didn't even kidnap her. I had a ride. She offered me a ride. After I told her that I was sitting and waiting for a friend.

ROYSTER: Like I said, her story is a little different than yours.

FULLER: I'm just trying to figure out how come its just her story being heard. Well her story

ROYSTER: Her story makes a little more sense than yours.

FULLER: It makes sense?

ROYSTER: Yeah it does.

FULLER: I mean it may sound like...

ROYSTER: She deliberately wrecked that car to get away from you.

13:04

FULLER: So when y'all came where was I? In the passenger seat right?

ROYSTER: Yeah, knocked out.

FULLER: Exactly so, I don't know. It's crazy.

ROYSTER: well, That's where we stand.

FULLER: She's under the influence, she's...I haven't drink anything she's been drinking and my word doesn't mean anything. I don't find that to be equal.

ROYSTER: we'll be checking the cameras at the store...be checking the cameras at the hotel. That hotel's got more cameras than you can imagine outside. So everything that goes on in that parking lot is on video and I think the BP up there has cameras outside. So the part of the story where you say she approached you at the hotel and she says he approached me at the store, right there is going to tell us who's telling the truth.

FULLER: Yeah, and I mean...

ROYSTER: Okay so if we see you getting in her car at the hotel we'll look at this in a different light.

FULLER: I definitely hope when you see this video. I definitely hope y'all see that she stuck her head out the window. I didn't even realize she was in the car over there. When I was looking up stairs to see was my friend coming out to see where they was coming from she called, she called, well she ain't call my name, she just said "what are you doing? And when I look at her she was like "oh I thought you was my family member, I'm sorry about that." I asked her could I have a cigarette while I was sitting out there waiting and she said sure she gave me a cigarette.

14:40

ROYSTER: okay well they woke me up at 5:30.

FULLER: can I smoke before sir?

ROYSTER: and uh, well see what happens.

FULLER: Yes sir. So I have to wait all the way til general sessions, that's...

ROYSTER: Uh huh. Let me get right and talk to her. Let's see what's going on

FULLER: You talking about the girl?

ROYSTER: Yeah

15:08

FULLER: I hope, I hope. Can you please talk to her when she's sober? Right now she's under the influence. I didn't do anything sexual to that girl. And I hate that, that even...

ROYSTER: She never said that.

FULLER: That's what the other guy said.

ROYSTER: Okay, well she didn't say that.

FULLER: The other police officer. I don't even know his name.

ROYSTER: Okay, well I promise you Michael I'll piece everything together. All right.

FULLER: I hope so sir.

ROYSTER: I will. I will.

FULLER: I'm not trying to sit in jail.

ROYSTER: I mean, there's been a few time you've been a pain to use but that doesn't mean you get railroaded.

15:50

Alright I'll get someone to radio over to the jail right now.

FULLER: thank you

ROYSTER: alright.

(Royster leaves room)

16:40

FULLER: Excuse me! Sir!

16:50

ROYSTER: Yes sir.

FULLER: I know once I get to the jail house I know that I'm not going to be able to call my grandmother or anything because they have a block and I truly need her to know where I'm at.

ROYSTER: What's her name?

FULLER: Her name is Mary Fuller and her telephone her house number is

ROYSTER: I'll call her in a little bit, give her time to wake up, okay, I'll do that for you

FULLER: What time is it?

ROYSTER: It's about 6:30, quarter to seven.

FULLER: My step dad should be waking up right now.

ROYSTER: Yep

FULLER: Is is impossible for me to speak with him?

ROYSTER: Yup but I'll let them know what's going on.

FULLER: This is crazy man.

17:50

ROYSTER: well, we will see. We'll get someone to bring you over there real quick.

(Royster leaves room)

22:32

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-17263

BAY

ARREST WARRANT NUMBER

FILED Sept - 4 2014
2013A0220101059

Liz Godard
C.C.C.P. & G.S.

