

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM Berkeley COUNTY
Court of General Sessions

Honorable Deadra Jefferson, Ninth Circuit Court Judge

Appellate Case No.: 2016-000 793

The State,

Respondent

v.

Telly Darnell McClam,

Appellant

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS
) CASE NO. 2014-GS-08-653;
COUNTY OF BERKELEY) 655; 658; 658; 839; 840

STATE OF SOUTH)
CAROLINA,)
) Transcript of Record
 Plaintiff,)

vs.)
) Date: February 29, 2016
TELLY DARNELL MCCLAM,) March 1, 2016
 Defendant.) March 2, 2016
) March 3, 2016

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B E F O R E:
THE HONORABLE DEADRA JEFFERSON

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Denise J. Lauder, RPR
Ninth Judicial Circuit
Circuit Court

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10

LEANDRE JENKINS - DIRECT EXAM

1 being here and participating in this process. We
2 can't do this without you.

3 THE COURT: State may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MS. WILLIAMS: The State calls Leandre
7 Jenkins.

8 THE COURT: If you would swear the
9 witness please.

10 LEANDRE JENKINS,

11 being first duly sworn, testified as follows:

12 THE CLERK: Have a seat. State your
13 full name for the record and spell your last name.

14 THE WITNESS: Leandre Jenkins,
15 J-E-N-K-I-N-S.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Leandre, do you have a nickname?

19 A. La-La.

20 Q. La-La?

21 A. Yes, ma'am.

22 Q. And where do you live right now?

23 A. Moncks Corner.

24 Q. And where were you living back on
25 October 28th of 2013?

11

LEANDRE JENKINS - DIRECT EXAM

1 A. At my grandmother's house in St.
2 Stephen.

3 Q. Do you remember the address?

4 A. [REDACTED]

5 Q. Okay. And who lived in that house with
6 you all?

7 A. My grandmother, my granddaddy and my
8 sister, Brianna.

9 Q. And how long had you lived there?

10 A. About four years.

11 Q. Okay. And do you have other sisters?

12 A. Yes, ma'am; [REDACTED] and [REDACTED]

13 (phonetic).

14 Q. And how old were they?

15 A. [REDACTED] was about 13, 14, [REDACTED] was
16 about 14 I believe, [REDACTED] was probably like 15.

17 Q. And how old were you at that time?

18 A. 17.

19 Q. And where did your other two sisters
20 live?

21 A. They lived with my mother and Telly.

22 Q. And on October 28, 2013, were they
23 still living with Telly?

24 A. No, ma'am.

25 Q. And when you say, Telly, who are you

12

LEANDRE JENKINS - DIRECT EXAM

1 talking about?

2 A. My mother's ex-boyfriend.

3 Q. Do you know his last name?

4 A. McClam.

5 Q. Do you see him here today?

6 A. Yes, ma'am.

7 Q. Can you just point to him?

8 A. (Pointing)

9 Q. What is he wearing?

10 A. A suit.

11 Q. Okay.

12 MS. WILLIAMS: Your Honor, please let
13 the record reflect that she has identified the
14 Defendant, Telly McClam.

15 THE COURT: You may proceed.

16 BY MS. WILLIAMS:

17 Q. And what school were you going to at
18 that time?

19 A. Timberland.

20 Q. Was the house and school in Berkeley
21 County?

22 A. Yes, ma'am.

23 Q. And what grade were you in?

24 A. Twelfth.

25 Q. What time did you usually get up for

LEANDRE JENKINS - DIRECT EXAM

- 1 school in the morning?
- 2 A. About 7.
- 3 Q. And did your grandma work?
- 4 A. Yes, ma'am.
- 5 Q. Where did she work?
- 6 A. At Timberland.
- 7 Q. What did she do?
- 8 A. She was an aid on the bus.
- 9 Q. And what time did she leave?
- 10 A. She would leave about quarter to five.
- 11 Q. And how did she usually get to work?
- 12 A. She usually drove.
- 13 Q. On October 28th, how did she get to
- 14 work?
- 15 A. My grandfather took her.
- 16 Q. Why was that?
- 17 A. She wrecked her -- she wrecked her van.
- 18 Q. Okay. So he had to drive her?
- 19 A. Yes.
- 20 Q. And was [redacted] home on that day?
- 21 A. No.
- 22 Q. Do you remember where she was?
- 23 A. She was at a friend's house.
- 24 Q. Okay. And so when your grandparents --
- 25 did your grandma get up to go to work that day?

LEANDRE JENKINS - DIRECT EXAM

- 1 A. Yes, ma'am.
- 2 Q. At that time that you said, the usual
3 time?
- 4 A. Yes, ma'am.
- 5 Q. What did you do usually when they would
6 leave?
- 7 A. She would wake me up to come lock the
8 door.
- 9 Q. Did you do that on that day?
- 10 A. Yes, ma'am.
- 11 Q. And then what would you do?
- 12 A. Go back in my bedroom and go to sleep.
- 13 Q. On that day, what happened? Well, what
14 time did you usually wake up, 7:00?
- 15 A. Yes, ma'am.
- 16 Q. On that day, when did you wake up?
- 17 A. I woke up like 4:45 probably to go lock
18 the door, and then about a little bit before 5:00,
19 like five or ten minutes after I laid down, I got
20 back up.
- 21 Q. And why did you wake up earlier that
22 day?
- 23 A. Because I heard somebody coming down
24 the hallway.
- 25 Q. And then what happened?

15

LEANDRE JENKINS - DIRECT EXAM

1 A. Then when I looked up -- well, at first
2 I thought it was my grandparents, but he never
3 comes down that hallway and he just left to take my
4 grand momma to work. So when I looked up, it was
5 Telly and he had a gun and a knife in his hand. At
6 first I thought I was dreaming, but I wasn't.

7 Q. What did the gun look like?

8 A. It was a revolver and -- it was like a
9 black revolver.

10 Q. Do you remember anything else about it?

11 A. It had a brownish-red handle.

12 Q. And what else did he have with him?

13 A. A knife, a green knife.

14 MS. WILLIAMS: Your Honor, I'm showing
15 defense counsel what's been marked as State's 89.

16 Your Honor, may I approach?

17 THE COURT: You may.

18 BY MS. WILLIAMS:

19 Q. What is this? Is this the gun he had
20 in his hand?

21 A. Yes, ma'am.

22 MS. WILLIAMS: Your Honor, at this
23 time, we would offer State's 89 into evidence.

24 THE COURT: Any objection?

25 MR. SCHWACKE: Until it's complete --

LEANDRE JENKINS - DIRECT EXAM

1 THE COURT: Chain needs to be
2 completed. ID only.

3 MS. WILLIAMS: Okay. And I'm going to
4 show defense counsel what was marked as State's 96.
5 May I approach?

6 THE COURT: You may.

7 BY MS. WILLIAMS:

8 Q. What is that?

9 A. The knife that he had.

10 MS. WILLIAMS: Your Honor, at this time
11 we would offer State's 96 into evidence.

12 THE COURT: I would assume the same
13 exception, until you can establish a chain.

14 MS. WILLIAMS: Can we approach, Your
15 Honor?

16 THE COURT: Yes. You need to complete
17 the chain. He's objected to it. I need to know
18 how it got here today from where it was taken from
19 him.

20 MS. WILLIAMS: I understand.

21 THE COURT: A complete chain. ID only.

22 BY MS. WILLIAMS.

23 Q. After he came into the house with the
24 gun and knife, what happened next?

25 A. He told me to come with him.

LEANDRE JENKINS - DIRECT EXAM

1 Q. And what did you have on?

2 A. I had on some black like capri
3 sweatpants and like a blue shirt, a sweatshirt.

4 Q. Is that what you wore to bed?

5 A. Yes.

6 Q. And do you own a phone?

7 A. Yes, ma'am.

8 Q. Did you at that time?

9 A. Yes, ma'am.

10 Q. Did you bring that with you?

11 A. No, ma'am.

12 Q. And then where did he take you?

13 A. He said he was taking me to where my
14 momma was, but before -- we went in the direction
15 to where my momma was, but he turned on a road
16 before we got there and we went to Pineville.

17 Q. Okay. So let's back up a little. He
18 took you out of the house, and then where did you
19 go next? Specifically.

20 A. We walked through the woods, through a
21 little path to get to his car.

22 Q. Okay. And do you remember what his car
23 looked?

24 A. It was a blue -- like a blue Hyundai, I
25 believe.

18

LEANDRE JENKINS - DIRECT EXAM

1 Q. Did he say anything to you about what
2 he was doing or where you were going or why he was
3 doing what he was doing?

4 A. He said that we were going to my
5 mother's house -- my uncle's house. He wanted to
6 talk to my mother. He told me that -- he had
7 already been in my grandmother's house. He told me
8 that he went through her stuff, he told me the type
9 of stuff that she had in her drawer, in her closet.
10 He told me that he was waiting there since 8:00 the
11 night before --

12 Q. Okay.

13 A. -- watching.

14 Q. Okay. Do you remember telling the
15 police that he said, your mom think I'm playing?

16 A. Yes, ma'am.

17 Q. Is that what he said?

18 A. (Nodding head.)

19 Q. Do you know how he got into the home?

20 A. He pried the door open.

21 Q. Okay.

22 A. Because when we left, he pried it back
23 closed somehow.

24 Q. Explain to me what that means.

25 A. He had something and he like just

LEANDRE JENKINS - DIRECT EXAM

1 closed the door back to make it look like nobody
2 had gotten into it.

3 Q. Okay. After you got into the car, did
4 he say where he was taking you?

5 A. At first he said we were going to my
6 mom's but we didn't go.

7 Q. Where did you go?

8 A. To Pineville.

9 Q. And where in Pineville was it? Were
10 you familiar with that area?

11 A. Yes.

12 Q. How were you familiar with it?

13 A. We lived down the road.

14 Q. Okay.

15 A. We used to.

16 Q. Okay. And at first when you got in the
17 car, where did you think you were going?

18 A. To my mom's.

19 Q. And when did you figure out that was
20 not the case?

21 A. When he turned on the road.

22 Q. Okay. And did he say anything to you
23 about why he had not gone to your mom's place?

24 A. Not then. When we got in Pineville.

25 Q. What did he say?

20.

LEANDRE JENKINS - DIRECT EXAM

1 A. He said, well, I'm going to take you
2 and I'll let you call your mom, but first I want
3 some P word.

4 Q. When you say P word, are you talking
5 about the word pussy?

6 A. Yes, ma'am.

7 Q. Okay. And so at this point, where in
8 that Pineville area did you go? Can you describe
9 that area?

10 A. We went down a long dirt road and it
11 was basically a lot of -- like a lot of fields and
12 woods and trees and stuff.

13 Q. Okay. And then what happened?

14 A. He parked his car, he said that, and
15 then at first I thought he was just joking, but
16 then I looked and he looked serious. So I said,
17 no. And he said, well, this is where you're going
18 to die then. And he got out of the car and he came
19 -- he came around the car to like open my door, but
20 I locked it and I jumped in the driver's seat.

21 I tried to find the keys because I
22 thought he left the keys, but he didn't. And then
23 he pointed the gun at the door and he came back
24 around and he opened the door behind me. And he
25 said -- he started like smirking. He was like,

LEANDRE JENKINS - DIRECT EXAM

1 now, you know these doors don't lock.

2 And he said, get out, get out of the
3 car. And that's when I got out. He told me to
4 take -- pull down my pants and take the bottom half
5 of my clothes off.

6 Q. And did you?

7 A. Yes, ma'am.

8 Q. Why did you?

9 A. He had a gun.

10 Q. Okay.

11 THE COURT: I'm sorry, I couldn't hear
12 the answer. Please repeat the answer.

13 THE WITNESS: He had a gun.

14 BY MS. WILLIAMS:

15 Q. And then what happened next?

16 A. I got on the car.

17 Q. Why did you get on the car?

18 A. Because he told me to.

19 Q. When you say, you got on the car, can
20 you explain what part of the car you got on?

21 A. The hood of the car.

22 Q. Okay.

23 A. I got on the hood of the car and I was
24 crying. And I asked, why are you doing this? He
25 said, I have to have some type of enjoyment out of

LEANDRE JENKINS - DIRECT EXAM

1 this. And he told me to get down and he made me do
2 oral sex on him, and then after that he got on the
3 car and told me to get back on the car and he raped
4 me.

5 Q. Okay. Now, was it still dark out?

6 A. Yes, ma'am.

7 Q. And when you say he told you to get
8 down off the car and do oral sex on him, how was he
9 positioned? Was he standing? Sitting? Kneeling?

10 A. Standing.

11 Q. And how were you?

12 A. Like kneeling down.

13 Q. Okay. And where was the gun?

14 A. In his hand.

15 Q. Did he say anything to you?

16 A. He said not to bite his private area.

17 Q. Did he use the word, private area?

18 A. No, ma'am.

19 Q. What word did he use?

20 A. His dick.

21 Q. Okay. And then after that when you got
22 back on the car, can you explain what position you
23 were in?

24 A. I was like -- I was sitting on the hood
25 of the car, like leaning back a little bit.

LEANDRE JENKINS - DIRECT EXAM

1 Q. And where was he?

2 A. In front of me.

3 Q. Was he standing or sitting?

4 A. Standing.

5 Q. Okay. And did his penis go into your
6 vagina?

7 A. Yes, ma'am.

8 Q. After that, what happened?

9 A. After that, he gave me a pair of his
10 pants to wear because I was on my menstrual cycle,
11 and I got -- basically urinated on myself because
12 of how scared I was.

13 Q. So when you urinated on yourself, was
14 that on the clothing that you had worn there?

15 A. Yes, ma'am.

16 Q. And I know this is personal, but you
17 were on your menstrual period. Did you have some
18 kind of precautions that you brought for that, like
19 with your clothing? Did you have some kind of
20 sanitary supplies with you?

21 A. No. All I had was the pad that I had
22 on.

23 Q. Okay. And so when you put his clothes
24 on, did you put on any underwear or did you put the
25 pad back on or just his clothes?

LEANDRE JENKINS - DIRECT EXAM

- 1 A. Just his clothes.
- 2 Q. Without any underwear?
- 3 A. Yes, ma'am.
- 4 Q. And what did his pants look like?
- 5 A. They were beige, like khaki pants.
- 6 Q. Where did he get them from?
- 7 A. The trunk of his car.
- 8 Q. Okay. And so after that, where did you
9 go next?
- 10 A. We left there and we went behind his
11 mother's house.
- 12 Q. Let me back up. Is Pineville in
13 Berkeley County too?
- 14 A. Yes, ma'am.
- 15 Q. You went by his mother's house. What
16 county does she live in?
- 17 A. Berkeley County.
- 18 Q. Where was her house?
- 19 A. I think it's Yeamans Hall Road, I
20 believe.
- 21 Q. What did you do when you got there?
- 22 A. When we got there, we sat behind --
23 behind her house, like right in front of the shed.
24 And he had me calling a bunch of people.
- 25 Q. Okay. Who was he having you call?

LEANDRE JENKINS - DIRECT EXAM

1 A. He had me call my uncle, he had me call
2 my uncle's wife's phone. He had me call a bunch of
3 people around that lived near where my uncle and my
4 mother was.

5 Q. And did he have you trying to call your
6 mother?

7 A. Yes, ma'am.

8 Q. And was it just calls or was there any
9 other kind of communication?

10 A. Text messages.

11 Q. Okay. And what were the text messages
12 that he was having you send?

13 A. He told me to tell -- to text them and
14 tell them not to call the police and that he had me
15 and he just wanted to talk.

16 Q. Okay. And did you do that?

17 A. Yes, ma'am.

18 Q. What phone were you using?

19 A. His phone.

20 MS. WILLIAMS: Your Honor, I'm going to
21 show defense counsel what's been marked as State's
22 102.

23 Q. (BY MS. WILLIAMS) What is this?

24 A. Telephone.

25 Q. Is this the phone you used to type the

26

LEANDRE JENKINS - DIRECT EXAM

1 texts on?

2 A. Yes, ma'am.

3 Q. How do you know that?

4 A. I just remember the phone.

5 Q. Did you look through the phone and look
6 at the texts?

7 A. Yes.

8 Q. Did you put something on there to show
9 that was the phone you looked through?

10 A. My initials.

11 Q. Okay. And look at these pictures and
12 tell me if you recognize those.

13 A. Yes, ma'am.

14 Q. What are these pictures of?

15 A. Text messages that you sent.

16 Q. How do you know those are text messages
17 that you sent?

18 A. I recognize what I sent.

19 MS. WILLIAMS: Your Honor, at this
20 time, we would offer State's --

21 Q. (BY MS. WILLIAMS) Do these accurately
22 depict the text messages that you sent?

23 A. Yes.

24 MS. WILLIAMS: We would offer State's
25 151 through 156 into evidence.

27

LEANDRE JENKINS - DIRECT EXAM

1 THE COURT: Any objection?

2 Show them again to Mr. Schwacke.

3 MR. SCHWACKE: No, Your Honor.

4 THE COURT: Marked and admitted without
5 objection.

6 (STATE'S EXH. 151 - 156, Photographs in
7 evidence.)

8 BY MS. WILLIAMS:

9 Q. La-La, those pictures are going to come
10 up behind you. If you could just read what that
11 says.

12 A. Quetta, this is La-La. Tell my momma
13 to call me on this number ASAP.

14 Q. Who is Quetta?

15 A. My uncle's wife.

16 Q. Who did she live with at that time?

17 A. My uncle and my mother.

18 MS. WILLIAMS: Can you put up 152?

19 Q. (BY MS. WILLIAMS) What does this one
20 say?

21 A. This is La-La, tell my momma to call me
22 on this number ASAP, please.

23 MS. WILLIAMS: And can you put up 153?

24 THE WITNESS: Call back number

25 843/209-3822.

28

LEANDRE JENKINS - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. And what time is it and what date is
3 it?

4 A. Monday, October 28, 5:30 a.m.

5 Q. Okay. And 154.

6 A. Uncle, this is La-La, I need tell my
7 momma ASAP, tell her to call.

8 Q. And 155?

9 A. La-La: I need tell my momma ASAP.
10 Tell her to call on this number. It's important.

11 Q. 156? And what date and time for that
12 text message?

13 A. Monday, October 28, 5:15 a.m.

14 Q. Okay. You can turn back around,
15 La-La.

16 MS. WILLIAMS: Your Honor, at this
17 time, we have an issue of law we would like to take
18 up with the Court.

19 THE COURT: Madame forelady, ladies
20 and gentlemen, I have an issue of law I need to
21 take up with the attorneys. During this break,
22 please do not discuss the case and leave your
23 notepads in your seats.

24 (Jury out, 2:52 p.m.)

25 THE COURT: You may be seated.

LEANDRE JENKINS - DIRECT EXAM

1 You may proceed.

2 MS. WILLIAMS: Your Honor, at this
3 time --

4 THE COURT: You need to proceed with
5 the questions you want to ask so I can get a
6 proffer.

7 PROFFERED EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Okay. La-La, had you ever had any kind
10 of relationship with Telly McClam that was sexual
11 or romantic in any way?

12 A. No, ma'am.

13 Q. And how often had you even been alone
14 with him?

15 THE COURT: I needed to make sure that
16 the door was closed. Go ahead.

17 THE WITNESS: Not really at all.

18 BY MS. WILLIAMS:

19 Q. When you were with him, who was usually
20 with him?

21 A. My mother.

22 Q. And were there other reasons why you
23 would have been afraid of Telly McClam, besides --

24 THE COURT: You need to watch the
25 leading. You need to rephrase the question.

LEANDRE JENKINS - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Okay. What else had happened -- what
3 else had you observed about Telly McClam within the
4 past six months between your mother and he?

5 A. He's kind of violent sometimes. He --
6 he's basically kind of violent.

7 Q. Was there any particular incident that
8 you witnessed about -- between them that was the
9 subject of a police report?

10 A. Yes, ma'am. At October Festival, he
11 got mad at my mother for some reason, and we were
12 going to my aunt's house, and he tried to ram us
13 with his car because she wouldn't stop. So we
14 turned around and went back towards the festival
15 where the police were. And when we stopped, he hit
16 the back of the car.

17 Well, my mother's truck was the car.
18 And -- at the stoplight, and we went and stopped.
19 And he came and he broke like the top piece, like
20 the little thing -- I don't know what it's called.
21 He broke that off, and then when we got in there,
22 he came in there and he basically snatched my
23 momma's window out.

24 And like a little while later, after we
25 wrote the police report kind of thing, we were

LEANDRE JENKINS - DIRECT EXAM

1 leaving and he was coming, and he was basically
2 fighting my mom to get in the car, saying he was
3 going with us. Somehow he got into the window and
4 got the keys and got into the driver's seat. I
5 jumped out of the car and my momma did too. And he
6 grabbed her by her jacket, and I was pulling on her
7 and screaming and telling him to stop, but he
8 didn't.

9 And we -- he was -- he was -- the next
10 thing I know, he had her by her hair somehow,
11 holding her, trying to get her in the car. And
12 while he was doing that, he was basically driving
13 and I was still holding onto my mother, whatever.
14 And she finally was just like, stop, before you
15 hurt my daughter. I'll go with you. And after
16 that, they left.

17 Q. Okay. What happened to that charge, if
18 you know?

19 A. I'm not sure.

20 Q. Okay. And was there any other
21 incidents that you knew about when he broke into
22 the house, regarding any other family member?

23 A. Not that I know of.

24 Q. What about your sister?

25 A. My little sister? I was -- I was -- he

LEANDRE JENKINS - DIRECT EXAM

1 tried to rape her.

2 Q. And did you know about that when he
3 broke into the house?

4 A. Yes, ma'am.

5 Q. And how did that make you feel about
6 him?

7 A. Scared.

8 Q. Okay. And you testified you never had
9 any kind of relationship with him except that he's
10 your mother's boyfriend?

11 A. Yes.

12 MS. WILLIAMS: Nothing further.

13 THE COURT: Any questions for the
14 witness, only on this line of questioning?

15 PROFFERED EXAMINATION

16 BY MR. SCHWACKE:

17 Q. You just talked about your little
18 sister. How did you hear about that?

19 A. After -- after it happened, or
20 whatever, my mom -- after they went to the
21 jailhouse, or whatever, she came and we all went to
22 my aunt's house and they told us.

23 Q. So you heard about it from someone, you
24 didn't witness it?

25 A. No, I didn't witness it.

LEANDRE JENKINS - DIRECT EXAM

1 Q. You weren't home in that house when it
2 happened?

3 A. No. I was at my grandmother's house.

4 Q. That wasn't the house that you were
5 living in? You weren't living in that house when
6 that happened?

7 A. No, sir.

8 Q. Now, the incident that happened back in
9 April, you know those charges were dropped, don't
10 you?

11 A. I've heard it, yes.

12 Q. Okay. Because you said you did not
13 know what happened to those?

14 A. I heard they were dropped.

15 Q. And you heard that from your mother?

16 A. No. I think it was my grandmother.

17 Q. Okay. Did you hear that from the
18 newspaper reporter that you interviewed with?

19 A. Interviewed? No.

20 Q. The newspaper story that you were
21 interviewed with, didn't it say that those charges
22 had been dropped and that's why you-all were having
23 a problem getting the police to believe you?

24 A. I don't know. I don't remember. It's
25 been awhile since I read those newspapers.

LEANDRE JENKINS - DIRECT EXAM

1 Q. The incident that happened with -- at
2 the festival in April, that was an incident between
3 you -- I mean, between Telly and your mother?

4 A. Yes.

5 Q. And didn't involve you?

6 A. I was there.

7 Q. Right. You were a witness?

8 A. Uh-huh.

9 Q. But no one was doing anything to you?

10 A. No.

11 Q. And the only thing you know about what
12 happened with your little sister was from your
13 mother?

14 A. My mother and my sister.

15 MR. SCHWACKE: One moment, Your Honor.

16 THE COURT: Uh-huh.

17 BY MR. SCHWACKE:

18 Q. Has Telly teased you before?

19 A. What do you mean?

20 Q. Make jokes with, wrestle with, any of
21 those kind of things?

22 A. Not wrestle with, but he made jokes.
23 He used to make us laugh sometimes.

24 MR. SCHWACKE: Okay. That's all the
25 questions I have on this point.

LEANDRE JENKINS - DIRECT EXAM

1 THE COURT: Any objection to the line
2 of questioning?

3 MR. SCHWACKE: What she is -- I guess
4 I'm trying to sort of figure out exactly where we
5 are in this process.

6 THE COURT: We are now in an in camera
7 hearing where we have created a proffer and I think
8 the line of questioning is clear. I need to know
9 if you have an objection to the line of
10 questioning.

11 MR. SCHWACKE: I do, because it becomes
12 prejudicial to my client. If you do a 404(B)
13 analysis, this is not going to -- neither of these
14 two earlier incidents provide anything to assist
15 the charge in fact here today in making a
16 determination. Bear with me just one second.

17 Normally, Your Honor, evidence of other
18 bad acts or crimes are admissible to show only
19 motive, identity, existence of common scheme, plan,
20 the absence of mistake, or lack of accident, or
21 intent; because, otherwise, the Rules completely --
22 Rule's exclusion doesn't allow that type of
23 evidence at all.

24 The Court has to perceive clearly that
25 the transaction and the crime that's now being

LEANDRE JENKINS - DIRECT EXAM

1 charged, that there's some logical relevancy, that
2 the accused should be given the benefit of the
3 doubt, if there is none, because the evidence
4 should not be admitted. It should be rejected.

5 Even if the Lyle exception is granted,
6 the Court still has to weigh the 404(3) analysis of
7 whether or not the evidence is so dangerous to my
8 client's being prejudiced by that information, that
9 it should not be admitted.

10 If you look at that sort of Lyle line
11 of testimony, among the different things that you
12 see -- and I'm not sure why the State is offering
13 this. Are they offering it --

14 THE COURT: They're offering it for her
15 to say why she's never been alone with him, because
16 she's fearful of him.

17 MR. SCHWACKE: And my question on that
18 is, with regards to Lyle, what is the element they
19 are seeking to introduce this under?

20 THE COURT: I would have to assume
21 motive and intent.

22 MS. WILLIAMS: And lack of mistake,
23 because he's now saying it's consensual. That was
24 the whole purpose of Mr. Schwacke's motion; he
25 wanted to introduce evidence that they'd had sex

LEANDRE JENKINS - DIRECT EXAM

1 before. If it's consensual, then it's lack of
2 mistake, it's motive, intent.

3 THE COURT: Is he, in fact -- is that
4 his defense, this was consensual? How old was she
5 at the time?

6 MS. WILLIAMS: 17.

7 THE COURT: And how old was he at the
8 time?

9 MS. WILLIAMS: 37. And he filed a
10 motion to try to get in evidence of consent, none
11 of which we're aware of.

12 MR. SCHWACKE: And at this point we
13 haven't made an attempt to offer...

14 THE COURT: I'm sorry, I can't hear
15 you.

16 MR. SCHWACKE: At this point we have
17 not made any effort to offer that evidence, but we
18 are of the belief that this clearly was improper
19 evidence of bad acts and would be --

20 THE COURT: Well, there's two types of
21 testimony she's offered; one of which is, did they
22 ever have any kind of relationship? I don't have a
23 problem with that question; I think it's
24 permissible.

25 MS. WILLIAMS: We're not going to ask

LEANDRE JENKINS - DIRECT EXAM

1 that, Your Honor.

2 THE COURT: Well, then why did you ask
3 it in camera?

4 MS. WILLIAMS: Because -- we offered it
5 because Mr. Schwacke filed a motion to try to get
6 in evidence of --

7 THE COURT: I understand that, but I've
8 asked you to ask the questions you intended to ask
9 in the presence of the jury, and one of them is
10 whether she had a relationship with him. So I need
11 to know, do you plan to ask that question?

12 MS. WILLIAMS: Not that question. That
13 was for the purpose of Your Honor being able to
14 evaluate whether he had any --

15 THE COURT: I can't evaluate until he
16 testifies. Until he testifies, there is no
17 consent.

18 MS. WILLIAMS: He can cross-examine
19 her.

20 THE COURT: I can't anticipate what
21 he's going to ask her.

22 MS. WILLIAMS: Well, I don't want him
23 to ask her something about rape shield, because
24 then I --

25 THE COURT: He can't. He has to do

LEANDRE JENKINS - DIRECT EXAM

1 that in camera, so that's a moot issue.

2 MS. WILLIAMS: I guess I assumed that
3 he was going to ask her questions about that during
4 this proffer, because I don't know when he would.

5 THE COURT: I have no idea.

6 MS. WILLIAMS: But while she's on the
7 stand, I wanted to get that information out so that
8 if later he offers that, you would have this
9 testimony to consider, so we wouldn't have to bring
10 her all the way back to testify about that issue.
11 But we would be asking her questions about the
12 prior.

13 THE COURT: What do you mean, bring her
14 all the way back? She's on the stand; he's going
15 to conduct his cross-examination. I'm confused.

16 MS. WILLIAMS: When he proffers his
17 client about any exception to rape shield --

18 THE COURT: He can't proffer his client
19 unless his client testifies.

20 MS. WILLIAMS: At that point, Your
21 Honor, I would like you to be able to consider what
22 she --

23 THE COURT: You may have to bring her
24 back. I don't know if that's going to happen or
25 not. You may want to call her in rebuttal; I have

LEANDRE JENKINS - DIRECT EXAM

1 no idea. I have no idea what he's going to say, if
2 he's going to testify.

3 MS. WILLIAMS: Okay. I wanted you to
4 be able to consider what she's saying now outside
5 of the presence of the jury when you consider
6 whether or not he has presented any reliable
7 evidence that would be an exception to the rape
8 shield, and while we were on the topic I asked her
9 that question. But we would be offering the other
10 evidence of his -- her knowledge of his prior
11 crimes as to show why she went with him, why she
12 was afraid of him, and why she didn't want to be
13 alone with him.

14 THE COURT: I don't think you need to
15 -- frankly, if somebody came -- if I believe her
16 testimony is true, that if somebody came into my
17 house at 5:00 in the morning, who I was not living
18 with, who was not my custodian, I don't think she
19 needs to provide any other evidence regarding why
20 she didn't want to go with him. He wasn't her
21 father. I don't know that you need to muddy the
22 issue.

23 I think she's made it very clear that
24 him coming into the house without her grandfather
25 or grandmother being there was disconcerting to

LEANDRE JENKINS - DIRECT EXAM

1 her. He did not have a key to the house, which
2 means he had to have broken in. I think that's
3 enough to establish she had fear of him.

4 Now, if they open the door, that's
5 another issue, which well could happen. In which
6 case I'm going to reserve whether it becomes
7 relevant. Right now it's not relevant and it's
8 more prejudicial than probative, at this moment.
9 Because I don't have any evidence at this point
10 that rises to the level of you coming within an
11 exception, because there has been no evidence
12 introduced where he's refuting motive, intent,
13 absence of mistake, all of those things that come
14 within the Lyle exception, but I'm not -- I'm not
15 precluding the Court from revisiting the issue if
16 the door is opened.

17 MS. WILLIAMS: Thank you.

18 THE COURT: And other evidence about an
19 alleged rape of her sister, all of that is hearsay.
20 She has no personal knowledge of it, so that won't
21 be coming in.

22 MS. WILLIAMS: We would just offer that
23 if it becomes relevant later and he opens the
24 door --

25 THE COURT: If he opens the door, but

LEANDRE JENKINS - DIRECT EXAM

1 you're still going to have to establish that she
2 knows about it of her own personal knowledge, not
3 that somebody told her.

4 MS. WILLIAMS: Well, the fact that she
5 knew about it is what made her afraid of him.

6 THE COURT: Somebody told her. She has
7 to know of it of her own personal knowledge,
8 otherwise it's hearsay and doesn't come within the
9 exception.

10 All right. Are we ready to proceed?

11 MS. WILLIAMS: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 I assume then you're not going to ask
14 any of these questions?

15 MS. WILLIAMS: Correct.

16 THE COURT: All right.

17 (Jury in, 3:09 p.m.)

18 THE COURT: You may be seated, ladies
19 and gentlemen. We appreciate your patience. We
20 will move on with the examination of the witness.
21 You may proceed.

22 MS. WILLIAMS: May I approach, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. WILLIAMS:

LEANDRE JENKINS - DIRECT EXAM

1 Q. I'm going to show you the last three
2 pictures and tell me if you recognize these.

3 A. Yes.

4 Q. Do those accurately depict the messages
5 that you sent that morning?

6 A. Yes, ma'am.

7 MS. WILLIAMS: Your Honor, at this time
8 we would offer 138, 139, and 140 into evidence.

9 THE COURT: Any objection?

10 MR. SCHWACKE: No objection.

11 THE COURT: 138, 139 and 140, marked
12 and admitted without objection.

13 You may proceed.

14 (STATE'S EXH. 138 - 140 Photographs in
15 evidence.)

16 BY MS. WILLIAMS:

17 Q. What does this message say?

18 A. This is La-La. Telly got me. Call
19 this phone now. No police or other family.

20 Q. Why did you put, no police or other
21 family?

22 A. He didn't want any police involved.

23 Q. 139. And is that part of the same
24 message?

25 A. Yes, ma'am.

44

LEANDRE JENKINS - DIRECT EXAM

1 Q. And 140. And tell us the date and time
2 of the message that you see on this picture.

3 A. Monday, October 28, 4:59 a.m.

4 Q. Thank you. Okay. So, La-La, where did
5 you go after the rape? After his mother's house?

6 A. We went to get my mother from my
7 uncle's house.

8 Q. Did anyone see you at his mother's
9 house, that you're aware of?

10 A. Not that I'm aware of.

11 Q. Okay. And where did your uncle live?

12 A. He lived in 41, on Green -- Green --
13 Green -- Grass Road, I believe.

14 Q. And when you were leaving the location
15 where you were raped, do you remember any of the
16 names of the streets that you saw when you were
17 there or that you might be familiar with?

18 A. I don't remember the names of the
19 street, but I just know where it's at.

20 Q. Do you remember telling detectives that
21 Matilda Circle was one of the places over there?

22 A. Yes, ma'am.

23 Q. Okay. How long ago was all this, when
24 you talked to detectives?

25 A. Like a couple of days after it

LEANDRE JENKINS - DIRECT EXAM

1 happened.

2 Q. So three years ago?

3 A. Yes, ma'am.

4 Q. And so when you got to your mother's
5 house, what happened? Or where she was staying?

6 A. I got in the back seat and she got in
7 the car and we left.

8 Q. And where was the gun at that time?

9 A. I'm not sure.

10 Q. It was still in the car?

11 A. Yes, ma'am.

12 Q. And where was the knife?

13 A. Still in the car.

14 Q. And where did you go next?

15 A. After that we went to Lanes to an
16 abandoned house -- or the cabin.

17 Q. Okay. I'm going to show you some
18 photographs.

19 MS. WILLIAMS: Your Honor, I'm showing
20 defense counsel -- we've already agreed to these.

21 BY MS. WILLIAMS:

22 Q. I'm going to show you --

23 MS. WILLIAMS: Can you put up State's
24 1?

25 Q. (BY MS. WILLIAMS) We are going to go

46.

LEANDRE JENKINS - DIRECT EXAM

1 back and look at some pictures. What is this a
2 picture of?

3 A. My grandmother's house.

4 THE COURT REPORTER: I can't hear her
5 turned around.

6 THE COURT: I need you to speak up for
7 us so the Court Reporter can take down everything
8 you're saying.

9 THE WITNESS: Yes, ma'am. My
10 grandmother's house.

11 BY MS. WILLIAMS:

12 Q. And is that the location where you were
13 taken from that you just testified about?

14 A. Yes, ma'am.

15 Q. And State's 5?

16 A. That's my grandma's back door.

17 Q. Is that the back door that you left out
18 of?

19 A. Yes, ma'am.

20 Q. And what door did he come in?

21 A. The back door.

22 Q. How do you know that?

23 A. Because he couldn't get through the
24 front. And we -- that's the door we left out of
25 and that's the door he pried close.

LEANDRE JENKINS - DIRECT EXAM

1 Q. And State's 7. What is that a picture
2 of?

3 A. Her locks.

4 Q. Okay. Is that where he pried it open?

5 A. Yes, ma'am.

6 Q. State's 9?

7 A. That's my grandma's kitchen and
8 curtain.

9 Q. I'm going to hand you a little pointer.
10 If you could kind of show us where on this picture
11 he would have come in and where your room was.

12 A. He would have come in through the
13 kitchen and come down the hallway, down here to
14 where my room was.

15 Q. State's 10.

16 A. That's my room.

17 Q. Okay. Is that the room you were in
18 when you were taken?

19 A. Yes, ma'am.

20 Q. State's 13. What is that a picture of?

21 A. Me and my younger sister, Brianna.

22 Q. But the picture is on what?

23 A. My cell phone.

24 Q. Okay. And is that the cell phone that
25 you did not take with you that day?

LEANDRE JENKINS - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. State's 14.

3 A. That's my bed.

4 MS. WILLIAMS: Okay. Beg the Court's
5 indulgence just a second.

6 Q. (BY MS. WILLIAMS) State's 12. There
7 are some books on the dresser right there. What
8 kind of books are those?

9 A. ACT books.

10 Q. And were you studying for the ACT at
11 the time?

12 A. Yes, ma'am.

13 Q. And lastly, State's 16 out of this
14 bunch. What's that a picture of?

15 A. The place where he had his car parked.

16 MS. WILLIAMS: And if you could put up
17 State's 22 -- 21 and 22.

18 THE WITNESS: That's my uncle -- like
19 that's the road to go to my uncle's house.

20 BY MS. WILLIAMS:

21 Q. And when you say, your uncle, is that
22 the uncle that your mother was living with?

23 A. Yes, ma'am.

24 Q. And is that where you drove to to get
25 her?

LEANDRE JENKINS - DIRECT EXAM

1 A. Yes, ma'am.

2 Q. Where did she come in relation to the
3 house? Show us, if it's on that picture, where she
4 came out, where you met her.

5 A. We met her like right in this area
6 right here. (Indicating)

7 Q. Okay. Okay. You can turn back around.
8 So you said that you went to Lane?

9 A. Yes, ma'am.

10 Q. Okay. What is that area?

11 A. Williamsburg County.

12 Q. Okay. How long did it take you to get
13 there?

14 A. About 20 minutes or -- 20 minutes
15 maybe.

16 Q. Do you have any idea why you were going
17 there?

18 A. No, I'm guessing.

19 MR. SCHWACKE: Objection, Your Honor.

20 THE COURT: Speculation; sustained.

21 MS. WILLIAMS: Okay.

22 THE COURT: Unless she knows of her
23 own knowledge and you can establish a foundation.

24 BY MS. WILLIAMS:

25 Q. You didn't know why, then?

LEANDRE JENKINS - DIRECT EXAM

1 A. No.

2 Q. When you got there, what happened?

3 A. When we got there, he broke into the
4 cabin place. And we went in the house and he
5 duct-taped me and my mom. And he said -- before he
6 left, he told my momma that I have good P word and
7 good head too. And he laughed and --

8 Q. So when he said that to your mother,
9 did he use that word, pussy? And what did he --
10 did he just tell her? Can you explain or
11 demonstrate how he told her?

12 A. He said that and he laughed and he
13 left.

14 Q. And where did he park the car when you
15 got there?

16 A. On the other side of the road, like
17 behind some bushes and stuff.

18 MS. WILLIAMS: Okay. Can you publish
19 25?

20 Q. (BY MS. WILLIAMS) He's going to put a
21 couple of more pictures up there. Can you tell us
22 what that's a picture of?

23 A. The cabin.

24 Q. Okay. And 38. Can you show us which
25 door, if you remember, he broke into?

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LEANDRE JENKINS - DIRECT EXAM

- 1 A. This one. (Indicating)
- 2 Q. And 39. And what is that a picture of
- 3 by the cabin?
- 4 A. The car --
- 5 Q. Okay.
- 6 A. -- that he used to get us.
- 7 Q. Is that the car you were in that day?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And, at that time, were you all
- 10 aware of any kind of camera that was in the woods?
- 11 Did you know anything about that?
- 12 A. No, ma'am.
- 13 Q. Okay. So after he -- you said he tied
- 14 you up. What did he tie you up with?
- 15 A. Duct tape.
- 16 Q. And what -- where? Like how were you
- 17 sitting? Where were you?
- 18 A. We were sitting like on this chair by a
- 19 window.
- 20 Q. Okay. And why did he -- did he tell
- 21 you why he was tying you all up?
- 22 A. So he could move the car.
- 23 Q. Where had he put it initially?
- 24 A. On the other side of the road behind
- 25 some bushes.

LEANDRE JENKINS - DIRECT EXAM

1 Q. And what did do after he duct-taped
2 you?

3 A. He went and got it and put it behind
4 the house.

5 Q. Did he say -- did he threaten you at
6 all when you were there? Did he say anything to
7 you about what he was going to do or his intention
8 or anything to you-all?

9 A. No. But he said, I could kill you
10 right now and nobody would ever know.

11 Q. Did he still have the gun?

12 A. Yes, ma'am, he had it in his hand.

13 Q. What else did you-all do while you were
14 at the cabin?

15 A. We were just sitting there and him and
16 my mom was -- were talking and I had to use the
17 bathroom. And that was it.

18 Q. Okay. And do you know how long you
19 were there?

20 A. No.

21 Q. And after you left there, where did you
22 go next?

23 A. After we left there, we went somewhere
24 and we went in the woods.

25 Q. Okay. And when you were driving

LEANDRE JENKINS - DIRECT EXAM

1 around, do you know what counties you were driving
2 through at this time?

3 A. No. I assumed we were still in
4 Williamsburg County.

5 Q. And do you know where in the woods you
6 were?

7 A. No.

8 Q. Okay. How far off the road did you go
9 in?

10 A. Not that far, but far enough where
11 nobody could see us.

12 Q. Okay. And what happened in the woods
13 that time?

14 A. When we went in the woods that time,
15 him and my momma were talking. They got out of the
16 car and were talking and I stayed in the car.

17 Q. Okay. Did you hear any of the things
18 that he said to her?

19 A. I didn't hear them.

20 Q. Okay. During this whole time, did you
21 have an opportunity to observe your mom, how she
22 was and her physical demeanor and how she was
23 acting?

24 A. She was -- basically, she was trying to
25 act as if she was, you know, strong, so that I

LEANDRE JENKINS - DIRECT EXAM

1 wouldn't break down, but I could tell she was kind
2 of scared.

3 Q. How could you tell?

4 A. You could tell by the look on her face
5 like and she was shaking and stuff.

6 Q. And did you leave the woods?

7 A. Yes. We left the woods and we went to
8 his sister's house to get something to eat because
9 I said I was hungry.

10 Q. Where does she live, if you know?

11 A. I don't know.

12 Q. Okay. What did you do when you got
13 there?

14 A. We got something to eat, I went and
15 used the rest room and after that, we left.

16 Q. Okay. Why didn't you run away or tell
17 her?

18 A. He had the gun in his pocket and he
19 told us to act normal.

20 Q. So did you act normal?

21 A. Yes, ma'am.

22 Q. Where did you go after that?

23 A. After that, we went to his aunt's house
24 to get gas money and then we went to the gas
25 station.

55

LEANDRE JENKINS - DIRECT EXAM

1 Q. And when you went to his aunt's house,
2 what was that like? Where does she live? Can you
3 describe the neighborhood or area?

4 A. I don't remember.

5 Q. Was there a lot of houses around?

6 A. I don't remember.

7 Q. Okay. And so when you got there, did
8 you tell the aunt? Did you try to run? Did you
9 let them know that he was holding you against your
10 will?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because he told us to act normal.

14 Q. Okay. And when you went to the gas
15 station, who pumped the gas?

16 A. He did.

17 Q. And where were you?

18 A. In the car.

19 Q. And where did your mom go?

20 A. To go pay for the gas.

21 Q. Why did she go in and pay for the gas;
22 do you know?

23 A. No.

24 Q. Did he tell her to?

25 A. Yes, ma'am.

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LEANDRE JENKINS - DIRECT EXAM

1 Q. Do you know that? Did you hear him
2 tell her?

3 A. Yes.

4 Q. Okay. And did she tell anyone at the
5 gas station?

6 A. No.

7 Q. Nobody cried for help?

8 A. No, ma'am.

9 Q. And after the gas station, where did
10 you go?

11 A. After the gas station, we just drove
12 around for a little bit, and a lady saw us and she
13 said something about an Amber Alert. And after
14 that, we went back into the woods. We went into a
15 different part of the woods and we went deeper into
16 the woods.

17 Q. What happened that time?

18 A. That time, they were like talking and
19 stuff. And then after that, we left out and we saw
20 the police.

21 Q. Do you remember him falling asleep at
22 any point?

23 A. No, ma'am.

24 Q. Okay. And how were you feeling this
25 whole time?

LEANDRE JENKINS - DIRECT EXAM

1 A. Scared.

2 Q. And when you left out of the woods the
3 other time, the last time -- well, before you got
4 to the woods at that time, was there any time
5 during this whole period when you called anyone,
6 you or your mom?

7 A. Yes, ma'am. He had us call and tell
8 them -- I don't remember exactly what it was, but I
9 know he told us to call them and tell them not to
10 call the police, he was going to bring us home at
11 nighttime.

12 Q. Who did he tell you to call?

13 A. My grandma.

14 Q. And who is she? What's her name?

15 A. Johnnie Ruth Jenkins.

16 Q. Okay. Was there anyone that you
17 remember besides her that you had to call?

18 A. No, I don't remember.

19 Q. Okay. And when you say that you saw
20 the police, can you describe to us what happened
21 during that?

22 A. When we came out of the woods, we were
23 coming out of the woods and the police car -- like,
24 a police car passed us. And he saw the police car
25 and the police car saw us and that's when we got in

LEANDRE JENKINS - DIRECT EXAM

1 like a chase.

2 Q. And what kind of road -- when you say,
3 chase, can you describe what happened and what kind
4 of road it was?

5 A. At first we were on like a paved road,
6 and then the police were following us and we were
7 going like really, really fast. And then we turned
8 down like a rocky dirt road, and we were like
9 waving to the police, or whatever, because he told
10 us to wave to the police to tell them to stop. And
11 after that, we ended up back at the house.

12 Q. And when you were going really fast in
13 the car, did you have your seat belts on?

14 A. No, ma'am.

15 Q. When you say, back to the house, which
16 house?

17 A. The cabin.

18 Q. What happened when you got there?

19 A. When we got there, he jumped out of the
20 car and went to the trunk and got bullets and a bag
21 I guess and he ran into the woods.

22 Q. And what did you and your momma do?

23 A. We ran.

24 Q. Did you see the police?

25 A. Yes, ma'am.

LEANDRE JENKINS - DIRECT EXAM

1 Q. And where did you go after that, after
2 the police got you?

3 A. After that, we went to the hospital.

4 Q. Okay. What time was it by this time;
5 do you remember?

6 A. No, ma'am.

7 Q. Do you remember anything during the day
8 that would give you a clue as to how long this
9 thing went on?

10 A. When we were at the gas station, I saw
11 buses so I assumed it was like 1 or 2:00.

12 Q. And how long were you at MUSC, the
13 hospital?

14 A. Hours.

15 Q. And what had to happen there?

16 A. They had to look up in me and take
17 pictures and stuff.

18 Q. And after you left there, what kind of
19 aftercare did you have to have? Like what kind of
20 things did you have to do medically?

21 A. I had to take a lot of medicine and I
22 had to go to a mental health hospital.

23 MS. WILLIAMS: Beg the Court's
24 indulgence.

25 THE COURT: Yes, ma'am.

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LEANDRE JENKINS - CROSS EXAM

1 MS. WILLIAMS: I don't have any more
2 questions for you, La-La. Please answer any
3 questions from the defense.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MR. SCHWACKE:

7 Q. Hey, La-La. How are you doing?

8 A. Fine, and you?

9 Q. I have a couple of questions. Trying
10 to understand some of what you said. So you have a
11 phone.

12 A. Yes, sir.

13 Q. But you left it that morning, you did
14 not take it with you?

15 A. Yes, sir.

16 Q. And your mom, she has how many phones?

17 A. She had one phone.

18 Q. Just one phone or two phones?

19 A. She had one phone with her when she
20 came, because she was talking on the phone with him
21 when we were coming.

22 Q. So the phone that all of the texting
23 was going on was whose phone?

24 A. That I was texting on?

25 Q. Right.

let

LEANDRE JENKINS - CROSS EXAM

- 1 A. I was texting off of Telly's phone.
- 2 Q. So Telly had a phone, your mom had a
3 phone in the car?
- 4 A. Yes, sir.
- 5 Q. Any other phones in the car?
- 6 A. No; just my mom's and Telly's.
- 7 Q. Does Telly have more than one phone?
- 8 A. I'm not sure.
- 9 Q. And you're not sure if your mom has one
10 or two phones?
- 11 A. I just know she had the one.
- 12 Q. Okay. When you were talking about you
13 had gone to Pineville and before you had gone over
14 to your aunt and your uncle's house, what clothes
15 did you change into?
- 16 A. His clothes.
- 17 Q. His clothes?
- 18 A. His pants.
- 19 Q. And they were what?
- 20 A. He had some beige khaki-looking pants.
- 21 Q. Anything else?
- 22 A. I had on a sweater because he gave me a
23 sweater earlier that day because I was cold.
- 24 Q. What kind of sweater?
- 25 A. I don't remember exactly how it looked.

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LEANDRE JENKINS - CROSS EXAM

1 It was like a hoodie though.

2 Q. Did he give you a pair of pants the
3 first time and you ended up telling him they were
4 too cold and you wanted another pair of pants?

5 A. I don't remember.

6 Q. You don't remember?

7 A. I don't remember.

8 Q. All right. So how many times did you
9 go to a gas station?

10 A. Just once.

11 Q. Just once?

12 A. Uh-huh.

13 Q. And you thought that was 1 or 2:00 in
14 the afternoon?

15 A. Uh-huh.

16 Q. How long after that did the police find
17 you?

18 A. I'm not exactly sure how long it was,
19 but it was a little while after.

20 Q. So a little while or a long -- what is
21 a little while?

22 A. I would say about 30 minutes to an
23 hour, probably.

24 Q. So the pictures that they showed of the
25 Grass Road house, that's your aunt and uncle's

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LEANDRE JENKINS - CROSS EXAM

1 house?

2 A. Yes, sir.

3 Q. And where did you say Telly stopped and
4 parked when you went over there?

5 A. Like almost to the trees.

6 Q. So how far away was that away from the
7 picture -- in the picture that we saw?

8 A. (No response.)

9 Q. La-La, if you could turn around, is
10 that your aunt and uncle's trailer?

11 THE COURT: I need you to identify the
12 exhibit you're showing.

13 MR. SCHWACKE: This would be State's
14 Exhibit 21.

15 THE WITNESS: No, that's not the
16 trailer. The trailer is like further to the right.

17 BY MR. SCHWACKE:

18 Q. The next one over is actually their
19 trailer?

20 A. Yes, sir.

21 Q. Okay. Thank you.

22 Were Telly and your mom doing a lot of
23 talking that you weren't paying attention to?

24 A. Yes, sir.

25 Q. Did you ever pay attention to what they

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LEANDRE JENKINS - CROSS EXAM

1 were saying?

2 A. No, not really. Every time they
3 talked, they basically left.

4 Q. So they were having like a private
5 conversation you weren't a part of?

6 A. Yes, sir.

7 Q. So when you first go to the house in
8 the woods, the brick -- that had the bricks, that
9 house, about what time of day are we talking about
10 there?

11 A. It was in the morning time.

12 Q. Okay. And you stayed at that house for
13 how long?

14 A. Probably about 30 to 45 minutes.

15 Q. And you say at one point he put duct
16 tape on both you and your mother?

17 A. Yes, sir.

18 Q. Where did he put duct tape on you?

19 A. On my legs and wrists.

20 Q. And whereabouts?

21 A. Like in these areas. (Indicating)

22 Q. And, again, you were wearing khaki
23 pants?

24 A. Uh-huh.

25 Q. Were they long or short?

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LEANDRE JENKINS - CROSS EXAM

1 A. Like short.

2 Q. The first person that you talked to
3 that day, either on the phone or in person, after
4 you had gotten into the car and your mom is in the
5 car with you, who is the first person that you
6 talked to?

7 A. When my mother got in the car?

8 Q. She's in the car, right. On the phone
9 now, who is the first phone contact that you had
10 after your mom is now in the vehicle?

11 A. I think it was my grandma and my uncle.

12 Q. And your grandmother is named what?

13 A. Johnnie Ruth Jenkins.

14 Q. And who is the other person you said?

15 A. My uncle.

16 Q. Uncle. Were those texts or were those
17 talk?

18 A. Talking on the phone.

19 Q. And the phone you would have used,
20 because it's either your mom's or Telly's, was
21 whose?

22 A. I think it was Telly's.

23 Q. Okay. So Telly let you have the phone?

24 A. Uh-huh.

25 Q. Any instructions about his phone?

lele

LEANDRE JENKINS - CROSS EXAM

- 1 A. What do you mean? Like, how he told us
2 to use the phone? We had to put it on
3 speakerphone.
- 4 Q. Okay. And you're sitting where in the
5 car?
- 6 A. In the back seat.
- 7 Q. How big is that car?
- 8 A. Not that big.
- 9 Q. And so you go to the house, you talk to
10 Johnnie -- your grandmother, Johnnie, and your
11 uncle. What's his name?
- 12 A. Chris.
- 13 Q. Jenkins?
- 14 A. Uh-huh.
- 15 Q. And then the next person, the actual
16 live person you see after you leave that house, is
17 who?
- 18 A. His sister.
- 19 Q. And do you know her name?
- 20 A. No, I don't remember it.
- 21 Q. Do you know where she lived?
- 22 A. I know she lived in a brick house. I
23 don't know exactly where she lives.
- 24 Q. Had you been there before?
- 25 A. No, just that once.

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LEANDRE JENKINS - CROSS EXAM

1 Q. This is the only time that you've ever
2 been to her house?

3 A. Yes, sir.

4 Q. And this is to get food?

5 A. Yes, sir.

6 Q. Okay. So did you go inside or stay out
7 in the car?

8 A. We went inside.

9 Q. Okay. Where did you go?

10 A. We went in the kitchen and I had to use
11 the rest room.

12 Q. All right. So her house, if you walk
13 in the front door, there's a room. And then the
14 kitchen is just past that?

15 A. I don't remember how her house looks,
16 like inside of the house.

17 Q. Okay. You don't remember -- do you
18 remember where the bathroom was in her home?

19 A. I don't remember nothing about how her
20 house looked inside.

21 Q. But you were there?

22 A. Yes, sir.

23 Q. At one point, were you in the kitchen
24 alone?

25 A. No.

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LEANDRE JENKINS - CROSS EXAM

- 1 Q. You were never in the kitchen alone?
- 2 A. I don't believe so.
- 3 Q. Were you in the kitchen without Telly?
- 4 A. I don't remember.
- 5 Q. Because you were there to get money for
6 gas, correct?
- 7 A. No. We went to his sister's house to
8 get food.
- 9 Q. But you didn't hear him ask for gas
10 money as well while they were there?
- 11 A. I don't know if he asked for gas money
12 when we were there. I know we went to his aunt's
13 house for gas money.
- 14 Q. So let's stay at his sister's,
15 Beatrice. Okay. Do you remember her name?
- 16 A. No.
- 17 Q. Okay. So she's given you cupcakes,
18 she's given you Kool-aid to drink, she's given you
19 Sloppy Joe's and potato salad. And you all are all
20 eating that around her kitchen table while she's
21 serving food?
- 22 A. We didn't stay to eat the food.
- 23 Q. You didn't eat any of it in her house?
- 24 A. I ate some of it in her house.
- 25 Q. And then that got wrapped up and taken

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LEANDRE JENKINS - CROSS EXAM

1 with you, what wasn't --

2 A. It was wrapped up and we took it with
3 us.

4 Q. Where do you go next?

5 A. After we left her house, we went to his
6 aunt's house for gas money.

7 Q. And his aunt is who?

8 A. I don't know her name. I have never
9 met her.

10 Q. You've never met her?

11 A. No.

12 Q. You've never been in her house before?

13 A. No.

14 Q. You've never gone over there to her
15 house before in your mom's truck?

16 A. Not that I know of. Not that I
17 remember.

18 Q. Do you remember where she was when you
19 got there?

20 A. I think she was outside.

21 Q. Then where did you go?

22 A. After we left her house, we went to the
23 gas station.

24 Q. Because she gave you some money?

25 A. Uh-huh.

LEANDRE JENKINS - CROSS EXAM

- 1 Q. Did you see how much?
- 2 A. No.
- 3 Q. And the gas station is the 52 Station?
- 4 A. Yes, sir.
- 5 Q. Have you been there before?
- 6 A. I don't know.
- 7 Q. So have you talked -- did you talk with
- 8 anybody else on the phone after you leave his
- 9 aunt's house?
- 10 A. No. I know we -- we had -- I know we
- 11 talked to -- on the phone, no. We haven't talked
- 12 to nobody else on the phone, I don't think.
- 13 Q. So you only made two phone calls the
- 14 entire time with your mom at that point?
- 15 A. No. I think it was only one.
- 16 Q. I thought you'd said that you had
- 17 spoken both to your -- Johnnie and to your uncle?
- 18 A. They were together.
- 19 Q. Okay. Not in separate phone calls?
- 20 A. No.
- 21 Q. You talked to both of them at the same
- 22 time. What about any other text messages?
- 23 A. There were no more text messages, that
- 24 I know of.
- 25 Q. I wasn't quite clear and understood

LEANDRE JENKINS - CROSS EXAM

1 what you said about waving to the police. Tell me
2 about that.

