

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

William H. Seals, Circuit Court Judge

ANTONIO D. PATTERSON,

RECEIVED

APR 09 2018

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002198

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED AUGUST 30, 31 AND SEPTEMBER 1, 2010.....	1
APPLICATION FOR POST-CONVICTION RELIEF	448
RETURN.....	455
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 11, 2017	461
COURT'S EXHIBIT #1 (SLED REPORT)	498
COURT'S EXHIBIT #2 (FORENSIC REPORT)	506
ORDER OF DISMISSAL.....	512
INDICTMENT	523

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

CIRCUIT COURT
2006-GS-10-09248
2007-GS-10-05911
2010-GS-10-04311

4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 ANTONIO DIEARGO PATTERSON,
7 Defendant.

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9
10
11 Heard on August 30, 31 and September 1, 2010
Charleston, South Carolina

12
13 BEFORE:

14 THE HONORABLE DEADRA L. JEFFERSON

15 AND A JURY

16 APPEARANCES:

17 Counsel on Behalf of the State:
18 Jennifer Shealy, Esq.
19 James Stack, Esq.

20 Counsel on Behalf of the Defendant:
21 Reese Stidham, Esq.
22 Ted Smith, Esq.

23 Gayle Burns, RMR
24 Cheri L. Young, RPR
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25 Aiken, SC 29802-1154

EXAMINATION INDEX

State's Case:

	DIRECT BY MS. SHEALY	82
	CROSS BY MR. STIDHAM	127
	REDIRECT BY MS. SHEALY	144
	RECROSS BY MR. STIDHAM	149
	ERIC LIGHT	
	DIRECT BY MR. STACK	151
	CROSS BY MR. STIDHAM	155
	REDIRECT BY MR. STACK	158
	JENNY ANTONIO	
	DIRECT BY MS. SHEALY	161
	CROSS BY MR. STIDHAM	184
	REDIRECT BY MS. SHEALY	192
	LISA ALTINE	
	DIRECT BY MS. SHEALY	197
	CROSS BY MR. STIDHAM	212
	REDIRECT BY MS. SHEALY	218
	RANDALL UNTERBRINK	
	DIRECT BY MR. STACK	223
	CROSS BY MR. STIDHAM	240
	REDIRECT BY MR. STACK	244
	QUINTES LEON YOUNG, II	
	DIRECT BY MR. STACK	244
	CROSS BY MR. STIDHAM	248
	ROBIN TAYLOR	
	DIRECT BY MS. SHEALY	249
	CROSS BY MR. SMITH	266

1 FAY LeBOEUF

2 DIRECT BY MS. SHEALY 272

3 CROSS BY MR. SMITH 280

4 REDIRECT BY MS. SHEALY 296

5 RECROSS BY MR. SMITH 299

6 DAVID ARD

7 DIRECT BY MR. STACK 300

8 Defendant's Case:

9 EMANUEL PATTERSON

10 DIRECT BY MR. STIDHAM 314

11 CROSS BY MS. SHEALY 319

12 TIMOTHY PATTERSON

13 DIRECT BY MR. STIDHAM 339

14 CROSS BY MS. SHEALY 344

15 REDIRECT BY MR. STIDHAM 351

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

EXHIBIT INDEX

MAR / ADM

State's:

1			
2			
3	1	Photograph	91
4	2	Photograph	91
5	3	Photograph	91
6	4	Photograph	91
7	5	Photograph	91
8	6	Photograph	91
9	7	Photograph	91
10	8	Photograph	91
11	9	Photograph	91
12	10	Photograph	91
13	11	Photograph	91
14	12	Photograph	91
15	13	Photograph	91
16	14	Photograph	91
17	15	Photograph	91
18	16	Photograph	91
19	17	Photograph	91
20	18	Photograph	91
21	19	Photograph	91
22	20	Photograph	91
23	21	Photograph	91
24	22	Photograph	91
25	23	Photograph	91

1	24	Photograph		91
2	25	Photograph		91
3	26	Photograph		91
4	27	Photograph		91
5	28	Photograph		91
6	29	Photograph		91
7	30	Photograph		91
8	31	Photograph		91
9	32	Photograph		91
10	33	Photograph		91
11	34	Photograph		91
12	35	Photograph		91
13	36	Photo lineup		125
14	37	Clothes		104
15	38	9-1-1 call on CD		118
16	39	Condom wrapper	236	236
17	40	Condon wrapper	236	236
18	41	Sofa sticky tape	236	236
19	42	Condom	236	236
20	43	Condom	236	236
21	44	Carpet cutting	236	236
22	45	Panties		104
23	46	Sexual assault kit	296	296
24	47	Photograph	180	180
25	48	Photograph	180	180

1	49	Suspect kit	259	259
2	50	Photograph		345
3	51	Photograph		345
4	60	Photograph	332	
5	61	Photograph		347
6	62	Photograph		335
7				
8	Court's:			
	1	Note from juror	54	54
9				
	3	Altine case notes	72	72
10				
11	Defendant's:			
	1	Statement	130	
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 ON MONDAY, AUGUST 30, 2010:

2 THE COURT: Unfortunately or fortunately, I don't
3 know that it the bodes well for us as a state, South
4 Carolina has 5,000 case filings per judge. So sometimes I
5 wish I could be like that Michael Keaton in Multiplicity
6 where I could be like 20 people and do 20 different things
7 and be in five courtrooms and I could do everything all at
8 one time, but I can't. The limitations physically is that
9 I can only be at one place at one time.

10 So we appreciate your patience as I disposed of
11 that matter prior to us commencing jury selection.

12 Again, please know that we do not take your time
13 for granted.

14 We're going to select a jury this morning for the
15 State of South Carolina versus Antonio Dieargo Patterson.
16 And those are two indictments. One is 2006-GS-10-9248.
17 That's an indictment for criminal sexual conduct in the
18 first degree. And that indictment alleges as follows:
19 That in Charleston County on or about April 9th of 2006
20 with the use of aggravated force, Antonio Dieargo
21 Patterson did commit a sexual battery upon [REDACTED]
22 against her will and without her consent, alleging a
23 violation of Code Section 16-3-652 of the Code of Laws as
24 amended and alleging those actions to be against the peace
25 and dignity of the State.

C SELECTION OF THE JURY

1 And Indictment 2007-GS-10-5911, which is an
2 indictment for possession of a firearm during the
3 commission of a violent crime. And that indictment
4 alleges as follows: That in Charleston County on or about
5 April 9th of 2006, Antonio Dieargo Patterson did possess
6 or physically display a firearm during the commission or
7 attempted commission of a violent crime.

8 To wit: He possessed and used a handgun during
9 the commission of first degree criminal sexual conduct,
10 alleging a violation of Code Section 16-23-490 of the Code
11 of Laws as amended and alleging such actions to be against
12 the peace and dignity of this state.

13 We're going to go through a process that is
14 called voir dire which is simply a fancy way of saying
15 that I'm going to ask you some questions so that the
16 attorneys can more effectively exercise their peremptory
17 challenges in jury selection.

18 If a question applies to you, I need for you to
19 stand and in a loud and clear voice give us your name and
20 your juror number and answer to the question as applicable
21 and remain standing until the Court has completed
22 questioning you.

23 Is there any member of the -- well, actually
24 before we do that, I need counsel for the State to stand
25 and introduce themselves and anyone that will be assisting

C SELECTION OF THE JURY

1 them in the trial of this case as well as the members of
2 their office. And then counsel for the defense, if you
3 will provide the same information as well as introducing
4 your client to the panel.

5 You may proceed, Ms. Shealy.

6 MS. SHEALY: Judge, do you want me to indicate
7 the people in our office?

8 THE COURT: Yes.

9 MS. SHEALY: Thank you, Your Honor.

10 Good morning. My name is Jennifer Shealy. I
11 work in the solicitor's office. Assisting me will be Jim
12 Stack. He's another attorney in our office.

C 13 Kathryn Walters -- and I'm going to read out a
14 list of names of other attorneys in our office. We have
15 Scarlett Wilson who's the solicitor; and Bruce DuRant who
16 is the deputy solicitor; Marian Askins; Jessica Baldwin;
17 Bryan Burke; Julie Cardillo; Natasha Chisolm; Rutledge
18 DuRant; Shannon Elliott; Timmy Finch; Meg Jaffee;
19 Elizabeth Gordon; Amy Harrell; Culver Kidd; Henry
20 Laurentis; Stephanie Linder; Lindsey McClain; Peter McCoy;
21 Michael Nelson; Trip Reson; Michael Sahn; Dale Savage;
22 Chad Simpson; Greg Voight; Burns Wetmore; Tyler Whitaker;
23 Adam Young; Ellen Steinberg; Anne Seymore; Shawn Barfield
24 and Spiro -- it's F. E. R. D. E. R. I. G. O. S. Thank
C 25 you.

SELECTION OF THE JURY

1 THE COURT: You may proceed, Mr. Stidham.

2 MR. STIDHAM: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MR. STIDHAM: Good morning. I'm Reese Stidham
5 from the public defender's office. I represent Antonio
6 Patterson. And helping me today is Ted Smith, also from
7 the public defender's office.

8 Other lawyers in my office include Karen Barker;
9 Beattie Butler; Rodney Davis; Martha Dicus; Rhett Dunaway;
10 Megan Ehrlich; Mary Ford; Cantrell Frair; Andrew Grimes;
11 Cody Groeber; David Haselden; Herbert Hoefer; Jason King;
12 Benjamin Lewis; Mary Beth Mullaney; my boss, Ashley
13 Pennington; Lori Proctor; Maryellen Rankin; Margaret Kent
14 Graves; Shelby Stokes; J. Tim Taylor.

15 THE COURT: Thank you. If you would introduce
16 your client to the panel. Sir, if you would stand and
17 face the panel for me as well. You did that already. I'm
18 sorry. I apologize. Mr. Smith, you did the same?

19 MR. SMITH: I did, Your Honor.

20 THE COURT: Thank you all.

21 Ladies and gentlemen, listen very carefully. If
22 the question applies to you, stand and in a loud, clear
23 voice give us your name and your juror number and remain
24 standing until the Court has completed questioning you.

25 Is there any member of the panel related by blood

SELECTION OF THE JURY

1 or marriage to -- please pronounce your client's middle
2 name for me.

3 MR. STIDHAM: It's Dee-R-go, Your Honor.

4 THE COURT: Dieargo. Is there any member of the
5 panel related by blood or marriage to Anthony (sic)
6 Dieargo Patterson or [REDACTED] [REDACTED] If so, please stand
7 at this time.

8 (No response.)

9 THE COURT: Does any member of the panel have a
10 close personal or social relationship with Anthony (sic)
11 Dieargo Patterson or [REDACTED] If so, please stand
12 at this time.

13 The following are a list of potential witnesses.
14 I would ask that you would listen very carefully.

15 [REDACTED]
16 Jenny Antonio. Lisa Altine. Jennifer Wooley.
17 Randy Unterbrink, all of the Charleston Police
18 Department.

19 Robin Taylor and Quintes Young of the South
20 Carolina Law Enforcement Division.

21 Fay LeBoeuf, Registered Nurse.

22 David Ard employed with Gerald Tires.

23 Eric Light. Veronica Evans. Kim Shunto Hughes,
24 who's the custodian records at the Charleston County
25 Police Department.

SELECTION OF THE JURY

1 DeWayne Patterson. Timothy Patterson. And
2 Emanuel Patterson

3 Is there any member of the panel related by blood
4 or marriage to any of the people that I've just listed or
5 does anyone have a close personal or social relationship
6 with any of these individuals? If so, please stand at
7 this time.

8 Yes, ma'am?

9 THE JUROR: Juror number nine. I work with the
10 Charleston City Police Department in the offices. I work
11 over there.

12 THE COURT: Okay. Tell me your name and your
13 juror number.

14 THE JUROR: Juror number nine. Rose Barron.

15 THE COURT: Ma'am, as a result of these
16 experience, do you feel that you can remain fair and
17 impartial and render a fair and impartial decision in this
18 case based solely on the evidence as it will be presented
19 and on the law that the Court will instruct?

20 THE JUROR: Yes.

21 THE COURT: Thank you, ma'am. You may take your
22 seat.

23 Has any member of the panel ever been represented
24 by any of the attorneys involved or anyone in their
25 offices? If so, please stand.

C SELECTION OF THE JURY

1 (No response.)

2 THE COURT: Is there any member of the panel
3 related by blood or marriage to, or have a close personal,
4 social or business relationship with any of the attorneys
5 involved or anyone in their office? If so, please stand
6 at this time.

7 If you would tell me your name and your juror
8 number. I'll start over here.

9 THE JUROR: My name's Robert Hunter Kennedy,
10 Juror 132. Socially acquainted with Reese Stidham.

11 THE COURT: If you'll remain standing for me,
12 sir. Yes, ma'am?

13 THE JUROR: I'm 265, Allison Nussbaum. And I
14 enjoy a close personal relationship with Henry Laurentis
15 of the solicitor's office.

16 THE COURT: If you'd remain standing for me. And
17 yes, sir?

18 THE JUROR: William Snow, Juror 220. I know
19 Scarlett Wilson.

20 THE COURT: Okay. Remain standing for me. Yes,
21 ma'am?

22 THE JUROR: Juror number 157, Sabrina McClair
23 Martin. I am friends with Cantrell Frair of the public
24 defender's office.

25 MS. SHEALY: I'm sorry. Can I get that juror

C SELECTION OF THE JURY

1 number?

2 THE COURT: 157. As a result of these
3 experiences, do you all feel that you can remain fair and
4 impartial and render a fair and impartial decision in this
5 case based solely on the evidence as it will be presented,
6 and on the law that the Court will instruct? If your
7 answer is yes, please take your seat.

8 Let the record reflect that all answered yes with
9 the exception of Number 220.

10 Sir, you will be excused from the trial of this
11 case only. You may take your seat.

C 12 Has any member of the panel formed or expressed
13 an opinion about any issue or matter involved in this
14 case? If so, please stand.

15 (No response.)

16 THE COURT: Is there any member of the panel
17 aware of any bias or prejudice toward either the State or
18 the defense in this case? If so, please stand at this
19 time.

20 (No response.)

21 Is there any member of the panel who is a member
22 of the grand jury which issued the indictments in this
23 case? If so, please stand at this time.

C 24 (No responose.)

25 Is there any member of the panel who is a member

C SELECTION OF THE JURY

1 of or contributor to any group which has as its primary
2 concern the promotion of law enforcement or victims'
3 rights?

4 These groups would include but are not limited
5 to, Mothers Against Drunk Driving, Students Against Drunk
6 Driving, Citizens Against Violent Crime, People Against
7 Rape, Citizens Advocating the Return to Decency and
8 Ethics, and Parents Empowered to Save Teens or any
9 community watch-type or any other like organizations? If
10 so, please stand at this time.

11 (No response.)

C 12 THE COURT: Is there any member of the panel who
13 was formerly employed with law enforcement? If so --
14 or if you have an immediate family member who is employed
15 with law enforcement? If so, please stand at this time.

16 Tell me your name, ma'am.

17 THE JUROR: Maria Chaverria.

18 THE COURT: And your juror number?

19 THE JUROR: 42.

20 THE COURT: And it is you or a family member?

21 THE JUROR: My husband.

22 THE COURT: And he is employed with whom?

23 THE JUROR: The City of Charleston Police
24 Department.

C 25 THE COURT: Please remain standing. And yes,

C SELECTION OF THE JURY

1 ma'am, in the back?

2 THE JUROR: Juror number 157, Sabrina McClair
3 Martin. Former probation and parole officer also former
4 Charleston Police Department dispatch.

5 THE COURT: Yes, ma'am?

6 THE JUROR: Juror 065, Helen Dent, brother of a
7 State Trooper.

8 THE COURT: As a result of these experiences, do
9 you all feel that you can remain fair and impartial and
10 render a fair and impartial decision in this case based
11 solely on the evidence as it will be presented and on the
12 law that the Court will instruct?

13 If your answer is yes, please take your seat.

14 Let the record reflect that all answered yes.

15 Is there any member of the panel who has read or
16 heard anything about this case, whether it be the radio,
17 newspaper, television or Internet? If so, please stand at
18 this time.

19 (No response.)

20 THE COURT: Is there any member of the panel who
21 is a member of the Fully Informed Juror organization? If
22 so, please stand at this time.

23 (No response.)

24 THE COURT: Is there any member of the panel who
25 has, or a member of your family, been a victim of a

SELECTION OF THE JURY

1 violent crime? If so, please stand at this time.

2 Yes, ma'am?

3 THE JUROR: Stephanie Parker, Number 266.

4 THE COURT: Was it you or a family member?

5 THE JUROR: Myself.

6 THE COURT: Ma'am, as a result of this
7 experience, would you feel that you can remain fair and
8 impartial and render a fair and impartial decision in this
9 case based solely on the evidence as it will be presented
10 and on the law that the Court will instruct?

11 THE JUROR: I think so.

12 THE COURT: Well, there's no right or wrong
13 answer. I need you to search your heart, but the question
14 has to -- the answer has to be a definitive yes or no.

15 Again, there is no right or wrong answer. Only
16 you can -- you've got to be satisfied with the answer that
17 you provide to the Court.

18 THE JUROR: No.

19 THE COURT: Okay. You'll be excused from the
20 trial of this case only. If you would take your seat.
21 That's Juror 266.

22 Is there any member of the panel who has any
23 moral, philosophical, political or religious beliefs that
24 prohibit you from sitting in judgment of another person?
25 If so, please stand at this time.

SELECTION OF THE JURY

1 (No response.)

2 THE COURT: Did you have a second page of your
3 voir dire questions?

4 MS. SHEALY: I did, Your Honor. .

5 THE COURT: Okay. I know this is an intensely
6 personal question. And if you do not want to stand in the
7 presence of your fellow jurors to answer, please let me
8 know and I'll speak with you privately with the court
9 reporter and with the lawyers. .

10 Is there any member of the panel or a member of
11 your family ever been a victim or a witness to a sexual
12 assault? If so, please stand at this time.

13 (No response.)

14 THE COURT: Is there any member of the panel or a
15 member of your family ever been accused of a sexual
16 assault? If so, please stand at this time.

17 (No response.)

18 THE COURT: Does any member of the panel know of
19 any reason whatsoever why he or she should not serve as a
20 juror in this case, with particular emphasis being placed
21 on your ability to be fair and impartial to both the State
22 and the defense? If so, please stand at this time.

23 (No response.)

24 THE COURT: Are there any additional questions
25 from the State?

SELECTION OF THE JURY

1 MS. SHEALY: No, Your Honor.

2 THE COURT: From the Defendant?

3 MR. STIDHAM: No, Your Honor.

4 THE COURT: Strikes will be 10 and five.

5 Ladies and gentlemen, if your name is called,
6 please come forward as Mr. Major is doing, please bring
7 all of your personal belongings. You will come forward
8 and stand exactly where he is standing, turn back around
9 and face your fellow jurors until you're either excused or
10 accepted as a panel member.

11 Again, please bring all of your personal
12 belongings. And if you're seated at the edge of a seat
13 and someone has to come from the inner part of the seat,
14 please slide down so that they don't have to climb back
15 over you to come back to their seats.

16 We appreciate your patience. You may proceed.

17 THE CLERK: Juror Number 132, Robert Kennedy
18 (white male). 132. What say you for the State?

19 MS. SHEALY: Please excuse the juror.

20 THE CLERK: Mr. Kennedy, please have a seat back
21 in the audience. You've been excused from the trial of
22 this case.

23 Juror number 38, Patricia Campbell (white
24 female). 38.

25 What say you for the State?

SELECTION OF THE JURY

1 MS. SHEALY: Please swear the juror.

2 THE CLERK: What say you for the Defendant?

3 MR. STIDHAM: Please seat the juror.

4 THE CLERK: Ms. Campbell, please have a seat in
5 the jury box. You've been selected as a juror in this
6 case.

7 Juror number 163, Yvonne Mitchell (black
8 female). 163.

9 THE COURT: What is the number?

10 THE CLERK: 163. What say you for the State?

11 MS. SHEALY: Please swear the juror.

12 THE CLERK: What say you for the Defendant?

13 MR. STIDHAM: Please seat the juror.

14 THE CLERK: Ms. Mitchell, please have a seat in
15 the jury box. You've been selected as a juror in this
16 case.

17 Juror number 234, Shannah Ward (black female).
18 234. What say you for the State?

19 MS. SHEALY: Please excuse the juror.

20 THE CLERK: Ms. Ward, please have a seat back in
21 the audience. You've been excused from the trial of this
22 case.

23 Juror number 187, Richard Putz (white male).

24 187. What say you for the State?

25 MS. SHEALY: Please swear the juror.

SELECTION OF THE JURY

1 THE CLERK: What say you for the Defendant?

2 MR. STIDHAM: Please excuse the juror.

3 THE CLERK: Mr. Putz, please have a seat back in
4 the audience. You've been excused from the trial of this
5 case.

6 Juror number 204, Dale Saulisbury (white male).
7 204. What say you for the State?

8 MS. SHEALY: Please swear the juror.

9 THE CLERK: What say you for the Defendant?

10 MR. STIDHAM: Please seat the juror.

11 THE CLERK: Mr. Saulisbury, please have a seat in
12 jury box. You've been selected as a juror in this case.

13 Juror number 170, Julia Notton (white female).
14 170. What say you for the State?

15 MS. SHEALY: Please swear the juror.

16 THE CLERK: What say you for the Defendant?

17 MR. STIDHAM: Please excuse the juror.

18 THE CLERK: Ms. Notton, please have a seat back
19 in the audience. You've been excused from the trial of
20 this case.

21 Juror number 32, Paul Brunson (black male). 32.
22 What say you for the State?

23 MS. SHEALY: Please swear the juror.

24 THE CLERK: What say you for the Defendant?

25 MR. STIDHAM: Please seat the juror.

SELECTION OF THE JURY

1 THE CLERK: Mr. Brunson, please have a seat in
2 the jury box. You've been selected as a juror in this
3 case.

4 Juror number 34, Donald Buhrmaster (white male).
5 34. What say you for the State?

6 MS. SHEALY: Please swear the juror.

7 THE CLERK: What say you for the Defendant?

8 MR. STIDHAM: Please excuse the juror.

9 THE CLERK: Mr. Buhrmaster, please have a seat
10 back in the audience. You've been excused from the trial
11 of this case.

12 Three strikes for the Defendant.

13 Juror number 201, Jacquetta Roper (black female),
14 201. What say you for the State?

15 MS. SHEALY: Please swear the juror.

16 THE CLERK: What say you for the Defendant?

17 MR. STIDHAM: Please swear the juror.

18 THE CLERK: Ms. Roper, please have a seat in the
19 jury box. You've been selected as a juror in this case.

20 Juror number 178, Jennifer Parks (white female).
21 178. What say you for the State?

22 MS. SHEALY: Please excuse the juror.

23 THE CLERK: Ms. Parks, please have a seat back in
24 the audience. You've been excused from the trial of this
25 case.

SELECTION OF THE JURY

1 Three strikes for the State.

2 Juror number 223, James Stanton (white male).

3 223. What say you for the State?

4 MS. SHEALY: Please swear the juror.

5 THE CLERK: What say you for the Defendant?

6 MR. STIDHAM: Please seat the juror.

7 THE CLERK: Mr. Stanton, please have a seat in
8 the jury box. You've been selected as a juror in this
9 case.

10 Juror number 173, William Olsen (white male).

11 173. What say you for the State?

12 MS. SHEALY: Please swear the juror.

13 THE CLERK: What say you for the Defendant?

14 MR. STIDHAM: Please excuse the juror.

15 THE CLERK: Mr. Olsen, please have a seat back in
16 the audience. You've been excused from the trial of this
17 case.

18 Juror number 22, Antonette Boswell (black
19 female). 22. What say you for the State?

20 MS. SHEALY: Please swear the juror.

21 THE CLERK: What say you for the Defendant?

22 MR. STIDHAM: Please seat the juror.

23 THE CLERK: Ms. Boswell, please have a seat in
24 the jury box. You will serve as a juror in this case.

25 Juror number 247, Edward Wind (white male).

SELECTION OF THE JURY

1 247. What say you for the State?

2 MS. SHEALY: Please swear the juror.

3 THE CLERK: What say you for the Defendant?

4 MR. STIDHAM: Please seat the juror.

5 THE CLERK: Mr. Wind, please have a seat in the
6 jury box. You've been selected as a juror in this case.

7 Juror number 144, Henry Lockwood (white male).

8 144. What say you for the State?

9 MS. SHEALY: Please excuse this juror.

10 THE CLERK: Mr. Lockwood, please have a seat back
11 in the audience. You've been excused from the trial of
12 this case.

13 That's four strikes for the State.

14 Juror number 264, Samuel Moon (unknown race
15 male). 264. What say you for the State?

16 MS. SHEALY: Please swear the juror.

17 THE CLERK: What say you for the Defendant?

18 MR. STIDHAM: Please swear the juror.

19 THE CLERK: Mr. Moon, please have a seat in the
20 jury box. You've been selected as a juror in this case.

21 Juror number 181, Washburn Phillips (white
22 female). 181. What say you for the State?

23 MS. SHEALY: Please swear the juror.

24 THE CLERK: What say you for the Defendant?

25 MR. STIDHAM: Please excuse the juror.

SELECTION OF THE JURY

1 THE CLERK: Ms. Phillips, please have a seat back
2 in the audience. You've been excused from the trial of
3 this case.

4 Juror number 43, Valerie Chestnut (black
5 female). 43. What say you for the State?

6 MS. SHEALY: Please swear the juror.

7 THE CLERK: What say you for the Defendant?

8 MR. STIDHAM: Please seat the juror.

9 THE CLERK: Ms. Chestnut, please have a seat in
10 the jury box.

11 THE BAILIFF: Order in the court.

12 THE CLERK: Juror number 177, Anthony Pappas
13 (white male). 177. What say you for the State?

14 MS. SHEALY: Please swear the juror.

15 THE CLERK: What say you for the Defendant?

16 MR. STIDHAM: Please seat the juror.

17 THE CLERK: Mr. Pappas, please have a seat in the
18 jury box. You've been selected as a juror in this case.

19 Juror number 255, Susan Bryant (unknown race
20 female). 255. What say you for the State?

21 MS. SHEALY: Please swear the juror.

22 THE CLERK: What say you for the Defendant?

23 MR. STIDHAM: Please excuse the juror.

24 THE CLERK: Ms. Bryant, please have a seat back
25 in the audience. You've been excused from the trial of

SELECTION OF THE JURY

1 this case.

2 Six strikes for the Defendant.

3 Juror number 111, Dorothy Haynes (black female).

4 111. What say you for the State?

5 MS. SHEALY: Please swear the juror.

6 THE CLERK: What say you for the Defendant?

7 MR. STIDHAM: Please seat the juror.

8 THE CLERK: Ms. Haynes, please have a seat in the
9 jury box. You've been selected as a juror in this case.

10 THE COURT: One alternate. From the State, one
11 alternate?

12 MS. SHEALY: Yes, ma'am?

13 THE COURT: One alternate from the defense?

14 MR. STIDHAM: Yes, sir, Your Honor.

15 THE COURT: One alternate. Strikes are one and
16 two.

17 THE CLERK: Juror number 89, Shain Freeman (black
18 female). 89. What say you for the State?

19 MS. SHEALY: Please swear the juror.

20 THE CLERK: What say you for the Defendant?

21 MR. STIDHAM: Please swear the juror.

22 THE CLERK: Ms. Freeman, please have a seat in
23 the jury box. You've been selected as a juror in this
24 case.

25 Your Honor, the jury has been selected and are

SELECTION OF THE JURY

1 seated.

2 THE COURT: Any motions regarding jury
3 selections, from the State?

4 MS. SHEALY: No, Your Honor.

5 THE COURT: From the Defendant?

6 MR. STIDHAM: None from the defense, Your Honor.

7 THE COURT: Ladies and gentlemen of the jury, we
8 appreciate your time and your patience. You're excused
9 for the remainder of the day. Please call the jury
10 information line after six o'clock this evening for
11 further instructions.

12 We anticipate we'll probably be selecting some
13 juries on Wednesday morning but you never know. Things
14 could change. Again, call after six for further
15 instructions.

16 Have a great afternoon. You're excused.

17 (Jury exits courtroom at 12:33 p.m.)

18 THE COURT: Ladies and gentlemen, please stand
19 and raise your right hand to be sworn.

20 (Jury impaneled.)

21 THE CLERK: Thank you. Be seated.

22 THE COURT: Ladies and gentlemen of the jury.
23 You've been selected for the case of the State versus
24 Antonio Dieargo Patterson.

25 We're going to take a brief recess so that I can

1 determine how we will be proceeding for the remainder of
2 the afternoon. I anticipate we're going to break for
3 lunch because I have another case that I need to dispose
4 of before lunch and it's going to take some considerable
5 time. But if you could bear with us while we flesh that
6 out and decide how we will be proceeding for the
7 afternoon.

8 During the recess, please do not discuss the case
9 among yourself. Please don't speculate about what you
10 think it may or could be about.

11 I'm selecting Number 32 as your foreperson. Your
12 foreperson is the person that writes out questions during
13 deliberations and fills out the verdict form. They don't
14 have any greater vote or voice than you do. It is merely
15 an administrative function and it's a completely random
16 process that the Court engages in in selecting that
17 person.

18 Again, please do not have any conversations about
19 what you think the case may or could be about. Please go
20 with the bailiffs for me, please.

21 Again, we appreciate your patience. We should
22 not be out very long.

23 (Jury exits courtroom at 12:35 p.m.)

24 THE COURT: Okay. Other than this motion -- bear
25 with me one second.

1 (Pause.)

2 THE COURT: Other than the motion that is filed
3 to introduce evidence pursuant to 16-3-659 which is the
4 rape shield statute, are there any other pre-trial motions
5 from the State?

6 MS. SHEALY: Your Honor, I have just a couple of
7 brief matters that I'd like to address.

8 THE COURT: Okay.

9 MS. SHEALY: Do you want me to do those now?

10 THE COURT: Uh-huh.

11 MS. SHEALY: The victim in our case, [REDACTED]
12 [REDACTED] Your Honor, on the day in question was on her way
13 to the jail to visit someone in the jail.