Anna Sanders

ACTION OF GRAND JURY

true bill

[Signature]

Robert Wade

Foreperson of Grand Jury

Date: September 4, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0201312

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2014

THE STATE

VS:

MICHAEL ANTWON FULLER

CDR #: 0044

Indictment for

UNLAWFUL CARRYING OF A PISTOL

§ 16-23-0020

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
24 day of March 2016
Liz Godard
C.C.C.P. & G.S. Aiken County, S.C.
Sherry S. Sangley
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
UNLAWFUL CARRYING OF A PISTOL

§ 16-23-0020

At a Court of General Sessions, convened on September 8, 2014, the Grand Jurors of Aiken County present upon their oath:

That **MICHAEL ANTWON FULLER** did in Aiken County on or about December 20, 2013, unlawfully carry about his person a pistol. All in violation of §16-23-20, 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.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #:

BAY

ARREST WARRANT NUMBERFILED Sept - 4 2014
2013A0220101069Liz Godard
C.C.P. & G.S.Amy Anderson
Filing Clerk**ACTION OF GRAND JURY**

true bill



Robert Wade

Foreperson of Grand Jury

Date: September 4, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0201310**The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****SEPTEMBER TERM 2014****THE STATE**

vs.

MICHAEL ANTWON FULLER**CDR #: 2364****Indictment for****POSSESSION OF A STOLEN PISTOL****§ 16-23-0030****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
24 day of March 2016
Liz Godard
C.C.P. & G.S. Aiken County, SC
Sherry S. Langley
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
POSSESSION OF A STOLEN PISTOL

§ 16-23-0030

At a Court of General Sessions, convened on September 8, 2014, the Grand Jurors of Aiken County present upon their oath:

That **MICHAEL ANTWON FULLER** did in Aiken County on or about December 20, 2013, unlawfully and knowingly possess a stolen pistol, to wit: a Titan .25 caliber pistol belonging to Mike Anthony Goodwin. All in violation of Section 16-23-30 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-17263

BAY

ARREST WARRANT NUMBERFILED Sept. 4 2014
2013A0220101060*Liz Godard*
C.C.P. & G.S.*Ann Sanders*
Deputy Clerk**ACTION OF GRAND JURY**

true bill

Robert Wade

Foreperson of Grand Jury

Date: September 4, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0201311**The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****SEPTEMBER TERM 2014****THE STATE**

vs.

MICHAEL ANTWON FULLER**CDR #: 0549****Indictment for****POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME****§ 16-23-0490****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this
24th day of March 2016
Liz Godard
C.C.P. & G.S. Aiken County, S.C.
Sherry S. Langley
Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on September 8, 2014, the Grand Jurors of Aiken County present upon their oath:

That **MICHAEL ANTWON FULLER** did in Aiken County on or about December 20, 2013, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Kidnapping, all in violation of Section 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.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-17263

BAY

ARREST WARRANT NUMBERFILED Sept. 4 2014
2013A0220101058Liz Godard
C.C.P.&G.S.Ann Sanders
Filing Clerk**ACTION OF GRAND JURY**

true bill

Robert Wade

Foreperson of Grand Jury

Date: September 4, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0201308**The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****SEPTEMBER TERM 2014****THE STATE****VS.****MICHAEL ANTWON FULLER****CDR #: 0095****Indictment for****KIDNAPPING****§ 16-03-0910****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 24 day of March 2016
Liz Godard
C.C.P. & G.S. Aiken County, S.C.
Sherry Langley
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on September 8, 2014, the Grand
Jurors of Aiken County present upon their oath:

That **MICHAEL ANTWON FULLER** did in Aiken County on or about December
20, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Katie
Schlinger without authority of law, all in violation of §16-3-910 of the Code of Laws of
South Carolina (1976), as amended.

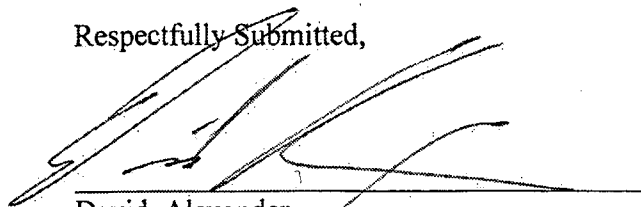
Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

Elizabeth B. Young
J. STROM THURMOND, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of August, 2017.

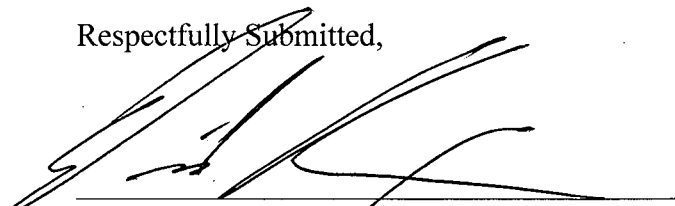
RECEIVED
AUG 14 2017
SC Court of Appeals

836

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of August, 2017.