3 A. He told us to try to get them to stop,
4 because he was going really fast and they were
5 basically chasing us. So we were waving to the
6 police for them to stop, because he told us to tell
7 them -- to try to get them to stop.

8 Q. So Telly is the one telling you to get
9 the police's attention to stop?

10 A. Yes.

11 MR. SCHWACKE: One moment, Your Honor.

12 THE COURT: Uh-huh.

13 BY MR. SCHWACKE:

14 Q. Didn't Beatrice substitute teach for
15 you at one point?

16 A. I don't know.

17 Q. You don't remember?

18 A. No. I don't remember half of the
19 teachers that I have at school; well, half of the
20 substitute teachers.

21 Q. This would have been the same woman
22 that you had seen that day?

23 A. I seen her, but I don't remember her
24 substituting for any of my classes.

25 MR. SCHWACKE: Thank you. That's all

1 of my questions.

2 THE COURT: Any redirect?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: Ma'am, you may step down.

5 Madame forelady, ladies and gentlemen,
6 we are going to take a brief rest room break.

7 During the break, please do not discuss the case
8 and please leave your notepads in your seats.

9 If you would go with the bailiffs,
10 please.

11 (Jury out, 3:44 p.m.)

12 THE COURT: Who is the State's next
13 witness?

14 MS. WILLIAMS: Captain Bobby Shuler.

15 THE COURT: We will be at ease for 10
16 minutes.

17 (A recess transpired.)

18 THE COURT: It's my understanding you
19 all have agreed to State's 108 through 132, 143
20 through 150, 157 through 158, coming into evidence
21 without objection. Is that correct?

22 MS. WILLIAMS: Yes, Your Honor.

23 MR. SCHWACKE: Yes, Your Honor.

24 THE COURT: It will be marked and
25 admitted without objection.

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1 (STATE'S EXH. 132 Photographs in
2 evidence.)

3 (STATE'S EXH. 143 - 150 Photographs in
4 evidence.)

5 (STATE'S EXH. 157 Photograph in
6 evidence.)

7 (STATE'S EXH. 158 Photograph in
8 evidence.)

9 THE COURT: Now, I need to address some
10 security concerns. There is way too much movement
11 in the gallery. I have instructed at the behest of
12 the deputies, they are going to control that
13 without my intervention. So if they feel like
14 there's too much movement, you're going to be
15 removed and not be allowed to return. So I need
16 you to govern yourselves accordingly.

17 State ready to proceed?

18 MS. WILLIAMS: Yes.

19 THE COURT: Defense ready to proceed?

20 MR. SCHWACKE: Yes.

21 THE COURT: Please bring in the jury.

22 And where is the next -- is the next
23 witness in the courtroom?

24 MR. POULOS: He's not. He's right
25 outside.

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BOBBY RAY SHULER - DIRECT EXAM

1 THE COURT: Have them ready so we don't
2 have to wait. If you have a witness, they should
3 be in the courtroom.

4 (Jury in, 4:03 p.m.)

5 THE COURT: You may be seated.

6 Ladies and gentlemen, I hope you
7 enjoyed your break. We will now resume testimony.
8 You may call the next witness.

9 MR. POULOS: The State calls Bobby
10 Shuler.

11 BOBBY RAY SHULER,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please state your full name
14 and spell your last.

15 THE WITNESS: Bobby Ray Shuler,
16 S-H-U-L-E-R.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. POULOS:

20 Q. Afternoon, Captain Shuler.

21 A. Afternoon.

22 Q. Tell us where you work.

23 A. Berkeley County Sheriff's Office.

24 Q. How long have you been there?

25 A. Approximately, 16 years.

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BOBBY RAY SHULER - DIRECT EXAM

1 Q. What is your position there?

2 A. I'm currently the Captain over the
3 Investigations Division.

4 Q. What responsibility do you have as the
5 Captain of the Investigations Division?

6 A. My overall job is to see to the overall
7 function and day-to-day operations of the Criminal
8 Investigations Division.

9 Q. Are you familiar with the facts and
10 circumstances that led to this Defendant's arrest
11 in this case?

12 A. Yes, I am.

13 Q. Okay. Did you assist in that
14 investigation and the apprehension of this
15 Defendant?

16 A. Yes, I did.

17 Q. Explain to the jury what role you
18 played throughout the course of these incidents.

19 A. Back when that incident occurred, I was
20 a sergeant. I was one of the lead sergeants,
21 detectives. I responded to one of the addresses in
22 question, which was the Peppermill address. Once I
23 got there, I started coordinating with Detective
24 Wilson and several of the other detectives that
25 were there, along with coordinating the forensics

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BOBBY RAY SHULER - DIRECT EXAM

1 response and just organizing the search with the
2 patrol division and other agencies.

3 Q. What other agencies were you working
4 with?

5 A. Initially, we were working with
6 Bonneau, St. Stephen, Berkeley County Sheriff's
7 Office, DNR got involved, Highway Patrol got
8 involved, SLED eventually got involved, also the
9 Federal Bureau of Prisons got involved, Charleston
10 County Sheriff's Office got involved. So I think
11 that pretty much wraps it up as far as agencies
12 involved.

13 Q. And each of those agencies had
14 representatives in the field searching?

15 A. They absolutely did.

16 Q. How did Berkeley County Sheriff's
17 Office first get involved in this case?

18 A. We received a call through dispatch and
19 the patrol deputies responded out to 215 Grass Road
20 in reference to a possible kidnapping.

21 Q. Okay. And is 215 Grass Road in
22 Berkeley County?

23 A. It is.

24 Q. Who called you from that address?

25 A. If I remember correctly, the caller was

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BOBBY RAY SHULER - DIRECT EXAM

1 a member of Deadrene McHoney's family. I think
2 Chiquita -- Quetta Jenkins, I believe.

3 Q. Do you know why they called? Why you
4 responded to that residence?

5 A. The alleged kidnapping of both Deadrene
6 and Leandre, if I'm pronouncing that correct.

7 Q. Did detectives speak to Deadrene's
8 family members when they arrived?

9 A. They did.

10 Q. And did they indicate whether or not
11 the Defendant had picked up Deadrene from that
12 residence?

13 A. Yes, they did.

14 Q. After responding to Grass Road, did
15 your office receive any other calls?

16 A. Yeah. While we were there, we received
17 another phone call, from a Johnnie Jenkins, which
18 is the mother of Deadrene McHoney and also the
19 grandmother of Leandre Jenkins, stating that the
20 granddaughter had been kidnapped.

21 Q. What is her address?

22 A. Her address is 946 Peppermill Road.

23 Q. Okay.

24 A. That's also in Berkeley County.

25 Q. And that's the address that you

BOBBY RAY SHULER - DIRECT EXAM

1 personally responded to?

2 A. That's correct.

3 Q. What other departments responded?

4 A. The initial responding deputies, a
5 couple of detectives, and then also we had
6 Lieutenant Kokinda. He's a member of the forensics
7 unit.

8 Q. And did he attempt to collect evidence
9 there?

10 A. He did.

11 Q. Okay. Were there signs of forced entry
12 at the Peppermill Way house?

13 A. Yes. The back door lock to the actual
14 residence and there was also fresh pry marks on the
15 back door of the residence.

16 Q. After you went -- after your deputies
17 went to Grass Road and Peppermill Road, what action
18 did your agency take at that time?

19 A. Based off the fact that we had a
20 kidnapping and it met the criteria -- most people
21 are familiar with the Amber Alert -- we sent two
22 detectives to St. Stephen's PD to fax the paperwork
23 to SLED to issue the Amber Alert for Leandre
24 Jenkins, and we also sent it to -- based off
25 information -- the facts and circumstances in this

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BOBBY RAY SHULER - DIRECT EXAM

1 case, Detective Cortain was sent to the office to
2 start working on obtaining an arrest warrant for
3 the Defendant.

4 Q. Did your deputies of Berkeley County
5 speak to any of the Defendant's family members in
6 an attempt to locate them?

7 A. Yes. Detective Riser and Detective
8 Weise both responded to meet with a Margaret
9 McClam, which is the mother of the Defendant, on
10 that. They responded over to Williamsburg County,
11 which is the county that joins up to Berkeley
12 County, and met with a Emma Cooper and also met --
13 which is the aunt of the Defendant, and they also
14 responded to and met with a Ms. Beatrice Jones,
15 which is a sister of the Defendant.

16 Q. Do you recall where Ms. Cooper and Ms.
17 Jones resided?

18 A. Ms. Cooper, if my memory refreshes me,
19 lives at 57 Flank Avenue, which is located in
20 Salter, South Carolina, which is also right there
21 in Williamsburg County. And Ms. Beatrice Jones,
22 she lives at 60 Bennett Circle, which is located in
23 Lane, South Carolina, and they all just kind of
24 butt up together there in Williamsburg County.

25 Q. Okay. Did your deputies make any

BOBBY RAY SHULER - DIRECT EXAM

1 initial contact with the Defendant?

2 A. They did. After speaking with Emma
3 Cooper and leaving there, they were still in
4 Williamsburg County, they were leaving to head back
5 to Highway 52 and in the process of doing that,
6 they received a phone call advising them that the
7 Defendant was back --

8 MR. SCHWACKE: Your Honor, I would
9 object; hearsay.

10 THE COURT: Overruled. It's not
11 offered for the truth, but for the details of the
12 investigation.

13 You may proceed.

14 THE WITNESS: They were proceeding back
15 to Bennett Circle, which is located in Lane. In
16 the process of that, they spotted the Defendant's
17 vehicle and the Defendant, along with both of the
18 victims.

19 BY MR. POULOS:

20 Q. Did they pursue them?

21 A. They did.

22 Q. How did that go?

23 A. They saw the vehicle, they turned
24 around on it, they passed it, they turned around on
25 it, at which point they saw both victims --

BOBBY RAY SHULER - DIRECT EXAM

1 MR. SCHWACKE: Your Honor, hearsay
2 again.

3 THE COURT: You need to establish that
4 it's within his rational perception and he saw
5 this.

6 MR. POULOS: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 By MR. POULOS:

9 Q. Did your agency at some point respond
10 to 1112 Council Road in Williamsburg County?

11 A. Yes.

12 Q. Why did you respond there?

13 A. Pursuant to a high-speed pursuit,
14 that's where the pursuit stopped, behind an
15 abandoned residence at 1112 Council Road, where the
16 Defendant fled into the woods on foot and both
17 victims were located.

18 Q. Was he presumed to be armed at that
19 time?

20 A. Yes, he was.

21 Q. Okay. After Berkeley County arrived at
22 that location on Council Road, what did your agency
23 do in the course of its investigation?

24 A. Obviously, we immediately took both
25 victims to make sure they were secure, secured the

BOBBY RAY SHULER - DIRECT EXAM

1 area as a crime scene, we also began to set up a
2 perimeter around the area with all the responding
3 agencies to try to help locate the Defendant after
4 he fled into the woods.

5 Q. Okay. Was the Defendant eventually
6 apprehended at some point?

7 A. Yes; he was, later that night.

8 Q. Was your agency involved in that
9 apprehension?

10 A. We were.

11 Q. And explain how an apprehension
12 occurred.

13 A. We received a tip that the Defendant
14 was possibly back over in the area of 60 Bennett
15 Circle in Lane, South Carolina, where his sister
16 lives. So all the responding agencies converged on
17 that area and we set up a perimeter and then we
18 started searching it with bloodhounds and
19 helicopters and everything else, trying to see if
20 we could locate the subject.

21 Q. Okay. Deputy, I'm going to show you
22 what is marked as State's 107. Do you recognize
23 that map?

24 A. Yes, sir. This is a map of the area
25 where 60 Bennett Court is in Lane, South Carolina.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. Does it fairly and accurately represent
2 the street layout as it was on the day of the
3 apprehension?

4 A. Yes, sir.

5 MR. POULOS: I would offer this into
6 evidence, Your Honor.

7 THE COURT: Any objection?

8 MR. SCHWACKE: None, Your Honor.

9 THE COURT: Marked and admitted without
10 objection, Number 107.

11 (STATE'S EXH. 107 Map in evidence.)

12 BY MR. POULOS:

13 Q. Captain, if you would use the laser
14 pointer here and identify for the jury where 60
15 Bennett Court is.

16 A. 60 Bennett Court is right here.

17 (Indicating)

18 Q. Do you know where approximately the
19 Defendant was apprehended?

20 A. I want to say he was somewhere in this
21 wood line, in this area. I know it was near the
22 tracks.

23 Q. Okay. Thank you.

24 Did your investigation reveal anything
25 about the area of Fairview Drive and Red Rose

BOBBY RAY SHULER - DIRECT EXAM

1 Avenue near Matilda Circle?

2 A. Based off after the victims were
3 located and everything else, through that
4 investigation, we determined the Fairfield View and
5 Rose Drive area was an area where the -- one of the
6 victims was sexually assaulted prior to all the
7 pursuit and everything else.

8 Q. Is that near Matilda Circle?

9 A. That's correct.

10 Q. Is Fairview Drive and Red Rose Avenue,
11 is that in Berkeley County?

12 A. That's also in Berkeley County.

13 Q. I would like to show you State's 102.
14 I show you State's 102. Do you recognize this map,
15 Captain Shuler?

16 A. Yes.

17 Q. And is that -- what is that a map of?

18 A. It's an overall map of both -- some of
19 the incident locations in Berkeley County, and also
20 it goes -- crosses into the county line into
21 Williamsburg County and some locations of interest
22 in Williamsburg.

23 Q. Does that fairly and accurately
24 represent how the roads were laid out at the time
25 of the incident?

BOBBY RAY SHULER - DIRECT EXAM

1 A. That is correct.

2 MR. POULOS: Your Honor, I would offer
3 that into evidence.

4 THE COURT: Any objection?

5 MR. SCHWACKE: No objection.

6 THE COURT: Without objection, State's
7 102.

8 (STATE'S EXH. 102 Map in evidence.)

9 MR. POULOS: The State has Exhibit 102
10 blown up, if Captain Shuler could step down for
11 demonstrative purposes.

12 THE COURT: You may.

13 THE WITNESS: Okay.

14 BY MR. POULOS:

15 Q. Captain, I would like to have you point
16 out some of these locations for the jury.

17 THE COURT: You need to switch places
18 so he's speaking to the Court Reporter.

19 BY MR. POULOS:

20 Q. Can you identify 946 Peppermill Way?

21 A. [REDACTED] is located right
22 here.

23 Q. Okay. And is that Johnnie Jenkins's
24 address?

25 A. That's correct.

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BOBBY RAY SHULER - DIRECT EXAM

1 Q. And that's in Berkeley County?

2 A. That's correct.

3 Q. Can you identify the area of Fairview
4 Road, Red Rose Avenue and Matilda Circle?

5 A. This is Fairfield Drive and Red Rose
6 Avenue.

7 Q. Okay. Is that in Berkeley County as
8 well?

9 A. That's also in Berkeley County.

10 Q. Please show the jury where 116 --
11 excuse me, 215 Grass Road is.

12 A. 215 Grass Road is right down here.

13 THE COURT: Are you-all saying grass or
14 brass?

15 THE WITNESS: Grass, G-R-A-S-S.

16 BY MR. POULOS:

17 Q. Is that also in Berkeley County?

18 A. That's correct.

19 Q. Captain, where is 1112 Council Road?

20 A. It's all the way up at the top of the
21 map. As you see, this is in Williamsburg County.

22 Q. Okay. Captain, how long would it take
23 to get from Grass Road to Council Road?

24 A. Probably -- well, if you're driving the
25 speed limit, maybe 20 minutes, maybe.

BOBBY RAY SHULER - DIRECT EXAM

1 Q. Okay. Can you point out where 60
2 Bennett Court is?

3 A. Right here on the map, not too far from
4 the area of 1112 Council Road.

5 Q. Is that in the area where the Defendant
6 was apprehended, approximately?

7 A. Yes, in that area of Council Road in
8 Williamsburg.

9 Q. Now, it's not on the map, but if you
10 can point out where approximately 57 Flank Avenue
11 would be.

12 A. 57 Flank Road, even though it's not on
13 the map, it's real close in the area of Council
14 Road, so it's going to be up in this area up here.
15 (Indicating)

16 Q. You indicated that Detective Riser had
17 spoken to an Emma Cooper?

18 A. Yes; the aunt of the Defendant.

19 Q. And is it your understanding, that was
20 her address?

21 A. That's correct.

22 Q. You can take your seat, Captain.

23 What kind of range are we dealing with
24 here square mileage-wise to encompass all of these
25 different sites?

BOBBY RAY SHULER - CROSS EXAM

1 A. Maybe from Grass Road to about where
2 Bennett Court is, I would have to say maybe 30,
3 40 miles.

4 Q. Is that part of the reason why other
5 agencies were brought in to assist?

6 A. Absolutely.

7 Q. Were there bloodhound teams there as
8 well?

9 A. Yeah. We had bloodhound units from
10 three different agencies to include ours, and also
11 two different aviation units participating, both
12 SLED and Charleston County aviation units.

13 MR. POULOS: Thank you, Captain.

14 THE COURT: Any questions for the
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Do you have a copy of the report that
19 you prepared in this case?

20 A. I do not, no. I was the supervisor on
21 scene to advise everybody and was giving people
22 tasks and their responsibilities.

23 Q. So, in other words, you didn't do one?

24 A. That's correct.

25 Q. And is that what they teach you at the

BOBBY RAY SHULER - CROSS EXAM

1 Academy?

2 A. There was nothing -- my involvement was
3 strictly a supervision position and that's what I
4 did.

5 Q. And after three years, it would have
6 been good to have something you yourself prepared
7 to go back and refresh your memory from?

8 A. Sure, if I had something like that.

9 Q. So whose reports did you use to refresh
10 your memory?

11 A. I had both Detective Riser and
12 Detective Wilson, the detectives that actually
13 responded there.

14 Q. And they did reports?

15 A. That's correct.

16 Q. So the accuracy of your information
17 depends on their accuracy?

18 A. I remember the case very well. It was
19 one of those cases that stuck in your mind.

20 MR. SCHWACKE: One moment, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. SCHWACKE:

23 Q. You didn't participate in the
24 collection of any evidence?

25 A. I did not.

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BOBBY RAY SHULER - CROSS/REDIRECT EXAM

1 Q. This got complicated for the Berkeley
2 County Sheriff's Office, didn't it?

3 A. As far as?

4 Q. Well, at one point you have two
5 different case numbers while working the same
6 incident?

7 A. Yeah. We have two different -- two
8 different incidents; two different locations, and
9 two different incidents.

10 Q. So reports were being done under both
11 numbers?

12 A. Yes, that's correct.

13 Q. And you didn't do a report at all?

14 A. That's correct.

15 MR. SCHWACKE: Okay. Thank you.

16 That's all the questions I have.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. POULOS:

20 Q. The reports of the detectives that you
21 reviewed, you were supervising those detectives
22 during the incident?

23 A. That's correct.

24 MR. POULOS: Thank you. Nothing
25 further.

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

3 MR. SCHWACKE: No, Your Honor.

4 MR. POULOS: None from the State.

5 THE COURT: Sir, you're excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 Call your next witness.

9 MS. WILLIAMS: The State calls Johnnie
10 Ruth Jenkins.

11 THE COURT: Is her testimony going to
12 take you beyond 5:00?

13 MS. WILLIAMS: No, Your Honor.

14 Your Honor, may we approach?

15 THE COURT: Sure.

16 (Bench conference.)

17 MS. WILLIAMS: I anticipate her
18 testimony being relatively short, but then Chris
19 Jenkins being even shorter. He flew in from
20 Atlanta --

21 THE COURT: Well, then I suggest you
22 make good use of your time because I'm not going
23 far beyond 5:00.

24 MS. WILLIAMS: Okay. Thank you.

25 (End of bench conference.)

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JOHNNIE RUTH JENKINS - DIRECT EXAM

1 JOHNNIE RUTH JENKINS,

2 being first duly sworn, testified as follows:

3 THE CLERK: Thank you. Please take a
4 seat. State your full name and spell your last
5 name.

6 THE WITNESS: Johnnie Jenkins,
7 J-E-N-K-I-N-S.

8 THE COURT: You may proceed.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Thank you, Ms. Jenkins. Where do you
12 live?

13 A. In St. Stephen.

14 Q. What is your address?

15 A. 946 Peppermill Way.

16 Q. Were you living there back on
17 October 28, 2013?

18 A. Yes.

19 Q. Who did you live with?

20 A. Me and a friend of mine that lived
21 together, my boyfriend.

22 Q. And what about anybody else that was
23 living there?

24 A. Leandre and Brianna.

25 Q. Are these -- how are they related?

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JOHNNIE RUTH JENKINS - DIRECT EXAM

- 1 A. My grands.
- 2 Q. And does Leandre have a nickname?
- 3 A. It's -- we call her La-La.
- 4 Q. Are you a little nervous?
- 5 A. Yes.
- 6 Q. It's okay. Is your address in Berkeley
- 7 County?
- 8 A. Yes, it is.
- 9 Q. Do you know Telly McClam?
- 10 A. Yes, I do.
- 11 Q. How do you know him?
- 12 A. I've been knowing him a long time. His
- 13 sister that passed away, me and her were best
- 14 friends.
- 15 Q. Okay. And did he ever date any of your
- 16 children?
- 17 A. No.
- 18 Q. What about Deadrene?
- 19 A. Yes. Not back then, but, yeah, about a
- 20 year ago.
- 21 Q. Okay. Could it have been at the time
- 22 of October 28, 2013; was that around the time they
- 23 dated?
- 24 A. Well, yes, uh-huh.
- 25 Q. Had she been living with him?

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JOHNNIE RUTH JENKINS - DIRECT EXAM

- 1 A. Yes.
- 2 Q. And do you remember where she was
3 living at the time of October 28, 2013?
- 4 A. She left him and went to my son.
- 5 Q. What is your son's name?
- 6 A. Christopher Jenkins.
- 7 Q. Where did he live?
- 8 A. 215 Grass Road.
- 9 Q. Okay. Do you know who lived there?
- 10 A. His wife, him, his kids, and Deadrene
11 and her two young girls.
- 12 Q. Okay. And where did you work at the
13 time this event occurred?
- 14 A. Timberland, Berkeley County School
15 Assistant for the buses.
- 16 Q. How long had you worked there?
- 17 A. 16 years.
- 18 Q. Do you still work there?
- 19 A. Huh-uh.
- 20 Q. What did you do exactly?
- 21 A. Monitored work for special needs and
22 monitored kids on the bus.
- 23 Q. What time did you go to work in the
24 morning?
- 25 A. I normally -- sometimes I leave home

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JOHNNIE RUTH JENKINS - DIRECT EXAM

1 about quarter to five.

2 Q. Like 4:45?

3 A. Uh-huh.

4 Q. And --

5 THE COURT: Ma'am, if you could say yes
6 or no.

7 THE WITNESS: Okay.

8 THE COURT: Thank you.

9 You may continue.

10 MS. WILLIAMS: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 BY MS. WILLIAMS:

13 Q. Did you work on that date, October 28,
14 2013?

15 A. Yes.

16 Q. How did you get to work that day?

17 A. My boyfriend took me.

18 Q. Okay. And how did you ordinarily get
19 to work?

20 A. I drive. I had a van.

21 Q. Okay. Why did you not drive that day?

22 A. Because I didn't have the van at the
23 time.

24 Q. Okay. And who was left at the home
25 when you left?

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JOHNNIE RUTH JENKINS - DIRECT EXAM

1 A. Leandre.

2 Q. Okay. And was anyone else there with
3 her?

4 A. No.

5 Q. So when you left, what, if anything,
6 does she do? What was your routine?

7 A. When I leaves out, I normally call her
8 and wake her up and tell her I'm about to leave and
9 I want her to lock the door behind me.

10 Q. In that area where you live, how close
11 is your next neighbor? Like how many houses?

12 A. One house over, then it's a house
13 across the woods area, but nobody can't see. The
14 house next door, somebody can see there.

15 Q. Can you describe like the woods or the
16 roads around there?

17 A. I have a road on the -- my house -- I
18 come down Peppermill Way, so the road come into my
19 house. And there's a road on the side, a little
20 road on the side before you get into my area where
21 I lives at. So a road goes straight in the back
22 and goes around into another road that goes out.
23 Then there is another road in the back, but nobody
24 can travel that road.

25 Q. Okay. And is it fair to say that it's

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JOHNNIE RUTH JENKINS - DIRECT EXAM

1 pretty isolated?

2 A. Yes.

3 Q. And so after you got to work, did you
4 hear anything else about your granddaughter that
5 day?

6 A. When I was coming back into the school
7 just before I was getting ready to get off the bus,
8 my son called.

9 Q. Without telling us what he said
10 specifically, what happened next? What did you do
11 next?

12 A. I went to try and clock out and tried
13 to get to my house so I could see what was going
14 on.

15 Q. When you were -- your son called, what
16 was his demeanor like? How did he sound?

17 A. He was like, Mom, Mom? I said, what?
18 He said, Telly got La-La. I said, no, he don't.
19 And he said, yes, he does, Momma. I said, no, he
20 don't. And I said, oh, my God.

21 Q. How were you feeling about that?

22 A. Not very good at all.

23 Q. Where did you go next?

24 A. I went to my son's house from the
25 school, and when I got there, a lot of TV -- the

JOHNNIE RUTH JENKINS - CROSS EXAM

1 newspeople was there, some of them, and they were
2 around and polices. And then later I said, I have
3 to go to my house and check it out. And I went to
4 my house not thinking of looking at the door. I
5 wanted to know how he got in there. So I went and
6 put the key in the door and I went on in the house.
7 I check around and I see nothing. I came back out
8 and I look at the door and I said, oh, my God, he
9 went in through my door. He pried my door open.

10 Q. Okay. And could you see the damage on
11 the door?

12 A. Uh-huh, I could.

13 MS. WILLIAMS: Okay. Beg the Court's
14 indulgence.

15 By MS. WILLIAMS:

16 Q. Which door of your home was that?

17 A. The back door.

18 MS. WILLIAMS: No further questions.
19 Answer any that the defense might have.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. SCHWACKE:

23 Q. So the only phone call you got all day
24 was from your son?

25 A. Well, I got that call from him, and

JOHNNIE RUTH JENKINS - CROSS EXAM

1 once I got there and when I left there, I went to
2 my house, I got another phone call.

3 Q. And that was from whom?

4 A. That was from my daughter, Deadrene.

5 Q. And that was about what time?

6 A. At that time, I think like about 8:30
7 or something.

8 Q. And she spoke with you?

9 A. Yes. She said, Mommy, we're okay.
10 Telly just wanted to talk to me. And he said don't
11 call the cops, that he would bring us back at
12 daybreak -- dark, you know.

13 MR. SCHWACKE: Thank you. That's all
14 the questions I have.

15 THE COURT: Any redirect?

16 MS. WILLIAMS: No.

17 THE COURT: Any objection to the
18 witness being excused? From the State?

19 MS. WILLIAMS: No, Your Honor.

20 THE COURT: From the defense?

21 MR. SCHWACKE: None, Your Honor.

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

23 Call your next witness.

24 MS. WILLIAMS: Christopher Jenkins; the
25 next witness is Deadrene McHoney and.

CHRISTOPHER JENKINS - DIRECT EXAM

1 THE COURT: And who is after that?

2 MS. WILLIAMS: Lieutenant Murphy.

3 CHRISTOPHER JENKINS,

4 being first duly sworn, testified as follows:

5 THE CLERK: Have a seat, state your
6 full name for the record and spell your last name.

7 THE WITNESS: Christopher Jenkins,
8 J-E-N-K-I-N-S.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Where do you live, Mr. Jenkins?

12 A. Jonesboro,
13 Georgia.

14 Q. Where were you living back on October
15 28, 2013?

16 A. [REDACTED]

17 Q. Who did you live with at that time?

18 A. Me and my wife, my kids.

19 Q. How many kids did you have? Do you
20 have?

21 A. Five.

22 Q. And did someone else come to live with
23 you sometime around October 28, 2013?

24 A. Yes, my sister.

25 Q. And who else?

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CHRISTOPHER JENKINS - DIRECT EXAM

- 1 A. And my nieces.
- 2 Q. And had she been there long?
- 3 A. A few days.
- 4 Q. Who did she live with before that?
- 5 A. The Defendant.
- 6 Q. Okay. And is that Mr. McClam?
- 7 A. Yes.
- 8 Q. And where were you working back on
- 9 October 28, 2013?
- 10 A. For Adams Electric, downtown
- 11 Charleston.
- 12 Q. And what time did you used to leave for
- 13 work in the morning?
- 14 A. Six.
- 15 Q. And who is Leandre Jenkins to you?
- 16 A. My niece.
- 17 Q. And was she living with you or someone
- 18 else?
- 19 A. She was living with my mom.
- 20 Q. Okay. And who is that?
- 21 A. Johnnie Ruth Jenkins.
- 22 Q. Okay. And at some point on
- 23 October 28th, 2013, did you hear from your niece?
- 24 A. Yes.
- 25 Q. What name does she go by?

CHRISTOPHER JENKINS - DIRECT EXAM

- 1 A. La-La.
- 2 Q. And where were you when you heard from
3 her?
- 4 A. I was at work.
- 5 Q. And what did she sound like? Can you
6 describe her demeanor?
- 7 A. She -- like she was -- like something
8 just wasn't right, like she was scared of
9 something.
- 10 Q. Okay. And did she call you or text you
11 or how did you hear from her?
- 12 A. She called me.
- 13 Q. And what did she tell you?
- 14 A. She wanted to speak to her mom, it was
15 very urgent that she speak to her mom.
- 16 Q. Did she tell you why?
- 17 A. She kept beating around the bush, I
18 just need to talk to my mom, it's really, really
19 important.
- 20 Q. Did she tell you who she was with?
- 21 A. No, ma'am, but from the number that she
22 called me, I noticed the number.
- 23 Q. Okay. And whose number was that?
- 24 A. Mr. McClam.
- 25 Q. And you recognized the number?

CHRISTOPHER JENKINS - DIRECT EXAM

1 A. Yes.

2 Q. Do you still remember that number, or
3 no?

4 A. No, ma'am.

5 Q. And did she tell you she was with
6 Mr. McClam at first or --

7 A. No. When I asked her, that's when the
8 phone hung up.

9 Q. Okay. And what did you do next?

10 A. I called my wife.

11 Q. And did you tell her what happened?

12 A. Yes.

13 Q. And did you stay at work that day?

14 A. I left.

15 Q. And where did you go?

16 A. Home.

17 Q. Why did you leave?

18 A. Because I wanted to see what was going
19 on with my niece.

20 Q. And at some point during that day, did
21 you hear from your sister or your niece?

22 A. Yes, they called me.

23 Q. And what was the nature of that
24 conversation?

25 A. Actually, it was Mr. McClam. It was

CHRISTOPHER JENKINS - DIRECT EXAM

1 like, everything is all right, I just wanted to
2 talk to them.

3 Q. That's what he said to you?

4 A. That's what he said. And I was like,
5 bring them back.

6 Q. Did you have any reason to believe that
7 he was going to bring them back?

8 A. No.

9 Q. And did you talk to -- after you talked
10 to Mr. McClam -- did he call you from that same
11 number?

12 A. Yes.

13 Q. And you recognized that number as his?

14 A. Yes.

15 Q. And is that the same number that she
16 was texting you from?

17 A. Called me.

18 Q. Called you, sorry. And do you remember
19 about what time that was?

20 A. I'd just got to work and it would
21 normally take me roughly 45 minutes to an hour, so
22 it was probably around seven.

23 Q. Okay. And when you got back home and
24 you heard from Mr. McClam, do you remember about
25 what time that was?

CHRISTOPHER JENKINS - DIRECT EXAM

1 A. Around nine I want to say.

2 Q. Okay. And did he bring them back?

3 A. No, he didn't.

4 Q. Did you ever get any phone calls about
5 the police from anybody?

6 A. Yes, my sister.

7 Q. What did she say?

8 A. Don't call the police.

9 MS. WILLIAMS: I don't have any other
10 questions for you, Mr. Jenkins. Please answer any
11 from the defense.

12 THE COURT: Any questions for the
13 witness?

14 MR. SCHWACKE: No questions.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: Sir, you're excused.

21 THE COURT: Counsel approach, please.

22 (Bench conference.)

23 THE COURT: Do you have any other short
24 witnesses?

25 MS. WILLIAMS: I don't.

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1 THE COURT: Who is next? You don't
2 have anybody else here to testify?

3 MS. WILLIAMS: We don't, Judge.

4 THE COURT: I hate to waste 20 minutes.
5 Be mindful of your time tomorrow.

6 (End of bench conference.)

7 THE COURT: Madame Forelady, ladies and
8 gentlemen, we're going to take advantage of the
9 break in testimony to take our evening recess.
10 During the break, please do not discuss the case.
11 Please leave your notepads in your seats. Please
12 do not read, watch, or listen to any media accounts
13 about this case and don't do any independent
14 research on the Internet.

15 We'll resume in the morning at 9:30.
16 You will come directly to the area as directed by
17 the bailiff and as soon as everyone has arrived, we
18 will resume testimony. Have a great evening.
19 We'll see you in the morning.

20 (Jury out, 4:37 p.m.)

21 THE COURT: You may be seated.
22 Anything before we adjourn? From the State?

23 MS. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. SCHWACKE: No, Your Honor.

1 THE COURT: See you in the morning at
2 9:30. If there's anything else that you can
3 premark, I suggest that you take the time to do
4 that with the Court Reporter before you leave this
5 evening.

6 (These proceedings were recessed at
7 4:42 p.m., to be continued March 1, 2016 at 9:30
8 a.m.)

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1 (The following proceedings were held in
2 the Court of General Sessions, March 1, 2016,
3 Berkeley County, South Carolina, at 9:39 a.m.)

4 THE COURT: State ready to proceed?

5 MS. WILLIAMS: Yes, Your Honor. We
6 have one thing to inform the Court.

7 THE COURT: Yes, ma'am.

8 MS. WILLIAMS: We have gotten with your
9 clerk and eliminated several witnesses off of the
10 witness list. We think we will probably be done by
11 Wednesday morning, the latest. We still have some
12 chain witnesses, but we will be relying on State v.
13 Hatcher to eliminate some of the insignificant
14 chain witnesses, and at the appropriate time, if
15 you want to hear argument, we will certainly --

16 THE COURT: Argument on what?

17 MS. WILLIAMS: If there is an objection
18 to us not bringing --

19 THE COURT: Yeah. I'll determine
20 how -- you know, if I need argument, I'll entertain
21 it. If not, I will take up any objections that are
22 contemporaneously made.

23 MS. WILLIAMS: Understood. Thank you,
24 Your Honor.

25 THE COURT: Anything before we proceed,

1 from the defense?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Now, Madame Court Reporter,
4 you indicated you needed some additional time to
5 deal with exhibits this morning. If you could,
6 tell me what those exhibits are.

7 THE COURT REPORTER: Yes, ma'am. The
8 defense has agreed to 103 through 106, 133 through
9 137, and 141 through 142.

10 THE COURT: Mr. Schwacke, is that
11 correct? 103 through 106, 133 through 137, and 141
12 through 142.

13 MR. SCHWACKE: I'm sorry, Your Honor,
14 could you --

15 THE COURT: 103 through 106?

16 MR. SCHWACKE: Yes, ma'am.

17 THE COURT: 133 through 137?

18 MR. SCHWACKE: Yes, ma'am.

19 THE COURT: And 141 through 142? 141
20 and 142.

21 MR. SCHWACKE: Yes, ma'am.

22 THE COURT: Okay. So those come in
23 without objection.

24 (STATE'S EXH. 103 - 106 in evidence.)

25 (STATE'S EXH. 133 - 137 in evidence.)

1 (STATE'S EXH. 141 - 142 in evidence.)

2 THE COURT: Is the State ready to
3 proceed?

4 MS. WILLIAMS: Yes, Your Honor.

5 THE COURT: Is the defense ready to
6 proceed?

7 MR. SCHWACKE: Yes, ma'am.

8 THE COURT: Who is the State's first
9 witness?

10 MR. POULOS: Kevin Murphy.

11 THE COURT: Where is he?

12 MR. POULOS: Right outside the
13 courtroom.

14 THE COURT: I need you to have somebody
15 to have your witnesses available right -- without
16 us having to look for them.

17 MS. WILLIAMS: We're sorry about that
18 yesterday, Your Honor. We're going to have them
19 stacked right there. We had a long talk with all
20 of them yesterday, and we have two extra people
21 helping us today.

22 THE COURT: Thank you, appreciate it.

23 (Jury in, 9:39 a.m.)

24 THE COURT: You may be seated. Good
25 morning, ladies and gentlemen of the jury. I hope

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KEVIN MURPHY - DIRECT EXAM

1 everyone had a pleasant evening. We are now going
2 to resume testimony. I would ask that you give the
3 attorneys your undivided attention.

4 MR. POULOS: The State calls Kevin
5 Murphy.

6 THE COURT: Sir, come forward -- oh,
7 he's right there. You may proceed.

8 KEVIN MURPHY,
9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat and state your
11 full name for the record, and spell your last name.

12 THE WITNESS: Kevin P. Murphy,
13 M-U-R-P-H-Y.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Morning, Detective.

18 A. Morning.

19 Q. Tell us where you work.

20 A. I work at the Berkeley County Sheriff's
21 Office.

22 Q. How long have you worked there?

23 A. Since January 2003.

24 Q. What is your current position?

25 A. I'm a detective lieutenant.

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KEVIN MURPHY - DIRECT EXAM

1 Q. And what responsibility does that
2 entail?

3 A. I do Internet crimes against children,
4 investigations, cellular phone forensics and some
5 computer forensics.

6 Q. As part of the cellular phone
7 forensics, do you exact data from cellular phones?

8 A. Yes.

9 Q. Explain how you go about extracting the
10 data.

11 A. We have equipment that specializes in
12 cellular phone extraction and other devices similar
13 to that. It's called Cellebrite. There is a
14 device that you attach the phone to that extracts
15 the data and puts it on a thumb drive, puts the
16 thumb drive into a computer, transfers data over to
17 the computer, and then there's software that parses
18 it out, which means it takes the raw data and puts
19 it into a format that you can read and understand.

20 Q. How many times have you used the
21 Cellebrite system to retrieve data from cell
22 phones?

23 A. Between 150 and 200 phones.

24 Q. Do you have any training or
25 certifications in using that program?

KEVIN MURPHY - DIRECT EXAM

1 A. Yes. I have two certifications, one in
2 what is called a Universal Forensics Extraction
3 Device, which is the device I explained you hook
4 the phone to, and also a certification in the
5 software.

6 Q. Is the Cellebrite system commonly used
7 among law enforcement?

8 A. It's probably the most popular.

9 Q. How long have you been using it?

10 A. Oh, probably about six years.

11 Q. Okay. Did you retrieve data from a
12 phone in this case?

13 A. I did.

14 MR. POULOS: May I approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. POULOS:

18 Q. This is marked as State's 101 and
19 identified by a previous witness. Do you recognize
20 that phone?

21 A. I do.

22 Q. And is that one of the phones that you
23 extracted data from in this case?

24 A. Yes.

25 Q. When did you conduct that data

KEVIN MURPHY - DIRECT EXAM

1 extraction?

2 A. I would have to look at the report.

3 Q. Detective, I will show you what is
4 marked as Exhibit 161. Do you recognize that
5 document?

6 A. Yes, sir, it's one of the extraction
7 reports.

8 Q. Is that the extraction report from the
9 phone sitting in front of you now?

10 A. It is.

11 Q. Do you know? Are there unique
12 identifying marks?

13 A. There is. It's what's called an MEID
14 and that matches the MEID on the phone and the
15 model of the phone.

16 Q. What is the model and the last few
17 digits of the MEID?

18 A. The model number is -- it's a Samsung
19 SCH-U365, also referred to as a Gusto 2, and the
20 text version of the MEID is A, I want to say five
21 0s, 442DBC9A.

22 Q. Okay. Detective, does your report
23 refresh your recollection as to when you conducted
24 this data extraction?

25 A. Yes.

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KEVIN MURPHY - DIRECT EXAM

1 Q. When was it?

2 A. 29th of October 2013.

3 Q. Where did it take place?

4 A. In my office, Berkeley County Sheriff's
5 Office.

6 Q. Was there retrievable data on the
7 phone?

8 A. Yes.

9 Q. Is that data contained in that report?

10 A. Yes.

11 Q. I'm showing you State's Exhibit 160.
12 Do you recognize that one-page document?

13 A. Yes. It's an extraction of what
14 appears to be SMS messages from this report.

15 Q. Is that an excerpt from that full
16 report?

17 A. Yes.

18 Q. Okay. And does that excerpt contain
19 the same information that is contained on the page
20 in the report that it's taken from?

21 A. Yes.

22 Q. Okay. Were you able to confirm that
23 the text messages listed in that excerpt are
24 physically contained on the phone? Did you
25 physically go into the phone and look at those

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KEVIN MURPHY - DIRECT EXAM

1 messages?

2 A. Yes. I personally looked at the phone
3 and text messages and matched the messages on the
4 phone.

5 Q. Is the excerpt of the report a fair and
6 accurate depiction of the messages that are on the
7 phone?

8 A. Yes.

9 MR. POULOS: Your Honor, I would offer
10 this into evidence as State's 160.

11 MR. SCHWACKE: No objection.

12 MR. POULOS: Permission to publish,
13 Your Honor?

14 THE COURT: You may proceed.

15 (STATE'S EXH. 160 in evidence.)

16 By MR. POULOS:

17 Q. Detective, can you please read the text
18 of the excerpt to the jury, starting with the text
19 message at the top going down to the bottom there?

20 A. Starting at line 64?

21 Q. Yes.

22 A. Do you want me to read the phone
23 numbers or --

24 Q. Just the messages are fine.

25 A. Well, some of them have, as you can

KEVIN MURPHY - DIRECT EXAM

1 see, the letter U instead of Y-O-U. I will read
2 them phonetically, if that's acceptable.

3 Either you're gonna call or not. Stop
4 fucking playing and call me now, exclamation point.
5 I think that may be an exclamation point, it's kind
6 of close. I am asking you please don't do this,
7 exclamation point. Please, exclamation point.
8 Trese, please call me. So I mean totally nothing
9 to you, question mark. That's what you saying,
10 question mark. Then call me, prove it, exclamation
11 point. So I guess not. Oh, you with a nigga,
12 question mark. Are you trying to make me lose my
13 mind, snap, question mark. Must be, exclamation
14 point. And then looks like D-N-T, which I would
15 imagine is, don't do this, Trese. I am sincerely
16 begging you to give me what I need. I am at my
17 breaking point. All I want is you and that's all I
18 have to say. Now call me. If, and then it looks
19 like an ampersand, and you can't this time and have
20 some true love and understanding, then I D-N-T, I
21 guess that's don't, know what else to tell you --
22 to tell you. Are you with me or not, question
23 mark. I give you five M-I-N, five minutes, to
24 prove to me what it is, ampersand, and that's --
25 and that's word as bond, several exclamation

KEVIN MURPHY - DIRECT EXAM

1 points, and then an ampersand, or it could be a
2 smiley face. I really can't tell by looking. No
3 more -- no more games for me. Fuck it, I will give
4 up on everything and throw my life away and run
5 away forever. And I mean that, exclamation point.
6 No probation -- no probation for, looks like,
7 C-L-A-R-K, and I don't know what that last thing
8 is, A-D possibly, and that's that. Then fucking
9 call me. Keep it real. Then call me back. You
10 are choice -- I guess it's you're choice,
11 exclamation point. You got 'till 1:00 to make it
12 right. I do love you and that's very much,
13 exclamation point.

14 Ma, this is -- Ma, this is -- I can't
15 see if that's Lay -- I can't really see on either
16 one of them. I am with Telly. He said for you not
17 to call the police cause all he wants to do is talk
18 to you. Chris, La-La. Telly got me. Call --
19 looks like, Chris -- Chris, La-La. Telly got me.
20 Call, looks like, D-H-I-S phone now. No police or
21 other family members involved. Momma, Telly got
22 me. Chris, La-La. Please D-H-A -- looks like
23 D-H-A police or any other family members. Uncle,
24 D-H-I-S, La-La. Need to -- need, and then it's
25 T-A-M-A, M-A-M-A ASAP. Tell her -- tell her, looks

KEVIN MURPHY - DIRECT EXAM

1 like T-A, call on D-H-I-S number. It's important.
2 And then it looks like Quetta, Q-U-E-T-T-A,
3 D-H-I-S, La-La. Tell Momma to call me on D-H-I-S
4 number ASAP please. Momma, D-H-A-A phone please,
5 it's La-La. And then, who dis, question mark, busy
6 cops.

7 Q. Detective, on line 81 where it says, I
8 do love you and that's very much, approximately
9 what time was that message sent, according to your
10 report?

11 A. It was sent on the 28th of October 2013
12 at 1:00 and 51 seconds.

13 Q. That's a.m.?

14 A. Yes.

15 Q. Okay. And the message that started
16 with line 82, Mom, this is La-La, I am with Telly,
17 when is that message sent?

18 A. 10/28/2013, 5:58:47 a.m.

19 Q. The time stamps on your report, are
20 those accurate time stamps?

21 A. The -- after I had performed these --
22 the extraction, I had noticed that the UFED
23 software updated and when it did, it messed with
24 the Daylight Savings Time setting, and I noted that
25 in the report.

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KEVIN MURPHY - CROSS EXAM

1 Q. So the times in your report are an hour
2 off from what they would be in the phone --

3 A. Yes.

4 Q. -- because of Daylight Savings Time?

5 A. I noted that in the report.

6 MR. POULOS: No further questions.

7 THE COURT: Any questions for the
8 witness?

9 MR. SCHWACKE: Yes, Your Honor.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. SCHWACKE:

13 Q. Officer Murphy, how long have you been
14 doing these extractions?

15 A. Five or six years we've had the device.

16 Q. And you've been with the department how
17 long?

18 A. Since 2003.

19 Q. And this is one of the several or many
20 different types of law enforcement programs that do
21 this?

22 A. I don't understand the question.

23 Q. The extraction process, there's more
24 than one company that --

25 A. Yes.

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KEVIN MURPHY - CROSS EXAM

1 Q. About how many?

2 A. I don't know. There's -- there's some
3 that do, you know, like partial stuff where they
4 will -- if you can get the data off the phone, they
5 will extract -- they will parse it out. There's
6 only maybe two or three major companies that
7 produce it.

8 Q. And you've been working with it since?

9 A. I don't know the exact date.

10 Q. In this case, how many phones were you
11 given to do an extraction from?

12 A. I don't recall how many phones I was
13 given.

14 Q. Do you have a report that you can
15 refresh your memory?

16 A. If I had the report. That I can
17 recall, I only recall the one phone, but I --
18 honestly, I can't be sure.

19 (DFT. EXH. 1, Copy of search warrant,
20 was marked for identification.)

21 (DFT. EXH. 2, Copy of search warrant,
22 was marked for identification.)

23 BY MR. SCHWACKE:

24 Q. I'm going to show you what's been
25 marked as Defendant's Exhibit Number 1 and ask if

KEVIN MURPHY - CROSS EXAM

1 you're familiar with that.

2 A. Yes.

3 Q. And what is that?

4 A. This is the search warrant for this
5 phone.

6 Q. I'm going to show you what's been
7 marked as Defendant's Exhibit 2, for
8 identification.

9 A. Yes.

10 Q. Are you familiar with that?

11 A. Yes.

12 Q. And what is that?

13 A. This is for a second phone. They are
14 both Samsung, different model numbers and different
15 unique identifiers.

16 Q. You did the extraction on both of
17 those?

18 A. According to this, I did the extraction
19 on this as well.

20 Q. Okay. With this equipment, does it in
21 any way allow you to capture information that had
22 been user deleted?

23 A. Yes.

24 Q. What does it allow you to retrieve?

25 A. It varies. It can -- it depends on,

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KEVIN MURPHY - CROSS EXAM

1 number one, the type of extraction or whether or
2 not I can do that. It depends where the data is
3 stored on the phone whether or not it can be
4 retrieved. And it is capable of retrieving images,
5 texts. It can carve strings out of deleted -- out
6 of the deleted data, if that makes sense, but it
7 doesn't know exactly where it goes because they're
8 kind of disassociated, if you will.

9 So the answer to your question is, it
10 varies on what can be extracted -- what can be
11 extracted has been previously deleted, on several
12 factors.

13 Q. So in some instances, it cannot recover
14 that information?

15 A. In some instances, deleted data cannot
16 be recovered.

17 Q. And there was nothing to prevent the
18 sheriff's department from attempting to secure all
19 of the information regarding this phone and this
20 account through the particular provider company?

21 A. You're saying submit a search warrant
22 to the phone company?

23 Q. Yes.

24 A. There was nothing to prevent us from
25 doing that, no, sir.

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KEVIN MURPHY - CROSS EXAM

1 Q. And in that instance, everything is
2 obtained, even things that might have been user
3 deleted and not able to be picked up from the
4 Cellebrite?

5 A. I noticed on that phone it says
6 Verizon. Verizon claims, for instance, that they
7 retain text message content, which would be --
8 there's two things from text messages that you can
9 recover. One of them is the fact that a text
10 message was sent on a certain date, it was 12
11 kilobytes in size and what the times were and some
12 other digital data, but not what was in the
13 message. The other one is text message content,
14 which is, please stop by the store and pick me up a
15 half gallon of milk.

16 Q. What you just read?

17 A. Correct. Verizon claims that their
18 data recovery rate -- that their retention period
19 for text messages are three to five days. I found
20 that is not always true, so with the -- by the time
21 the search warrant had been served, would those
22 text messages have been on Verizon's servers? I
23 can't say that with any a surety whatsoever.

24 Q. Well, you were doing the extraction the
25 day after this incident allegedly happened?

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KEVIN MURPHY - CROSS EXAM

1 A. Yes.

2 Q. One day?

3 A. Correct.

4 Q. And it's obvious in reading what you
5 read that there were responses coming in that
6 didn't show on that printout?

7 A. I don't know if there were responses
8 that didn't show up.

9 Q. There were questions being asked and
10 then there would be a different question being
11 asked, as if there was a conversation going on, but
12 part of it was missing, correct?

13 A. I guess that's a personal -- I've --
14 honestly, I've read so many, you can't -- there's
15 no -- I can't -- I can't say that. That would be
16 an opinion; I don't know.

17 Q. Can you tell from the information that
18 you extract who is the owner of a particular phone?

19 A. Sometimes there are names on the phone
20 or other personal identifying information. I
21 believe the name -- I think it was Darrel on that
22 phone, whoever owned the phone put on there. Other
23 than that, no.

24 Q. Is there a way to tell what account is
25 on that phone, user account?

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KEVIN MURPHY - CROSS EXAM

- 1 A. It would go by the phone number.
- 2 Q. And did you have a phone number on
- 3 this?
- 4 A. There is a phone number, yes.
- 5 Q. Have you used a program other than
- 6 Cellebrite?
- 7 A. Do I use?
- 8 Q. Have you?
- 9 A. I have occasionally used another
- 10 program called BlackLight. Not to extract the
- 11 data, but to parse it out. And usually with
- 12 iPhones, because that's what it's primarily
- 13 designed for, IOS systems.
- 14 Q. And so I want to understand a little
- 15 bit more about deletions, because if you look
- 16 through the reports that you generated from your
- 17 extraction, it shows intact, but it has no other
- 18 information. Others of them show deleted. Is that
- 19 a function of the machine? Is that --
- 20 A. Yes. The machine -- the software that
- 21 parses it out, not the -- again, let me just
- 22 explain. There is a two-step process. One of them
- 23 is a little black box, if you will, which is
- 24 basically a small computer. That is what you hook
- 25 the phone to to extract the data from the phone.

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KEVIN MURPHY - CROSS EXAM

1 It extracts the data. Depending on the type of
2 extraction you do, there's logical and physical
3 extractions.

4 Physical is basically making a carbon
5 copy of the phone's memory chip itself. The other
6 one is called logical, where it extracts the kind
7 of data that you would -- if you were physically
8 looking on the phone yourself, basically. Data
9 that is deleted is sent into unallocated space,
10 which is basically what the phone would look at as
11 empty space.

12 You will be able to retrieve stuff like
13 that using the physical; however, most phones, for
14 their SMS, which is your simple text messages, they
15 have usually a sequel-like database and when the
16 messages are deleted -- it's like a box. Okay.

17 Here's the difference: It's like a
18 box. It's like if you delete something in the box,
19 it just stays in the box, just goes down to the
20 bottom. If it totally gets deleted, it gets thrown
21 outside the box. That's the best way to explain
22 it. That's one of the things that makes it -- that
23 makes it possible for us to delete -- to recover
24 deleted text messages with their date, time stamp
25 and the rest of the information, not just the

KEVIN MURPHY - CROSS EXAM

1 string that says, pick me up milk, without telling
2 you what it really was. If that helps answer your
3 question.

4 Q. And, again, you were doing this
5 extraction on the 29th of October?

6 A. Correct.

7 Q. And that would have been the day after
8 the alleged incidents?

9 A. I believe so.

10 Q. A search warrant was not obtained for
11 records from the cell phone service provider
12 company?

13 A. I don't know. I wouldn't have been
14 responsible for that.

15 Q. You would have been provided the
16 report, I'm assuming, to explain to other people
17 what was involved in that?

18 A. No. Not necessarily, no, sir.

19 Q. They don't come to you as the resident
20 expert?

21 A. Occasionally, but not always.

22 Q. So no search warrant was provided to
23 the company that --

24 A. I don't know the answer to that
25 question.

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KEVIN MURPHY - REDIRECT EXAM

1 Q. Okay.

2 A. If it's not in the report, then the
3 answer is no.

4 Q. You don't know whose phone that is?

5 A. No. I go by the chain of custody that
6 was given to me. I examine the phone and it goes
7 back into the evidence.

8 Q. And your extraction report shows there
9 was some information, at least, deleted from the
10 phone?

11 A. Yes.

12 MR. SCHWACKE: No further questions.

13 THE COURT: Any redirect?

14 MR. POULOS: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Detective, Mr. Schwacke asked you if
18 there appeared to be some obvious deletions from
19 the text screen string we read to the jury. Is it
20 equally plausible those are just unanswered text
21 messages?

22 A. Honestly, I don't think anybody can
23 give you -- you know, other than the people who
24 sent and received them.

25 Q. Okay. I'm going to show you State's

KEVIN MURPHY - REDIRECT EXAM

1 162. Do you recognize this photograph?

2 A. Yes.

3 Q. And what is that a photograph of?

4 A. A photograph of this -- this particular
5 phone that's turned on, what you see.

6 Q. Is the screen saver on the phone
7 visible?

8 A. Yes.

9 Q. And what does the screen saver say?

10 A. In this image, it says in the center,
11 Darnell, D-A-R-N-E-L-L, and then it says Tuesday,
12 March 1, 8:53 a.m., and then new contacts.

13 THE COURT: Sir, if you could speak
14 directly into the microphone.

15 THE WITNESS: Oh, I'm sorry, ma'am.

16 THE COURT: That's all right.

17 MR. POULOS: The State offers this into
18 evidence as 162.

19 THE COURT: You need to show it to
20 Counsel.

21 MR. POULOS: I did.

22 MR. SCHWACKE: No objection.

23 THE COURT: Marked and admitted without
24 objection.

25 (STATE'S EXH. 162 in evidence.)

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KEVIN MURPHY - REDIRECT EXAM

1 BY MR. POULOS:

2 Q. Darnell, is it your understanding
3 that's the Defendant's middle name?

4 A. I don't know.

5 Q. Okay. But that photograph came from
6 that phone, correct?

7 A. Yes.

8 Q. And the text message string you read to
9 the jury came from that phone?

10 A. Yes.

11 MR. POULOS: One moment. No further
12 questions, Your Honor. Thank you.

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

15 MR. POULOS: None from the State.

16 THE COURT: From the defense?

17 MR. SCHWACKE: None, Your Honor.

18 THE COURT: Sir, you're excused.

19 Call your next witness.

20 MS. WILLIAMS: The State would call
21 Deadrene McHoney, M-C-H-O-N-E-Y.

22 DEADRENE MCHONEY,
23 being first duly sworn, testified as follows:

24 THE CLERK: State your full name for
25 the record and spell your last name.

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DEADRENE MCHONEY - DIRECT EXAM

1 THE WITNESS: Deadrene Waltrese
2 McHoney, M-C-H-O-N-E-Y.

3 THE COURT: If you would spell your
4 first name for the Court Reporter.

5 THE WITNESS: You said spell it?

6 THE COURT: Yes, ma'am.

7 THE WITNESS: D-E-A-D-R-E-N-E,
8 W-A-L-T-R-E-S-E.

9 THE COURT: You may proceed.

10 MS. WILLIAMS: Thank you.

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Do you sometimes go by a different
14 name?

15 A. Yes.

16 Q. And what is that?

17 A. Trese.

18 THE COURT REPORTER: Can you speak into
19 the microphone? Pull it down. Thank you.

20 BY MS. WILLIAMS:

21 Q. Is that the name that the defendant
22 called you?

23 A. Yes, ma'am.

24 Q. Do you see the defendant here today?

25 A. Yes.

133

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Where is he?