14 THE COURT: Uh-huh.

15 MS. SHEALY: It would be our position that any
16 reference to her going to a visitation in the jail is
17 irrelevant. And if relevant, any probative value would be
18 outweighed by the prejudicial effect of it.

19 So we would ask that the defense be precluded
20 from inquiring exactly where she was going.

21 THE COURT: Did you all plan to ask that
22 question?

23 MR. STIDHAM: Your Honor -- Yes, Your Honor.

24 THE COURT: Okay. I'll have to hear it in
25 camera. I'm not going to make any evidentiary decisions

1 without hearing the cases in its posture as it proceeds.

2 So before any of those questions are asked, you
3 need to make me aware of them so I can hear them in camera
4 and determine if it's proper at that time.

5 MS. SHEALY: Okay. And that will be pretty --
6 she's the first witness. It will be pretty much right up
7 front.

8 THE COURT: Well, no, not until cross-
9 examination.

10 MS. SHEALY: Well, if he's entitled to go into
11 it. I'd like to go ahead and ask her that. And I also
12 thought we'd probably need to address it in some fashion
13 during my opening.

14 THE COURT: See, I don't know whether it's
15 relevant or probative at this point. Why would it be
16 relevant or probative?

17 MR. STIDHAM: Judge, it may go -- depending on
18 who she was visiting, it may go to her motive.

19 THE COURT: You should know by now who she was
20 visiting.

21 MR. STIDHAM: I know exactly who she was
22 visiting. I don't know her relationship with that
23 person. And the sequence of --

24 THE COURT: Who was she going to visit?

25 MS. SHEALY: Her boyfriend.

1 THE COURT: Okay. So why is that relevant or
2 probative?

3 MR. STIDHAM: Well, it may go to her motive to
4 why -- depending on my client's testimony, whether --

5 THE COURT: Well, whether she's going to the jail
6 to visit him doesn't go to a motivation to lie.

7 MR. STIDHAM: Well, depending on --

8 THE COURT: If going into her relationship with
9 him is what would be relevant or probative, then you would
10 have to prove that somehow her having sex with someone
11 else would have had some detrimental or deleterious effect
12 on her relationship. And then you'd have to then connect
13 the dots as to how that connects her going to visit him in
14 the jail. Do you understand what I'm saying?

15 MR. STIDHAM: I'm not sure I do, Your Honor.

16 THE COURT: I think that whether in fact she has
17 other relationships that would motivate her to lie bears
18 on her credibility. So her going to the jail to visit
19 somebody, you're going to have to connect the dots for me
20 to see that that's relevant.

21 MR. STIDHAM: My client took her to the jail and
22 also picked her up from the jail.

23 THE COURT: Okay.

24 MR. STIDHAM: And then the allegations of sexual
25 conduct occurred after that visitation at the jail.

1 And it may or it may not be my client's testimony
2 that there might have been some consensual sexual conduct
3 prior to that visitation at the jail. And then
4 subsequently there was an accusation of an assault.

5 THE COURT: Do you have any idea of what was said
6 or anything that would have prompted some kind of false
7 statement?

8 MR. STIDHAM: What was said when?

9 THE COURT: When she visited the jail or how that
10 would affect -- see, you can elicit that same testimony by
11 saying, do you have a boyfriend and isn't it true that you
12 were visiting him.

13 MR. STIDHAM: I would say --

14 THE COURT: You can talk about her going to visit
15 without saying where.

16 MR. STIDHAM: That's fine.

17 THE COURT: I think that's fair.

18 MR. STIDHAM: I'm not trying to --

19 THE COURT: I think it's fair game for him to
20 say, did he take you to visit your boyfriend and did he
21 pick you up, and after all of that, did he then say these
22 things. I think all of that is relevant, but where he was
23 taking her is not relevant.

24 MR. STIDHAM: That's fine.

25 THE COURT: Is that acceptable to the State?

1 MS. SHEALY: It is. Thank you, Your Honor.

2 THE COURT: All right. Next one?

3 MS. SHEALY: Then, Your Honor, there is an oral
4 statement by the Defendant that the defense has not made a
5 motion about, but I just thought we should probably just
6 put it on the record.

7 THE COURT: What is the substance of that
8 statement?

9 MS. SHEALY: That he denies any -- it's a
10 telephone conversation between the Defendant and Lisa
11 Altine, the city police officer --

12 THE COURT: Uh-huh.

13 MS. SHEALY: -- where he called her and said that
14 he did not rape [REDACTED] and that he would like to tell
15 her his side of the story. And then he said he'd call her
16 back in 10 minutes and then she never heard from him
17 again.

18 We probably will go into that. It's my
19 understanding the defense has no objection.

20 THE COURT: Is that correct?

21 MR. STIDHAM: That's correct, Your Honor.

22 THE COURT: Okay.

23 MS. SHEALY: And, Your Honor, I believe the
24 defense also in addition to the rape shield issue has a
25 motion regarding the 9-1-1 tape.

1 MR. STIDHAM: Yes, Your Honor, we do.

2 THE COURT: I haven't received that.

3 MR. STIDHAM: Oh, I didn't file a written motion,
4 Your Honor.

5 THE COURT: Okay.

6 MR. STIDHAM: I'm just moving to suppress it on
7 the basis that it's hearsay and improper bolstering.

8 THE COURT: Wouldn't that be outcry? It's a
9 9-1-1 tape from who?

10 MR. STIDHAM: It's from the victim to 9-1-1.

11 THE COURT: I think it comes under outcry but I'd
12 have to hear it. I'll hear it in camera.

13 MS. SHEALY: Again, Judge, that would be my first
14 witness. I just wanted to know ahead of time what you
15 wanted to do.

16 THE COURT: I'm going to do it within the context
17 of the testimony. There's no point in me doing it twice.
18 So when you get to that testimony, you need to make me
19 aware that you have a matter of law so we can stop it and
20 do it.

21 MS. SHEALY: Okay. And then, Your Honor, I have
22 no idea whether Mr. Stidham or Mr. Smith would intend to
23 do this, but I have noticed a trend with defense attorneys
24 in their openings to share information about their client.
25 that otherwise doesn't get elicited from witnesses in

1 trial.

2 And if they are considering doing that, I would
3 have an objection to them proceeding in that way.

4 MR. STIDHAM: No, Your Honor.

5 THE COURT: And if they do, you can make a
6 contemporaneous objection.

7 MS. SHEALY: Yes. That's all that we have other
8 than the rape shield.

9 THE COURT: Other than the rape shield, do you
10 have anything else, Mr. Stidham?

11 MR. STIDHAM: No, Your Honor.

12 THE COURT: We'll take up the rape shield
13 information in camera.

14 So before you ask any of those questions, you
15 need to tell me that you have a matter of law and we'll
16 take them up in camera.

17 MS. SHEALY: Your Honor, that question is -- the
18 subject matter that he wants to address in that is pretty,
19 I guess the best word to use is inflammatory on top of
20 being inappropriate, I think.

21 And I think even in addressing my opening, we
22 might -- we would probably need to have that settled as to
23 whether or not we--

24 THE COURT: I'm not going to settle it until I
25 hear all the testimony. I need to hear it in its totality

1 before I make a decision about that. I won't make a
2 decision like that beforehand if that's what you're asking
3 me to do.

4 I have to hear all of the statements to make a
5 decision as to whether it's relevant and whether it meets
6 the statutory criteria. And I'm not going to hear bits
7 and parts of what you all are going to tell me what she's
8 going to say. I need to hear what she's going to say
9 because people rarely repeat things the same way twice. I
10 need to hear all her testimony.

11 And I don't see any prejudice to you because you
12 can always argue it in closing. So if you want to argue
13 in your opening what the evidence will show. So if I
14 exclude it I exclude it, but I'm not going to make a
15 decision like that on the rape shield. I need to hear
16 exactly how the posture of the case is going as the
17 evidence is presented.

18 MS. SHEALY: Well, Your Honor, then I think what
19 I would need to do is in my testimony of her, we would
20 probably have to address his motion because what I don't
21 want to do, Your Honor, is not ask her certain questions
22 about this alleged incident and then he bring it out on
23 cross and have --

24 THE COURT: He's not going to bring it out on
25 cross because I'm going to do it in camera.

1 MS. SHEALY: Maybe I don't understand what --
2 exactly what you mean. Are we going to have her testify
3 now as to it?

4 THE COURT: No. We're going to have her testify
5 when you call her as a witness and before she goes into it
6 I'll hear it in camera. And then I'll make a decision
7 based on the rape shield statute whether it's admissible
8 or not, because I need to hear her testimony in its
9 totality to determine whether it's relevant and whether it
10 meets the criteria of the rape shield statute.

11 MS. SHEALY: So it --

12 THE COURT: And I'm not going to do that based on
13 what you all say she's going to say. And I'm not going to
14 do that based on in camera of what you say she's going to
15 say because people rarely repeat things the same way
16 twice.

17 MS. SHEALY: May I just tell you what it is we
18 hope to go into, so I could better explain my dilemma?

19 THE COURT: Yes.

20 MS. SHEALY: [REDACTED] the victim, when she
21 was 13 or 14 years old, was sexually assaulted by the
22 Defendant's brother.

23 THE COURT: Okay.

24 MS. SHEALY: Mr. Stidham wants to inquire of her
25 about that during this trial. So, right out of the box,

1 you know, I would want to explore that with her.

2 THE COURT: I assume he's saying it's consensual.
3 How is that relevant?

4 MR. STIDHAM: Judge, it may go to her motive to
5 fabricate a lie. There is evidence --

6 THE COURT: Well, there's criteria that you have
7 to meet. I thought I had that. While I'm looking for
8 that --

9 MR. STIDHAM: Judge, we're not trying to
10 introduce that to show anything about Ms. [REDACTED]
11 character. We're trying to show that that may be evidence
12 of bias against my client's family and a motive to lie.

13 THE COURT: Well, they have to do more than that
14 to meet the statutory criteria, don't they?

15 MR. STIDHAM: Well, I think there's case law in
16 State V. Finley. I noted in my motion, I believe I
17 provided the Court a copy of that, it says it's a factual
18 situation very analogous to the one we have here.

19 (Pause.)

20 MS. SHEALY: It was not reported. She did not
21 report it to anyone. And it took place, Judge, over 10
22 years prior to this incident. There's no connectiveness
23 between that incident and this incident, unlike in the
24 Finley case.

25 THE COURT: Well, the Finley case is a whole

1 different situation.

2 MS. SHEALY: Right.

3 MR. STIDHAM: Where somebody was trying to extort
4 money based on a series of events.

5 MS. SHEALY: And the litany of cases since then
6 regarding rape shield is very protective of this type of
7 testimony not being offered against victims.

8 MR. STIDHAM: Judge, are we arguing the rape
9 shield right now?

10 THE COURT: No, but I'm looking it up to decide
11 how I'm going to handle it.

12 MR. STIDHAM: Well, if I may state my position.

13 THE COURT: I'm going to let you fully argue it
14 but I'm deciding right now what -- how I'm going to deal
15 with it. (Pause.)

16 What testimony would you be eliciting at this
17 time?

18 MR. STIDHAM: Your Honor, the victim in this case
19 gave statements to the police on the date of the incident
20 saying that, in answer to a question: How do you know
21 Tony? I've known him since I was 14 or 15. Have you ever
22 had consensual sex with Tony? Yes, when I was 13 or 14.

23 THE COURT: Is that your client?

24 MR. STIDHAM: Yes, Your Honor. My client's Tony.

25 THE COURT: Okay.

1 MR. STIDHAM: I understand now from the solicitor
2 that the victim now says, I didn't say that. That's not
3 true. What I said was, Tony's brother, DeWayne, raped me
4 when I was 13 or 14.

5 THE COURT: Is that going to be elicited?

6 MS. SHEALY: I don't intend to elicit it, but
7 what I think, Judge, is the appropriate course would be
8 for him not to be able to inquire of it and for that part
9 of the statement not to come in.

10 THE COURT: Well, my question is: Did you plan
11 to make that inquiry?

12 MS. SHEALY: Only if you were allowing anything
13 about the --

14 THE COURT: Not going into that. Is it your
15 position that you only need to ask that because the
16 State's planning to go into her statement?

17 MR. STIDHAM: I want it to impeach the witness.
18 Yes, Your Honor.

19 THE COURT: Okay. How -- I'm trying to -- if the
20 State doesn't elicit that, then how are you going to
21 impeach her?

22 MR. STIDHAM: Well, I can't do it with -- I mean,
23 she gave her --

24 THE COURT: She gave a statement that she had
25 consensual sex with him, which at her age couldn't be

1 consensual sex because she was underage according to the
2 law.

3 MR. STIDHAM: That's right.

4 THE COURT: So what part do you plan to impeach?

5 MR. STIDHAM: Well, Judge, she said that that's
6 not -- I never said that. So it's either important that
7 the officer got it wrong or that she gave a --

8 THE COURT: Who's going to say that she never
9 said that?

10 MR. STIDHAM: I'm sorry?

11 THE COURT: Who's going to say that she never
12 said that?

13 MR. STIDHAM: Well, I guess if the State doesn't
14 intend to get into it --

15 THE COURT: How is it you're going to get into
16 it?

17 MR. STIDHAM: Well, Judge, again, my motive for
18 getting into this question is to prove that --

19 THE COURT: Yeah, but how are you going to get
20 into it?

21 MR. STIDHAM: Well, Judge, I was planning on
22 asking [REDACTED] if she ever told Officer Antonio that
23 she had consensual sex with my client. And my question
24 was, can I not do that?

25 THE COURT: That she did?

1 MR. STIDHAM: Right.

2 THE COURT: Well, the statement says that she
3 did.

4 MR. STIDHAM: Right. And --

5 THE COURT: So that's not inconsistent with what
6 she said.

7 MR. STIDHAM: Well, can I ask her: Did she say
8 that and is that true?

9 THE COURT: I don't know what her answer is going
10 to be so --

11 MR. STIDHAM: Well, I just want to be able to ask
12 the question.

13 THE COURT: Is the State saying that they don't
14 object to that question?

15 MS. SHEALY: No, I do, because for her to answer
16 that question truthfully, she would then have to break
17 out, no, what I told the officer was that I had, I had
18 been attacked sexually by his brother when I was 13 or 14
19 years old.

20 THE COURT: Have you had a chance to go over that
21 statement?

22 MR. STIDHAM: She wrote it and initialed all her
23 answers, Judge.

24 MS. SHEALY: The problem, Judge, if the officer
25 then asked her another question under rape shield it

1 wouldn't allow it and --

2 THE COURT: That's different. Rape shield and
3 credibility are two separate issues. And this is, this is
4 not about rape shield.

5 This is about credibility of her statement, the
6 words she put in her statement whether she was consistent
7 or inconsistent.

8 When she says she had consensual sex with him, he
9 can ask her about that. If she then wants to bring in her
10 sexual history and say, well, no, I didn't say that,
11 that's a whole different issue.

12 I'm not going to restrict that. I'm going to ask
13 her about a statement that she made contemporaneous with
14 the interview. If she now says that's something separate,
15 something different than she said, then she -- then that's
16 y'all getting into it. That's not them getting into it.

17 If she wants to now say, no, that's not what I
18 told the officer, I told him something different. That's
19 a whole different ball of wax. If she had the opportunity
20 to read her statement and correct it at that time and if
21 she failed to that, that's just the set of facts we're
22 left with.

23 I cannot -- that's up to you as to whether you
24 want to go into it. Her statement says -- it's an
25 impeachment issue for the defense. The defense is going

1 to ask her: Is this the statement you made. And then
2 she's going to say yes or no. If she says no, then she's
3 going to say, no, I told them such-and-such-and-such.

4 It still becomes a credibility issue because the
5 defense then will ask her: Well, didn't you read your
6 statement? Why didn't you correct it then? Wasn't it
7 made in close proximity to when this happened?

8 Or, you can pre-emptively deal with it by
9 saying -- because I assume you're going to ask her about
10 her statement -- and you can deal with all those issues
11 about why she didn't correct it or whether it's truthful.
12 or not.

13 So it becomes a credibility issue, not a rape
14 shield issue about the weight to be afforded to the
15 statement that she made in close proximity of the event.
16 And I don't think I can restrict them based on that. It's
17 just a credibility issue.

18 Now what we can do and the way we can handle it
19 is you can ask her all the questions you want to ask her
20 and then we'll take up that part of it in camera. I will
21 hear it and make a decision.

22 And then if you want to ask her those questions.
23 prior to you concluding your examination, you can do
24 that. Or if you choose not to, then the defense can ask
25 her those questions.

1 MS. SHEALY: Your Honor, I think Mr. Stidham is
2 also asserting though that he is going to use that, that
3 there was a sexual encounter between her and his brother
4 10-something years ago to assert intentional motive on her
5 part.

6 And so that's certainly going into the rape
7 shield protections.

8 MR. STIDHAM: If I was attacking her character it
9 would be going into the rape shield, but motive and bias
10 and prejudice --

11 THE COURT: I'll have to hear all of that in
12 camera.

13 MR. STIDHAM: Okay.

14 THE COURT: Because, again, I haven't heard the
15 testimony. And, again, I don't like making decisions on
16 what you think it will be. It will wind up being 98
17 percent wrong.

18 Whatever is elicited or developed will be
19 assumptions, not deliberate on your part. It's just not
20 the way that comes out. Even when I hear vigorous other
21 motions in camera, witnesses don't say what they say in
22 here, or either they'll abbreviate the questions and they
23 just never, never -- I hear some stuff in testimony in
24 front of the jury that I never heard before.

25 And so I would prefer to hear it within the

1 proximity of her testimony so I can make a decision about
2 its relevance and credibility. So what we'll do is when
3 you're questioning her, we'll have an in camera hearing to
4 hear all of those questions. And then I'll make a
5 decision about whether it's relevant and whether it comes
6 under the rape shield.

7 MS. SHEALY: Okay.

8 THE COURT: Now, is there anything else we need
9 to take up before we break for lunch?

10 MS. SHEALY: Not from the State.

11 MR. STIDHAM: No, Your Honor. Thank you.

12 THE COURT: Okay. Y'all go to lunch and be back
13 at -- actually, did you sign up your fellow on
14 Mr. Burton?

15 MR. STIDHAM: Yes, Your Honor.

16 (Thereafter, another matter was heard.)

17 THE COURT: What we're going to do is break for
18 lunch until 2:30, and then I need you back at 2:30 ready
19 to do your plea. And then I need y'all back at quarter to
20 three, but I'm going to bring the jury in and I'm going to
21 explain to them what's going on.

22 Please bring the jury. The foreperson's name is
23 Mr. Brunson, Number 32.

24 (Jury enters courtroom at 1:08 p.m.)

25 THE BAILIFF: Jury is all present.

1 THE COURT: Thank you. Ladies and gentlemen, we
2 appreciate your patience.

3 We are going to break for lunch and resume this
4 matter at quarter of three. During the break, please do
5 not discuss this case among yourselves or with anyone
6 else. Please don't speculate about what you think it may
7 or could be about.

8 Please don't allow yourselves to be exposed to
9 any media coverage about this case. That includes
10 anything that could be on the radio, television, Internet
11 or otherwise, or in the newspaper. I'm not aware of any
12 media accounts, so, please guard yourselves accordingly.

13 Please don't have any contact with anyone in or
14 about the courthouse. Again, I would hate for an innocent
15 conversation to be observed and misconstrued.

16 Our extended delay is due to the fact that I had
17 some matters of law that I needed to deal with on this
18 case that we personally dealt with. And I also have a
19 guilty plea that I need to dispose of prior to us
20 beginning this case and I don't want you all sitting while
21 I do that.

22 So you might as well have some extra time to do
23 what you need to do so that you will not be waiting on us
24 to return to the courthouse. You will return directly to
25 your jury room. And, again, please don't have any contact

1 in or about the courthouse.

2 The bailiffs will show you how to do that. We
3 appreciate your patience. We'll see you at 2:45 which is
4 quarter of three. Have a good lunch.

5 (Jury exits courtroom 1:09 p.m.)

6 THE COURT: Is there anything before we break for
7 the luncheon recess, from the State?

8 MS. SHEALY: Would the Defendant then be off his
9 bond at this time?

10 THE COURT: He is. The case has been called.
11 He'll be taken into custody pursuant to the statute.

12 Anything further from the Defendant?

13 MR. STIDHAM: Nothing, Your Honor.

14 THE COURT: Have a good lunch. I'll see you all
15 at 2:45.

16 MR. STIDHAM: Thank you, Your Honor.

17 (Thereupon, the luncheon recess was taken at
18 1:10 p.m. Following the recess, other matters were heard
19 by the Court. The hearing of this trial resumed
20 3:16 p.m.:)

21 THE COURT: Are we ready to proceed with State
22 versus Patterson?

23 MS. SHEALY: Yes, Your Honor. Your Honor, we
24 would both be asking for a sequestration order.

25 THE COURT: Witnesses will be sequestered by

1 agreement with the exception of the victim and the case
2 agent.

3 MR. STIDHAM: Thank you, Your Honor.

4 THE COURT: Yes, sir. I have gotten a note from
5 Juror 247. I have no idea what the source of this is but
6 the note simply says: Juror Number 247 would like to
7 speak to the Judge concerning possible conflict of
8 interest between he and the Defendant.

9 I have no idea what that means but I'm going to
10 bring him out and ask him.

11 Any exception from the State?

12 MS. SHEALY: No, Your Honor.

13 THE COURT: From the defense?

14 MR. STIDHAM: No, Your Honor.

15 THE COURT: Please bring in Juror Number 247.

16 (Juror enters courtroom at 3:18 p.m.)

17 THE COURT: Yes, sir. We received your note. I
18 need for you to explain to me what you meant. If you
19 would tell me your name and your juror number.

20 THE JUROR: My name is Howard Wind, Juror Number
21 247.

22 THE COURT: Yes, sir.

23 THE JUROR: And I know the Defendant father for a
24 number of years. He worked as my employee.

25 THE COURT: In what capacity, sir?

1 THE JUROR: I was his supervisor.

2 THE COURT: At where?

3 THE JUROR: Charleston Naval Shipyards. We
4 worked together for more than 27 years.

5 THE COURT: And how would you characterize your
6 relationship with him?

7 THE JUROR: As a friend.

8 THE COURT: When you say friend, define that for
9 me.

10 THE JUROR: Uh --

11 THE COURT: Did you see each other every day or
12 every other day? Did you socialize outside of work? Did
13 you consider yourself close or just acquaintances?

14 THE JUROR: Close.

15 THE COURT: Is there a reason you did not
16 disclose that to us during the voir dire process?

17 THE JUROR: Yes, ma'am. I wasn't sure.

18 THE COURT: You weren't sure if it was relevant
19 or you weren't sure he was the same person?

20 THE JUROR: I wasn't sure if he was the same
21 person.

22 THE COURT: Okay. What solidified it in your
23 mind that he was the same person?

24 THE JUROR: Uh. Can I --

25 THE COURT: I can't. They all have to hear what

1 you're telling me.

2 THE JUROR: Oh. After, after I, I, you know,
3 seen the person, who it was, and heard the name.

4 THE COURT: It all started coming back to you?

5 THE JUROR: Yes, ma'am. Not only that but --
6 and, well, one of your bailiffs and I also worked together
7 for a number of years.

8 THE COURT: Okay.

9 THE JUROR: Okay.

10 THE COURT: And y'all both know this gentleman?

11 THE JUROR: Yes, ma'am.

12 THE COURT: Sir, as a result of what has
13 happened -- let me ask another question: Did you and
14 Mr. Patterson have any discussions regarding the facts and
15 circumstances of this case during your friendship?

16 THE JUROR: No, ma'am.

17 THE COURT: When was the last time you would say
18 you saw him?

19 THE JUROR: Saw Mr. Patterson?

20 THE COURT: Patterson. Uh-huh. The Defendant's
21 father.

22 THE JUROR: Two weeks ago.

23 THE COURT: So you all maintained your contact
24 even after the shipyard closed?

25 THE JUROR: Yes, ma'am.

1 THE COURT: How often would you say you see him?

2 THE JUROR: Oh --

3 THE COURT: Just give me an estimate. How often
4 would you say you see him? Once a week? Twice a week?
5 Once a month?

6 THE JUROR: Not that. No, not that often; no.

7 THE COURT: Once every other month?

8 THE JUROR: Something like that.

9 THE COURT: Is it in passing or do you all make
10 it a concerted effort to see one another and have lunch or
11 anything?

12 THE JUROR: No. It's in passing.

13 THE COURT: Okay. Sir, as a result of what
14 you've disclosed to the Court, do you feel that you can be
15 fair and impartial?

16 THE JUROR: No, ma'am.

17 THE COURT: Okay. If you could step outside the
18 door with one of the bailiffs for me, please. And you all
19 do not take him back into the jury room. And, sir, do not
20 discuss what we've discussed.

21 (Juror exits courtroom at 3:22 p.m.)

22 THE COURT: In light of the juror's responses
23 that he cannot be fair and impartial, it would seem
24 prudent that we dismiss him and seat Juror Number 89 who
25 is the alternate. Any exception from the State?

1 MS. SHEALY: No, Your Honor, but I would ask the
2 Court to inquire whether he shared that information with
3 anybody else on the jury, whether it was a discussion with
4 him, overheard by any other members.

5 THE COURT: Mr. Stidham, any exception to the
6 Court's polling the juror in that fashion?

7 MR. STIDHAM: No, Your Honor.

8 THE COURT: Please bring the juror in.

9 (Juror enters courtroom.)

10 THE COURT: Mr. Wind, pertaining to what you just
11 disclosed to the Court, did you have any discussion
12 regarding any of this with any of the other jurors?

13 THE JUROR: No, ma'am.

14 THE COURT: And the discussion that you said you
15 had in passing with a bailiff, could that have been
16 overheard by any of the other jurors?

17 THE JUROR: No, ma'am.

18 THE COURT: Okay. Sir, you're excused with the
19 Court's thanks. Just call the jury information line after
20 six o'clock this evening for further instructions.

21 Please do not discuss in any manner whatsoever,
22 any of the matters that have been discussed with you by
23 the Court. Thank you so much.

24 The note will be marked as a Court's exhibit.

25 (Court's Exhibit Number 1, note from juror was

1 marked and received into the record.)

2 MS. SHEALY: Our victim was pointing out
3 something to me as he was coming out. I would just like
4 to have a discussion with her.

5 THE COURT: Go right ahead. Take five minutes.
6 I suggest y'all refresh yourself, go to the restroom and
7 otherwise, and I will be right back and then we'll get
8 started.

9 (Thereupon, a brief break was taken. At
10 3:30 p.m., the trial continued:)

11 THE COURT: Are there any exhibits to be marked?

12 MS. SHEALY: We pre-marked some, Judge, but we've
13 got another issue.

14 THE COURT: All right.

15 MS. SHEALY: [REDACTED] the victim, has
16 advised me that we believe it's the alternate, Judge,
17 we're not sure of her name, but by the physical
18 description she gave it is someone that she worked with at
19 Church's Fried Chicken.

20 And she said had we known -- had she known this
21 person would have -- was a potential juror, she would have
22 advised me of that so.

23 THE COURT: Unfortunately that person probably
24 recognized that person. That person was a manager at a
25 pizza restaurant which she indicated was her profession.

1 MS. SHEALY: They don't work together now. They
2 used to work together at Church's Restaurant.

3 THE COURT: I asked very carefully if --

4 MS. SHEALY: Well --

5 THE COURT: -- they knew them under any
6 circumstances. The Defendant and the victim, she was
7 present here during jury selection.

8 MS. SHEALY: She was and I'm not sure -- and that
9 taught me a lesson, but I didn't have [REDACTED] stand up
10 during that --

11 THE COURT: But she was sitting there. The
12 person knew her name. She recognized her. She turned
13 around and she was sitting right there as well as having,
14 where she was seated at the table. She did not indicate
15 that she knew her.

16 The only alternative I would have at this point
17 would be to ask her if she in fact knows her and if that
18 in fact impairs her ability to be fair and impartial.

19 If she answers yes to any of that, we'll have to
20 replace her.

21 MS. SHEALY: That's what we'd ask.

22 THE COURT: Any exceptions from the defense?

23 MR. STIDHAM: I think that's very fair.

24 THE COURT: Please bring in Juror 89.

25 THE BAILIFF: Eighty-nine?

1 THE COURT: Yes, sir. We'll get her name for you
2 right quick.

3 THE CLERK: Shain Freeman.

4 (Juror enters courtroom at 3:33 p.m.)

5 THE COURT: Ma'am, tell me your name for the
6 record.

7 THE JUROR: Shain Freeman.

8 THE COURT: Ms. Freeman, tell me where you're
9 employed.

10 THE JUROR: Dominoes Pizza.

11 THE COURT: Dominoes Pizza. How long have you
12 been employed at Dominoes?

13 THE JUROR: Fifteen years.

14 THE COURT: That would be the wrong time frame.

15 MS. SHEALY: Could we approach, Your Honor?

16 THE COURT: Bear with us one second, ma'am.

17 (Off-the-record discussion.)

18 THE COURT: Ma'am, have you been employed at any
19 place other than Dominoes, anyplace, over the last 15
20 years?

21 THE JUROR: No.

22 THE COURT: Ma'am, thank you so much for your
23 indulgence. Please do not discuss what we've discussed
24 with your fellow jurors.

25 If you'll go with the bailiff for me, please.

1 THE JUROR: Okay.

2 THE COURT: Follow the bailiff for me, please.

3 (Juror exits courtroom.)

4 THE COURT: Okay. Number 89, Ms. Freeman, has
5 indicated that she has been employed at Dominoes for the
6 last 15 years. That's the only place she's been
7 employed. The alleged victim is 27. When she is a 12
8 year old, they could go back -- in South Carolina, she
9 certainly could not have been employed anyplace.

10 So, are we in agreement that this could not be
11 this juror?

12 MS. SHEALY: Yes, Your Honor.

13 THE COURT: She could not have had any contact or
14 relationship with the juror.

15 MS. SHEALY: Well, I mean, I don't know if I
16 could agree with that.

17 THE COURT: I think you have to, if she said she
18 was employed at Church's and the juror said she never
19 worked there.