2 A. Right over there. (Indicating)

3 Q. Okay. What's he wearing?

4 A. A gray suit.

5 MS. WILLIAMS: Please let the record
6 reflect that this victim has identified the
7 defendant, Telly McClam.

8 Q. (By MS. WILLIAMS) And you have been in
9 a relationship with Mr. McClam; is that correct?

10 A. Yes.

11 Q. What is his full name?

12 A. Telly Darnell McClam.

13 Q. And how long were you in a relationship
14 with him?

15 A. Since, like, about August 2013 up until
16 like about a week before the incident.

17 Q. Okay. And you've had some trouble in
18 the past, have you not?

19 A. Yes, ma'am.

20 Q. Do you have a forgery from 2006 --

21 A. Yes.

22 Q. -- on your record?

23 A. Yes.

24 Q. And you're all finished with that, you
25 completed it?

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DEADRENE MCHONEY - DIRECT EXAM

- 1 A. Yes, ma'am.
- 2 Q. Paid everything back. And that was --
- 3 that was almost ten years ago?
- 4 A. Yes.
- 5 Q. And how long had you known Mr. McClam
- 6 before you dated him?
- 7 A. Oh, we grew up together. We went to
- 8 elementary school together and then he moved away.
- 9 Q. Okay. And how many children do you
- 10 have?
- 11 A. Four girls.
- 12 Q. And at the time of October 2013, where
- 13 were you living?
- 14 A. Repeat the question.
- 15 Q. At the time all this occurred, where
- 16 were you living? October 28, 2013.
- 17 A. At my brother's house.
- 18 Q. Okay. How many people were in that
- 19 house?
- 20 A. My brother, five -- his five kids, my
- 21 brother, his wife, me and my two young daughters.
- 22 Q. So this wasn't a permanent situation?
- 23 A. Huh-uh.
- 24 Q. And why were you there?
- 25 A. Because I had just left the defendant.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. And how did he feel about that?

2 A. He didn't like it.

3 Q. And at some point during the time that
4 you had moved in with your brother -- first of all,
5 how many days had you been there; do you know?

6 A. No more than probably about five.

7 Q. During that time, did he try to contact
8 you at all?

9 A. Yes.

10 Q. And did you ever answer any of the
11 calls in the beginning?

12 A. I don't think I did.

13 Q. Okay. The evening before this event
14 occurred with your daughter and you, did you get
15 some text messages and some phone calls from Mr.
16 McClam?

17 A. I did.

18 Q. And did you answer any of them?

19 A. No.

20 Q. Why is that?

21 A. Because I know what he wanted and I
22 knew he wasn't going to stop.

23 Q. Were you awake the whole time you were
24 getting the calls?

25 A. No.

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DEADRENE MCHONEY - DIRECT EXAM

1 Q. Do you remember what time you went to
2 sleep that night?

3 A. No, ma'am, I don't.

4 Q. When was the first time -- how long had
5 you dated him, did you say?

6 A. From August 2013 up until about a week
7 before the incident happened.

8 Q. And what was the thing that finally
9 made you go with the defendant that day?

10 MR. SCHWACKE: Your Honor, may we
11 approach?

12 THE COURT: You may.

13 (Bench conference.)

14 MR. SCHWACKE: She's pitting for
15 information.

16 THE COURT: If she said, what made you
17 go with him that day, it's res gestae. That's a
18 continuum of events. She's entitled to say why she
19 went with him. As long as it's not a reference to
20 something that happened in the past.

21 MS. WILLIAMS: I've warned them not to
22 say anything about the two prior --

23 THE COURT: I need to be sure.

24 MS. WILLIAMS: I'll do a hearing even
25 when it's not necessary, I promise you. Like

DEADRENE MCHONEY - DIRECT EXAM

1 yesterday --

2 THE COURT: Uh-huh. I need to be sure.
3 I mean, you can't control her. What do you
4 anticipate her response to be?

5 MS. WILLIAMS: That she got a call from
6 her daughter and --

7 THE COURT: Okay. That's res gestae.

8 (End of bench conference.)

9 THE COURT: Overruled, you may proceed.

10 BY MS. WILLIAMS:

11 Q. So at some point you got in a car with
12 Telly McClam that day?

13 A. I did.

14 Q. And up until that point, you just
15 testified that you didn't want anything to do with
16 him, you were ignoring the calls?

17 A. Right.

18 Q. What made you get in the car?

19 A. Because he had my daughter.

20 Q. Without going into any specifics, why
21 did that alarm you?

22 A. Because he physically harmed me before,
23 so I was scared for her.

24 Q. So you got in the car and what
25 happened? What was the first thing he told you?

DEADRENE MCHONEY - DIRECT EXAM

1 A. I think he said he just wanted to talk
2 to me.

3 Q. Okay.

4 A. And then he pulled the gun from under
5 his right leg and showed me the gun and then he had
6 the knife in the driver door panel.

7 Q. Okay. Do you remember if he said
8 anything about the gun?

9 A. I don't remember.

10 Q. Do you remember telling police officers
11 that he said, I got this right here, and showing
12 you the gun?

13 A. He could have said that.

14 Q. Do you remember telling them that?

15 A. Yes, ma'am.

16 Q. You haven't watched the -- or listened
17 to the tape-recorded interview that you gave the
18 police detectives, did you?

19 A. No.

20 Q. And you call Leandre La-La?

21 A. Yes.

22 Q. And that's the daughter he had?

23 A. Yes, ma'am.

24 Q. When you got into the car, where did
25 you sit?

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DEADRENE MCHONEY - DIRECT EXAM

1 A. In the passenger seat.

2 Q. Where was La-La?

3 A. Sitting behind the driver's seat.

4 Q. At this point did you know of anything
5 that had transpired between La-La and him?

6 A. No.

7 Q. Where was the gun that you saw?

8 A. Under his right leg.

9 Q. And did you see any other weapon in the
10 car at that time?

11 A. He showed me the knife.

12 Q. Okay. Do you remember what the knife
13 looked like?

14 A. It's a green knife, like razor blade
15 sharp, folded in.

16 Q. And that was with the defendant?

17 A. Yes, ma'am.

18 MS. WILLIAMS: Your Honor, I'm going to
19 show her what has been marked as State's 96. I'm
20 going to show defense counsel first.

21 May I approach?

22 THE COURT: Uh-huh.

23 BY MS. WILLIAMS:

24 Q. What is this?

25 A. That's the knife that he had.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. This is a folding -- this folds all the
2 way out?

3 A. Yes.

4 Q. How would you describe that blade?

5 A. Like razor sharp.

6 Q. Now, after you left the home that you
7 shared with your brother -- what town was that in?

8 A. Berkeley.

9 Q. Berkeley County?

10 A. Uh-huh.

11 Q. Do you remember what the town was?

12 A. 41 area.

13 Q. Is that near St. Stephens or --

14 A. In between St. Stephens and Bonneau.

15 Q. Where did you go next?

16 A. He drove like through Westerville, the
17 back road, and we came out -- like ended up in
18 Pineville by J. K. School, went straight across all
19 the way to Highway 52 and then headed towards Lane,
20 South Carolina.

21 Q. And when you're talking about going
22 through Pineville and 52, is that still Berkeley
23 County?

24 A. Yes.

25 Q. When you get to the Lane area, what

DEADRENE MCHONEY - DIRECT EXAM

- 1 county is that?
- 2 A. Williamsburg.
- 3 Q. Where did you wind up?
- 4 A. At a cabin.
- 5 Q. Had you been to that cabin before?
- 6 A. No, ma'am.
- 7 Q. And did he tell you why you were there?
- 8 A. He said it was his -- his dad had
- 9 something to do with it.
- 10 Q. Okay. What did it look like?
- 11 A. An abandoned cabin.
- 12 Q. When you were driving there, what kind
- 13 of car were you in?
- 14 A. A small blue car.
- 15 Q. Do you know whose car that was?
- 16 A. His mom.
- 17 Q. Okay. And on the way over, did he say
- 18 anything to you that you remember?
- 19 A. He kept saying that he loved me and he
- 20 just wanted to talk to me, and that I thought he
- 21 was playing with me.
- 22 Q. He thought you were playing with him?
- 23 A. Uh-huh.
- 24 Q. And when you got to the cabin, what
- 25 happened?

DEADRENE MCHONEY - DIRECT EXAM

1 A. La-La, my daughter, had to use the rest
2 room. Well, he broke into the cabin. At first, we
3 got to the cabin, he parked the car across the
4 street behind some bushes and then we walked over
5 and crossed to the cabin. He went to the side door
6 and couldn't get in. He went to the front door and
7 couldn't get in. He had a hammer and busted into
8 the side door.

9 Q. Do you remember what the hammer looked
10 like?

11 A. Just a regular small hammer. It had
12 some duct tape on it.

13 Q. What kind of cigarettes does Mr. McClam
14 smoke?

15 A. Newports 100, in the box.

16 Q. I'm going to show you some pictures
17 behind you if you could turn around and look at
18 them.

19 Denita, would you please put up State's
20 80?

21 Tell the jury what that's a picture of.

22 A. That's a picture of the cabin that he
23 broke into and that's a picture of the car.

24 Q. And could you put up State's 48?

25 Now, what is this a picture of?

DEADRENE MCHONEY - DIRECT EXAM

1 A. A cigarette lighter, a phone, and a Bud
2 Light can.

3 Q: And it looks like just a phone back.
4 Why would there be a phone back in his car when you
5 were traveling around and not the whole phone?

6 A. Because he kept the phone back off and
7 the batteries out until he wanted us to make a
8 phone call to our family members and tell them,
9 don't call the police.

10 Q. Why did he take the batteries and phone
11 the backs off?

12 A. Because he said the police can't track
13 the phone like that.

14 Q. Do you know if that's true or not?

15 A. I'm not sure.

16 Q. State's 46. And what is that a picture
17 of?

18 A. A pack of Newport Box 100s.

19 Q. State's 51. Is that the door that he
20 broke into?

21 A. Yes, ma'am.

22 Q. State's 82. Is that -- tell us what
23 that is. Is that inside the cabin?

24 A. I'm not sure.

25 MR. SCHWACKE: Your Honor, may we

DEADRENE MCHONEY - DIRECT EXAM

1 approach?

2 THE COURT: Yes.

3 (Bench conference.)

4 MR. SCHWACKE: I'll object next time.

5 THE COURT: Leading?

6 MR. SCHWACKE: Leading the witness on
7 the photographs, like, is that the door he broke
8 in.

9 THE COURT: I'm listening. Is the
10 objection leading?

11 MS. WILLIAMS: I'll stop leading.

12 THE COURT: Sustained, leading.

13 (End of bench conference.)

14 THE COURT: You may proceed.

15 BY MS. WILLIAMS:

16 Q. State's Exhibit 64. Do you recognize
17 that picture?

18 A. That's the living room of the cabin.

19 Q. Okay. And is there anything about that
20 couch that you remember about that day?

21 A. That's where me and La-La sat when she
22 came from the rest room and that's where he
23 duct-taped our feet and our hands together.

24 Q. And I'm going to show you State's 92.
25 Oh, 93, I'm sorry. What is that?

DEADRENE MCHONEY - DIRECT EXAM

1 A. The hammer that he had to break into
2 the cabin.

3 Q. Is that the one that Telly McClam used
4 to break into the cabin?

5 A. Yes.

6 Q. And you recognize it because --

7 THE COURT: Watch the leading.

8 MS. WILLIAMS: Okay. Your Honor, at
9 this time we would offer State's 93.

10 THE COURT: Any objection?

11 MR. SCHWACKE: No.

12 THE COURT: Without objection, marked
13 and admitted in evidence.

14 (STATE'S EXH. 93 in evidence.)

15 BY MS. WILLIAMS:

16 Q. Now, when you first got there, where
17 did Mr. McClam put his car?

18 A. Across the street.

19 Q. Okay. And why did he do that, if you
20 know?

21 A. I guess because it wasn't his --

22 MR. SCHWACKE: Objection.

23 THE COURT: Sustained; speculation.

24 You need to establish a foundation that's within
25 her rational perception.

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DEADRENE MCHONEY - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Did he ever tell you why he put the car
3 across the street?

4 A. He didn't want anyone to see it.

5 Q. And did the car remain there?

6 A. Not the whole time.

7 Q. Okay. And why did he tell you he was
8 tieing you up with duct tape?

9 A. Because he was going back across the
10 street to get the car and he didn't want us to run,
11 so he duct-taped us together.

12 Q. What part?

13 A. He duct-taped our hands, our wrists
14 together like this (Indicating) and our arms
15 together.

16 Q. And what color was the duct tape?

17 A. Silver.

18 Q. And do you know how long you were there
19 being duct-taped?

20 A. It was just probably long enough for
21 him to go out and get the car, and he searched
22 around in the house for a little bit.

23 Q. And when he was searching around the
24 house for a little bit, what did he find, if
25 anything?

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DEADRENE MCHONEY - DIRECT EXAM

1 A. I think he had some beer. I think it
2 was Bud Light, some Diet Coke or Pepsi soda, and
3 some shotgun bullets.

4 Q. Okay. And where was the gun at this
5 time?

6 A. He had it on him.

7 Q. Okay. And did you all see the gun?

8 A. He kept it in -- he had on like a
9 hoodie, I think. And he kept it like in the front
10 pocket.

11 Q. Did you know where the knife was?

12 A. No, not at that time.

13 Q. Okay. And did he say anything to you
14 or touch you or do anything like that when he was
15 leaving to move the car?

16 A. Yes, he did. He actually said that, I
17 could kill you all right now and no one would know,
18 and then after he duct-taped me, he turned around
19 smiling and walked to me and tapped me on the face
20 and said oh, yeah, your daughter got good pussy and
21 good head.

22 Q. Is that the first time you learned that
23 he raped your daughter?

24 A. Yes, ma'am.

25 Q. After that, when he came back and went

DEADRENE MCHONEY - DIRECT EXAM

1 through the house and found those items, what
2 happened next?

3 A. He took the tape off of us and then we
4 left.

5 Q. I'm going to show you what's been
6 marked as State's 54. If you can turn around, can
7 you tell us what that's a picture of?

8 A. The back of -- the trunk of the car.

9 Q. Okay. And do you see any items in
10 there that you recognize?

11 A. His clothes, the gray duct tape and I
12 think some sneakers that he had on.

13 Q. I'm going to hand you -- may I
14 approach?

15 THE COURT: You may.

16 BY MS. WILLIAMS:

17 Q. I'm going to hand you this little
18 pointer. If you can point to the duct tape.

19 A. It's right there. (Indicating)

20 Q. Okay. Thank you. State's 66, do you
21 recognize what's in that picture?

22 A. Yes, ma'am, that's the duct tape that
23 he taped us with.

24 Q. And 67, what is that a picture of?

25 A. Some more of the duct tape that he took

DEADRENE MCHONEY - DIRECT EXAM

1 off of us.

2 Q. Okay. Thank you.

3 Now, during the course of your
4 relationship with Mr. McClam, there were times even
5 close to this event where you -- how did you feel
6 about him?

7 A. I started to hate him.

8 Q. But did you always hate him?

9 A. I didn't always hate him. The last few
10 months in the relationship, things just totally
11 turned around. He started being abusive and
12 talking to me all sorts of ways.

13 Q. Without going into those details, were
14 there times when you expressed different emotions
15 to him, even when things were going wrong? Did you
16 sometimes let him know a different type of emotion?
17 Did you sometimes tell him that you didn't hate him
18 --

19 A. Yes, ma'am.

20 Q. -- even when things were bad?

21 A. Yes.

22 Q. In fact, even after he was arrested,
23 didn't you sometimes tell him you loved him?

24 A. Yes.

25 Q. So after you left the cabin, where did

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DEADRENE MCHONEY - DIRECT EXAM

1 you go next?] Do you even know what time it was by
2 this time?

3 A. No, ma'am.

4 Q. What time was it that you started
5 getting calls from your daughter? Do you remember
6 what time you woke up?

7 A. I was actually still asleep. My
8 sister-in-law brought the phone in the living room
9 and told me that my daughter, La-La, was on the
10 phone, she needed to talk to me.

11 Q. And do you know about what time you
12 left Grass Road?

13 A. Like after seven.

14 Q. Okay. And so after the cabin, do you
15 know -- do you have any idea what time it was at
16 that point?

17 A. No.

18 Q. Where did you go next?

19 A. To his sister's house.

20 Q. Okay. And what did you do at his
21 sister's house?

22 A. Me and my daughter went to the rest
23 room, but before we got into the house, he told us
24 -- before we went into the house, he told us to act
25 normal. We went into the house, he took his sister

DEADRENE MCHONEY - DIRECT EXAM

1 and he took her into a room and talked about two
2 minutes while me and my daughter used the rest
3 room. We came back out and sat down and she came
4 in and I guess Mr. McClam told her that my daughter
5 wanted something to eat. She went into the kitchen
6 and fixed I think some leftovers that she had.

7 Q. Okay. And you didn't run away?

8 A. No, ma'am.

9 Q. Did you tell the sister that you were
10 being held against your will?

11 A. No, ma'am.

12 THE COURT: You need to say yes or no.

13 Q. (By MS. WILLIAMS) Could you repeat your
14 answer?

15 A. No, ma'am.

16 Q. And why?

17 A. Why didn't I run?

18 Q. Yes.

19 A. Because I know what he was capable of.

20 Q. And did you and your daughter have any
21 time to form a plan? Was there any time that you
22 were alone for any length of time?

23 A. No.

24 Q. After the sister's house, what did you
25 do? Do you know how long you were there?

DEADRENE MCHONEY - DIRECT EXAM

- 1 A. No longer than about 20 minutes.
- 2 Q. What did you do next?
- 3 A. He called his aunt on the phone because
- 4 he realized that the car was running low on gas.
- 5 He called and asked her if he could get \$5 of gas.
- 6 Q. And was he able to do that?
- 7 A. Yes, ma'am.
- 8 Q. And so where does the aunt live?
- 9 A. It's somewhere in Salters.
- 10 Q. And is that -- how far away is that
- 11 from the sister's house?
- 12 A. Not too far.
- 13 Q. When you got there, who got out of the
- 14 car?
- 15 A. Telly did.
- 16 Q. Okay. Where were you and your
- 17 daughter?
- 18 A. Sitting in the car.
- 19 Q. Did you communicate with the aunt and
- 20 anyone else at that house?
- 21 A. No, ma'am.
- 22 Q. What kind of area is that?
- 23 A. It's almost like a remote area. It's
- 24 just like her trailer was one spot and there was a
- 25 house a couple of -- like maybe about a hundred

DEADRENE MCHONEY - DIRECT EXAM

1 foot up and then another abandoned trailer. Other
2 than that, it was a lot of woods.

3 Q. Exhibit 105, please, State's 105. Now,
4 can you show us where the aunt's house is with the
5 -- with the pointer? The red one.

6 A. This is it. (Indicating)

7 Q. Okay. Do you know who lives in any of
8 the other houses?

9 A. Mr. McClam's family.

10 Q. Okay. And what's surrounding that?
11 It's hard to tell from this aerial, but you've been
12 there. What is that?

13 A. It's just like -- that's the field;
14 it's a bunch of fields and woods.

15 Q. Okay. All right. Thank you. What did
16 you do after you got the \$5?

17 A. Went to the 52 gas station.

18 Q. And who pumped the gas?

19 A. Mr. McClam did.

20 Q. And where was La-La?

21 A. In the car.

22 Q. And where did you go?

23 A. Into the gas station to pay for the
24 gas.

25 Q. And did you tell anyone in the gas

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DEADRENE MCHONEY - DIRECT EXAM

1 station you were being held against your will?

2 A. No, ma'am, I was so afraid.

3 Q. Besides going to the aunt's house and
4 sister's house and the gas station, was there
5 anywhere else that you went?

6 A. In the woods.

7 Q. Tell us about that.

8 A. We went in the woods and we was riding
9 around for like an hour. He said he was looking
10 for a spot, because if the cops had any helicopters
11 or anything looking for us, he wanted to park under
12 some trees so the car wouldn't be seen.

13 Q. And so how many times did you go into
14 the woods?

15 A. Maybe like about three times.

16 Q. Do you know for sure? Do you remember
17 for sure?

18 A. It was about three times.

19 Q. Okay. And what happened when you would
20 go into the woods?

21 A. My daughter was -- I know she was
22 scared, so I asked him, can we get out of the car
23 and talk. And he did agree to that. We walked
24 away from the car, like around a limb that was
25 hanging down so my daughter couldn't see us. And I

DEADRENE MCHONEY - DIRECT EXAM

1 asked him why was he doing this? And he was facing
2 the woods, not facing me at the time.

3 And that's when he pulled the gun out
4 of his pocket and he pointed it towards me and
5 said, this is what I brought you out for. And I
6 started begging and pleading for my life, and I
7 guess he felt sorry, or whatever. And then he
8 said, well, I'm going to kill La-La then. And I
9 started begging and pleading for her life.

10 Q. Did he say why he was going to kill
11 La-La?

12 A. No.

13 Q. What condition was La-La in physically?
14 Like describe what she was wearing and what was
15 going on.

16 A. She was frantic and scared. She had on
17 a pair of his big, like, khaki short pants.

18 Q. Where was her underwear and all --
19 where were her clothes?

20 A. I think he had them in the trunk,
21 because he made her take them off earlier.

22 Q. Was there anything going on with her
23 body at that time?

24 A. She was on her menstruation.

25 Q. And did she have on any underwear?

DEADRENE MCHONEY - DIRECT EXAM

1 A. I don't think she had any underwear on.

2 Q. You don't know for sure?

3 A. Huh-uh.

4 Q. Okay. And what else happened in the
5 woods? That was just one of the times?

6 A. Yes, ma'am.

7 Q. Did he say -- did he tell you any of
8 the plans he had for you?

9 A. Yes, ma'am. He said that -- he
10 promised me that he would take my daughter back at
11 like dusk dark, and that he was going to take me
12 back, me and him was just going to run, and I was
13 going to run with him. He wasn't going to let me
14 go.

15 And I asked him how was we supposed to
16 live like that? And he said he would just rob
17 people so we could live.

18 Q. So he was telling you these different
19 things. Were these at different times in the woods
20 or when were all of these plans being told to you?

21 A. That was when he pointed the gun at me.

22 Q. Okay. Can you describe another time in
23 the woods?

24 A. We just sat in the woods.

25 Q. Okay.

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DEADRENE MCHONEY - DIRECT EXAM

1 A. Sat in the car.

2 Q. Okay.

3 A. He like dozed off for a second, but I
4 couldn't escape because he had the gun right there.
5 And the back passenger door, I think that door
6 wouldn't open, and the door that La-La sat by, he
7 had the seat back so she couldn't really get out.

8 Q. Do you know where you were in the
9 woods? What county or where you were?

10 A. No, ma'am.

11 Q. And was there anything wrong with any
12 of the doors in that car?

13 A. The back passenger door, I think that
14 door couldn't open and the back driver door, that
15 door couldn't lock.

16 Q. Okay. And you were familiar with that
17 car -- or were you familiar with that car?

18 A. Yes.

19 Q. Why?

20 A. That's the car that he used.

21 Q. Who owned that car?

22 A. His mother.

23 Q. Now, at some point, did you encounter a
24 member of his family in all of these travels?

25 A. I seen them. I didn't talk to them.

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Okay. Did anyone drive by you?

2 A. His cousin.

3 Q. Do you know her?

4 A. I don't know her, know her, but I've
5 been to that house before and she was there.
6 That's his aunt's daughter.

7 Q. Okay. And tell us about that
8 encounter.

9 A. He stopped -- she waved us down and he
10 stopped. And she was like, you don't -- there's an
11 Amber Alert out for you-all and the police said
12 that they are going to shoot you down on sight.
13 And then he went back into the woods after that.

14 Q. Okay. And did he say anything about
15 the Amber Alert or anything regarding that, that
16 you can remember?

17 A. I think he said, I thought you said you
18 weren't going to call the police, or something like
19 that.

20 Q. At some point, did you call your
21 family?

22 A. Yes, ma'am, I did.

23 Q. And tell us about how that went.

24 A. He allowed us to call I think like two
25 times to let them know he was going to bring us

159

DEADRENE MCHONEY - DIRECT EXAM

1 back and don't get no police or nothing involved.

2 Q. Okay. And who were you able to reach
3 at your family?

4 A. I think my mom and my daughter.

5 Q. Okay. And do you remember him calling
6 Christopher?

7 A. I don't remember him calling my
8 brother, but I remember him talking to him.

9 Q. Okay. And was the phone -- did he do
10 anything with the phone that was special when you
11 were talking? Like who could hear?

12 A. Everybody, because it had to be on
13 speakerphone.

14 Q. Why did it have to be on speakerphone?

15 A. Because he wanted to hear everything.

16 Q. Okay. Now, after you're in and out of
17 the woods, what happens next?

18 A. The last time, after the cousin told
19 him about the Amber Alert, we went back into the
20 woods, I told him I had to use the bathroom. So I
21 guess he was going to take me back to his sister's
22 house to use the rest room, but as we was coming
23 out the woods, the detectives was passing by. And
24 they swung around in the road after they seen us
25 and that's when he mashed the gas.

160

DEADRENE MCHONEY - DIRECT EXAM

1 Q. And when you say, mashed the gas, what
2 does that mean?

3 A. He speed up.

4 Q. And who was behind you?

5 A. The burgundy car, the officers.

6 Q. Burgundy?

7 A. Uh-huh.

8 Q. What kind of road were you on?

9 A. At first it was the paved road, but
10 then he dipped off into a dirt road, a very curvy
11 rocky dirt road.

12 Q. Do you know how fast you were going?

13 A. About 90 miles per hour.

14 Q. Did you have your seat belts on?

15 A. No, ma'am.

16 Q. What happened next?

17 A. We ended up back at the cabin.

18 Q. Okay. And when you got to the cabin,
19 what happened?

20 A. He told me and La-La to get out and try
21 to stop the police, and he got out, went into the
22 trunk, took a plastic bag out and then he ran into
23 the woods.

24 Q. Can you put State's 106 up? I'm going
25 to show you one more map. Do you recognize this

101

DEADRENE MCHONEY - DIRECT EXAM

1 area on this map?

2 A. Unity Church Road, because I used to
3 live on that road a couple of years ago.

4 Q. Do you recognize any of those roads
5 from any of the events that you've described in
6 your testimony?

7 A. 57 Flank Avenue, I think that's his
8 sister's address or his aunt's address, and 112
9 Council Road, I think that's where the abandoned
10 cabin was.

11 Q. What about any of the other roads in
12 yellow?

13 A. That's by a train track. That would be
14 by his sister's house.

15 Q. Okay. Thank you.

16 Now, do you remember talking to
17 detectives in the days following this event?

18 A. Yes.

19 Q. How long, if you know, was Mr. McClam
20 out there before he was captured?

21 A. About six, seven hours, I think.

22 Q. Okay. And when you talked to the
23 police, was that before or after they caught him;
24 do you remember?

25 A. After.

1162

DEADRENE MCHONEY - DIRECT EXAM

1 Q. Okay. And do you remember giving the
2 police the text messages that he had been sending
3 you, telling them the text messages?

4 A. Yes.

5 Q. Do you remember telling them the number
6 that was on the phone?

7 A. Yes.

8 Q. Do you remember what that number was
9 today?

10 A. I believe it was 843/312-8836.

11 Q. Okay. I'm going to show you -- I'm
12 going to show you State's 160.

13 MS. WILLIAMS: May I approach?

14 THE COURT: You may.

15 BY MS. WILLIAMS:

16 Q. Tell me if you recognize the messages
17 on here.

18 A. Yes, ma'am, I do.

19 Q. And what are those messages?

20 A. Messages that Mr. McClam sent to me.

21 Q. And do you see the times there on the
22 messages that he was sending you?

23 A. Yes, ma'am.

24 Q. And during that period of time, were
25 you awake?

143

DEADRENE MCHONEY - DIRECT EXAM

1 A. No, ma'am.

2 Q. Were you answering?

3 A. No, ma'am.

4 Q. And at some point do the messages
5 change?

6 A. Yes, ma'am; at the end of it.

7 Q. Okay. And is there any time when the
8 messages appear to be coming from someone else?

9 A. Yes.

10 Q. What time does that start?

11 A. At 5:58.

12 Q. Okay. What is the last message that
13 you get from Mr. McClam before your daughter gets
14 on?

15 A. It says 1:00.

16 Q. What does it say?

17 A. It says, I do love you and that's very
18 much.

19 Q. Okay. What about the one before that?

20 A. It says, you got until 1:00 to make it
21 right.

22 Q. Okay. Thank you.

23 THE COURT: Could you clarify which
24 exhibit you're referring to?

25 MS. WILLIAMS: 106.

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DEADRENE MCHONEY - DIRECT EXAM

1 MR. SCHWACKE: 160.

2 MS. WILLIAMS: Oh, I'm sorry, 160, Your
3 Honor. Beg the Court's indulgence.

4 THE COURT: Uh-huh.

5 BY MS. WILLIAMS:

6 Q. Would you have gotten in the car had he
7 not had your daughter?

8 A. No, ma'am.

9 Q. And did he get on the phone with you to
10 tell you he had your daughter?

11 A. Yes, ma'am.

12 Q. And what did he say about her and about
13 you getting in the car?

14 A. He said that he had La-La, he wasn't
15 going to hurt her, all he wanted to do was to talk
16 to me and that he was going to send somebody to
17 come and pick me up.

18 Q. But you had to get in the car?

19 A. Yes, ma'am.

20 Q. After that, did you feel like you could
21 leave the car when you first got in with La-La?

22 A. No, ma'am.

23 Q. Why was that?

24 A. He hurt me physically before.

25 Q. What else did he have with him?

165

DEADRENE MCHONEY - CROSS EXAM

1 A. The gun and knife.

2 Q. When you were driving around with him
3 and you got to the cabin, were you free to go
4 there?

5 A. No, ma'am.

6 Q. When were you finally free to go?

7 A. After the last time he got to the cabin
8 and the officers were right there.

9 Q. And where was he?

10 A. He was running into the woods.

11 Q. So when he left?

12 A. Uh-huh.

13 MS. WILLIAMS: Nothing further.

14 THE COURT: Any questions for the
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Do you prefer Deadrene or Trese?

19 A. It doesn't matter.

20 Q. How old are you?

21 A. I'm 38.

22 Q. And you had known Telly when you were
23 younger?

24 A. Uh-huh. Yes, sir.

25 Q. How old were you about when you first

11e6

DEADRENE MCHONEY - CROSS EXAM

1 met him?

2 A. About elementary, maybe first or second
3 grade.

4 Q. And are you -- are you from Berkeley
5 County or where are you from?

6 A. Berkeley County.

7 Q. But you indicated you lived up off of
8 that Church --

9 A. Church Hill Road.

10 Q. -- Church Hill Road?

11 A. Uh-huh.

12 Q. When was that?

13 A. About three or four years ago.

14 Q. And so you are familiar with that area?

15 A. Not too familiar because I never really
16 got out.

17 Q. But you lived in that area?

18 A. Uh-huh.

19 Q. What were you wearing on that date?

20 A. When he picked me up?

21 Q. Did you change clothes at some point?

22 A. No, I didn't.

23 Q. So when -- on that day when he picked
24 you up, what were you wearing?

25 A. Some jeans and a T-shirt and I think a

147

DEADRENE MCHONEY - CROSS EXAM

1 jacket.

2 Q. Let me go back a second. So how many
3 daughters do you have?

4 A. Four.

5 Q. And their ages are what?

6 A. The ages are now?

7 Q. Yes, ma'am.

8 A. 18, 17, 16, and 15.

9 Q. And with the exception of La-La, for a
10 period of time you-all had moved in with your
11 mother?

12 A. Uh-huh.

13 Q. And you've already indicated you had
14 moved out away from Telly before this day?

15 A. Yes, sir.

16 Q. So when you're in the car -- you
17 earlier had your cell phone. Did you have your
18 cell phone in the car when he picked you up?

19 A. No, I didn't.

20 Q. Where was your phone?

21 A. I left it at my brother's house.

22 Q. And how many phones do you have?

23 A. That I had at that time?

24 Q. Yes.

25 A. I think I had two phones at the time.

1128

DEADRENE MCHONEY - CROSS EXAM

1 One was like one of those DSS phones and the other
2 was like a Verizon phone that wasn't turned on.

3 Q. You had two numbers?

4 A. Uh-huh.

5 Q. And if there were extractions from
6 other phones receiving messages from what you're
7 calling the DSS phone, you were in fact over the
8 period of this time using both of those phones?

9 A. I was only using one phone. The
10 Verizon phone wouldn't turn on.

11 Q. And you say you didn't have a phone at
12 all that day?

13 A. No, sir.

14 Q. Did you turn over your phone to the
15 police?

16 A. After the incident.

17 Q. How many phones did you turn over?

18 A. It was just that one I think because
19 that was the only phone that he was texting.

20 Q. Again, you had the number 843/749-3681?

21 A. Yes, sir.

22 Q. And you had the number 843/826-0857?

23 A. Yes, sir.

24 Q. And that was at the same time?

25 A. Uh-huh.

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DEADRENE MCHONEY - CROSS EXAM

1 Q. And only -- the police got one phone
2 from you?

3 A. The phone that he was texting; the
4 phone that was actually on, that I could make and
5 receive phone calls off of it.

6 Q. All right. So you indicated that you
7 get into the car with him. At that point, that
8 happens where, in front of your mom's, or at what
9 location?

10 A. 215 Grass Road.

11 Q. And that's --

12 A. My brother's.

13 Q. Your brother's?

14 A. Uh-huh.

15 Q. And from that point -- you get in the
16 front seat, La-La is already in the back seat, and
17 Telly is driving?

18 A. Yes, sir.

19 Q. You go to the woods?

20 A. We go to Lane, and we rode around for
21 awhile because he said he was looking for a good
22 area to park the car because he didn't want any
23 helicopters or anyone to notice the car.

24 Q. And at some point you go over to
25 Beatrice's house?

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DEADRENE MCHONEY - CROSS EXAM

- 1 A. Yes.
- 2 Q. Who is that?
- 3 A. His sister.
- 4 Q. And you have met her before?
- 5 A. Yes, I have.
- 6 Q. How many times have you met her?
- 7 A. Maybe about two or three.
- 8 Q. And she lives kind of right by some
- 9 railroad tracks?
- 10 A. Yes, sir.
- 11 Q. So all three of you go into her house?
- 12 A. Yes, sir.
- 13 Q. And that's the first person you see
- 14 after you go with Telly?
- 15 A. Yes, sir.
- 16 Q. And when you enter her house, you have
- 17 a living room that you first go into and then a
- 18 kitchen and a dining area in the back?
- 19 A. Yes.
- 20 Q. And that's where you went --
- 21 A. Uh-huh, yes, sir.
- 22 Q. -- to the dining area? Did anyone use
- 23 the rest room?
- 24 A. Me and my daughter.
- 25 Q. You both did?

171

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes.

2 Q. And so to get to that, before you would
3 get to the kitchen, you would turn to the left and
4 it would be like the second door on the right?

5 A. On the right.

6 Q. Was anyone else in the house?

7 A. Just his sister, I believe.

8 Q. Beatrice?

9 A. Uh-huh.

10 Q. Was her daughter in the back room?

11 A. I don't remember her being there.

12 Q. Okay. And the reason to go there was
13 to ask for money?

14 A. To get food.

15 Q. And that was based upon?

16 A. My daughter said she was hungry.

17 Q. So he drove to Beatrice's, and you were
18 there you indicated about 20 minutes?

19 A. Yes.

20 Q. And during that time, Telly went into
21 the back to talk with her while you were up in the
22 kitchen?

23 A. While we were in the bathroom.

24 Q. Only one person at a time in the
25 bathroom?

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DEADRENE MCHONEY - CROSS EXAM

- 1 A. No, we both went to the bathroom.
- 2 Q. So you had a chance to talk to each
- 3 other then?
- 4 A. Not very long.
- 5 Q. But you had a chance?
- 6 A. We could have talked. But of course
- 7 that wasn't on our mind. We were being held
- 8 captive by a gun.
- 9 Q. Beatrice, what do you know about her?
- 10 A. She substitutes at school.
- 11 Q. She's a teacher?
- 12 A. Uh-huh.
- 13 Q. She has a duty to report, as a teacher?
- 14 A. She has what?
- 15 Q. A duty to report to law enforcement, as
- 16 a teacher?
- 17 A. I guess.
- 18 Q. So you were there 20 minutes?
- 19 A. About 20 minutes.
- 20 Q. She served you cupcakes, Kool-aid,
- 21 potato salad and Sloppy Joe's?
- 22 A. Uh-huh.
- 23 Q. And then what you don't eat gets
- 24 wrapped up and put back into --
- 25 A. My daughter ate a couple of spoons. I

DEADRENE MCHONEY - CROSS EXAM

1 never ate anything.

2 Q. That got wrapped up and put into the
3 car?

4 A. Yes, sir.

5 Q. Are you having any conversation with
6 Beatrice?

7 A. No, sir.

8 Q. Not saying anything?

9 A. No, sir.

10 Q. Just totally quiet?

11 A. Yes, sir.

12 Q. No conversation back and forth between
13 you and her?

14 A. No, sir.

15 Q. What happens after you leave
16 Beatrice's?

17 A. He noticed the gas and called his aunt
18 for gas money.

19 Q. So that's Ms. Cooper?

20 A. Yes.

21 Q. Emma?

22 A. Uh-huh.

23 Q. And you have met her before?

24 A. Uh-huh.

25 Q. You'd been to her house before?

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DEADRENE MCHONEY - CROSS EXAM

- 1 A. Yes, I have.
- 2 Q. How many times have you been to her
3 house?
- 4 A. I think twice.
- 5 Q. Could it be more than that?
- 6 A. I don't think so.
- 7 Q. Are there times you went there in the
8 -- was there a truck or an Explorer? You had a
9 vehicle?
- 10 A. Uh-huh.
- 11 Q. What was your vehicle?
- 12 A. A red Explorer.
- 13 Q. And you went to her house in that
14 Explorer before?
- 15 A. Uh-huh.
- 16 Q. Was Telly with you when you went that
17 time?
- 18 A. Yes, he was.
- 19 Q. Was La-La with you when you went that
20 time?
- 21 A. No, she wasn't.
- 22 Q. Was La-La with you at any time you went
23 to Ms. Cooper's house?
- 24 A. No, she wasn't.
- 25 Q. Where was Ms. Cooper when you arrived

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DEADRENE MCHONEY - CROSS EXAM

1 at her house?

2 A. I think she was coming from around the
3 back of the trailer. I think she was doing some
4 kind of gardening or something.

5 Q. And were there some men outside right
6 next door?

7 A. I'm not sure. I think her son might
8 have been out there, but I don't remember.

9 Q. And you indicated you never went in
10 that time?

11 A. No, sir.

12 Q. Where did you go after -- about how
13 long were you out there?

14 A. Not long. Just long enough for him to
15 ask her how she was doing and for her to give him
16 \$5 for gas.

17 Q. And so how much money did he give you
18 to get gas?

19 A. \$5.

20 Q. Okay. Is that what happens next?

21 A. After we leave the aunt's house?

22 Q. Right.

23 A. We go to the gas station.

24 Q. What gas station did you go to?

25 A. 52 gas station.

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DEADRENE MCHONEY - CROSS EXAM

1 Q. And you have met with the Solicitor for
2 this case, correct?

3 A. Uh-huh.

4 Q. Before testifying --

5 A. Uh-huh.

6 Q. -- giving information? They showed you
7 video of you at the 52 station?

8 A. No, sir.

9 Q. Okay. Do you recall going into the 52
10 station?

11 A. I do.

12 Q. And who gets out of the vehicle first?

13 A. Telly does.

14 Q. All right. And at that point he's
15 outside, he's going to get the gas?

16 A. No. He gives me the \$5 for me to go in
17 and pay for the gas.

18 Q. How does he give that to you? Does he
19 reach across the car to you?

20 A. He handed it inside the car.

21 Q. Where is La-La?

22 A. Sitting in the back seat.

23 Q. So then you go and walk into the store.
24 Do you recall a gentleman being at the door at the
25 time you walk in, opening and holding the door for

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DEADRENE MCHONEY - CROSS EXAM

- 1 you?
- 2 A. I don't recall that.
- 3 Q. Do you remember going to the counter
4 and it's a female attendant?
- 5 A. Yes, uh-huh.
- 6 Q. Do you say anything to the female
7 attendant?
- 8 A. \$5 gas and on pump -- whatever pump it
9 was.
- 10 Q. And that's all you say?
- 11 A. Yes.
- 12 Q. And then what do you do?
- 13 A. I walk back out of the store and go to
14 the car and sit in the car and he's out there
15 pumping gas.
- 16 Q. Because he's not finished pumping that
17 \$5 of gas before you get out there?
- 18 A. No.
- 19 Q. Where did you-all go after that?
- 20 A. After that, we go back to the woods.
- 21 Q. At some point you come into contact
22 with Samantha Cooper?
- 23 A. Yes, sir.
- 24 Q. And do you know Samantha?
- 25 A. I have seen her. We might have said

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DEADRENE MCHONEY - CROSS EXAM

1 like two or three words to each other. Other than
2 that, I don't know her.

3 Q. Where would you have seen her?

4 A. At her mom's house.

5 Q. Was that a family gathering or what?

6 A. A family gathering.

7 Q. How many family gatherings do you
8 remember going to with Telly's family?

9 A. Two.

10 Q. And where were they?

11 A. One was at his aunt's house, I think
12 Ms. Cooper, and the other was at his mom's house.

13 Q. So Emma Cooper's house is where you
14 went to get gas?

15 A. Uh-huh.

16 Q. So the cousin, or Samantha, she passes
17 you while you-all are driving? You-all see each
18 other --

19 A. Uh-huh.

20 Q. -- and sort of back up, somebody's
21 going to come back and talk to people about what
22 was going on?

23 A. Yes, sir.

24 Q. At that point, she says something about
25 an Amber Alert?

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DEADRENE MCHONEY - CROSS EXAM

- 1 A. Yes, sir.
- 2 Q. And you all are all surprised about
3 that?
- 4 A. Yes, sir.
- 5 Q. You didn't know that was going on?
- 6 A. I'm quite sure that my family had
7 called the cops, but I didn't know an Amber Alert
8 was out.
- 9 Q. And you don't have any part of the
10 conversation with Samantha, is that the way --
- 11 A. No, sir.
- 12 Q. -- that works? You don't say help?
13 You don't say --
- 14 A. Nothing.
- 15 Q. You don't gesture?
- 16 A. Nothing.
- 17 Q. And then it's not long after that, the
18 police come?
- 19 A. Yes, sir.
- 20 Q. And Telly is telling you to wave your
21 hands out of the car?
- 22 A. Yes, he was.
- 23 Q. To get the attention of the police?
- 24 A. Yes.
- 25 Q. Do you smoke?

180

DEADRENE MCHONEY - CROSS EXAM

1 A. Yes, sir, I do.

2 Q. Do you smoke the same kind of
3 cigarettes?

4 A. Yes, I do, but I smoke short
5 cigarettes.

6 Q. And clothes-wise, you had on -- you're
7 not sure?

8 A. I just know it was jeans and some
9 sneakers and a T-shirt.

10 Q. Short-sleeved T-shirt, long-sleeved?

11 A. Short.

12 Q. What about the jeans?

13 A. Long jeans.

14 Q. All the way down?

15 A. Uh-huh.

16 MR. SCHWACKE: One moment, Your Honor.

17 BY MR. SCHWACKE:

18 Q. How many times have you met with the
19 Solicitor?

20 A. Two times.

21 Q. Did they review with you your recorded
22 statement?

23 A. No, sir.

24 Q. You never played it back?

25 A. No, sir.

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DEADRENE MCHONEY - CROSS EXAM

1 Q. And you gave that approximately when?

2 A. Like a day after the incident, a day or
3 two after the incident.

4 Q. So your memory would be fresher then
5 than it would be now?

6 A. Yes, sir.

7 Q. Did the police tell -- ask you to tell
8 them any and everything about the case so they
9 could keep a record of that?

10 A. Yes, sir.

11 Q. You would have given them every detail?

12 A. Yes, sir.

13 Q. But you have not reviewed your
14 statement?

15 A. No, sir.

16 Q. Again, you had the opportunity to tell
17 Ms. Cooper and whoever the gentlemen were outside
18 of her house next door, you had the opportunity to
19 tell Samantha Cooper, you had the opportunity to
20 tell Beatrice Jones, but neither of -- and you had
21 the opportunity to tell the man at the gas station
22 as well as the attendant, and you didn't tell any
23 of those people anything about this?

24 A. No, sir.

25 MR. SCHWACKE: Thank you.

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DEADRENE MCHONEY - CROSS EXAM

1 THE COURT: Any redirect?

2 MS. WILLIAMS: Yes, and we have an
3 issue of law, Your Honor.

4 THE COURT: Approach.

5 (Bench conference.)

6 MS. WILLIAMS: The last time she called
7 the police, she pulled into a busy area, she called
8 the police and they were right there. He came and
9 smashed the window and dragged her out of the car
10 and then they made the arrest and she wound up
11 dropping the charges. And then when her daughter
12 was raped, they told her they weren't going to take
13 the or her? Charges because she dropped the last
14 one.

15 THE COURT: What does that have to do
16 with anything?

17 MS. WILLIAMS: I would like to get into
18 the fact, that even when she does tell them --

19 THE COURT: Nope, because it wasn't
20 raised in that manner. It hasn't been raised at
21 all, actually.

22 MS. WILLIAMS: He's implying.

23 THE COURT: And she's already gotten in
24 that she got in because she was afraid of him from
25 the past. That's on the record.

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DEADRENE MCHONEY - REDIRECT EXAM

1 Next.

2 (End of bench conference.)

3 THE COURT: You may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Ms. McHoney, do you remember telling
9 the detectives that you were wearing capris --
10 could you have said you were wearing capris back
11 three years ago when you gave your statement? Is
12 that possible?

13 A. It could be possible, I'm not sure. I
14 just got up from sleep.

15 Q. And Mr. Schwacke rattled off a bunch of
16 phone numbers that could have been yours. I'm
17 going to show you what's been marked 160.

18 MS. WILLIAMS: May I approach?

19 THE COURT: You may.

20 BY MS. WILLIAMS:

21 Q. What was the actual phone number that
22 he was calling you on? If you can read it from the
23 report.

24 A. [REDACTED]

25 Q. 0657. And you testified that when you

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DEADRENE MCHONEY - REDIRECT EXAM

1 went to Flank, and you were showed the map, that
2 was a pretty desolate area?

3 A. Uh-huh.

4 Q. Why else would you not run away from
5 Telly McClam if -- even if you felt like you had an
6 opening? What was in your mind? How did you feel
7 about your situation? Did you feel like you had an
8 opportunity to run away?

9 A. No, I didn't, because he was only
10 around his family and around a bunch of wooded
11 area. Where was I supposed to go?

12 Q. How did you feel about Mr. McClam by
13 that point?

14 A. I hated him.

15 Q. And did you fear him?

16 A. Yes, I did.

17 MS. WILLIAMS: Thank you very much.

18 THE COURT: Ma'am, you may step down.
19 Madame Forelady, and ladies and gentlemen, we are
20 going to take advantage of the break in testimony
21 to take a short rest room break. Please do not
22 discuss the case and please leave your notepads in
23 your seats.

24 (Jury out, 11:07 a.m.)

25 THE COURT: You may be seated. We'll

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KEVIN CROUT - DIRECT EXAM

1 be at ease for ten minutes. Make sure that the
2 Court Reporter has all of the exhibits.

3 (A recess transpired.)

4 THE COURT: Is the State ready to
5 proceed?

6 MS. WILLIAMS: Yes.

7 THE COURT: Is the defense ready to
8 proceed?

9 MR. SCHWACKE: Yes, Your Honor.

10 (Jury in, 11:25 a.m.)

11 THE COURT: Call the next witness.

12 MR. POULOS: State calls Kevin Crout.

13 THE COURT: Please swear the witness.

14 KEVIN CROUT,

15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat, state your
17 full name and spell your last name.

18 THE WITNESS: Christopher Kevin Crout,
19 C-R-O-U-T.

20 THE COURT: You may proceed.

21 Sir, if you would speak directly into
22 the microphone for us.

23 DIRECT EXAMINATION

24 BY MR. POULOS:

25 Q. Morning, Mr. Crout.

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KEVIN CROUT - DIRECT EXAM

- 1 A. Morning.
- 2 Q. Tell the jury where you're from.
- 3 A. I'm from Summerville, South Carolina.
- 4 Q. How long have you lived in the area?
- 5 A. Approximately, ten years.
- 6 Q. Does your family own a residence at
- 7 1112 Council Road in Salters, South Carolina?
- 8 A. Yes, we do.
- 9 Q. Turn around and take a look at the
- 10 screen there. Is that your residence at 1112
- 11 Council Road?
- 12 A. Yes, it is.
- 13 Q. State's 38, is that another angle of
- 14 the residence?
- 15 A. Yes, it is.
- 16 Q. Okay. Thank you. What do you use that
- 17 house for?
- 18 A. Typically, we use the property for
- 19 hunting on the weekends.
- 20 Q. So it's not an abandoned property?
- 21 A. No. We're typically there at least
- 22 every weekend.
- 23 Q. Back on October 28, 2013, did you have
- 24 a deer camera mounted near that property?
- 25 A. Yes, we did.

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KEVIN CROUT - DIRECT EXAM

1 Q. What is a deer camera?

2 A. Typically, a deer camera is mounted
3 normally in the woods and it's used to take
4 pictures of wildlife in a particular area.

5 Q. And how is it activated?

6 A. It's activated by motion. So if an
7 animal or something came by and hit the motion
8 sensor, it takes a photo.

9 Q. Does it take repeated photos or does it
10 take pauses in between? How does it work?

11 A. Yeah. It typically takes a pause,
12 about 30 seconds, in between photos. It depends on
13 the type of camera that -- the type of camera that
14 you got.

15 Q. I'm going to show you State's 72 and
16 73. Take a look at the screen again. Is that the
17 deer camera on the property?

18 A. Yes, it is.

19 Q. 73; is that it again there?

20 A. Yes.

21 Q. Okay.

22 THE COURT: Which number is that,
23 please?

24 MR. POULOS: That is 73, Your Honor.

25 THE COURT: Okay. That's just a

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KEVIN CROUT - DIRECT EXAM

1 close-up?

2 MR. POULOS: Yes.

3 BY MR. POULOS:

4 Q. Did you give the sheriff's office
5 permission to take this camera and extract photos?

6 A. Yes, I did.

7 Q. And have you reviewed the photos that
8 were taken from the camera?

9 A. Yes.

10 Q. And so you're familiar with how those
11 photos generally appear?

12 A. Yes.

13 Q. Do the photos produced by this camera
14 have an accurate date and time stamp on them?

15 A. They do.

16 Q. Do they also bear the camera's brand
17 name?

18 A. They do.

19 Q. I show you State's 78 and 80, already
20 in evidence. First 78, now directing your
21 attention to the bottom of the photo. Is there a
22 time and date stamp?

23 A. Yes, there is.

24 Q. Okay. And is that your residence in
25 the background?

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KEVIN CROUT - DIRECT EXAM

1 A. Yes, it is.

2 Q. What is the time and date on that
3 photograph?

4 A. 9:22 a.m. on October 28th, 2013.

5 Q. Show you State's 80. Again, is there a
6 time and date stamp?

7 A. Yes, it is.

8 Q. Is that the residence in the
9 background?

10 A. Yes, it is.

11 Q. What's the time and date?

12 A. 3:22 p.m. on October 28th, 2013.

13 Q. Thank you, Mr. Crout.

14 The blue vehicle that you see in these
15 photos, have you ever seen that vehicle before?

16 A. No, I haven't.

17 Q. Anyone in your family drive a vehicle
18 like that?

19 A. No, they don't.

20 Q. Do you know the defendant in this case,
21 Telly McClam?

22 A. I do not.

23 Q. Has Mr. McClam ever had permission to
24 enter onto your property or into your house?

25 A. No, he hasn't.

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KEVIN CROUT - CROSS EXAM

1 MR. POULOS: I have no further
2 questions of this witness, Your Honor.

3 THE COURT: Any questions of the
4 witness?

5 MR. SCHWACKE: Just a few.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Has the State shown you more
9 photographs than just the two?

10 A. I have seen a few photographs. I don't
11 recall exactly how many or in addition to what I've
12 already seen.

13 Q. There's one that appears to be of an
14 elderly gentleman in a hat and beard. Is he a
15 relative?

16 A. That's my father.

17 Q. Okay. Just so I understand, if there
18 was a photo that was triggered and taken by the
19 camera at 9:22 a.m., when would we expect the next
20 photograph?

21 A. If something were to come by and set
22 off the motion sensor; if there's nothing moving
23 within that particular area, the camera doesn't
24 necessarily take a photo.

25 Q. So a person getting out of a car would

KEVIN CROUT - CROSS/REDIRECT EXAM

1 be a motion which would --

2 A. Possibly.

3 Q. When was the last time you would have
4 been at the residence?

5 A. The end of December.

6 Q. I'm sorry, prior to October 28th of
7 2013. Do you recall --

8 A. I would have been there probably the
9 weekend prior. During that time of year, we're
10 normally there every weekend.

11 Q. Did you go out to the scene?

12 A. No, I didn't.

13 Q. So they just said, we want your camera.
14 Can we have it?

15 A. Yes.

16 MR. SCHWACKE: Thank you. That's all
17 the questions I have.

18 THE COURT: Any redirect?

19 MR. POULOS: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. POULOS:

22 Q. Mr. Crout, just to clarify, you stated
23 the pause in between the photographs is
24 approximately 30 seconds. Could it be longer? Do
25 you know exactly how long the pause is?

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KEVIN CROUT - CROSS/REDIRECT EXAM

1 A. Oh, no. It could be up to five to
2 ten minutes. Just depends on how it's set.

3 Q. And once that 30-seconds or five-minute
4 or 10-minute pause passes, it will only take a
5 photograph if there is still continuous motion?

6 A. That's correct.

7 Q. No further questions.

8 THE COURT: Any objection to the
9 witness being excused?

10 MR. POULOS: Not from the State.

11 THE COURT: From the defense?

12 MR. SCHWACKE: None, Your Honor.

13 THE COURT: Sir, you're excused.

14 THE WITNESS: Am I excused from my
15 Subpoena?

16 THE COURT: Yes, sir, have a good day.
17 Call your next witness.

18 MR. POULOS: The State calls James
19 Riser.

20 JAMES RISER,
21 being first duly sworn, testified as follows:

22 THE CLERK: State your full name for
23 the record and spell your last name.

24 THE WITNESS: James Riser, R-I-S-E-R.

25 THE COURT: You may proceed.

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JAMES RISER - DIRECT EXAM

1 MS. WILLIAMS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. Good morning.

5 A. Morning.

6 Q. And where are you employed?

7 A. With the Berkeley County Sheriff's
8 Office, Criminal Investigation Division.

9 Q. How long have you worked there?

10 A. I've been with the sheriff's office
11 going on 13 years.

12 Q. Okay. And in what capacity were you
13 working with the sheriff's office on October 28,
14 2013?

15 A. I was in the Criminal Investigation
16 Division, a detective.

17 Q. And did you respond to a case involving
18 a kidnapping on that date?

19 A. I did.

20 Q. Where did you respond first?

21 A. At first I responded to 215, I think it
22 was, Grass Road in St. Stephens, South Carolina,
23 County of Berkeley.

24 Q. Okay. And what did you do initially?

25 A. Upon arrival, Detective Corporal Weise

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JAMES RISER - DIRECT EXAM

1 also responded with me, we rode together. Upon
2 arrival, I stepped out of the car. I was met by
3 Captain Ollic of the Berkeley County Sheriff's
4 Office, who was over the Criminal Investigation
5 Division. He handed me an Amber Alert page and
6 informed me to go to St. Stephen's Police
7 Department, which is in the county of Berkeley, and
8 fax it to SLED, which is South Carolina Law
9 Enforcement Division.

10 Q. Okay. And at some point in the
11 investigation did you determine who the suspect
12 was?

13 A. Yes.

14 Q. And who was that?

15 A. Telly McClam.

16 Q. What did you do next?

17 A. After that, myself and Detective Weise
18 and the St. Stephens Police Department went to I
19 think it was 103 Wells Street or Circle, it's right
20 there in St. Stephens, and met with Mr. McClam's
21 mother.

22 Q. And what did you do after that?

23 A. She informed us that Mr. Telly had been
24 to his sister's house up in Williamsburg County,
25 and she provided us the address and the name, which

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JAMES RISER - DIRECT EXAM

1 was Beatrice Jones Bennett, I think it was. I
2 would have to look at my notes to see the exact
3 name. It was a Beatrice and she lived on 60
4 Bennett in Lane, South Carolina.

5 Q. Okay. Would it refresh your memory to
6 see your report?

7 A. Yes, ma'am, if I could. I could give
8 you the correct name.

9 MS. WILLIAMS: May I approach, Your
10 Honor?

11 THE COURT: You may.

12 THE WITNESS: It was a Beatrice Cooper
13 Jones, my mistake. She lived at 60 Bennett Court,
14 Lane, Williamsburg County, South Carolina.

15 BY MS. WILLIAMS:

16 Q. Based on that call, what did you do
17 next?

18 A. I informed Captain Ollic of the
19 information that we had received. I was
20 instructed, myself and Detective Weise, to go and
21 see if we could talk to Ms. Bennett.

22 Q. Okay.

23 A. Sorry, Ms. Jones.

24 Q. And is this in Williamsburg County at
25 this point?

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JAMES RISER - DIRECT EXAM

1 A. Yes, it is.

2 Q. And where did you go next?

3 A. We then proceeded to 60 Bennett Court
4 to talk to Beatrice Cooper Jones. She stated that
5 -- she gave us a statement saying that Mr. Telly
6 had been there earlier that morning and that he had
7 already visited his aunt, Emma Cooper, and she
8 lived at 57 Flank Avenue in Salters, South
9 Carolina, County of Williamsburg, and that she is
10 -- was expecting us.

11 Q. Okay. And at some point did you get
12 information of where the defendant was?

13 A. After we had talked to Ms. Emma at
14 Flank, she provided a statement also. I left her
15 my cell phone number and asked her if she ever
16 found out anything about Mr. Telly or saw him, to
17 please give me a call. Myself and Detective Weise
18 then left and proceeded back towards Berkeley
19 County.

20 Upon getting to about 52, the
21 intersection on 52 and turning left to come back to
22 Berkeley County, I received a phone call from Ms.
23 Emma in reference to -- that her daughter -- I
24 think it was her daughter -- let me make sure here
25 -- that her daughter was with Telly -- Mr. Telly

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JAMES RISER - DIRECT EXAM

1 and that the victims -- they were all in an area of
2 Union Church Road and Council Road, for us to turn
3 around, at which time I did turn around and try to
4 advise Captain Ollic and Sergeant Shuler of the
5 information that I had just found out about. I
6 couldn't raise them on the radio and we proceeded
7 on in that direction.

8 Q. And did you see him at some point?

9 A. Yes, I did. As I come to the
10 intersection there, we proceeded through the
11 intersection, came up to Morningstar, which was a
12 road to my right. At that time, the vehicle, 2000
13 Hyundai, came out right in front of us, directly in
14 front of us. In fact, we almost had to hit the
15 brakes. Mr. Telly was driving, the two victims
16 were in the car. I then proceeded to turn around
17 on the vehicle and advised dispatch that I had the
18 vehicle identified and was following it.

19 At that time Mr. Telly started to speed
20 up at a high rate of speed. I observed him run a
21 stop sign. At that time I initiated my blue lights
22 and sirens, trying to get him to stop. The victims
23 were hanging their hands out the window waving,
24 seemed to be waving in a help-me manner.

25 Q. Would it assist you to have a map to

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JAMES RISER - DIRECT EXAM

1 show the course of this chase?

2 A. Yes.

3 Q. Okay. Could you put up number 106?

4 If you could just explain where you saw
5 him and where the chase began.

6 A. Right in this area is Morningstar. We
7 came through this intersection, was coming up this
8 way to go back towards Flank, is where Emma lived,
9 the aunt. As we approached this intersection, he
10 was coming out, cut in front of us and headed back
11 down this way.

12 We spun around and he headed up --
13 started at a high rate of speed. He went through
14 this intersection, which is a stop sign, at a high
15 rate of speed. I initiated my blue lights and
16 sirens, informed dispatch that I was behind the
17 vehicle in pursuit at that time. I handed the mic
18 over to my partner so he could call it out so I
19 could focus on driving the vehicle.

20 The victims were hanging out -- their
21 hands out the window, waving in like a distress
22 mode, wanting -- wanting -- we looked at it like
23 they were wanting our help. Somewhere around in
24 here, we were told to turn off the blue lights and
25 sirens, but continue to follow them at a safe

JAMES RISER - DIRECT EXAM

1 distance.

2 They came down this way, they got on
3 Thunderbolt Road this way. This is an unpaved
4 road. I'm not sure if it was gravel or dirt, but
5 it was one or two, still at a high rate of speed.
6 They turned here, come back down Pickle, and all
7 this -- all this whole area right here is unpaved
8 road. It was like a dirt road, gravel, and they
9 were travelling at a high rate of speed. They
10 turned back left, continued back up the way we --
11 from where we saw them.

12 We were still following them at a safe
13 distance, came through the intersection, and about
14 right in here, there's a house where they cut in
15 and ditched the car behind it.

16 Q. And when you had your blue lights on
17 and your sirens, that was within view of Mr.
18 McClam's car, so would that have been obvious?

19 A. Yes.

20 Q. And did he at any time make an effort
21 to stop for the blue lights and the sirens?

22 A. No. He actually increased his speed.

23 Q. And where did he go once he ditched the
24 car?

25 A. Once he ditched the car behind the

JAMES RISER - DIRECT EXAM

1 residence right here, was like an abandoned
2 residence, we saw him run across the little dirt
3 road right here beside the residence that went back
4 to the residence and beside it. If I can explain
5 the road, it was like a hunting camp road where you
6 come off the main road and go back into. It was
7 one of them like, but it went right beside the
8 house back up this way. I observed him also myself
9 -- myself and Detective Weise observed him run
10 across the road and into this patch of woods right
11 here, like in the direction of Flank where his aunt
12 lived, at which time I informed Detective Weise to
13 go to the victims, check on them, and I proceeded
14 after Mr. Telly.

15 Q. Okay. State's 41. Is that the
16 vehicle?

17 A. Yes, it is; a blue Hyundai DI 404,
18 four-door.

19 Q. State's 78, again, what is that?

20 A. This is the vehicle parked behind the
21 residence right here.

22 Q. Okay. And would you put up State's 52?
23 Well, that's not right. 32, I'm sorry. Okay. Can
24 you explain what that is and where it is?

25 A. This is the residence here, this is the

201

JAMES RISER - DIRECT EXAM

1 fence that I think is on the right-hand side -- I'm
2 sorry, if you're standing on the road facing the
3 house, it would to the left-hand side. The actual
4 road is over here on the right-hand side, in this
5 area.

6 Q. And which road did you go down and
7 which road did he go down?

8 A. I went down this one. I'm not sure if
9 he went down this one or this one. I'm not quite
10 sure.

11 Q. Okay. Can you put up 28? What is
12 that?

13 A. Yes. That's the road right there and,
14 in fact, right around this curve right here, it
15 went to really soft pluff dirt.

16 Q. Okay. And can you see that road -- or
17 that house from on the road?

18 A. Yes. Once, in fact, I went to just the
19 pluff right there, and that's the road. As you go
20 down it, the house is actually sitting about right
21 there where the arrow is. And as it goes down, it
22 goes right beside the house just a short distance,
23 a yard distance.

24 Q. Okay. And so it's your testimony that
25 you ran into the woods?

202

JAMES RISER - CROSS EXAM

1 A. Yes, ma'am. I ran after Mr. Telly, but
2 lost sight of him in the woods. And for my safety
3 and knowing that he was armed, I stopped, took
4 cover behind a tree and kept sight of where -- a
5 bearing of where I last saw him. So I knew more
6 officers were coming and also K9 was coming. So I
7 stayed there.

8 I could still talk to Officer Weise. I
9 asked him, did you have -- you know, we were
10 yelling back and forth because it's a short
11 distance. I yelled at him and said, did you find
12 them? He said, I've got them. They had actually
13 got out of the vehicle, went around the house on
14 the opposite side that we were at, and he went
15 around the house and found them in the front yard
16 near that gate.

17 Q. And how did you know he had a gun?

18 A. From what we were told at the initial
19 report when we first arrived.

20 MS. WILLIAMS: Okay. Thank you.

21 THE COURT: Any questions for the
22 witness?

23 CROSS-EXAMINATION

24 BY MR. SCHWACKE:

25 Q. Do you remember what your unit number

203

JAMES RISER - CROSS EXAM

1 was back on October 2013? Would it have been BC
2 202?

3 A. It could have been.

4 Q. If I show you a list, would that assist
5 you in that?

6 A. It could, yes, sir.

7 (DFT. EXH. 3, Copy of CAD report, was
8 marked for identification.)

9 BY MR. SCHWACKE:

10 Q. Officer Riser, I'm going to show you
11 what has been marked as Defendant's Exhibit Number
12 3 for identification, and ask if you are familiar
13 with that.

14 A. Yes. This is a CAD incident detail.

15 Q. And a CAD report is a way of
16 memorializing both radio and telephone
17 communications concerning a case?

18 A. You could say that, yes. It depends on

19 -

20 Q. Tell me what you want to call it.

21 A. It's radio communication, what you put
22 out on the radio and stuff.

23 Q. It's a log that is done
24 contemporaneously --

25 A. Yes.

204

JAMES RISER - CROSS EXAM

1 Q. -- with an event?

2 A. Yes, with people and dispatch.

3 Q. And so at that time, does this indicate
4 that you would have been unit 202?

5 A. Yes, BC 202.

6 Q. And then would it refresh your memory
7 -- you mentioned the communications that were going
8 on during the chase in your testimony?

9 A. Yes.

10 Q. And there's an indication that -- from
11 BC 202, your unit, that the car was spotted?

12 A. Yes, 202 spotted the car.

13 Q. And what time was that?

14 A. That would be on the 28th at 14:12:42,
15 which would be 2:12 and 42 seconds.

16 Q. And then there is another indication?

17 A. Yes. BC 202 turned onto Tate Road,
18 backed off.

19 Q. And then there is another?

20 A. Left on Union Church.

21 Q. And then the next designations for BC
22 202?

23 A. And that was -- one was at -- turned
24 off -- turned on Tate Road, backed off 14:13:34,
25 left on Union Church Road at 14:14:41. Council

205

JAMES RISER - CROSS EXAM

1 Road, looks like 14:15:37, dirt road off of Council
2 Road, hundred yards behind house, subject 1080 on
3 foot, subject in wood.

4 Q. At that point, the car chase has ended?

5 A. Yes.

6 Q. And so the time for that entry, that
7 subject on foot --

8 A. 14:16; from 14:12 to 14:16.

9 Q. So roughly three,
10 three-and-a-half-minutes?

11 A. Roughly four minutes, give or take.

12 And then it says, subject in the woods, two females
13 10-4.

14 Q. So that means that has ended that part
15 of the chase. During the course of your
16 investigation that day, you came into contact with
17 a number of Mr. McClam's relatives; is that
18 correct?

19 A. I did.

20 Q. And that would have included his
21 mother, Margaret?

22 A. His mother.

23 Q. Margaret?

24 A. I think that was her name.

25 Q. She was the one at 103 Wells Circle

206

JAMES RISER - CROSS EXAM

1 that you testified about?

2 A. Okay.

3 Q. You met with Beatrice Jones?

4 A. Yes, the sister at 60 Bennett.

5 Q. You also met his aunt, Emma Cooper?

6 A. Yes, at 57 Flank.

7 Q. And then after that you met with a
8 cousin, Samantha Cooper, who was in the car --

9 A. I don't remember that one.

10 Q. Okay.

11 A. You will have to refresh my memory on
12 that one.

13 Q. You didn't take statements from --
14 never mind, you weren't involved in this.

15 A. Okay.

16 Q. But as for the people you came in
17 contact with, Margaret, Beatrice and Emma, they
18 were all highly and fully cooperative with law
19 enforcement?

20 A. Yes.

21 Q. They did exactly what they said they
22 would do, they contacted you when they had
23 information?

24 A. Yes.

25 Q. And they provided you information with

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JAMES RISER - CROSS EXAM

1 where he was last seen?

2 A. Yes. In fact, it was -- Ms. Emma is
3 the one that called me.

4 MR. SCHWACKE: Thank you. That's all
5 the questions I have.

6 THE COURT: Any redirect?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: Any objection to the
9 witness being excused? From the State?

10 MS. WILLIAMS: No, Your Honor.

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

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: Sir, you're excused.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Call your next witness.

18 MS. WILLIAMS: State calls Detective
19 Weise.

20 JOHN WEISE,

21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your
23 full name for the record and spell your last name.

24 THE WITNESS: John Weise, W-E-I-S-E.

25 DIRECT EXAMINATION

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JOHN WEISE - DIRECT EXAM

1 BY MS. WILLIAMS:

2 Q. Where are you employed?

3 A. Berkeley County Sheriff's Office.

4 Q. How long have you been there?

5 A. Six years.

6 Q. And what are your duties?

7 A. At the moment I'm assigned to the
8 uniform patrol.

9 Q. Okay. And what were your duties back
10 on October 28, 2013?

11 A. I was in training in CID, which is
12 Criminal Investigation.

13 Q. And back on that date, did you get
14 involved in the case involving Telly McClam?

15 A. I did.

16 Q. And who were you working with that day?

17 A. Detective Riser.

18 Q. And were you with Detective Riser
19 during a high-speed chase?

20 A. I was.

21 Q. And do you remember about where that
22 chase was?

23 A. I can't recall the name of the road,
24 but it was in Williamsburg County.

25 Q. And how fast was the vehicle that you

209

JOHN WEISE - DIRECT EXAM

1 were chasing going, if you remember?

2 A. I was a passenger, I don't recall, but
3 it was initially -- I believe it -- it was up to
4 60, 70 miles per hour.

5 Q. What kind of roads were you on?

6 A. Initially it was a paved road and then
7 turned off onto a gravel or dirt road.

8 Q. Okay. And did at any time the
9 defendant make any effort to stop?

10 A. No, ma'am.

11 Q. What did you observe when you were
12 behind the vehicle?

13 A. When we initially were behind him, the
14 victims were both waving their arms out of the
15 window, that appeared to be in distress.

16 Q. Where did this chase end?

17 A. It was behind a house. He turned off
18 onto a little dirt road and parked behind the
19 house.

20 Q. Where did the defendant go?

21 A. He ran into the woods.

22 Q. And where did Riser go?

23 A. He followed him until he lost sight of
24 him.

25 Q. Who came into contact with the victims?

210

JOHN WEISE - DIRECT EXAM

1 A. I did.

2 Q. And can you describe their demeanor?

3 A. They were visibly upset, crying.

4 Q. And where did you put them?

5 A. I immediately put them into Lieutenant
6 Riser's car.

7 Q. What was the purpose of that?

8 A. To keep them secure.

9 MS. WILLIAMS: Thank you. No further
10 questions.

11 THE COURT: Any cross-examination of
12 the witness?

13 MR. SCHWACKE: No questions, Your
14 Honor.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MS. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. SCHWACKE: No, Your Honor.

20 THE COURT: Thank you. You're excused.
21 Call your next witness.

22 MR. POULOS: Detective Alteri.

23 GENO ALTERI,

24 being first duly sworn, testified as follows:

25 THE CLERK: Please have a seat, state

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GENC ALTERI - DIRECT EXAM

1 your full name for the record and spell your last.

2 THE WITNESS: Geno Alteri, G-E-N-O,
3 A-L-T-E-R-I.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. POULOS:

7 Q. Morning, Detective.

8 A. Morning.

9 Q. Where do you currently work?

10 A. Berkeley County Sheriff's Office.

11 Q. How long have you been with the
12 sheriff's office?

13 A. Approximately 20 years.

14 Q. Okay. What is your position there?

15 A. Now I'm a lieutenant in the forensics
16 unit.

17 Q. Okay. What did you do previously?

18 A. I was in detectives.

19 Q. What are your current responsibilities
20 at BCSO?

21 A. I am currently with the forensics unit,
22 collecting and preserving evidence.

23 Q. Were you involved in the investigation
24 and collection of evidence in this case?

25 A. I was.

212

GENC ALTERI - DIRECT EXAM

1 Q. I want to direct your attention to
2 October 28, 2013. Did you respond to 1112 Council
3 Road in Williamsburg that day?

4 A. I did.

5 Q. What was your responsibility at that
6 residence?

7 A. I had only been in forensics a short
8 time at that time, so myself and Detective Spence
9 went to the residence to process the scene for
10 Williamsburg County.

11 Q. Okay. And what was the first thing you
12 did in processing that scene?

13 A. Photographed the exterior of the
14 residence and the vehicle.

15 Q. Okay. Showing you State's 43 on the
16 screen. Is this the vehicle that was present at
17 that location you photographed?

18 A. Yes, it is.

19 Q. I'm showing you State's 39. Is that
20 the residence you photographed, with the vehicle in
21 the photograph as well?

22 A. It is.

23 Q. Okay. Who processed the car?

24 A. That will be -- actually it was all
25 three of us. It was Detective Spence, myself, and

213

GENC ALTERI - DIRECT EXAM

1 Detective Wrenn from Williamsburg County.

2 Q. And after -- after the car was
3 photographed and processed, did you process the
4 residence?

5 A. Yes, sir.

6 Q. Okay. State's 36 -- 62, I'm sorry. Is
7 this the interior of the residence that you
8 photographed?

9 A. Yes.

10 Q. 63. Same thing?

11 A. Yes, sir.

12 Q. Okay. 65; another photo inside the
13 house?

14 A. Yes, sir.

15 Q. Did you collect anything from inside
16 that house?

17 A. Yes.

18 Q. What did you collect?

19 A. Some duct tape, newspapers, some
20 washcloths, I believe a cigarette butt.

21 Q. I want to show you State's 66 and 67.
22 Looking at State's 66, what is that?

23 A. That's some duct tape that was in the
24 -- I believe that's in the living room.

25 Q. And you collected that duct tape?

214

GENC ALTERI - DIRECT EXAM

1 A. Yes.

2 Q. Okay. State's 67. Again, what is
3 that?

4 A. It's also more duct tape.

5 Q. Okay. After you collected that duct
6 tape, how did you package it?

7 A. It was put into a bag that Detective
8 Wrenn had documented.

9 Q. How many bags did you say you put the
10 duct tape in?

11 A. I don't know exactly how many bags were
12 used.

13 Q. I'm going to show you State's 87 and
14 88.

15 MR. SCHWACKE: Your Honor, we might
16 need a minute at this time.

17 THE COURT: It's been marked and
18 admitted prior to.

19 That's number 77 and 78?

20 MS. LITTLEJOHN: 87 and 88.

21 THE COURT: Okay. I misunderstood the
22 numbers. Approach.

23 (Bench conference.)

24 MR. SCHWACKE: Sorry.

25 THE COURT: That's okay. What's the

215

GENC ALTERI - DIRECT EXAM

1 problem?

2 MR. SCHWACKE: Obviously, we're
3 challenging every step in the chain, so that's what
4 we were trying to sort out. We were looking for
5 the sort of transfer of custody forms.

6 MR. POULOS: He put the tape in the
7 bags, another deputy filled out the evidence sheet
8 while he was doing it, and a third deputy received
9 it. So we're not going to put it into evidence
10 until we're done.

11 MS. WILLIAMS: They were all there at
12 the same time. Those people will come in after,
13 but since he collected it --

14 THE COURT: He's entitled to testify he
15 collected it and he put it in the bags.

16 MR. SCHWACKE: I'm not -- I just wanted
17 to see exactly what paperwork they had for that
18 process.

19 THE COURT: I assume they'll offer that
20 through the witness who actually filled it out.

21 (End of bench conference.)

22 THE COURT: You may proceed.

23 BY MR. POULOS:

24 Q. I'm showing you what's been marked as
25 State's 87 and 88. Do you recognize those two

216

GENC ALTERI - DIRECT EXAM

1 paper bags?

2 A. Yes.

3 Q. And what are those?

4 A. These are the bags that were used to
5 collect the evidence.

6 Q. Did you put the tape in those bags?

7 A. Yes.

8 Q. Okay. And did your partner, Mr.
9 Spence, record the transaction on the evidence
10 sheet?

11 A. Yeah. I believe it was Detective
12 Spence.

13 Q. Okay. Who did you give the bag of tape
14 to?

15 A. Detective Wrenn.

16 Q. Okay. And who was Detective Wrenn
17 with?

18 A. Williamsburg County.

19 Q. Okay. Were the bags stapled and closed
20 when you gave them to Detective Wrenn?

21 A. They were not.

22 Q. Did you later collect anything from the
23 surrounding area of the residence?

24 A. Outside of the residence there was a
25 deer camera that was in the tree. I don't recall

217

GENC ALTERI - DIRECT EXAM

1 exactly who asked for it, but we ended up taking
2 it.

3 Q. What did you do with the deer camera?

4 A. It was turned over to Detective Wrenn.

5 Q. Did you also at some point collect a
6 buccal swab from the defendant in this case?

7 A. I did.

8 Q. What is a buccal swab?

9 A. It's a swab from the mouth, so you can
10 compare it to any other DNA evidence that you have
11 in the case.

12 Q. I show you what's been marked as
13 State's 100. Do you recognize this item marked
14 State's 100?

15 A. Yes.

16 Q. And what do you recognize it to be?

17 A. This is the chain of custody. Once we
18 take the buccal swab from whoever we're getting it
19 from, then it's turned over to us and then we turn
20 it in to Evidence.

21 Q. The item contained in that pouch is the
22 defendant's buccal swab?

23 A. Correct.

24 Q. Okay. When did you retrieve that from
25 the defendant?

218

GENC ALTERI - DIRECT EXAM

- 1 A. This says 10/31/2013.
- 2 Q. What did you do with it?
- 3 A. Turned it in to Evidence for it to be
4 sent to SLED.
- 5 Q. You logged it in to Evidence yourself?
- 6 A. It could have been either myself or
7 Detective Spence. I'm the one that actually turned
8 it in. Whether I logged it in or her, I don't
9 know.
- 10 Q. And it was within your possession
11 between the time you took it and the time you
12 logged it in to Evidence?
- 13 A. Correct.
- 14 Q. I show you what has been marked as
15 State's 84. Do you recognize that item?
- 16 A. Yes.
- 17 Q. What is that?
- 18 A. This is an ASA kit that was picked up
19 from MUSC.
- 20 Q. What is an ASA kit?
- 21 A. A sexual assault kit.
- 22 Q. Does that pertain to the victim,
23 Leandre Jenkins, in this case?
- 24 A. Yes.
- 25 Q. When did you pick that up?

GENC ALTERI - CROSS EXAM

1 A. 1/16/2014.

2 Q. Was it sealed when you picked it up?

3 A. Yes.

4 Q. Did it remain sealed when it was in
5 your custody?

6 A. Yes.

7 Q. What did you do with it?

8 A. It was sent to SLED.

9 Q. What did you do with it right after you
10 picked it up?

11 A. It was logged in to Evidence.

12 MR. POULOS: Okay. I have no further
13 questions for this witness.

14 THE COURT: Any questions for this
15 witness?

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Officer Alteri, the item that was just
19 provided to you in the box, that's -- what number
20 is that again?

21 A. 84, I believe. I don't have my glasses
22 with me.

23 Q. When did it come into your possession?

24 A. That would have been picked up from
25 MUSC on 1/16/2014.

220

GENC ALTERI - CROSS EXAM

1 Q. And you picked it up from MUSC?

2 A. Correct. I got it from Sergeant
3 Register.

4 Q. Is he with the?

5 A. Public Safety.

6 Q. Public Safety with MUSC?

7 A. Yes, sir.

8 Q. Register?

9 A. Yes, sir.

10 Q. Does that indicate when that kit was
11 created?

12 A. No, not the chain of custody. On the
13 box itself it says, 10/28 of '13.

14 Q. And the first time it comes into law
15 enforcement's possession after that is January 16,
16 2014?

17 A. That's when Berkeley County took
18 possession of it.

19 Q. There were a number of items that were
20 taken at the location?

21 A. MUSC?

22 Q. No. No, I'm sorry, at the location, at
23 the house?

24 A. Yes, sir.

25 Q. And you didn't go to any other location

221

GENC ALTERI - CROSS EXAM

1 for any of the other evidence?

2 A. No, sir. We were only on the actual
3 property where the car and the residence was.

4 Q. Was there a time when these items --
5 the additional items that were taken from the
6 house, placed into the custody of the Williamsburg
7 County Sheriff's Office?

8 A. All evidence from the scene that we did
9 that day on the 28th, I believe it was, was turned
10 over to Williamsburg County. We did not take
11 anything from that -- on that date that we were
12 there.

13 Q. So the items -- you did a supplemental
14 report.

15 (DFT. EXH. 4, Report, was marked for
16 identification.)

17 BY MR. SCHWACKE:

18 Q. I show you what has been marked
19 Defendant's Exhibit 4 for identification and ask if
20 you are familiar with that.

21 A. I am.

22 Q. And what is that?

23 A. This is my supplement to the incident.

24 Q. And it helps you remember things when
25 you have a trial three years after?

222

GENC ALTERI - CROSS EXAM

1 A. Yes.

2 Q. You searched both the house and
3 vehicle; is that correct?

4 A. I did not search the vehicle. I
5 photographed and assisted in processing for prints.

6 Q. Who would have searched the vehicle?

7 A. That was Detective Spence and Wrenn.

8 Q. And all of those items were then turned
9 over to Detective Wrenn?

10 A. Correct.

11 Q. And that's exactly what the last line
12 on that page says?

13 A. All items including -- I'm sorry, all
14 items, including the items taken from the vehicle,
15 were turned over to Detective Wrenn, correct.

16 Q. I guess what is confusing me is this
17 page of the supplemental report.

18 A. Okay.

19 Q. And at the very top of the list, it
20 says, these items were retained by this agency?

21 A. This was not on that day. This was
22 later on we met with -- once we found out that we
23 were going to be handling the case, then we met
24 back up with Detective Wrenn and collected all the
25 evidence that she had and brought it to us.

223

GENC ALTERI - CROSS EXAM

1 Q. So at this point, Williamsburg County
2 has no evidence that belongs to this case?

3 A. I can't answer that. As far as I know,
4 they do not.

5 Q. So the items that were placed into
6 evidence included a pair of female black pants?

7 A. I don't know. I would have to look
8 at -- yes.

9 Q. Is that correct? Pair of white
10 underwear with a sanitary pad, pair of sneakers
11 size 12?

12 A. Yes.

13 Q. Pair of jeans?

14 A. Yes.

15 Q. Blue and white shirt?

16 A. Yes.

17 Q. Is that a T-shirt times three?

18 A. I want to say it's extra --

19 Q. Extra extra extra large?

20 A. Correct.

21 Q. Socks times two?

22 A. Yes.

23 Q. So I assume that's two pairs. Stocking
24 cap, a green and black knife, red and black ball
25 cap, green lighter with -- I'm sorry, green lighter

224

GENC ALTERI - CROSS EXAM

1 and an empty Newport cigarette pack -- so those
2 were together?

3 A. Yeah. All of this was given to us
4 together.

5 Q. Backs to cell phones and that says
6 plural, so do you know how many backs to cell
7 phones that was?

8 A. I do not.

9 Q. A cell phone, cell phone chargers, and
10 then a Smith and Wesson 22-caliber handgun?

11 A. Yes.

12 Q. Okay. With regards to the page before
13 that, you indicated that you collected the deer
14 camera, you collected the newspaper, there were
15 cuttings that were taken from various mattresses?

16 A. Correct.

17 Q. There were a number of photographs that
18 you took of that information; is that correct?

19 A. Correct.

20 MR. SCHWACKE: Thank you. That's all
21 the questions I have.

22 THE COURT: Any redirect?

23 MR. POULOS: Yes, Your Honor.

24 THE COURT: You may proceed.

25 REDIRECT EXAMINATION

225

GENC ALTERI - REDIRECT EXAM

1 BY MR. POULOS:

2 Q. Just to be clear, Detective, State's 87
3 and 88, which you identified as the duct tape you
4 collected and put in bags, you gave those to
5 Detective Wrenn from Williamsburg County?

6 A. Yes.

7 Q. Everything you collected from the house
8 that day went to Williamsburg County?

9 A. Yes.

10 Q. And some of the items were brought back
11 to Berkeley County?

12 A. Yes.

13 Q. The duct tape that you gave to
14 Detective Wrenn was not part of the items that came
15 back?

16 A. Not according to my list.

17 MR. POULOS: Okay. Nothing further,
18 Your Honor. Thank you.

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

21 MR. POULOS: None from the State.

22 THE COURT: From the defense?

23 MR. SCHWACKE: No, Your Honor.

24 THE COURT: Sir, you're excused.

25 THE WITNESS: Thank you.

226

CRYSTAL SPENCE - DIRECT EXAM

1 THE COURT: You're welcome.

2 Call your next witness.

3 MR. POULOS: The State calls Crystal
4 Spence.

5 CRYSTAL SPENCE,

6 being first duly sworn, testified as follows:

7 THE CLERK: Have a seat, state your
8 full name and spell your last name.

9 THE WITNESS: Crystal Spence,
10 S-P-E-N-C-E.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. POULOS:

14 Q. Afternoon. Where do you work?

15 A. Berkeley County Sheriff's Office.

16 Q. How long have you been there?

17 A. Since 2000.

18 Q. What is your position?

19 A. Forensics service unit.

20 Q. What are your responsibilities in that
21 role?

22 A. Processing crime scenes, logging in
23 evidence and taking evidence to other agencies for
24 processing.

25 Q. Okay. Directing your attention to

227

CRYSTAL SPENCE - DIRECT EXAM

1 October 28, 2013, did you respond to 1112 Council
2 Road in Williamsburg with Lieutenant Alteri?

3 A. Yes, I did.

4 Q. What's the first thing you did?

5 A. Process the vehicle.

6 Q. Okay. Describe the vehicle.

7 A. It is a blue Hyundai Accent, and it was
8 located behind the residence.

9 Q. Did you recover a number of items from
10 that vehicle?

11 A. Yes.

12 Q. Okay. I want to show you State's 45.
13 What are we looking at there?

14 A. That is a large knife.

15 Q. And did you recover that knife from the
16 vehicle?

17 A. Yes, I did.

18 Q. I show you State's Exhibit -- what has
19 been marked for identification, 96. What is that?

20 A. This is the knife.

21 Q. That is the knife that you recovered
22 from that vehicle?

23 A. Yes, I did.

24 MR. POULOS: Your Honor, I would offer
25 that into evidence as State's 96.

228

CRYSTAL SPENCE - DIRECT EXAM

1 MR. SCHWACKE: At this time, no
2 objection.

3 THE COURT: Marked and admitted without
4 objection.

5 (STATE'S EXH. 96 in evidence.)

6 BY MR. POULOS:

7 Q. I show you State's 54. What is that?

8 A. That's a picture of the trunk.

9 Q. Okay. What's in the trunk?

10 A. The roll of duct tape, clothing, shoes.

11 Q. Did you collect the duct tape that you
12 see in the picture there?

13 A. Yes, I did.

14 Q. If you would look in that bag and tell
15 us, what is in there, please?

16 A. One roll of duct tape.

17 Q. Is that the duct tape you recovered
18 from the trunk?

19 A. Yes.

20 MR. POULOS: I would offer that into
21 evidence as State's 94.

22 THE COURT: Any objection?

23 MR. SCHWACKE: No objection.

24 THE COURT: Marked and admitted without
25 objection.

229

CRYSTAL SPENCE - DIRECT EXAM

1 (STATE'S EXH. 94 in evidence.)

2 BY MR. POULOS:

3 Q. I show you a photograph marked as
4 State's 52. What are we looking at there?

5 A. That is the passenger side floorboard
6 and a pair of black pants.

7 Q. What was inside of those pants?

8 A. A pair of underwear and a sanitary
9 napkin.

10 Q. You collected those?

11 A. Yes, I did.

12 Q. And who did you turn all this evidence
13 over to?

14 A. Lieutenant Wrenn from Williamsburg.

15 Q. Okay. I show you State's 46 and
16 State's 97. First of all, referring to the
17 photograph, State's 47, what is that?

18 A. That's the floorboard of the driver's
19 side of the vehicle.

20 Q. What is in the floorboard?

21 A. A pack of Newport cigarettes.

22 Q. Did you recover that pack of
23 cigarettes?

24 A. Yes.

25 Q. I show you State's 97. Is that the

230

CRYSTAL SPENCE - DIRECT EXAM

1 pack of cigarettes you recovered?

2 A. Yes, it is.

3 MR. POULOS: I would offer that in
4 evidence as State's 97.

5 MR. SCHWACKE: No objection.

6 THE COURT: Marked and admitted without
7 objection.

8 (STATE'S EXH. 97 in evidence.)

9 BY MR. POULOS:

10 Q. Did you attempt to take fingerprints
11 from that cigarette pack?

12 A. Yes, I did.

13 Q. And did you also attempt to take
14 fingerprints from the vehicle itself?

15 A. Yes, I did.

16 Q. Describe that process for me.

17 A. I'm sorry?

18 Q. Describe the process for me.

19 A. With Bateman powder and a brush we
20 processed the outside of the vehicle where you
21 would think people would touch. Once you see ridge
22 detail, which is the lines on your fingers, we lift
23 that with tape and then put it on backer cards,
24 which are called latent lifts.

25 Q. I show you what's been marked as

231

CRYSTAL SPENCE - DIRECT EXAM

1 State's 99, containing 99 A, B, C, and D. Tell me
2 what those are, please.

3 A. These are the four latents obtained
4 from that scene.

5 Q. Okay. Now let's back up. You put the
6 powder on the car and you put the tape on the car?

7 A. Yes.

8 Q. Who then pulls the tape off?

9 A. Lieutenant Wrenn.

10 Q. What did she do with it?

11 A. She put it on this white card and wrote
12 the information on the back.

13 Q. And you saw her do that?

14 A. Yes, I did.

15 Q. Is there a reason why you take turns,
16 why you wouldn't be putting the tape on the card?

17 A. Normally, when you're dusting, your
18 gloves and everything get really black and then the
19 cards get real black and are messy. So one person
20 dusts and one person lifts the prints.

21 Q. What did you do with those latents
22 after they were --

23 A. They were turned over to Lieutenant
24 Wrenn.

25 Q. Okay. And are they in the same

232

CRYSTAL SPENCE - DIRECT EXAM

1 condition as they were when you turned them over?

2 A. Yes, sir.

3 MR. POULOS: I would offer those into
4 evidence, Your Honor.

5 MR. SCHWACKE: No objection.

6 THE COURT: Marked and admitted without
7 objection.

8 (STATE'S EXH. 99A, B, C and D in
9 evidence.)

10 By MR. POULOS:

11 Q. I show you a box marked State's 85,
12 containing State's 87 and 88. If you could look at
13 State's 87 and 88 and tell me if you recognize
14 those two bags.

15 A. Those are the style bags we use in
16 forensics to put evidence in at scenes.

17 Q. And did you observe evidence being
18 placed into those bags?

19 A. Yes.

20 Q. Who placed it in there?

21 A. Lieutenant Alteri placed it in the
22 bags, Lieutenant Wrenn wrote on the bags, and then
23 I filled out chain of custody as everything was
24 handed to me.

25 Q. You filled out the chain of custody

233

CRYSTAL SPENCE - CROSS EXAM

1 noting that it went to Lieutenant Wrenn?

2 A. Correct.

3 MR. POULOS: Okay. I would offer 87
4 and 88 into evidence.

5 THE COURT: Any objection?

6 MR. SCHWACKE: Not at this time, Your
7 Honor, until the chain is complete.

8 THE COURT: That didn't answer my
9 question. Do you have an objection to the
10 admission of 87 and 88?

11 MR. SCHWACKE: I do, Your Honor.

12 THE COURT: Okay. They are marked for
13 ID, subject to completion of the chain.

14 MR. POULOS: Thank you, Your Honor.
15 No further questions.

16 THE COURT: Any questions for the
17 witness?

18 CROSS-EXAMINATION

19 BY MR. SCHWACKE:

20 Q. Are there markings you place on bags to
21 indicate who did what?

22 A. I can just tell by the handwriting on
23 the bag. The numbers should coincide with the
24 markers when they're photographed and then I know
25 her handwriting.

234

CRYSTAL SPENCE - CROSS EXAM

1 Q. And where is anything to indicate that
2 you were in the process of it?

3 A. Chain of custody.

4 Q. And that's a separate --

5 A. Piece of paper.

6 Q. And is that part of what's in your hand
7 right now?

8 A. No. This is just the bag.

9 Q. So somewhere there is a chain sheet?

10 A. Yes.

11 Q. For every item?

12 A. For every item.

13 Q. Would each item have its own sheet?

14 A. No. There's several items on a chain
15 of custody. On some of the pieces of chain of
16 custody, there's up to nine items on a chain of
17 custody.

18 Q. So you haven't seen that in terms of
19 your testimony here today -- you haven't seen that
20 sheet?

21 A. No.

22 MR. SCHWACKE: That's all I have.

23 THE COURT: Any redirect?

24 MR. POULOS: No, Your Honor.

25 THE COURT: Any objection to the

GERARD CUCURULLO - DIRECT EXAM

1 witness being excused? From the State?

2 MS. WILLIAMS: None from the State.

3 THE COURT: From the defense?

4 MR. SCHWACKE: No, Your Honor.

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

6 You may call your next witness.

7 MS. WILLIAMS: State would call Agent
8 Cucurullo.

9 GERARD CUCURULLO,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, state your
12 full name for the record, and spell your first and
13 last name, please.

14 THE WITNESS: Gerard Cucurullo.

15 THE COURT: Spell your last name,
16 please.

17 THE WITNESS: C-U-C-U-R-U-L-L-O.

18 THE COURT: You may proceed.

19 MS. WILLIAMS: Thank you.

20 DIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Agent Cucurullo, who do you work for?

23 A. South Carolina Law Enforcement
24 Division.

25 Q. And where are you based?

236

GERARD CUCURULLC - DIRECT EXAM

- 1 A. Columbia.
- 2 Q. And how long have you worked for them?
- 3 A. About three years.
- 4 Q. And what are your duties?
- 5 A. I work for the bloodhound tracking
- 6 team; we track criminals and missing people with
- 7 bloodhounds.
- 8 Q. What kind of training and experience is
- 9 involved in the bloodhound team?
- 10 A. We do a lot of in-house. We've had
- 11 dogs at SLED since the '50s. We've had a lot of
- 12 experience with Premiere Agency out of South
- 13 Carolina running bloodhounds, but I've also been to
- 14 three week-long schools, one put on by the Federal
- 15 Government.
- 16 Q. These are what kind of dogs?
- 17 A. They are bloodhound mixes. Bloodhound
- 18 has the best nose, but we mix in Bluetick and
- 19 Redbone.
- 20 Q. Did you have an opportunity to respond
- 21 to a call on October 28, 2013?
- 22 A. I did.
- 23 Q. What kind of call was that?
- 24 A. I went to two calls on that day, but I
- 25 believe the one that we're here for is the one in

GERARD CUCURULLC - DIRECT EXAM

1 Williamsburg.

2 Q. Okay. And were you trying to find a
3 suspect or a missing person?

4 A. We were called to help track a suspect.

5 Q. And when you arrived at the scene, do
6 you remember about what area that was in in
7 Williamsburg?

8 A. It was close to I believe a prison or
9 jail of some sort.

10 Q. Near Ridgeville?

11 A. I don't recall.

12 Q. Okay. What was the terrain like? What
13 did it look like?

14 A. A lot of woods.

15 Q. And how many agencies were onsite when
16 you got there?

17 A. There were numerous agencies. I can't
18 give you an exact number. I know there was an
19 agent from our SLED Fugitive Team, Charleston
20 County Dogs had already been in the woods,
21 Williamsburg Sheriff's Department -- I'm sure there
22 were others.

23 Q. Who did you arrive with?

24 A. At the time, I was with two other
25 tracking team members in the vehicle we were with,

238

GERARD CUCURULLC - DIRECT EXAM

1 and there were also two other tracking team members
2 responding as well.

3 Q. Did you have the name of the person
4 that you were looking for?

5 A. We were given a description. I don't
6 know if we had the name or not.

7 Q. What was the description?

8 A. I can't recall.

9 Q. Would it refresh your memory to look at
10 your report?

11 A. Sure.

12 MS. WILLIAMS: May I approach?

13 THE COURT: Yes.

14 THE WITNESS: What was your question?

15 By MS. WILLIAMS:

16 Q. Who were you looking for?

17 A. Telly McClam.

18 Q. Okay. And does it have how big he was
19 at the time?

20 A. I'm sure it did, but I don't have that
21 on my report. They normally give us a description
22 by height, weight, what they were wearing at the
23 time.

24 Q. And what did you learn upon arrival at
25 the scene?

GERARD CUCURULLO - DIRECT EXAM

1 A. Of course we learned he was wanted and
2 we had learned that Charleston County K9 had been
3 in the woods attempting to track him. When we were
4 there, they were starting to come out of the woods.
5 So we were just starting to get intel on where the
6 last place they saw him, the last place they were
7 tracking him, so we could establish where we needed
8 to start.

9 Q. What was the name of the dog that you
10 were handling that day?

11 A. Jessie, one of our bloodhound mixes.

12 Q. What did you do with Jessie after that,
13 after you found out about the -- not the success of
14 Charleston County?

15 A. After the Charleston County, we
16 discussed with them where's the last place they
17 thought they had him and we went into the woods in
18 that area and attempted to put bloodhound Jessie
19 around that area to see if she would pick up on a
20 track that they didn't pick up on, and we were
21 unsuccessful at that time.

22 Q. Okay. So what happened next?

23 A. So we got out of the woods. A lot of
24 times we'll get additional spottings, so we gave it
25 a little bit of time, hoping to get another

GERARD CUCURULLO - DIRECT EXAM

1 spotting so we could start the dog again if the
2 suspect doesn't get picked up. And in this case,
3 that's what happened. We got an additional
4 sighting.

5 Q. And do you even know about what time
6 this was?

7 A. I know we got the call around
8 5:00 p.m., but I don't recall how long between the
9 initial track and next sighting was. I don't
10 recall.

11 Q. So when you get the tip, then, do you
12 move to another location?

13 A. We do. We got the call that there was
14 somebody knocking on the back door or back window
15 of the suspect's mother's house.

16 Q. And how far away do you go next?

17 A. It was a few miles.

18 Q. Then what happens?

19 A. So we responded to that location and
20 once again we pulled bloodhound Jessie out of the
21 dog wagon and cut her in the backyard where the
22 suspect was last possibly at, and bloodhound Jessie
23 pretty quickly picked up on the trail and started
24 tracking.

25 Q. Did you at some point put eyes on him?

GERARD CUCURULLO - DIRECT EXAM

1 A. So we started tracking, and when we
2 track, we want a perimeter. We don't always track
3 directly to the suspect. Sometimes we push the
4 suspect to the perimeter where other officers are
5 and they can catch them.

6 In this case, Steve Sly, one of our
7 other trackers, had gone to the left and there were
8 railroad tracks that ran on the other side of the
9 woods and it gives you a clear view a good distance
10 down the wood line. In this case it worked out,
11 because he saw an individual they identified as the
12 suspect run across the railroad tracks.

13 And so we started tracking from the
14 house and ended up going across the railroad
15 tracks. And Stevie was too far away to be able to
16 run and catch him, but he did confirm where --
17 tracking where he saw the individual and we tracked
18 to the other side of the woods, where we first made
19 contact with Mr. McClam.

20 Q. And were you present when Mr. McClam
21 was apprehended?

22 A. I was.

23 Q. Can you explain that to us, how that
24 went down?

25 A. We approached him and he was initially

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GERARD CUCURULLO - DIRECT EXAM

1 going the opposite direction of us. And we gave
2 him lots of verbal commands, let's see your hands,
3 you're under arrest, and get on the ground. He
4 initially didn't want to respond with anything.

5 And then he started getting on the
6 ground, and at this point I saw he didn't have any
7 weapons in his hands and I couldn't tell about
8 around his waistline or anything like that, didn't
9 see any in his hands. So I approached, I grabbed
10 -- I dropped the dog, because I was running
11 bloodhound Jessie at the time, dropped the lead to
12 the dog, and I approached and I grabbed I believe
13 it was his left arm and another officer had started
14 coming up to grab his right.

15 So as I had his left arm about the
16 wrist, I looked over to make sure that his other
17 hand was -- started getting secured. At this time
18 he's prone on the ground, I'm off I believe on the
19 left side, and another officer on the opposite
20 side, and I could tell he was starting to -- he was
21 resisting some and he started feeling around on the
22 ground next to him. I thought that was odd at the
23 time, but we were trying to get his hands behind
24 his back.

25 So I didn't pay any attention to that

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GERARD CUCURULLO - DIRECT EXAM

1 at the time. And it took awhile, he didn't respond
2 to our verbal orders, didn't want to put his hands
3 behind his back, but we were able to get his hands
4 behind his back and get him handcuffed. That's
5 when I started thinking, why is he trying to feel
6 around on the ground. And I started looking and
7 within a couple of feet, there was a silver
8 revolver on the ground next to us.

9 Q. Okay. And that was right where he was
10 feeling around with his hands?

11 A. It was close to it.

12 Q. Okay. And once he was apprehended, was
13 he removed from that area? Where was he placed?

14 A. We had local officers, I guess there
15 was a road on the other side of the wood line, and
16 we had turned him over to local officers to have
17 him transported to wherever he was going and then
18 we also -- we didn't collect the gun at that time.
19 We stood there and waited for other local officers
20 to come in, the crime scene or whoever they wanted
21 to take pictures and process it before we picked it
22 up. We didn't want to contaminate any of the
23 evidence they had there.

24 Q. So that gun right by Mr. McClam, you
25 held secure until someone else could pick it up?

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GERARD CUCURULLO - DIRECT EXAM

1 A. We secured it there and left it alone.
2 We didn't pick it up. We had a perimeter around
3 it. It was going nowhere and no one had access to
4 it.

5 Q. How did you describe that gun in your
6 report?

7 A. It was a silver in color revolver.

8 Q. Did you see anything about the handle?

9 A. It was a different color. It was brown
10 or black.

11 Q. Would you recognize the gun if you saw
12 it?

13 A. I probably would, but it's been a
14 while.

15 MS. WILLIAMS: Your Honor, I'm going to
16 show him what has been marked as State's 90.

17 THE WITNESS: That does look similar to
18 the gun I saw that day.

19 BY MS. WILLIAMS:

20 Q. And this gun was kept secure by your
21 agency until somebody from the local agency could
22 pick it up?

23 A. Yes, ma'am.

24 Q. I believe in a previous statement you
25 described the defendant's arrest as a tussle. Do

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GERARD CUCURULLO - CROSS EXAM

1 you remember saying that?

2 A. Yeah. He -- he wasn't -- he wasn't
3 listening to our verbal commands. It wasn't a
4 fight. There wasn't punches or anything like that.
5 He was being -- he was resisting. He didn't want
6 to go to jail. He had something else on his mind,
7 he wasn't obeying what we wanted him to do. He
8 didn't want to put his hands behind his back. We
9 struggled with that, to get him in handcuffs.

10 MS. WILLIAMS: Okay. Thank you.

11 THE COURT: Cross-examination of the
12 witness?

13 CROSS-EXAMINATION

14 BY MR. SCHWACKE:

15 Q. I'm not going to try to say your last
16 name.

17 A. Cucurullo; it's a tough one.

18 Q. Okay. How long have you been with
19 SLED?

20 A. I've been with SLED for over three
21 years.

22 Q. And it's all been with dog tracking?

23 A. Yes, sir. That's my primary duties.

24 Q. I'm assuming there are different types
25 of dogs at SLED?

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GERARD CUCURULLO - CROSS EXAM

1 A. There are. There are.

2 Q. You mentioned a bloodhound mix which is
3 used for tracking and then there would be other
4 drug dogs or --

5 A. We do -- we have bomb dogs, narcotic
6 dogs, we have an apprehension dog that can also
7 track and do our searches, so we have different
8 dogs for different situations.

9 Q. And does SLED offer training or do you
10 get that from someplace else?

11 A. We do most of our training in-house.
12 We have numerous years of training there, but we go
13 externally as well. I've been to three different
14 week-long schools about tracking. One was put on
15 by the Federal Government.

16 Q. Is this training the type for both the
17 handler and the dog?

18 A. Yes.

19 Q. At the same time?

20 A. Some could be one-on-one or it could
21 just be the handler out there looking for signs by
22 ourselves. We're trained to track with our eyes
23 and not just the dog. We want to confirm that the
24 dog is on the trail of what we see. So looking for
25 footprints, looking for a shine on the grass where

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GERARD CUCURULLC - CROSS EXAM

1 it's been pushed down, twigs that have been broken.
2 We want to confirm that the dog is on the proper
3 trail. Yes, we train with the dog and without as
4 well.

5 Q. Is there such a thing as too many dogs
6 on a search? Can they mess up -- can one set of
7 dogs mess up the process for another set of dogs?

8 A. If -- if you're speaking of
9 contamination, that does become an issue, but we
10 train on that. You just have to work through it.
11 We want to get the dog struck on that one scent,
12 and with our dogs, once they're on that one scent,
13 that's what they're going to track for.

14 Q. And so about how long were you out
15 there that day?

16 A. We got the call about 5:00, and my
17 report says we were -- we had cleared from there
18 about 1:20 in the morning. I believe that was back
19 in Columbia, 1:20.

20 Q. Do you recall what the weather was?

21 A. I don't recall.

22 Q. The Solicitor was asking about the
23 report indicating a tussle. What do you remember
24 specifically about that?

25 A. Just what I stated. It wasn't a -- he

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GERARD CUCURULLO - CROSS EXAM

1 was resisting arrest. He didn't want to put his
2 hands behind his back, he didn't want to go to
3 jail, he wasn't listening to the verbal commands.

4 Q. Had he gotten worked up? Was he
5 sweaty? What was his physical shape?

6 A. I don't recall.

7 Q. And after he is taken down, you
8 indicate that he's kind of reaching towards an
9 area?

10 A. He was reaching off to his side like he
11 was searching for something.

12 Q. And at that point, once he's in
13 custody, there is a weapon that's similar to the
14 one that was shown to you today?

15 A. Yes, sir.

16 Q. And you all took great lengths to make
17 sure that there was no contamination, touching,
18 anything to the weapon, until someone else could
19 come and pick it up?

20 A. Yes, sir.

21 Q. Did you remain until that person came?

22 A. I did.

23 Q. Do you know who the person was?

24 A. I just know it was a local officer.

25 Q. Okay. Any of the local agencies? It

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GERARD CUCURULLC - CROSS EXAM

1 could have been Williamsburg or --

2 A. I believe it was Williamsburg, but I
3 don't recall.

4 Q. Was it a uniformed officer or --

5 A. I believe it was an uniformed officer.

6 MR. SCHWACKE: One moment. That's all
7 the questions I have.

8 THE COURT: Any redirect?

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: I can't hear you.

11 MS. WILLIAMS: No, Your Honor.

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

14 MS. WILLIAMS: No.

15 THE COURT: From the defense?

16 MR. SCHWACKE: No, Your Honor.

17 THE COURT: Sir, you're excused.

18 THE WITNESS: Thank you very much.

19 THE COURT: You're welcome.

20 Call your next witness.

21 MS. WILLIAMS: Detective Ballard.

22 JUAN BALLARD,

23 being first duly sworn, testified as follows:

24 THE CLERK: Have a seat, state your
25 full name and spell your last name.

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JUAN BALLARD - DIRECT EXAM

1 THE WITNESS: Juan Ballard,
2 Williamsburg County Sheriff's Office,
3 B-A-L-L-A-R-D.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Detective Ballard, how long have you
8 worked for Williamsburg County Sheriff's Office?

9 A. Going on 18 years.

10 Q. Okay. And where did you work before
11 that?

12 A. Atlantic Beach, South Carolina.

13 Q. And generally your responsibilities are
14 in the detective unit?

15 A. Yes, ma'am.

16 Q. And did you respond to a call regarding
17 Telly McClam on 10/28/2013?

18 A. I did.

19 Q. And was that an agency assist?

20 A. It was.

21 Q. Where did you initially respond?

22 A. To a residence on Council Road in the
23 Salters area.

24 Q. At some point did you learn that the
25 defendant had been apprehended?

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JUAN BALLARD - DIRECT EXAM

1 A. Yes.

2 Q. And did you go to that location?

3 A. I did.

4 Q. And did you collect anything from that
5 location?

6 A. I did.

7 Q. What was that?

8 A. A small caliber, I think 22, revolver.

9 Q. Okay. And when you got there, who was
10 in control of that evidence?

11 A. SLED agents.

12 MS. WILLIAMS: Okay. Your Honor, I'm
13 going to show Detective Ballard what has been
14 marked as State's 89 and 90.

15 May I approach?

16 THE COURT: You may.

17 BY MS. WILLIAMS:

18 Q. Can you tell us what this box is and
19 what's inside?

20 A. It's an evidence box we use to put
21 small items in, like handguns, knives, things like
22 that.

23 Q. Is that the evidence box you used that
24 day?

25 A. It is.

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JUAN BALLARD - DIRECT EXAM

1 Q. And is there some kind of identifying
2 mark on this gun and on this box that shows you
3 that this is the box that you collected for this
4 gun?

5 A. It is, serial number.

6 Q. What is the serial number on the
7 weapon?

8 A. 20365.

9 Q. And what is the serial number on the
10 box?

11 A. 20365.

12 Q. And what did you do with this box when
13 -- after you collected it? Where did you put it
14 next?

15 A. We put it in our drop box at the
16 sheriff's office.

17 Q. Who did you give it to specifically to
18 do that?

19 A. Lieutenant Wrenn.

20 Q. Okay. And was there anything else you
21 collected at the time?

22 A. There was ammunition out of the gun I
23 took out.

24 Q. Was the ammunition in the gun when you
25 collected it?

253

JUAN BALLARD - DIRECT EXAM

1 A. It was.

2 Q. Okay. And describe the scene like
3 where you got the gun, where SLED was holding it.
4 Was it a neighborhood? Tell us what the terrain
5 was like.

6 A. It was a wooded area, probably from me
7 to the table, from the railroad tracks.

8 Q. And, in addition --

9 MS. WILLIAMS: At this time, Your
10 Honor, we would offer State's 89, the box that the
11 gun was in, and State's 90 into evidence.

12 THE COURT: Any objection?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: Marked and admitted without
15 objection.

16 (STATE'S EXH. 89 in evidence.)

17 (STATE'S EXH. 90 in evidence.)

18 BY MS. WILLIAMS:

19 Q. Just to be clear, State's 91, are these
20 the bullets that were in the gun?

21 A. Yes, ma'am.

22 Q. And that's what you put into the box?

23 A. I did.

24 MS. WILLIAMS: We would offer State's
25 91 as well.

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JUAN BALLARD - DIRECT EXAM

1 THE COURT: Any objection?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Marked and admitted without
4 objection.

5 (STATE'S EXH. 91 in evidence.)

6 BY MS. WILLIAMS:

7 Q. Did you also get a deer camera at some
8 point?

9 A. Yes.

10 Q. What did you do with that?

11 A. Took the memory card out and downloaded
12 the pictures.

13 Q. And you printed some of those pictures?

14 A. I did.

15 Q. And in addition to that, did you also
16 take some items to SLED?

17 A. I did.

18 Q. And I'm going to show you --

19 MS. WILLIAMS: May I approach?

20 THE COURT: You may.

21 BY MS. WILLIAMS:

22 Q. This is State's 85. Can you tell us
23 what was in this box, if you know?

24 A. I can't recall everything that was in
25 the box at this point.

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JUAN BALLARD - DIRECT EXAM

1 Q. Is there a slip that can help you? Can
2 you tell us -- is that a slip that's on the box?

3 A. Yes, ma'am.

4 Q. And what was in the box?

5 A. Sealed box with two pieces of duct
6 tape, buccal swabs from Deadrene McHoney, swabs
7 from duct tape, 11 latent prints and a ten-print
8 from Telly McClam.

9 Q. And how do you know you took these
10 things to SLED?

11 A. My initials are right there.

12 (Indicating)

13 Q. And what does that read?

14 A. JLB.

15 Q. Okay. And did you tamper with this box
16 or do anything else to this box --

17 A. I did not.

18 Q. -- except deliver it?

19 A. Except deliver it.

20 Q. Detective, we just talked about item
21 85. Can you say which item's numbers are in this
22 box? Can you read off the item numbers that are in
23 the box?

24 A. 87, 88.

25 Q. And what about here?

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JUAN BALLARD - DIRECT EXAM

1 A. 86.

2 Q. Okay. And those items, State's 88, 87,
3 and 86, are contained in State's 85?

4 A. Yes, ma'am.

5 Q. And that was sealed with your initials?

6 A. It was.

7 MS. WILLIAMS: May I approach?

8 THE COURT: You may.

9 BY MS. WILLIAMS

10 Q. Did you take some latent cards to SLED?
11 And this is State's 99.

12 A. Yes, ma'am, I did.

13 Q. And how do you know that you took those
14 up?

15 A. That's my scribble.

16 Q. Okay. Thank you. Thank you, Detective
17 Ballard. No other questions.

18 THE COURT: Any questions for the
19 witness?

20 MR. SCHWACKE: Just a couple questions.

21 CROSS-EXAMINATION

22 BY MR. SCHWACKE:

23 Q. Do you recall when you went out to the
24 tracks that night exactly or whereabouts the gun
25 was?

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JUAN BALLARD - CROSS EXAM

1 A. Do I recall exactly where the gun was
2 at?

3 Q. Generally?

4 A. Yeah.

5 Q. Where was it?

6 A. It was -- like I said, it was in a
7 wooded area beside the railroad tracks in the Lane
8 community.

9 Q. There were officer there at the time?

10 A. Yes.

11 Q. About how many SLED agents out there?

12 A. I can't recall how many SLED agents.
13 There was like 60 of us out there.

14 Q. And how did you take the gun into your
15 possession?

16 A. When the SLED agents alerted us that
17 the gun was in the woods, I went in there and took
18 possession of the gun, placed it in the box and put
19 it in my vehicle and it stayed there until I took
20 it to the office.