20 MS. SHEALY: I understand. If you will just
21 allow me one moment to talk to my victim.

22 THE COURT: Uh-huh.

23 MS. SHEALY: (Conferring with victim.)

24 She says it is not her, now that she's got a
25 better look at her. But now, Judge, I have yet another

1 issue arise.

2 THE COURT: All right.

3 MS. SHEALY: Lisa Altine has arrived with what
4 she said was a copy of her complete file that she didn't
5 have previously. And so Mr. Stidham and Mr. Smith need to
6 take a look at this, if the Court would indulge us.

7 THE COURT: Is it imperative that you go through
8 that report before the opening arguments?

9 MR. STIDHAM: Well, maybe.

10 THE COURT: Okay. Well, then, go ahead then.

11 MS. SHEALY: Okay.

12 (Defense counsel reviewing records from 3:53 p.m.
13 until 3:56 p.m.)

14 MR. STIDHAM: Your Honor, I got about a third of
15 the way through.

16 THE COURT: I need to know, but this case has
17 been pending from 2006 and you just have this file?

18 MS. SHEALY: It appeared that Ms. Altine could
19 not find her individual file. And she said she just found
20 it. I asked her, she said she found it this morning on
21 her way over here.

22 We both -- most of what's in her file we have
23 provided in discovery. However, she found her individual
24 file that contains her notes that didn't contain some
25 information that neither Mr. Stidham nor I had previously

1 had.

2 THE COURT: Does that affect your opening
3 argument or --

4 MS. SHEALY: Yes, Your Honor.

5 THE COURT: -- an opportunity to get that
6 together?

7 MS. SHEALY: Probably, Your Honor.

8 THE COURT: The jury has been sitting there since
9 quarter to three. And that's not fair to them to be
10 sitting in the room without --

11 MS. SHEALY: I think that would be --

12 MR. STIDHAM: Your Honor, I agree.

13 THE COURT: I think what I would like to do,
14 however, is give them their opening instruction and then
15 let them go. That puts in context everything else I need
16 to tell them about not looking at the case or anything
17 else.

18 Is there any exception to that from the State?

19 MS. SHEALY: No, Your Honor.

20 THE COURT: From the defense?

21 MR. STIDHAM: No, Your Honor.

22 THE COURT: Okay. Let's bring in the jury.

23 (Jury enters courtroom at 3:58 p.m.)

24 THE COURT: Thank you. Ladies and gentlemen, we
25 appreciate your patience. We've had several legal matters

1 that we have had to deal with this afternoon regarding
2 this case as well as the case ahead of this one. It took
3 a little longer than I anticipated.

4 But what we're going to do is in light of the
5 advanced time of the afternoon, I'm going to give you some
6 preliminary instructions so that you will better
7 understand procedurally how we will be proceeding in the
8 trial of this case.

9 And then I'm going to allow you all to go home
10 for the afternoon so that the attorneys can continue to
11 work through the legal matters that we have so that we'll
12 be able to start the trial in earnest in the morning with
13 as little interruption as possible.

14 Madam Bailiff, will you please pass out those
15 notepads? Does anyone have a cell phone on? Go ahead and
16 pass those out for me, please.

17 Ladies and gentlemen, please write your juror
18 number on the front sticker that's on the front of the
19 notepads so that you will be able to identify which
20 notepad belongs to you.

21 For those in the gallery, if you have a cell
22 phone on, that needs to be turned off. If it goes off it
23 it will be taken and will not be returned to you and that
24 will be a very expensive lesson. So if you will, turn
25 those off and it will be greatly appreciated.

1 Ladies and gentlemen of the jury, the case that
2 we're about to try is the case of State of South Carolina
3 versus Antonio Dieargo Patterson. What I will now say is
4 intended to serve as an introduction to the trial of this
5 case. These remarks are not a charge on the law and we
6 commonly refer to the Court's instructions as a charge so
7 I will use those terms interchangeably.

8 But this will not be a charge on the law. Those
9 instructions will come at the end of the trial before you
10 retire to consider your verdict. This is merely an
11 explanation of the procedure that we will follow during
12 the trial of this case so that you may better understand
13 what's happening.

14 During the course of this trial you will be given
15 the opportunity to take notes. And I'm going to give you
16 some instructions regarding that near the conclusion of
17 the Court's instructions.

18 The Defendant has been charged by two indictments
19 filed with this Court with the offenses of criminal sexual
20 conduct in the first degree and possession of a firearm
21 during the commission of a violent crime. The elements of
22 which I will explain to you after you -- before you begin
23 to deliberate and after the closing arguments are given in
24 this case.

25 The indictments, ladies and gentlemen, are simply

1 the charges by which this case is brought to court. And
2 they are not in any sense evidence of any of the
3 allegations they contain.

4 The Defendant has pled not guilty to the
5 indictments. The State, therefore, has the burden of
6 proving each of the elements of the indictments beyond a
7 reasonable doubt. And it will be your duty, ladies and
8 gentlemen, to determine whether the State has met that
9 burden or not.

10 Your purpose as jurors is to find and determine
11 the facts. You are the sole judges of the facts in this
12 case. If at any time I make any comment regarding the
13 facts, you must disregard it. The constitution of our
14 state does not allow a trial judge to have an opinion
15 about the facts of the case.

16 You are to determine the facts from the testimony
17 you hear and the other evidence introduced in court. It
18 is then up to you to determine the inferences which you
19 feel may be properly drawn from the evidence.

20 It is especially important that you perform your
21 duty of determining the facts diligently and
22 conscientiously because ordinarily there is no way to
23 correct an erroneous determination of facts made by a
24 trial jury.

25 On the other hand and with equal emphasis, the

1 same law that makes you the judge the facts makes me the
2 judge of the law. The law as given by the Court is the
3 only law you may consider. You must accept and follow it,
4 even though you may disagree with it. I cannot tell you
5 what the facts are and you cannot disagree with the Court
6 about what the law is or what the law should be.

7 Your job is to take the law as instructed and to
8 apply it to the facts as you find them from the testimony
9 of the witnesses and any other evidence that's
10 introduced. After doing that, ladies and gentlemen, you
11 will render your verdict, a true and just verdict under
12 the solemn oath that you have taken as jurors in this
13 case.

14 Until I advise you to begin your deliberations,
15 you must not discuss this case with anyone. That includes
16 your family members, your friends, your fellow jury
17 members and anyone else that may be involved in the case.

18 After the case is submitted to you, you must
19 discuss it only in the jury room with your fellow jurors.

20 The attorneys and the parties have been advised
21 that they shouldn't speak with you at all. So if you
22 should see them in lobby of the courthouse, or in the
23 hallway, restaurant, on the street or even in the parking
24 garage and they don't speak to you, please don't think
25 that they're being unfriendly, they're simply strictly

1 following the Court's instruction. Because, again, we
2 would not want an innocent conversation to be observed by
3 someone and misconstrued. In other words, we would not
4 want someone to think that you were inappropriately
5 discussing the facts and circumstances of this case
6 outside of court.

7 During the trial, you are strictly instructed
8 that you're not to read, listen to, or watch any news
9 reports about this case. This includes anything that
10 would be in the newspaper, Internet, radio or television.

11 And in addition to that, you're not to do any
12 independent research of any type on the Internet. That
13 includes any type of Internet searches, any subject matter
14 searches, any name searches, or otherwise, on the
15 Internet.

16 You must not consider anything that you may have
17 read or heard outside of this case outside of the
18 courtroom whether before or during the trial of this case.

19 You are bound by your oath to decide this case
20 solely on the evidence that will be presented through the
21 witnesses and the other evidence that will be introduced.

22 It is important and essential that you keep an
23 open mind and not decide any issue in this case until all
24 of the evidence has been presented, the parties have made
25 their closing arguments and I've instructed you on the law

1 applicable to this case.

2 It is your solemn responsibility to determine the
3 guilt or innocence of the Defendant. And your verdict
4 must be based solely on the evidence as it is presented to
5 you in this trial and on the law as I will instruct you
6 during and at the close of this trial.

7 In the morning the solicitor will make what is
8 called an opening statement in which the solicitor will
9 explain to you what she or he believes the issues to be in
10 this case. The attorneys for the Defendant may also make
11 an opening statement, although they are not required to do
12 so.

13 What the attorneys tell you during their opening
14 statements is not evidence in this case. It is only their
15 contention as to what they believe the evidence will show
16 in this case. The evidence will be presented to you by
17 the testimony of sworn witnesses from the witness stand
18 and/or by exhibits that may be introduced into evidence.

19 From time to time during the trial you may hear
20 one of the attorneys say, Your Honor, I object. Just as
21 in sports, business or any other structured activity,
22 there are certain rules that we must obey in the
23 presentation of evidence. These rules have a definite
24 purpose. They insure that you receive the most
25 trustworthy and reliable evidence available.

1 An objection is the procedure that an attorney
2 uses to call a possible violation of these rules to my
3 attention as the Judge of this Court. And for this reason
4 you should never hold an attorney's objection against them
5 nor should you conclude from the Court's overruling or
6 sustaining an objection that I favor one side or the
7 other.

8 Also from time to time you may hear one of the
9 attorneys say, Your Honor, we have a question of law or a
10 matter of law to discuss, or they may ask to approach the
11 bench, or I may ask them to approach the bench, or it
12 might be necessary that we excuse you from courtroom for a
13 short while while we discuss matters of law, and while
14 we're at the bench you will hear (demonstrating sound
15 system white noise) which is directly over your head. And
16 it is designed so that you cannot hear what we're saying.

17 And I say that because our petit jurors raise
18 their hand and say, we can't hear you while you're
19 talking. And it's designed so that you can't hear us
20 while we're talking. And, again, that's so that you will
21 not be influenced by anything that the Court may say or do
22 in connection with the facts of this case.

23 Again as I've indicated, sometimes it might be
24 necessary for us to exclude you from the courtroom for a
25 short while while we discuss matter of law. And the

1 reason we do this is, as I've explained, as the Judge of
2 this Court I'm not allowed to have an opinion about the
3 facts of this case.

4 But sometimes when I'm discussing matters of law
5 with the attorneys it might be necessary for me to make
6 some comment about the facts and could actually rule on
7 whether a statute applies, which is the law, or a rule of
8 evidence applies or whether a procedural rule applies.
9 And for this reason we exclude you from the courtroom so
10 that in no way will you be influenced by anything that the
11 Court may say or do in connection with the facts of this
12 case.

13 Ladies and gentlemen, in determining what the
14 true facts are in this case, you must decide whether or
15 not the testimony of a witness is believable. It will be
16 my responsibility to rule as a matter of law as to whether
17 certain testimony is admissible at all or not. But once
18 the testimony is admitted, whether or not you believe it
19 is solely a matter for you to determine.

20 In deciding whether to believe a witness, you
21 have a right to consider the interest of any witness, the
22 bias of any witness, the prejudice of any witness, the
23 opportunity for the witness to have seen the matters and
24 things about which the witness may testify, and when a
25 witness is actually on the witness stand something we

1 commonly refer to as demeanor.

2 You have a right to consider anything that is in
3 the record that will help you to evaluate the testimony of
4 the witnesses. That means, ladies and gentlemen, that it
5 is your duty to pay close attention to the witnesses, to
6 observe them, to listen to them and to pay close attention
7 to the attorneys and the Court.

8 Although I know it is very difficult sometimes,
9 please do not allow your thoughts to wander but give
10 strict attention to the testimony so that at the end of
11 the testimony, after the arguments of the attorneys and
12 the instructions on the law that's given by the Court, you
13 will then be in a position to determine what the true
14 facts are and apply the law to those facts and thus render
15 a true and just verdict.

16 During the course of this trial, you will be
17 given the opportunity to take notes. Note taking is a
18 privilege that you may choose to exercise or choose not to
19 exercise. Please don't feel compelled to take notes. Not
20 everybody finds note taking helpful to them. If you
21 should decide to take notes, please don't try to record
22 everything that's said. It's physically impossible.

23 The average person speaks at over 200 words a
24 minute. So you could imagine, even though you think you
25 might be taking something down verbatim if you were to go

1 back and listen to it, you would realize that you missed
2 words.

3 So, please do not allow note taking to become a
4 distraction to you. It is absolutely essential that you
5 rely on your powers of observation. And if you allow
6 note taking to consume you, that will dilute your power
7 and not allow you to observe the demeanor of the witnesses
8 as they testify.

9 You may want to keep an outline, the main points
10 that are being made, so that you can use those to refresh
11 your memory at the time that you begin to deliberate.

12 Please remember that your notes are for your
13 specific and your individual purposes. They're not to be
14 used or shared with anyone else. They're only to be used
15 for the purpose of refreshing your own memory.

16 Please be reminded that your notes are not to be
17 considered any more reliable than someone else's memory.
18 Their memory should be considered just as reliable as
19 notes you may have taken.

20 During breaks and recess your notes will be left
21 in your seats. And the reason we do that is to make sure
22 that there is no temptation to peremptorily discuss
23 anything that you may have heard during the course of the
24 testimony.

25 It is your added duty, Mr. Foreman, to preside in

1 the jury room and to be the jury spokesperson during jury
2 deliberations and to write the verdict, but I will give
3 you further instructions regarding that at the conclusion
4 of the trial. And I will emphasize that. The foreperson
5 is merely an administrative function. That person does
6 not have any greater vote or voice than you do.

7 In order to preserve everyone's rights, I'm going
8 to give the attorneys an opportunity to take exception to
9 anything that the Court has said by way of opening
10 instructions.

11 Are there any exceptions from the State?

12 MS. SHEALY: No, Your Honor.

13 THE COURT: From the defense?

14 MR. STIDHAM: No, Your Honor.

15 THE COURT: Ladies and gentlemen, I'm going to
16 excuse you for the afternoon so that we can conclude
17 dealing with the matters of law that have arisen during
18 the course of our preparation to begin the trial of this
19 case. And it would not be fair to have you all waiting
20 while the attorneys work through these matters.

21 We're going to resume in the morning at 9:30.

22 During the break, please do not discuss the case among
23 yourselves or with anyone else. Again, please, don't

24 speculate about what you think it may or could be about.

25 And as tempting as it may be, please don't do any type of

1 Internet searches regarding any matter or issue involved
2 in this case.

3 You'll return directly to your jury room. And I
4 believe the bailiffs have already shown you how to do
5 that. You will follow that same procedure in the
6 morning.

7 Again, please don't talk with anybody in or about
8 the courthouse. We do not want an innocent conversation
9 to be misinterpreted. You all have been incredibly
10 patient with us today. We appreciate it. We know it's a
11 long day for you all. It's par for the course for us.
12 It's been a typical Monday. So we appreciate your
13 patience. We don't want you to think that we are taking
14 your time for granted.

15 If you will leave your notepads in your seats.
16 We'll see you in the morning at 9:30. Have a great
17 afternoon.

18 If you will go with the bailiffs.

19 (Jury exits courtroom at 4:12 p.m.)

20 THE COURT: Okay. Is there anything before we
21 break for the afternoon from the State?

22 MS. SHEALY: No, Your Honor.

23 THE COURT: From the defense?

24 MR. STIDHAM: No, Your Honor.

25 THE COURT: Okay. I'll see y'all at 9:30.

1 MS. SHEALY: Thank you.

2 MR. STIDHAM: Thank you.

3 THE COURT: You're welcome.

4 END OF DAY: 4:13 P.M.

5 * * * * *

6 ON TUESDAY, AUGUST 31, 2010 AT 9:40 A.M.:

7 THE COURT: Yes, ma'am.

8 MS. SHEALY: Judge, I have gathered the documents
9 that have been provided to us yesterday that we had never
10 seen before and Mr. Stidham has had the opportunity to go
11 over them as had I. I would like to mark those as a
12 Court's Exhibit just as though -- to preserve that issue
13 so later it will be obvious what was actually provided.

14 THE COURT: Any exception from the Defendant?

15 MR. STIDHAM: No, Your Honor. We're fine with
16 the Court's exhibit.

17 THE COURT: Marked as a Court's Exhibit.

18 (Court's Exhibit, Court's Exhibit No. 3, Altine
19 case notes, was marked and received into the record.)

20 THE COURT: Defense ready to proceed?

21 MR. STIDHAM: Yes, Your Honor.

22 THE COURT: Let's bring in the jury.

23 (Jury enters courtroom at 9:44 a.m.)

24 THE COURT: Ladies and gentlemen, I hope you had
25 a pleasant evening. We appreciate your patience as we're

1 preparing to go forward with this trial. We'll now move
2 to the trial with the State proceeding.

3 You may proceed.

4 MS. SHEALY: If it please the Court.

5 Mr. Stidwell. Mr. Smith. Good morning. Good morning.

6 THE JURY (collectively): Good morning.

7 MS. SHEALY: April 9th, 2006, [REDACTED]
8 started the day with plans to go see her boyfriend who was
9 in the county jail. He lived with her mother, just the
10 two of them alone. And she walked from her house to the
11 McDonald's over off Rivers Avenue to get something to eat
12 before she caught the bus to go see her boyfriend.

13 When she was walking into McDonald's she saw
14 Antonio Patterson in the parking lot. She knew from him
15 growing up in the projects. They weren't good friends but
16 they had known each other. She walked on into McDonald's
17 and he came in and said, could I buy you breakfast. Well,
18 there was part of her that made her feel good but she
19 said, no, that's okay.

20 And she ordered her breakfast and they started
21 talking. He asked her what was she going to be doing that
22 day on a Sunday morning and she said, I'm going to be
23 visiting my boyfriend at the county jail. That's why I'm
24 grabbing a bus. He said, well, why don't you let me take
25 there because he was attracted to her.

C 1 It would be more fun talking to somebody, right,
2 would be more pleasant than riding the bus, to get there
3 quicker. And it's cheaper. So she got in the car with
4 Mr. Patterson and rode from Rivers Avenue over to Leeds
5 Avenue where the county jail is.

6 You have certain visitation days. I don't know
7 if you've been there with your family or somebody you know
8 or a boyfriend or a girlfriend are in jail, and so she
9 rode over there with him.

10 Before she got out of the car, Mr. Patterson
11 said, I would be happy to pick you up when you get
C 12 finished and she said okay. I'll call you. She had her
13 cell phone.

14 So she went in for her visitation, and when she
15 came back out, Mr. Patterson was across the street at the
16 DMV, Department of Motor Vehicles, which is right across
17 the street on Leeds. She didn't have to call him.

18 Well at the time, it just seemed kind of nice.
19 He was there to pick her up. In hindsight, you see the
20 eagerness.

21 They got in the car and he said, do you want to
22 do something? Do you want to go to a movie or want to
23 cook out or something? And [REDACTED] doesn't get to
C 24 do a whole bunch of fun things, so she thought that
25 sounded nice. She said, sure, we could cook out.

1 So they drove in Mr. Patterson's car to Food
2 Lion. They bought some chicken, some ribs, things for
3 salad and stuff and they took it to his house over on Orrs
4 Court. Now, keep in mind this is broad daylight, morning,
5 midday hours.

6 And when they get there he realizes it would be
7 kind of fun to have some gin. So he goes to someone's
8 house, gets some gin because he was out of it. So like
9 most cookout-type events, they started preparing food.
10 They boiled the meat before they put it on the grill.

11 They had something to drink, the gin. [REDACTED]
12 remembers having a couple of drinks that she mixed
13 together with orange juice.

14 They also shared a marijuana blunt over the
15 course of the afternoon.

16 Now at some point some members of his family also
17 come, a brother, and some nephews. And you'll see
18 photographs of the house. There's an area outside where
19 the grill was. And the family members were primarily
20 outside talking, hanging out and occasionally coming in.

21 The layout of the house is a little bit unusual
22 because you walk in the front door and to the left is the
23 downstairs. There's a room and then you walk through that
24 room to the kitchen. There's a bathroom right off the
25 kitchen and then there's a bedroom behind a living room

1 area that's in the middle of the house.

2 So it's a little bit of an unusual floor plan.

3 But also unusual is you have to walk back out that door
4 and go up a separate entrance to the bedrooms that are
5 upstairs.

6 [REDACTED] never goes upstairs.

7 Well, the afternoon was pleasant enough.

8 Mr. Patterson continued to be nice to her. And they
9 stayed inside most of the day. They weren't outside with
10 the younger nephews.

11 Well after they ate, things changed. The
12 atmosphere became very different. It started with the
13 romantic, I want to have sex with you. [REDACTED] [REDACTED] said
14 no, you know what, no, I just need to go home.

15 Now she didn't have a car. Remember she rode
16 over there with him. And she said, no, I just need to go
17 home.

18 So Mr. Patterson walks out of that downstairs
19 area and goes upstairs. He appears to go upstairs. When
20 he came back, he did not come back ready to take her
21 home. He came back armed with a gun and a condom.

22 At some point the nephew comes back in the house
23 and he shoos them out and at that point he takes

24 [REDACTED] [REDACTED] he pushes her into the bathroom and he's got a
25 gun, and he slides it back to scare her and he wants his

1 way with her.

2 She's fussing. She's screaming. She's scared to
3 death. They get back out of that bathroom area. And she
4 wants to go towards the door and get the heck out of
5 there.

6 He's faster than she is. He blocks her at the
7 door. He locks it, takes that gun, he threatens her and
8 he moves her back into the house toward where the living
9 room is and then he assaults her. He sexually assaults
10 her.

11 She had these little lightweight sweat pants on.
12 He yanks down her pants. He's got the gun in one hand.
13 Somehow she doesn't know where the gun is because he was
14 doing her over the arm of the sofa. The condom is there.
15 She sees him tearing the condom wrapper. And he sticks
16 the condom on and he rapes her.

17 She is absolutely hysterical. She knows his
18 family is right outside the door. Keep in mind the door
19 is one, two, three rooms back is where the rape occurred.

20 She tears out of there after he's finished with
21 what he wanted, what he wanted since McDonald's. And
22 hysterically she runs out of the house, down the street,
23 knocks on the door says, please, can I use your phone.

24 I've just been sexually assaulted.

25 That person doesn't let her in the house but

1 gives her the phone and she calls 9-1-1 immediately.

2 This is a young girl who went to eighth grade.
3 She's not used to words like penetration, ejaculation,
4 consensual. But she is interviewed by a professional, a
5 professional. The professional asked, what happened.

6 And you'll hear the details that she gives.
7 Sometimes she's not exactly sure what they're asking. But
8 she consistently says that on April 9th that man raped
9 her.

10 What does he do? When she starts walking down
11 the road, he gets in his car and he flees. He's gone.

12 Several days later when the police come in with a search
13 warrant, that house is just like it was that day. Out by
14 the grill the aluminum foil was, the barbecue sauce in the
15 kitchen, the pot that they boiled the meat, barbecue sauce
16 is still there, dirty dishes in the sink. He didn't want
17 to go back home.

18 And the man worked. He had a job. He was
19 supposed to be at work the Monday, the Tuesday, the
20 Wednesday, the Thursday, and the Friday after he assaulted
21 [REDACTED] He didn't show up.

22 Ladies and gentlemen, Mr. Patterson had something
23 on his mind early morning Sunday. He felt like he just
24 owned her because he bought her food and showed her a good
25 time. But she didn't want to have sex with him. And she

1 told him that.

2 And he violated her. And what she thought was
3 going to be a day where someone was showing her some
4 kindness, it became the worst day of her life. Thank you.

5 THE COURT: Defense ready to proceed?

6 MR. STIDHAM: Yes, Your Honor.

7 THE COURT: You may proceed.

8 MR. STIDHAM: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. STIDHAM: Ms. Shealy. Mr. Stack. Ladies and
12 gentlemen of the jury.

13 This is a tough case. I'm sure that probably
14 more than one of you have groaned a little bit on the
15 inside when you got picked to sit in a jury on a rape
16 trail because there's only two possibilities. Right?
17 Either, one, somebody has been raped, or, two, somebody
18 has been falsely accused of rape.

19 Well, neither one of those things is a very
20 pleasant thing but they're both tragic.

21 But we all know that in this country you're
22 presumed innocent until proven guilty. Right? That's one
23 of the fundamental rights of being an American. We hear
24 it all the time. See it at the end of a cop show,
25 somebody is being led away in handcuffs. This guy is

1 presumed to be innocent, but we don't often stop and think
2 about what that means.

3 The way I like to think about the presumption of
4 innocence is this: If somebody told me that my mother
5 committed a crime I'd say, I don't believe that, you're
6 going to have to prove that to me.

7 Well, that initial resistance, that reluctance to
8 believe that any crime's been committed until somebody
9 proves it to you, that's what presumption of innocence is.
10 all about.

11 So you heard the solicitor's version of events.

12 Well, of course, our version of events is a little bit
13 different. It was a Sunday day back in April, 2006. My
14 client, Tony Patterson, met a girl, [REDACTED] They
15 became friends. They spent the day together. They did
16 decide to have a cookout. They did go to the store. They
17 did buy meat, food, and brought it back to the [REDACTED] Orrs
18 Court.

19 Now [REDACTED] Orrs Court is downtown Charleston. It's
20 right near Burke High School. It's got a small front
21 yard, maybe enough to park two cars in. Grill by the
22 front door and then when you immediately -- the solicitor
23 was very accurate on her description of the house. But
24 it's a small living room that you enter. And it's a very
25 small kitchen. The kind of kitchen you could probably

1 stand in the middle and put your hand on both counters.

2 Two doors in the back of that kitchen, bathroom, little
3 living room behind that.

4 So, what I mean to say is there's no long hall.
5 It's just very, very small. Just a small house, two-story
6 house.

7 Tony's family comes over to cook out. His
8 brothers are over there. His teenage nephews. They got
9 meat, boil it on the grill -- excuse me. Boils it on the
10 the stove, meat on the grill. People in and out of the
11 restroom, enjoying each other's company.

12 And then while they're eating something, and I
13 don't know what, happened but [REDACTED] became very
14 upset. She threw her plate of food down and she ran out
15 of the house and eventually she called the police and
16 accused my client of rape.

17 Now in a little bit she's going to take the
18 stand. And she's going to point her finger at my client,
19 Tony Patterson, and she's going to say, he raped me.

20 And then you're going to hear from a lot of other
21 people who are going to testify. You're going to hear
22 from a lot of people that have a lot of expertise and
23 training in detecting at crimes just like this. And not
24 one of them, not one of them is going to tell you that
25 there is one shred of physical evidence that proves to

██████████ - DIRECT

1 them that this rape occurred. Not one.

2 Now, I appreciate your attention and this is not
3 going to be exactly pleasant, but extremely important, of
4 course. It's important to my client. It's important to
5 my client's family because today is his day in court.
6 He's waited a long time for this because today for the
7 first time 12 citizens get to hear all the facts, not the
8 police officers or the lawyers or even judges, but 12
9 citizens get to hear all the facts and listen to all the
10 testimony, look at all the evidence or lack of evidence
11 and decide on his guilt or innocence.

12 And in the end, ladies and gentlemen, I'm going
13 to ask you to return the only verdict that I believe the
14 evidence supports. The only just verdict is one of not
15 guilty.

16 Thank you.

17 THE COURT: You may proceed.

18 MS. SHEALY: ██████████

19 ██████████ having been duly sworn, was
20 examined and testified as follows:

21 THE CLERK: ██████████ I need you to speak up so
22 everyone can hear you. I need you to get pretty close and
23 state your full name and then spell your last name.

24 THE WITNESS: ██████████ My last name is
25 spelled ██████████

[REDACTED] - DIRECT

DIRECT EXAMINATION

1

2 BY MS. SHEALY:

3 Q. [REDACTED] if you would, please tell us how old you
4 are.

5 A. I'm 27.

6 Q. And you live in the Charleston area?

7 A. Yes, ma'am.

8 Q. Have you always lived in the Charleston area?

9 A. Yes, ma'am.

10 Q. You know what I might need you to do? I might need
11 you to get a little bit closer to that microphone and just
12 make sure all the jury can hear you. And -- that might be
13 a little too close. Okay.

14 You grew up in Charleston?

15 A. Yes, ma'am.

16 Q. And where did you go to high school?

17 A. I never went to high school. I went to eighth grade
18 at Alice Birney.

19 Q. Eighth grade at Alice Birney. And you stopped school
20 at eighth grade?

21 A. Yes, ma'am.

22 Q. And never went to high school?

23 A. No, ma'am.

24 Q. Are you working somewhere now?

25 A. Yes, ma'am.

██████████ - DIRECT

1 Q. Where do you work?

2 A. I work at the Wal-Mart in Mount Pleasant.

3 Q. And, there are two Wal-Marts in Mount Pleasant.

4 A. The old Wal-Mart.

5 Q. How long have you worked there?

6 A. Two years.

7 Q. Now, I would like to get you to focus your attention
8 back to April of 2006. Okay?

9 A. Okay.

10 Q. And specifically, April 9th. Tell the jury if you
11 would, who were you living with back then?

12 A. I was living with my mom at the time.

13 Q. And where did y'all live?

14 A. We lived at ██████████ Apartment ██████████

15 Q. And are you still living over on that side of town?

16 A. No.

17 Q. If you need a moment. Here's a tissue. You tell me
18 if you need a moment. Okay? Are you okay right now?

19 A. Yes.

20 Q. So, again, back in April, you lived over on O'Hara?

21 A. Yes, ma'am.

22 Q. And just for general purposes, is it over off, near
23 Rivers somewhere?

24 A. Yes, ma'am.

25 Q. That Sunday, morning would you tell the jury what your

██████████ - DIRECT

1 plans were?