21 Q. So you had the box with you when you
22 went?

23 A. We keep boxes in our vehicles.

24 Q. Okay. And did you wear any gloves?

25 A. I did.

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JUAN BALLARD - CROSS EXAM

1 Q. What kind of gloves?

2 A. Black latex gloves.

3 Q. Do you recall when you did the transfer
4 to SLED of these items?

5 A. I can't remember the exact date on
6 that.

7 Q. Were those taken by Juan Ballard --
8 that's you?

9 A. That's me.

10 Q. They were taken up there -- if it says
11 -- it has the sealing official, Investigator Juan
12 Ballard?

13 A. Yes.

14 Q. And it says, date 4/9/2014, would that
15 be the date?

16 A. Is that the SLED seal?

17 Q. It is their evidence bag.

18 A. That's when I took it then.

19 Q. So, again, April 9, 2014?

20 A. That would be correct.

21 MR. SCHWACKE: That's all, Your Honor.

22 THE COURT: Any redirect of the
23 witness?

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: Any objection to the

1 witness being excused? From the State?

2 MS. WILLIAMS: Not from the State.

3 MR. SCHWACKE: No, ma'am.

4 THE COURT: Sir, you're excused.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: You're welcome.

7 We're going to take advantage of this
8 break in testimony to take our lunch recess. We
9 are going to break until five after two. During
10 the break, do not discuss the case among yourselves
11 and do not do any independent research on the
12 Internet, and please do not read, watch, or listen
13 to any media accounts about this case if there are
14 any, and please don't have any contact with anyone
15 in or about the courthouse. Again, we would not
16 want an innocent conversation misinterpreted. If
17 you would leave your notepads in your seats and
18 follow the directions of the bailiff. As soon as
19 everyone returns at 2:05, we will resume testimony.

20 (Jury out, 1:02 p.m.)

21 THE COURT: You may be seated. Okay.

22 Mr. Schwacke, I took something under advisement
23 because I didn't want to ask this question in the
24 presence of the jury and I knew we would have a
25 break. I'm confused as to whom you claim is

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1 missing in the chain on number 87 and 88 of the
2 State.

3 MR. SCHWACKE: I did not -- we agreed
4 on -- I did earlier, but they just completed it
5 with Mr. Ballard.

6 THE COURT: They completed it, but they
7 didn't offer it, unless I --

8 MS. WILLIAMS: Well, we offered it --

9 THE COURT: You offered it earlier, but
10 you didn't offer it just now and that's why I'm
11 asking the question. So is there no exception to
12 87 and 88?

13 MR. SCHWACKE: Based on his testimony,
14 no, Your Honor.

15 THE COURT: 87 and 88 are in without
16 objection.

17 (STATE'S EXH. 87 in evidence.)

18 (STATE'S EXH. 88 in evidence.)

19 THE COURT: All right. Anything else
20 we need to take up before we adjourn for lunch?
21 From the State?

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Have a good lunch. See

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1 you all at 2:05.

2 (A luncheon recess transpired.)

3 THE COURT: State ready to proceed?

4 MS. WILLIAMS: Yes, Your Honor. I
5 wanted to inquire about a scheduling issue. We
6 will conclude today with our final witness. We're
7 offering an expert on domestic violence, on the
8 dynamics of domestic violence. And Mr. Schwacke is
9 going to want a hearing about her credentials and
10 also about whether she is relevant to this trial.

11 I imagine that we will finish with all
12 of our other witnesses, we have about seven
13 witnesses left, by close to 4:00 or 4:30. I would
14 hate to have her come all the way up here unless
15 you want me to bring her up here, if we're going to
16 stay past 5:00.

17 THE COURT: I'm not going beyond 5:00.

18 MS. WILLIAMS: So we would just plan to
19 have her in the morning.

20 THE COURT: That would be your last
21 witness?

22 MS. WILLIAMS: Yes, ma'am.

23 THE COURT: What is tomorrow,
24 Wednesday?

25 MS. WILLIAMS: Yes, ma'am.

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1 THE COURT: Mr. Schwacke, do you still
2 intend to call witnesses?

3 MR. SCHWACKE: That's currently our
4 intention.

5 THE COURT: How many of those do you
6 still intend to call?

7 MR. SCHWACKE: This is subject to
8 our --

9 THE COURT: Well, you don't have to
10 present anybody. This is for scheduling purposes.

11 MR. SCHWACKE: I believe we would have
12 as many as five to six witnesses. And at some
13 point, Your Honor, you will have to address my
14 client with regard to his own intentions.

15 THE COURT: Yes, of course.

16 MR. SCHWACKE: I believe -- I'm
17 planning to have all of my witnesses here in the
18 morning.

19 THE COURT: Well, my question becomes,
20 how long are the witnesses that the State has
21 remaining?

22 MS. WILLIAMS: For today?

23 THE COURT: Yes.

24 MS. WILLIAMS: We got through eight
25 this morning and one of the eight was the victim,

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1 which took a lot longer. We do have a couple of --
2 four SLED people that I think are going to be
3 vigorously cross-examined so I'm guessing at least
4 two hours, but possibly longer. But, you know, the
5 bulk of it is the nurse, the SLED scientists, which
6 is three of them, a couple of chain people, and
7 that's pretty much it.

8 THE COURT: And then who is your last
9 witness that you've indicated you plan to call?

10 MS. WILLIAMS: It is Dr. Alyssa
11 Rheingold, and we've provided her CV to Mr.
12 Schwacke. She has testified numerous times up here
13 just about the dynamics of domestic violence, about
14 trauma, why kidnapping victims act a certain way,
15 what the --

16 THE COURT: Let me ask you a question.
17 Are you going to object to her testimony,
18 Mr. Schwacke?

19 MR. SCHWACKE: Yes, ma'am.

20 THE COURT: And what would be the basis
21 of the objection?

22 MR. SCHWACKE: Well, first, the
23 Solicitor just sort of painted with a broad brush
24 there as what she will be testifying to. I'm not
25 sure that the science of what she is about to

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1 testify has yet sort of been approved.

2 THE COURT: What are you referring to?

3 MR. SCHWACKE: Well, she's -- she's
4 intending to be an expert and testify as an expert
5 witness in a broad area of things, including
6 domestic violence; where this might be classified
7 as a domestic violence case, it's not been framed
8 in that way, other than the occasional question by
9 Ms. Williams, but no witnesses described it as
10 such.

11 I don't believe that the information
12 that she could provide would be of benefit to a
13 jury, that they would be able to essentially
14 understand the nature of a person being fearful of
15 a weapon being pointed at them without the
16 direction of someone being paid as an expert
17 witness to come in here and say that.

18 THE COURT: You lost me. I thought
19 they were going to present her as an expert.

20 MR. SCHWACKE: They are.

21 THE COURT: People testify all the time
22 about why people don't report things, why in
23 stressful situations they don't act in certain
24 manners. Of course, she can't say that
25 specifically of these individuals. She can only

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1 talk in general hypotheticals, but that's a tested
2 science.

3 It's not anything new. It's testified
4 to around the state and across the country every
5 day. I don't know that -- I don't think -- I can't
6 imagine a valid objection scientifically, because
7 it has been tested, but relevance may -- I haven't
8 heard anything about domestic violence at this
9 point that would make it relevant, but I think she
10 can talk about the dynamics of how people react to
11 stressful situations, depending on her
12 qualifications. I would have to hear that.

13 MR. SCHWACKE: That's where I am as
14 well, as to whether or not she would be qualified
15 as an expert.

16 THE COURT: You have her CV, don't you?

17 MR. SCHWACKE: I do. I see a lot of
18 things, but at this point, I don't know what your
19 ruling would be.

20 THE COURT: I have no idea. I haven't
21 heard anything, but I'm just trying to flesh out
22 whether there's really an objection. Sometimes
23 there's several grounds for objections. I don't
24 think there can be a valid objection on the
25 science. There might be some objection to her

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1 expertise, her education, training, and experience,
2 and maybe an objection on relevance, but I need for
3 you to be focused in your objection.

4 I think we should only expend time on
5 things that are valid. I think we all know that
6 science has been tested and proven and there's
7 nothing -- it's not rocket science; people testify
8 to that all the time. They testify about why
9 children don't report certain things, they testify
10 about why adults don't report certain things,
11 especially when there's a delayed report in a rape,
12 which we know happens all the time, and it's
13 testified to all the time. I'm trying to figure
14 out what the basis of the objection would be.

15 MR. SCHWACKE: Your Honor, at the
16 appropriate time we would object to her
17 qualification as an expert and the relevancy of her
18 testimony.

19 THE COURT: Well, then you need to
20 guesstimate on your time, how long it's going to
21 take. I don't want to have -- I don't want us to
22 have some long extended break.

23 MS. WILLIAMS: I understand.

24 THE COURT: Because -- it's not going
25 to matter to me one way or the other, but you don't

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1 get to hear the complaints on the back end from the
2 jury when their time was wasted and they've taken
3 off from their jobs. They see us leaving court
4 early as not a good thing. They see that as a
5 waste of their time. They don't tell you that, but
6 we get to hear it.

7 So if it seems that I'm being exacting
8 on time, that is why. Because you-all don't get to
9 hear the back end of what we hear. So we have to
10 make as much use of the jurors' time as possible.

11 MS. WILLIAMS: Well, just in an effort
12 to make it a little more efficient, could we submit
13 her CV to the Court and --

14 THE COURT: I'm still going to have to
15 hear it.

16 MS. WILLIAMS: Well, I understand that,
17 but maybe we could at least hear the argument and
18 the case law about the relevance and then we could
19 just -- she's going to be voir dired as far as --

20 THE COURT: I will have to hear her
21 testimony before I make any decision about her
22 qualifications. Her CV is educational, but it's
23 not going to assist me in making a record and
24 making a decision.

25 MS. WILLIAMS: Well --

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1 THE COURT: I have to hear her
2 testimony. I have to judge her credibility, I have
3 to listen to what she has to say.

4 MS. WILLIAMS: Could we maybe just have
5 the relevance portion and the case law argument --

6 THE COURT: I haven't heard anything.

7 MS. WILLIAMS: I can't bring her up
8 here for today and then bring her back tomorrow for
9 testimony. I don't even know if we have the budget
10 for --

11 THE COURT: You have to make that call.

12 MS. WILLIAMS: Okay.

13 THE COURT: Are we ready to go forward?
14 State ready?

15 MS. WILLIAMS: Yes, Your Honor.

16 THE COURT: Defense ready?

17 MR. SCHWACKE: Yes, Your Honor.

18 THE COURT: And who is the State's next
19 witness?

20 MS. WILLIAMS: SANE nurse Karlayne
21 Dufault.

22 THE COURT: Is she present?

23 MS. WILLIAMS: She is.

24 THE COURT: Okay. Bring in the jury.

25 (Jury in, 2:20 p.m.)

2009

KARLAYNE DUFAULT - DIRECT EXAM

1 THE COURT: You may be seated.

2 Ladies and gentlemen, I hope you had a
3 good lunch. We are now going to resume testimony.

4 The State may call their next witness.

5 MS. WILLIAMS: Karlayne Dufault.

6 KARLAYNE DUFAULT

7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat, state your
9 full name for the record and spell your last name.

10 THE WITNESS: Karlayne Default,
11 D-U-F-A-U-L-T.

12 THE COURT: And could you spell your
13 first name as well?

14 THE WITNESS: Yes, ma'am,
15 K-A-R-L-A-Y-N-E.

16 THE COURT: You may proceed.

17 MS. WILLIAMS: Thank you.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. How long have you -- where do you work?

21 A. I work at MUSC Children's Hospital.

22 Q. And how long have you worked there?

23 A. I have worked there since 1999.

24 Q. And what do you do? What is your
25 present position?

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KARLAYNE DUFAULT - DIRECT EXAM

1 A. I'm a pediatric nurse practitioner in
2 the division of child abuse pediatrics.

3 Q. And are you also a nurse practitioner?

4 A. Nurse practitioner, yes, ma'am, and
5 also a certified pediatric sexual assault nurse
6 examiner.

7 Q. What is your educational background?

8 A. I went to MUSC College of Nursing
9 undergraduate and received my Bachelor's of Science
10 in Nursing, and then I also did a Master's Program
11 at the College of Nursing under the pediatric nurse
12 practitioner program.

13 Q. And is continuing education also
14 required in your field?

15 A. Yes, ma'am.

16 Q. Tell us a little bit about that.

17 A. Each year I have to have 12 hours of
18 CEUs that are directly related to child abuse
19 pediatrics.

20 Q. And how long have you worked in the
21 pediatric SANE area?

22 A. Since 2004.

23 Q. Okay. What special educational or
24 practical requirements are there for that specific
25 specialty?

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KARLAYNE DFAULT - DIRECT EXAM

1 A. When I first started, I did a
2 three-month training under a child abuse
3 pediatrician before I was allowed to do cases on my
4 own, and then the 12 hours of continuing education
5 per year are specifically related to child abuse
6 pediatrics.

7 Q. Do you presently supervise anyone?

8 A. I do. I'm the nursing coordinator for
9 Pediatric Sexual Assault Nurse Examiner Program and
10 under that program we have five RNs that work on
11 acute sexual assault cases for us.

12 MS. WILLIAMS: Your Honor, at this time
13 the State would offer Karlayne Dfault as an expert
14 in sexual assault nurse examination.

15 THE COURT: Any questions or
16 objections?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: Admitted without
19 objection. You may proceed.

20 BY MS. WILLIAMS:

21 Q. Now, were you working at MUSC in this
22 capacity October 28th, 2013?

23 A. Yes, ma'am.

24 Q. And during this time can you tell us if
25 you treated a patient named Leandre Jenkins?

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KARLAYNE DUFAULT - DIRECT EXAM

1 A. I did.

2 Q. Did you obtain general information
3 concerning the patient when she came in?

4 A. Yes, ma'am, I did.

5 Q. Do you do that routinely?

6 A. We do.

7 Q. And did she tell you why she was there?

8 A. She did, yes, ma'am.

9 Q. Did she tell you she was sexually
10 assaulted?

11 A. Yes, ma'am, she did.

12 Q. Did she tell you where she was sexually
13 assaulted?

14 A. She did.

15 Q. And where did she say?

16 A. She said she was assaulted in
17 Pineville, down a dirt road, on the top of a car.

18 Q. And did she tell you when that
19 occurred?

20 A. It had happened that morning between 5
21 to 6:00 a.m.

22 Q. Okay. And what is the protocol or
23 procedure for doctors in treating a patient for
24 sexual assault? What is done first?

25 A. So first we have two types of exams for

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KARLAYNE DFAULT - DIRECT EXAM

1 child sexual assault. And how we decide which exam
2 we are going to do is based on the time frame. So
3 if an alleged assault occurred within 72 hours,
4 then we do what we call an acute exam. And that is
5 where we do a head-to-toe exam of the body, looking
6 for any injuries to the skin, and then we also do a
7 genital exam, looking for any trauma to the genital
8 area. We also use a kit where we have swabs that
9 we're swabbing for potential DNA evidence and then
10 offering prophylactic medications for pregnancy and
11 sexually transmitted infections as well.

12 Q. You mentioned trauma to the genitals.
13 We've all seen television and we all expect when
14 someone is raped there will be terrible injuries to
15 the genitals. Is that the case usually?

16 A. In acute sexual assault, about -- the
17 national standards are about 20 percent of the time
18 we will see an acute injury. So about one in five
19 patients will have an acute injury.

20 Q. And for those four out of five, would
21 you rule out that they were sexually assaulted?

22 A. No. History is very important in every
23 part of medicine, so it's the same for sexual abuse
24 as well.

25 Q. Have studies been done about people

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KARLAYNE DUFAULT - DIRECT EXAM

1 that it was verified that they were sexually
2 assaulted, but there is no injury?

3 A. There are. There are two articles in
4 child abuse pediatrics that we refer to frequently;
5 one is by Dr. Joyce Adams and it's called, "It's
6 Normal to be Normal". And so these were cases that
7 were legally confirmed to be child sexual abuse and
8 most of the children did not have genital injuries.

9 The second article that we reference a
10 lot is by Dr. Nancy Kellogg, and it is a group of
11 teenagers that have been sexually assaulted and
12 became pregnant as a result of the assault. And
13 there -- most of those genital exams are normal as
14 well, they don't have any acute injuries or any
15 healing scarring injuries from the -- from the
16 assault.

17 Q. Okay. And why is that? Can you
18 explain to the jury why that is anatomically? Why
19 someone could be sexually assaulted, but you don't
20 see any injury to the genital area?

21 A. The two biggest evident reasons are,
22 what type of assault happened? What type of
23 penetration happened? And then the second reason
24 is that the vaginal muscle is very elastic. So
25 even when there is a history of vaginal penile

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KARLAYNE DUFAULT - DIRECT EXAM

1 penetration, that muscle is very elastic, and that
2 is the main reason why we do not see injury all the
3 time.

4 Q. Okay. And do you often examine younger
5 children than the age of 17?

6 A. Yes. Our protocol at the Children's
7 Hospital is from birth until the age of 17.

8 Q. And so even in young children, do you
9 find this to be true?

10 A. We do, yes. And those statistics
11 include younger children as well.

12 Q. And not to be too graphic, but the area
13 of the body that we're talking about is mucousy or
14 like a mucousy --

15 A. It's a mucous membrane.

16 Q. And does that affect too whether
17 there's going to be injuries, as to what is going
18 on with the body?

19 A. It can, yes.

20 Q. And I know there's not a lot of
21 research on menstrual blood, but certainly
22 menstrual blood would be a liquid present; if it
23 was present at the time -- hypothetically at the
24 time of the assault, would you think that it's
25 possible that could act as a lubricant?

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KARLAYNE DUFAULT - DIRECT EXAM

1 A. It's possible.

2 Q. And in this case, did you -- did you
3 collect a history?

4 A. I did, yes.

5 Q. And why is a history important?

6 A. So we do a -- just a general medical
7 history of the patient to see if they have any
8 previous surgeries to their body or also
9 specifically to their genital area, and we also see
10 if they're on daily medications. That's important
11 for your exam, their overall health, and we do a
12 history of the present illness, so while they are
13 currently there.

14 Q. And for purposes of medical diagnosis
15 and treatment, is there certain information
16 important for you to collect in order to determine
17 what treatment to give the patient?

18 A. Yes.

19 Q. And would the presence of a condom be
20 important?

21 A. Yes.

22 Q. Why?

23 A. Well, first, if a condom was used, we
24 would want to try to gather that as evidence; and
25 then secondly, it may help us decide on what --

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KARLAYNE DUFAULT - DIRECT EXAM

1 what tests to run and what -- what medications to
2 administer.

3 Q. And in this case, was a condom used?

4 A. No, ma'am.

5 Q. And would it be important to know where
6 you had to swab on the body to collect evidence?

7 A. Yes.

8 Q. And would it be important to know if
9 there was licking or kissing on the neck or
10 sucking, like what we call a hickey?

11 A. Yes.

12 Q. And in this case, did any of that
13 occur?

14 A. No, ma'am.

15 Q. So you did not have to swab anywhere
16 else?

17 A. I did not, not on the --

18 Q. The neck or the face or --

19 A. Correct.

20 Q. And would it be important for medical
21 diagnosis and treatment to know if there was a
22 penetrating injury -- I'm sorry, a penetration of
23 the vagina or the anus or the mouth?

24 A. Yes.

25 Q. Why is that?

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KARLAYNE DUFAULT - DIRECT EXAM

1 A. Because we definitely want to swab
2 those areas for potential DNA and also do separate
3 swabs for sexually transmitted infections.

4 Q. And in this case, did you collect that
5 information?

6 A. I did, yes, ma'am.

7 Q. And where was this -- this teenager
8 penetrated?

9 A. There was a history of vaginal penile
10 penetration, digital, which is finger vagina
11 penetration, and then oral penetration as well.

12 Q. And explain to us what that exam is
13 like when you're collecting evidence and treating
14 the patient.

15 A. So we first come in and explain the
16 exam to the patient. We get consent to do the
17 exam. We then do a head-to-toe exam, looking for
18 any signs of trauma to the skin, and then we do
19 oral -- or swabs based on the history. So usually
20 I start with the mouth, looking for any injuries to
21 the mouth.

22 I do a swab of the mouth for the
23 potential DNA for the kit. We have the patient
24 rinse their mouth with water and we wait about 15
25 minutes and do another swab on the inside of the

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KARLAYNE DUFAULT - DIRECT EXAM

1 cheek. It's called a buccal swab. And that is for
2 us to obtain the patient's DNA so that we have
3 their DNA to reference to any other DNA that may be
4 picked up from the exam.

5 At that point, if I had any history of
6 any licking or kissing to the neck or breast or
7 abdomen, I do swabs to that area for saliva. And
8 then we do the genital exam. And we so look
9 externally at the vaginal area to look for any
10 signs of injury. We then swab with our Q-tips for
11 potential DNA evidence and then swab with another
12 Q-tip if we're going to test for sexually
13 transmitted infections. We can do -- on some
14 patients, we can do internal vaginal exams if they
15 can tolerate that and then we do an anal exam. So
16 we're looking externally for any signs of trauma
17 and then we're swabbing for potential DNA evidence
18 and then a second swab for sexually transmitted
19 infections.

20 Q. And physically where is the victim or
21 the patient when this is all going on? Can you
22 explain how -- is it a hospital bed, stirrups?

23 A. In a teenager, we do use -- all of our
24 patients are on stretchers. And for teenagers we
25 do have stirrups that their feet are placed in and

KARLAYNE DUFAULT - DIRECT EXAM

1 they are laying supine, which is on the back, for
2 the exam.

3 Q. And how long do these exams usually
4 take?

5 A. From start to finish, collecting the
6 history until we package up everything, usually
7 about three to four hours..

8 Q. And photographs are taken --

9 A. Yes.

10 Q. -- of the vaginal area?

11 A. Yes, with the consent of the patient
12 and care taker.

13 Q. Now, in this case, you did not see any
14 injuries?

15 A. No, ma'am.

16 Q. And in this case, you did note
17 menstrual blood?

18 A. Yes.

19 Q. And did this patient come in with any
20 underwear?

21 A. She was not wearing underwear, no,
22 ma'am.

23 Q. Okay. Are there any notes as to what
24 she was wearing when she came in?

25 A. Yes. She had on a shirt, pants, bra,

KARLAYNE DUFAULT - DIRECT EXAM

1 and socks.

2 Q. You didn't note a description of any of
3 the clothing?

4 A. No, ma'am.

5 Q. After you take the swabs that you just
6 described to the jury, what do you do with them?

7 A. They are then placed in a swab dryer
8 that has a key to lock the dryer, and we turn the
9 dryer on and the key is kept on our person. And
10 usually about 30 to 45 minutes is the amount of
11 time for our swabs to completely dry, as long as
12 they're not super saturated with secretions.

13 Q. Okay. I'm showing an exhibit
14 previously marked as State's 84.

15 MS. WILLIAMS: May I approach?

16 THE COURT: You may.

17 By MS. WILLIAMS:

18 Q. Can you tell us what this is?

19 A. This is an acute sexual assault kit.

20 Q. And is this the kit that -- do you
21 recognize that specific kit?

22 A. Those are the kits that we use in our
23 emergency room.

24 Q. And is this the kit that you used that
25 day on Leandre Jenkins?

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KARLAYNE DUFAULT - DIRECT EXAM

- 1 A. Can I --
- 2 Q. Yes, you can open it.
- 3 A. Yes. This is -- yes, I used this kit.
- 4 Q. And if you open it up -- I'm not sure.
- 5 Open it up and see if your packaging is --
- 6 A. (Indicating)
- 7 Q. Okay. What are these items that you're
- 8 taking out?
- 9 A. So these are different parts of the
- 10 kit. This is a debris collection sheet. When the
- 11 patient has on the clothes -- the same clothes that
- 12 they were wearing after or during the assault, we
- 13 have them stand on this white sheet, remove their
- 14 clothing. The clothing are packaged up into a
- 15 large white bag, and then that debris collection
- 16 sheet is packaged up as well.
- 17 Q. Okay. And are your initials on any of
- 18 these items?
- 19 A. They are, yes.
- 20 Q. What is this?
- 21 A. This is an envelope that holds the DNA
- 22 section of the kit. It includes the known buccal
- 23 swab, envelopes of any suspected body fluids,
- 24 suspected saliva, the vaginal, oral, rectal swabs,
- 25 if we do fingernail scrapings. There is a vaginal,

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KARLAYNE DUFAULT - DIRECT EXAM

1 oral, and rectal slide holder, which is right here.
2 If we do pubic hair combing, then there is also an
3 envelope for any miscellaneous materials that we
4 might find on the patient.

5 MS. WILLIAMS: I'm going to mark the
6 debris envelope as 84A.

7 (STATE'S EXH. 84A, Debris envelope, was
8 marked for identification.)

9 MS. WILLIAMS: And the DNA envelope is
10 84 B.

11 (STATE'S EXH. 84B, DNA envelope, was
12 marked for identification.)

13 BY MS. WILLIAMS:

14 Q. And what else did you say was in here?

15 A. There's also another envelope for any
16 toxicology. So if we're concerned it is a
17 drug-facilitated sexual assault, we can send blood
18 and urine for toxicology. And there is an envelope
19 for underwear.

20 Q. And none of that was sent?

21 A. It was not collected.

22 Q. Is there anything else in this bag that
23 you handled that has your initials on it?

24 A. The only other thing is this slide
25 container. These are slides when we get oral,

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KARLAYNE DUFAULT - DIRECT EXAM

1 vaginal, and rectal smears.

2 MS. WILLIAMS: And I will mark this as
3 84C.

4 (STATE'S EXH. 84C, Slide container, was
5 marked for identification.)

6 BY MS. WILLIAMS:

7 Q. After you packaged all the stuff up,
8 what did you do with it next?

9 A. We then -- if law enforcement is
10 investigating the case, if they are present, we
11 turn it over to them. If not, we call our MUSC
12 public safety team and they have an officer come to
13 take the kits for us.

14 Q. And what happened in this case?

15 A. Public safety came.

16 Q. Who specifically did you give it to
17 next?

18 A. So after me, chain of custody went to
19 Officer Russell Hagen.

20 Q. And that's the last time you handled
21 this particular item?

22 A. Yes.

23 Q. Okay. Thank you.

24 Now, as far as Leandre Jenkins, what
25 kind of post treatment did she have? You mentioned

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KARLAYNE DUFAULT - DIRECT EXAM

1 some medications.

2 A. Yes. So she -- she was tested for
3 gonorrhea, chlamydia, trichomonas, pregnancy, HIV
4 and syphilis. And then we also gave her
5 medications. One is Rocephin, it is an IM shot
6 that is used to prophylax for gonorrhea. She got
7 Azithromycin pills, which is a prophylaxis for
8 chlamydia. She got Plan B tablets, which are
9 pregnancy prophylaxis; Flagyl tablets, which are
10 for trichomonas; and then in this case she also
11 qualified for HIV prophylaxis. So that is one pill
12 a day for 28 days.

13 Q. Are there side effects of the HIV
14 medication?

15 A. The biggest -- we use a medication
16 called Truvada. The biggest report is GI upset,
17 some nausea and diarrhea is the biggest complaints
18 that we have.

19 MS. WILLIAMS: Court's indulgence?

20 THE COURT: Yes, ma'am.

21 MS. WILLIAMS: Thank you very much.

22 THE COURT: Any questions for the
23 witness?

24 CROSS-EXAMINATION

25 BY MR. SCHWACKE:

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KARLAYNE DUFAULT - CROSS EXAM

1 Q. Ms. Dufault, you've been doing this
2 how long?

3 A. Since May of 2004, so almost 12 years.

4 Q. And your training was at MUSC?

5 A. Yes, sir.

6 Q. In terms of these types of testing, you
7 mentioned acute. That would be -- would mean of
8 recent origin? Is that what that means in terms of
9 what you do?

10 A. Yes, sir; acute is within 72 hours.
11 The allegation is within 72 hours.

12 Q. And where no physical findings are
13 made, it becomes all sort of important to
14 understand what the patient is reporting as the
15 history of what's happened?

16 A. Yes.

17 Q. With kids, you sometimes have people so
18 young they can't do that?

19 A. In our prepubertal children, we will
20 ask them if they know why they are here. And if
21 they say, no, then we don't question them any
22 further. A lot of times we will get a separate
23 history from the family that's with them in a
24 different room. And with our teenagers, we ask
25 them the same question; why are they here? And if

KARLAYNE DUFAULT - CROSS EXAM

1 they give us information, then we ask medically
2 important questions.

3 Q. And in this case, Leandre gave a
4 history of what?

5 A. She gave a history of sexual assault.
6 She had actually written a statement to law
7 enforcement prior to coming to our emergency room
8 and so she gave me a copy of that to read. And
9 then there's also a page where I ask about the
10 contact that's happened. And so she was able to
11 answer those yes or no questions.

12 Q. And so, again, the history of sexual
13 assault that she gave you was of what acts?

14 A. Of vaginal penile penetration, digital
15 vaginal penetration, and oral penile penetration.

16 Q. And that history kind of bears out some
17 of the statistics I guess that you were giving
18 earlier, where there are often times where sexual
19 assaults occur where there are no reports of
20 physical findings. Obviously, oral sex often won't
21 leave any type of evidence of an injury whatsoever?

22 A. Correct.

23 Q. And so those statistics would include
24 those type of offenses as well?

25 A. They do, yes, sir.

KARLAYNE DUFAULT - CROSS EXAM

1 Q. And she did not report a history of any
2 type of penile anal contact?

3 A. No.

4 Q. The Solicitor asked you about the items
5 that were recovered at the time of the examination,
6 especially when you were doing the sheet to collect
7 the debris. There are pictures that are taken of
8 the physical injuries. There are no pictures taken
9 of any of the physical evidence, clothing or any of
10 that type of thing during an examination?

11 A. Not normally. If we have clothing that
12 is torn or has blood on it, we will take a photo of
13 that, but otherwise we do not take photos of the
14 clothing. We take photos of any skin injuries and
15 we do photo document all of our genital exams with
16 the family's consent. We do 100 percent peer
17 review. So as a nurse practitioner, I have a
18 physician that reviews all of my cases and my
19 photos.

20 Q. Going back to my question with regard
21 to clothing, had there been evidence of blood or
22 anything else on the clothing, you would have
23 photographed it or kept that?

24 A. Correct. The clothing in this case was
25 submitted with the kit, but had I noted any blood,

KARLAYNE DUFAULT - CROSS EXAM

1 I would have photographed that.

2 Q. You didn't note any blood on any
3 clothing?

4 A. No, sir.

5 Q. Have you had people give you a wrong
6 history?

7 A. It -- as a medical examiner, it's not
8 my role to decide if it is true or not. I treat
9 the patient medically and then, in these cases, I
10 let law enforcement figure out those facts.

11 Q. When did you conduct this exam?

12 A. It was on October 28, 2013.

13 Q. And do you know when you would have
14 transferred the kit over to your public safety
15 officer?

16 A. I do. The time is on the back of the
17 kit.

18 Q. This would be State's Exhibit 84.

19 A. So Officer Hagen took custody of the
20 kit at 2224, which is military time for 10:24 p.m.

21 Q. Thank you.

22 A. You're welcome.

23 Q. In this case, there were no indications
24 of any type of physical injuries?

25 A. There was no trauma, yes, sir.

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KARLAYNE DUFAULT - REDIRECT EXAM

1 MR. SCHWACKE: One moment. Thank you.

2 That's all the questions I have:

3 THE COURT: Any redirect?

4 MS. WILLIAMS: Yes.

5 THE COURT: You may proceed.

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Mr. Schwacke asked you, when there was
9 no physical findings, then the history is all the
10 more important, but that word, physical findings,
11 is misleading in terms of whether something is a
12 sexual assault, isn't it? Because you could have
13 physical findings even if there's consensual sex?

14 A. Yes.

15 Q. So if two adults, or a 17-year-old and
16 a boyfriend, have sex and it's consensual, there
17 can be tears and there can be all kind of
18 contusions, depending on the type of sex they have
19 and if there's lubrication and all that kind of
20 stuff; isn't that correct?

21 A. Correct.

22 Q. So you can have physical findings in
23 consensual sex and no physical findings in rape?

24 A. Yes.

25 Q. Hasn't that been your experience?

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KARLAYNE DUFAULT - REDIRECT EXAM

1 A. Yes.

2 Q. And you collected some clothing from
3 the victim. Did you collect her pants?

4 A. I collected a shirt, pants, bra, and
5 socks.

6 MS. WILLIAMS: I'm going to mark this
7 -- Madame Court Reporter, what's our next number?

8 THE COURT REPORTER: 163.

9 MR. SCHWACKE: Your Honor, may we
10 approach?

11 THE COURT: Yes, you may.

12 (Bench conference.)

13 MR. SCHWACKE: Your Honor, I haven't
14 seen what's in that bag. I just don't want it
15 opened up with the jury all sitting in here.

16 MS. WILLIAM: We looked at it together
17 over at forensics. And you just asked her if she
18 would have photographed it if there was blood on
19 the pants. There is blood all over the pants. So
20 we can take a break and you can look at it again.

21 THE COURT: Did you look at it with
22 her?

23 MR. SCHWACKE: Now that she's reminded
24 me which bag that one is. We looked at it over at
25 -- I didn't realize there was blood on it.

292

KARLAYNE DUFAULT - REDIRECT EXAM

1 MS. WILLIAMS: It's in the crotch. Now
2 that it's become an issue, I need to ask her about
3 it.

4 THE COURT: Next? I assume it's
5 withdrawn?

6 MR. SCHWACKE: Yes, Your Honor.

7 (End of bench conference.)

8 THE COURT: You may proceed.

9 BY MS. WILLIAMS:

10 Q. I'm going to show you this bag and if
11 you could tell us if this is the bag you used to
12 collect --

13 THE COURT: We need to get her some
14 gloves.

15 Q. (BY MS. WILLIAMS) If you could just
16 identify if there's anything on the bag that shows
17 this is the bag you used to collect Leandre
18 Jenkins' clothing.

19 A. So there's a label of outer clothing
20 that I filled out with her name and what all was in
21 there.

22 Q. And if you could pull out the pants,
23 and take a look at those. Mr. Schwacke asked you
24 if -- implied there was no blood on it because you
25 didn't -- is there any blood on there?

293

KARLAYNE DUFAULT - REDIRECT EXAM

1 A. Yes. This does appear to be blood in
2 the crotch of these pants.

3 Q. Okay. Thank you. And what other
4 items, if you could just describe them, are in
5 here?

6 A. These are a pair of sweatpants and
7 there are socks, there is several sports bras, and
8 a regular bra, and this is a sweatshirt.

9 Q. Okay. And are these the items that you
10 got from the victim, Leandre Jenkins?

11 A. Yes.

12 MS. WILLIAMS: We would offer this item
13 163 into evidence.

14 THE COURT: Any objection?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: Without objection, marked
17 and admitted. You're going to have to find another
18 bag.

19 (STATE'S EXH. 163 in evidence.)

20 MS. WILLIAMS: We will, Your Honor.

21 Nothing further.

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

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: From the defense?

294

RUSSELL HAGEN - DIRECT EXAM

1 MR. SCHWACKE: No, Your Honor.

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

3 THE WITNESS: Okay. Thank you.

4 THE COURT: You may call your next
5 witness.

6 MS. WILLIAMS: State calls Russell
7 Hagen.

8 RUSSELL HAGEN,
9 being first duly sworn, testified as follows:

10 THE CLERK: Please have a seat, state
11 your full name for the record and spell your last
12 name.

13 THE WITNESS: My name is Russell Hagen.
14 The last name is spelled H-A-G-E-N.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Where do you work, Mr. Hagen?

19 A. Medical University of South Carolina
20 Public Safety Department.

21 Q. What do you do?

22 A. I'm a police officer there.

23 Q. And do you have any interaction with
24 the sexual assault nurse examiners from time to
25 time?

295

RUSSELL HAGEN - DIRECT EXAM

1 A. Yes.

2 Q. And tell us about that.

3 A. We routinely get called for -- to pick
4 up sexual assault kits such as the one sitting in
5 front of you, looks like that, and for other
6 departments, local departments. And what we do is
7 we will take them from the nurse, bring them to our
8 headquarters and secure them in our evidence locker
9 for them to then come back it up.

10 Q. How far away are those two spots?

11 A. One block.

12 Q. How do you keep them? In what type of
13 way?

14 A. When I transport it to our
15 headquarters, it gets logged as evidence and it's
16 secured into an evidence locker in a refrigerator
17 which is a secured refrigerator.

18 Q. Do you remember having any contact with
19 this evidence in this case?

20 A. Yes.

21 MS. WILLIAMS: Your Honor, I'm going to
22 approach with State's 84 with the Court's
23 permission.

24 BY MS. WILLIAMS:

25 Q. Tell us what this is.

296

RUSSELL HAGEN - DIRECT EXAM

1 A. This is an evidence kit, sexual assault
2 evidence kit, and this is a chain of custody --
3 chain of custody form which provides the custody of
4 who had it to each person and each person and each
5 person.

6 Q. Okay. And are you on there?

7 A. I am.

8 Q. And who did you get it from?

9 A. I got it from Ms. Dufault, the nurse.

10 Q. Okay. And what did you do with -- and
11 what date did you get it?

12 A. I got it on the 28th of October. It
13 looks like October 13th -- October 28, 2013.

14 Q. Okay. And then what did you do with it
15 next?

16 A. When I received it from her, I did
17 bring it back to our headquarters and logged it as
18 evidence and secured it in our evidence locker.

19 MS. WILLIAMS: No further questions.

20 THE COURT: Any questions for the
21 witness?

22 MR. SCHWACKE: No, Your Honor.

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

25 MS. WILLIAMS: No, Your Honor.

297

WILLIAM REGISTER - DIRECT EXAM

1 THE COURT: From the defense?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Sir, you're excused.

4 THE WITNESS: Thank you.

5 THE COURT: You're welcome.

6 Call your next witness.

7 MS. WILLIAMS: The State would call

8 William Register.

9 WILLIAM REGISTER,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, state your
12 full name for the record and spell your last name.

13 THE WITNESS: My name is William Donald
14 Register, last name is spelled R-E-G-I-S-T-E-R.

15 THE COURT: You may proceed.

16 MS. WILLIAMS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Where do you work, Mr. Register?

21 A. I am a sergeant with MUSC Department of
22 Public Safety, assigned to investigations division.

23 Q. And do you from time to time pick up
24 sexual assault kits from the sexual assault nurse
25 examiners?

298

WILLIAM REGISTER - DIRECT EXAM

1 A. Not specifically from the nurse
2 examiner. I pick it up from the refrigerator after
3 its been placed into evidence and the report is
4 done by the officer that picks it up from the SANE
5 nurse.

6 Q. Okay. You work in the building where
7 the refrigerator is?

8 A. Yes.

9 Q. And in this case, did you release a
10 sexual assault kit to anybody from the
11 refrigerator, to any detectives or police officers
12 in this case?

13 A. Yes. On January 16th, I believe, the
14 report -- supplemental that I did, I released it to
15 then Sergeant Alteri with the Berkeley County
16 Sheriff's Office.

17 Q. And how do you know it was this
18 particular case?

19 A. When the evidence is logged into the
20 evidence system, a tracking number is automatically
21 computer generated, specifically assigning that
22 piece of evidence to that report. That tracking
23 number is then not only placed on the evidence
24 sheet, but also on the evidence itself. It's a T
25 number.

299

WILLIAM REGISTER - DIRECT EXAM

1 Q. Okay. And would it be anywhere on the
2 box?

3 A. Yes.

4 MS. WILLIAMS: May I approach?

5 THE COURT: You may.

6 BY MS. WILLIAMS:

7 Q. Is that identifying number on here
8 where you can see it?

9 A. T3804 matches up to T3804 on the
10 evidence sheet.

11 Q. You released it to Sergeant Alteri?

12 A. I'm sorry?

13 Q. You released it to Sergeant Alteri?

14 A. I did.

15 MS. WILLIAMS: Okay. Thank you. No
16 further questions.

17 THE COURT: Any questions for the
18 witness?

19 MR. SCHWACKE: No, Your Honor.

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

22 MS. WILLIAMS: Not from the State.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Sir, you're excused.

300

PAMELA WRENN - DIRECT EXAM

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 You may call your next witness.

4 MR. POULOS: The State calls Pamela
5 Wrenn.

6 PAMELA WRENN,

7 being first duly sworn, testified as follows:

8 THE CLERK: Have a seat, state your
9 full name for the record and spell your last name.

10 THE WITNESS: Pamela Jean Wrenn,
11 W-R-E-N-N.

12 THE COURT: You may proceed.

13 MR. POULOS: Thank you.

14 THE COURT: You're welcome.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Afternoon, Detective Wrenn. Where do
18 you work?

19 A. Williamsburg County Sheriff's Office.

20 Q. How long have you been with that
21 office?

22 A. Since 2007.

23 Q. What is your position?

24 A. I'm lieutenant over investigations.

25 Q. And what does that entail?

301

PAMELA WRENN - DIRECT EXAM

1 A. Any criminal investigations within the
2 sheriff's department.

3 Q. Did you assist in the investigation and
4 apprehension of the defendant in this case?

5 A. Yes, I did.

6 Q. On October 28, 2013, did you respond to
7 1112 Council Road?

8 A. Yes, I did.

9 Q. What did you do there?

10 A. We responded to a call given out by
11 central dispatch that Berkeley County investigators
12 had spotted a vehicle involved in a case that
13 occurred in their county.

14 Q. Once you arrived, did you assist in
15 processing some evidence?

16 A. I assisted, yes, sir.

17 Q. Specifically, as to a blue vehicle, did
18 you assist Detective Spence with Berkeley County in
19 processing that vehicle?

20 A. I did. It was a 2000 blue in color
21 Hyundai.

22 Q. Would that include assisting with
23 latent fingerprint lifts?

24 A. That's correct.

25 Q. I will show you what has already been

302

PAMELA WRENN - DIRECT EXAM

1 entered into evidence as State's 99, which contains
2 99A, B, C, and D. Do you recognize these cards?

3 A. Yes, I do.

4 Q. Are those the latent print cards that
5 you assisted Detective Spence with and took into
6 custody?

7 A. Yes, sir.

8 Q. Did you also collect pieces of duct
9 tape from the residence?

10 A. That's correct.

11 Q. Okay. Who did you collect those from?

12 A. Detective Alteri.

13 Q. Let me show you State's 85, containing
14 State's 87 and 88, which are already in evidence.
15 Do you recognize the two paper bags labeled 87 and
16 88?

17 A. Yes.

18 Q. Is that the duct tape that you received
19 from Lieutenant Alteri?

20 A. Yes, sir.

21 Q. How do you recognize it?

22 A. This is my writing on the outside and I
23 have it listed under contents, one piece of duct
24 tape from inside the house.

25 Q. And you took custody of that for

303

PAMELA WRENN - DIRECT EXAM

1 Williamsburg County Sheriff's Office?

2 A. Yes, I did.

3 Q. Lastly, after the defendant was --
4 second to last, after the defendant was
5 apprehended, did you receive a firearm?

6 A. Yes, I did.

7 Q. And who did you receive that from?

8 A. From Investigator Ballard with
9 Williamsburg County Sheriff's Office.

10 Q. I show you State's 89, containing
11 State's 90, 91. Is this the firearm that you
12 received from Ballard?

13 A. Yes, it is.

14 Q. How do you know?

15 A. This is my writing on the unfired round
16 and this is my writing on the outside of the box.

17 Q. Okay. Thank you.

18 Was that gun sent -- eventually sent to
19 Berkeley County Sheriff's Office?

20 A. Yes, it was.

21 Q. Did you also assist in collecting
22 photographs from a deer camera?

23 A. Yes.

24 Q. Who gave you custody of the deer
25 camera?

304

PAMELA WRENN - DIRECT EXAM

1 A. It was retrieved at the scene on the
2 28th of October when we arrived there, and then
3 Investigator Ballard removed the SIM card and
4 printed out the pictures.

5 Q. And you observed Detective Ballard
6 remove the SIM card and print out the pictures?

7 A. Yes.

8 Q. And, lastly, did you recover a hammer
9 from 1112 Council Road?

10 A. The following day, yes, sir.

11 Q. I'm going to show you State's 92, a bag
12 containing State's 93. Do you recognize State's
13 93?

14 A. Yes, sir, I do.

15 Q. What is this?

16 A. That is a hammer with duct tape that,
17 through the investigation, we were advised was used
18 to make entry into the residence.

19 MR. POULOS: State's 93 already being
20 in evidence, I have no further questions.

21 THE COURT: Any questions for the
22 witness?

23 MR. SCHWACKE: No, Your Honor.

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

305

AUGUST FLOOD - DIRECT EXAM

1 MR. POULOS: None from the State.

2 THE COURT: From the defense?

3 MR. SCHWACKE: No, Your Honor.

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

5 Call your next witness.

6 MR. POULOS: The State calls Augustus
7 Flood.

8 AUGUSTUS FLOOD,

9 being first duly sworn, testified as follows:

10 THE CLERK: Please state your full name
11 for the record and spell the last.

12 THE WITNESS: Augustus Flood, the
13 Third, A-U-G-U-S-T-U-S, F-L-O-O-D.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. POULOS:

17 Q. Good afternoon. Where do you work?

18 A. Berkeley County Sheriff's Office. I'm
19 with forensics.

20 Q. How long have you been with the
21 sheriff's office?

22 A. Since March of 2011.

23 Q. What does your current position in
24 forensics entail?

25 A. I'm a forensic technician.

306

AUGUST FLOOD - DIRECT EXAM

1 Q. What responsibilities does that
2 include?

3 A. I do crime scene investigations; I
4 analyze all of our drugs, marijuana, that comes in.
5 I make most of our SLED runs and daily operations
6 at the forensics office.

7 Q. Did you assist in transporting some
8 pieces of evidence in this case?

9 A. Yes, I did.

10 Q. I show you what's been marked as
11 State's Exhibit 100 and previously identified as
12 the defendant's buccal swab. Did you transport
13 that buccal swab up to SLED?

14 A. Yes, I did.

15 Q. What date did you transport it?

16 A. 12/3/14.

17 Q. Was it in your control and custody
18 exclusively until you checked it in?

19 A. That's correct.

20 Q. Was it sealed the entire time?

21 A. Absolutely, yes, sir.

22 MR. POULOS: State offers that into
23 evidence as State's 100.

24 THE COURT: Any objection?

25 MR. SCHWACKE: No, Your Honor.

307

AUGUST FLOOD - DIRECT EXAM

1 THE COURT: Marked and admitted without
2 objection.

3 (STATE'S EXH. 100 in evidence.)

4 BY MR. POULOS:

5 Q. I also show you State's 84, which has
6 been previously identified as the sexual assault
7 kit. Did you transport that kit to SLED as well?

8 A. I would have to look at the chain of
9 custody. Yes, sir. I did.

10 Q. And you retrieved that from Berkeley
11 County as evidence?

12 A. Yes.

13 Q. What day did you take it up to SLED?

14 A. 12/3/14.

15 Q. Was it in your control and custody the
16 entire time until you checked it in?

17 A. Yes, it was.

18 Q. And did it remain sealed?

19 A. Yes, it was.

20 Q. Lastly, showing you State's 89, which
21 is in evidence, 89 containing 90 and 91. Did you
22 transport this gun up to SLED as well?

23 A. Yes, sir, I did.

24 MR. POULOS: And, Your Honor, at this
25 time, I apologize, I would move State's 84 into

308

AUGUST FLOOD - CROSS EXAM

1 evidence.

2 THE COURT: Any objection?

3 MR. SCHWACKE: Yes, Your Honor.

4 THE COURT: ID only.

5 MR. SCHWACKE: Still requires a
6 complete chain.

7 MR. POULOS: No further questions for
8 this witness.

9 THE COURT: Any questions for the
10 witness?

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. Officer Flood, can you -- you described
14 that you make SLED runs. When you do that,
15 basically you don't just take just this case, you
16 take several cases with you, don't you?

17 A. That's correct.

18 MS. LITTLEJOHN: Okay. I have no
19 further questions, Your Honor.

20 THE COURT: Any redirect?

21 MR. POULOS: No, Your Honor.

22 THE COURT: Any objection to the
23 witness being excused?

24 MR. POULOS: None from the State.

25 THE COURT: From the defense?

309

AMY STEPHENS - DIRECT EXAM

1 MS. LITTLEJOHN: No, Your Honor.

2 THE COURT: Sir, you're excused.

3 You may call your next witness.

4 MS. WILLIAMS: The State calls Amy
5 Stephens.

6 AMY STEPHENS,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please state your full name
9 for the record and spell the last.

10 THE WITNESS: Amy Stephens,
11 S-T-E-P-H-E-N-S.

12 DIRECT EXAMINATION

13 BY MS. WILLIAMS:

14 Q. Amy, what do you do for a living?

15 A. I'm currently employed as a forensics
16 technician in the evidence control department at
17 the South Carolina Law Enforcement Division, also
18 known as SLED.

19 Q. And how long have you been there?

20 A. As of March 2nd, which is this week, I
21 will have been there ten years.

22 Q. What do you do specifically there?

23 A. Our main job responsibilities are to
24 log in, package, and transfer evidence for forensic
25 analysis.

310

AMY STEPHENS - DIRECT EXAM

1 Q. And are you familiar with the items of
2 evidence in this case?

3 A. Yes, I am.

4 Q. I'm showing Mr. Schwacke what has been
5 marked as State's 84.

6 MS. WILLIAMS: May I approach, Your
7 Honor?

8 THE COURT: You may.

9 BY MS. WILLIAMS:

10 Q. Can you tell us if you logged in this
11 piece of evidence? And explain what it is.

12 A. Yes, I did. This is a CSC kit from the
13 victim in this case. Once evidence is brought in
14 to SLED, we assign it a unique lab number and we
15 identify it by this unique lab number that is
16 affixed to the SLED packaging.

17 Q. Do you tamper with it? Do you change
18 it? Do you do anything with that evidence except
19 log it in?

20 A. All we do is log it in and package it
21 for transfer to the department that is going to
22 analyze it.

23 Q. When you say package it, what
24 specifically do you do?

25 A. In this case, I packaged the contents

AMY STEPHENS - DIRECT EXAM

1 of the CSC kit into this SLED heat-sealed pouch. I
2 would have sealed the heat-sealed pouch and have
3 the submitting officer initial and date the SLED
4 heat-sealed pouch and then I'd sign and date the
5 heat-sealed pouch.

6 Q. And is it stored in a secure location?

7 A. Yes, it is.

8 Q. Okay. Thank you.

9 I'm going to show you another piece of
10 evidence marked State's 85.

11 MS. WILLIAMS: May I approach?

12 THE COURT: You may.

13 By MS. WILLIAMS:

14 Q. Do you recognize this piece of
15 evidence?

16 A. The box itself I recognize, based on
17 the lab number that is affixed to this box.

18 Q. Okay. And is that an item that you
19 logged in?

20 A. Yes.

21 Q. Did you package it in that box?

22 A. Yes, I did.

23 Q. And did you seal it up?

24 A. I did.

25 Q. Did you tamper with it in any way?

312

AMY STEPHENS - DIRECT EXAM

1 A. No, I did not.

2 Q. What is this item, just for the jury's

3 --

4 A. State's 85.

5 Q. What does it contain?

6 A. State's 85, which corresponds with SLED
7 L14-04487, contains SLED items 6 and 7, which were
8 paper bags containing duct tape.

9 Q. Okay. Thank you.

10 And, lastly, State's 100. Is that
11 something you also logged in?

12 A. Yes, it is.

13 Q. Okay. And what is that?

14 A. This is the buccal swab from Telly
15 McClam.

16 Q. And you didn't tamper with it, change
17 it, do anything to it that would change the
18 integrity of the evidence?

19 A. No, I did not.

20 Q. And did you seal it?

21 A. Yes. I placed it in the SLED
22 heat-sealed pouch.

23 MS. WILLIAMS: No further questions.

24 THE COURT: Any questions for the
25 witness?

313

AMY STEPHENS - CROSS/REDIRECT EXAM

1 CROSS-EXAMINATION

2 BY MR. SCHWACKE:

3 Q. In this case, did you get evidence from
4 Williamsburg County Sheriff's Office as well as
5 Berkeley County Sheriff's Office?

6 A. Yes, I did.

7 Q. Are those items included in what we're
8 talking about here today?

9 A. The items that were in the box, they
10 were submitted from the Williamsburg County
11 Sheriff's Office.

12 Q. If there's any other evidence from
13 Williamsburg County, you don't know about it?

14 A. I have evidence from that particular
15 case; several items of evidence were submitted.

16 Q. And it's not something that you have
17 testified about today?

18 A. No, it's not.

19 MR. SCHWACKE: Thank you.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. What are the other items that you got
24 from Williamsburg County?

25 A. SLED case number L14-04487, we received

314

AMY STEPHENS - CROSS/REDIRECT EXAM

1 a buccal swab from Deadrene McHoney, four latent
2 lifts from a vehicle, and two paper bags containing
3 duct tape.

4 MS. WILLIAMS: Okay. Thank you.

5 THE COURT: Any objection to the
6 witness being excused? From the State?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

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

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome.

13 We are going to take a brief rest room
14 break.

15 Ladies and gentlemen, we're going to
16 take a brief rest room break. During the break,
17 please do not discuss the case and leave your
18 notepads in your seats.

19 (Jury out, 3:17 p.m.)

20 THE COURT: You may be seated. Who is
21 the State's next witness?

22 MS. WILLIAMS: The State's next witness
23 is Jessica Herron from SLED and then we have Samuel
24 Stewart.

25 THE COURT: You said Jessica Herron?

315

1 MS. WILLIAMS: Yes, H-E-R-R-O-N. She
2 just got married, Your Honor. It used to be Stowe
3 on the list.

4 THE COURT: Okay. Let's take a brief
5 rest room break.

6 (A recess transpired.)

7 THE COURT: State ready to proceed?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: Is the defense ready to
10 proceed?

11 MR. SCHWACKE: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 Do you have the next witness ready?

14 MS. WILLIAMS: Yes.

15 (Jury in, 3:25 p.m.)

16 THE COURT: Please call your next
17 witness.

18 MS. WILLIAMS: The State calls Jessie
19 Stowe.

20 THE COURT: Please swear the witness.

21 JESSICA STOWE

22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name for the record and spell the last name.

25 THE WITNESS: Jessica Stowe, S-T-O-W-E.

314

JESSICA STOWE - DIRECT EXAM

1 THE COURT: You may proceed.

2 MS. WILLIAMS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. WILLIAMS:

5 Q. Where do you work?

6 A. I work for the South Carolina Law
7 Enforcement Division, often referred to as SLED.

8 Q. What do you do there?

9 A. I'm a forensic serologist.

10 Q. What is a forensic serologist?

11 A. Well, first off, serology is the
12 identification of body fluids, so that is blood,
13 semen, and saliva. As a forensic serologist, what
14 we're doing is we're screening items of evidence
15 that are submitted to the DNA department for these
16 potential body fluids. We use resources to
17 determine what is there and what isn't. If we find
18 a body fluid, we proceed to put them -- to create
19 small cuttings for the DNA department. We generate
20 a report based off of our findings and then we
21 testify in court.

22 Q. What is your educational background?

23 A. I have a Bachelor's of Science in
24 Biological Sciences from the University of South
25 Carolina, along with a minor in chemistry; also,

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JESSICA STOWE - DIRECT EXAM

1 through SLED I have taken numerous classes through
2 places such as West Virginia University, dna.gov,
3 in courses such as hair analysis, courtroom
4 testimony, biological evidence, as well as a
5 graduate level course from the University of
6 Florida in biological evidence and serology.

7 Q. How long have you worked in the field
8 of forensic science?

9 A. Almost four years.

10 Q. What are your duties?

11 A. As a forensic serologist, like I said
12 earlier, we examine items of evidence for body
13 fluids, we create small cuttings for DNA analysis,
14 we generate a report and we also participate in the
15 review of our peers' work as well.

16 Q. How many cases would you say that you
17 have worked on at SLED?

18 A. At least a thousand. It's a lot.

19 Q. Okay. And have you testified before as
20 an expert in the field of forensic science DNA
21 analysis before?

22 A. I have.

23 Q. How many times would you say?

24 A. Four.

25 Q. Your Honor, at this time the State

318

JESSICA STOWE - DIRECT EXAM

1 would offer Ms. Herron to be qualified as an expert
2 in the field of forensic science DNA analysis.

3 THE COURT: Any objections or
4 questions?

5 MS. LITTLEJOHN: Yes, Your Honor.

6 THE COURT: Approach.

7 (Bench conference.)

8 THE COURT: What are your objections
9 to her qualifications?

10 MS. LITTLEJOHN: She testified to a
11 dna.gov class, but she did not testify with regard
12 to her serology. Serology is a really specialized
13 field with the blood.

14 THE COURT: She's testifying about DNA,
15 though, isn't she?

16 MS. LITTLEJOHN: She only testified to
17 the DNA --

18 MS. WILLIAMS: I can get into some of
19 her specialized training.

20 THE COURT: You need to get into all of
21 her training and experience.

22 MS. LITTLEJOHN: And what classes
23 particularly. I'll be going through the same thing
24 with the DNA analysis. I want to know what she has
25 peer reviewed and what publications as well.