2 A. My plans were to go see my boyfriend at the jail.

3 Q. And did you stop somewhere before going to the jail?

4 A. I went to McDonald's.

5 Q. When you were going to McDonald's, did you see anyone
6 in the parking lot that you were familiar with?

7 A. Yes.

8 Q. And who was that?

9 A. Antonio Patterson.

10 Q. And do you see him seated in the courtroom?

11 A. Yes.

12 Q. Could you just tell the jury what he has on?

13 A. A white shirt and pants.

14 Q. And who is he sitting next to? What does that person
15 have on?

16 A. A person with a black suit.

17 MS. SHEALY: Your Honor, let the record reflect
18 that she's identified the Defendant.

19 THE COURT: The record will so reflect.

20 BY MS. SHEALY:

21 Q. Tell the jury, if you would, how you knew

22 Mr. Patterson.

23 A. From the neighborhood that we stayed at stay at a long
24 time ago.

25 Q. And what neighborhood was that?

██████████ - DIRECT

1 A. It was Hanover Street.

2 Q. And did Mr. Patterson have several brothers?

3 A. Yes.

4 Q. Okay. Did you have some type of incident with one of
5 his brothers?

6 A. Yes.

7 Q. First, if you would tell the jury, how old you were
8 when that happened?

9 A. I was about 13, 14.

10 Q. Okay. And what happened with his brother?

11 A. His brother assaulted me and put a gun to my head and
12 made me do things that I didn't want to do.

13 Q. And you were how old?

14 A. Thirteen years old, 13, 14.

15 Q. And was that about eighth grade?

16 A. Yes.

17 Q. Now, what happened once you walked into McDonald's,
18 did you see Mr. Patterson again?

19 A. Yes.

20 Q. And tell the jury if you would what he said to you?

21 A. He told -- asked me if he could pay for my food and I
22 told him, no, I'd buy my food and we walked out the door
23 together.

24 Q. You walked where?

25 A. We walked out the door together.

██████████ - DIRECT

1 Q. Okay. Did he ask you anything about your plans that
2 day?

3 A. Yes.

4 Q. And what did you tell him?

5 A. He asked me what I was, where I was going at and I
6 told him I was going to the jail to see my boyfriend.

7 Q. Did you tell him how you were going to get there?

8 A. I told him I was catching the bus. He told me that he
9 would take me to the jail.

10 Q. Okay. Now, given your history with his brother and
11 what his brother had done to you, did you get in the car
12 with Mr. Patterson?

13 A. I went -- yes.

14 Q. Okay. Well, did it not concern you about getting in
15 the car with Mr. Patterson?

16 A. No.

17 Q. No. Why? Why did you feel okay getting in the car
18 with him?

19 A. Because I felt like he wouldn't have done the same
20 thing that his brother did to me. I trusted him a little
21 bit.

22 Q. You what?

23 A. I trusted him a little bit.

24 Q. Okay. And, again, that event took place over 10 years
25 ago?

██████████ - DIRECT

1 A. Yes.

2 Q. Now as y'all traveled from the McDonald's to Leeds
3 Avenue where the jail is, tell the jury whether or not the
4 conversation was pleasant or unpleasant.

5 A. The conversation was pleasant. We was in the car and
6 he asking me what, you know, if I wanted to go to the
7 movies or have a cookout. And I told him that I'll think
8 about it and tell you when I come out the jail.

9 And when I came out of the jail he was sitting right
10 across the street. I didn't have to call him or nothing.
11 I went across the street. I got back in the car and he
12 asked me the same thing where -- what do I want to do and
13 stuff.

14 And I told him that I'll go out with him and went out
15 to the cookout. And to have a cookout, we need to go and
16 get our things and I just don't do nothing or stay in the
17 house and we can have a little cookout.

18 Q. Okay. Well, let me break that down a little bit.
19 When he dropped you off at the jail, how did y'all leave
20 it about how would you get him back to the jail, how did
21 y'all leave that?

22 A. I told him that my appointment was at 10:30 and I'll
23 be out at 11:30 because it's an hour visitation time.

24 Q. And what were you supposed to do when you got finished
25 at the -- with your visitation?

██████████ - DIRECT

1 A. When I got finished with my visitation he told me to
2 call him, which I didn't have to call him because he was
3 already out there waiting for me.

4 Q. And then when he asked you about the cookout you said
5 something to the jury just now because you don't do
6 anything, what do you mean?

7 A. I don't go nowhere. I just go to work and come home
8 and just be home.

9 Q. And so the cookout sounded like fun to you?

10 A. Yeah, I just went out for a little while and just to
11 get out and get some fresh air and just have a good time.

12 Q. Okay. Now, Tiffany, back in '09 when you said that
13 you were working and at home, where did you work back
14 then?

15 A. In '09, I worked still at -- I was working at Wendy's
16 and I left Wendy's and I went to Subway.

17 Q. Okay. So you worked at Wendy's and Subway?

18 A. Uh-huh.

19 Q. Anywhere else before Wal-Mart?

20 A. And I went to Ross.

21 Q. To Ross?

22 A. Uh-huh.

23 Q. And back at that time, were you working at Wendy's or
24 at Subway, or do you remember?

25 A. I was working at Wendy's.

██████████ - DIRECT

1 Q. In April of '09?

2 A. Yeah.

3 Q. Now, when you got in the car and agreed that the
4 cookout sounded fun, where did y'all go from there?

5 A. We went to the Food Lion and we bought some meat, he
6 bought some meat. And we went back to the house to put
7 the food on the stove to boil.

8 Q. You boiled it?

9 A. Yeah.

10 Q. Is that what you said? Now, when you were in the car
11 with Mr. Patterson and y'all were going to the grocery
12 store and then going to his house, at that point did he
13 act in any way that made you worried?

14 A. No.

15 Q. Okay. Was he being kind to you?

16 A. Yes.

17 Q. And he actually paid for the stuff at the grocery
18 store?

19 A. Yes.

20 Q. After going to the grocery store, did y'all then come
21 home?

22 A. Yes.

23 MS. SHEALY: Your Honor, at this time I would
24 offer into evidence what's been previously been marked as
25 State's Exhibits One through 35. I believe that that --

██████████ - DIRECT

1 THE COURT: Excuse me. Show it to --

2 MS. SHEALY: I believe it's without objection.

3 (Photographs shown to defense counsel.)

4 MR. STIDHAM: Without objection, Your Honor.

5 THE COURT: Marked and admitted without

6 objection. Are those individuals?

7 MS. SHEALY: They are.

8 THE COURT: They were all marked individually?

9 MS. SHEALY: They were.

10 THE COURT: Please make sure you refer to the
11 appropriate corresponding number.

12 MS. SHEALY: Yes, Your Honor.

13 (Thereupon State's Exhibits No. 1 through 35,
14 photographs, were received into evidence.)

15 BY MS. SHEALY:

16 Q. Now, Tiffany, I'm going to show you a photograph and
17 ask you to identify it for us. Okay? I'm showing you
18 what's been marked as State's Exhibit Number One. Could
19 you tell the jury what this picture -- what's this a
20 picture of?

21 A. That's his house.

22 Q. That's his house?

23 A. Yes.

24 Q. Okay. Do you see the grill that y'all used?

25 A. Yes.

██████████ - DIRECT

1 Q. Could you point that out to the jury?

2 A. (Complying.)

3 Q. Showing you State's Exhibit Number Two. That's a
4 close-up of the grill. Is that the pan that y'all put the
5 ribs in?

6 A. Yes.

7 Q. I'm showing you State's Exhibit Number Three. Can you
8 tell the jury what this is a picture of?

9 A. That's a -- the way that we went in on the side, and
10 that part right there where you go upstairs, okay.

11 Q. And you know what, when you turn your back like that,
12 it's a little bit harder to hear. So just make sure you
13 talk loud for us.

14 So in other words, on State's One, this door area,
15 this is the close-up of that area?

16 A. Yes.

17 Q. Okay. And when you walked through this doorway, and
18 you turn left and go through this door, what area of the
19 house are you going towards?

20 A. You going to another room and then you going in the
21 kitchen.

22 Q. Okay. And showing you State's Exhibit Four, if you
23 would have gone right -- what is that on the right? Can
24 you see it?

25 A. Yes. That's going upstairs.

██████████ - DIRECT

1 Q. And did you go upstairs at all that day?

2 A. No.

3 Q. Okay. So that area to the right as you're walking in
4 from outside, showing you State's Exhibit Six, is that the
5 first room near the front door?

6 A. That's the kitchen.

7 Q. If this is the front door, you're walking in here, can
8 you see whether that's the first room? Let me show you a
9 different picture. That one might be hard for you to
10 identify.

11 I'm showing you State's Seven. Is that the first room
12 as you walk in from outside?

13 A. Yes.

14 Q. And the door to the outside would be over in this
15 area?

16 A. Yes.

17 Q. Okay. Now, did y'all spend much time in that room?

18 A. No. We was in the kitchen.

19 Q. And when you walk through that room, right here is
20 what, from the kitchen? Can you tell?

21 A. It's another, another little room that they had.

22 Q. Okay. But if you're looking at this photograph, in
23 this room right here is, what, the kitchen?

24 A. Yeah.

25 Q. And showing you State's Exhibit Eight, once you walked

██████████ - DIRECT

1 into the kitchen there's the refrigerator we were looking
2 at from the other room. Right?

3 A. Yes, ma'am.

4 Q. And over here is, what?

5 A. The bathroom.

6 Q. Okay. I'm showing you State's Nine. Is this another
7 wall of the kitchen?

8 A. Yes. That's the kitchen.

9 Q. And State's Exhibit 10, there's the refrigerator that
10 we looked at from a different angle. When you walk
11 through there, where do you lead?

12 A. You lead into another room. That's -- it's the living
13 room.

14 Q. Okay. So with that being the refrigerator, showing
15 you State's 11, that's the doorway into the living room
16 that you're talking about?

17 A. Yes, ma'am.

18 Q. And that's on the opposite side of that front room.
19 That's a different side of the kitchen?

20 A. Right.

21 Q. Showing you State's 12. Showing you State's 12, is
22 that inside the living room area?

23 A. Yes, ma'am.

24 Q. Okay. So y'all get over to his house, and you start
25 boiling the meat for the barbecue?

██████████ - DIRECT

1 A. Yes.

2 Q. And do you remember how many different family members
3 of his that were over there?

4 A. All of -- was his brother and his brother kids at the
5 time.

6 Q. Do you know which brother that was?

7 A. No, I don't know the name.

8 Q. And, it wasn't the brother that you had that
9 previous --

10 A. No.

11 Q. -- matter with? Now, the brother and the kids that
12 were there, were they inside the house some?

13 A. No. The kids were, like, they was in the -- where you
14 exit house in the front part of the living room.

15 Q. Okay. Because you're using the living room for two
16 different rooms; right?

17 A. Yeah. The first one.

18 Q. So why don't we call that the front living room?

19 A. Okay.

20 Q. And that would be what's depicted on Number Seven?

21 A. Yeah.

22 Q. This area?

23 A. Yes.

24 Q. And I don't think this photograph shows it, but
25 there's some toys and stuff in this room as well. Right?

██████████ - DIRECT

1 A. Yes.

2 Q. Okay. So the nephews or the children would primarily
3 be in that room?

4 A. Yes.

5 Q. As y'all were preparing the meal, what did you have to
6 drink?

7 A. We had some gin and orange juice.

8 Q. Okay. And do you know where the gin came from?

9 A. He went to a friend house and got it.

10 Q. Once y'all got home?

11 A. Yeah. Once we got home he left the house and he told
12 me to watch the food on the stove and he be back, he going
13 to get the gin around the corner from a friend house.

14 Q. And when he came back with the gin, was it in a bottle
15 or was it in some other type container?

16 A. It was in a bottle.

17 Q. A gin bottle or some other type?

18 A. It was.

19 Q. A gin bottle or some other type?

20 A. Some other type.

21 Q. What other type?

22 A. It was like orange juice bottle that you get from the
23 store and it had gin in it.

24 Q. Okay. And how many glasses did you have of the gin
25 mixed with orange juice?

██████████ - DIRECT

1 A. Two glass.

2 Q. And that was over the course of the whole afternoon?

3 A. Yes.

4 Q. Did y'all smoke some pot?

5 A. Yes.

6 Q. And was it just one blunt?

7 A. Yes.

8 Q. That you smoked?

9 A. Yes, ma'am.

10 Q. Okay. Now, did you feel intoxicated at that point?

11 A. No, ma'am.

12 Q. As y'all continued to cook the food, who went outside
13 to grill it?

14 A. It was his brother and he was going back and forth
15 outside.

16 Q. Who?

17 A. Antonio.

18 Q. Do you call him Tony?

19 A. Yes.

20 Q. Okay. So Tony was going in and out?

21 A. Yes, ma'am.

22 Q. Now at that point, did anything seem inappropriate or
23 did you feel concerned about anything?

24 A. No.

25 Q. When it came time to actually eat the food, where did

██████████ - DIRECT

1 y'all actually eat the food?

2 A. We eat in the kitchen.

3 Q. And when you say we, you mean?

4 A. Me and Antonio.

5 Q. Where were the brother and the children?

6 A. They were outside.

7 Q. And after you ate, could you tell the jury what
8 happened then?

9 A. After I ate we was sitting down, and I told him that I
10 was ready to go home because I had to work the next day.
11 He told me that he'll be back. He went upstairs and when
12 he came back, he back with a gun.

13 Q. And let me stop you there, Tiffany. Before you told
14 him you wanted to go home, did he tell you what he wanted
15 to do?

16 A. He told me that he wanted to have sex with me.

17 Q. Okay. And how did that make you feel?

18 A. It made me feel, like, kind of suspicious or
19 something.

20 Q. Okay. So what did you tell him about whether you
21 wanted to have sex?

22 A. I told him no, all I wanted to do is go home. I'm
23 ready to go home.

24 Q. And he left that kitchen area and went where?

25 A. He went upstairs.

██████████ - DIRECT

1 Q. Okay. Now tell the jury if would you, when he came
2 back down, how did he appear? And what did he have?

3 A. When he came back down he had -- he came back down he
4 had a gun.

5 Q. Okay. Tell the jury if you would, what the gun looked
6 like.

7 A. It was silver and black.

8 Q. And what did he do with the gun?

9 A. He threatened me with the gun. He pointed the gun at
10 me. He took me in the bathroom and he threatened me in
11 that bathroom. He told me he didn't bought all the stuff
12 for nothing. That he wanted to have sex with me and I
13 told him no, all I wanted to do is go home.

14 Q. And the bathroom that you said he took you to, was the
15 bathroom in Number Eight? In Number Eight?

16 A. Yes.

17 Q. Okay. Can you show the jury how he was holding the
18 gun?

19 A. He was holding the gun like this (indicating) at me.

20 Q. And when you say he took you to the bathroom, how did
21 that happen? Where were you when he came back down?

22 A. When he came back down, I was sitting in the kitchen.

23 Q. And how does he get you from the seated position in
24 the kitchen into the bathroom?

25 A. I was turned, I was turned with my back turn -- I was

██████████ - DIRECT

1 turned with my back turned and he came behind me and he
2 point the gun at me and told me to go to the bathroom.

3 Q. Okay. So was he behind you as you were walking to the
4 bathroom?

5 A. Yes.

6 Q. And do you know why he took you to the bathroom?

7 A. No.

8 Q. When you got into the bathroom, what exactly was going
9 on in there?

10 A. He was -- he had the gun pointing at me and told me
11 that he didn't buy all of that stuff for nothing and he
12 wanted to have sex. And I told him all I wanted to do was
13 go home, please let me go home.

14 Q. What happened after all of that occurred in the
15 bathroom? Did y'all leave the bathroom?

16 A. Yes. He opened the bathroom door and I tried to run
17 back to the front door and he put his foot in front of the
18 door and he was threatening me.

19 Q. Okay. Now, before that happened, did the -- were the
20 nephews still inside?

21 A. No.

22 Q. Did they come back in at some point?

23 A. Yes, they did. And he told them to leave.

24 Q. Okay. So when you were heading toward the front
25 door -- is that what you said?

██████████ - DIRECT

1 A. Yes.

2 Q. Where is he in relationship to you?

3 A. He was right, he was right behind me.

4 Q. And when you got to the front door, what happened?

5 A. When I got to the front door he shut the door, locked
6 the door and put his foot in front the door and said I'm
7 not going anywhere and he was pointing the gun at me.

8 Q. Okay. Now, back in the bathroom when he closed the
9 door was he kind of yelling at you?

10 A. Yes.

11 Q. Okay. And the door was closed but he was yelling at
12 you?

13 A. Yes.

14 Q. After he would not let you out of the front door --
15 first let me ask you: Did you have your cell phone with
16 you?

17 A. Yes.

18 Q. And at some point did you get your cell phone out?

19 A. Yes.

20 Q. Okay. Tell the jury about that, please.

21 A. When I took my cell phone out he took it from me so I
22 couldn't call nobody or nothing.

23 Q. When was that that he took it from you?

24 A. When he shut the door and put his foot in front the
25 door and start threatening me.

██████████ - DIRECT

1 Q. What were you trying to do with the phone?

2 A. I was trying to call somebody to please help me.

3 Q. Okay. Did you get your phone back that night?

4 A. No.

5 Q. So after he locked the door and blocked you from
6 getting out, where do y'all go?

7 A. After that when he shut the door he was threatening me
8 with the gun. And he took my arm and put my arm behind my
9 back and took me to the back room with another room and
10 then he over.

11 And was threatening me with the gun. He still had the
12 gun in his hand and as I was trying to get up, on my way
13 up off the house, he just was putting more and more on my
14 arm, like, I couldn't move or nothing. I was --

15 Q. Let's slow down just a little bit, Tiffany. Okay.

16 Your Honor, with Your Honor's permission, can I have

17 ██████████ approach the jury for an instruction?

18 THE COURT: Yes.

19 BY MS. SHEALY:

20 Q. ██████████ if you come on down for me.

21 A. (Complying.)

22 Q. If Ms. Walters was you, okay, when you say you took
23 your arm up and you turned this way, make sure you talk
24 loud enough, will you show Ms. Walters how he was doing
25 your arm?

██████████ - DIRECT

1 A. He took my arm. He was, just spring me like that
2 (indicating) and walk me to the back and he was holding me
3 as he was walking.

4 Q. When you would try to resist him, what would he do to
5 your arm?

6 A. He just twist it more, put more pressure on my arm.

7 Q. Okay. You can go ahead back to your seat.

8 A. (Complying.)

9 Q. Now you told us that was when you were going from the
10 front door area back to that second living --

11 A. Yes, ma'am

12 Q. -- back to the back living room. And so, again,
13 showing you State's 11, if you were walking in through the
14 kitchen, this is the second back living room area?

15 A. Yes, ma'am.

16 Q. Okay. And I'm showing you State's 12, is that a
17 closer up of the furniture in there?

18 A. Yes, ma'am.

19 Q. Would you point to the jury and show them where it was
20 that he had you near the sofa?

21 A. Right here.

22 Q. Now --

23 A. Right here.

24 Q. Now, can you slow down for us just a little bit and
25 tell us what was going on when you got to that area?

██████████ - DIRECT

1 A. When I got to that area he was bending -- he had me
2 bend over and he was pressure on my arm, like I say, and
3 every time I tried to get up and he pulled my pants down
4 and he had a condom and he put the condom on and put his
5 penis inside my vagina and I had sex with him.

6 Q. And did you want to do that with him?

7 A. No.

8 MS. SHEALY: Beg the Court's indulgence.

9 (Pause.) Your Honor, without objection, I would
10 offer into evidence State's Exhibit 37.

11 MR. STIDHAM: That's correct, Your Honor.

12 THE COURT: Mark that as admitted then without
13 objection.

14 MS. SHEALY: And State's Exhibit 45.

15 MR. STIDHAM: Without objection.

16 THE COURT: Marked and entered without objection.

17 (Thereupon, State's Exhibit No. 37, clothes, and
18 State's Exhibit No. 45, panties, were received into
19 evidence.)

20 BY MS. SHEALY:

21 Q. You told us that he pulled your pants down?

22 A. Yes, ma'am.

23 Q. And showing you State's Exhibit 37, are these the
24 pants that you had on that day?

25 A. Yes, ma'am.

TIFFANY GRAHAM - DIRECT

1 Q. And they have an elastic waist?

2 A. Yes, ma'am.

3 Q. Did you also have on this tank top?

4 A. Yes, ma'am.

5 Q. And was that closest to your body?

6 A. Yes, ma'am.

7 Q. And then, is this the next layer you had on, the gray
8 sweatshirt?

9 A. Yes, ma'am.

10 Q. I guess you would say sweat jacket. And then did you
11 also have an outer jacket?

12 A. Yes, ma'am.

13 Q. Now this jacket, did you take it off at some point
14 during the day?

15 A. Yes. Yes, ma'am.

16 Q. This is just if it were chilly?

17 A. Yes.

18 Q. Now they also took your panties?

19 A. Yes.

20 Q. And, I won't -- just -- in showing you State's Exhibit
21 45, could you just tell me if those are the panties that
22 you had on that day?

23 A. Yes, ma'am.

24 Q. Now, if Mr. Patterson had the gun, could you tell the
25 jury whether or not he was always pointing the gun at you,

██████████ - DIRECT

1 or was there some times that you didn't know where the gun
2 was?

3 A. At some times when he had me -- the part where he had
4 me over the couch.

5 Q. Say that again.

6 A. The part where he had me over the couch but the rest
7 of the times he had the gun point at me.

8 Q. Okay. Well, the point where he had you over the
9 couch, was your back to him?

10 A. Yes, ma'am.

11 Q. And tell us again about the condom. How did you know
12 he had a condom?

13 A.. Because when I was trying to look up, I turned my head
14 and he was, he had one, he had one hand on my arm, still
15 on my arm and he had the other arm tearing it, holding it,
16 and tearing it with his teeth.

17 Q. And do you know where his gun was at that point?

18 A. No.

19 Q. Did he kiss you?

20 A. No.

21 Q. Did he touch your breasts at all?

22 A. No.

23 Q. Was there anything else sexual that happened other
24 than him putting his penis in your vagina?

25 A. No.

██████████ - DIRECT

1 Q. Okay. Now, Tiffany, at any point did you give
2 Mr. Patterson the idea that you wanted to have sex?

3 A. No.

4 Q. After that happened, what happened? After he entered
5 you, what then happened?

6 A. When he entered me and he finish, and I pull up my
7 pants and I ran out the door. As I was trying to run out
8 the door, he closed the door back and wouldn't let me
9 out.

10 When the door was closed he put his foot in front the
11 door and wouldn't let me out. He tell me -- please let me
12 me go. You did what you had to do. And that's when he
13 left his foot off the door and let me go and I ran to the
14 neighbor house, ██████████ ██████████

15 Q. Now did he take the time to pull his pants back up?

16 A. At the time I don't know because I was already left.

17 Q. Because you were running?

18 A. Yes.

19 Q. When you left that house, did you have to walk out by
20 his family members?

21 A. Yes.

22 Q. And tell us how you were reacting at that point? How
23 did you feel?

24 A. I was so scared. I was real scared.

25 Q. Okay. And were you crying?

██████████ - DIRECT

1 A. Yes.

2 Q. When you say you left and went to another person's
3 house to make the 9-1-1 call, which way did you leave out
4 of that driveway? Do you remember?

5 A. When I left out I turned left.

6 Q. And when you got to the end of that street, which way
7 did you go?

8 A. Left.

9 Q. How did you decide which house to go to?

10 A. I just ran to that neighbor house and knock on the
11 door and hoping that she answer the door.

12 Q. In fact, someone did answer the door?

13 A. Yeah.

14 Q. Did she give you any help or invite you in or
15 anything?

16 A. No.

17 Q. Does anyone from Mr. Patterson's house follow you?

18 A. Yes, there was. Mr. Patterson, his brother, DeWayne,
19 they were coming behind me.

20 Q. And at any point do you see Mr. Patterson leave?

21 A. Yes.

22 Q. Okay. How -- did he leave in his own vehicle?

23 A. Yes.

24 Q. What about a female? Did a female come down, if you
25 remember, where you were to make a phone call?

██████████ - DIRECT

1 A. Yes.

2 Q. Who was that?

3 A. His sister.

4 Q. So let's back up just a second. When you get the
5 phone from the neighbor, do you in fact dial 9-1-1?

6 A. Yes.

7 Q. And in general what do you tell them? Do you report
8 what happened?

9 A. Yes.

10 Q. Are you having a conversation with Mr. Patterson's
11 family members while you're talking to 9-1-1?

12 A. Yes.

13 Q. And those were which family members?

14 A. His sister.

15 Q. And who else was standing with her?

16 A. His brother, DeWayne.

17 Q. Now did you know that those two were at the house?

18 A. No. Only DeWayne was at there later, but I didn't see
19 his sister.

20 Q. Okay. Now DeWayne is the person that assaulted you
21 when you were a young girl; is that right?

22 A. Yes, ma'am.

23 Q. So when you're having a conversation with the 9-1-1
24 dispatcher you're also talking with them?

25 A. Yes.

██████████ - DIRECT

1 MS. SHEALY: And, Your Honor, at this time we
2 have a matter of law.

3 THE COURT: Mr. Foreman, ladies and gentlemen of
4 the jury, I have a brief matter of law to take up.

5 During this break, please do not discuss the
6 case. And please leave your notepads in your seats.

7 You can go with the bailiffs, please.

8 (Jury exits courtroom at 10:32 a.m.)

9 THE COURT: I assume you're going to try to
10 introduce the 9-1-1 tape?

11 MS. SHEALY: Yes, Your Honor.

12 THE COURT: How are you going to establish the
13 chain of custody that was kept in the ordinary course of
14 business? Do you have a records' custodian?

15 MS. SHEALY: Your Honor, I would -- I do have a
16 records' custodian but also, Your Honor, I don't think
17 it's necessary when she can authenticate her own voice.

18 THE COURT: I think you're still going to have to
19 authenticate where the tape came from, whose custody its
20 been in. Do you understand? That's a business record. I
21 think it comes in within the present-sense impression as
22 well as excited utterance.

23 MS. SHEALY: It does.

24 THE COURT: But generally when you deal with
25 that, you deal with statements that are uttered and

██████████ - DIRECT

1 someone else repeats the statement.

2 MS. SHEALY: Your Honor, I have that person. I
3 can put that person up and then put her back up. And I
4 would allow her to listen to the tape and to initially say
5 that she listened to tape, that's what she's listened to,
6 establish that that's her voice.

7 THE COURT: She can establish that it's her
8 voice. You can ask her those questions, whether she feels
9 it's her voice. She's not going to be able to comment on
10 what she said.

11 MS. SHEALY: Yes, Your Honor, but I guess what I
12 was addressing is, I think that the fact that she has
13 listened to the tape and she can authenticate it and say
14 that that is her voice.

15 THE COURT: She can say it's her voice but she
16 can't say the tape actually is a record kept in the
17 ordinary course of business within the police department.
18 It's a little bit different situation than the usual
19 excited utterance or present-sense impression of someone
20 else stated that someone else said in their presence.

21 In other words, for example, and this is probably
22 not the best example, but if I were watching a car
23 accident and someone was standing next to me and I go, oh
24 my God, it's the most horrible accident in the world. Oh,
25 he ran the light.

██████████ - DIRECT

1 It doesn't require the claim of some other record
2 because that person was there. They heard me say it. So
3 it's a little different situation then someone calling
4 9-1-1 where a tape is made. You have to also establish
5 that it's a business record kept in the ordinary course.

6 She can establish that she said it. That doesn't
7 mean it goes into evidence. It means her statement goes
8 into evidence but it doesn't mean the tape goes into
9 evidence. Do you understand what I'm saying?

10 MS. SHEALY: Well, then, what I'll need to --

11 THE COURT: She can authenticate her voice
12 without listening to the tape. You can ask her if she
13 listened to it, if in fact that's her voice. And clearly
14 it comes within the hearsay exception and in the present-
15 sense impression. It is clearly an excited utterance.

16 You can establish those foundational questions
17 for the police department -- I mean, records person as to
18 exactly when the tape was done, who recorded it, what
19 equipment they used, and all those other questions that
20 you can ask of that person. Then I think the tape can be
21 played.

22 MS. SHEALY: Okay. So in order to do that, Your
23 Honor, we'd probably put the custodian in at the end of
24 her case. It would -- probably going to recall her and
25 ask her those questions.

██████████ - DIRECT

1 THE COURT: She'll have to listen to the tape and
2 authenticate her voice.

3 MS. SHEALY: Proffer about regarding those
4 questions about the tape?

5 THE COURT: That's correct.

6 MS. SHEALY: Do you have any objection to it
7 coming in without the custodian?

8 MR. STIDHAM: One moment, Your Honor.

9 Judge, first of all, I have a motion to suppress
10 the 9-1-1 tape to begin with. So I don't think I can
11 consent to it.

12 THE COURT: What's the basis of the motion to
13 suppress?

14 MR. STIDHAM: It's -- that it's hearsay.

15 THE COURT: I've overruled that objection. It's
16 clearly an excited utterance. It's clearly present-sense
17 impression.

18 And I would think that although the foundational
19 questions have not been completely asked, I don't think it
20 would just be an anomaly if she can't establish that it's
21 an excited utterance. The testimony is that she
22 immediately fled the residence and she called 9-1-1.

23 I would imagine based on what she just said less
24 than three minutes elapsed and that comes within the
25 classic excited utterance definition.

██████████ - DIRECT

1 MR. STIDHAM: Thank you, Your Honor.

2 THE COURT: So that would not be a basis to
3 exclude the testimony, if that's your sole basis. Then
4 you have an exception to the tape?

5 I haven't heard the tape but I would have to make
6 an assumption as to -- well, let me hear the tape right
7 quick. Can we hear it?

8 (Audio recording played for the Court.)

9 THE COURT: This is clearly an excited utterance
10 that was made. It relates to a startling event or
11 condition that was made while the declarant was under some
12 stressful situation and the stress of the excitement
13 caused the startling event or condition and based upon the
14 witness's testimony it happened within very close
15 proximity of the event, within less than five minutes.

16 Clearly it comes within the exception articulated
17 within 803-2, as well is 803-1 which is the statement
18 describing or explaining that a condition made while
19 declarant was perceiving the event or condition or
20 immediately thereafter but it is clearly an excited
21 utterance.

22 The problem that you have, Ms. Shealy, is that
23 there's someone else's voice on the tape. And that's
24 where the business record exception comes in but clearly
25 it's a 9-1-1 tape as proposed by law and so you're going

██████████ - DIRECT

1 to have to establish all of that.

2 Now having made, having -- the Court having made
3 the ruling that it is an excited utterance, I guess I need
4 to hear from Mr. Stidham whether he still objects to the
5 tape being played, I guess, subject to -- I guess it's
6 really now, just procedural matters.

7 It's going to be played. Secondly it's just a
8 matter of when it's going to be played.

9 MR. STIDHAM: That's correct, Judge. My objection
10 was that it's hearsay and it's improper bolstering plus
11 the dispatcher can testify to it, but you've already ruled
12 on that.

13 So I guess procedurally -- Judge, I'm consenting
14 to the playing of it now without having to call the
15 records custodian. Of course, you can eventually call the
16 records custodian, but I still maintain my objection on
17 the grounds of hearsay and improper bolstering.

18 THE COURT: It will be noted for the record. And
19 it's clearly an excited utterance.

20 In addition to that, it would probably fall under
21 res justis as well which is basically the same as present-
22 sense impression as part of the, which of course res justis
23 was replaced by excited utterance and present-sense
24 impression but it clearly comes within the hearsay
25 exception.

██████████ - DIRECT

1 It will marked for ID only at this point until
2 the records custodian is called to lay the appropriate
3 foundation and the tape will be played.

4 MR. STIDHAM: With no commentary?

5 THE COURT: Yes, with no commentary.

6 MR. STIDHAM: I think once the tape's played --

7 THE COURT: So y'all want to stipulate then it's
8 a business record?

9 MR. STIDHAM: Yes, ma'am.

10 THE COURT: So you've stipulated that it's a
11 business record. Will be marked and admitted as State's,
12 next exhibit.

13 MS. SHEALY: We have it marked as State's Exhibit
14 38.

15 (Thereupon State's Exhibit No. 38, 9-1-1 call on
16 CD, was received into evidence.)

17 THE COURT: It's stipulated that it's a business
18 record. Mr. Stidham made his objection regarding the
19 admissibility of it. I've overruled that.

20 Since the jury is out, why don't we take
21 advantage of that and go to the restroom as well?

22 The jury has indicated that they cannot hear the
23 witness in the back. Ask her to speak more directly into
24 the microphone. We'll be in recess.

25 MS. SHEALY: Thank you.

██████████ - DIRECT

1 THE COURT: During the break, ma'am, please do
2 not discuss your testimony with anyone and you can go to
3 the restroom if you like.

4 THE WITNESS: Okay.

5 (Thereupon at 10:46 a.m., a break was taken. At
6 11:01 a.m., the jury enters the courtroom and the trial
7 resumes as follows:)

8 THE COURT: Ladies and gentlemen, I hope you
9 enjoyed your break. We'll now resume with the witness's
10 testimony.

11 Ms. Shealy, you may proceed.

12 DIRECT EXAMINATION (CONTINUED)

13 BY MS. SHEALY:

14 Q. ██████████ We were talking to you about the 9-1-1
15 tape -- excuse me, the 9-1-1 call. Do you remember?

16 A. Yes.

17 Q. And now again, tell the jury when you left that house
18 how quickly do you get to the place that you're going,
19 going to try to use the phone?

20 A. It wasn't like even, two, two minutes, three minutes.

21 Q. And again, you testified that there -- at some point
22 Mr. Patterson's sister and brother come behind you. Is
23 that right?

24 A. Yes.

25 Q. Okay. And you're talking to them and the dispatcher

██████████ - DIRECT

1 with 9-1-1?

2 A. Yes.

3 Q. Have you had the opportunity to listen to the tape
4 recording I have of the 9-1-1 call?

5 A. Yes.

6 Q. I'm showing you what's been marked as State's Exhibit
7 38. I would ask you if those are your initials on that?

8 A. Yes.

9 Q. And did you initial those at my office?

10 A. Yes.

11 MS. SHEALY: Your Honor, at this time, I would
12 offer State's Exhibit 38 into evidence.

13 MR. STIDHAM: Without objection.

14 THE COURT: All right. It will be marked and
15 admitted without objection.

16 (Thereupon, State's Exhibit No. 38, audio
17 recording of 9-1-1 call, was marked and received into
18 evidence.)

19 MS. SHEALY: Your Honor, at this time we would
20 request to be able to play it.

21 THE COURT: Any exception?

22 MR. STIDHAM: No, Your Honor.

23 THE COURT: You may proceed.

24 (Thereupon, the audio recording of a 9-1-1 call,
25 State's Exhibit No. 38, was played for the jury.)

██████████ - DIRECT

1 BY MS. SHEALY:

2 Q. Now some of that tape's a little bit difficult to
3 hear. What kind of conversation were you having with
4 Mr. Patterson's relatives?

5 A. Me and his sister was arguing about the situation
6 happened a long time ago between me and DeWayne.

7 Q. And what were y'all arguing about it?

8 A. About what was going on with me and DeWayne and what
9 DeWayne did to me and stuff.

10 Q. In other words, were you telling her what DeWayne had
11 done?

12 A. Yes.

13 Q. And where was DeWayne standing?

14 A. He was standing by his sister.

15 Q. Okay. And on the tape when you were referring to he
16 did this to me, who were you talking about?

17 A. I was talking about DeWayne.

18 Q. And you were telling his sister?

19 A. Yes.

20 Q. Now, after that and the police arrive, I think the
21 dispatcher told you to kind of wave to the policeman when
22 they get there?

23 A. Yes.

24 Q. Did you in fact do that?

25 A. Yes.

██████████ - DIRECT

1 Q. And tell us at that point how clearly are you
2 thinking? Are you upset or what's going on?

3 A. I was very upset and was scared and afraid.

4 Q. And do you remember talking to an Officer Light, a
5 male that had brown hair? Do you remember that
6 conversation?

7 A. No.

8 Q. Okay. Do you remember being driven somewhere from the
9 scene?

10 A. Yes.

11 Q. And do you remember where you were taken?

12 A. Yes.

13 Q. Where were you taken?

14 A. To the Women's Health Center on Cannon Street.

15 Q. Do you remember getting sick when you got there?

16 A. Yes.

17 Q. Will you tell the jury about that, please?

18 A. Yes. I vomit.

19 Q. And do you remember how many times you were vomiting?

20 A. I vomit, like, about two or three times.

21 Q. Do you remember a different officer talking to you
22 when you got down there?

23 A. No.

24 Q. You don't remember that?

25 A. No.

██████████ - DIRECT

1 Q. Do you remember them taking a written statement from
2 you, somebody talking to you and asking questions?

3 A. Yes.

4 Q. And do you remember that that happened at the Women's
5 Center?

6 A. Yes.

7 Q. Do you remember it being a female officer?

8 A. Yes.

9 Q. So you remember that conversation?

10 A. Yes.

11 Q. Now, while you were talking to her, do you remember
12 whether or not that's when you were vomiting?

13 A. Yes.

14 Q. Okay. And tell the jury whether or not you tried to
15 do the best you could with your details when you were
16 talking to her?

17 A. Yes.

18 Q. Okay. Have you had a chance to look back at your
19 statement?

20 A. No.

21 Q. So the statement that you gave the police, have you
22 had a chance to read it since then?

23 A. No, I didn't.

24 Q. Okay. But what I'm asking now since this event
25 happened, have you ever gone back to read your statement?

██████████ - DIRECT

1 A. Yes.

2 Q. Okay. Now, Tiffany, you know, you've told us that you
3 went to eighth grade and that you were working at the
4 different fast foods and at Ross. Were you used to
5 talking to people who were in professional positions? Do
6 you know what I mean?

7 A. Like, you can --

8 Q. Well, like talking to police officers, was that
9 something you were used to doing?

10 A. No.

11 Q. Okay. Talking to doctors?

12 A. Yes.

13 Q. You talked to doctors when you've gone to get help?

14 A. Yes.

15 Q. Okay. And what about talking to lawyers? I know
16 we've talked plenty now --

17 A. No.

18 Q. -- but before this happened, were you used to talking
19 to lawyers?

20 A. No.

21 Q. If someone used a word that you didn't know, would you
22 act like you knew it anyway?

23 A. Yeah.

24 Q. Okay. Now, after the female officer took your written
25 statement, do you remember that she gave it to you and

██████████ - DIRECT

1 asked you if you'd like to read it. Do you remember that?

2 A. No.

3 Q. Do you remember her giving it to you and saying you
4 can read it if you want to?

5 A. Yes.

6 Q. And did you in fact sign it?

7 A. Yes, I did.

8 Q. Did you initial each page?

9 A. Yes, I did.

10 Q. Now tell the jury whether or not you were studying to
11 make sure everything was right.

12 A. No, I wasn't, because I was so upset at the time that
13 I wasn't thinking about the paper. I was just thinking
14 about what happened to me and what went on in the house
15 and trying to, you know, get the police to lock him up for
16 what he was doing, what he did to me.

17 Q. Okay. Now, after talking to that female officer, did
18 you in fact go and talk to and see a nurse?

19 A. Yes.

20 Q. Okay. And did they do some kind of examination of
21 you --

22 A. Yes.

23 Q. -- while you were there? Can you tell the jury what
24 you remember about that examination?

25 A. Yes.

██████████ - DIRECT

1 Q. Tell them what they did.

2 A. When they examined me they pulled, they pulled hair
3 from my hair and they pulled hair from my private part.
4 And that's all that they did. They took my clothes from
5 me. They told me to took off my clothes and gather my
6 clothes and they gave me clothes.

7 Q. Do you remember them -- I'm sorry to ask you these
8 questions in front of the whole courtroom full of people.

9 A. That's okay.

10 Q. But do you remember them having to open up your
11 vaginal area and look inside? Do you remember that?

12 A. Yes.

13 Q. Do you remember them having to stick something inside?

14 A. Yes.

15 Q. And then your fanny bottom area, did they have to do
16 it -- did they do it to that area as well?

17 A. No.

18 Q. You don't remember that?

19 A. I remember them pulling hair from me.

20 Q. Okay. But not the back part?

21 A. No.

22 Q. You don't remember that. When you were talking to the
23 nurse, were you still upset or had you calmed down or
24 what?

25 A. I was still upset.

██████████ - DIRECT

1 Q. Did they take your blood, too, while you were back
2 there?

3 A. Yes, they did.

4 Q. Okay. Now, do you remember then a few days after that
5 happened, two female officers came to see you?

6 A. Yes.

7 Q. And do you remember that they were talking to you in
8 their vehicle?

9 A. Yes.

10 Q. Okay. Were they asking you details about what had
11 happened again?

12 A. Yes.

13 Q. Were you a little more calm at that time?

14 A. Yes.

15 Q. And did they show you some photographs and ask you
16 whether you saw the person who attacked you in the
17 photographs?

18 A. Yes.

19 MS. SHEALY: Your Honor, I would move to admit
20 State's Exhibit 36, without objection, to the lineup.

21 MR. STIDHAM: Without objection.

22 THE COURT: Number 36, without objection.

23 (Thereupon, State's Exhibit No. 36, photo lineup,
24 was received into evidence.)

25 BY MS. SHEALY:

██████████ - DIRECT

1 Q. ██████████ I'm going to show you what's been marked
2 as State's Exhibit 36 and ask you if you remember this?

3 A. Yes.

4 Q. Okay. And do you remember what the officers asked you
5 to do when you looked at the photograph?

6 A. Yes.

7 Q. What did they tell you?

8 A. They told me to pick out the person that, who done it
9 to me.

10 Q. Did they show you who to pick out?

11 A. No.

12 Q. And could you tell the jury what number photograph you
13 picked out?

14 A. Number three.

15 Q. Is that your signature on that photograph?

16 A. Yes, ma'am.

17 Q. And who is that a picture of?

18 A. Antonio Patterson.

19 Q. So look behind you.

20 A. (Complying.)

21 Q. And State's Exhibit 36, the picture circled with your
22 name and date of April 12th, is the person that you picked
23 out. Is that correct?

24 A. Yes.

25 Q. Tiffany, that day, April 9th, did you do anything that

██████████ - CROSS

1 would make Mr. Patterson believe you wanted to have sex
2 with him?

3 A. No.

4 MS. SHEALY: I beg the Court's indulgence one
5 moment. (Pause.)

6 ██████████ I have no further questions for you.
7 Answer any that the defense may have.

8 THE WITNESS: Okay.

9 THE COURT: Mr. Stidham, you may proceed.

10 MR. STIDHAM: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. STIDHAM:

14 Q. Good morning, ██████████

15 A. Good morning.

16 Q. I'm sure that you've spoken with Ms. Shealy plenty
17 before today. Right?

18 A. Yes.

19 Q. And she probably told you that I was going to ask you
20 some tough questions.

21 A. Yes.

22 Q. So if you need any more time, you just let me know.
23 Okay?

24 A. Okay.

25 Q. You testified today that on the day of the incident

██████████ - CROSS

1 back in April of 2006, that there was no sex in the
2 bathroom. Is that correct?

3 A. Yes.

4 Q. And you testified that Tony put a condom on before he
5 had sex with you. Correct?

6 A. Yes.

7 Q. And that he only had sex with you one time?

8 A. Yes.

9 Q. And you testified that he went upstairs to get a gun,
10 and came back down?

11 A. Yes.

12 Q. So Tony met you about eight o'clock. Is that right?

13 A. Yes.

14 Q. And you went to go see your boyfriend at the jail at
15 10:30?

16 A. Yes.

17 Q. What did you do for those two and a half hours?

18 A. Well, the two and a half hours when I went, when I
19 walked into the McDonald's -- I had to walk to McDonald's
20 so it took me, like, 30 minutes to get there. And I
21 ordered my food. And he took me to the jail and I sat to
22 the jail for my visitation.

23 Q. But Tony met you at McDonald's. Right?

24 A. Yes.

25 Q. And so you were at McDonald's. He met you at

██████████ - CROSS

1 McDonald's. Right?

2 A. Yes.

3 Q. So were you at the McDonald's for two and a half
4 hours?

5 A. No.

6 Q. Or did you go somewhere else?

7 A. No, we didn't go nowhere.

8 Q. You didn't go to Tony's house?

9 A. No.

10 Q. So where did you go before McDonald's?

11 A. I went to the jail for my visitation.

12 Q. You sat at the jail?

13 A. Yes.

14 Q. So, Tiffany, I want to talk about the statement that
15 you gave on the day of the incident at the Women's
16 Center. You testified you remember giving that
17 statement. Correct?

18 A. Yes.

19 MR. STIDHAM: Your Honor, may I approach?

20 THE COURT: Yes, you may.

21 BY MR. STIDHAM:

22 Q. Tiffany, I'm going to show you a copy of that
23 statement. And let me ask you: Is that your handwriting?

24 A. No.

25 Q. Okay. So an officer wrote that for you?

██████████ - CROSS

1 A. Yes.

2 Q. But is that your signature there on the bottom?

3 A. Yes.

4 Q. Okay. So does that look like the statement that you
5 gave that day?

6 A. Yes.

7 Q. Okay. Can I hold it back for one second?

8 A. (Hands document to counsel.)

9 MR. STIDHAM: Can I have this marked?

10 THE COURT: Are you seeking to admit it?

11 MR. STIDHAM: Yes, ma'am.

12 THE COURT: Any objection?

13 MS. SHEALY: Your Honor, I think that --

14 THE COURT: Yes, ma'am. You need to approach.

15 (Off-the-record discussion).

16 MR. STIDHAM: Statement marked for ID only.

17 (Thereupon, Defendant's Exhibit No. 1, statement,
18 was marked for identification only.)

19 BY MR. STIDHAM:

20 Q. Okay. Tiffany -- excuse me. I just got to get my
21 copy. I got it right here. Okay.

22 Tiffany, do you see on that statement where you said
23 that you were yelling and screaming. Do you remember
24 telling the officers that?

25 A. Yes.

██████████ - CROSS

1 Q. Okay. And that you pulled, Tony pulled a black and
2 silver nine millimeter gun from his back pocket?

3 A. Yes.

4 Q. Okay. But you didn't mention anything about Tony
5 going upstairs to go get a gun.

6 A. Yes.

7 Q. You did, but they just didn't say it?

8 A. Yes.

9 Q. Do you see the bottom, at the bottom of each page,
10 Tiffany, where it says, I've read the foregoing statement
11 or had it read to me and it is true and correct to the
12 best of my knowledge. I've given this statement freely
13 and voluntarily?

14 A. Yes.

15 Q. And you signed right below that?

16 A. Yes.

17 Q. But you didn't mention anything about him going
18 upstairs to go get a gun.

19 A. Like I said, at the time I was so afraid and scared
20 that I didn't have -- worry about reading the paper. I
21 just was scared for my life and worried about what he did
22 to me, so.

23 And I probably misunderstood what he told me or he
24 misunderstood me.

25 Q. Okay. Well, what about on page three, the question

██████████ - CROSS

1 is: Have you ever had consensual sex with Tony. You
2 wrote, answer, yes, when I was about 13 or 14. And you
3 initialed it. Isn't that right?

4 A. Yes, I initial it.

5 Q. Okay. But your testimony today was that that's not
6 true?

7 A. It's not true. Like I say at the time, I was very
8 upset. I wasn't -- the people, they was asking me
9 questions and a whole bunch of questions and the situation
10 was involved with his brother, too.

11 So I didn't, I thought they were talking about his
12 brother at the same time so I say yes. And they wrote
13 that they was talking about him at the time.

14 Q. So when this says, have you ever had sex with Tony,
15 you thought they were talking about his brother?

16 A. Yes.

17 Q. When they asked the question, where did Tony penetrate
18 you, you answered, first it was in the bathroom. Then
19 again it was in the den. And you initialed that, but
20 today you're saying that that's not true?

21 A. No. At the time I didn't know what penetration mean.
22 Ms. Shirley, Ms. Shirley let me know what penetration mean
23 because I didn't know what it mean at that time.

24 Q. Okay. I'm sorry. Who's Ms. Shirley?

25 A. Ms. Shirley in the gray shirt on.

██████████ - CROSS

1 MS. SHEALY: Shealy.

2 BY MR. STIDHAM:

3 Q. Shealy?

4 A. Shealy. I'm sorry.

5 Q. The question on the same page of your statement, were
6 you under the influence of any substance. Answer, I
7 remember everything. I only had two glass of gin. You
8 testified today that that's not true either, is it?

9 A. Yes. That is true.

10 Q. Well, gin's not only thing you had. You also smoked
11 marijuana. Didn't you?

12 A. Yes.

13 Q. And you smoked a blunt of marijuana. Correct?

14 A. Yes.

15 Q. But you said you were sober?

16 A. Yes. I was not intoxicated.

17 Q. Two glasses of gin and a marijuana blunt did not leave
18 you intoxicated?

19 A. No.

20 Q. Okay. There were other people at this cookout.
21 Right?

22 A. Yes, there was.

23 Q. Did you ever mention that to the police?

24 A. Yes.

25 Q. Do you remember telling the officer who responded to

[REDACTED] - CROSS

1 the scene, Officer Light, do you remember saying that we
2 were cooking out with friends?

3 A. I didn't say that we was cooking out with friends. I
4 said me and him was cooking out and his family, his
5 brother, his family was there but they was not with us.

6 Q. Okay. Do you remember telling that officer that while
7 you were in the bathroom that Tony penetrated your vagina
8 without your consent and permission?

9 A. At the time I was so angry and frustrated, I didn't
10 know what penetration mean, so.

11 Q. Well, you understand what your vagina is?

12 A. Yes.

13 Q. Did Tony do anything to your vagina while you were in
14 the bathroom?

15 A. No.

16 Q. Well, why did you tell Officer Light that Tony
17 penetrated your vagina without your permission?

18 A. Because I didn't know what penetration mean. I was
19 very upset and angry.

20 Q. Okay. What about Ms. LeBoeuf? You remember going to
21 the Women's Center and speaking with her. Right?

22 A. Yes.

23 Q. And she wrote that statement that you gave her.

24 Correct?

25 A. Yes.

██████████ - CROSS

1 Q. And you told Ms. LeBoeuf that he put his penis in you
2 without a condom. Is that right?

3 A. No.

4 Q. That's not correct? Did she get that wrong?

5 A. Yes. She probably misunderstood it, but I didn't told
6 her that he put his penis in with a condom because he had
7 a condom on.

8 Q. Okay. Do you remember the two female police officers
9 that you spoke with, Officer Antonio? Do you remember
10 her?

11 A. Yes.

12 Q. Do you remember telling her that Tony pulled your
13 pants down in the bathroom and forced you to have vaginal
14 intercourse?

15 A. No.

16 Q. You didn't say that?

17 A. I didn't -- probably said it but, like I said, that I
18 was very upset and she probably misunderstood what I say.
19 But I didn't told her that it was in the bathroom, that it
20 happened in the living room. But he never sexually
21 assault me in the bathroom. Unless she wrote it down
22 wrong.

23 Q. Okay. And Officer Altine, do you remember her? That
24 would have been the other female officer that was
25 accompanying Officer Antonio.

██████████ - CROSS

1 A. I don't remember her.

2 Q. You don't remember it being two female officers a
3 couple days after the incident?

4 A. I remember the first officer but I don't remember the
5 second one.

6 Q. Okay. This would have been April 12th, 2006. So
7 that's three days after. Do you remember -- you don't
8 remember meeting with, with two people, two female police
9 officers?

10 A. I remember her, but not the other lady.

11 Q. Okay. But do you remember telling her that Tony had a
12 black and silver automatic handgun in his back pocket?

13 A. Yes. I told the first lady that, yes.

14 Q. But you didn't mention anything about him going
15 upstairs to go get the gun?

16 A. I may have, but she probably didn't understand --
17 misunderstood me.

18 Q. Okay. And you also -- do you remember saying that
19 Tony put on a condom after the first entry?

20 A. No.

21 Q. Tiffany, there are several statements that say that
22 you told police officers that Tony had sex with you in the
23 bathroom without a condom, but you're telling me that
24 people misunderstood what you said?

25 A. Yes.

██████████ - CROSS

1 Q. Could it be that after -- you met with the solicitor
2 several times about this case. Right?

3 A. Yes.

4 Q. And y'all talked about what kind of evidence there was
5 and what kind of evidence there was not?

6 A. Yes.

7 Q. Did she tell you there was no DNA evidence?

8 A. Yes.

9 Q. Could it be that now your story's changed when you
10 found out there's no DNA evidence?

11 A. No. My story has not changed. It's the same.

12 Q. Well, your story's different from the witness
13 statement that you gave at the Women's Center. Your
14 story's different from what you told Officer Antonio.
15 Your story is different from what you --

16 MS. SHEALY: Your Honor, I'd ask that he let her
17 answer the question.

18 THE COURT: Let her the answer the question.

19 MR. STIDHAM: I'm sorry.

20 BY MR. STIDHAM:

21 Q. Your story is different than what you told at the
22 Women's Center, is it not?

23 A. Like I said, I was very scared and afraid. And I was,
24 I probably, you know, I probably say, you know, I probably
25 say something and they didn't understand me and they took

██████████ - CROSS

1 it down wrong but he never had sex with me in the
2 bathroom.

3 Q. Is your testimony today that Officer Antonio
4 misunderstood you at the Women's Center?

5 A. (No response.)

6 Q. When -- when you said that Tony had sex with me when I
7 was 13 or 14, she misunderstood you. Correct?

8 A. Yes.

9 Q. And when you said that Tony first penetrated you in
10 the bathroom, she misunderstood you or you misunderstood
11 her?

12 A. Yes. I misunderstood her because I didn't know what
13 penetration means.

14 Q. And then later Officer Antonio on April 12th spoke
15 with you, she again misunderstood you?

16 A. If you can repeat that again.

17 Q. April 12th when you met with Officer Antonio and you
18 told her that Tony had put a condom on after his first
19 entry, she misunderstood you?

20 A. What you mean by his first entry?

21 Q. Meaning that he penetrated your vagina with his penis
22 first, without a condom on, and then later he put on a
23 condom?

24 A. She probably misunderstood me.

25 Q. Okay. You testified today that Tony's brother,

██████████ - CROSS

1 DeWayne, had assaulted you when you were 13 or 14?

2 A. Yes.

3 Q. When were you aware that DeWayne was at the cookout?

4 A. When -- after all -- when I went out the door he was
5 standing, like, by the door. And where I saw him at
6 because my body was really coming in the part that we was
7 in, they was like going upstairs. So I was in the
8 kitchen. I was in the kitchen. I couldn't see nobody
9 going up the stairs.

10 Q. So your testimony today is that Tony had your arm
11 behind your back. Correct?

12 A. Yes.

13 Q. That he was twisting your arm behind your back?

14 A. Yes.

15 Q. And you were yelling and screaming for him to stop?

16 A. Yes.

17 Q. How loud were you screaming? As loud as you could?

18 A. Yes.

19 Q. And this took place in the living room behind the
20 kitchen?

21 A. Yes.

22 Q. Let's talk about the 9-1-1 tape. You, you called
23 9-1-1 because you wanted the police to come. Right?

24 A. Yes.

25 Q. And you wanted Tony caught?

██████████ - CROSS

1 A. Yes.

2 Q. So you knew that it was important that you tell the
3 police officers certain information. Right? I mean, you
4 needed to tell them details so that they could catch Tony
5 and punish him for what he did. Right?

6 A. Yes.

7 Q. You never mentioned that he put a gun to your head.
8 Did you?

9 A. Yes, I told. I told them, yes.

10 Q. That's not on tape we just heard. The tape, you
11 didn't say -- you never said he had a gun. That's not on
12 the tape.

13 A. Like I say, I was upset and very -- I was so upset and
14 I was very mad. And when I made that phone call I was
15 upset and mad and afraid.

16 Q. I understand.

17 A. So I didn't mention everything that he done to me.

18 Q. But you did mention -- you did feel it important
19 enough to say that he twisted your arm behind your back.
20 You mentioned that twice.

21 A. Yes.

22 Q. Was that more important than he put a gun to his head
23 -- or he put a gun to your head? I'm sorry.

24 A. No.

25 Q. Didn't you think the police needed to know that they

██████████ - CROSS

1 were going after an armed person?

2 A. Yes.

3 Q. But you didn't tell them?

4 A. No.

5 Q. When you said on the 9-1-1 tape he did this to me a

6 long time ago, your testimony today is that you were

7 talking about DeWayne?

8 A. Yes.

9 Q. And that your, and your statement, had you ever had

10 sex with Tony, yes, when I was 13 or 14. Again, you

11 weren't talking about Tony?

12 A. No.

13 Q. You were talking about DeWayne?

14 A. Yeah.

15 Q. Now, Tiffany, you testified that you've had several

16 jobs. Right?

17 A. Yes.

18 Q. And those jobs you had interviews, I imagine, to get

19 the job. Right?

20 A. Yes.

21 Q. And you didn't have any problem communicating with

22 them. They hired you?

23 A. Yes.

24 Q. Okay. So generally you don't have a problem

25 communicating and understanding people. Do you?

██████████ - CROSS

1 A. Like, sometime I do.

2 Q. Okay. Court's indulgence?

3 THE COURT: Yes.

4 (Pause.)

5 by MR. STIDHAM:

6 Q. Tiffany, when y'all got back from the Food Lion, who
7 was at the house?

8 A. It was DeWayne's brother and his brother kids.

9 Q. DeWayne's brother?

10 A. Yeah. I mean, Antonio brother and Tony brother kids.

11 Q. Tony's brother's?

12 A. No, I don't know the names.

13 Q. Okay. And you referred to them as children. They
14 weren't children. They were teenagers. Right? About 15
15 or 16?

16 A. No, they wasn't that. They wasn't that old.

17 Q. How old would you say?

18 A. They looked about nine or 10.

19 Q. Okay. And how many people? So that would be one --

20 A. One adult.

21 Q. One adult?

22 A. Two kids.

23 Q. Children?

24 A. Uh-huh.

25 Q. And when did DeWayne's -- well, excuse me, when did

[REDACTED] - CROSS

1 DeWayne -- and you said there's a sister there?

2 A. Yes.

3 Q. When did they arrive?

4 A. When the sister, I didn't know because he had already
5 had the door down. So I didn't know who was outside then.

6 Q. But they were outside when you got there?

7 A. No, they was not outside when I got there.

8 Q. I apologize. You're correct. They were outside when
9 you left?

10 A. Yes.

11 Q. Was it one sister or two sisters?

12 A. At the time I just saw -- when we came, I saw his
13 sister is when I made the 9-1-1 call and she walked up.

14 Q. And which sister was that? Do you know her name?

15 A. No. I don't know her name.

16 Q. Could you identify her if you saw her again?

17 A. Yes.

18 MR. STIDHAM: One moment, Your Honor.

19 (Pause.)

20 BY MR. STIDHAM:

21 Q. Tiffany, did the -- when Tony threatened you in the
22 bathroom, did you start yelling and screaming then?

23 A. Yes, I was.

24 Q. And were you yelling and screaming during the assault?

25 A. Yes.

██████████ - REDIRECT

1 Q. And were you yelling and screaming after the assault
2 when he let you out of the house?

3 A. Yes.

4 Q. So, you were yelling and screaming as loud as you
5 could for several minutes?

6 A. Yes.

7 MR. STIDHAM: That's all the questions I have,
8 Your Honor.

9 THE COURT: Any redirect of the witness?

10 MS. SHEALY: Yes, Your Honor.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MS. SHEALY:

14 Q. Tiffany, the statement that Mr. Stidham showed you,
15 did you write this statement or did Detective Antonio
16 write this statement?

17 A. Detective Antonio.

18 Q. Okay. And you told us that you did not take time to
19 carefully look at everything before you signed it. Is
20 that correct?

21 A. Yes.

22 Q. What would you -- do you remember what you were going
23 to have to do next after you did the statement? Do you
24 remember what the next thing for you to have to do after
25 you were down there was?

██████████ - REDIRECT

1 A. No.

2 Q. Had you had your physical exam yet?

3 A. Yes -- no, not yet.

4 Q. So you were still going to have to get your physical
5 exam?

6 A. Yes.

7 Q. To make sure we understand when he took you to that
8 bathroom, did any sex occur?

9 A. No.

10 Q. Did you ever tell Officer Light, Detective Antonio or
11 Detective Altine that you had sex in the bathroom?

12 A. No. They probably thought, misunderstood what I was
13 saying but I didn't told them. He didn't have sex with me
14 in bathroom.