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JESSICA STOWE - DIRECT EXAM

1 THE COURT: You need to lay a
2 foundation for both.

3 (End of bench conference.)

4 THE COURT: You may proceed.

5 MS. WILLIAMS: Thank you.

6 BY MS. WILLIAMS:

7 Q. So let's talk a little bit about your
8 background and training and experience in serology
9 specifically.

10 A. Right. So what we do, we have a SLED
11 in-house training program. I was trained by a
12 Court-qualified DNA analyst and evidence processing
13 technician. In the beginning you are watching a
14 lot of cases, you're observing. It's at this point
15 you're learning the policies and procedures,
16 watching your training -- just getting comfortable
17 in the lab.

18 After you've observed for awhile, your
19 trainer will let you do small things. You may test
20 this for blood, you might test this for semen.
21 Again, you're just getting comfortable with the
22 evidence and in that environment. Once you've done
23 this awhile you enter a phase of your training
24 called your training samples.

25 What these are is they are just

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JESSICA STOWE - DIRECT EXAM

1 swatches of cloth, they're swabs. It's made
2 in-house. And it's our job to use all the
3 resources available to us to find what body fluids
4 are present on these cloths and swabs and which
5 ones aren't recent. Once we do this successfully,
6 we then enter a phase of our training called
7 supervised casework, where we're working cases at
8 this point under our trainer from the beginning to
9 the end.

10 Once you have done this for awhile and
11 you're doing a good job, you enter a phase called
12 the competency exam. A competency exam is a
13 five-part examination that encompasses all aspects
14 of a forensic serologist. Once you complete this
15 successfully, you're then deemed competent to
16 perform forensic serology.

17 Q. And is this all part of requirement to
18 make SLED a certified lab?

19 A. Yes.

20 Q. So SLED could not be certified without
21 its serologists going through this level of
22 training?

23 A. As far as their requirements with their
24 certification, I'm not sure of the logistics behind
25 it, but this is definitely something that I know

321

JESSICA STOWE - DIRECT EXAM

1 they will require.

2 Q. And it is a certified lab?

3 A. Oh, yes.

4 Q. You talked a little bit about some of
5 the classes you took from the graduate program.
6 Could you just go into that a little bit in more
7 detail?

8 A. Yes. So I am a forensic serologist.
9 We work focussing on body fluids. Our class, what
10 we're doing, it just goes over the components that
11 we're looking for when we're screening for these
12 body fluids, as well as hair analysis. You know,
13 how do we look at hair? How do we determine if
14 these -- the hairs are eligible for DNA analysis?

15 It's important to keep in mind, as a
16 serologist, we don't perform DNA analysis. What
17 we're doing is we are examining these piece of
18 evidence for these body fluids or the biological
19 material necessary to develop DNA profiles.

20 So by the time we're finished with the
21 evidence, we have narrowed down areas on the
22 evidence that could potentially lead to a DNA
23 profile, such as the blood, the semen, the hair or
24 saliva. And then, like I said, we put them into
25 tubes, and then they are forwarded to the DNA

322

JESSICA STOWE - DIRECT EXAM

1 analyst who performs DNA analysis in that case.

2 Q. When you said you had worked on over a
3 thousand cases as a serologist at SLED, were there
4 also some cases that you worked on when you were in
5 the training program?

6 A. Oh, absolutely, yes.

7 Q. How many cases would you have worked on
8 in the training program through SLED?

9 A. Hundreds.

10 Q. And are all of your cases subject to
11 peer review?

12 A. All of them, every single one of them.
13 They go through two levels of review, having a
14 technical review and an administrative review.

15 Q. And you talked about some additional
16 classes you took at West Virginia?

17 A. West Virginia University, yes.

18 Q. Tell us about those classes.

19 A. They were classes that I took early on
20 when I began my job at SLED. Because I have just
21 the science background, it was important that SLED
22 brings me up to the forensic aspect of it, as most
23 employers do. So these courses just helped me
24 learn the forensic -- the legal aspect, such as --
25 like I said, the hair analysis, how to handle

323

JESSICA STOWE - DIRECT EXAM

1 biological evidence.

2 So they're going over making sure
3 you're changing your gloves. Again, this is all
4 stuff that we learn in-house, but these are just
5 courses to help reiterate what we're going to be
6 doing in our everyday work at SLED. So changing
7 your gloves, wearing your lab coat, making sure to
8 be careful when you handle evidence, because a lot
9 could be wet at the time so you could, you know,
10 transfer something you don't want disease-wise, but
11 that's really what our course is over as well as
12 courtroom testimony, so how to handle that.

13 Q. So it was the forensic aspect of
14 serology?

15 A. Yes.

16 Q. And you mentioned that your bachelor's
17 degree was in biology?

18 A. Yes. It was in biology with a minor in
19 chemistry from the University of South Carolina.

20 MS. WILLIAMS: Your Honor, at this time
21 we would move Ms. Stowe to be qualified as an
22 expert in the field of forensic science,
23 specifically serology.

24 THE COURT: Any questions objection or
25 objections?

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JESSICA STOWE - DIRECT EXAM

1 MS. LITTLEJOHN: Your Honor, we don't
2 have an objection to it being limited strictly to
3 serological analyst.

4 THE COURT: I think that's the area
5 she moved to have her admitted. Is there any
6 objection?

7 MS. LITTLEJOHN: Only limited to the
8 serological analysis, Your Honor.

9 THE COURT: She's moved to admit her as
10 a forensic scientist with a specialty in serology.
11 Is there any exception?

12 MS. LITTLEJOHN: No exception as long
13 as it's narrowed to that.

14 THE COURT: You may proceed.

15 MS. WILLIAMS: Thank you.

16 THE COURT: You're welcome.

17 BY MS. WILLIAMS:

18 Q. So Ms. Stowe, used to be Ms. Herron?

19 A. Yes.

20 Q. Did you work on items of evidence in
21 this case?

22 A. I did.

23 Q. And I'm going to show you a piece of
24 evidence, State's 84.

25 MS. WILLIAMS: With the Court's

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JESSICA STOWE - DIRECT EXAM

1 permission --

2 THE COURT: Yes, ma'am, you may
3 approach.

4 BY MS. WILLIAMS:

5 Q. We have broken this down and marked
6 individual things as well. If you could just tell
7 us how you got this piece of evidence, the
8 condition it was in, and what's inside.

9 A. Okay. This appears to be a sexual
10 assault kit. When a case is assigned to us, we
11 fill out a formal request to the evidence control
12 portion of the lab and then once they let me know
13 that my evidence is ready, it is taken into my
14 custody and then I make sure that everything has
15 been properly sealed and make sure it hasn't been
16 tampered with.

17 Q. Was that kit sealed when you received
18 it and had anything been tampered with?

19 A. Yes. This is the portion that I would
20 have received right here. (Indicating)

21 Q. And was it sealed?

22 A. Yes, it was sealed.

23 Q. Had anything been tampered with?

24 A. No.

25 Q. And what do you do when you get it?

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JESSICA STOWE - DIRECT EXAM

1 A. What I do is I then inventory it. It
2 came in as L14-14994, item 2. So item 2 overall is
3 the sexual assault kit. What we do is we open it
4 up and we look at the items that were collected by
5 the sexual assault nurse. And in this case --
6 would you like me to go through with you what was
7 put down?

8 Q. Sure.

9 A. I inventoried smears, vaginal, oral and
10 rectal; vaginal swabs, oral swabs, rectal swabs;
11 pubic hair combing, the victim's buccal swab and a
12 debris collection. So that's what I did when I got
13 it.

14 Q. Okay. And what did you do with those
15 items? Did you separate them? Did you --

16 A. Yes. Once they're separated, I then
17 created them in our information system, which is
18 how -- with what I just read, with the smears, the
19 vaginal, oral, and rectal swabs; all of those
20 become their own item. And the request in this
21 case was to look for semen, and that's the type of
22 screening I performed on this sexual assault kit.

23 Q. Did you find semen on any of the items?

24 A. Would you like me to read my --

25 Q. Uh-huh.

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JESSICA STOWE - DIRECT EXAM

1 A. Regarding the vaginal swabs,
2 examination for a component of semen, P30, was
3 positive. No spermatozoa identified. Item
4 forwarded to the DNA section.

5 Oral swabs, examination for component
6 of semen, P30 and spermatozoa were negative, no
7 semen identified.

8 Rectal swabs, examination for a
9 component of semen, P30, was positive. No
10 spermatozoa identified. Item forwarded to the DNA
11 section. And those are the items that I
12 specifically tested.

13 Q. Okay. And what is P30?

14 A. So when you think of semen, it's the
15 male reproductive fluid; however, it's important to
16 realize that semen seminal fluid has two
17 components. It has a liquid component, which is
18 the seminal fluid, and then it has the cellular
19 component, which is your sperm cells, the
20 spermatozoa. It's the cells that have the tails,
21 the squiggly tails.

22 So what we're doing is we're taking
23 that and looking at the liquid portion, because
24 that's the portion that has the protein and the
25 enzymes and everything that we use to screen for

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JESSICA STOWE - DIRECT EXAM

1 the possible presence of saliva, and that's where
2 the P30 would be.

3 Q. Is P30 found in any other substance
4 besides semen?

5 A. Yes, P30 is found in very high levels
6 in male seminal fluids; however, it can be found in
7 low levels in vaginal fluid, the blood of males
8 with prostate cancer and female breast milk.

9 Q. And your test is designed to pick up
10 low levels of P30?

11 A. No, our test is designed to detect the
12 levels of P30 at higher levels.

13 Q. And do you sometimes get results on a
14 rectal swab even when there is no rectal assault?

15 A. Yes, it is common.

16 Q. Okay.

17 A. Would you like me to explain?

18 Q. Please.

19 A. So when ejaculation occurs inside the
20 vagina, the semen is going to encounter gravity.
21 So the gravity is going to pull the seminal fluid,
22 because it is a liquid, out of the vagina and
23 sometimes it will drain into the rectal area. So
24 even though a rectal assault may have not have
25 occurred, semen could still be present in that area

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JESSICA STOWE - CROSS EXAM

1 just from drainage and gravity.

2 Q. And as far as you detecting semen, but
3 no sperm, hypothetically, could that be equated to,
4 say, a man that has a low sperm count?

5 A. Yes.

6 Q. Or a man that can't get his wife
7 pregnant because he has semen but he doesn't have
8 sperm?

9 A. Yes.

10 Q. So just to reiterate, the protein found
11 in semen was found on the vaginal swabs and the
12 rectal swabs of the sexual assault kit from Leandre
13 Jenkins?

14 A. That's correct, yes.

15 MS. WILLIAMS: Court's indulgence?

16 THE COURT: Yes, ma'am.

17 MS. WILLIAMS: Thank you very much.

18 THE COURT: Any questions for the
19 witness?

20 CROSS-EXAMINATION

21 BY MS. LITTLEJOHN:

22 Q. Ms. Stowe -- I had to correct myself.
23 I wanted to call you by your maiden name.

24 A. It's okay. It happens all the time.

25 Q. Just a couple of questions for you

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JESSICA STOWE - CROSS EXAM

1 here. Pretty much as I understand it, there is
2 somebody with SLED, stuff is dropped off and they
3 check it in?

4 A. Okay.

5 Q. And then pretty much everything comes
6 through serology, doesn't it?

7 A. Not everything. Just anything that
8 would need body fluid examination, as well as
9 touch, and other requests that's not really
10 relevant to this request.

11 Q. Okay. Do you know if anything else
12 other than this came through your department?

13 A. I don't understand your question. I'm
14 sorry.

15 Q. Well, like clothes that she may have
16 been wearing, would they have come through your
17 department?

18 A. If they were submitted to SLED --

19 Q. They would have come through your
20 department?

21 A. They could have, yes.

22 Q. So that would have come through
23 serology?

24 A. It could have, yes.

25 Q. Weapons don't come through your

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JESSICA STOWE - CROSS EXAM

1 department, right?

2 A. They do.

3 Q. They do?

4 A. Yes. It depends -- a completely
5 different case scenario.

6 Q. Like for maybe touch DNA or something
7 like that?

8 A. Yes, nothing relative to this case.

9 Q. Okay. So you're kind of the screener
10 in a way, separating out where things will go, in a
11 sense? Like you will screen it and send it off to
12 DNA or screen it and send it to another division?

13 A. Not to another division. I would only
14 forward things to the DNA department. We're a
15 subset of the DNA department. So as a screener,
16 what I'm doing is I'm determining what items could
17 we possibly get a DNA profile from and with, you
18 know, my testing, and that's what I forward to DNA.

19 Q. And one thing you look for in that
20 might be, say if I touched this right here,
21 (Indicating), you know, hey, she touched that right
22 there, that podium. I bet we can find some -- if
23 somebody swabbed it, we can find her DNA on that.
24 Let me test it?

25 A. Yes, that is certainly possible.

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JESSICA STOWE - CROSS EXAM

1 Q. Transfer DNA is what we call it?

2 A. Right. Our department handles case
3 scenarios like that as well.

4 MS. LITTLEJOHN: Okay. Your Honor, may
5 I approach the witness?

6 THE COURT: You may.

7 BY MS. LITTLEJOHN:

8 Q. I noticed earlier you said that one of
9 the things that you did was you took some classes
10 about -- on the forensics of it, about handling
11 evidence and everything?

12 A. Uh-huh.

13 Q. Because that's pretty important, right?

14 A. Absolutely.

15 Q. Because, I mean -- and the thing about
16 it is, you don't know how it was handled before it
17 hit SLED, do you?

18 A. No, we have no idea.

19 Q. And one of the things you do is put it
20 in this heat-sealed bag, right?

21 A. Well, when I get it, it is typically in
22 that bag, yes.

23 Q. And this is a SLED bag, right?

24 A. Yes. It appears to be one of our
25 heat-sealed pouches.

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JESSICA STOWE - CROSS EXAM

1 Q. And you -- sort of like you see on the
2 commercials with food, it's sealed with heat?

3 A. Yes.

4 Q. Until you opened it?

5 A. Yes.

6 Q. Okay. So you don't know what happened
7 to it before SLED got it, before it was
8 heat-sealed?

9 A. No, I don't, huh-uh. I just make sure
10 that when I get it, it is in proper condition.

11 Q. And it's important for it to be
12 heat-sealed so that no contaminants get into it?

13 A. Well, it's not necessarily important
14 that it's heat-sealed. We get a lot of evidence in
15 boxes. It's important that all entries that lead
16 to the evidence is sealed off so nothing can get
17 inside or anything can get out.

18 Q. Right. You wouldn't want all of a
19 sudden, you know, goodness, somebody sneeze even?
20 You wouldn't want anything like that?

21 A. No, you wouldn't. No.

22 Q. Okay. Can you imagine somebody
23 touching it without their gloves on?

24 A. No.

25 Q. No. And on the swabs you did, you

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JESSICA STOWE - CROSS EXAM

1 can't tell where in the vagina actually the swabs
2 were taken from, because you weren't present, were
3 you?

4 A. That would be correct, yes. When we
5 get the vaginal swabs, all we know is that it's
6 from the vaginal area.

7 Q. And you don't know how it got there,
8 right?

9 A. No.

10 MS. LITTLEJOHN: Okay. I have no
11 further questions, Your Honor.

12 THE COURT: Any redirect?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: Any objection to the
15 witness being excused?

16 MS. WILLIAMS: No, Your Honor.

17 MS. LITTLEJOHN: No.

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

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 You may call the next witness.

22 MS. WILLIAMS: State calls Samuel
23 Stewart.

24 SAMUEL STEWART,

25 being first duly sworn, testified as follows:

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SAMUEL STEWART - DIRECT EXAM

1 THE CLERK: Please state your full name
2 for the record and spell the last.

3 THE WITNESS: Samuel Stewart,
4 S-T-E-W-A-R-T.

5 THE COURT: You may proceed.

6 MS. WILLIAMS: Thank you.

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Where do you work, Mr. Stewart?

10 A. I work for the South Carolina Law
11 Enforcement Division, commonly known as SLED.

12 Q. What do you do there?

13 A. I'm a forensic scientist assigned to
14 the DNA casework department.

15 Q. What is your educational background?

16 A. I received my Bachelor's of Science in
17 Biology from Francis Marion University; I received
18 in-house SLED training under a Court-qualified
19 analyst for over a year and a half; I had to
20 successfully complete a written exam, oral exam and
21 a competency exam and a mock trial to be deemed
22 competent as a DNA analyst.

23 Q. And are you certified in any -- a
24 member of any associations that certify in any
25 areas?

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SAMUEL STEWART - DIRECT EXAM

1 A. Not at this time.

2 Q. And what other courses have you had to
3 take in your experience with SLED?

4 A. I had to make sure to have basic
5 courses, such as genetics, microbiology, and
6 statistics training.

7 Q. And before you were able to conduct
8 your own cases, tell us what kind of training you
9 had in observing or participating in lab work at
10 SLED.

11 A. Yes. My trainer allowed me to watch
12 her do her lab work, I also got to participate in
13 helping her complete the DNA process on those lab
14 works as well, and I also shadowed her while going
15 to court to get a feel for that.

16 Q. How many cases would you say you've
17 watched and observed in that program?

18 A. Over a hundred; hundreds.

19 Q. And how many cases would you say you've
20 worked on on your own?

21 A. I would say hundreds as well.

22 Q. And in your course of work at SLED,
23 tell us specifically what you do.

24 A. As a DNA analyst, I'm responsible for
25 processing any evidence and known standards through

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SAMUEL STEWART - DIRECT EXAM

1 DNA. My purpose is to try to determine whether or
2 not the DNA profile I develop from those known
3 standards, which can come from a subject or a
4 victim, can be included or excluded as a possible
5 contributor to the DNA profile from that evidence.
6 I'm responsible for putting those findings in a
7 report and giving that report to the submitting
8 agency. I'm also responsible for reviewing the
9 work of my peers and eight hours of continuing
10 education a year.

11 Q. And in those eight hours of continuing
12 education, what kinds of courses are you required
13 to take?

14 A. Various courses, such as mixture
15 interpretations, statistics training, just any
16 number of those trainings along the area of DNA,
17 being updated on new technologies and methodologies
18 that are being done in DNA. Any of those numbers
19 things can be done in eight hours of training.

20 Q. How long have you worked there?

21 A. Four years.

22 Q. So in that four years, you've had to
23 take an additional 32 hours of DNA training, in
24 addition to your Bachelor of Arts work and your
25 peer work and additional courses?

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SAMUEL STEWART - DIRECT EXAM

1 A. That's correct.

2 Q. And what types of cases are you usually
3 working on when you're analyzing DNA at SLED?

4 A. The cases can vary from homicide,
5 burglary, robbery, sexual assault. It can vary
6 from a number of different cases.

7 Q. Is there peer review on all of your
8 cases?

9 A. Yes, there is. There's a two-tiered
10 peer review. The peer review first is done by one
11 of my fellow colleagues and then --

12 MS. LITTLEJOHN: Your Honor, I'm going
13 to object to this peer review. I think it's
14 improper bolstering.

15 THE COURT: Overruled. You may
16 continue.

17 THE WITNESS: And then also a final
18 peer review is done by a senior DNA analyst. Once
19 it gets through those peer reviews, then it's ready
20 for submission to the submitting agency.

21 BY MS. WILLIAMS:

22 Q. Is it fair to say that, in addition to
23 all of your background and foundational work,
24 educationally and practically, it's ongoing
25 training for DNA analysis?

3.39

SAMUEL STEWART - DIRECT EXAM

1 A. That's correct.

2 MS. WILLIAMS: At this time, Your
3 Honor, we would offer Mr. Stewart to be qualified
4 as an expert in the field of forensic science,
5 specifically DNA analysis.

6 THE COURT: Any questions or
7 objections?

8 MS. LITTLEJOHN: We would like to have
9 the opportunity to question him.

10 THE COURT: You may proceed.

11 EXAMINATION (VOIR DIRE)

12 BY MS. LITTLEJOHN:

13 Q. Hey, Agent Stewart. I'm Debbie
14 Littlejohn. You and I have talked a little bit.
15 Forensic DNA is, I guess for lack of a better word,
16 is hard science instead of soft science; in other
17 words, the chemistry part of it instead of the
18 psychology part of it?

19 A. Okay. I can agree with that.

20 Q. Okay. Likewise, so would -- statistics
21 is sort of a hard science. Can you tell us what
22 sort of classes, past, say, the basic 16 hours in
23 chemistry or regression analysis, you've had?

24 A. Yes. I've had the regular statistics,
25 but I've also had the eight-hour continuing

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SAMUEL STEWART - DIRECT EXAM

1 education in statistics as well.

2 Q. What do you learn in that?

3 A. We understand the probabilistic
4 statistics, which is what we use. This statistics
5 is -- which has been used from the FBI. It's just
6 basic statistics that -- at every location, that we
7 use during our developing a DNA profile.

8 Q. So that's basically the class where
9 they talk about which test to apply to what --
10 basically, which test to apply to what -- which
11 statistical test to apply to what test?

12 A. What this course does is lets us know
13 which formula we need to use at every location to
14 develop the probabilistic of how random or how
15 often we would see these in these certain
16 locations. That's what the training is for.

17 Q. Have you had any training on
18 algorithms?

19 A. No; I have not had any training on
20 algorithms.

21 Q. My understanding of DNA is that it's
22 somewhat computer generated and it's based on the
23 algorithms, correct?

24 A. Well, yes. It is computer based, but
25 like I said, we know the formula. The formula is

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SAMUEL STEWART - DIRECT EXAM

1 what we use and the computer just does that for us.

2 Q. So if the computer algorithms are off,
3 then it can't really be -- how do you determine if
4 it's working or not?

5 A. Well, the computers are always updated
6 and constantly being checked and making sure that
7 -- like I said, this is done by the FBI. And it's
8 constantly making sure that all the types and all
9 the formulas and everything is working properly.
10 We just had an update to the FBI database not too
11 long ago as well. So we're always constantly
12 making sure that those formulas are being done and
13 applied properly.

14 Q. So they'll come in if the computer is
15 not --

16 MS. WILLIAMS: Objection.

17 THE COURT: Basis?

18 MS. WILLIAMS: It goes beyond the scope
19 of his expertise and the expertise for DNA analysis
20 and the science of it.

21 THE COURT: I think she can question
22 him regarding the equipment he uses, but that
23 really does not go to the validity of his
24 qualifications to testify as an expert. That's
25 more in the nature of cross-examination and how

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SAMUEL STEWART - DIRECT EXAM

1 thorough his analysis was.

2 MS. LITTLEJOHN: Your Honor, I need to
3 make sure that he understands the equipment that
4 he's using when he does the DNA, because the
5 equipment is part --

6 THE COURT: I will give you some
7 latitude, but you need to move on. It goes to the
8 weight of his testimony, not his expertise.

9 BY MS. LITTLEJOHN:

10 Q. Population genetics is part of DNA,
11 correct?

12 A. It's what we use to put weight to the
13 information that we have or that we report.

14 Q. And we break down the population
15 according to different races?

16 A. Yes, we do.

17 Q. And how many classes have you had on
18 population genetics? How many graduate school
19 classes have you had on that?

20 A. I have not taken any graduate classes
21 on it. But, like I said, we have the eight-hour
22 continuing education that we do have in-house. I
23 have taken that.

24 Q. And that's just one eight-hour class?

25 A. Well, yes; it was an eight-hour class.

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SAMUEL STEWART - DIRECT EXAM

1 Q. In population genetics?

2 A. Yes, that's correct.

3 Q. Are you licensed? Such as CPAs have a
4 license, MDs have a license and pass a board. Are
5 you licensed and pass a board?

6 A. I'm certified in DNA analysis. I have
7 my certification and qualifications in those areas,
8 so, yes, I guess you could say I'm certified as a
9 DNA expert.

10 Q. So you would be able to go to any other
11 state and practice it?

12 A. Yes, I should be able to do that.

13 Q. Okay. And have you published anything?

14 A. I have not.

15 Q. And have you had any reviewing of your
16 material that's been through a blind proficiency
17 testing versus peer review?

18 A. I don't understand the question.

19 Q. In other words, not by people that you
20 work with?

21 A. Proficiency test done by other
22 laboratories?

23 Q. Right.

24 A. We do our proficiency testing in-house.

25 Q. I mean, have you had other laboratories

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SAMUEL STEWART - DIRECT EXAM

1 look at your techniques to determine --

2 A. Yes, we are audited. We are audited
3 twice a year. We have an internal audit that is
4 done by SLED and we have another forensic lab that
5 comes in and does an audit as well.

6 Q. And who would that be?

7 A. It varies. We have different states
8 that we rotate with.

9 Q. Okay. So the population genetics, your
10 only -- that's only been eight hours --

11 MS. WILLIAMS: Objection; asked and
12 answered.

13 THE COURT: I haven't heard the
14 totality of the question. Please complete the
15 question.

16 MS. LITTLEJOHN: I was saying, so the
17 population genetics is just the eight hours you've
18 had, right?

19 THE WITNESS: Including what I took in
20 school, yes.

21 BY MS. LITTLEJOHN:

22 Q. Okay. Did you take some extra classes
23 in school on population genetics?

24 A. Like I said, I only took the statistics
25 that was necessary for my course work and the eight

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SAMUEL STEWART - DIRECT EXAM

1 hours that I took at SLED as well.

2 MS. LITTLEJOHN: Okay. I have no
3 further questions, Your Honor.

4 THE COURT: Any questions -- any
5 redirect on his qualifications from the State?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Any objection to him being
8 admitted as an expert in DNA analysis?

9 MS. LITTLEJOHN: None, Your Honor.

10 THE COURT: So admitted. Please
11 proceed.

12 CONTINUING DIRECT EXAMINATION.

13 BY MS. WILLIAMS:

14 Q. In the course of your work at SLED, did
15 you receive items of evidence in this case?

16 A. Yes, I did.

17 Q. And I think that there's a box sitting
18 in front of you marked State's 84. If you could
19 look at this and see if you received items of
20 evidence that came in in this box. You can open
21 it.

22 A. Yes, I did.

23 Q. Okay. And when you get it, it comes
24 from serology?

25 A. That's correct.

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SAMUEL STEWART - DIRECT EXAM

1 Q. And is it resealed and by the time you
2 get it, it's sealed up?

3 A. Yes, that's correct.

4 Q. And when you got it, did you do
5 anything to tamper with it or change the evidence
6 or do anything with the evidence except test it?

7 A. No, I did not.

8 Q. So tell us what you do with those
9 pieces of evidence when you got them.

10 A. When I received this evidence in my
11 custody, I take a look and see what has been done
12 by the serologist and what she has stated needs to
13 be forwarded for DNA. I take those items and do
14 processing on them.

15 We have four basic -- basic steps that
16 we use. We do extraction, which is taking the DNA
17 from the swabs and put it into a preserved
18 solution. That stabilizes it and makes sure it
19 lasts for a long time. We also quantify it.
20 Quantification is important. We have -- we have to
21 do this step because we need to know how much DNA
22 we have.

23 When we know how much DNA we have, we
24 know exactly what range to put it into to submit it
25 to our instrument. We also have to take another

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SAMUEL STEWART - DIRECT EXAM

1 step, which is a PCR step, which is making multiple
2 copies of the DNA. This is to make sure that we
3 have enough DNA to get full representation of the
4 DNA profile that we're looking for.

5 Once we have that, we put it into the
6 instrument and it runs in the instrument and that
7 gives us our DNA profile.

8 Q. And if you could -- did you commit the
9 description of the items of evidence that you
10 worked on to a report?

11 A. Yes, I did.

12 Q. If you could describe to the jury what
13 items of evidence you worked on, that would be
14 helpful.

15 A. Yes. Item 1 was a buccal swab from
16 Telly McClam.

17 Q. What is a buccal swab? We've heard
18 about how they take it, but what is it that you're
19 using that for?

20 A. Buccal swab is used for a known
21 standard. It is for us to be able to compare their
22 DNA to the DNA profile of the evidence.

23 Q. And go on.

24 A. Item 2 was a buccal swab from Leandre
25 Jenkins. Item 2.2 was vaginal swabs and item 2.4

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SAMUEL STEWART - DIRECT EXAM

1 were rectal swabs.

2 Q. Were those vaginal and rectal swabs
3 from Leandre Jenkins?

4 A. Yes, they were.

5 Q. Okay. And then you just described some
6 of the testing that you did on those items. So you
7 extracted DNA from the items that you got from the
8 sexual assault kit?

9 A. That's correct.

10 Q. That's not the way you said it, you
11 said it a lot smarter. And then you compared it to
12 Mr. McClam's DNA?

13 A. That's correct.

14 Q. And what were the results?

15 A. The DNA profile developed from the
16 sperm fraction of items 2.2 and 2.4 is a mixture of
17 at least two individuals. A DNA profile foreign to
18 Leandre Jenkins is present within the mixture and
19 matches the DNA profile of Telly McClam. The
20 probability of randomly selecting an unrelated
21 individual having a DNA profile matching this
22 foreign profile is approximately 1 in 2.2 billion.

23 Q. The chances that it's someone else
24 besides Telly McClam is 1 in 2.2 billion?

25 A. That's correct.

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SAMUEL STEWART - DIRECT EXAM

1 Q. Just a little bit of confusion that I
2 had with it, the serologist talked about the fact
3 that there was semen, but no sperm, but in this
4 report, it refers to it as a sperm fraction.
5 Explain that.

6 A. No problem. When we have a positive
7 result for the presumptive testing of semen, what I
8 stated about the extraction, we do a special type
9 of extraction of these samples. This extraction is
10 known as a differential extraction. Essentially
11 what I'm doing is I'm separating the evidence into
12 two fractions, a non-sperm fraction which is -- I
13 just hope to get to the -- get only the female DNA,
14 the victim, and in a sperm fraction.

15 This fraction is any potential male DNA
16 that may be there. And this is done so that we can
17 get a clear cut or see if there's any male DNA
18 there. If I was not doing this type of extraction,
19 the overwhelming female DNA would mask the
20 potential male DNA.

21 Q. So when you say sperm fraction, what
22 you're really talking about is just the male DNA in
23 that mixture?

24 A. Yes; hopefully, the male DNA that would
25 be extracted.

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SAMUEL STEWART - DIRECT EXAM

1 Q. You didn't test for whether there was
2 actually spermatozoa?

3 A. No, I did not.

4 Q. That was done before and she determined
5 that there was the P30 from the semen?

6 A. That's correct.

7 Q. Is there a chart that helps explain to
8 the jury how strong this match is?

9 A. Yes, there is.

10 MS. WILLIAMS: Your Honor, I'm going to
11 show Counsel what has been previously marked as
12 164. And, Madame Court Reporter, we marked this
13 chart just for demonstrative purposes.

14 THE COURT: 164 for ID only.

15 (STATE'S EXH. 164, Chart, was marked
16 for identification.)

17 MS. WILLIAMS: May we publish as a
18 demonstrative aid?

19 MS. LITTLEJOHN: No objection.

20 BY MS. WILLIAMS:

21 Q. And you have a pointer up here. And if
22 you can just kind of --it goes that way, the chair,
23 sorry. If you could use that thing.

24 A. So what we're looking at here --

25 THE COURT REPORTER: I can't hear him.

35)

SAMUEL STEWART - DIRECT EXAM

1 THE COURT: Sir, if you could speak a
2 little louder.

3 THE WITNESS: So what we're looking at
4 here is my DNA table. The first column -- excuse
5 me, this first row right here is the DNA profile of
6 Mr. Telly McClam. What you see here are the
7 different locations for that DNA profile. We have
8 16 different locations that we use to develop a DNA
9 profile. So, like I said, the first one belongs to
10 Telly McClam. The second one belongs to Leandre
11 Jenkins. These other rows are the vaginal swabs
12 and rectal swabs, 2.2 and 2.4.

13 As I stated earlier, I separated, using
14 the differential extraction, into two different
15 fractions, a non-sperm fraction and a sperm
16 fraction. As I stated before, the non-sperm
17 fraction, I'm just trying to get the female DNA.
18 Just trying to separate it out from any potential
19 male DNA that may be there.

20 As you can see -- I will take 2.2 NS
21 for example. If you look at the DNA types of every
22 location, between the non-sperm fraction and
23 Leandre Jenkins, you will see that it corresponded
24 between every location. And this is what I'm
25 looking for. I'm looking for correspondence from

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SAMUEL STEWART - DIRECT EXAM

1 the known standards, which are these two at the
2 top, and the DNA profile from the evidence.

3 And looking at this, I can see that the
4 DNA profile at item 2.2 NS belongs to Ms. Jenkins,
5 which is what I was trying to accomplish. For item
6 2.2 S, the sperm fraction, I did get Ms. Leandre in
7 here as well, but I also got a foreign DNA profile.
8 And when I -- when we have samples like this that
9 are taken from an individual's body, I'm able to
10 treat it as an intimate sample. That means, I
11 expect to find them at these locations. I expected
12 to find her DNA since these DNAs did come from her
13 body, her vaginal swabs, her rectal swabs.

14 So essentially what I did, I remove her
15 DNA types from this mixture, because it's a mixture
16 of these two individuals, and what I do is I look
17 at the foreign types that do not belong to Ms.
18 Jenkins. And when I do that, I get the foreign DNA
19 profile and I look at that foreign DNA profile and
20 I compare that it to Mr. McClam's DNA profile and I
21 was able to determine that the foreign DNA at each
22 location at 2.2 S matched the DNA profile of
23 Mr. McClam's.

24 I will take it one step at a time.
25 Right here, I have a 1415 and I also have a 1415

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SAMUEL STEWART - DIRECT EXAM

1 for Mr. McClam. I also have a 30.2 and a 31, and
2 that also matches -- excuse me, I'm sorry, I'm
3 getting confused. I have 29 and a 31.2 and a 29
4 and a 31.2 here for Mr. McClam.

5 So I look at every location and I take
6 it overall as a profile and I look and see whether
7 or not I have correspondence to every location.
8 And because I did, I was able to determine a match
9 for that foreign profile for 2.2 S and 2.4 S.

10 Q. Thank you. Now, there were other items
11 of evidence that you received in this case, that
12 you were not successful in finding any evidence on;
13 is that correct?

14 A. That is correct.

15 Q. And could you just briefly tell us what
16 those were?

17 A. I also did samples from a related case.
18 That case number was L14-4487. In that case I was
19 given -- I was given swabs from duct tape. And I
20 was unable to develop a DNA profile from those
21 items. That was 6.1 and 7.1 from that case.

22 Q. And who were they wanting you to
23 compare for DNA analysis to the duct tape swab?

24 A. I also have a buccal swab from Deadrene
25 McHoney.

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SAMUEL STEWART - CROSS EXAM

1 MS. WILLIAMS: Okay. Thank you.

2 Nothing further.

3 THE COURT: Any questions for the
4 witness?

5 CROSS-EXAMINATION

6 BY MS. LITTLEJOHN:

7 Q. Agent Stewart, when you gave that
8 number that you gave earlier, one of the reasons we
9 were talking about population genetics is because
10 we have to break down the population into the size
11 to be able to say what's consistent with and what's
12 not consistent with a certain DNA, correct?

13 A. I don't follow you.

14 Q. In other words, I believe -- if you
15 said 01 in 700 people, would -- it would be
16 consistent with -- you gave a number on your report
17 of 1 in 2.2 billion?

18 A. That's correct.

19 Q. And that's because of population
20 genetics, right?

21 A. That's correct.

22 Q. And statistics, that you come up with
23 that kind of number, right?

24 A. That is correct.

25 Q. Because that's really kind of

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SAMUEL STEWART - CROSS EXAM

1 misleading because we don't even have that many
2 people in the US, do we?

3 A. Well, it is in the world, and the world
4 is approximately 7 billion, but it goes to the
5 rarity of the profile. It's not just about the
6 number of people in the world. What we're looking
7 at is we're looking to see if we took a random
8 person's DNA profile and we compared it to that DNA
9 profile, the foreign profile that I was able to
10 pull out, what are the chances that that random
11 person's DNA profile would match the DNA -- that
12 foreign profile I should say, and the probability
13 of that happening is the 2.2 billion.

14 We're not looking at just the world
15 population. We're looking at the probability of a
16 random person DNA's profile matching that foreign
17 profile.

18 Q. We were looking at probabilities?

19 A. That's correct.

20 Q. So we're looking at, is something
21 consistent with?

22 A. Or we're looking for a rarity, I should
23 say maybe.

24 Q. So it's not so much a match, it's
25 consistent with?

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SAMUEL STEWART - CROSS EXAM

1 A. I can say within a scientific certainty
2 that it's a match with that high number of a stat.

3 Q. Didn't you also say in your report, a
4 mixture of at least two individuals?

5 A. That's correct. And that is our
6 wording that we use when we use at least, but for
7 this profile, what I was looking at, I can
8 definitely say it was mainly just a mixture of two
9 individuals, but our wording does state at least
10 two.

11 Q. And that's because scientifically, you
12 want to be solid to say something scientifically,
13 which is why you're wanting to -- it would be
14 consistent with something, correct?

15 A. (No response.)

16 Q. Did you by any chance -- working in the
17 DNA lab, I know you run across a lot of items and
18 let's just -- you work for SLED, which means you
19 work for law enforcement, and you-all work with the
20 Solicitors and all. If I wanted to call up and ask
21 that something be examined, as a defense attorney,
22 can I do that?

23 A. I'm not exactly sure.

24 Q. If I called up and said, hey, can you
25 examine something, would you do it?

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SAMUEL STEWART - CROSS EXAM

1 A. I would have to check the policy. As
2 far as I know, I have not heard of that happening.

3 Q. I haven't either in 20-something years.
4 You usually get a copy of the police report when
5 you do it, too? Don't they send you a copy of the
6 police report, or not?

7 A. We get a copy of the SANE nurse's
8 protocol and we get a copy of the incident report.

9 Q. And you also work with touch DNA,
10 right?

11 A. Yes, we do.

12 Q. And transfer DNA?

13 A. Essentially, touch DNA, that's correct.

14 Q. Where something can be on something and
15 it can be transferred?

16 A. That is possible.

17 Q. And you would agree that we have to
18 validate all of our studies, right?

19 A. Yes, validation we do in-house.

20 Q. And there are error rates on
21 everything?

22 A. We don't report an error rate on what
23 we do as a DNA analyst.

24 Q. You don't record it, is that what you
25 said?

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SAMUEL STEWART - CROSS EXAM

1 A. We do not report it. We do not have an
2 error rate.

3 Q. But you're familiar with the recent lab
4 mixup I think where they had to readjust the
5 population --

6 A. We had --

7 Q. -- at the big FBI lab, right?

8 A. We had an update to the database, the
9 FBI database. And I also would like to state,
10 when we have these updates, we went ahead and we
11 recalculated all of the statistics that we
12 previously did before the update. And I also did
13 it for this case as well, and the probabilistic did
14 not change that I just stated, 2.2 billion, when I
15 recalculated the statistics.

16 Q. But we have errors that occur from time
17 to time in some labs, even in the FBI. Like you
18 just said, we had to have that update?

19 A. As I said, it was an update. I'm not
20 sure about an error, but I know it was an update.

21 Q. And there have been some things that
22 have happened over the times in some of these. You
23 would agree with me, in a perfect world, if
24 everything was perfect, with all the evidence being
25 perfect, DNA would be a great reliable tool?

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SAMUEL STEWART - CROSS EXAM

1 A. I think DNA is a great reliable tool.

2 Q. I think it's pretty good, but I'm
3 saying it would be a great reliable tool. There
4 are a lot of things that you can't help, aren't
5 there?

6 A. I'm not sure I understand.

7 Q. Well, imagine if you would --

8 MS. LITTLEJOHN: Your Honor, may I
9 approach?

10 THE COURT: You may.

11 By MS. LITTLEJOHN:

12 Q: Imagine if you would somebody sees a
13 piece of evidence, gets a set of gloves out of the
14 trunk of their car that's been sitting there like
15 this (Indicating) in the trunk of a car, unsealed,
16 or don't even get gloves, they put them on and then
17 they pop this one off, get a soda, then put this
18 one on with this hand, a lot of cross-contamination
19 can happen before it ever hits you, right?

20 A. As far as I know, everyone follows --

21 Q. I'm talking about you. Before it hits
22 you, you don't have anything to do with that, do
23 you?

24 A. No, I don't have anything to do with
25 that before it hits me with the evidence.

340

SAMUEL STEWART - CROSS EXAM

1 Q. There's a lot of things that can happen
2 to evidence before it ever hits you?

3 A. That's possible.

4 Q. Because at SLED, you-all know boxes,
5 you seal them, right?

6 A. Yes. Everything stays in a heat-sealed
7 pouch.

8 Q. Do you-all keep them in dusty trunks or
9 anything?

10 A. No, we do not. We have an evidence
11 storage locker.

12 Q. And that's, I assume, a controlled
13 environment?

14 A. Yes.

15 Q. Because you would not want to stick new
16 evidence in, say, some box that could have been
17 opened and in your trunk, right?

18 A. That's correct.

19 Q. Because that would be the
20 cross-contamination that we're talking about,
21 right?

22 A. Yes.

23 Q. And you never know what might get in
24 there, right?

25 So there's lots of things that can lead

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SAMUEL STEWART - CROSS EXAM

1 to this. If it's not packaged appropriately,
2 before it gets to you, products can be damaged,
3 right? Items can be?

4 A. I guess that's possible.

5 Q. I mean, this is before it gets to you.
6 If something in transport isn't done appropriately,
7 before it gets to you, things can be damaged,
8 correct?

9 A. Once again, I have no information on
10 any of this, but I guess it's possible, but --

11 Q. There are lots of things that can
12 happen to items before they get to you?

13 A. Yes, that's correct.

14 Q. You have absolutely no control over
15 that?

16 A. That's correct.

17 Q. So you can do -- you can do everything
18 with the DNA, but how something may have gotten
19 where, that's up to however many people's hands and
20 what environment it was, and how well-trained they
21 were, they take evidence collections classes, et
22 cetera, because you know how important that is,
23 correct?

24 A. That's correct.

25 Q. As a matter of fact, evidence

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SAMUEL STEWART - CROSS EXAM

1 collection is probably one of the top things that
2 you learn, isn't it?

3 A. Yes, it is.

4 Q. You can't tell how long DNA has been
5 present, can you?

6 A. No, I cannot.

7 Q. Look on the chart that Ms. Williams
8 had. We're looking at I think 15 loci up there,
9 right?

10 A. 16.

11 Q. Okay. 16 with the male/female?

12 A. That is correct.

13 Q. Other countries do look at more?

14 A. Yes, that's correct. I mean, different
15 laboratories in different countries, they do look
16 at various different loci.

17 Q. Is there a reason that -- a particular
18 reason, or do you know, why SLED doesn't look
19 beyond the 15, 16?

20 A. As we are right now, we only look at
21 the core loci that is done by the FBI. We do do a
22 couple of others besides those, and we are also
23 looking to update, to go to another kit that does
24 include more loci. At this time, yes, we do stick
25 with the 15 different loci and mostly closely

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SAMUEL STEWART - CROSS EXAM

1 because of the FBI.

2 Q. And, in fact, it's more expensive to
3 get a kit that costs -- with more loci, correct?

4 A. Expense is not the word. We're looking
5 at getting a new kit that has more loci as we talk
6 right now.

7 Q. Oh, good. When it comes to the alleles
8 and the levels, does it identify low-level alleles?

9 A. Yes. We have specialized kits that
10 looks at low-level alleles or low-level DNA, I
11 should say.

12 Q. Okay. So you don't know how the police
13 handled the evidence because you weren't there,
14 right?

15 A. That's correct.

16 Q. You don't know if facial masks were
17 worn?

18 A. No, I have no information on that.

19 Q. You don't know, if they did, what type
20 they wore?

21 A. No.

22 Q. You don't know if they wore gloves?

23 A. No, I do not.

24 Q. You don't know, if they wore them, if
25 they changed them in between each specimen?

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SAMUEL STEWART - CROSS EXAM

1 A. No, I do not know, but I believe this
2 evidence here was collected by a SANE nurse.

3 Q. You don't know what happened there, do
4 you?

5 A. No, I do not.

6 Q. And you don't know if the pen, that was
7 recorded, just to put things on, had been
8 contaminated and written on and touched with the
9 glove, do you?

10 A. No, I do not know.

11 Q. So there are a lot of unknowns that you
12 don't have. You don't know, when it got
13 transported, if it was in extreme heat, do you?

14 A. No, I do not.

15 Q. You don't know if, when it got
16 transported, it was in there with a bunch of other
17 stuff, just everything piled on top of each other,
18 do you?

19 A. No, I don't know how it was
20 transported.

21 Q. But at SLED, you heat-seal it to
22 prevent any leakage or anything getting in, right?

23 A. Yes, and to protect the identity of the
24 -- the evidence and to show there was no tampering.

25 Q. Because, I mean, it's heat-sealed then,

365

SAMUEL STEWART - CROSS EXAM

1 right? At SLED?

2 A. Yes.

3 Q. And we get our DNA from who? I don't
4 think we talked about that. Who does your DNA come
5 from?

6 A. Essentially, DNA -- we get -- if I can
7 explain. We get our DNA from our chromosomes.
8 That's where we get the DNA from. We receive half
9 of our chromosomes from our mother and the other
10 half from our father. That's why you will see
11 either one number or two numbers when you saw the
12 known standards. Either your mother or your father
13 donated you -- your mother or your father donated
14 you one number, making it two; or, essentially,
15 when you see just one number, that means that your
16 parents donated the same number to you.

17 Q. So, essentially, my DNA would have
18 something similar to my brother or my male cousins
19 or my male uncles, something like that?

20 A. Yes. Close relatives would have a
21 slightly similar DNA profile.

22 Q. And with regard to DNA and transfer and
23 all, isn't it true that we shed about 40,000 skin
24 cells a day?

25 A. Individuals shed differently. You

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SAMUEL STEWART - CROSS EXAM

1 can't really gauge how much an individual sheds.
2 Some people shed heavily and some people shed
3 lightly. We don't have any concrete evidence on
4 how much an individual can shed.

5 Q. But individuals do shed a lot of skin
6 cells, don't they?

7 A. As I said, some people shed lightly and
8 some more than lightly.

9 Q. Would you agree with me it's more than
10 5,000 --

11 A. I can't put a number onto it.

12 Q. If someone were to tape my hands and
13 untape them, you would agree with me that's on my
14 skin, right? Because they wrapped the tape around
15 there?

16 A. Are you asking about the tape?

17 Q. Right. If you wrap tape around my
18 wrist and then take it off, there would be hair,
19 right?

20 A. I believe it's possible.

21 Q. Skin cells?

22 A. Yes, that would be possible.

23 Q. All sorts of things that you could test
24 for DNA if it, in fact, was wrapped around my
25 hands?

347

SAMUEL STEWART - CROSS EXAM

1 A. Yes, it is possible.

2 Q. If you're really lucky, you can get it
3 wrapped around my wrists and my ankles, right? And
4 you would have even more material if it was on me
5 that you could test for my skin cells and some
6 hair, right?

7 A. Yes, that's possible.

8 Q. Do you know if you were sent any --
9 were you sent a telephone -- were you sent a
10 telephone to test for DNA?

11 A. No, I was not.

12 Q. Were you sent any DNA swabs from door
13 handles?

14 A. No, I was not.

15 Q. Were you sent any shorts to test for
16 DNA?

17 A. No, I was not.

18 Q. Were you sent a pair of female black
19 pants to test for DNA?

20 A. No, I was not.

21 Q. Were you sent a knife to test for DNA?

22 A. No, I was not.

23 Q. Were you sent a cigarette package to
24 test for DNA?

25 A. No, I was not.

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SAMUEL STEWART - REDIRECT EXAM

1 Q. And I'm going to assume the answer but
2 I will ask it anyway. Have you ever done a
3 cigarette butt testing for DNA?

4 A. Yes, I have.

5 Q. Okay. And that can be done?

6 A. Yes, it can be.

7 Q. Were you sent any cigarette butts to
8 test for DNA?

9 A. No, I was not.

10 Q. Were you sent any lighters to test for
11 DNA?

12 A. No, I was not.

13 Q. Were you sent a gun to test for DNA?

14 A. No, I was not.

15 MS. LITTLEJOHN: No further questions,
16 Your Honor.

17 THE COURT: Any redirect?

18 MS. WILLIAMS: Briefly.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Ms. Littlejohn asked you about whether
23 or not, if somebody had their hands wrapped in duct
24 tape, if you would find DNA. And you tested swabs
25 from duct tape, right?

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SAMUEL STEWART - REDIRECT EXAM

1 A. That's correct.

2 Q. And you don't know where on the duct
3 tape the swabs were taken?

4 A. No, I do not.

5 Q. So just because you don't find
6 someone's DNA on the swabs from part of the duct
7 tape, that doesn't mean that they weren't tied up
8 with duct tape?

9 A. That's correct.

10 Q. Isn't it true that you often get items
11 of evidence for touch DNA and you don't have any
12 results?

13 A. That's right.

14 Q. What are some of the reasons why it's
15 so difficult to get touch DNA?

16 A. As I stated earlier, some people are
17 heavy shedders and some people are light shedders.
18 Also, you know, it's transfer DNA. So,
19 essentially, you're touching an object and trying
20 to see if you can get DNA from that. And sometimes
21 it's just not there, we don't have enough genetic
22 material there to develop a DNA profile.

23 Q. And Ms. Littlejohn went through a
24 litany of other ways that you could test for DNA in
25 the sexual assault kit; you could have done this,

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SAMUEL STEWART - REDIRECT EXAM

1 you could have done that, and, in fact, you could
2 have. You could have done PCR testing, correct?

3 A. Essentially, I did do PCR.

4 Q. You could have done where you separate
5 out the male?

6 A. Oh, you mean Y testing?

7 Q. Y testing.

8 A. Yes, I could have done that.

9 Q. But you didn't need to, did you,
10 because you had a match?

11 A. That's correct.

12 MS. WILLIAMS: Thank you.

13 THE COURT: Any objection to the
14 witness being excused?

15 MS. WILLIAMS: Not from the State.

16 THE COURT: From the defense?

17 MS. LITTLEJOHN: None from the defense.

18 THE COURT: Sir, you are excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 Call your next witness.

22 MR. POULOS: The State calls Thomas
23 Darnell.

24 THOMAS DARNELL,

25 being first duly sworn, testified as follows:

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1 THE CLERK: Have a seat, state your
2 full name for the record, and spell the last name.

3 THE WITNESS: Thomas Edward Darnell.
4 Last name is spelled D-A-R-N-E-L-L.

5 THE COURT: You may proceed.

6 MR. POULOS: Thank you.

7 DIRECT EXAMINATION

8 BY MR. POULOS:

9 Q. Good afternoon, Mr. Darnell.

10 A. Afternoon.

11 Q. Tell us where you're employed.

12 A. I work for the State Law Enforcement
13 Division, more commonly referred to as SLED.

14 Q. How long have you worked for SLED?

15 A. I've been there 25 years total. About
16 20 of that I've been in the forensic laboratory.

17 Q. Is that your current position, in the
18 forensic lab?

19 A. Yes.

20 Q. What are your responsibilities?

21 A. I'm a latent print examiner or a
22 fingerprint examiner at the laboratory. Basically,
23 what I do is I receive evidence from outside
24 agencies and I process those items of evidence to
25 determine if there are any fingerprints present.

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1 Q. Does that include fingerprint analysis?

2 A. Yes, sir.

3 Q. And you stated you've been working in
4 that field for 20 years?

5 A. Yes, sir, about 20 years.

6 Q. Can you describe for us your work
7 history, your specialized education, any kind of
8 training that you've received in the field?

9 A. First of all, I have a college degree
10 from University of South Carolina; I have a
11 Bachelor's of Science in Criminal Justice,
12 graduated from there in 1982; I started out at
13 Richland County Sheriff's Office in Columbia. I
14 worked there for about eight years, I was in
15 uniform patrol there. 1990, I started working for
16 SLED. I was in the latent fingerprint crime scene
17 department. 1998, I was promoted to lieutenant
18 over the latent print department. In 2004, I left
19 the lab briefly; stayed at SLED, but went to a
20 different department at SLED. In 2008, I returned
21 to the laboratory and once again I was supervisor
22 over the latent print department where I was for
23 about two years. I then signed up for retirement
24 in 2009; kept working -- left there and went to --
25 back to Richland County and worked there for about

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1 a year doing latent work for Sheriff Lock.

2 After that, I deployed to Afghanistan
3 and did forensic work for the US military. I
4 returned home and was rehired back at SLED in 2012
5 to be a latent print examiner and that's where I'm
6 currently at.

7 As far as my training, I completed an
8 in-house training program at SLED in the latent
9 print laboratory, dealing with latent print
10 processing, how to process evidence and how to do
11 comparisons. Once I completed the in-house
12 training program, I attended the State Academy
13 there in Columbia. I've taken numerous courses
14 dealing with latent print processing, latent print
15 comparisons, I've taken some courses out of state
16 as well.

17 All of the courses have dealt with some
18 form of latent processing or comparison. I took
19 some classes on how to testify in court, how to
20 present evidence in a courtroom. Also, I've attend
21 the FBI Academy in Quantico, Virginia for a
22 three-week course dealing with latent -- most
23 anything dealing with latent prints, processing,
24 comparison. I actually had several courses that I
25 went through.

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1 In addition to the training that I've
2 had, I've trained other examiners to do the work
3 that I'm doing. Some training was done in-house,
4 some was done out in the field across the state.

5 Q. Approximately how many fingerprints or
6 palm prints have you examined in your career?

7 A. I guess it would be safe to say
8 thousands. When you think about a fingerprint
9 card, there's ten fingers. Most of us do have ten
10 fingers. If you look at it that way, I've looked
11 at thousands upon thousands of fingerprints as well
12 as palm prints.

13 Q. Have you ever been qualified as an
14 expert in a South Carolina State Court before for
15 latent analysis?

16 A. Yes, I have.

17 MR. POULOS: Your Honor, I would move
18 to have this witness qualified as an expert in
19 latent fingerprint analysis.

20 THE COURT: Any questions or
21 objections?

22 MR. SCHWACKE: Absolutely none.

23 THE COURT: Without objection, so
24 admitted. You may proceed.

25 BY MR. POULOS:

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1 Q. Please describe for the jury how the
2 different processes can be used to obtain
3 fingerprints.

4 A. When determining which process to use,
5 I basically have to consider if the evidence is
6 porous or nonporous. Porous would be something
7 like paper, something that basically you have --
8 that liquid would penetrate. Nonporous would be
9 like a can or a piece of countertop or something
10 like that.

11 Once I determine if it's porous or
12 nonporous, I then have several different options to
13 use. I can use anything from Super Glue fuming to
14 black powder to different dye stains, different
15 chemicals that we can use. I also have the ability
16 to use different light sources. Some folks like to
17 refer to it as a laser. That's not really what it
18 is, but that's what folks like to refer to it as, a
19 laser light.

20 But I have a variety of processes at my
21 disposal that I can use. And in some cases I can
22 use -- I can actually use more than one process on
23 certain types of evidence, depending on what I'm
24 trying to achieve.

25 So the basic consideration is whether

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1 the surface of the evidence is porous or nonporous
2 determines which technique I would have to use.

3 Q. In your experience, are fingerprints
4 always recovered from an item that was handled?

5 A. No, sir, not always recovered. And the
6 reason for that is that the majority of your
7 fingerprint is nothing more than moisture that
8 comes out of the pores in your skin. It just
9 depends on how you're perspiring and it depends on
10 how -- how -- or the condition of the surface that
11 might be touched. It depends on how you touch it,
12 it depends on how you handle it, it depends on if
13 someone else comes behind you and touches the area
14 that you just touched.

15 It depends on things like weather.
16 Think about the fact that the fingerprint is mostly
17 moisture. Just to -- just the presence of being
18 out in the elements could damage a print. But I
19 know we all watch television and they always get
20 fingerprints, and that doesn't happen in the real
21 crime scene field.

22 Q. Did you analyze fingerprints in this
23 case?

24 A. I did.

25 Q. And what, generally, items did you look

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1 at when analyzing this fingerprint?

2 A. I had -- I received some latent lifts
3 or some fingerprint lifts that came in from the
4 submitting agency. I also looked at some -- a
5 couple of pieces of sections of duct tape that I
6 was asked to examine.

7 Q. I'll show you State's 85 first. As to
8 State's 87 and 88, do you recognize those two
9 items?

10 A. Yes, I do.

11 Q. And did you receive those for analysis?

12 A. I did.

13 Q. What do they contain?

14 A. State's 87 is a brown paper bag that's
15 marked as containing some duct tape, indicating
16 it's coming from inside the residence. And it
17 gives an address, date it was collected and so
18 forth. And on the outside of the bag it has our
19 laboratory number and it has an item number that
20 was given to the item once it came to the
21 laboratory and it has my initials.

22 Q. What's the item number for Exhibit 87?

23 A. Item number six.

24 Q. And what about State's 88?

25 A. State's 88 is another brown bag, also

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1 indicates duct tape should be inside, gives the
2 address of -- 1112 Council Road is the location
3 written on the outside. It also has the laboratory
4 number and my item number, which is item number
5 seven, and it has my initials on the outside of the
6 bag that I placed on once I received these items.