15 Q. Okay. Tell us again what happens in the bathroom.

16 A. In the bathroom what happened, he took me in the
17 bathroom and was threatening me with the gun. And he told
18 me that they, that he didn't bought all of this stuff for
19 nothing and he want to have sex with me.

20 Q. Okay. And you told us he closed the door when he was
21 telling you that?

22 A. Yes.

23 Q. And then after that is when you told the deputies you
24 got out of the house?

25 A. Yes.

██████████ - REDIRECT

1 Q. Now the yelling and screaming, while you were inside
2 and while he was cranking your arm back and had the gun
3 out, were you calling out for help?

4 A. Yes.

5 Q. Tell the jury whether anybody outside yelled back.

6 A. Yes. Somebody said, shut the B. up.

7 Q. Shut that B. up. Okay. Regarding the question -- do
8 you still have the statement up there?

9 MR. STIDHAM: I have it.

10 MS. SHEALY: Oh, okay.

11 BY MS. SHEALY:

12 Q. Regarding the question, have you ever had consensual
13 sex with Tony, did you write that question?

14 A. No.

15 Q. Did you write the answer, yes, when I was about 13 or
16 14?

17 A. No.

18 Q. Okay. Tell the jury when you're talking about what
19 happened to you when you were 13 or 14, what were you
20 talking about?

21 A. I was talking about his brother, DeWayne.

22 Q. Do you know what consensual sex is?

23 A. No.

24 Q. And you've already told us that someone asked you if
25 you were penetrated in the bathroom. Did you know what

██████████ - REDIRECT

1 penetrated meant at the time you gave this statement?

2 A. No.

3 Q. Regarding whether or not you were under the influence
4 of any substance, you had those two glasses of gin.

5 Correct?

6 A. Yes.

7 Q. And then you also had the blunt?

8 A. Yes.

9 Q. But, were you drunk or intoxicated?

10 A. No.

11 Q. Mr. Stidham asked you about your discussions with the
12 nurse, Fay LaBoeuf, the nurse who examined you?

13 A. Yes.

14 Q. And did you see that she had some paperwork that she
15 was talking to you and she was checking things off?

16 A. No.

17 Q. Okay. Do you know that she checked you said a condom
18 was used. Did you know that? Or you don't know what she
19 checked and what she didn't check?

20 A. No.

21 Q. Okay. But you told her you had -- a condom was used?

22 A. Yes.

23 Q. When he was asking you whether or not you remembered
24 Detective Altine -- had asked you whether you remembered
25 meeting with two female officers. You remember meeting

██████████ - REDIRECT

1 with two. You just don't remember what the second one
2 looked like. Is that what you're saying?

3 A. No. I remember the first lady but I don't remember
4 the second lady.

5 Q. When you say you don't remember the second lady, you
6 don't remember that there was a second lady or you don't
7 remember what she looked like?

8 A. I didn't remember the second. I don't remember there
9 was a second lady.

10 Q. Okay. And remember when I was asking you about the
11 interview that took place in the police car?

12 A. Yes.

13 Q. Were there two people there then?

14 A. It was only the first lady.

15 Q. You think there was just one lady?

16 A. Yes.

17 Q. Okay. Mr. Stidham had asked you about why you
18 mentioned the cranking of the arm in the 9-1-1 tape. Of
19 all the things that actually hurt the most, what hurt the
20 most that he was doing to you?

21 A. When he had the gun pointed at me and sexually
22 assaulted me.

23 Q. And what about the cranking of the arm? Did that feel
24 good or did that feel bad?

25 A. Yes, that felt bad.

██████████ - RECROSS

1 Q. Which thing hurt worse physically, or did it all hurt?

2 A. It all hurt.

3 Q. Okay. Now, Mr. Stidham said that, you know, you had
4 gone through a job interview at Wendy's and Subway and you
5 handled yourself okay. Were they asking about sex?

6 A. No.

7 Q. Were they asking you about rape?

8 A. No.

9 Q. About penetration?

10 A. No.

11 Q. Ejaculation?

12 A. No.

13 MS. SHEALY: I don't have any other further
14 questions.

15 THE COURT: You may step down.

16 MR. STIDHAM: Your Honor, I have a few.

17 THE COURT: Very brief.

18 MR. STIDHAM: Yes, briefly.

19 RECROSS-EXAMINATION

20 BY MR. STIDHAM:

21 Q. Tiffany, your statement, do you still have that in
22 front of you, the one you gave?

23 A. Yes.

24 Q. You said you don't understand, you didn't understand
25 what penetrate meant. Right?

██████████ - RECROSS

1 A. Yes.

2 Q. But you know, you know who Tony is?

3 A. Yes. I know who Tony is.

4 Q. And you know who DeWayne is?

5 A. Yes.

6 Q. You understand who Tony and DeWayne are. Correct?

7 A. Yes.

8 Q. And on that statement you had an opportunity to circle
9 each answer that you made and you initialed each one.

10 Right?

11 A. Yes.

12 Q. And they gave you an opportunity to go ahead and read
13 over your statement and what you had answered. Right?

14 A. Yes.

15 Q. And you took the time to circle and initial seven or
16 eight questions?

17 A. At the time I just initial. I wasn't thinking about
18 the paper. I was thinking about my life and I was
19 thinking about what happened to me and putting him behind
20 jail. I wasn't really thinking about what was on the
21 paper --

22 MR. STIDHAM: Thank you.

23 THE WITNESS: -- at the time.

24 THE COURT: Any redirect?

25 MS. SHEALY: None, Your Honor. Thank you.

ERIC LIGHT - DIRECT

1 THE COURT: Ma'am, you may step down. You may
2 call your next witness.

3 MR. STACK: State calls Officer Eric Light of the
4 Charleston Police Department.

5 ERIC LIGHT, having been duly sworn, was examined
6 and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STACK:

9 Q. Would you state your name and spell your last name?

10 A. Eric -- Officer Eric Light of the Charleston Police
11 Department, L. I. G. H. T.

12 Q. Good morning, Officer Light. Would you tell the jury
13 what you do for a living?

14 A. I'm employed with the City of Charleston Police
15 Department. I worked there just over six years. I'm
16 currently in the patrol division right now.

17 Q. Tell the jury what kind of duties and responsibilities
18 you have with the Charleston Police Department.

19 A. As with the Charleston Police Department now we're
20 responsible for in-calls for service, from in-progress
21 calls to alarm calls. Any type of calls that they have to
22 call 9-1-1, that's what we respond to.

23 Q. Were those the types of duties you had back on April
24 6 -- correction, on April 9th, 2006?

25 A. Yes, sir.

ERIC LIGHT - DIRECT

1 Q. Did you respond to a call that day?

2 A. Yes, I did.

3 Q. How long did it take you to arrive on the scene?

4 A. Probably --

5 Q. Let me restate. What time were you dispatched and
6 what time did you arrive?

7 A. 9:35 (sic) I was dispatched. So roughly probably
8 about a few minutes after.

9 Q. Did you drive very far to get there?

10 A. No. Downtown is very close, just one area.
11 Everything is in close proximity.

12 Q. All right. Good. Tell the jury the nature and the
13 location of that call that you responded to.

14 A. When I was dispatched, I was dispatched to [REDACTED] Orrs
15 Court in reference to a sexual assault.

16 Q. Now at the crime scene what do you -- what did you
17 see?

18 A. When I responded I talked to the victim at the time
19 that stated that she had been sexually assaulted by the
20 Defendant.

21 Q. All right. Did you talk to [REDACTED]

22 A. Yes, sir. That's correct. Yes, sir.

23 Q. How long did you speak with her?

24 A. I spoke with her initially. She was very emotional.

25 It's, it's difficult for law enforcement that --

ERIC LIGHT - DIRECT

1 somebody's been through a traumatic experience, you kind
2 of want to get their side of the story but at the same
3 time you want to be sensitive. So you don't want to --
4 she was very emotional. So you have to be, kind of best
5 to empathize as much as you can but at the same time you
6 have to get the information.

7 So in a good few minutes I was trying to figure out
8 what actually happened.

9 Q. You said initially. Did you talk to her a second
10 time?

11 A. Yes. Well, I stayed with her throughout the night. I
12 took my report. I was familiar with her, so after that I
13 was with her at the hospital and transported her to Cannon
14 Street as well.

15 Q. Cannon Street, is that the Women's Clinic?

16 A. Yes, sir.

17 Q. Can you describe her demeanor when you arrived?

18 A. When I arrived her -- the initial time, like I said,
19 she was shaky. She was visibly upset. She was crying
20 hysterically, couldn't catch her breath initially. That's
21 why I said it was difficult exacting what happened.

22 Q. She was crying?

23 A. Yes, sir.

24 Q. She was shaky?

25 A. Yes, sir.

ERIC LIGHT - DIRECT

1 Q. Was she having a hard time catching her breath?

2 A. Yes, sir.

3 Q. Why was that?

4 A. She was emotional.

5 Q. She was crying?

6 A. She would cry, like, hysterical.

7 Q. When you spoke with her and working through her
8 emotions, did she appear to be intoxicated?

9 A. No, sir.

10 Q. Or impaired in any way?

11 A. No, sir.

12 Q. Did she appear to be drunk?

13 A. No, sir.

14 Q. Was she coherent? Did she have good command of the
15 detail of the information she was giving?

16 A. Yes, sir.

17 Q. And did she identify the person who sexually assaulted
18 her?

19 A. Yes, sir.

20 Q. And who was that?

21 A. That's the Defendant sitting right there.

22 MR. STACK: Beg the Court's indulgence just for a
23 moment. (Pause.)

24 BY MR. STACK:

25 Q. Just to clarify, the difference between military time

ERIC LIGHT - CROSS

1 and civilian time. You responded at about 19:35 hours?

2 A. 19:35.

3 Q. That's 7:35 p.m.?

4 A. Oh. Sorry.

5 Q. Yeah. No problem. No problem. Please answer any
6 questions the defense counsel may have.

7 THE COURT: Cross-examination?

8 MR. STIDHAM: Yes, Your Honor.

9 THE COURT: You may proceed.

10 MR. STIDHAM: Thank you, Your Honor. May it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MR. STIDHAM:

14 Q. Officer Light, how are you?

15 A. Good, sir.

16 Q. When you arrived at the scene, did you observe any
17 physical injuries?

18 A. No, sir.

19 Q. There was no scratches?

20 A. No, sir.

21 Q. No bruising?

22 A. Not that I recall. None that I put in the report.

23 No, sir.

24 Q. No torn clothing?

25 A. No, sir.

ERIC LIGHT - CROSS

1 Q. Do you remember that [REDACTED] said she was
2 grilling out with friends?

3 A. Correct.

4 Q. And that she told you that the subject removed a
5 pistol from his rear back pocket?

6 A. That's correct. Yes, sir.

7 Q. And she also told you and you just testified that she
8 had a good command of what she was saying?

9 A. Correct.

10 Q. She did not appear intoxicated?

11 A. No, sir.

12 Q. She told you that the Defendant or the subject
13 penetrated her vagina without her permission and/or
14 consent in the bathroom?

15 A. That's correct.

16 Q. Then she said that the subject moved her into the
17 living room and then placed a condom on his penis while in
18 the living room?

19 A. Correct.

20 Q. How many people were there when you arrived on the
21 scene?

22 A. When I went to the house to speak to the -- [REDACTED] Orrs
23 Court, there was a group of people out there. I can't
24 remember the exact number but --

25 Q. There was several people?

ERIC LIGHT - CROSS

1 A. There was several people. Yes, sir.

2 Q. Did you get any of them to speak?

3 A. We tried to talk. The supervisor that was there that
4 day, she kind of took the lead role. I was a newer
5 officer so she took the lead role. So I didn't interview
6 anybody at the scene. No, sir.

7 Q. So you're not aware of any witnesses who heard any
8 yelling or screaming?

9 A. No, sir.

10 Q. Tiffany, did she describe that it was a nine
11 millimeter?

12 A. If I put nine millimeter in the report, which I did,
13 she would have described it.

14 Q. In other words, did she say nine millimeter?

15 A. She would have said nine millimeter. Correct.

16 Q. And you're familiar with that?

17 A. Nine millimeter.

18 Q. I'm assuming that the caliber of weapon somewhat
19 determines the size of the weapon?

20 A. Correct.

21 Q. So how would you describe the size of a nine
22 millimeter?

23 A. Nine millimeter is a basic-sized weapon. You could
24 have, even between, the difference between a .45 caliber
25 and a nine millimeter, if I saw that I could tell you the

ERIC LIGHT - REDIRECT

1 difference. It's a little bit bigger than a .45 caliber.
2 It's just the size of the round, just a little bit wider
3 chamber, a little bit bigger for the actual round. With a
4 nine millimeter the actual chamber is going to be a little
5 bit more narrow, smaller barrel.

6 MR. STIDHAM: Court's indulgence one moment, Your
7 Honor. (Pause.) That's all the questions I have. Thank
8 you.

9 THE COURT: Any redirect for the witness?

10 MR. STACK: Yes, Your Honor. Beg the Court's
11 indulgence.

12 REDIRECT EXAMINATION

13 BY MR. STACK:

14 Q. Did you ask the victim -- did you ask the victim where
15 the Defendant got the gun from?

16 A. Did I ask the -- no, I did not. Oh, I'm sorry.
17 You're talking about the location it was removed from or?

18 Q. Yeah.

19 A. No. I can't recall if I asked her where it was from.
20 I put it in the report it's in the rear pocket, so I would
21 say that she told me that's where he removed it from.

22 Q. Did she say anything about what the Defendant might
23 have said to her?

24 A. Yes. I have in quotations in the report that -- if I
25 put it quotations it's exactly what the person said at the

ERIC LIGHT - REDIRECT

1 time. Put it in quotations so I'll know they used that
2 word or that word was said.

3 Q. What did she say?

4 A. What did she say or what did the Defendant --

5 Q. What did the Defendant say?

6 A. Okay.

7 Q. Or her?

8 A. Okay. While -- stated, I want to have sex with you.

9 I don't -- and victim replied, I don't want to have sex
10 with you. I want to go home.

11 Q. All right.

12 A. And it has the time the victim stated that Defendant
13 had the pistol and said, I'm just trying to scare you.

14 Q. What did she say the Defendant did with the gun?

15 A. Attempted and -- pointed the weapon at her and
16 attempted to slide the chamber.

17 Q. Did she tell you anything about what he did to get her
18 to the living room?

19 A. Forced her arm behind her to force her into the living
20 room -- or the room.

21 Q. Kind of an arm bar?

22 A. Kind of an arm bar behind her back.

23 Q. And did she say how he was holding the gun at the same
24 time?

25 A. I do not have that, no.

1 Q. In terms of caliber, the frame of the weapon comes in
2 different sizes. Doesn't it?

3 A. Correct.

4 Q. It could be a very large-frame nine millimeter and a
5 very small-frame nine millimeter?

6 A. It's possible, correct.

7 Q. Would you say she was extremely upset?

8 A. Yes.

9 Q. Extremely upset?

10 A. Yes, sir.

11 MR. STACK: Nothing further. Thank you.

12 THE COURT: Any cross-examination -- any further
13 questions of the witness?

14 MR. STIDHAM: I have no recross, Your Honor.

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

17 MR. STACK: No, Your Honor.

18 THE COURT: From the Defendant?

19 MR. STIDHAM: No, Your Honor.

20 THE COURT: Officer, you're excused.

21 MS. SHEALY: Jenny Antonio.

22 JENNY ANTONIO, having been duly sworn, was
23 examined and testified as follows:

24 THE CLERK: Please have a seat on the witness
25 box. State your full name and spell your last.

JENNY ANTONIO - DIRECT

1 THE WITNESS: Jenny Antonio, A. N. T. O. N. I. O.

2 DIRECT EXAMINATION

3 BY MS. SHEALY:

4 Q. You may need to move your seat up a little bit. We're
5 having trouble hearing this morning.

6 Tell the jury, if you would, where you're currently
7 employed.

8 A. I'm employed with the City of Charleston Police
9 Department.

10 Q. And what area within that department are you working?

11 A. I am currently assigned to our central detectives'
12 office. But at the present moment, I also work over at
13 ATF, which is a federal agency, Alcohol Tobacco Firearms
14 and Explosives as a task force officer. So I'm a liaison
15 with that federal agency where I now prosecute felons with
16 guns, and in any city case in state and federal court.

17 Q. Focusing your attention back to April of 2006, tell
18 the jury where were you working then.

19 A. At that time I was assigned, still in the detectives'
20 office but it was the persons' unit where any crime
21 against persons, any felony crimes I would investigate. I
22 primarily investigated sexual assaults during that time.

23 Q. How long have you been with the city?

24 A. Since September of 1998.

25 Q. How long were you working in the persons' unit and

JENNY ANTONIO - DIRECT

1 dealing mainly with sexual assault cases? What time
2 period did you do that?

3 A. It was, I believe -- I don't keep my dates as well
4 tracked as I should have. I, I came into the detectives'
5 office between 2000, 2001. I started work with burglaries
6 for a month and then I worked criminal domestic violence
7 cases for about three years.

8 And then from that period up until November 2007, I
9 worked crimes against persons and again primarily any
10 aggravated assaults, sexual assaults against females as
11 the victims.

12 Q. Now focusing your attention specifically on April 9th,
13 2006, can you tell the jury whether you answered a call
14 involving the victim, [REDACTED]

15 A. I did. At that time we were assigned to work night
16 shifts and we would work seven days straight, Monday
17 through Sunday. And the night shift, I worked four p.m.
18 to 12 in the morning, until midnight. And I think at that
19 time we were also working the graveyard shift, seven p.m.
20 to three a.m.

21 Q. Do you remember when you first came in contact with
22 Tiffany?

23 A. I do. I had been advised that there had been a sexual
24 assault that occurred at [REDACTED] Orrs Court by the supervisor,
25 the patrol supervisor. I was advised that [REDACTED] [REDACTED] had

JENNY ANTONIO - DIRECT

1 been transported over to Cannon Street for her physical
2 exam and then advised there was a crime scene at the time
3 for us as detectives to respond to.

4 Q. Now tell us, if you would, what Cannon Street Place
5 is?

6 A. It is, the Medical University of South Carolina has
7 the Women's Center and at that time the forensic nurse who
8 would come and conduct these type of exams, what we would
9 do is once an assault like this would occur we would make
10 contact with her or the patrol officers would make
11 contact.

12 And she would tell them to where to take the victim,
13 whether it be at 134 Cannon Street or a location in North
14 Charleston. And 134 North Cannon Street being the Women's
15 Center had the doctors' offices. Normal business hours
16 they see patients OB-GYN.

17 When we arrived, there was no one there. The safe
18 team, which would be your group from MUSC that would be
19 people against rape representatives, they usually let us
20 in to the building waiting on the forensic nurse to
21 respond.

22 Q. And what is the purpose of the forensic nurse?

23 A. That is to conduct the physical exam to determine if
24 there were any signs or evidence of an assault that the
25 victim is alleging had just occurred.

JENNY ANTONIO - DIRECT

1 Q. Well, let's take a moment to discuss that for a
2 second. Having worked so long with sexual assaults, could
3 you explain to the jury the role between finding physical
4 evidence that a sexual assault has occurred and the
5 significance of that?

6 A. Yes, ma'am. Typically most people would assume that
7 with an assault you think of it as someone strikes your
8 face, you have an immediate physical sign that this
9 occurred.

10 And when we request these exams they are to determine
11 if there are any physical signs that did appear in this
12 kind of an assault. But often you don't find that kind of
13 marks that are obvious, that are seen.

14 And that, it depends on the circumstances of the
15 actual assault. If there was a condom used, the kind of
16 force that was used, the female, her anatomy itself has
17 lot to with it as well.

18 Q. What about the male anatomy?

19 A. And also, as well as the male anatomy. You know, it
20 can -- you can determine on size, things like that,
21 variations, and you may think, oh wow, you would see lots
22 of trauma. Well, no, not necessary. Not necessarily.

23 And then we also look for trace evidence whether there
24 would be pubic hair, semen left behind, any evidence that
25 maybe the male had been inside the female.

JENNY ANTONIO - DIRECT

1 And oftentimes if a condom was worn or anything of
2 that nature, then you're not going to have semen and
3 depending if the male was shaven or not shaven, you won't
4 have had evidence of hair fibers either.

5 Q. And would the position of sexual assault itself also
6 determine whether hair would be present?

7 A. It could, yes.

8 Q. Are there certain cases where the physical evidence
9 becomes more important than others?

10 A. I'm not sure.

11 Q. Well if, you had a situation where a defendant had not
12 been identified, is there some importance to --

13 A. Absolutely. Absolutely. If, if -- if there is an
14 assault that occurred with a stranger, then as a detective
15 we're going to rely on any physical evidence that would be
16 left behind to determine the identity of the perpetrator.
17 And that becomes very important.

18 Q. Now if we are using the term stranger sexual assault
19 and non-stranger sexual assault, could you tell the jury
20 if in your experience whether you see both types of
21 assaults frequently or if there's any distinguishing
22 between stranger assault and non-stranger assault?

23 A. In my experience, more assaults occur with
24 non-strangers. And it could be someone as close as a
25 friend or a relative or a non-stranger could also mean you

JENNY ANTONIO - DIRECT

1 met someone in a bar one night. You know, it doesn't
2 really have to be best friends with them, but you see that
3 more often than just a stranger off the street that, you
4 know, would assault you right there.

5 Q. When you first saw [REDACTED] then, had she already
6 arrived at Cannon Street Place? Do you remember?

7 A. She had. She was already there.

8 Q. If you would take a moment and describe for the jury
9 how she appeared.

10 A. She was extremely hysterical, crying, shaken, you
11 know, kind of withdrawn. We were in a break room of the
12 actual doctors' office. So what I remember are tables
13 with chairs, the restroom and then there were, there was a
14 very large trash can, like a gray trash can on wheels. I
15 believe there might be some snack machines.

16 But she was crying, like I said. She was -- you had
17 to -- we had to go through the story again. She had
18 already informed the patrol officers what happened and she
19 was just extremely upset. Extremely upset.

20 Q. Was there anything going on with you on a personal
21 level physically during this time?

22 A. I was right at the seventh month mark of pregnancy, my
23 first pregnancy, and working night shifts. So I was a
24 little more sensitive to my environment than normal.

25 Q. Okay. And how did you accept that? Did [REDACTED]

JENNY ANTONIO - DIRECT

1 was she throwing up when you were trying to interview her?

2 A. She did. And during the interview we have our witness
3 statement forms and typically I like to ask the victim
4 what happened first. That kind of gets them to calm down
5 a little bit and then that way I go back and I will often
6 write it for them so they don't have to read the, read --
7 they go word or word and I try to write as quickly as they
8 speak.

9 During that process [REDACTED] [REDACTED] she excused herself
10 quickly in my presence to throw up in that trash can. And
11 the first time I was okay. I could stomach it. And then
12 the second time I'm thinking I might throw up in the trash
13 can next because I was pregnant.

14 And I felt -- I remember being kind of rushed, trying
15 to interview her and get her, all of her information. And
16 my condition at the same time wasn't allowing me to
17 perform maybe at my peak.

18 Q. And do you remember the sequence of events? Did you
19 interview her first or was she seen for her examination
20 first or do you remember?

21 A. I do. I interviewed her first. The nurse, our
22 forensic nurse at the time, usually was always very, very
23 understanding that we liked to get our information as soon
24 as possible in the event that we can go immediately to do
25 something else at that time.

JENNY ANTONIO - DIRECT

1 And then we also, gives us a chance to corroborate
2 what she had told the patrolman she's now told me and then
3 she would have to tell the nurse for the third time. And
4 we try to eliminate her having so many story-telling
5 moments during that time and then the nurse can have an
6 opportunity to read her statement and enter it into the
7 computer afterwards, after the exam.

8 Q. So the best you can recollect -- first of all, who was
9 the nurse that evening if you recall?

10 A. It was Fay LeBoeuf.

11 Q. Do you recall whether she had the opportunity to read
12 the statement that you took from [REDACTED] prior to --

13 A. I believe she did. I believe she did. I can't swear
14 about it.

15 Q. When you are in the process of interviewing someone,
16 do you try to determine whether or not they appear to be
17 intoxicated or under the influence of any substance?

18 A. Oftentimes, yes. Yes, ma'am. And if there's been any
19 indicators or statements to the officers that alcohol was
20 involved then oftentimes we try to determine how
21 intoxicated you were. We may use the scale one to 10
22 where you would label yourself, 10 being the most
23 intoxicated or in [REDACTED] incident, I believe she
24 remembered having two drinks of gin. We try to record
25 that in the event there's maybe some kind of confusion,

JENNY ANTONIO - DIRECT

1 you know, on exactly what happened or if not any
2 confusion.

3 Q. And, in your experience as a law officer and a
4 detective, you have dealt with people who have been under
5 the influence or intoxicated or et cetera. Was there
6 anything about [REDACTED] demeanor or manner of
7 speaking, the way she appeared, the way she smelled that
8 suggested to you that she was under the influence?

9 A. Not -- what stood out with her demeanor was how
10 physically hysterical she was to the point of throwing
11 up. That's what stood out, but not under the influence of
12 alcohol or intoxicants.

13 Q. Do you remember how many times you threw up?

14 A. What I remember was twice.

15 Q. Now after -- well, let me ask you this: You had
16 indicated that you talked to her. Y'all had a general
17 conversation. And then you tried to report what she was
18 saying by writing it out yourself. Is that correct?

19 A. That's correct.

20 Q. And so if we refer to the statement of [REDACTED]
21 it's the statement that you wrote on her behalf?

22 A. That's correct.

23 Q. Is that correct?

24 A. That's correct.

25 Q. Okay. There are signatures by her on each page?

JENNY ANTONIO - DIRECT

1 A. Yeah.

2 Q. There is initialing by her of each entry or the
3 questions and answers, I think?

4 A. Correct. By the questions I initialed and by her
5 answers, her responses, she initialed.

6 Q. In talking to her and observing her, do you have any
7 idea how carefully she was reading all of that?

8 A. No, no, ma'am. And a lot of times when -- because
9 that's -- at the conclusion of the interview, we will ask
10 it looks like a copy of their statement and typically they
11 always say yes and [REDACTED] [REDACTED] said yes.

12 But a lot of times when someone is that hysterical and
13 that upset, they don't take what I would say, maybe three
14 to five minutes to read through, digest word for word, you
15 know, they'll just say they took it and that was correct
16 and that will be it.

17 Q. Okay. Now, after you then completed getting the
18 statement from her, what was the next step in the process
19 for [REDACTED] [REDACTED] What happened to her after that?

20 A. Then she was taken with Ms. LeBoeuf for her exam and
21 that was -- I do not believe any other contact was made
22 with her at that point on that night.

23 Q. Have you had a lot of contact with Fay LeBoeuf in your
24 occupation?

25 A. In my, in my working sexual assaults, yes.

JENNY ANTONIO - DIRECT

1 Q. Was she most frequently the nurse examiner?

2 A. Typically, yes.

3 Q. Now did you at some point learn from Ms. LeBoeuf
4 whether or not there were any physical indications on
5 [REDACTED] of trauma?

6 MR. STIDHAM: Objection.

7 THE COURT: Basis?

8 MR. STIDHAM: Hearsay.

9 THE COURT: She can answer and say what she
10 said. The answer calls for a yes or no answer. You may
11 answer the question.

12 THE WITNESS: I believe that that information was
13 provided to Detective Altine.

14 BY MS. SHEALY:

15 Q. And not to you?

16 A. Yes. Investigator Altine.

17 Q. Okay. Very well. Let me ask you, though: As a
18 detective who investigates sexual assault cases, if there
19 had been no finding of physical trauma, would that make
20 you stop the investigation now and say no sexual assault?

21 A. No, ma'am. Not necessarily, no.

22 Q. And can you explain why that is for us?

23 A. Well, at this time it's Sunday night, I've worked
24 seven nights. For this particular case, we have been told
25 that this occurred inside a particular location or

JENNY ANTONIO - DIRECT

1 residence of the Defendant.

2 And we performed -- I would conclude that, you know,
3 no crime occurred because there were no findings. You
4 want to follow through and find out if there were other
5 indicators that the crime actually did occur. She
6 describes the residence, there may be something inside the
7 residence. Maybe he wore a condom. Maybe he took the
8 condom off and there was semen where she's alleging that
9 to have occurred. And that happens often.

10 So we typically we would try to go back and find this
11 location and do what we needed to do to determine if there
12 was any signs of the assault there.

13 Q. Okay. And as it relates to the physical findings
14 alone, if there had been negative findings, what
15 significance does the negative findings play with you in
16 your experience with sexual assaults?

17 A. It really doesn't play any significance. It just is
18 one less tool that I have to say, oh, the Defendant's
19 semen was there or, oh, the Defendant's pubic hair was
20 there. That's all.

21 Q. Can you explain that to the jury because I think, you
22 know, somebody might think you can have evidence of sex on
23 someone that gets examined. Can you explain that to us?

24 A. It would go back to the anatomy of each individual,
25 the female's anatomy, the male's anatomy.

JENNY ANTONIO - DIRECT

1 It would also go to the fact a condom with lubrication
2 was used during the assault.

3 It goes to the position of this assault that
4 occurred.

5 All of those play into the factors of there wouldn't
6 be a tear or a bruise or things of that nature. And we
7 know there wouldn't be semen unless the condom was faulty,
8 you know.

9 So we weren't really expecting to find too many
10 findings, you know, indicating the Defendant with this
11 particular assault.

12 Q. This particular one, you did not expect to find any?

13 A. Correct.

14 Q. Could you tell the jury what efforts were made to find
15 Mr. Patterson that you're aware of?

16 A. Yes, ma'am. I guess, if I could say, Detective Altine
17 was the day shift detective on that Monday after the
18 Sunday night where I responded to the call. So she was
19 assigned the actual case.

20 So we kind of, we did a lot of this work together.

21 And I know on -- we had been advised that the
22 Defendant worked at Gerald's Tires on Dorchester Road and
23 I know on the 13th of August, which was Thursday, I made
24 contact with an individual at Gerald's Tires trying to
25 locate -- I'm sorry, the Defendant. And we were advised

JENNY ANTONIO - DIRECT

1 that he was not at work and had not been there.

2 Q. Do you recall whether or not they also told you he was
3 expected to come in?

4 A. He -- they -- they -- the exact notes, I spoke with a
5 David Ard at Gerald's Tires. He said he had been out of
6 work for a week and was scheduled to return on the 14th.

7 Q. And that was after he had called in?

8 A. I believe so. I think Detective Altine has that.

9 Q. Now April 12th of 2006, that being, you know, a few
10 days after the assault, did you and Detective Altine go
11 and see [REDACTED] again?

12 A. We did. And the reason it was the Wednesday after the
13 assault, that's the day I would return to work because I
14 worked seven days and then we would be given Monday and
15 Tuesday off to make up for your weekend and then return to
16 work on Wednesday.

17 So I asked her, I wanted to go with her. We would go
18 together go over, or Detective Altine, since it's her
19 case, what [REDACTED] had to say and if there were any
20 details that I might have missed in our interview.

21 Q. Was there anything about your interview with her that
22 gave you concerns about the details in this?

23 A. Well, with my condition, again, I felt very rushed and
24 with [REDACTED] getting sick, I felt it was a very bad if
25 I started getting sick in front of her. It would make her

JENNY ANTONIO - DIRECT

1 feel very uncomfortable and I didn't know if I'd cut it
2 short if there was some other detail that she might have
3 had and just might have missed it at that very moment.

4 Q. On the 12th when you and Detective Altine went to talk
5 to [REDACTED] [REDACTED] had Mr. Patterson been arrested at that
6 point?

7 A. He had not.

8 Q. Could you tell the jury what happened on April 13th?

9 A. I can. On the 12th -- I'm sorry, before the 13th,
10 after meeting with [REDACTED] [REDACTED] Detective Altine and I
11 secured a search warrant for the residence located at [REDACTED]
12 Orrs Court which was the location of the assault.

13 And I believe also his arrest warrants were secured by
14 Detective Altine on the same date.

15 Q. Okay. And was it your understanding that Detective
16 Altine had talked to Ms. LeBoeuf prior to the 12th?

17 A. Yes, ma'am. It was.

18 Q. So you had the arrest warrants and y'all were just
19 waiting to serve them on Mr. Patterson when you could find
20 him?

21 A. Correct. But the very next morning we arranged to
22 conduct the search warrant.

23 Q. Okay. Would you just describe generally what the
24 purpose of the search warrant on that house is?

25 A. It is -- again, it was to locate any evidence of the

JENNY ANTONIO - DIRECT

1 crime that was being reported. [REDACTED] [REDACTED] had reported a
2 sexual assault so we would be going in there looking for
3 any particular items that would be signs of the sexual
4 assault, where they occurred.

5 In her incident she reported that he used a condom.
6 So we're going to look for used condoms, locations where
7 she possibly said we would eliminate -- we would try to
8 eliminate. But if the couch was used then we're going to
9 use a light to determine whether or not there's any semen
10 in, near or around there, really that she would indicate
11 that could be left behind. That's what we would look for.

12 Q. Okay. And so you participated as the detective but do
13 people from the crime scene unit also come?

14 A. They did. It was crime scene technician Randy
15 Unterbrink.

16 Q. Okay. And did you have any type of medical issue
17 while you were at the house?

18 A. I did. Again, I was still pregnant and I did -- I
19 did -- actually after we entered the residence, [REDACTED] [REDACTED]
20 had indicated they had gone together to the residence for
21 a cookout. And there would be barbecue items, you know,
22 the food, rice, things that were freshly cooked.

23 And one of the officers when we came into one of the
24 front lower rooms, there was a refrigerator in the
25 kitchen, opened the refrigerator and apparently it had

JENNY ANTONIO - DIRECT

1 been unplugged and someone probably accidentally unplugged
2 it. So there was meat in the refrigerator but it hadn't
3 been plugged in for a couple of days.

4 So the smell of the meat, I had to stand outside.
5 Again, I didn't want to have an issue of throwing up there
6 myself.

7 Q. Okay. Now, before that incident occurred, before you
8 had to step outside, did you have the opportunity to go
9 into the kitchen area?

10 A. I did. I was able to go through the first floor but
11 the first floor only.

12 Q. Say that again.. I'm sorry.

13 A. I was only able to go through the first floor.

14 Q. The first floor?

15 A. Yes, ma'am.

16 Q. And if you could, describe for the jury whether or not
17 the house looked like it had been cleaned up after the
18 barbecue or not?

19 A. It did not. It appeared as if someone had just left,
20 you know, we just missed them. But we knew this cookout
21 occurred four days prior on Sunday but, and we still had
22 the tinfoil wrappers, the smell, even the charcoal,
23 freshly charcoaled items. It appears someone just got up
24 and left and didn't clean or try to clean up anything.

25 MS. SHEALY: Beg the Court's indulgence just a

JENNY ANTONIO - DIRECT

1 moment. . (Pause.)

2 BY MS. SHEALY: .

3 Q. Okay. Showing you State's Exhibit Two then. Did you
4 notice the grill when you arrived?

5 A. Yes, ma'am. I did.

6 Q. And the photographs that we're looking at, were these
7 pictures taken at the crime scene by Randy Unterbrink?

8 A. That's correct.

9 Q. So this is the day of the search warrant?

10 A. Correct. On the 13th.

11 Q. Four days after this, the incident?

12 A. Uh-huh.

13 Q. The kitchen, when you say it looked like somebody had
14 just walked out, showing you State's Exhibit Nine, that
15 was the condition of the stove area when you came in?

16 A. That's correct. The barbecue sauce and the tinfoil.

17 Q. And showing you State's Exhibit Six, is that the
18 refrigerator in the front room that got opened?

19 A. That is the refrigerator. Yes, ma'am.

20 Q. So what was your role at the time, if you had to step
21 outside?

22 A. My role, literally a scribe onto the search warrant
23 itself. I -- at that time when we used to do search
24 warrants together as a group, I used to add -- if you find
25 it, write it in the supplemental. You can indicate how

JENNY ANTONIO - DIRECT

1 you found it. I can't.

2 And so I just wrote down the items that were taken as
3 evidence pertaining to this particular incident, back of
4 the search warrant as they were called out to me from,
5 usually Detective Altine, but if someone else found an
6 item then I would just write it down.

7 And I just stayed outside. It's kind of like in a
8 driveway and you pulled right in front of the house.

9 Q. Okay. And then showing you State's Exhibits One
10 through 35. Regarding the downstairs area, if you could
11 just tell the jury -- sometimes when police officers come
12 in on a search warrant, don't they go through doors and
13 make quite a mess of the house?

14 A. They can.

15 Q. Tell us though if these photographs reflect the house
16 before the search or after the search.

17 A. These photos were taken before. There was no, what
18 Ms. Shealy was referring to, we call it tossing the
19 house. There was no tossing when we came in this house.
20 We went in to look around to see.

21 [REDACTED] had described, again, this cookout. The
22 kitchen first caught our attention. Oh, there's barbecue
23 sauce. There's, there's pans. Things was very fresh.
24 Things was never cleaned up from Sunday but all these
25 items, matches, the bookcase, all of these items were

JENNY ANTONIO - DIRECT

1 there.

2 Q. And they were all in that position?

3 A. That's correct.

4 MS. SHEALY: Judge, I have two other photographs,
5 Numbers 47 and 48, that have not been previously entered.
6 I understand there's no objection to entering them.

7 MR.. STIDHAM: No objection.

8 THE COURT: Mark them without objection.

9 (Thereupon, State's Exhibit No. 47 and 48,
10 photographs, were received into evidence.)

11 BY MS. SHEALY:

12 Q. I show you what's been marked as State's Exhibit 47.

13 It's just one area of the kitchen. The dishes were still
14 in the sink?

15 A. Correct.

16 Q. And 48, it's a closer up?

17 A. That's right.

18 Q. And --

19 A. Yes, ma'am.

20 Q. Okay. So Randy Unterbrink would be the person who
21 actually was responsible for the collection of the
22 evidence at the scene along with Detective Altine?

23 A. Correct. He would not be responsible for locating it
24 but if they found it, for example, the condom wrappers,
25 then typically they will call out, I have it in such-and-

JENNY ANTONIO - DIRECT

1 such a room. And you need to come here.

2 And he will take a photograph of it before we disturb
3 it. If it's in the bag, if it's on the floor, then we
4 collect it. That way we can document how we saw it. That
5 way we didn't pull it out of an unknown location.

6 Q. Okay. And would you explain to the jury that you as a
7 detective or a crime scene officer collect potential
8 evidence frequently it is sent to other labs. Is that
9 correct?

10 A. That's correct.

11 Q. And tell the jury what SLED is?

12 A. It is the South Carolina Law Enforcement --

13 Q. Division?

14 A. -- Division. I'm sorry. And that is where, it's a
15 central hub for testing for the entire state. And when I
16 say testing, DNA testing.

17 The City of Charleston, we do have the luxury of a
18 local lab at MUSC that will test narcotics but we don't
19 have DNA, things of that. When there's a chance in this
20 as detectives, we would typically request for all these
21 items to be sent to SLED for their comparison and their
22 analysis.

23 Q. Now after the search warrant, did you in fact have any
24 contact with Mr. Patterson after his arrest?

25 A. I did. He was arrested later on the evening of, I

JENNY ANTONIO - DIRECT

1 believe, the 18th. And by the 19th, I was set up and
2 working day shift. So I obtained a search warrant for his
3 DNA which again would just be a possibility of
4 identification or elimination in the event there was
5 semen.

6 And at that time in this case we would not know if
7 there was any indicators of semen in her exam because that
8 was determined by SLED which usually takes a good three to
9 six months or more.

10 Q. Well, let me ask you this: When someone is getting a
11 sexual assault examination done and the nurse examiner
12 takes swabs from inside the vagina and inside the anus
13 area --

14 A. Yes, ma'am.

15 Q. -- those swabs are, what, are sent to SLED?

16 A. Correct. It's the methodical package. The envelope
17 will tell the nurse, if the nurse has never done it
18 before, will tell the nurse what swabs go in what tubes,
19 what they would indicate.

20 And once all of that is packaged and it goes to SLED,
21 then examiners at SLED know exactly this is a vaginal swab
22 and they will know what they are looking for with any DNA
23 analysis.

24 Q. Is blood also taken from the victim as a part of the
25 sexual assault exam?

JENNY ANTONIO - DIRECT

1 A. I believe so. I mean, I don't want to swear to that.

2 Q. Okay. That's fine. When you got the DNA sample from
3 Mr. Patterson, could you tell the jury what that includes?

4 A. It's similar in nature. Again, there's a packet that
5 a nurse that may have never done it, all the instructions
6 are in the little envelope. Everything is laid out.

7 They have shortened the process. Before we would take
8 saliva, blood, head hair samples. It would be from the
9 front, the middle, the back, the sides. Pubic hair
10 samples, they have to be at least 13 pubic hairs with
11 roots to be able to determine DNA.

12 And what -- at the time back then, we often had to go
13 to the jail and pick up the defendant, transport him or
14 her to Charleston County Memorial Hospital, and one of the
15 nurses there would collect those specimens for us, put it
16 back in the package.

17 And we would return the defendant to the jail and
18 return, take that package immediately to our crime scene
19 office so it can be refrigerated and once the kit, the
20 victim's kit and the Defendant's kits are together, they
21 would take them both to SLED so that SLED has everything
22 that they would need for this particular case to compare.

23 Q. Okay. And, in fact, in this case is that what you did
24 with Mr. Patterson, you brought it back to the crime
25 scene?

JENNY ANTONIO - CROSS

1 A. Corporal Cirgo (phonetically) actually delivered it
2 back to the crime scene. Yes, ma'am.

3 MS. SHEALY: Very well. Beg the Court's
4 indulgence just a second. (Pause).

5 I have no further questions. Please answer any
6 questions that anyone else may have.

7 THE COURT: Any questions for the witness?

8 MR. STIDHAM: Yes, ma'am.

9 THE COURT: You may proceed.

10 MR. STIDHAM: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. STIDHAM:

13 Q. Good afternoon, Detective Antonio.

14 A. Good afternoon.

15 Q. You said that oftentimes injuries or bruising doesn't
16 show up until several days later?

17 A. In certain sexual assaults; yes, sir, that can happen.

18 Q. And you met with [REDACTED] about three days later
19 after the assault?

20 A. Correct.

21 Q. Did you see any bruising or scrapes or redness or
22 swelling on her arms anywhere?

23 A. I sat in the rear of Detective Altine's vehicle. I
24 did not notice, but Detective Altine very well could have
25 noticed something.

JENNY ANTONIO - CROSS

1 Q. Okay. Ms. Shealy asked you that or said that physical
2 evidence isn't also important. How did -- well, physical
3 evidence is always important; isn't it?

4 A. It would depend on the nature of the crime.

5 Q. Physical evidence is sometimes not important in a
6 crime? I mean, don't you want to be able to, if somebody
7 is charged, say, I know it's you because here's the blood?

8 A. Well, you can, but when you're -- I guess, what is
9 your question exactly?

10 Q. Is not physical evidence always important?

11 A. It is because it will determine, it may be physical
12 evidence that is a condom wrapper. It may be physical
13 evidence that there are bruises or marks. It may be
14 physical evidence that there is a package of meat and a
15 receipt. It may be physical evidence that is material,
16 not just lacerations, bruising, contusions.

17 So there's all kind of physical evidence and, again,
18 yes, they help determine whether the crime occurred as the
19 victim had alleged.

20 Q. And when somebody has reported a rape, it's important
21 to get them to the Women's Center as soon as possible.

22 Right?

23 A. Absolutely.

24 Q. And, that's why Fay LeBoeuf comes out at all hours;
25 right?

JENNY ANTONIO - CROSS

1 A. Correct. It's an on-call status and we like to get
2 that exam done as quickly as possible.

3 Q. Because physical evidence can disappear?

4 A. Absolutely.

5 Q. And, [REDACTED] was transported immediately from
6 the scene, you picked her up and took her to the Women's
7 Center.

8 A. To my knowledge. Yes, sir.

9 Q. And that physical exam showed absolutely no evidence
10 of rape. Is that correct?

11 A. I can't tell you exactly what that exam showed.

12 Q. Okay. You took the statement from [REDACTED] at the
13 Women's Center?

14 A. Yes, sir.

15 Q. Do you have a copy of that statement?

16 A. I do.

17 Q. I'm going to show you -- Your Honor, excuse me. May I
18 approach?

19 THE COURT: You may.

20 BY MR. STIDHAM:

21 Q. -- what's been marked as Defense Exhibit One for
22 identification. Is that the statement that you took?

23 A. Yes, it is.

24 Q. And did [REDACTED] sign that statement?

25 A. She did.

JENNY ANTONIO - CROSS

1 Q. And she signed every page of it?

2 A. She did.

3 Q. And there's a question and answer portion of that
4 statement. Did she initial every answer that she made?

5 A. She did.

6 MR. STIDHAM: Your Honor, at this time I'm moving
7 to introduce Defendant's Exhibit One for identification
8 into evidence.

9 THE COURT: Any objection?

10 MS. SHEALY: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Off-the-record discussion.)

13 BY MR. STIDHAM:

14 Q. Detective Antonio, you've been a detective for some
15 time. Correct?

16 A. Yes, sir.

17 Q. And so I would imagine that you see marijuana quite
18 often?

19 A. I've never been assigned to the narcotics unit as a
20 narcotics detective.

21 Q. But you go to crime scenes?

22 A. I do go to crime scenes. Yes, sir.

23 Q. And you oftentimes come across people who are under
24 the influence. Don't you?

25 A. Under the influence of various narcotics.

JENNY ANTONIO - CROSS

1 Q. And you've been trained on the effects of marijuana?

2 A. No, sir.

3 Q. At the academy, they never told you that somebody
4 under the influence of marijuana might well act this way?

5 A. That was 12 years ago. To say I remember exactly what
6 the academy trained, that wouldn't be very accurate at
7 this time.

8 Q. You were there to help execute the search warrant.
9 Correct?

10 A. Yes, sir.

11 Q. And ■ Orrs Court, there are other houses close by.
12 Right?

13 A. Yes, sir.

14 Q. They're small houses. So there're houses on each side
15 if I remember?

16 A. Yes, sir.

17 Q. Did you talk to any neighbors?

18 A. I did not.

19 Q. Did you see any other officers talking to any
20 neighbors?

21 A. No, sir. The first day I was at ■ Orrs Court would
22 have been on the execution of the search warrant, on the
23 13th.

24 Q. But nobody -- are you aware if anybody knocked on
25 doors and said, did you hear any yelling and screaming?

JENNY ANTONIO - CROSS

1 A. Previous to that day, the -- I believe they did but --

2 Q. And nobody said they did?.

3 A. I don't know what they said.

4 Q. Are you aware of any evidence of a gun that was found
5 at the scene?

6 A. I'm sorry? I didn't hear you.

7 Q. I'm sorry. Are you aware of any gun that was found at
8 the scene?

9 A. I'm not aware of any evidence of a gun.

10 Q. So you're not aware of any bullets or shell casings,
11 box of ammunition or holster or anything like that, none
12 of that was found at the scene?

13 A. May I refer to my notes where we recorded what we took
14 in the search warrant?

15 Q. Go ahead. Please.

16 A. (Reviewing documents.) None that we took. I believe
17 there might have been some that was photographed but I
18 would have to look at them again.

19 Q. Okay. On the 12th when you were with Detective
20 Altine, you met with Ms. Brandon and Ms. Quattlebaum?

21 A. In her detective's unmarked car. Yes, sir.

22 Q. And are you -- did [REDACTED] tell you or state
23 that the suspect put a condom on after his first entry?

24 A. I -- you'd probably have to refer to Detective Altine
25 for that --

JENNY ANTONIO - CROSS

1 Q. Okay.

2 A. -- in that statement, sir.

3 Q. On April 9th, you wrote up a report. Correct?

4 A. Correct.

5 Q. And in that report you put, you wrote that subject
6 pulled her pants down in the bathroom and forced her to
7 have vaginal intercourse?

8 A. Yes, sir. That was my perception of what she had
9 stated. Yes, sir.

10 Q. That's what's -- can you clarify what you mean by
11 that's your perception of what she stated?

12 A. What was stated to me when she provided the written
13 statement, that was my perception; that it had taken place
14 inside the bathroom.

15 Q. First, without a condom?

16 A. Well, I think what was more in my mind was that he had
17 the gun and had gone into the restroom with her.

18 And when I asked her specifically about the
19 penetration, did it -- it was first in the bathroom was
20 her statement. So, yes, sir.

21 Q. Okay. I mean, Detective Antonio, you understand the
22 importance of writing these reports. Right?

23 A. Absolutely.

24 Q. They're important for a lot of reasons?

25 A. Absolutely.

JENNY ANTONIO - CROSS

1 Q. Your superiors, I suppose, look at the reports and
2 decide how to prosecute the case?

3 A. No, sir. More importantly it's for times like this
4 four years later that we're in court.

5 Q. Exactly. So the solicitor looks at the report. She
6 decides how to prosecute the case?

7 A. Correct.

8 Q. And I get a copy of the report?

9 A. Correct.

10 Q. And so when I ask you, did the victim say that the
11 Defendant had vaginal intercourse with her in the bathroom
12 you want to say, I know that's true because I wrote it
13 down?

14 A. Well, that's what -- again, my supplemental report is
15 basically a summary of what her statement is.

16 Q. Okay. And her statement to you was that he had sex
17 with her in the bathroom without a condom on?

18 A. That was what I initially believed; yes, sir. That
19 that assault took place --

20 Q. And that she was assaulted again later and he put a
21 condom on then?

22 A. Well, what I was going to say was that the assault
23 started in the bathroom.

24 Q. Court's indulgence one moment, Your Honor.

25 (Pause.)

JENNY ANTONIO - REDIRECT

1 MR. STIDHAM: That's all the questions I have.

2 THE COURT: Any redirect?

3 MS. SHEALY: Yes, Your Honor.

4 THE COURT: You may proceed.

5 REDIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q. Detective Antonio, when Mr. Stidham was asking you
8 about bruising, on that later date that you and Detective
9 Altine saw [REDACTED] did you ask her to look at her
10 arms or anything like that at that point?

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

12 Q. Okay. And is there anything unusual about someone
13 who's just raped someone leaving with the gun if they're
14 going to leave?

15 A. Absolutely not.

16 Q. You didn't expect to find a gun in that house, did
17 you?

18 A. Not really. No, ma'am.

19 Q. And did you expect to find the condom he used?

20 A. No. I was hoping to.

21 Q. Hoping to. But you didn't expect to; did you?

22 A. And the used condom would be more of an expectation
23 that normal -- normally people will throw that in the
24 trash can.

25 Q. Now, regarding the bathroom activity, okay, in the

JENNY ANTONIO - REDIRECT

1 statement that you took from [REDACTED] on the night,
2 the day that she's throwing up in the waiting room getting
3 ready to get a sexual assault exam, when you go through --
4 is it fair to say the statement is two different styles?
5 One is like a narrative, paragraph form of what happened.
6 And then there's a questions and answers?

7 A. That's correct.

8 Q. In the narrative of what happened, does it say
9 anything about her having been raped in the bathroom?

10 A. In the narrative, if you give me just a moment.

11 (Reviewing document.)

12 It states that after -- that he wanted to have sex
13 with me and I told him no. Then he started getting
14 violent with me and grabbing me by my arm and pulling my
15 pants. I told him to stop, that I wanted to go home. He
16 grabbed me by my arm, pulling me, twisting my arm behind
17 my back. I was yelling and screaming. I wanted to go
18 home.

19 He pulled me into the living room while he was pushing
20 my arm behind my back. He laid me over the arm of the
21 chair. He pulled my pants down. He had sex with me.

22 Q. Okay. And that is referencing what took place in the
23 living room. Is that correct?

24 A. Correct.

25 Q. And that is with a condom on. Is that correct?

JENNY ANTONIO - REDIRECT

1 A. Correct.

2 Q. So when she is describing to you what happened, she
3 doesn't ever say there's sex in the bathroom in this
4 narrative. Is that correct?

5 A. Not in the narrative. No, ma'am.

6 Q. Okay. So when we get to the question and answer part,
7 you ask, where did Tony penetrate you. Is that correct?

8 A. Correct.

9 Q. And do you know whether [REDACTED] understood what
10 penetrate meant?

11 MR. STIDHAM: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. STIDHAM: Speculation.

14 THE COURT: You need to rephrase the question.
15 Lay the appropriate foundation for her present-sense
16 impression, for her observation, in order to answer that
17 question.

18 BY MS. SHEALY:

19 Q. Detective Antonio?

20 A. Yes, ma'am.

21 Q. Did you ask [REDACTED] whether she knows what
22 penetrate means?

23 A. I do not recall.

24 Q. Before you began talking with Tiffany Graham, had you
25 spoken with Officer Light?

JENNY ANTONIO - REDIRECT

1 A. Yes, ma'am. Typically patrol officers, we like to
2 speak with them first to determine what the victim had
3 said to them. Then we're not so blind, if you will, as to
4 the interview, you know.

5 If it's indicated the assault takes place in a certain
6 room, then we can say, you know, what happened in the
7 bathroom or in the living room. And then we have somewhat
8 of an idea instead of starting, you know, where she had to
9 start with the patrol officer.

10 Q. Okay. And then after your interview of [REDACTED]
11 you shared that information with Fay LeBoeuf?

12 A. That's correct.

13 MS. SHEALY: Beg the Court's indulgence just one
14 moment. (Pause.)

15 I have no further questions. Thank you.

16 THE COURT: Any objection to the witness being
17 excused, from the State?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: From the defense?

20 MR. STIDHAM: None from the defense, Your Honor.

21 THE COURT: Officer, you're excused.

22 Mr. Foreman, ladies and gentlemen, we're going to
23 take advantage of this break in testimony to take our
24 lunch recess.

25 During the break, please do not discuss the case

1 among yourselves or with anyone else. Please do not do
2 any independent research and please don't associate
3 yourself with any media coverage if there is any. Again,
4 please don't have any contact with anyone in or about the
5 courthouse. The person that you do not know could end up
6 to be a fellow juror.

7 We're going to break until 2:15 which is just shy
8 of an hour and a half for lunch. Return directly to your
9 jury room. Leave your notepads in your seats.

10 Have a pleasant lunch. We'll see you at 2:15.

11 (Jury exits courtroom at 12:50 p.m.)

12 THE COURT: All right. Is there anything before
13 we break for lunch, from the State?

14 MS. SHEALY: No, Your Honor.

15 THE COURT: From the Defendant?

16 MR. STIDHAM: No, ma'am.

17 THE COURT: And your motion regarding the rape
18 shield statute, you went into it voluntarily so I'm just
19 going to have the clerk file your motion.

20 MR. STIDHAM: That's fine. Thank you.

21 THE COURT: Yes, sir.

22 (Thereupon the luncheon break was taken at
23 12:50 p.m. At 2:15 p.m., the trial resumed as follows:)

24 THE COURT: Is the State ready to proceed?

25 MS. SHEALY: Yes, Your Honor.

LISA ALTINE - DIRECT

1 THE COURT: Is the defense ready to proceed?

2 MR. STIDHAM: Yes, Your Honor.

3 THE COURT: All right. Bring us a jury.

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

5 THE COURT: Ladies and gentlemen, I hope that you
6 had a pleasant lunch recess. We'll now resume the
7 testimony. The State may proceed.

8 MS. SHEALY: Lisa Altine.

9 LISA ALTINE, having been duly sworn, was examined
10 and testified as follows:

11 THE CLERK: Please be seated. Please state your
12 full name and then spell your last name for the record.

13 THE WITNESS: My name is Lisa Altine, A. L. T. I
14 N. E.

15 THE COURT: Also if you speak directly into the
16 microphone that would be helpful.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. SHEALY:

21 Q. Detective Altine, would you tell jury where you're
22 currently employed?

23 A. Charleston Police Department.

24 Q. And -- I'm sorry. Charleston Police Department??

25 A. Charleston Police Department. Yes, ma'am.

LISA ALTINE - DIRECT

1 Q. How long have you worked there?

2 A. Twelve years.

3 Q. In what capacity are you working there now?

4 A. I am team one road supervisor.

5 Q. Okay. Back in April of 2006, what was your position
6 there at the time?

7 A. I worked in central investigations.

8 Q. And were you a detective?

9 A. Yes, I was.

10 Q. And what type of investigations were you responsible
11 for?

12 A. Back in '06, I did robbery and assault.

13 Q. And when you say assault, that would include sexual
14 assault?

15 A. Yes, ma'am.

16 Q. If I could focus your attention back to April 10th of
17 2006. Was that the first date that you became involved in
18 the investigation regarding [REDACTED]

19 A. Yes.

20 Q. And Antonio Patterson?

21 A. Yes.

22 Q. And you're probably going to need to speak up for us a
23 little bit. Okay?

24 A. Okay.

25 Q. Tell the jury what your role was.

LISA ALTINE - DIRECT

1 A. This case was primarily assigned to me. I believe
2 this happened over the weekend. We get assigned cases on
3 Mondays. The case was assigned to me on Monday the 10th..

4 Q. Okay. And prior to your involvement, Jenny Antonio
5 had been involved?

6 A. Yes.

7 Q. And was she working on that Monday?

8 A. She was not. She was off because she had worked
9 through the weekend, Saturday and Sunday. So she had
10 Monday and Tuesday off.

11 Jenny and I worked together on sexual assault cases.

12 And we worked together. When she was off, I would pick
13 up. And when I was off she would, you know, pick up what
14 needed to be done.

15 Q. So on that Monday the 10th, had Mr. Patterson been
16 arrested?

17 A. No, ma'am.

18 Q. As part of your role in the case, were you looking for
19 Mr. Patterson?

20 A. I was looking to talk with him.

21 Q. Okay. And did you in fact have a phone conversation
22 with him?

23 A. I did. Mr. Patterson made a call to the police
24 department, to my lieutenant, Lieutenant Moser. And

25 Lieutenant Moser had asked, gave me a message that said,

LISA ALTINE - DIRECT

1 you know, to go ahead and call him back which I did. And
2 I did speak with him on 10th.

3 Q. Tell the jury what he told you on the 10th.

4 A. I'm going back to my notes here. Mr. Patterson states
5 that he did not do anything wrong. That he wanted
6 somebody to listen to his side of the story.

7 And over the phone, you know, I told him I needed to
8 meet with him face to face. What would be a good time to
9 do this. And I have written in my notes that he stated
10 that he was currently at MUSC. He did not know when he
11 could meet with me.

12 I asked -- I said, well, what about tomorrow, the next
13 day, which was the 11th, around 9:30 in the morning. I
14 said, pick the place and he made an excuse. And basically
15 no date was set for him to -- well, I take that back. He
16 said he'd call me back shortly, which he did not.

17 Q. Okay. Did you ever hear back from him prior to his
18 arrest?

19 A. No.

20 Q. Okay. Did you in fact try to contact him on other
21 occasions?

22 A. I did. Referring back to my notes on the 11th of
23 April, I left a message for Patterson, for Mr. Patterson
24 to call me. I left that message at [REDACTED]. Also on the
25 13th in my notes I have that Investigator Antonio called,

LISA ALTINE - DIRECT

1 left a message Gerald's Tires for him to call. That was
2 his place of employment.

3 And I believe that's it.

4 Q. Okay. Now, after not hearing back from Mr. Patterson,
5 what was your next involvement in the case?

6 A. Ah --

7 Q. Were you involved in the search warrant?

8 A. Yes.

9 Q. Okay. And prior to the search warrant, did you
10 participate in another interview with [REDACTED]

11 A. Yes. Detective Antonio and I went on the 12th to
12 Ms. Graham's residence. We spoke with [REDACTED] [REDACTED] We
13 normally give victims a day or two, you know, to take time
14 to reflect and then we go over the incident again.

15 So Detective Antonio and I went over to her
16 residence. We interviewed her in my police vehicle
17 outside of the home where it was quiet. I sat up in the
18 driver's seat. [REDACTED] [REDACTED] was up front and Detective
19 Antonio, I believe, was in the back and we talked to her
20 about what transpired.