7 Q. How did you receive these items? What
8 condition were they in?

9 A. These bags were actually stapled
10 closed. You can see there is a staple here still
11 in the bag. They were stapled closed to prevent
12 something from coming in or coming out, and it was
13 folded over, just as you see it here. And both of
14 these bags, State's 87 and 88, were located inside
15 of a sealed cardboard box. So, basically, when I
16 received it, it was inside a sealed box.

17 Q. Okay. What type of tests did you run
18 on the two pieces of duct tape?

19 A. On the duct tape, there were -- there
20 were a couple of things I did with it. It was
21 submitted with a request to see if there was any
22 touch DNA present. I'm not a DNA analyst. I'm a
23 latent print examiner, but I do know how to collect
24 and how to swab evidence, and we have certain
25 procedures that we have to do.

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1 In this case, I swabbed the nonadhesive
2 side of the tape with a sterile swab, allowed it to
3 air dry, and packaged it to be transported to the
4 DNA department. And I actually did this before I
5 began to separate the tape. And once I did the
6 swabs for touch DNA or for the potential of there
7 being touch DNA, I then began my fingerprint
8 processing.

9 I was able to process both sides, the
10 non-adhesive side as well as the adhesive, or the
11 sticky, side. The non-adhesive side, the
12 non-sticky side, I used a Super Glue fuming
13 technique and then -- to see if I could enhance or
14 develop any moisture from any prints that might be
15 there. And once I did that, I was able to process
16 the sticky side of the tape, basically using what
17 was essentially a black liquid powder that is
18 referred to as WETWOP, W-E-T-W-O-P, the product is
19 called.

20 It's essentially a liquid powder and
21 I'm brushing it onto the surface, allowing it to
22 dry, and then I rinse it off under tap water. And
23 if there are fingerprints present on the sticky
24 side of the tape, it would enhance those to where I
25 could see them better. And in this case they would

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1 be black. They would be able to -- I would develop
2 them and be able to see them and enhance them to
3 where I could do a comparison.

4 Q. Specifically as to State's 87, which is
5 SLED item 6, were you able to recover any
6 fingerprints from that piece of duct tape?

7 A. Yes, I was.

8 Q. Okay. And what did you do once you
9 developed -- once you saw that there were prints on
10 it, what did you do with that piece of tape?

11 A. Once I saw that there were fingerprints
12 on State's 87, item 6, I had to get them
13 documented. I had to get them preserved. I had to
14 get them photographed. So what I did at that point
15 is, rather than trying to transfer an entire bundle
16 of tape, you know, to the photographer, I took a
17 pair of scissors, and keep in mind I've already
18 processed it at this point, so I'm done with the
19 process. I took a pair of scissors and clipped out
20 those sections where the prints were and placed
21 those into a box, labeled them accordingly with my
22 identifier, my initials and so forth, and then I
23 transferred them to photography for them to be
24 photographed.

25 Q. I'm showing you State's 86. Do you

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1 recognize this box and its contents?

2 A. Yes, I do.

3 Q. What is that?

4 A. This box contains three pieces of duct
5 tape. It has a label attached to the duct tape.
6 The label again has the lab number and the item
7 number that I assigned to each impression, and it
8 also bears my initials. There was actually two
9 prints on one piece of tape and the other two
10 pieces of tape has a single print visible.

11 Q. Okay. So you cut those pieces off of a
12 bigger piece and put them in a box to be
13 photographed?

14 A. Yes, sir.

15 Q. Okay. And what did you do with that
16 box? Who did you send it to?

17 A. Once I -- once I secured it inside the
18 box and labeled it accordingly and so forth and
19 positioned it where it wouldn't move around, I
20 sealed it up with evidence tape, yellow evidence
21 tape, and I dated and initialed it, so that way --
22 and then I transferred it to what we call our photo
23 studio. It goes into our photo studio and from
24 there the photographer would retrieve it and then
25 he would do what he has to do in the photo lab.

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1 Q. And did you receive that box back from
2 the photographer?

3 A. I did. I received it back from the
4 photographer and it was also sealed by him once he
5 finished it. Again, that's to prevent anything
6 from being cross-contaminated or, you know,
7 anything from getting in or anything from leaving
8 the box. And he sealed it with the same evidence
9 tape. In fact, you can actually see what appears
10 to be his initials on the box.

11 MR. POULOS: Your Honor, at this time I
12 would move State's 86 into evidence.

13 THE COURT: Any objection?

14 MR. SCHWACKE: No objection.

15 THE COURT: Marked and admitted without
16 objection.

17 (STATE'S EXH. 86 in evidence.)

18 BY MR. POULOS:

19 Q. Did I receive the photographs of those
20 pieces of duct tape?

21 A. Yes, sir.

22 Q. I show you State's 98, which contains
23 98 A through M. We'll start with 98 A, B, C, D.
24 Do you recognize those items?

25 A. Yes, I do.

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1 Q. And what are those?

2 A. These are photographs that were
3 produced by our photo studio and each photograph is
4 a duplication of what is inside State's 87.

5 Q. Why do you photograph it?

6 A. I have to get it photographed so I can
7 do my comparisons. It's difficult to sometimes
8 handle evidence that has a print on it to do a
9 comparison, so I can -- get it onto film and get it
10 captured, so -- where I can more easily handle it
11 to make my comparison.

12 Q. Did you also received latent lifts in
13 this case?

14 A. Yes, I did.

15 Q. I show you what is already in evidence
16 as State's 99, containing 99A, B, C and D. Look at
17 these items and tell me what they are.

18 A. States 99A through D, these are all
19 latent lifts, fingerprint lifts, that were
20 submitted by the -- I think they were done by the
21 Berkeley County Sheriff's Office and they were
22 submitted to the laboratory as part of this case
23 and I was asked to examine them to determine if
24 they were identifiable or not.

25 Q. Are the SLED item numbers listed on

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1 those exhibits?

2 A. Yes, there is.

3 MR. POULOS: Your Honor, I would offer
4 these into evidence. I'm sorry, they're already in
5 evidence. I apologize.

6 THE COURT: What numbers did you just
7 refer to?

8 MR. POULOS: 99A, B, C and D.

9 BY MR. POULOS

10 Q. Did you also compare the prints on the
11 latent cards and the duct tape to a set of known
12 prints?

13 A. Yes, I did.

14 Q. I'm going to show you State's 98E
15 through M. Can you tell me what those are, please?

16 A. State's 98E through M are -- these are
17 what I refer to as or what most of us -- we all
18 refer to them in the fingerprint world as major
19 case prints. Major case prints means that they are
20 not just fingerprint cards, but they're also palm
21 print cards as well. Each of these items bears the
22 laboratory number and it bears my initials and the
23 item number that it was assigned to at SLED, which
24 is item 8, and they bear the name of Telly McClam.

25 MR. POULOS: I would offer these into

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1 evidence as well.

2 THE COURT: Any objection?

3 MR. SCHWACKE: No objection.

4 THE COURT: Marked and admitted without
5 objection.

6 (STATE'S EXH. 98E - M in evidence.)

7 BY MR. POULOS:

8 Q. Mr. Darnell, specifically as to item 3,
9 what is item 3.1?

10 A. SLED 3.1 is a latent lift that was
11 submitted by the agency. And it is marked as
12 having come from an empty cigarette pack, driver's
13 side floorboard. The item 3.1 is the -- is a
14 sub-item of -- on this latent lift. The sub-item
15 is indicating the presence of a fingerprint.

16 Q. And did you compare that to Mr.
17 McClam's known fingerprints?

18 A. Yes, I did.

19 Q. And what was the ultimate result?

20 A. The result was that sub-item 3.1 was
21 identified as having been made by the right middle
22 finger of Mr. Telly Darnell McClam.

23 Q. Now, as to items 6.2, 6.3, 6.4, 6.5,
24 SLED items referring to the prints recovered from
25 the pieces of duct tape, did you compare those as

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1 well to Mr. McClam's known prints?

2 A. Yes, I did.

3 Q. What was the conclusion to that
4 comparison?

5 A. 6.2, which was an impression that came
6 from the sticky side or the adhesive side of the
7 tape from State's 87, 6.2 was identified with the
8 left middle finger of Telly Darnell McClam. 6.3,
9 also on the adhesive side of the duct tape, was
10 identified to his left index finger of Telly
11 Darnell McClam. And then 6.4 was identified with
12 his right index finger of the -- again, on the
13 adhesive side of the duct tape. And then 6.5 was
14 identified with the left index finger of Telly
15 Darnell McClam.

16 Q. Mr. Darnell, did you prepare a
17 demonstrative aid for today to show how the actual
18 comparison is done?

19 A. I did.

20 MR. POULOS: May Mr. Darnell step down?

21 THE COURT: Uh-huh.

22 MR. POULOS: We're referring to State's
23 Exhibit 159 for demonstrative purposes.

24 THE COURT: 159, ID only.

25 BY MR. POULOS:

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1 Q. Can you explain to the jury how you go
2 about comparing prints and what markers you use?

3 A. Well, first of all, let me explain that
4 this is nothing more than a demonstration as to how
5 I reached my conclusion on one of the prints that I
6 have identified. This particular print was
7 identified with the right index finger of Telly
8 McClam. And, again, the print came from the
9 adhesive side of the duct tape.

10 And what I've got here is a chart
11 showing -- I've got two prints. I have a latent
12 print. The word latent means hidden or invisible,
13 or in this case it was -- in this case, this print
14 was developed with the liquid black powder that I
15 previously mentioned to you. That's what the
16 latent print is.

17 On the other side of the chart is a
18 known print. This is actually his right index
19 finger or I should say -- and I'm looking at a card
20 that has his name on it, but it's indicating it
21 being his right index finger. This is a known
22 print. This is a print that was taken under a
23 controlled environment, where a person's print is
24 just simply inked or just digitally produced onto a
25 card.

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1 So, in other words, I know whose print
2 this belongs to based on the card that I had. I
3 did not know whose print this was initially when I
4 developed it. When I made the comparison, I was
5 able to determine that this print was made by this
6 finger. And how I was able to do that is, first of
7 all, one important thing to understand is that
8 prints are permanent.

9 Your prints are permanent and they are
10 unique to each other. They are unique in that,
11 within the pattern, you have certain individual
12 characteristics that are going to differ from one
13 person to the next. You may have the same pattern
14 as the next person sitting next to you today, but
15 what makes it unique is the characteristics inside
16 of that print.

17 These black lines that you see, is
18 nothing more than the raised portions of skin on
19 your fingers. On your fingers you have raised
20 portions of skin that are constantly exuding
21 perspiration. When you touch something, you may or
22 may not leave that pattern or that perspiration on
23 that surface. In this case, this impression was
24 left on the adhesive side of the duct tape.

25 And what I have is, you can see some

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1 red lines and some letters. And the A --

2 THE COURT REPORTER: Judge, I can't
3 hear him now with the air-conditioner on, I'm
4 sorry.

5 THE COURT: Sir, they're going to put
6 it up on the screen, so you can retake your seat
7 and they're going to give you a pointer.

8 You may proceed. Please speak loudly
9 so the Court Reporter can hear you.

10 THE WITNESS: Can I sit this way?

11 THE COURT: Yes, sir. Just project
12 your voice for me.

13 THE WITNESS: Okay. What I've got is
14 the -- on this side is the latent fingerprint and
15 the known print I was just showing you on my chart.
16 This is an enlargement of what I just had in front
17 of you. Each red line marks a characteristic.
18 Okay. If you can look at -- let's just start with
19 -- and let say, I can go from A to I, I can go from
20 F to B, or -- and I will have the same number of
21 black lines, if you will, between the two. And
22 these characteristics appear in the same relative
23 position in both the latent and in the known.

24 If you can start with -- we'll just
25 start with A. You can see that A is pointing to

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THOMAS DARNELL - DIRECT EXAM

1 what I call an ending ridge. You can see how the
2 -- see how the lines sort of -- it starts out and
3 it comes to an end right there. The end of that
4 red line is marking that ending ridge. That's just
5 one of the characteristics that we look for.

6 And then you can come over to the known
7 print, and again you see the A, you see that same
8 black line, how it comes to an end. It's in the
9 same position between the two. And let's go from A
10 to -- let's go from A to B in this case, and I've
11 got -- let's go back to the latent print and you
12 will see I have two lines between A and B, two
13 black lines.

14 That's the fingerprint pattern. I have
15 two black lines and then I have B, which is another
16 ending ridge. And then you roll to the known print
17 and you've got two lines and then you have the same
18 ending ridge, which is what I have marked as B.

19 So at this point I've got two things
20 that correspond. Okay. I have about ten things
21 marked here. There's actually about 20 or so in
22 this print. Some of them are very obvious, that
23 you can see. And I didn't want to mark them all,
24 because if I did, you would have a mess. There
25 would be red lines everywhere and it would be hard

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1 for me to demonstrate.

2 Let's go over to -- let's see. Let's
3 go to I. See right here? (Indicating) You've got
4 what looks to be one ridge that starts out and it
5 splits into two. Right there. (Indicating) Come
6 over to I on the known print and you have the same
7 formation right here. That's what we refer to as a
8 bifurcation or a forking ridge. It's one ridge
9 that starts out and it simply comes into a split.

10 And we have -- let's drop down to H and
11 G. H and G, see the little ridge that kind of cuts
12 across two there? I have the same formation in the
13 known print as well. Kind of cuts across the two
14 black lines there.

15 One I've examined the entire print and
16 once I've looked at all of the areas and there's
17 one important thing that I have to -- I have to
18 meet: There cannot be anything in this print that
19 is unexplainable. In other words, if I find a
20 characteristic in this latent that does not appear
21 in this known print, in that point, I would have to
22 say that this print was not made by this known
23 print.

24 That didn't happen in this case;
25 everything that I found corresponded between the

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1 two. So this latent on that adhesive side of the
2 tape was -- no doubt was made by this index finger
3 when I compared the two. Keep in mind, the latent
4 print is a -- you know, if you just look at it, it
5 does -- it does look different because that's --
6 that's because it's -- it was a chance impression.

7 This print wasn't intended to be left
8 on the tape. You've got some smudging and so
9 forth. You have some smudging here. Obviously,
10 that smudging isn't here and it's not here. The
11 reason for that is because this known print was
12 taken by someone who had the person in front of
13 them and they have -- and they are able to evenly
14 -- have an even amount of pressure and they are
15 able to roll that fingerprint to where it's legible
16 all the way through from side to side.

17 So you will see some smudging here, but
18 that could be from, again, how the person touched
19 the tape. It's just a number of things. Keep in
20 mind, too, the tape was stuck together. I had to
21 peel it apart and all that. But you can see the
22 overall patterns, see, the shape is there. That's
23 the first thing I look for. If it has the same
24 pattern and the same shape, then I'm going to start
25 looking at it a little bit harder.

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1 If I have this pattern here and this
2 pattern over here is not even close, I'm not going
3 to waste my time looking at it. Because it has the
4 same pattern is when I start digging into the
5 detail of the print to be able to determine if a
6 print was made by a certain individual.

7 Q. Mr. Darnell, is there any doubt in your
8 mind whatsoever that the prints found on the duct
9 tape are Telly McClam's prints?

10 A. No doubt in my mind.

11 MR. POULOS: No further questions, Your
12 Honor.

13 THE COURT: Any questions for the
14 witness?

15 MR. SCHWACKE: Just a few.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. And your rank now is?

20 A. Well, I'm just a retired agent at SLED,
21 I suppose. I was a lieutenant, but I'm a retired
22 lieutenant, so I'm just referred to as just I guess
23 Mr.

24 Q. Mr. Darnell, thank you for being here
25 today. I have a couple of questions. I wanted to

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1 understand sort of the process that you went
2 through when you first received the adhesive tape.
3 You indicated, first, that you're not a DNA guy,
4 but you know how to try to save DNA-type evidence.

5 A. Yes, sir. I've been trained how to
6 collect it, yes, sir.

7 Q. And in this instance, you sort of had
8 to take on that role first with the tape?

9 A. Yes, sir.

10 Q. And so you did the swabbing to preserve
11 something if it existed on the tape?

12 A. Yes.

13 Q. And that would have been to both the
14 adhesive side and non-adhesive side?

15 A. Actually, in this case I chose to
16 process the non-adhesive side of the tape, and that
17 was based on my experiences at processing tape. I
18 tend to get much better results on the --
19 developing a latent print on the adhesive side of
20 the tape versus the non-adhesive side of the tape
21 over all of the tape I've processed throughout my
22 career. So I'm juggling two disciplines here, I'm
23 juggling DNA and latent prints. I'm trying to do
24 both, essentially, but in this case I swabbed a
25 non-adhesive side of the tape prior to attempting

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1 to separate it.

2 Q: And, again, when you swab, you don't
3 swab the entire piece of tape, you select a space
4 or an area?

5 A. That's correct. That's correct. And
6 the tape when it came in was sort of stuck together
7 in pieces, so I tried to swab what I could see on
8 the outside. I tried to swab just sort of random
9 -- actually just random swabbing of the tape in an
10 attempt to collect touch DNA.

11 Q. And after that, you did do a swabbing
12 on the non-adhesive side as well?

13 A. Yes, sir.

14 Q. And that's what went to DNA from you,
15 was -- were the swabs that you had actually done?

16 A. Yes.

17 Q. The tape itself never made it over to
18 DNA?

19 A. No, sir.

20 Q. And then really the last sort of
21 question I have for you is, the one thing about
22 fingerprints is, you can't say when they got placed
23 there?

24 A. No, sir, I can't. I can only say that
25 it -- when someone -- when the tape was touched is

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1 when the print was put there. I can't tell you
2 when it was put there.

3 MR. SCHWACKE: One moment. That's all
4 the questions we have.

5 THE COURT: Any redirect?

6 MR. POULOS: None, Your Honor.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MR. POULOS: None from the State.

10 THE COURT: From the defense?

11 MR. SCHWACKE: No, Your Honor.

12 THE COURT: Sir, you're excused.

13 Thank you.

14 Madame forelady, ladies and gentlemen,
15 I'm going to give you a brief rest room break. We
16 have an additional witness who has driven from
17 Columbia that we would like to try to complete
18 before we adjourn today. If that would cause
19 anyone any inconvenience, please let the bailiff
20 know. I can adjust the schedule accordingly. We
21 appreciate your patience. If you will go with the
22 bailiffs.

23 (Jury out, 5:07 p.m.)

24 THE COURT: You may be seated. Who is
25 the additional witness you indicated you have?

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1 MR. POULOS: Chad Smith. He's going to
2 testify about the gun. He should be very brief.

3 THE COURT: And that's the only other
4 witness you have from Columbia?

5 MS. WILLIAMS: Yes, Your Honor. We
6 would like to move in item 84.

7 MR. SCHWACKE: No objection.

8 THE COURT: Marked and admitted
9 without objection.

10 MS. WILLIAMS: And I think it's A, B,
11 C.

12 (STATE'S EXH. 84A, B, C in evidence.)

13 THE COURT: All right. We'll take a
14 brief recess.

15 (A recess transpired.)

16 THE COURT: Bring in the jury.

17 (Jury in, 5:26 p.m.)

18 THE COURT: You may be seated.

19 MR. POULOS: The State calls Chad
20 Smith.

21 CHAD SMITH,
22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name and spell your last name.

25 THE WITNESS: My name is Chad Smith,

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CHAD SMITH - DIRECT EXAM

1 S-M-I-T-H.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. POULOS:

5 Q. Afternoon, Mr. Smith.

6 A. Afternoon.

7 Q. Where do you work?

8 A. I work at South Carolina Law
9 Enforcement Division, commonly known as SLED.

10 Q. How long have you been at SLED?

11 A. About seven and a half years.

12 Q. And what is your current position?

13 A. I'm in the firearms department. I'm a
14 firearms examiner. The majority of what I do is
15 examination of firearms, examination of components
16 in ammunition, and the majority of my examinations
17 are trying to determine if a specific ammunition
18 component, such as a bullet or cartridge case, was
19 fired by a particular firearm.

20 Q. What specialized training do you have
21 in your present position?

22 A. I have a Bachelor of Science degree
23 from Clemson University in Biological Sciences. I
24 came onboard with SLED in 2008 and began my
25 training as a firearms examiner. The training

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CHAD SMITH - DIRECT EXAM

1 program lasts between three to five years and it's
2 supervised by Court-qualified examiners of the
3 firearms department. It involves extensive reading
4 and studying, multiple exams and tests are given
5 during this period. Also during my training I
6 helped other examiners prepare their own casework,
7 and then at the end of my training period, I
8 received a comprehensive multipart examination,
9 which I successfully passed, and then I began to
10 receive my own casework.

11 Q. How many firearms would you say you've
12 tested in your career?

13 A. Several hundred.

14 Q. Have you previously been qualified as
15 an expert in that field?

16 A. Yes.

17 MR. POULOS: At this time, the State
18 would move to have Mr. Smith qualified as an expert
19 in firearms testing and identification.

20 MR. SCHWACKE: No objection.

21 THE COURT: So admitted without
22 objection.

23 BY MR. POULOS:

24 Q. Mr. Smith, did you test a firearm in
25 this case?

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CHAD SMITH - DIRECT EXAM

1 A. Yes, sir, I did.

2 Q. I'm showing you what's already in
3 evidence as State's 89, which contains State's 90
4 and State's 91. Please look through those items
5 and tell us what it is.

6 A. Ladies and gentlemen, this firearm is
7 safe to handle; the cylinder is open and it has
8 cable ties around it, so it is safe.

9 Q. Can you examine the firearm and compare
10 it with the serial number on your report and tell
11 us if that's the gun that you examined?

12 A. Yes, sir, it is.

13 Q. Okay. How did SLED come into
14 possession of this weapon?

15 A. The Berkeley County Sheriff's Office
16 submitted the firearm and then I would receive it
17 from our evidence control department. And then
18 once I have it in my custody, I can either begin
19 working on it right away or store it in my own
20 evidence locker.

21 Q. And what type of tests -- or did you
22 perform tests on this specific firearm?

23 A. Yes, sir.

24 Q. What type of test?

25 A. I was asked to perform a function test,

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CHAD SMITH - CROSS EXAM

1 basically, to see if the firearm functioned
2 properly.

3 Q. And what were the results of your test?

4 A. My results were that, yes, sir, the
5 firearm functioned; it is in working order.

6 Q. Did some rounds come with that gun to
7 SLED?

8 A. Yes, sir, there were four unfired
9 cartridges with it.

10 Q. And do those cartridges fit the gun?

11 A. They are. They are the caliber for
12 this particular firearm.

13 MR. POULOS: No further questions from
14 the State.

15 THE COURT: Any questions for the
16 witness?

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. And you're aware of no other evidence
20 that was -- no other --

21 A. Firearms --

22 Q. -- testing that was done on that
23 firearm that wasn't related to function?

24 A. Right. No, sir.

25 MR. SCHWACKE: Thank you. That's all

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1 the questions I have.

2 THE COURT: Any redirect?

3 MR. POULOS: Nothing from the State.

4 THE COURT: Any objection to the
5 witness being excused?

6 MR. POULOS: None from the State.

7 THE COURT: From the defense?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Sir, you're excused.

10 THE WITNESS: All right. Thank you.

11 THE COURT: You're welcome.

12 Counsel approach, please.

13 (Bench conference.)

14 THE COURT: Do you have any other
15 witnesses from SLED?

16 MS. WILLIAMS: No, Judge.

17 THE COURT: Okay. That was your last
18 witness other than the person you were talking
19 about in the morning.

20 MS. WILLIAMS: Yes.

21 THE COURT: Okay. Step back.

22 (End of bench conference.)

23 THE COURT: Madame Forelady, ladies and
24 gentlemen, we're going to take advantage of this
25 break in testimony to take our evening recess.

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1 During the break, please do not discuss the case
2 among yourselves or with anyone else. Please do
3 not do any type of independent research of any type
4 on the Internet regarding any issue or matter
5 involved in this case and please do not watch,
6 read, or listen to any media accounts about this
7 case.

8 When you return to the courthouse in
9 the morning when we resume at 9:30, please do not
10 have any contact with anyone in or about the
11 courthouse. Please leave your notepads in your
12 seats. As soon as everyone has arrived, we will
13 resume testimony in the morning. Have a great
14 evening.

15 (Jury out, 5:32 p.m.)

16 THE COURT: You may be seated. What
17 evidence, Madame Court Reporter, were you trying to
18 bring to my attention?

19 THE COURT REPORTER: The defense has
20 agreed to Exhibits 133 through 137.

21 THE COURT: Is that correct?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Those will come in without
24 objection.

25 (STATE'S EXH. 133 - 137 in evidence.)

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 THE COURT: Now, will the State be
2 calling Chiquita Jenkins?

3 MS. WILLIAMS: No, Your Honor. Alyssa
4 Rheingold is our last witness.

5 THE COURT: Captain Sherod Timmons?

6 MS. WILLIAMS: No, Your Honor.

7 THE COURT: Ben Varnadore?

8 MS. WILLIAMS: No, Your Honor.

9 THE COURT: And she will be here in the
10 morning, correct?

11 MS. WILLIAMS: She will.

12 THE COURT: Okay. Now, sir, if you
13 would stand for me and raise your right hand to be
14 sworn.

15 TELLY DARNELL MCCLAM,
16 being first duly sworn, testified as follows:

17 THE COURT: I need you to answer the
18 question. Ms. Littlejohn cannot answer for you.

19 THE DEFENDANT: Yes.

20 EXAMINATION

21 BY THE COURT:

22 Q. You can put your hand down. Sir, state
23 your full name for the record.

24 A. It's Telly McClam.

25 Q. Do you have a middle name?

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 A. Telly Darnell McClam.

2 THE COURT: Does the State have any
3 convictions they would be seeking to introduce to
4 impeach Mr. McClam's credibility?

5 MS. WILLIAMS: Yes, Your Honor.

6 THE COURT: If you would tell me what
7 those are, please.

8 MS. WILLIAMS: A 1999 --

9 THE COURT: I can't hear you with your
10 back turned. And neither can the Court Reporter.

11 MS. WILLIAMS: Court's indulgence.

12 I have handed the Court, in reference
13 to other motions, a criminal sexual conduct in the
14 second degree from 1999 --

15 THE COURT: Why would that impeach his
16 credibility?

17 MS. WILLIAMS: Well, it just depends on
18 how he testifies. I'm making the Court aware of
19 his prior conviction. Burglary first from 1999, he
20 has a burglary second from 1999 and he has an ABHAN
21 from 1999.

22 THE COURT: When was he released from
23 confinement, because those would be more than ten
24 years old?

25 MS. WILLIAMS: He got out of prison, I

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 think, in 2010.

2 THE DEFENDANT: March 1st, 2012.. I did
3 13 years.

4 THE COURT: On which charges, sir?

5 THE DEFENDANT: The ones that she
6 just --

7 THE COURT: All of them?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Did the burglary first of
10 the burglary second actually involve a theft or was
11 it simply a breaking into a home associated with
12 the CSC second?

13 MS. WILLIAMS: The burglary first was
14 associated with a separate attempted rape that was
15 pled down to an ABHAN.

16 THE COURT: So it was not a theft?

17 MS. WILLIAMS: It was not a theft.

18 THE COURT: And neither was the
19 burglary second I assume?

20 MS. WILLIAMS: I do think the burglary
21 second was -- had something to do with theft, Your
22 Honor, but I can look through his file.

23 THE COURT: Mr. Schwacke, do you have
24 any indication that the burglary second had
25 anything to do with a theft?

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 MR. SCHWACKE: The State has given us a
2 complete package of what they were going to
3 introduce and I'm trying to find it.

4 THE COURT: Did it involve a theft or
5 was it associated with the break-in on one of these
6 CSCs? The CSC or the ABHAN?

7 Well, if he had a CSC and it was pled
8 down, then he doesn't have a CSC and an ABHAN, does
9 he?

10 MS. WILLIAMS: Actually, Your Honor,
11 the CSC second was a separate incident with a
12 friend of his or --

13 THE COURT: And so then the ABHAN was
14 what was pled down?

15 MS. WILLIAMS: Well, the ABHAN -- he
16 had -- he has a breaking into autos, that I didn't
17 tell you about, that is from 1999 and the burglary
18 second degree, which does appear to be associated
19 with a theft.

20 The ABHAN --

21 THE COURT: I need to know exactly how
22 it was associated with the theft.

23 MS. WILLIAMS: Well, I will have to
24 have the Court's indulgence for just a moment to
25 look at this. I apologize; I should have had this

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 for you earlier, but I didn't.

2 THE COURT: I also need to know when
3 he was released from confinement on the breaking
4 and entering a motor vehicle. Because that one
5 only carries five years, so it couldn't have been
6 in 2012.

7 MS. WILLIAMS: It appears that he
8 broke into Dorothy White's garage --

9 MR. SCHWACKE: And stole tools.

10 MS. WILLIAMS: -- and stole tools and
11 that is the breaking and entering into autos.

12 THE COURT: When was he released from
13 confinement? Because it's clearly over ten years
14 old. And unless you gave them notice that you
15 intended to use it, you can't use it, and I still
16 have to do the balancing regarding the ten years.

17 MS. WILLIAMS: I don't know. I don't
18 know if he served time on that or not. I have to
19 look it up. Mr. Schwacke's aware of all of these
20 --

21 THE COURT: I still have to do the
22 balancing, if it's more than ten years old.

23 MS. WILLIAMS: I will have to get his
24 sentencing sheets; for some reason the breaking
25 into autos is not in here and there's actually four

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 separate Indictments for that charge. And I can
2 have those to you in the morning.

3 THE COURT: Well, I need some
4 information now because I'm advising him of his
5 rights so he can have adequate time to talk with
6 his lawyer so I don't have to spend additional time
7 on this later.

8 When were you given advance notice, Mr.
9 Schwacke?

10 MR. SCHWACKE: As to the notice of
11 life --

12 THE COURT: As to all of them? The use
13 of these offenses to impeach your client's
14 credibility.

15 MR. SCHWACKE: We have not had that
16 discussion until now.

17 THE COURT: You didn't get written
18 notice that they planned to use these offenses
19 against your client?

20 MR. SCHWACKE: Other than for the
21 purpose of punishment, not with regard to
22 impeachment.

23 THE COURT: So what did you receive in
24 writing? You said she gave you something.

25 MR. SCHWACKE: This would be the packet

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 that ties in to establish the record for purposes
2 of establishing that he's got prior crimes of
3 violence, for the LWOP, life without parole
4 provision.

5 MS. WILLIAMS: I e-mailed both
6 burglaries to Mr. Schwacke --

7 THE COURT: But did you tell him that
8 you planned to use it to impeach his client and it
9 was more than ten years old?

10 MS. WILLIAMS: No, not specifically. I
11 thought that I explained it, but not specifically.

12 THE COURT: Well, Rule 609 requires
13 advanced written notice. Because if it's more than
14 ten years old, based on the -- when his period of
15 confinement ended, 2012, those offenses would not
16 be more than ten years old, but the B&E motor
17 vehicle in '99 would have to be more than ten years
18 old because it only carries five years. And even
19 if he got active time, he would have maxed out on
20 it a long time ago. So I need to know whether you
21 gave him notice regarding that.

22 MS. WILLIAMS: For the B&E?

23 THE COURT: Uh-huh.

24 MS. WILLIAMS: I don't think he has
25 notice, pursuant to 602.. So what we're looking at

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 then is the burglaries that he got out in 2012 for.

2 THE COURT: And you'd have to prove
3 pursuant to case law that each of those involved a
4 theft and then I would have to engage in the
5 balancing. It simply being a burglary does not
6 bring it within the confines of impeachment. So I
7 would need to know if the burglary first involved a
8 theft and if the burglary second involved a theft.

9 MS. WILLIAMS: The burglary first and
10 the burglary second were at the same address, so I
11 would have to go through the file and figure out if
12 they involved --

13 THE COURT: What is your knowledge of
14 the facts and circumstances of these offenses, Mr.
15 Schwacke?

16 MR. SCHWACKE: I'm looking at that
17 case. The burglary appears to have involved what
18 later becomes the assault and battery of a high and
19 aggravated nature from a CSC. Okay. I see -- I
20 see a -- I am a visual person.

21 Your Honor, I need to write these down
22 to figure them out, but it appears that the
23 burglary charge and the accompanying ABHAN charge
24 did not have to do with theft. It had to do with

25 --

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 THE COURT: Breaking in to commit the
2 CSC. That is -- I have a burglary second and a
3 burglary first.

4 MS. WILLIAMS: Right. The burglary
5 second I think has to do with theft. I'm trying to
6 find some proof of that.

7 THE COURT: The burglary first did not?

8 MR. SCHWACKE: Not as alleged in the
9 arrest warrant under E764744.

10 THE COURT: Is that a burglary first?

11 MR. SCHWACKE: That's a burglary first,
12 Your Honor. And the ABHAN charge with that is
13 E764743. That's assault and battery with a high
14 and aggravated nature.

15 BY THE COURT:

16 Q. Sir, at this time, I'm going to explain
17 to you certain of your rights. If you do not
18 understand something that I say, please let me
19 know. If you want me to explain anything in more
20 detail, please let me know. Do you understand?

21 A. Yes, ma'am.

22 Q. I'm explaining these rights to you in
23 advance of what I anticipate, the State resting
24 their case at some point in the morning, so that
25 you will be fully advised, and then I will give you

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 the opportunity to speak with your lawyer,
2 additionally, if you need to. Do you understand?

3 A. Yes, ma'am.

4 Q. Sir, you have the right to claim the
5 protections given to you by the Fifth Amendment of
6 the Constitution of the United States when
7 presenting your defense or the opportunity to
8 present your defense. This Amendment states in
9 part that no person should be compelled in any
10 criminal case to be a witness against himself.
11 This means that you cannot be required to testify.
12 You have the right to testify; however, no one can
13 make you testify. This is a personal right and no
14 one can waive this right except you. If you decide
15 to testify, you would be subject to the same rules
16 that govern other witnesses and you may be examined
17 and cross-examined on any relevant issue in this
18 case. In addition, if you have any convictions
19 involving dishonesty or false statements or of
20 crimes punishable by imprisonment for more than one
21 year and this Court determines that the probative
22 value of admitting this evidence outweighs its
23 prejudicial effect to you, the Solicitor will be
24 able to attack -- to introduce your record to
25 attack your credibility.

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TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 If you decide to testify, this decision
2 on your part must be made freely, intelligently and
3 voluntarily, with knowledge of the protections
4 given to you by the Fifth Amendment and the
5 consequences of your decision to testify. If you
6 decide not to testify, I will instruct the jury
7 that they cannot give this fact any consideration
8 whatsoever, that there is to be no prejudice to you
9 and that you have no burden of proof in this case;
10 that the State is required to prove your guilt
11 beyond a reasonable doubt, and that they cannot
12 discuss your lack of testifying in any manner
13 whatsoever.

14 Whether you testify is entirely left up
15 to you. You can speak to your attorney, family
16 members, friends or anyone else, but the final
17 decision is yourself. Do you understand your
18 rights, sir?

19 A. Yes.

20 Q. Do you have any questions about what I
21 have explained to you?

22 A. No, ma'am.

23 Q. And I'm going to give you an
24 opportunity over this evening as well as tomorrow
25 prior to your attorneys presenting your defense to

TELLY DARNELL MCCLAM - EXAM BY THE COURT

1 discuss this any further with your attorneys. Do
2 you understand?

3 A. Yes, ma'am.

4 THE COURT: Preliminarily, as regards
5 the CSC second, that would not be admissible as it
6 would not be probative. It would be more
7 prejudicial in light of the similarity of the
8 offenses he is currently charged with. Unless
9 there can be some nexus or some theft shown in
10 connection with the burglary in the first degree,
11 as well as the burglary in the second degree, those
12 would be inadmissible. And an ABHAN is not
13 admissible for purposes of impeaching credibility,
14 and unless the B&E motor vehicle comes within the
15 ten-year time limit, that would be inadmissible as
16 well.

17 We'll be at ease until the morning.

18 MR. SCHWACKE: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 (These proceedings were recessed at
21 5:50 p.m., to be continued March 2, 2016, at 9:30
22 a.m.)

23

24

25

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1 (Whereupon, the following proceedings
2 were had in the Court of General Sessions, March 2,
3 2016, Berkeley County, at 9:34 a.m.)

4 THE COURT: State ready to proceed?

5 MS. WILLIAMS: I have a couple of
6 matters to bring to the Court's attention if it's
7 okay. I just want to understand when the Court is
8 going to make a finding under 15-23-500. My
9 understanding is that Mr. Schwacke is not waiving
10 that element of the crime, that you make a finding
11 that he is, that his client has been convicted of
12 the --

13 THE COURT: You haven't completed your
14 case yet, so it's not appropriate for me to make
15 any findings.

16 MS. WILLIAMS: But I just wanted to
17 make sure, because I didn't know when we were
18 supposed to read the stipulation and I didn't want
19 to read it at the end of our case, which is when I
20 would have done it, until the finding is made.

21 THE COURT: Why would I make a finding
22 before you have met your elements?

23 MS. WILLIAMS: I think you can --

24 THE COURT: I can, but I'm not. You
25 need to make your entire case; you have the burden

1 of proof. And then it's only appropriate for the
2 Court to make findings at that time. Or at the
3 conclusion of his case, either way.

4 MS. WILLIAMS: Well, I can't read my
5 stipulation until the Court has made the finding
6 under that statute and --

7 THE COURT: Why wouldn't you be able to
8 read your stipulation before then?

9 MS. WILLIAMS: Because we haven't -- I
10 think the Court --

11 THE COURT: You have an element of
12 proof and you-all have agreed to it.

13 MS. WILLIAMS: Mr. Schwacke has agreed
14 to how it gets presented to the jury. He's not
15 waiving the element of the fact that his client has
16 to be found by the Court --

17 THE COURT: I understand that, but I'm
18 not going to make a finding until you have finished
19 your case. I don't think it's appropriate that I
20 make a finding.

21 MS. WILLIAMS: That's fine. If you
22 would just let me know when that's going to be so I
23 can read my stipulation before --

24 THE COURT: I think you need to do
25 whatever you need to do to meet your elements of

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1 proof.

2 MS. WILLIAMS: In our opinion we have
3 met the elements of proof, except the one that we
4 have no control over, which the Court has to make.
5 We've given you a certified conviction, we've
6 presented evidence about him having the gun. We
7 just need, outside of the presence of the jury, at
8 some point --

9 THE COURT: I've never had a Court make
10 a finding before you complete your case. I've
11 never seen it done that way. You still have to
12 meet your elements of proof, and then at the
13 appropriate time I make any findings of fact. I
14 don't make findings of fact before you've completed
15 your case.

16 And, actually, most times it's not done
17 until the end of the entire totality of the case is
18 presented. But you have an element of proof to
19 meet. So if you already have a stipulation, that
20 means he's already agreed that it's uncontroverted
21 that that comes into evidence. The only way a
22 stipulation comes into evidence is if one of you
23 agrees to read or publish it.

24 MS. WILLIAMS: He's not agreed to that
25 part of the statute.

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1 THE COURT: He has agreed to the
2 publication of your stipulation. That's the only
3 thing you need to be concerned about. And you are
4 correct, you cannot control when the Court makes
5 its findings of fact. That is not really for your
6 concern. You need to be concerned about your
7 element of proof and present your case in that
8 regard.

9 MS. WILLIAMS: We will be aware of our
10 own elements of proof that we have control over.

11 The other thing I wanted to just put on
12 the record is that Mr. Schwacke's case and the
13 questions that he's asked and the proof that he's
14 about to present all have to do with the fact that
15 the victims did not run away when they had small
16 windows of time when the gun wasn't directly on
17 them.

18 The evidence that I wanted to proffer
19 during Deadrene's testimony was that five days
20 before, she had reported, she had run to the
21 police --

22 THE COURT: I have already made a
23 contemporaneous ruling on that.

24 MS. WILLIAMS: And I understand that,
25 Your Honor, but I just -- just for possible

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1 rebuttal --

2 THE COURT: You don't need to make an
3 additional record. Rule 18 provides that once the
4 Court has -- I've allowed you to make your
5 statement, that's why I record all bench
6 conferences, and I've already ruled
7 contemporaneously on it. And I have reserved
8 whether he opens the door or not. I don't know if
9 that's going to happen. I have no idea.

10 MS. WILLIAMS: The only thing I just
11 wanted to add, because I didn't give you all of the
12 details, if it would come in later or on rebuttal
13 or on cross, is that the police told her she could
14 not -- they didn't believe her --

15 THE COURT: You told me that at bench
16 conference.

17 MS. WILLIAMS: Okay.

18 THE COURT: You said that, I heard you
19 and I made a ruling.

20 MS. WILLIAMS: The other concern we
21 had, we did find the burglary second was based on
22 stealing, but apparently there is a fairly new case
23 called Christopher --

24 THE COURT: Yeah, I'm aware of it, but
25 I still needed to know if it was based on a theft,

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1 because there is another case that deals with that
2 as well, that deals with the clarification of the
3 Al-Amin precedent. So all of that is premature
4 until he actually testifies. I needed to know all
5 that information so that I could make a ruling at
6 the appropriate time so that I can advise him as to
7 whether he plans to testify.

8 MS. WILLIAMS: I understand. And I
9 apologize to the Court that we didn't have it handy
10 yesterday, and it's not an excuse but we have had a
11 lot of difficulty with some of his convictions
12 appearing on his rap sheet and the public index.
13 We did finally get the files ordered, and it's
14 certainly not an excuse, it's a three-year old
15 case, but we did find out that he was on probation
16 until March 1, 2012, and then he was on community
17 supervision after that; and that the burglary first
18 was not based on theft, but the burglary second was
19 based on him breaking into the detached garage of a
20 residence without consent, stealing an electric
21 drill, Black and Decker jig saw, a Craftsman
22 compound, miter saw. All items approximately
23 valued at \$680.

24 And he pled guilty to that at the same
25 time as all those other crimes, even though it was

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1 two separate victims, and went to prison. At that
2 time the range of burglary, nonviolent, was 0 to
3 15, because it was before 2010. So he went to
4 prison until March 1, 2012.

5 THE COURT: Okay. Is there anything
6 else we need to take up before you proceed with the
7 next witness?

8 MS. WILLIAMS: I think Mr. Schwacke is
9 objecting to our next witness, which is our last
10 witness, Alyssa Rheingold, who is our expert.

11 MR. SCHWACKE: I'm not objecting. I'm
12 going to get to the point where I might have to
13 object, once we get through the qualifications
14 standpoint, she's going to qualify her as an
15 expert; if I don't have any questions after that --

16 THE COURT: State ready to proceed?

17 MS. WILLIAMS: Yes, Your Honor.

18 THE COURT: Is the defense ready to
19 proceed?

20 MR. SCHWACKE: Yes, ma'am.

21 THE COURT: Please bring in the jury.

22 (Jury in, 9:41 a.m.)

23 THE COURT: You may be seated. Good
24 morning, ladies and gentlemen. I hope that you all
25 had a pleasant evening recess. We will now resume

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ALYSSA RHEINGOLD - DIRECT EXAM

1 with the presentation of testimony, and I would ask
2 that you give Counsel your undivided attention.

3 You may proceed.

4 MS. WILLIAMS: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MS. WILLIAMS: The State would call
7 Alyssa Rheingold.

8 ALYSSA RHEINGOLD,

9 being first duly sworn, testified as follows:

10 THE CLERK: Have a seat, please state
11 your full name for the record and spell your last.

12 THE WITNESS: Alyssa Rheingold,
13 R-H-E-I-N-G-O-L-D.

14 THE COURT: You may proceed.

15 MS. WILLIAMS: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION

18 BY MS. WILLIAMS:

19 Q. Dr. Rheingold, could you tell us a
20 little about your educational background and
21 training?

22 A. Yes. I went to University of
23 Pennsylvania for my undergraduate degree, where I
24 graduated with honors cum laude majoring in
25 psychology in 1996, and then I went on to graduate

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ALYSSA RHEINGOLD - DIRECT EXAM

1 studies at M. C. P. Hahnemann University, which is
2 currently known as Drexel University, for clinical
3 psychology. I received my Master's in 1998 and
4 then my PhD in clinical psychology in 2001.

5 Q. And what is your position now?

6 A. I'm currently a professor and licensed
7 clinical psychologist at the National Crime Victims
8 Research and Treatment Center at the Medical
9 University of South Carolina.

10 Q. How long have you been there?

11 A. I have been at MUSC since 2000. I
12 completed a psychology internship there as part of
13 my graduate program for a year and then I stayed on
14 for two years as a postdoctoral fellow specializing
15 in adult and child trauma research. And then I've
16 been a faculty member since 2003.

17 Q. What did your postdoctoral fellowship
18 involve?

19 A. It was a two-year fellowship where I
20 mainly focused on research in the area of trauma
21 and traumatic response for adults and children. I
22 also did some clinical -- work in the clinical area
23 of trauma and treating mental health reactions to
24 traumatic events.

25 Q. Have you gotten any awards or

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ALYSSA RHEINGOLD - DIRECT EXAM

1 commendations during your tenure?

2 A. Yes. I received the MUSC Foundation
3 Outstanding Clinician Award, which is given to two
4 out of I think it's about 1500 clinicians at MUSC,
5 for my work working with victims of crime.

6 Q. Have you presented any presentations?

7 A. I have. Part of my academic work, I
8 present at national and international conferences,
9 as well as regional, state, local type of
10 conferences, and I have presented probably over
11 about a hundred different presentations.

12 Q. How about any publications?

13 A. I've published about 50 articles and
14 chapters, 35 of those are peer review journals,
15 predominantly in the area of trauma.

16 Q. And in your present position, do you
17 still see patients?

18 A. Yes.

19 Q. Go ahead.

20 A. So I direct the clinical operation at
21 the Crime Victims Center. I'm in charge of both
22 our office-based adult and child clinics, as well
23 as our outreach -- community outreach program. We
24 provide services in the community for victims of
25 crime. As part of my duties, I do see patients

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ALYSSA RHEINGOLD - DIRECT EXAM

1 myself, and I also supervise psychology interns,
2 psychiatry residents, and several full-time
3 clinicians.

4 Q. You said you supervise other
5 clinicians?

6 A. Yes.

7 MS. WILLIAMS: Your Honor, at this time
8 we would offer Dr. Rheingold as an expert in the
9 field of psychology, in the field of impact trauma.

10 THE COURT: I'm sorry, I didn't hear
11 you.

12 MS. WILLIAMS: We would offer her as an
13 expert in the field of psychology, specifically in
14 the field of impact of trauma and domestic
15 violence.

16 MR. SCHWACKE: Your Honor --

17 THE COURT: Any questions or
18 objections?

19 MR. SCHWACKE: I do have an objection.

20 THE COURT: Please approach.

21 (Bench conference.)

22 THE COURT: What is your objection?

23 MR. SCHWACKE: Just to the --

24 THE COURT: I think she can talk about
25 trauma, but there's no evidence of CDV in the

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ALYSSA RHEINGOLD - DIRECT EXAM

1 record, so it wouldn't be relevant or appropriate
2 until such time that it's raised.

3 Now, if they raise it in their
4 presentation of the case, then you may be able to
5 call her back and rebut it, but at this point, it's
6 not relevant.

7 MS. WILLIAMS: Okay.

8 THE COURT: It's not probative on any
9 issue.

10 MS. WILLIAMS: Okay.

11 (End of bench conference.)

12 THE COURT: Now, with that ruling, is
13 there any exception to her admission in the area of
14 impact of trauma?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: You may proceed with that
17 qualification.

18 MS. WILLIAMS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 BY MS. WILLIAMS:

21 Q. Now, Dr. Rheingold, have you had an
22 opportunity to treat patients that have been
23 through traumatic events?

24 A. Yes.

25 Q. And have some of those patients been

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ALYSSA RHEINGOLD - DIRECT EXAM

1 sexually assaulted?

2 A. Yes.

3 Q. And have you had an opportunity to deal
4 with some of the symptoms that they deal with on an
5 ongoing basis?

6 A. Yes.

7 Q. And have you been able to then in your
8 work do research and get an understanding of what
9 the field of psychology wisdom is about what people
10 go through after they've been through a traumatic
11 event?

12 A. Yes.

13 Q. And if someone had hypothetically just
14 been raped, and in the hours after the rape, is it
15 possible that they would go through what some
16 people refer to as a freeze state?

17 A. Yes. And may I clarify? So some
18 victims of trauma right after a traumatic event
19 could have a host of reactions. So there isn't one
20 set sort of immediate reaction that anyone
21 experiences; however, a lot of victims of trauma
22 experience what is called sort of fight, flight, or
23 freeze reaction, where they're either just -- in a
24 survival type of behavioral response to protect
25 themselves, either by fighting, getting out, or

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ALYSSA RHEINGOLD - DIRECT EXAM

1 freezing. Sort of -- in sort of a playing possum,
2 if you will, type of response, where it's a
3 survival mechanism to do what you can in that
4 moment to protect yourself and to emotionally cope
5 through it as well.

6 THE COURT: Doctor, could you pull the
7 microphone closer to you so we can hear you?

8 You may continue, Ms. Williams.

9 BY MS. WILLIAMS:

10 Q. And what does emotionally numb mean?

11 A. It's a term used to describe some
12 victims' response to trauma as a way of coping. So
13 if someone experiences a horrific traumatic event,
14 it could be very difficult to manage some reactions
15 to that and so they may as a way to try to avoid or
16 cope and deal with it, sort of avoid the emotions
17 and -- to the point where they report feeling numb.
18 They don't feel any sort of emotions tied to that
19 or tied to other sorts of emotions as well.

20 Q. Is it fair to say that someone just
21 kind of goes through the motions?

22 A. Yes. So some victims will report kind
23 of like going through the motions, feeling inside
24 kind of like a zombie, not experiencing any emotion
25 at all. Sort of going through their routine as a

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ALYSSA RHEINGOLD - DIRECT EXAM

1 way to cope.

2 Q. And hypothetically, if there was a
3 victim that was sexually assaulted and in such fear
4 of her rapist that she urinated on herself and was
5 just terrified of him and remained with him all
6 day, would it be unusual that she would just do
7 everything that he said?

8 A. So it wouldn't be unusual if someone
9 has just experienced a traumatic event and perhaps
10 if they've been exposed to -- especially if they
11 were exposed to ongoing violence, that they would
12 try to continue to do what they feel like they need
13 to do in order to protect themselves. And that
14 might be out of fear or threat of future harm.

15 Most often, sexual assault victims
16 don't go immediately running and disclose that
17 they've been sexually assaulted. Most actually
18 don't even report to authorities shortly after.

19 Q. And if you add to that hypothetical
20 that intermittently the assailant had a gun, she
21 knew he had a gun, would that then heighten her
22 sense of wanting to survive and doing everything
23 that he said, even when he didn't have the gun
24 directly on her?

25 A. I would assume, if somebody has been

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ALYSSA RHEINGOLD - DIRECT EXAM

1 threatened with a gun, it would increase the
2 potential risk for their safety and interpretation
3 of future safety.

4 Q. So have you come across cases where
5 someone has been in a situation where their freedom
6 has been restricted, they're not allowed to go
7 where they want to go because someone is holding
8 them by force, but then there's windows of
9 opportunity where, looking in as a person that
10 hasn't been through the traumatic event, looking in
11 from a different perspective like us, that it seems
12 like maybe they would have a window to run away or
13 to tell somebody?

14 You know, how is that explainable, if
15 you've been through a traumatic event just hours
16 before? How is that to be understood in terms of
17 their psyche?

18 A. You know, every case is sort of unique
19 and different, and so trauma victims -- when
20 someone has just experienced a trauma, it impacts
21 their thought process, it impacts their
22 concentration, their ability to sometimes think
23 clearly.

24 They're also still concerned about the
25 potential threat of harm, and there is a concern,

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ALYSSA RHEINGOLD - DIRECT EXAM

1 even if they do potentially reach out for help,
2 that they're not going to be believed or helped,
3 and if so, then they potentially have put
4 themselves at greater risk, so...

5 Q. What about if you had a victim who was
6 in fear of a family member for a child's safety and
7 knew what the defendant was capable of, like what
8 had -- already was afraid of him, and yet did not
9 run away at periods of time when the average person
10 might look and say, well, you know, why didn't you
11 run away?

12 How does that play into it, fear for
13 family members, particularly children, and
14 historical knowledge of and fear of the defendant?

15 A. It definitely plays a role. So if --
16 if you're a victim of trauma and it's perpetrated
17 -- especially by someone that you know, and there
18 has been ongoing violence either to yourself or
19 children or family members or even just threats, in
20 the sense of coercion and threats by that
21 individual, that it definitely impacts your
22 willingness to report and to seek help.

23 A lot of trauma victims in those
24 instances report feeling concerned that they're not
25 going to be believed, they're scared, frightened in

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ALYSSA RHEINGOLD - DIRECT EXAM

1 these instances.

2 Q. And I'm assuming in your practice you
3 see that different patients cope with hostage
4 situations and trauma situations and sexual assault
5 situations in many different ways?

6 A. Yes. So there isn't one set way a
7 victim sort of should respond. There is a wide
8 variety of reactions.

9 Q. And everybody is different?

10 A. Correct.

11 Q. And have you ever seen victims who take
12 the approach to just try to go along with the
13 person that is holding them, hoping that they can
14 convince them to let them go? Have you ever seen
15 that kind of situation when the two people know
16 each other?

17 A. So if the perpetrator is somebody that
18 the victim knows, they are much more likely not to
19 report and much more likely to stay in that
20 relationship longer, than if it was a stranger or
21 an acquaintance. They are much more likely to --
22 to stay in the relationship. Some of it is out of
23 fear. Some of it is out of shame and guilt,
24 especially if it's violence within a family. There
25 is some -- folks believe it's a personal matter to

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ALYSSA RHEINGOLD - DIRECT EXAM

1 manage and deal with, and sometimes they just feel
2 like no one is going to help or believe them.

3 Q. What would be some of the reasons why
4 someone in a relationship like that wouldn't tell
5 family members on either side about what's going
6 on? Maybe family members wouldn't even know there
7 was anything wrong in their relationship.

8 A. That's actually very common. So a lot
9 of victims who are being abused within a
10 relationship feel shame, they feel -- still feel a
11 lot of threats. So if they've been threatened or
12 coerced or intimidated by the perpetrator, that
13 might increase their unwillingness to want to talk
14 to others or to seek help.

15 Q. And I'm not really sure how to phrase
16 this because it's not a scientific question, but
17 some victims in a relationship where trauma occurs
18 run away and others think they can sort of talk the
19 guy out of it. Is that just a difference in
20 personalities or is that impacted by how long
21 they've been in the relationship, economic
22 dependence, education levels? What are some of the
23 factors that make one woman think -- like a family
24 member might come in and go, you need to get out.
25 And she's like, no, no, sometimes he's nice. I can

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ALYSSA RHEINGOLD - DIRECT EXAM

1 talk him out of this. Does that occur and is there
2 something clinical that you see in your practice?

3 A. So, yes, a lot of victims that I work
4 with, if violence is occurring within a
5 relationship, there's more than just the violence
6 that's occurring. Often there is other sort of
7 power/control type of behaviors that are occurring,
8 so that victims then feel obligated to remain in
9 the relationship: Intimidation, minimizing the
10 victimization, using finances as a -- feeling
11 financially tied to the perpetrator, using
12 children, threatening to harm individuals, social
13 isolations of keeping that person perhaps from
14 others. Those are all sort of dynamics that often
15 sometimes keep the individuals in those
16 relationship.

17 Q. Have you found in your practice that
18 family members of the victims often figure it out a
19 lot sooner than the victims?

20 A. Yes. So sometimes in these
21 relationships, folks become isolated, sometimes or
22 often because family members see that abuse is
23 occurring or see that violence is occurring and
24 they try to seek them out and say, you need help,
25 and the victim sometimes does not -- doesn't do

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ALYSSA RHEINGOLD - DIRECT EXAM

1 that for reasons that I mentioned, and sometimes
2 that can then make them feel isolated, that they
3 have the support or that those individuals then
4 sometimes pull away.

5 Q. Now, you talked a little bit about
6 flight, fight, or freeze. Do you sometimes in your
7 practice collaborate with other doctors that need
8 to treat the physiological symptoms that these
9 victims are having so that you have an
10 understanding of what's actually going on when they
11 experience these reactions to trauma?

12 A. So I collaborate with psychiatrists who
13 also provide treatment for physiological symptoms
14 that are associated with traumas. And I treat --
15 through more evidence-based intervention --
16 evidence-based psychotherapy intervention, treat
17 trauma reactions as well.

18 So folks can develop posttraumatic
19 stress disorder, which is being very overwhelmed by
20 intrusive thoughts and images, a lot of
21 hyperarousal, feeling like you're on guard and on
22 edge all the time, being easily startled by loud
23 noises. All those sort of -- are within the
24 context of posttraumatic stress disorder, which we
25 often attribute to war veterans, but folks who

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ALYSSA RHEINGOLD - DIRECT EXAM

1 experience sexual assault, domestic violence, can
2 experience the same type of symptoms.

3 Q. When you were talking about how someone
4 might act right after a sexual assault or the
5 threat of a child and being in that traumatic event
6 and you talked about freeze and going through the
7 motions and being emotionally numb, what is
8 actually going on that causes them to have that
9 kind of demeanor where they're sort of robotic or
10 going through the motions?

11 A. Some of it is our body's sort of
12 natural response to danger. So some folks are more
13 in tuned to kind of kick into more fight mode and
14 others are more in tuned to go more into the
15 emotional numbing sort of freeze response.
16 Behaviorally it is demonstrated in somebody sort of
17 kind of going through the motions, to kind of
18 protect themselves, not create waves, do what they
19 can to hopefully not endure future harm. And that
20 might not be reaching out for help.

21 It might just be keeping quiet and
22 doing what you need to do so that you're not going
23 to be potentially harmed again.

24 Q. Hoping that it ends?

25 A. Correct.

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ALYSSA RHEINGOLD - CROSS EXAM

1 MS. WILLIAMS: Nothing further.

2 THE COURT: Any questions for the
3 witness?

4 MR. SCHWACKE: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Good morning.

9 A. Morning.

10 Q. Dr. Rheingold, you work at MUSC in the
11 Crime Victims Center?

12 A. Correct.

13 Q. And you've been there since when?

14 A. I've been a faculty member since 2003.

15 Q. Do you get paid to come here and
16 testify in these types of cases?

17 A. I do get paid for my time here, as this
18 is not part of my general duties at MUSC.

19 Q. So you will bill the State at some
20 point for this time?

21 A. Correct.

22 Q. And how many times have you testified
23 for the State in these types of cases?

24 A. Twice.

25 Q. I'm sorry?

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ALYSSA RHEINGOLD - CROSS EXAM

1 A. Twice.

2 Q. And you indicated that your training
3 and kind of area of work deals with patients
4 suffering traumatic criminal offenses essentially?

5 A. I treat folks who have experienced all
6 types of trauma, including victimization.

7 Q. And when you say, you treat, what is
8 involved in the treatment of a patient?

9 A. Sure. So sometimes folks can
10 experience traumatic reactions, like posttraumatic
11 stress disorder or depression or anxiety, as a
12 result of victimization, and they are seeking
13 assistance with that; it can be very debilitating
14 and chronic. And so they will come to my center,
15 myself, to get appropriate care.

16 So there's various evidence-based types
17 of treatment, interventions that are demonstrated
18 to be fairly effective for treatment.

19 Q. And the people that -- or the
20 individuals that you see as patients, you would
21 then be able to actually form and state an opinion
22 about them and some idea as to what has happened
23 and how they're dealing with what has happened to
24 them?

25 A. Correct.

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ALYSSA RHEINGOLD - CROSS EXAM

1 Q. And you have not treated as a patient
2 anyone in connection with this case?

3 A. Correct.

4 Q. So you can't form or express any
5 opinions to the jury about how a specific
6 individual involved in this case deals with
7 anything?

8 A. Correct. I can only provide general
9 information about how trauma victims as a whole
10 often respond.

11 Q. So dealing generally with trauma
12 victims, what are some of the ways they respond?
13 You mentioned some, but if you could just -- we
14 could one through one -- one at a time?

15 A. Well, there's -- I think one of the
16 most important comments to make is that there is no
17 specific response that all victims react in the
18 same exact way. So there is a variety of
19 responses.

20 Q. And how big is that variety?

21 A. I mean, it can range. So some folks
22 can be very resilient after trauma and not
23 experience a whole lot of reactions, where others
24 can be extraordinarily debilitated that they need
25 to seek inpatient hospitalization. So there is a

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ALYSSA RHEINGOLD - CROSS EXAM

1 wide variety of response.

2 Q. You mentioned coping is one kind of a
3 response?

4 A. So there are behaviors that one can
5 engage in that they can be used as a way to cope
6 and manage with negative reactions.

7 Q. You mentioned emotional numbness?

8 A. Yes.

9 Q. What are people who are not emotionally
10 numb -- are there people who have suffered an
11 injury such as you were talking about and not be
12 emotionally numb?

13 A. Yes.

14 Q. Is that sort of true of everything,
15 that -- because everyone acts differently to a
16 situation, that means while one person can be over
17 here and one can be totally over here, in the way
18 they're managing?

19 A. Correct.

20 Q. So it's as if a person might have
21 experienced that type of situation and, again, have
22 a diagnosis, where another person -- or not a
23 diagnosis, but you're claiming that would be a
24 reaction to that injury to themselves. Someone
25 could be over here and have a totally different --

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ALYSSA RHEINGOLD - CROSS EXAM

1 again, different reaction?

2 A. There's a wide variety of reactions,
3 yes.

4 Q. And there's no way for you or anyone to
5 predict how a given person is going to react in
6 that situation?

7 A. No. There are some risk factors for
8 the likelihood that somebody might have
9 posttraumatic reactions. So I can't 100 percent
10 predict, but there are risk factors, so the extent
11 of physical injury -- the greater physical injury,
12 the perceived threat of harm in an instance; the
13 past victimization history might increase their
14 likelihood if they'd experienced a more traumatic
15 response to a situation.

16 Q. My kids used to play a game called
17 Opposite Day. And that's sort of true here, right?
18 A person could very well be victimized of a crime
19 and display these characteristics, where another
20 one would play a completely different set of
21 characteristics?

22 A. Correct.

23 Q. So the jury in hearing that from you
24 knows that not only could it be A, it could also be
25 Z, in terms of that?

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ALYSSA RHEINGOLD - REDIRECT EXAM

1 A. In response?

2 Q. In response, yes.

3 A. Correct.

4 Q. And I guess we have been using a term a
5 little bit generically, I guess; when you're
6 dealing with trauma, it doesn't necessarily have to
7 have been a crime or a physical injury to a person?

8 A. That I've directly worked with or just
9 trauma in general?

10 Q. Trauma in general.

11 A. Trauma -- correct. So somebody can
12 experience traumatic reactions as a result of a
13 non-victim-related type of injury.

14 Q. Or non-physical situation?

15 A. Correct.

16 MR. SCHWACKE: That's all the questions
17 I have.

18 THE COURT: Any redirect?

19 MS. WILLIAMS: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. You haven't met these victims, have
23 you?

24 A. No, ma'am.

25 Q. And when you're talking about these

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ALYSSA RHEINGOLD - REDIRECT EXAM

1 reactions that people have to trauma, these are
2 common reactions that people have to trauma?

3 A. Correct.

4 Q. And isn't it true that, even though
5 there's a wide range of how people react to trauma,
6 like a Navy vet might react differently than a
7 17-year-old girl that was taken from her bedroom,
8 there are some common reactions, because you have
9 literature and there is research that has been done
10 about flight, fight, and freeze; isn't that
11 correct?

12 A. Yes.

13 Q. And emotional numbing, you know, that
14 term comes from the fact that people have been
15 studied and that's a common reaction for some
16 people?

17 A. Yes.

18 Q. So the whole Opposite Day thing, it's
19 not as if -- it's a little misleading, would you
20 agree, that just because one person has a reaction
21 where they freeze, that doesn't mean that there's a
22 person -- there's an opposite reaction for every
23 single person in the population? Everybody does
24 react differently, but it depends, as you said, on
25 risk factors?

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ALYSSA RHEINGOLD - REDIRECT EXAM

1 A. Yes. So there's a wide variety of
2 reactions that they can have to trauma. There is
3 -- often I think as lay people we try to interpret
4 a trauma based on how a victim may have reacted to
5 that, but that might not be accurate because
6 victims can react differently one to the other.
7 That being said, there are some reactions that
8 victims can demonstrate as a response to trauma.
9 So a numbing -- about a third of the population do
10 end up with posttraumatic stress disorder, a third
11 do develop depression. So -- though not everybody
12 experiences that, those are -- trauma increases the
13 risk for those having those sort of reactions.

14 Q. So might you expect, hypothetically, a
15 17-year-old-girl, taken from her house at gun point
16 and raped in the dark in a desolate area, to react
17 differently than, I don't know, a man Mr.
18 Schwacke's size and someone attacking him and maybe
19 him being able to fight them off --

20 MR. SCHWACKE: Your Honor, I have to
21 object.

22 THE COURT: Rephrase the question.

23 BY MS. WILLIAMS:

24 Q. A grown man who maybe was already out,
25 someone tries to attack him, he's able to --

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1 because of his size and experience and age, able to
2 handle that situation differently. Would you
3 expect that those two people, in separate
4 situations, with different histories, different
5 ages, might react differently to trauma?

6 A. Yes.

7 MS. WILLIAMS: Thank you.

8 THE COURT: Any objection to the
9 witness being excused? From the State?

10 MS. WILLIAMS: Not the State.

11 THE COURT: From the defense?

12 MR. SCHWACKE: No, Your Honor.

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

14 THE WITNESS: Thank you very much.

15 THE COURT: You're welcome.

16 State may proceed.

17 MS. WILLIAMS: Your Honor, the State
18 rests.

19 THE COURT: Madame Forelady, ladies and
20 gentlemen, the State has rested their case. I have
21 some brief matters of law to take up with the
22 attorneys. During the break, please do not discuss
23 the case --

24 MS. WILLIAMS: Actually, Your Honor, I
25 think we need to read our stipulation.

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1 THE COURT: You may proceed.

2 MS. WILLIAMS: I apologize.

3 THE COURT: The State may proceed.

4 MS. WILLIAMS: Thank you. For the
5 charges of unlawful possession of a firearm by a
6 person convicted of a violent offense, both the
7 defense counsel and the State have agreed to a
8 stipulation.

9 The stipulation is that the State and
10 the defense have stipulated that the defendant has
11 previously been convicted of a violent felony, as
12 classified by section 16-1-60, and as required by
13 section 16-23-500 of the South Carolina Code of
14 Laws. This law is unlawful possession of a firearm
15 by a person convicted of a violent offense.

16 THE COURT: Anything further from the
17 State?

18 MS. WILLIAMS: No. Thank you, Your
19 Honor.

20 THE COURT: Does the State rest?

21 MS. WILLIAMS: The State now rests.

22 THE COURT: Ladies and gentlemen, I
23 have some matters of law to take up with the
24 attorneys. During the break, please do not discuss
25 the case and please leave your notepads in your

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1 seats. We appreciate your patience.

2 (Jury out, 10:14 a.m.)

3 THE COURT: You may be seated.

4 The State has rested. Are there any
5 motions?

6 MR. SCHWACKE: Your Honor, for the
7 record, the defense would move for a directed
8 verdict of acquittal on the basis that the evidence
9 presented by the State, in the most favorable light
10 to the State, is insufficient for conviction of...

11 THE COURT: I can barely hear you, Mr.
12 Schwacke. If you could speak up for me, please.

13 MR. SCHWACKE: Yes, ma'am. The State
14 would move -- the defense would move for a directed
15 verdict of acquittal, for the record, based upon
16 the evidence presented by the State does not meet
17 their burden of guilt beyond a reasonable doubt.

18 THE COURT: Would the State like to
19 respond?

20 MS. WILLIAMS: Yes, Your Honor. Would
21 you like me to go through each charge?

22 THE COURT: It's up to you.

23 MS. WILLIAMS: With regard to -- we
24 feel that the State has met our burden. As the
25 Court knows, the Court is concerned with evidence,

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1 not the weight of the evidence. And with regard to
2 criminal sexual conduct in the first degree, the
3 defendant, Telly McClam, took Leandre Jenkins out
4 of her home, took her to a desolate place, forced
5 her at gunpoint to perform fellatio and forced her
6 at gunpoint to have sex with him.

7 There is DNA evidence with his semen on
8 the vaginal and rectal swabs that showed that that
9 occurred, and that happened in Berkeley County.
10 She testified they used to live over by Matilda
11 Circle. And the Captain pointed to Matilda Circle,
12 which was also near Fairview Court, both in
13 Berkeley County.

14 With regard to burglary in the first
15 degree, the defendant broke into a residence, armed
16 with a deadly weapon, displayed a knife and a
17 revolver, and with a crime -- with the intent to
18 commit a crime, and that was kidnapping and
19 criminal sexual conduct in the first degree.

20 With regard to commission of a crime
21 while possessing a firearm, or knife, or a weapon,
22 he broke into the house, he kidnapped her at
23 gunpoint, he displayed the knife, he kidnapped
24 Deadrene at gunpoint, he used the gun to sexually
25 assault her by holding the gun on her while he

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1 forced her to do sex acts, and he held the gun on
2 for the ongoing offense of kidnapping during the
3 whole day.

4 With regard to unlawful possession of a
5 firearm by a person convicted of a violent offense,
6 once the Court makes a finding that he's been
7 convicted of a violent offense, we have provided
8 the Court with two certified convictions, one for
9 -- actually three, burglary first, burglary second,
10 and CSC second. And those are violent offenses
11 under the statute, as defined by 16-1-60.

12 There has been ample evidence that he
13 had a gun all day. The victims described the
14 revolver that he had when he kidnapped them.
15 Leandre had described it in detail to the
16 detectives the day after the event occurred. We
17 showed it to her in court. She identified it as
18 the revolver.

19 We had SLED officers say that while he
20 was being apprehended, he was reaching around for a
21 gun that presumably had fallen from his person,
22 then they kept an eye on that gun and that gun was
23 taken and put into the box and the serial number
24 was recorded and the chain of evidence was kept all
25 the way to SLED. That was the same gun that

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1 Leandre had identified as the same gun that he had
2 when he came into her place.

3 With regard to the kidnapping, he
4 carried Leandre away from her home after he broke
5 into her home. He confined her -- he abducted her,
6 he confined her all day, at one point -- he tied
7 her with duct tape at one point. The only time
8 they were able to go was when he fled from the car
9 after a high-speed chase.

10 With regard to Deadrene McHoney, he
11 tricked her into getting in the car. He inveigled
12 her; I would also say that decoy as a term in that
13 statute would also apply. She only got into the
14 vehicle because he said, I've got your daughter,
15 I'm not going to hurt her. And the suggestion was,
16 if you get into the vehicle. As soon as she got
17 into the vehicle, he showed her the gun and said,
18 this is what I got, and it was right under his leg.

19 He continued to hold her, confine her
20 all day long, until the police engaged in a
21 high-speed chase. He displayed the knife, he
22 displayed the gun on at least two occasions. He
23 said, this is where you die, I could kill you right
24 now. He took them to a remote area in the woods
25 and would not let them go.

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1 So we feel that we have met our burden,
2 Your Honor, especially in light of the favor --
3 most favorable to the State and we would ask that
4 you deny the defense's directed verdict motion.

5 THE COURT: Anything further from the
6 defense?

7 MR. SCHWACKE: No, Your Honor.

8 THE COURT: The Court, when considering
9 a motion for directed verdict, is only concerned
10 with the existence or non-existence of evidence and
11 not its weight. The State is required to prove by
12 direct or substantial circumstantial evidence the
13 guilt of the defendant. They are not required to
14 meet this burden by showing proof or evidence that
15 infers guilt to the exclusion of any other
16 reasonable hypothesis.

17 The Court finds that there is both
18 direct and substantial circumstantial evidence
19 reasonably tending to prove the defendant's guilt;
20 that being the direct testimony of the victim on
21 both criminal sexual conduct charges, as well as
22 both victims on the kidnapping charge -- kidnapping
23 charges, as well as the testimony regarding the
24 burglary in the first degree and possession of a
25 weapon during the commission of a violent crime and

1 unlawful possession of a firearm by a person
2 convicted of a violent offense; therefore, the
3 motion for directed verdict is denied.

4 Just for clarity of the record,
5 16-23-500 requires the Court to make an affirmative
6 finding, but that is regarding the sufficiency of
7 the charge. That does not go to the jury, it's not
8 required to be published to the jury. That's a
9 legal sufficiency finding and the statute does not
10 require when the Judge should make that finding of
11 fact.

12 The fact that you all have entered into
13 a stipulation and the fact that he has clearly been
14 convicted of criminal sexual conduct in the second
15 degree, which is most serious and violent, really
16 makes that finding a formality. He clearly has
17 been convicted of the crime. You still are
18 required to prove that he was in fact in possession
19 of a weapon at the time of this offense, but that's
20 a question of legal sufficiency for us. That's not
21 for the jury; it doesn't get published to the jury.

22 And you all have entered into a
23 stipulation, which does not require any further
24 proof, which is, quite frankly, astute on the
25 defense's part, because then I would have had to

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1 give a long curative instruction if you had
2 actually published what the offense was that he had
3 been convicted of.

4 MS. WILLIAMS: We understand.

5 Can we make a Court exhibit of his
6 violent offenses? I have a certified copy.

7 THE COURT: If you want to. I think
8 it's attached to the stipulation which is already a
9 Court exhibit.

10 MS. WILLIAMS: It is not, Your Honor.

11 THE COURT: Why didn't you all give the
12 stipulation to the Curt Reporter as I instructed
13 earlier? It should have been made a Court's
14 exhibit because stipulations don't go back to the
15 jury. It should have been made a part of the
16 record a long time ago.

17 THE COURT REPORTER: The stipulation
18 was made an exhibit, but there's nothing attached.

19 MS. WILLIAMS: It just doesn't have
20 the --

21 THE COURT: Oh, well, you all need to
22 attach it. I thought it was, as you attached it to
23 mine.

24 MS. WILLIAMS: And to Mr. Schwacke's
25 was attached a certified copy of the burglar first

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1 conviction.

2 THE COURT: Well, you need to attach
3 the criminal sexual conduct as well, because what I
4 was given was the CSC second, which he was
5 convicted of 6/16/99.

6 MS. WILLIAMS: This is the same
7 conviction date of the CSC second --

8 THE COURT: I think you need to give
9 them both, because what I relied on was the CSC
10 second.

11 MS. WILLIAMS: Okay. Do you still
12 have, Your Honor, a copy of the CSC second for the
13 purpose of the LWOP?

14 THE COURT: What I have is attached to
15 the stipulation. It is not attached to the LWOP.

16 MS. WILLIAMS: But you have one
17 attached to the LWOP, I think. You should.

18 Thank you, Your Honor.

19 THE COURT: You're welcome.

20 Sir, if you would stand for me, please.
21 I'll remind you that you're still under oath.

22 We have not reached the state of the
23 trial where you may present your defense. I have
24 explained to you on yesterday evening your rights
25 according to the Constitution and your right

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1 against self-incrimination and your right to remain
2 silent.

3 As I understand it, there are several
4 offenses that you have been convicted of, those
5 being CSC second in 1999, which would not be
6 admissible. Considering the balancing test, it
7 would be more prejudicial than probative as --
8 because of its similarities to the offenses you are
9 now charged with.

10 Burglary in the first degree, where you
11 were released from confinement. These are all '99
12 convictions, but you were released from confinement
13 in 2012, which would bring them within the ten
14 years contemplated by Rule 609. Burglary in the
15 first degree, burglary in the second degree, the
16 assault and battery of a high and aggravated
17 nature, which was pled down from a criminal sexual
18 conduct, would not be admissible; the breaking and
19 entering of a motor vehicle, I was never made clear
20 as to when you were released from confinement to
21 know if that came within the ten years, so that
22 leaves me at a bit of a loss, but as regards to the
23 burglary in the first degree and the burglary in
24 the second degree, I've now been advised that they
25 involved thefts.

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1 There is a recent case that the State
2 has made reference to, the Court was well aware of,
3 and that's why I asked the questions I asked on
4 yesterday, which reversed the Al-Amin precedent.
5 It does not mean that these offenses are not
6 admissible, it just means that it corrects a
7 misapprehension on the Court's part that they were
8 not required to perform a balancing of whether
9 these offenses are more prejudicial than probative
10 on the issue of your truthfulness.

11 And I would have to think about that a
12 little bit more now that I've been told the
13 circumstance of this actual incident.

14 And as I understand it, Ms. Williams,
15 you're saying from the burglary first degree, he
16 stole items valued at \$630, correct?

17 MS. WILLIAMS: That's the burglary
18 second.

19 THE COURT: That's the second.

20 MS. WILLIAMS: The burglary first
21 degree is not based on theft. It's based on
22 breaking into someone's house and attacking a
23 woman.

24 THE COURT: Okay. That would not be
25 admissible.

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1 MS. WILLIAMS: We were just asking for
2 the burglary second.

3 THE COURT: And I will have to look at
4 that a little bit more and determine whether that
5 would be admissible to impeach her credibility
6 based on the balancing test required by Rule 609.

7 When was he released from confinement
8 on the breaking and entering of a motor vehicle?

9 MS. WILLIAMS: The breaking and
10 entering of a motor vehicle, there's like 14 of
11 them, and it looks like most of them were
12 dismissed. And the other -- the only one that I
13 could find, I don't think he went to prison on it,
14 so we're not offering those because I don't have
15 clarification as to whether there are convictions.

16 THE COURT: Well, it would be more than
17 ten years old.

18 MS. WILLIAMS: It would be.

19 Your Honor, would you like a copy of
20 the Affidavit and Warrant for the burglary second?

21 THE COURT: Is it any different than
22 what you've represented, that he broke into --

23 MS. WILLIAMS: No, ma'am.

24 THE COURT: The only thing that would
25 be additionally helpful for me would be the actual

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1 -- either evidence presented at the trial or what
2 he allocuted to at a guilty plea because then I
3 would know exactly what elements of the offense he
4 was admitting to, but it would seem to me that what
5 he would have admitted to is breaking into the
6 structure and stealing these items. Is that the
7 essence of it?

8 MS. WILLIAMS: That is.

9 THE COURT: In the nighttime? Well,
10 not in the nighttime, because it's burglary second.

11 Q. Sir, have you understood your rights as
12 I have explained them to you?

13 A. Yes, ma'am.

14 Q. Have you had an opportunity -- do you
15 have any questions about what I have explained to
16 you?

17 A. No, ma'am.

18 Q. Have you had an opportunity to discuss
19 with your lawyers whether you should or should not
20 testify?

21 A. Yes, ma'am.

22 Q. Do you need to speak with them any more
23 at this time?

24 A. Yes.

25 Q. I can't hear you.

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1 A. Yes.

2 Q. Okay. We'll take a brief recess for
3 you to discuss that with them.

4 THE COURT: In the meantime, Mr.
5 Schwacke, I need to know -- you provided the Court
6 with a list of eight potential witnesses. And I
7 need to know of those witnesses who you intend to
8 call. Well, I guess more likely, who do you not
9 intend to call?

10 I know you told me the other day you
11 were not calling Mr. Patel.

12 MR. SCHWACKE: Number 7 is off. Number
13 6 is probably off.

14 THE COURT: Okay.

15 MR. SCHWACKE: Number 5 is probably
16 off, depending upon the testimony here. Margaret
17 McClam we are not going to use and we would ask
18 that she now be allowed to be present in the
19 courtroom.

20 THE COURT: I would assume that the
21 State has no exception to that since she is not
22 going to be called?

23 MS. WILLIAMS: No.

24 MR. SCHWACKE: Samantha Cooper is
25 medically not available to us. She would not be

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1 called. Ms. Cooper and Ms. Jones are expected to
2 testify.

3 THE COURT: Okay. And those are his
4 aunts?

5 MS. WILLIAMS: Who is Charlie?

6 MR. SCHWACKE: Charlie is really
7 Shirley.

8 THE COURT: Shirley Wilson?

9 MR. SCHWACKE: It is, Your Honor. Not
10 Charlie.

11 THE COURT: So basically, at the most,
12 we have four witnesses, if your client decides to
13 testify. So we should be able to probably complete
14 testimony close to lunchtime? And then deal with
15 any rebuttal? I can't imagine any of these
16 witnesses are going to be particularly long, other
17 than your client, if he intended to testify.

18 MR. SCHWACKE: That's correct.

19 THE COURT: We'll be at ease for ten
20 minutes. I have 10:24. I'll give you to 10:35 to
21 talk with your client. Let me know if you need
22 more time than that. That clock isn't right.

23 MR. SCHWACKE: We have one issue we're
24 trying to agree on.

25 THE COURT: Yes, sir.

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1 MR. SCHWACKE: Whether or not a disk
2 goes into --

3 MS. WILLIAMS: Mr. Schwacke edited a
4 disk and I just want to watch it.

5 THE COURT: Okay. You can talk about
6 that during the break.

7 MR. SCHWACKE: I'll need to line it up
8 for them.

9 THE COURT: What disk are you referring
10 to?

11 MS. WILLIAMS: It's a disk where she
12 goes into the gas station.

13 THE COURT: Oh, okay. Have you had --
14 you need to look at it and if you agree on it, have
15 the Court Reporter mark it and we'll deal with it
16 after the break.

17 MS. LITTLEJOHN: Sounds like we might
18 need a little bit more than ten minutes.

19 THE COURT: You only need ten minutes
20 to talk with him. That's why I gave you overnight.
21 You've had more than ample opportunity to discuss
22 with him that issue. It is now 10:25. You have
23 until 10:35 to talk with him. Let me know at that
24 point if you need additional time to talk with him
25 about that limited issue and then we'll deal with

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1 everything else.

2 (A recess transpired.)

3 (DFT. EXH. 5, CD, was marked for
4 identification.)

5 THE COURT: You may be seated.

6 Sir, if you will stand. I will remind
7 you that you're still under oath. Have you had a
8 full opportunity to discuss with your lawyers
9 whether you should or should not testify?

10 THE WITNESS: Yes.

11 THE COURT: Do you have any questions
12 for the Court regarding your right to testify?

13 THE DEFENDANT: No.

14 THE COURT: Do you wish to testify?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: You may take your seat.

17 The record should reflect that I gave the defendant
18 the opportunity from 10:25 and it is now 11:05 to
19 discuss -- in addition to last evening, the
20 additional time to discuss with his lawyers whether
21 he should or should not testify. And I assume, Mr.
22 Schwacke and Ms. Littlejohn, that you have fully
23 explained his right to testify?

24 MR. SCHWACKE: Yes, ma'am.

25 THE COURT: And that he understood

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1 those conversations?

2 MR. SCHWACKE: I believe he did.

3 MS. LITTLEJOHN: Yes.

4 THE COURT: Sir, if you will stand for
5 me. I'll remind you you're still under oath.

6 BY THE COURT:

7 Q. Have you fully discussed with your
8 lawyers if you should testify?

9 A. Yes, ma'am.

10 Q. Have you understood those discussions?

11 A. Yes.

12 Q. And they have fully discussed with you
13 all of those pros and cons, so to speak, of the
14 decision to testify or not to testify?

15 A. Yes, ma'am.

16 Q. Thank you, sir. You may take your
17 seat.

18 THE COURT: Does the defense have its
19 first witness ready and available?

20 MR. SCHWACKE: We do, Your Honor.

21 THE COURT: And who is that?

22 MR. SCHWACKE: It would be Ms. Emma
23 Cooper.

24 THE COURT: If you would go ahead and
25 get her, please.

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EMMA RUTH COOPER - DIRECT EXAM

1 (Jury in, 11:05 a.m.)

2 THE COURT: You may be seated.

3 Ladies and gentlemen, we appreciate
4 your patience. Those matters of law took a little
5 longer than we anticipated. We are now going to
6 resume testimony. I would ask that you give the
7 attorneys your attention.

8 You may proceed.

9 MR. SCHWACKE: Thank you. The defense
10 calls Emma Cooper.

11 THE COURT: Ma'am, if you would come to
12 the stand to be sworn.

13 EMMA RUTH COOPER,
14 being first duly sworn, testified as follows:

15 THE CLERK: State your full name for
16 the record and spell your last name.

17 THE WITNESS: Emma Ruth Cooper,
18 E-M-M-A, R-U-T-H, C-O-O-P-E-R.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. SCHWACKE:

22 Q. And, Ms. Cooper, you live in
23 Williamsburg County?

24 A. I do.

25 Q. Where at?

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EMMA RUTH COOPER - DIRECT EXAM

- 1 A. Salters, South Carolina, 57 Flank
2 Avenue.
- 3 Q. 57 Flank Avenue?
- 4 A. That's correct.
- 5 Q. And who all lives there with you?
- 6 A. Nobody but my grandson lives there now.
- 7 Q. Are there neighbors close to your
8 house? What is the area like?
- 9 A. The area is houses all around.
- 10 Q. Uh-huh. You can get around pretty easy
11 out that way?
- 12 A. Yes, country.
- 13 Q. How old are you?
- 14 A. I'm 65 years old.
- 15 Q. And have you lived there all your life?
- 16 A. All my life.
- 17 Q. And you are related to Telly McClam?
- 18 A. That's my nephew.
- 19 Q. And you were home on the day of
20 October 28, 2013; is that correct?
- 21 A. Yes.
- 22 Q. And you remember that, because the
23 police talked to you?
- 24 A. No. I remember that because he came to
25 my house that day and the investigator or whatever,

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EMMA RUTH COOPER - DIRECT EXAM

1 he was from St. Stephens, came to my house that
2 morning.

3 Q. So what time did you get started that
4 morning?

5 A. Well, I was on the outside with my
6 friend. He was out there fixing the -- the -- what
7 you call it? It come from under the house. I
8 usually go up there and reach and turn the water
9 on. He was down there pulling that through the
10 under pan so I wouldn't have to go -- so I wouldn't
11 have to go underneath the house to get to the
12 faucet.

13 Q. That's at your house?

14 A. At my residence, uh-huh.

15 Q. Who was that that was out there with
16 you?

17 A. Herbert Milton.

18 Q. Anybody else with him?

19 A. No.

20 Q. So what happens while you're outside
21 that morning?

22 A. Telly and a young lady and her daughter
23 came up during that time.

24 Q. Okay. And how did they get there?

25 A. They were driving my sister's car.

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EMMA RUTH COOPER - DIRECT EXAM

- 1 Q. The blue Hyundai?
- 2 A. Yes.
- 3 Q. Had you had seen Telly in that car
- 4 before?
- 5 A. Oh, yes.
- 6 Q. How many times?
- 7 A. I can't count them, so many.
- 8 Q. How about the people in the car with
- 9 him, had you seen them before?
- 10 A. Yes.
- 11 Q. How many times before that day had you
- 12 seen them?
- 13 A. Several times.
- 14 Q. Where at?
- 15 A. At my house.
- 16 Q. At your house?
- 17 A. Yes.
- 18 Q. How would they get there?
- 19 A. With him.
- 20 Q. Was it always the blue car?
- 21 A. No. They would come in the truck
- 22 sometimes.
- 23 Q. And so they pulled up. What did --
- 24 what were they stopping by for?
- 25 A. He just come to see me because I'm his

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EMMA RUTH COOPER - DIRECT EXAM

1 aunt.

2 Q. Okay. And how long did he stay?

3 A. Sometime he stay maybe 15 minutes,
4 sometimes 30 minutes. If my other children, young
5 men is at the house, they associate with each other
6 and he'd stay a little longer.

7 Q. So that day, how long did he stay?

8 A. Well, they didn't stay long. He just
9 came -- I can't point to minutes, but he didn't
10 stay about maybe -- it wasn't maybe ten minutes or
11 so. Maybe less than that. I don't know, but he
12 didn't stay.

13 Q. Did they get out of the car?

14 A. No, she didn't get out that day.

15 Q. Nobody got out?

16 A. No. She was -- when he came up I was
17 in the back.

18 Q. Okay.

19 A. And we was around there. Like I said,
20 I was with my friend. And he got out and he came
21 up and I met him. He got out of the car and he met
22 me. He had on a pair of blue jeans, a T-shirt, and
23 I greet him. And -- well, I give him \$5 that
24 morning. He asked me for it and I give it to him.

25 Q. When did he ask you for that?

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EMMA RUTH COOPER - DIRECT EXAM

1 A. Well, he came -- he called and asked
2 me.

3 Q. About what time did he call; do you
4 remember?

5 A. He got at the house between 8:30 and
6 9:00. It was more closer to 9:00 than 8:30, and I
7 give it to him. Before I give it to him, I went in
8 the house to get it and I speak to them. And when
9 I came out, when I give it to him, then he said,
10 well, auntie, I can't stay. I got to go to my
11 sister's house before I leave. And I said, well,
12 okay. He said, I would have stayed longer, but I
13 got them in the car.

14 Q. You said you greeted them?

15 A. Yeah. Like we'd meet each other, we
16 always hug.

17 Q. Did you know their names?

18 A. I don't know. I know the young lady
19 name is Reese or something, I can't remember.
20 Trese or Reese, or something.

21 Q. Okay.

22 A. But she had been to my house several
23 times. I talked to her and held a conversation
24 with her.

25 Q. And how close to the car did you get

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EMMA RUTH COOPER - DIRECT EXAM

1 that morning?

2 A. All the way to the car.

3 Q. Up to which door?

4 A. The driver door.

5 Q. At the driver's door?

6 A. Uh-huh.

7 Q. And was -- did any of them -- any of
8 the females say anything to you?

9 A. No. I spoke to them like always.

10 Q. And how did they act back to you?

11 A. The same way. The young lady that was
12 in the back was over the seat -- with her arms over
13 the back of the seat when I approached the car and
14 I spoke to them.

15 Q. And you didn't see them again after
16 that?

17 A. Not that night. I haven't seen them
18 since.

19 Q. But you would talk to the police later
20 and told them --

21 A. I told them the same thing I'm telling
22 you right now. During the time they used to come
23 to my house, they act the same way they always act.
24 It wasn't no different.

25 MR. SCHWACKE: One moment. Thank you,

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EMMA RUTH COOPER - CROSS EXAM

1 Ms. Cooper. Answer any questions that Ms.
2 Williams or Mr. Poulos has.

3 THE COURT: Any questions?

4 MR. POULOS: Yes, Your Honor.

5 THE COURT: You may proceed.

6 CROSS-EXAMINATION

7 BY MR. POULOS:

8 Q. Morning, Ms. Cooper.

9 A. Morning.

10 Q. Thank you for being here today. Thank
11 you for meeting with Ms. Williams and I at your
12 home last week. I appreciate that.

13 I want to talk to you a little bit
14 about the things we talked about at your house.

15 A. Uh-huh.

16 Q. First of all, how well do you know your
17 nephew, Mr. McClam?

18 A. Well, I know him. I never knew him
19 when he was a child because we didn't see each
20 other very much then, but after he grown up and he
21 used to come around to see me and we would talk and
22 I would tell him, you know, like how any aunt who
23 cared about and loved their niece and nephew, they
24 would tell them right from wrong, you know.

25 Q. How old was he when he started coming

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EMMA RUTH COOPER - CROSS EXAM

1 around more?

2 A. He was -- I don't know. I can't tell
3 how old he was because I didn't know. He was a
4 young man, I know.

5 Q. Okay. Approximately, when did he start
6 coming around? The last couple of years?

7 A. The last time was when he got out of
8 prison.

9 Q. The last couple of years, he started
10 coming around?

11 A. Yes, uh-huh.

12 Q. How many times would you say he's come
13 to your house in the past three or four years?

14 A. I can't count them. Most of the time
15 he come -- sometimes he come himself. The majority
16 of time he came, he brought her and the children,
17 but they would never get out. She would get out
18 sometimes, but they stayed in the car, whoever they
19 was in the car, but I never went outside to see who
20 they were.

21 Q. Do you know Deadrene? Do you know her
22 well?

23 A. Who?

24 Q. Deadrene? Trese?

25 A. No, I don't know her that well.

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EMMA RUTH COOPER - CROSS EXAM

1 Q. How many times would you say you have
2 met her?

3 A. Oh, I can't count them on my hand,
4 because he would always come and they would
5 sometimes sit on the porch with my other boys and
6 talk with them and I would tell her about herself.
7 Do you understand?

8 Q. How many conversations would you say
9 you've had directly with Trese?

10 A. Two or three real conversations.

11 Q. You've had about two or three
12 conversations with her?

13 A. Yes.

14 Q. How long do you think the conversations
15 were?

16 A. How what?

17 Q. How long do you think the conversations
18 were that you had with Trese? Were they long
19 conversations?

20 A. No, not that long. When Telly would
21 come to the house and he would go outside and talk
22 to my boys or whoever was there, my niece and my
23 daughter and they was outside and she was in there
24 with me and I would tell her -- I asked her one
25 day, I said, baby, you need to -- you're over there

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EMMA RUTH COOPER - CROSS EXAM

1 living with Telly and my sister is taking care of
2 him, providing you with a home, shelter and
3 whatever you needed. You're there using whatever
4 he use. So you, young lady, you've got children
5 and you need to find yourself someplace to live, a
6 job, and support your children.

7 Q. You didn't think very highly of Trese?

8 A. I don't know anything about her to be
9 thinking that highly about her. I heard about her,
10 but I don't know her.

11 Q. You don't know her?

12 A. No, I don't.

13 Q. So you've had two or three
14 conversations with her and they were each a few
15 minutes long you'd say?

16 A. Yes.

17 Q. That was over the past --

18 A. Behind Telly's back. I never talked to
19 him before his face telling her that, you know,
20 because how I feel about it, I respect her that
21 much.

22 Q. Do you remember telling us you didn't
23 like the way she carried herself?

24 A. That's right.

25 Q. Okay. So you didn't approve of Trese

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EMMA RUTH COOPER - CROSS EXAM

1 being with Telly?

2 A. That's right.

3 Q. Okay. And that's based on the two or
4 three conversations that you had --

5 A. No, by seeing her and how she take care
6 of herself. Any young lady who think anything of
7 themselves and got young ladies, bringing them up,
8 they would be home with their children, plus they
9 would have them behind them everywhere she goes.

10 Q. How many daughters does she have?

11 A. I don't know, because like I told you,
12 I never went to the car to see who they was.

13 Q. You've never met Leandre Jenkins then;
14 is that right?

15 A. Who is that?

16 Q. The other young girl in the car that
17 day that Telly came to your house.

18 A. I don't know. Like I told you, I don't
19 know them. That day he, she, whoever was in the
20 car, I told you she was sitting in the back seat
21 and I assumed that was her daughter because when --
22 later on they said that -- my niece told me, said
23 that was her daughter, because they came to their
24 house and eat breakfast there.

25 Q. But you've never met her before?

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EMMA RUTH COOPER - CROSS EXAM

1 A. Met who?

2 Q. The young girl --

3 A. No. I told you, they were never in my
4 house before.

5 Q. But you've never even talked to her?

6 A. No.

7 Q. Besides from the ten minutes they were
8 at your house, you don't know what happened earlier
9 in the day?

10 A. No.

11 Q. Both Trese and her daughter stayed in
12 the car the whole time, right?

13 A. Yes.

14 Q. Now, you've described your house as
15 having a lot of other houses around it?

16 A. You were there, you seen them.

17 Q. Right, I was there. That's mostly your
18 family, right?

19 A. No.

20 Q. That lives in the vicinity?

21 A. They're just in the community but we
22 take each other as family.

23 Q. Okay. But in the immediate houses,
24 aren't there other relatives that live there around
25 you?

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EMMA RUTH COOPER - CROSS EXAM

1 A. In the what?

2 Q. Aren't there other relatives of Mr.
3 McClam that live by you?

4 A. Yes.

5 Q. State's Exhibit 105. Ms. Cooper, I'm
6 going to put up -- a map up on the screen right
7 behind you. It's going to show your house and some
8 other things.

9 A. Uh-huh.

10 Q. Now, this right here, does it look
11 familiar?

12 A. Uh-huh.

13 Q. Okay. This is your house?

14 (Indicating)

15 A. Uh-huh.

16 THE COURT: Ma'am, if you could say
17 yes or no for us.

18 THE WITNESS: Okay.

19 THE COURT: I know it's a habit. I do
20 it myself, but if you could say yes or no. Thank
21 you.

22 THE WITNESS: Okay. Thank you.

23 BY MR. POULOS:

24 Q. Now, this is all woods, right?

25 A. Yes.

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EMMA RUTH COOPER - CROSS EXAM

1 Q. And this is fields?

2 A. Yes.

3 Q. And this is a field. And the only way
4 into your house is either up this road or up this
5 road?

6 A. Yes.

7 Q. Okay. Who lives all in here?

8 A. Well, that's my first cousin; my
9 sister's house right next to me. The one you
10 passed to come to me and the one on the left is my
11 first cousin and the one in front is my first
12 cousin and ones in the back behind the trees right
13 back there, well, they just --

14 Q. Back here?

15 A. No, right here.

16 Q. Right here? (Indicating)

17 A. Yes. And all over there behind me in
18 the little blue section --

19 Q. Right there? (Indicating)

20 A. Right there. They live behind me.

21 Q. Who lives right here? Do you know
22 these people?

23 A. Behind me is right here. You came in
24 right here.

25 Q. Who lives up in here?

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EMMA RUTH COOPER - CROSS EXAM

1 A. Those are neighbors.

2 Q. So everybody that lives right through
3 here are related to you and Mr. McClam?

4 A. No, not related to -- yeah, a little.
5 At least family, you know, just family.

6 Q. Okay. Ms. Cooper, how well do you
7 think you remember that day here today? Do you
8 think you have a clear memory of what happened?

9 A. All I know is he came to me and asked
10 me -- he wanted -- I told him I didn't have but \$5,
11 and I give it to him.

12 Q. You gave him \$5?

13 A. Yes.

14 Q. Do you remember giving a statement to
15 Detective Riser, a written statement?

16 A. Yes, I remember.

17 Q. Do you remember telling him that you
18 did not give Telly any money?

19 A. Yes, I remember.

20 Q. Okay. So why did you tell him that day
21 you did not give --

22 A. I figured it wasn't his business.

23 Q. Okay. Do you remember telling
24 Detective Riser that when Telly got out, he pulled
25 his shirt down when he got --

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EMMA RUTH COOPER - CROSS EXAM

1 A. No. I told him when he got out -- he
2 asked me how he got out of the car. I told him,
3 when he got out, he pulled like -- like I'd get out
4 of the car, I'd pull my blouse down over my coat.

5 Q. You told him he pulled his shirt down
6 when he got out?

7 A. Yes, I did.

8 Q. Do you know what, if anything, he had
9 in his waistband --

10 A. I had my arm around him. I didn't felt
11 anything.

12 Q. And he came around 9:00 a.m.?

13 A. Between 8:30 and 9:00.

14 Q. Is that typical? Does he usually come
15 to your house in the morning?

16 A. He asked me what time he came. And
17 that's the only time I can remember, because when
18 my friend came up, it was something to eight.

19 Q. Okay.

20 A. And shortly after that, we was in the
21 back yard.

22 Q. But when Mr. McClam comes to visit you
23 normally, does he come --

24 A. No.

25 Q. -- early in the morning?

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EMMA RUTH COOPER - REDIRECT EXAM

1 A. No. Because I asked him what they was
2 doing. And he said, just riding there and he was
3 going to his sister's.

4 MR. POULOS: No further questions,
5 Judge.

6 Thank you, Ms. Cooper.

7 THE COURT: Any redirect?

8 MR. SCHWACKE: Just a few.

9 THE COURT: You may proceed.

10 REDIRECT EXAMINATION

11 BY MR. SCHWACKE:

12 Q. Ms. Cooper, the State asked you about
13 what you had told the police that day?

14 A. Yes, sir.

15 Q. And you were cooperative with them; is
16 that right?

17 A. I did.

18 Q. And did they know where to go next,
19 based on what you gave --

20 A. He told me that day, and he said, Ms.
21 Cooper, I know it was on the TV, about the red
22 alert and everything. So I called my daughter and
23 I asked her if she had heard about it, and she told
24 me, she said, no, Mom, I haven't heard about it.
25 And then during that time he said -- but when I'm

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EMMA RUTH COOPER - REDIRECT EXAM

1 about to leave here --

2 MR. POULOS: Objection, Your Honor.

3 BY MR. SCHWACKE:

4 Q. Based on that, you gave information to
5 the police --

6 A. Yes.

7 Q. -- about going to Beatrice's house?

8 A. I did what?

9 Q. The police asked you where they went?

10 A. I told them where he was going.

11 Q. And that was to Beatrice's?

12 A. That's right.

13 Q. And so you were cooperative?

14 A. Yes, sir.

15 MR. SCHWACKE: Thank you.

16 THE COURT: Any objection to the
17 witness being excused? From the State?

18 MR. POULOS: Not from the State.

19 THE COURT: From the defense?

20 MR. SCHWACKE: None, Your Honor.

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

22 Call your next witness.

23 MR. SCHWACKE: Beatrice Jones.

24 BEATRICE JONES,

25 being first duly sworn, testified as follows:

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BEATRICE JONES - DIRECT EXAM

1 THE CLERK: Have a seat, state your
2 full name for the record and spell your last name
3 for the record.

4 THE WITNESS: Good morning. My name is
5 Beatrice C. Jones.

6 THE COURT: Spell your last name,
7 ma'am.

8 THE WITNESS: I'm sorry.

9 THE COURT: That's okay.

10 THE WITNESS: J as in Jones, O as in
11 owner, N as in Nancy, E as in eggplant and S as in
12 Sam.

13 THE COURT: Thank you. You may
14 proceed.

15 DIRECT EXAMINATION

16 BY MR. SCHWACKE:

17 Q. Ms. Jones, how old are you?

18 A. I'm 56.

19 Q. 56. And where do you live?

20 A. I live in Lane, South Carolina.

21 Q. How long have you been in that area?

22 A. About approximately 30 years because my
23 house is soon to be paid off. Sorry.

24 Q. Does anyone live there with you?

25 A. Just me and my daughter Taylor.

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BEATRICE JONES - DIRECT EXAM

1 Q. And how old is she?

2 A. Taylor is 20.

3 Q. And do you work?

4 A. I work two jobs.

5 Q. Where do you work?

6 A. I work at the school district in
7 Berkeley and in Williamsburg County, but I don't
8 work in Berkeley County anymore, and I work as an
9 AT&T customer service representative.

10 Q. And you are related to Mr. Telly
11 McClam?

12 A. Telly is my brother. He's my only
13 brother.

14 Q. And you have had occasion to see him or
15 he's come to your house?

16 A. Let me rephrase that, Telly is my worry
17 brother.

18 Q. He's what?

19 A. Telly worries me all the time. Telly
20 is my brother. He comes and sees me. He come and
21 see me quite often. He come and see me all the
22 time. He come and see me sometimes twice a week.
23 He come and see me quite often.

24 Q. So what do you for the school district?

25 A. I am a substitute teacher. Now -- I

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BEATRICE JONES - DIRECT EXAM

1 passed my practice test. Now I'm a certified
2 teacher. I can teach business education, computer
3 programming, from seventh through twelfth grade.

4 Q. And do you have a number of degrees; is
5 that right?

6 A. Yes, I do.

7 Q. What are they?

8 A. I have two associate's, two BS's and a
9 master's.

10 Q. And your daughter is looking to go into
11 school?

12 A. I have -- my daughter Taylor is 20.
13 She attends Winthrop University, but right now
14 she's out. I'm trying to pay her tuition, that's
15 why I work two jobs. Taylor is trying to get a
16 golf scholarship. She's majoring in golf.

17 Q. I wish her luck on that. On the day of
18 June 30th -- October 28th of 2013 --

19 A. Yes, sir.

20 Q. -- you were home on that day; is that
21 right?

22 A. Yes, sir. I was supposed to go to work
23 that day, but I didn't go to work.

24 Q. And did you have occasion -- did
25 somebody stop by that day?

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BEATRICE JONES - DIRECT EXAM

1 A. Yes, around about 10:00 there was a
2 knock on the door. And I was sleeping, I didn't
3 feel too well. My husband had just died. I'm a
4 widower and so I didn't feel like it. So I got up
5 and it was Telly. And I said, wait a minute. I
6 wasn't dressed.

7 So I looked out the door and he was out
8 there, and he was out there with Trese and her
9 daughter. And they were on the -- they were on --
10 near the -- I have a porch and they were standing
11 -- he was standing there on the porch and they were
12 all up on the porch on the step. And I said, wait
13 a minute. So I went back in the house and I put
14 some clothes on. I put my attire on. And I came
15 to the door and opened the door.

16 And he said, Bee, you got any money or
17 something to eat?

18 Q. Is that unusual for him to show up at
19 your house asking for money?

20 A. No, that's common. That's normal.

21 Q. And you tried to help him out the best
22 way you could?

23 A. I always give him money. I give him
24 money for gas, cigarettes, or whatever he asked me
25 for. If I have it, I give it to him.

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BEATRICE JONES -- DIRECT EXAM

- 1 Q. So who -- you said Trese or --
- 2 A. Yeah, that's --
- 3 Q. -- was there?
- 4 A. That's his friend.
- 5 Q. Was anyone else --
- 6 A. Yeah, the daughter. I don't know her
- 7 name.
- 8 Q. Had you seen her before?
- 9 A. I think I had, because they come to the
- 10 house with him several times. They come in a truck
- 11 or come in a car and sometimes when Telly and his
- 12 friend come, sometimes they don't get out. They be
- 13 in the car, or whatever. So I can't say I seen her
- 14 before.
- 15 Q. And your front door is not that far
- 16 away from the road?
- 17 A. No, it's right there.
- 18 Q. So they came inside?
- 19 A. They came inside.
- 20 Q. And what happened?
- 21 A. And we went into the kitchen, and I
- 22 give them -- and I said, all I have to eat is some
- 23 potato salad, a roll, and I put out some Red Velvet
- 24 cupcakes and I gave it to them. I forgot the meat.
- 25 I gave them some meat.

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BEATRICE JONES - DIRECT EXAM

1 Q. Sloppy Joe's?

2 A. No Sloppy Joe's. I can't remember what
3 meat it was, and they sat down at the table.

4 Q. Did you fix that or you just -- it was
5 already made and you got it out --

6 A. I got it out of the refrigerator and I
7 warmed it up.

8 Q. And made plates?

9 A. I made a plate for everyone.

10 Q. And where was everybody when you were
11 doing that?

12 A. In the kitchen.

13 Q. And where is your kitchen?

14 A. As you walk in the front area, walk
15 right to the kitchen. There is no hallway, you
16 walk into the front room to the kitchen.

17 Q. Is there a place to sit and eat?

18 A. Yeah. I have a table and six chairs.

19 Q. At a table right there in the kitchen?

20 A. Right there in the kitchen.

21 Q. Who all went into the kitchen area?

22 A. Trese, Telly, and the girl, and me.

23 Q. And how long were you all in there?

24 A. About ten minutes in the kitchen. And
25 then Telly say, hey, Bee, with the money.

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BEATRICE JONES - DIRECT EXAM

1 And so I went down the hall to my
2 daughter's. She was in her bedroom, she was
3 actually sleeping. I woke her up and asked her for
4 the money. And Telly came down the hall behind me.
5 And I went in my room -- because really what
6 happened, all my daughter had was a 20, and I was
7 only going to give Telly 10. And I said, well,
8 I'll give you 10. I don't have any more change.

9 So I went in the room. He came in the
10 room with me --

11 Q. Which room are we talking about?

12 A. My daughter's is the last room in my
13 house. Then my room is right next to hers, but her
14 door was closed. She never saw Telly, she never
15 saw Trese, she never saw anyone. She was asleep
16 and I woke her up.

17 Q. But you and Telly were in your room?

18 A. Yes, sir.

19 Q. Where were Trese and her daughter?

20 A. Down the -- down the hall in the
21 kitchen. And Trese went to the bathroom. They
22 were down the hall. Me and Telly was down there in
23 the room, I give him the money, and that was in the
24 pocketbook, searching. And I said, that's all I
25 have. I didn't want to give him the 20. That's

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BEATRICE JONES - DIRECT EXAM

1 all I had.

2 So I give him the 20, then we came back
3 down the hall -- we came down the hall; Trese was
4 in the bathroom still. She was in the bathroom.
5 And he said, got something to drink. And I said,
6 well, I got Kool-aid. He likes Kool-aid. I give
7 everybody some Kool-aid -- I was actually the
8 server. I gave everybody Kool-aid, gave everybody
9 a drink, I never sat down with them.

10 Q. And how long did they stay?

11 A. They stayed about 20, 30 minutes.

12 Q. Was anybody -- any conversation going
13 on?

14 A. They were talking. They were talking.
15 They were talking at the table.

16 Q. Who is they?

17 A. Telly and Trese were talking.

18 Q. And the daughter?

19 A. Yeah, the daughter was talking. They
20 was doing a conversation, yes.

21 Q. So when did they leave your house?

22 A. They left my house around about 10:30;
23 10:30, quarter to 11, or something like that. They
24 didn't stay that long, because --

25 Q. And you don't wear a watch?

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BEATRICE JONES - DIRECT EXAM

1 A. No, I do not.

2 Q. So you're guessing on times?

3 A. Yes.

4 Q. Did you hear from them again?

5 A. No. I walked outside in the yard -- I
6 walked outside in the yard and I came back inside.
7 And I was watching -- I think it was the "Price Is
8 Right", or something. I don't know what was on.
9 "Young and Restless" -- something was on. And I
10 saw an Amber Alert, and then I started screaming.

11 And I started screaming and I said, oh,
12 my God, that's Telly, that's Telly, that's Telly.
13 I called my momma, and I said, Momma, something
14 happened, something happened, something happened.
15 And I kept saying, they just left here, they just
16 left here, they just left here, they just left
17 here.

18 Q. So how were they acting when they were
19 at your house?

20 A. They were acting the same way -- they
21 were acting the same way. They were eating, they
22 were talking to Telly, they were having
23 conversation. Nothing -- nothing -- normal, they
24 were just --

25 Q. So after that, the police at one point

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BEATRICE JONES - DIRECT EXAM

1 come by your house and you give them information?

2 A. Yes.

3 Q. And you're cooperative with them?

4 A. Yes, I did. I talked to the police. I
5 talked to the investigators.

6 Q. And, in fact, you called the police or
7 attempted to call the police when the SLED
8 bloodhounds catch him?

9 A. I never talked to my brother -- I
10 haven't seen my brother since that day. The police
11 came to my house that afternoon and he said --
12 well, I got home around about seven. He said,
13 thank you, ma'am.

14 He said, if your brother attempt to
15 come to this house or call you in any way or
16 contact you in any way, I want you to call me. He
17 give me his card. He was Lane's Police, in my
18 town.

19 Q. And you did what you were supposed to?

20 A. I tell you what happened. Around about
21 10, 10:30 that night, my daughter said, Momma,
22 somebody at my window. And he knocked on my
23 daughter's window, the back window. And then he
24 came around the house, he came to the -- her window
25 on the side of the house, he came to the kitchen

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BEATRICE JONES - DIRECT EXAM

1 window. He said, Bee, this is Telly.

2 And me and my daughter got on the floor
3 in the hall because she was scared and I was
4 scared, because there was so much police that day
5 and we were so scared. So I called the police -- I
6 called the police on my brother. I called the
7 police on my brother. I called the police on my
8 brother. There wasn't no neighbor, it was me. It
9 was me. I called them. I called the police on my
10 brother. No neighbor. It was me. Bee Jones
11 called the police on my brother.

12 And he said, Bee. And I said, I can't
13 open the door for him. I can't open the door. He
14 came to me for protection and I can't even protect
15 him. So -- and I called the police and then the
16 police didn't answer. So I called my neighbor. My
17 neighbor is Lulabelle Conyers. It was me. That
18 number that called was 5559. She called the police
19 for me.

20 In the next three minutes, next -- I
21 don't know how long. I know less than five
22 minutes, they were there. It was -- I heard the
23 dogs, I heard the lights, I heard the dogs and the
24 lights coming. And then my brother -- my
25 brother-in-law work with the -- with the Caycee

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BEATRICE JONES - DIRECT EXAM

1 Police Department. He said, Bee, we got him. We
2 got Telly. And I said, good, as long as he's not
3 hurt.

4 And I haven't seen my brother since
5 that day. Since that day he left my house, I
6 haven't seen my brother since that day until this
7 morning.

8 Q. And, again, that morning you had Trese
9 and her daughter --

10 A. Yes.

11 Q. -- in your house?

12 A. I treat them nice.

13 Q. And was there anything signaling you
14 that something bad was going on?

15 A. No, sir. No, sir.

16 Q. And you have already told us about your
17 education and your jobs as a teacher?

18 A. Yes, sir.

19 Q. You would have participated in DSS
20 classes --

21 A. Yes, sir.

22 Q. -- in reporting requirements?

23 A. Yes, sir.

24 Q. And, in fact, did you participate in
25 those?

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BEATRICE JONES - CROSS EXAM

1 A. Yes, sir.

2 Q. And you've been certified in that
3 regard?

4 A. Yes, sir. I'm certified, but I haven't
5 had the job yet. But even when you work for Kelly,
6 you have to go through classes and education.
7 Kelly -- you have to go through that. And they
8 tell us what we should do and we have to report
9 things, we have to do things as a teacher, an
10 educator.

11 Q. And so you would have reported
12 something if you had seen it?

13 A. Yes, sir.

14 MR. SCHWACKE: Okay. Thank you.
15 That's all the questions I have.

16 THE COURT: Any questions for the
17 witness?

18 MS. WILLIAMS: Yes, Your Honor.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MS. WILLIAMS:

22 Q. Thank you for being here, Mrs. Jones.
23 I know this is hard for you. Do you need to take a
24 break?

25 A. No, ma'am.

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BEATRICE JONES - CROSS EXAM

1 Q. You have a duty to report child abuse?

2 A. Yes.

3 THE COURT: Ms. Williams, can you speak
4 up, please? With the air conditioner, I know it's
5 hard for the court reporter.

6 MS. WILLIAMS: I'm not usually so soft
7 spoken, I apologize. I will step it up.

8 BY MS. WILLIAMS:

9 Q. You have to have report child abuse,
10 right?

11 A. Yes.

12 Q. If you had known that a
13 17-year-old-child was raped earlier that day, you
14 would have reported it, right?

15 A. Yes, ma'am. I have three daughters.

16 Q. Right.

17 A. I would --

18 Q. Absolutely would have reported it?

19 A. Yes, ma'am.

20 Q. If you would have known that a
21 17-year-old was taken from her home at gunpoint and
22 taken to an area and forced to perform oral sex,
23 you would have reported that?

24 A. I would have reported that.

25 Q. Absolutely. Did you know anything