21 Q. Now when you are conducting that type of interview,
22 were you taking notes as you were talking to her?

23 A. Yes.

24 Q. And you have those notes present with you in the
25 courtroom today?

LISA ALTINE - DIRECT

1 A. I do.

2 Q. Also when you were talking with her, did you show her
3 a lineup?

4 A. I did.

5 Q. And showing you what has been previously marked as
6 State's Exhibit 36, I'll ask you whether that is the
7 lineup that you showed her. You can take it out of the
8 bag if you need to.

9 A. Yes, it is. It's my writing.

10 Q. Would you describe to the jury when you showed her,
11 describe her demeanor and her level of comfort in
12 identifying someone from the photographs.

13 A. Well, it was several years ago. I really don't
14 remember what her demeanor was. What I can say is that we
15 read the admonition form first and we explain to the
16 individual, you need to look at each photograph
17 separately. Facial hair, hair styles may change, you
18 know, the color of their skin may not be the same. You
19 really need to look at the pictures.

20 And I explained this to her. She signed that we
21 explained it. And she identified number three which is
22 Mr. Patterson. And I have down here in the officer notes,
23 [REDACTED] ID'd number three without hesitation on
24 4-12-06.

25 So she must have gone right to him and said, that's

LISA ALTINE - DIRECT

1 the one.

2 Q. The part about the skin color may be different, what
3 do you mean about that?

4 A. Because our printers at the police department are not
5 of the highest quality and a lot of times the toner, the
6 pictures don't come out 100 percent the way they should.

7 Q. The same complexion?

8 A. Correct.

9 Q. Okay. Now, on that occasion when y'all spoke to
10 [REDACTED] there was no written statement taken from
11 her. Is that correct?

12 A. From [REDACTED]

13 Q. Yes.

14 A. Detective Antonio --

15 Q. She had done that previously?

16 A. No, ma'am. There was not.

17 Q. So after you finished up with Tiffany on that day you
18 asked her again about what had happened?

19 A. Uh-huh.

20 Q. Your next involvement was with the search warrant?

21 A. It says on the same day, April 12th, we obtained the
22 search warrant for the residence at [REDACTED] Orrs Court and also
23 the arrest warrant for Mr. Patterson for sexual assault.

24 Q. Okay. And do you recall whether or not you had spoken
25 to Fay LeBoeuf prior to getting the arrest warrant?

LISA ALTINE - DIRECT

1 A. I have down here on April 10th, telephone to Fay
2 LeBoeuf.

3 Q. And without telling us what she said --

4 A. Uh-huh.

5 Q. -- you had spoken to her about her findings and then
6 got the arrest warrant for Mr. Patterson?

7 A. Correct.

8 Q. Now, asking you a more general question. If there are
9 no signs of trauma, meaning no tears in the vaginal area
10 or the anal area, no bruises in that area, could you tell
11 the jury the significance of those types of negative
12 findings to whether or not you would seek an arrest
13 warrant?

14 A. If there are no findings it does not mean that a
15 sexual assault occurred -- did not occur or occurred. I'm
16 sorry. I don't know if I'm being clear.

17 Lack of tears, bruising, swelling does not mean that a
18 sexual assault did not occur.

19 Q. And with your experience with assault cases, and if
20 you don't know the answer to that, that's fine, but do you
21 know various reasons why there may not be any signs of
22 trauma on someone who has been assaulted?

23 A. Uh --

24 Q. And if you don't feel comfortable answering that, I
25 can ask it --

LISA ALTINE - DIRECT

1 A. No, I'll be glad to. Sometimes the male anatomy may
2 not be large and then on the other hand the female, her
3 vaginal area may be a little larger so, you know, it just
4 depends on the anatomy.

5 Q. Okay. What about the positions of the body at the
6 time of the assault?

7 A. What I was explained from [REDACTED] [REDACTED] was that the
8 sexual assault occurred downstairs in the living room and
9 she was bent over the sofa.

10 Q. Okay. Would -- in general, would the position of the
11 bodies during the assault affect whether or not there was
12 any trauma in the area or do you know?

13 A. Well, it -- sometimes. I mean, it would depend on the
14 force --

15 Q. Okay.

16 A. -- and whatnot, but the position --

17 Q. And what about the use of a condom?

18 A. What about use of the condom?

19 Q. Can that affect whether or not there's the presence of
20 trauma in the vaginal area? I'm sorry. I'll save those
21 for Ms. LeBoeuf.

22 A. Okay. Save those for LeBoeuf.

23 Q. Regarding the search warrant itself, you went over and
24 Detective Altine -- excuse me, Detective Antonio went over
25 with Randy Unterbrink. Is that correct?

LISA ALTINE - DIRECT

1 A. Yes.

2 Q. Showing you State's Exhibit Eight. Is there any way
3 we can turn the lights up?

4 (Pause.)

5 Okay. Officer Altine, looking at that room to the
6 left behind the kitchen chair, this one.

7 A. Yes.

8 Q. What room is that? Can you tell from that picture?

9 A. Bathroom.

10 Q. And when y'all were in there for the search warrant,
11 in general, it was for the purpose of collecting any
12 potential evidence. Is that correct?

13 A. Yes.

14 Q. While you were in there, did anyone spend any time
15 looking for evidence in the bathroom that you're aware of?

16 A. All the rooms were searched. I do not recall if
17 someone spent specific time in there searching for
18 anything.

19 Q. Tell the jury, if you would, what area in the house
20 that y'all were especially interested in for the purpose
21 of finding some forensic evidence. Which room?

22 A. The upstairs bedroom and the living room.

23 Q. The living room. And the living room because that's
24 where the assault occurred?

25 A. Yes.

LISA ALTINE - DIRECT

1 Q. Now regarding the upstairs bedroom, I'm showing you
2 State's Three. That would be the front door, if you were
3 to turn to the right. I'm showing you State's Four. You
4 probably can't see, can't really see that there, but
5 there's some staircases reflected on State's Five. Is
6 that how you lead upstairs when you're in that house?

7 A. Yes.

8 Q. And the only way then from, to get from the downstairs
9 area to the upstairs area is to go through this area. Is
10 that correct?

11 A. That's correct.

12 Q. And State's Exhibit Five, again, is the staircase that
13 leads upstairs. State's Exhibit 19, is this the area,
14 once you get off the stairs and are looking down the hall
15 a bit, or do you remember?

16 A. I don't remember. I'm sorry.

17 Q. That's okay. Do you remember a room that y'all
18 believed to be Mr. Patterson's room?

19 A. Yes.

20 Q. And in showing you State's 22, I ask you whether that
21 is the room?

22 A. Yes.

23 Q. And you can see the T-shirt or sweatshirt there. And
24 tell us what name is on it?

25 A. I can't read it.

LISA ALTINE - DIRECT

1 Q. You can't read it?

2 A. I'm sorry.

3 Q. Let me hand it to you and see if you can see it
4 better.

5 A. Tony. Sorry.

6 Q. Showing you State's Exhibit 23. Is this another angle
7 of that same room?

8 A. Yes.

9 Q. Okay. I'm sorry. I'm having problems with the
10 lighting.

11 If you were to go closer up in this area, showing you
12 State's Exhibit 24, are there some bills or some letters
13 in this area?

14 A. Yes, there are.

15 Q. Can you see that?

16 A. Uh-huh.

17 Q. And in showing you State's 25, a close-up of those
18 bills, is that what was reflected on those envelopes?

19 A. Yes.

20 Q. Now while in that room with Tony's shirt and the mail
21 to Mr. Patterson, and you're looking back towards the door
22 you've entered, I'm showing you 26, were those items, the
23 gin bottle, the other bottle and that bag on the back of
24 the doorknob?

25 A. Yes, they were.

LISA ALTINE - DIRECT

1 Q. And do you recall whether or not that bottle of gin
2 was empty?

3 A. It was empty.

4 Q. It was empty?

5 A. Yes.

6 Q. Did you look inside that plastic bag?

7 A. Yes, we did.

8 Q. And here's a closer shot of the bag as it appeared
9 before you opened it. That's item 27. And showing you 28
10 with the bag opened.

11 Could you tell the jury what that gold-ish item is?

12 A. It's a Lifestyles condom wrapper.

13 Q. And if you cannot see it up there, I'll hand it to
14 you. Could you indicate whether or not it reflects that
15 the condom is lubricated? Can you see that?

16 A. I can't.

17 Q. Would you like to use my glasses?

18 A. Please. Yes. It does say.

19 Q. Lubricated?

20 A. Yes. I'm sorry.

21 Q. Do you remember how many wrappers were in that bag?

22 A. Two is what I have noted.

23 Q. Okay. And then in showing you State's 29, is that
24 another angle from the same bag?

25 A. Yes.

LISA ALTINE - DIRECT

1 Q. And these yellowish items, could you tell the jury
2 what those are?

3 A. Those are the condoms.

4 Q. Used condoms?

5 A. Used condoms.

6 Q. And I don't know whether you could remember this or
7 not, but in showing you State's Exhibit 30, when you exit
8 Mr. Patterson's room that was down here, is that looking
9 back down the staircase into another bedroom, or can you
10 orient yourself?

11 A. The bathroom is over here. I believe that's
12 downstairs. The bathroom is right here.

13 Q. Okay. Now, were you present when the area where the
14 sofa was in that internal living room, was being looked at
15 by Randy Unterbrink?

16 A. Yes.

17 Q. And what did you see him doing? Could you describe
18 for the jury what you saw him doing?

19 A. Well, I had requested that he get his illumination
20 light out out to see if there was any evidence of semen.
21 And he -- I was in there when he turned the lights off and
22 put the fluorescent light on inside the room and located
23 what appeared to be some form of semen on the wall as you
24 entered the living room. And there was also something
25 that may have been semen on the wall at the base of the

LISA ALTINE - DIRECT

1 sofa.

2 Q. And that was the room that had been described to you
3 by [REDACTED]

4 A. Yes. Yes.

5 Q. Okay. And showing you State's Exhibit 13, is this the
6 -- I'm sorry. Is this the arm of the chair that you were
7 talking about?

8 A. Yes.

9 Q. And then showing you State's Exhibit 32, is that the
10 lighting instrument that you were referencing or can you
11 tell?

12 A. I can't even tell.

13 Q. Okay. So you were present when Mr. Unterbrink was
14 examining the sofa area, the carpet area, that wall area
15 where [REDACTED] had described the assault had
16 occurred?

17 A. Yes.

18 Q. Did you ever see Mr. Unterbrink with that light in the
19 bathroom?

20 A. I don't remember.

21 Q. Were you looking inside the house also for the
22 victim's telephone? Do you recall?

23 A. I know she said the phone was taken. I don't
24 remember --

25 Q. If you were looking for it?

LISA ALTINE - CROSS

1 A. -- if we were looking for that or not.

2 MS. SHEALY: Beg the Court's indulgence just a
3 moment. (Pause.)

4 I have no further questions. Please answer any
5 that Mr. Stidham may have.

6 THE COURT: Any cross-examination for this
7 witness?

8 MR. STIDHAM: Yes, Your Honor.

9 THE COURT: You may proceed.

10 MR. STIDHAM: Thank you, Your Honor. If it
11 please the Court.

12 CROSS-EXAMINATION

13 BY MR. STIDHAM:

14 Q. Good afternoon, Officer Altine.

15 A. Good afternoon.

16 Q. Solicitor Shealy asked you if you had any idea that,
17 about whether or not the position of a sexual assault
18 would affect whether or not there was trauma. You have no
19 idea whether or not this position that was alleged in this
20 assault could have any effect on whether or not there was
21 trauma?

22 A. No.

23 Q. You did say that force would have an effect on whether
24 or not, if there was physical evidence. Correct?

25 A. Yes.

LISA ALTINE - CROSS

1 Q. And are there allegations in this case which you
2 described as a physical affect?

3 A. I would say that from what she explained when he held
4 her down over the sofa. Holding her down against her
5 will, that's force.

6 Q. And, from her account of this, there would be no
7 cooperation on her part if she was screaming and yelling
8 and he was bending her arm back, she was screaming and
9 telling him no, there would be no cooperation?

10 A. Correct.

11 Q. You helped serve the search warrant. Correct?

12 A. Yes.

13 Q. Along with Detective Antonio?

14 A. Yes.

15 Q. Sergeant Young? I'm reading from the report.

16 A. Yes.

17 Q. Sergeant Hull?

18 A. Yes.

19 Q. Sergeant Fritz?

20 A. Yes.

21 Q. Sergeant Page and Officer Light?

22 A. Yes.

23 Q. And Crime Scene Investigator Unterbrink is not listed
24 there, but he was also there as well?

25 A. Correct.

LISA ALTINE - CROSS

1 Q. Eight officers at least?

2 A. (No response.)

3 Q. Was there any evidence of a gun found at the scene?

4 A. There was not.

5 Q. You were looking though, correct, for evidence of the
6 gun, were you not?

7 A. Yes.

8 Q. You didn't find any boxes of bullets?

9 A. Not that I recall. I mean, it's a -- it's a --

10 Q. Surely that would have been in the report?

11 A. Correct. Absolutely.

12 Q. There's no receipt for a gun or bullets or any kind of
13 evidence that would indicate a weapon was in that house at
14 all?

15 A. Not that I recall.

16 Q. Did -- of all those officers that were there that day,
17 did anybody speak to any neighbors?

18 A. In my notes it states that I spoke with a neighbor,
19 but I don't have that neighbor's name.

20 Q. And in that conversation with that neighbor, you
21 discovered that Mr. Patterson's wife had died. Correct?

22 A. Correct.

23 Q. Did that neighbor -- there's no indication that you
24 learned of any witnesses who heard any yelling or
25 screaming?

LISA ALTINE - CROSS

1 A. No.

2 Q. And Orrs Court, the houses are relatively close
3 together. Are they not? .

4 A. Yes, they are.

5 Q. Are you aware of any other calls to police? Did
6 anybody call 9-1-1 or anybody call the police other than

7

8 A. Not that I'm aware of.

9 Q. We've heard testimony today that the house looked as
10 if someone had just left. It's fair to say the whole
11 house was very messy; was it not?

12 A. Yes, it was.

13 Q. Used condoms were found upstairs. Correct?

14 A. Yes, they were.

15 Q. There's no indications to believe that the victim was
16 ever upstairs --

17 A. Repeat --

18 Q. -- to your knowledge?

19 A. Repeat that.

20 Q. Is there any indication to your knowledge that the
21 victim had ever been upstairs at that house?

22 A. The victim at one point stated that she was in the
23 bathroom. There was a bathroom upstairs and a bathroom
24 downstairs, so.

25 Q. Fair enough. Is it fair to say that you are

LISA ALTINE - CROSS

1 meticulous in your report writing?

2 A. I do the best I can.

3 Q. Because obviously they become very important later?

4 A. Yes.

5 Q. So, you do the best that you can to make them fair,
6 accurate and complete?

7 A. Yes.

8 Q. In your report you wrote that the victim, Tiffany
9 Graham, told you the suspect put a condom on after his
10 first entry. Is that correct?

11 A. Yes. I have that written down.

12 Q. So, after first -- his first entry, by that you meant
13 that he penetrated her vaginally with his penis without a
14 condom on first, and then, second, put a condom on later?

15 A. Correct.

16 Q. Ms. Shealy referred to Mr. Patterson's arrest. Are
17 you aware of the circumstances of that arrest?

18 Let me put it this way: Are you aware that
19 Mr. Patterson turned himself in?

20 A. Yes. I spoke with his attorney or, a Mr. Bollis on
21 the 17th and Mr. Bollis as my notes say, stated that
22 Mr. Patterson would come in at four o'clock and turn
23 himself in the next day. And on my notes it says that he
24 did come in and turned himself in on the next day.

25 Q. And to be clear, all eight of the officers there were,

LISA ALTINE - CROSS

1 they searched everywhere; right?

2 A. Every room was searched, yes.

3 Q. And everybody had an eye out for potential forensic
4 evidence?

5 A. Correct.

6 MR. STIDHAM: Court's indulgence one moment, Your
7 Honor.

8 THE COURT: Yes, sir.

9 (Off-the-record discussion.)

10 BY MR. STIDHAM:

11 Q. Detective, were you there when the search warrant --
12 initially when you made, when the police officers made
13 entry into the house?

14 A. Yes.

15 Q. And nobody was home. Correct?

16 A. Correct.

17 Q. So you eventually had to knock the door down.
18 Correct?

19 A. Yes.

20 Q. I'm showing you what's been marked as State's Exhibit
21 Eight. This room right here which has been described as
22 the living room. It appears that it's been knocked off
23 the hinges there.

24 Did you have -- did one of your police officers break
25 that door down to gain entry into that room?

LISA ALTINE - REDIRECT

1 A. I don't recall.

2 Q. You --

3 A. I remember the front door, yes.

4 Q. But never as to whether or not that door was broken
5 down or not?

6 A. I don't recall having entered that door. I don't
7 remember.

8 MR. STIDHAM: Thank you. One moment, Your
9 Honor. No further questions. Thank you.

10 THE COURT: Any redirect?

11 MS. SHEALY: Yes, Your Honor.

12 THE COURT: You may proceed.

13 REDIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q. Mr. Stidham asked you about whether there were eight
16 officers all together on the search warrant. Did y'all
17 start out with that number or did you have to call some
18 other ones in? Do you remember?

19 A. I know we had a good amount and the majority of these
20 people are from upstairs in central investigations.
21 They're the detectives that would go out with me on search
22 warrants, you know, to assist. I don't recall if we, you
23 know --

24 Q. Had to call --

25 A. -- if we had to call anybody else for any reason

LISA ALTINE - REDIRECT

1 except for the locksmith.

2 Q. To try get the door open?

3 A. To try to get the door open. Correct.

4 Q. When you get that number of people to go over on a
5 search warrant, do you know ahead of time if when you get
6 there, if there will be people there that you also have to
7 control?

8 A. We don't know if there's somebody else there. That's
9 the problem. So, you take as many people as you can. And
10 you hope that nothing transpires, which we were fortunate.

11 Q. Mr. Stidham asked you about Mr. Patterson turning
12 himself in. Tell us the date he turned himself in again.

13 A. I have in my notes that it was the 18th.

14 Q. Okay. The 18th of April?

15 A. The 18th of April.

16 Q. So that's nine days after the assault?

17 A. Correct.

18 Q. In that interim period, those nine days, is it safe to
19 say people were looking for Antonio Patterson?

20 A. Oh, absolutely. I mean, I tried to make contact or
21 Detective Antonio did at his place of employment. I
22 believe his father tried to get ahold of him at one
23 point. I even spoke to him also on the 10th.

24 Q. Tell the jury when you spoke to his father, did his
25 father know where he was?

LISA ALTINE - REDIRECT

1 A. Let me refer back to my notes real quick. (Reviewing
2 documents.)

3 Mr. Patterson -- this is on the 14th when I talked to
4 Mr. Patterson, the father. Mr. Patterson stated that he
5 did not know anything else about the incident. I don't
6 believe he knew where he was.

7 Q. He gave you -- he didn't say he was sitting at home
8 this whole time?

9 A. No.

10 Q. His father didn't tell you where you could find him?

11 A. No, he did not.

12 Q. Did you also speak to Mr. Patterson's brother,
13 Timothy?

14 A. I did.

15 Q. And did Timothy tell you that Tony had been at his
16 house the whole time?

17 A. When Detective Antonio, myself and Sergeant Hull tried
18 to serve the search warrant -- not the search warrant, the
19 arrest warrant at Gerald's Tires on Rivers Avenue, spoke
20 with his brother, Timothy, his brother stated he does not
21 know where his brother is and he hasn't seen him since
22 Sunday which was the day of the incident.

23 Q. So his own father and his own brother had not seen him
24 since the assault?

25 A. Correct.

LISA ALTINE - REDIRECT

1 Q. Okay. Now, you told us that when you were talking to
2 [REDACTED] you were taking notes that day. And that's
3 what you have before you. Is that correct?

4 A. Yes.

5 Q. And Mr. Stidham was asking you about a report that you
6 then go back and type down at the police department. Is
7 that correct?

8 A. Yes.

9 Q. Just so the jury understands, you take -- I'm
10 assuming, and you tell me if I'm wrong -- you take your
11 notes, you reread them and you write your report?

12 A. Correct.

13 Q. I'm asking you to look at your notes themselves that
14 you were taking while you were, in sitting in front of
15 [REDACTED] in that car. Okay?

16 A. Okay.

17 Q. Would you please tell us, looking at the bottom of the
18 page of your entry on April 12th, tell the jury how
19 [REDACTED] described what happened, starting with, the
20 victim stated the Defendant.

21 A. (Reviewing document.)

22 Q. Starting here.

23 A. Okay.

24 Q. And tell the jury what date you have that you wrote
25 this down.

1 A. All right. This is on April 12th.

2 Q. And that's when you and Detective Antonio went back to
3 speak to Tiffany?

4 A. Yes.

5 Q. The victim stated the Defendant pushed her into the
6 bathroom, then sent his two nephews out of the house.

7 Both were outside during the assault. From the bathroom
8 she was forced by taking her right arm behind her, pushing
9 it up.

10 The Defendant bent her over the arm of the sofa, put
11 his knees against her body, undid his pants, put a condom
12 on, then forced his penis into her vagina.

13 The Defendant also produced a black and silver auto
14 and would rack the gun to frighten her into submission.
15 The Defendant took the victim's red Nokia cell phone.

16 When the victim attempted to leave he put his foot
17 against the door, pushed her down. And then it says the
18 victim immediately went to a neighbor and called 9-1-1.

19 MS. SHEALY: Thank you very much. I have no
20 further questions.

21 THE COURT: Any objection to the witness being
22 excused, from the State?

23 MS. SHEALY: No, Your Honor.

24 THE COURT: From the defense?

25 MR. STIDHAM: No, ma'am.

RANDALL UNTERBRINK - DIRECT

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

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 MR. STACK: State calls Randall Unterbrink.

5 RANDALL UNTERBRINK, having been duly sworn, was
6 examined and testified as follows:

7 THE CLERK: Please be seated. Please state your
8 full name and spell your last name for the record.

9 THE WITNESS: My name's Randall Unterbrink, U. N.
10 T. E. R. B. R. I. N. K.

11 THE COURT: Thank you, sir.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION

14 BY MR. STACK:

15 Q. Good afternoon, Officer. So where are you presently
16 employed?

17 A. I work for the Charleston Police Department.

18 Q. How long have you worked for the CPD?

19 A. Twenty years.

20 Q. Within the CPD, where do you work?

21 A. Right now with the crime scene unit.

22 Q. How long have you worked with them?

23 A. Seven and a half years.

24 Q. With the crime scene unit?

25 A. That's correct.

RANDALL UNTERBRINK - DIRECT

1 Q. Please tell the jury what types of duties and
2 responsibilities you have with the crime scene unit.

3 A. My responsibility in the crime scene unit really is
4 three fold. I identify or document evidence, collect
5 evidence and then preserve evidence.

6 Q. Okay. Back on April 13th of '06, were you involved in
7 the execution of a search warrant at ■ Orrs Court in
8 Charleston?

9 A. I was.

10 Q. What was your involvement with that search?

11 A. Really those three things; I was to document the scene
12 as it was, collect any evidence that was brought to me
13 that I needed to collect and then store it.

14 Q. Okay. I'm going to ask you if you would, that the
15 door behind you on the wall, could you open that and
16 there's a grease board. With the pencil in front of you,
17 would you identify the first floor of Orrs Court, please?

18 A. I apologize. How does this work?

19 THE BAILIFF: Take the cap off. (Pause.)

20 THE WITNESS: These rooms. I'm identifying these
21 rooms. This is the front and this is Orrs Court and label
22 this as the front room.

23 This is the kitchen.

24 This is a bathroom. Closet.

25 We call this the living room.

RANDALL UNTERBRINK - DIRECT

1 This is a bedroom.

2 What we have here is sort of a combination of a
3 bedroom off to the right and a toilet.

4 BY MR. STACK:

5 Q. Okay. And where's the front door, the entrance to it?

6 A. The entrance is off to the side. When you actually
7 face the front of the building, there's a door and then
8 you have the option of going either to the left or to the
9 right.

10 If you go to the left, it will take you through this
11 side door which then leads you into the front room.

12 Q. If you go to the right, does that take you upstairs?

13 A. That's correct. To the right -- that's more like
14 this. And take a left it takes you to the bottom floor.
15 If you take a right it takes you upstairs to the second
16 floor.

17 Q. We've heard testimony about a cell phone. Where is
18 the cell phone in this diagram?

19 A. The cell phone would be right here in the living room,
20 right past this door.

21 Q. Would you point out where the front door is and where
22 the sofa is?

23 A. Okay.

24 Q. The sofa is in, like, the middle room?

25 A. It's in what I would call the living room.

RANDALL UNTERBRINK - DIRECT

1 Q. Okay. And where is the bathroom on the first floor
2 located?

3 A. That would be right here. The access is through the
4 kitchen.

5 Q. Okay.

6 A. Just prior to entering into the living room.

7 Q. So if someone walked out of -- were to walk out of the
8 bathroom to go to that couch, what route would they take?

9 A. You would take through this door, into the kitchen and
10 then out into the living room. And the couch would be to
11 your right.

12 Q. Okay. Is that the front door is -- to back up a
13 little bit. You can go left into the first floor right
14 upstairs. Is that the only entrance on the ground floor?

15 A. Yes, sir.

16 Q. Thank you, sir. Sir, I'm going to show you a
17 diagram. When you were in the house did you take any
18 photographs?

19 A. I did.

20 Q. And what else did you do with regard to collecting and
21 preserving evidence?

22 A. I was directed towards the sofa that was mentioned
23 there in the living room. I was told that there could be
24 possibly be semen in that area.

25 Also I collected upstairs some condoms and also

RANDALL UNTERBRINK - DIRECT

1 wrappers.

2 Q. Okay. And did you use sticky tape?

3 A. I did, yes.

4 Q. What is the purpose of sticky tape and what does it
5 do?

6 A. Right there at the sofa, the arm of the sofa I was
7 told that there was, a sexual assault had took place
8 there. And so my goal was to collect any hair fibers that
9 could possibly be there on that arm of the sofa.

10 So what I did is I just placed sticky tape on the arm
11 and when I pulled it off, if there were hair fibers on the
12 sofa, the hope would be they would be transferred over to
13 the sticky tape where it would be stored for reference
14 later.

15 Q. Okay. And did you also use -- I'm not sure if I'm
16 going to say this right -- ultraviolet light or some sort
17 of alternative light source?

18 A. Yes, sir.

19 Q. What did you use that for?

20 A. When I was told that a sexual assault was believed to
21 have taken place at the arm of that same sofa that you
22 just mentioned, I was told that the suspect was standing
23 just next to the sofa arm.

24 And there was -- if there was any ejaculation the
25 possibility of any of his semen falling straight down to

RANDALL UNTERBRINK - DIRECT

1 the floor was a possibility. And so I needed to examine
2 that area to see if I could find anything like that. And
3 an ultraviolet light, when you turn off all of your
4 lights and have on only that particular ultraviolet light
5 source, it will cause the semen to fluoresce. And when
6 that happens, that's the area that you're going to want to
7 collect and then store later.

8 Q. And did you use the ultra light, did you take any
9 carpet samples?

10 A. I did.

11 Q. Would you describe that, please?

12 A. When I had the light shine, there was a small area on
13 the carpet that did fluoresce. Now, whether it is semen
14 or not, that's impossible for me to know in that type of
15 condition.

16 So I needed to cut that particular section of the
17 carpet and we're talking about a small square of that
18 particular section out. I took it out, packaged it and
19 submitted it as evidence for it to be referred to at a
20 later date.

21 Q. Officer, I'm going to show you a series of photographs
22 and may I ask the bailiff if you would mind closing the
23 doors so we can bring the screen back down, please.

24 (Pause.)

25 Take a moment for it to come up.

RANDALL UNTERBRINK - DIRECT

1 Okay. Officer, when you talked about the front door,
2 is this the entrance you referred to?

3 A. That's correct.

4 Q. Is that the only entrance to the bottom floor there?

5 A. Yes, sir.

6 Q. You walk into the door, that's going to be the
7 entrance you're referring to?

8 A. Yes, sir.

9 Q. This is State's Exhibit Number Six. It's already
10 entered into evidence. So this is that front room you
11 referred to as you go through that front door?

12 A. That's correct.

13 Q. All right. This is State's Exhibit Number Seven.
14 What does this photo depict?

15 A. That is still in that front room and we're now looking
16 at the door frame that will lead into the very next door
17 which is the kitchen. And the most distinguishing part of
18 course -- well, the only thing you can see at this point
19 is the refrigerator.

20 Q. Speaking of the refrigerator, this is State's Exhibit
21 Eight. Is that the refrigerator you're referring to?

22 A. That's correct. And now we're in the kitchen slightly
23 to the left of the refrigerator.

24 Q. A reverse view of the previous photo?

25 A. It's not a reverse view. It's just that we are now in

C RANDALL UNTERBRINK - DIRECT

1 the kitchen. And we're sidestepped slightly to the left.

2 And we're now in the kitchen. And we're now looking at
3 two other doors.

4 Q. This is State's Exhibit Number 12. What does this
5 photo depict?

6 A. This is the living room. And this is actually looking
7 through that door frame. The previous photo had two
8 doors. We are looking -- we are going through the door
9 that was on the right. And this is what you see
10 immediately as you enter into that living room.

11 Q. Okay. Was this the couch where you took the fiber,
12 that sticky-tape fiber?

13 A. That's correct.

14 Q. Can you point to me where?

15 A. Various different areas but I began here and then
16 worked all the way to the right.

17 Q. This is State's Exhibit 13. What does this photo
18 depict?

19 A. That's just on the other side of that same couch, the
20 arm.

21 Q. That's the same arm that you're concentrating on?

22 A. That's correct.

23 Q. And who told you to concentrate at that arm, one of
24 the other officers?

25 A. One of the detectives.

RANDALL UNTERBRINK - DIRECT

1 Q. And you said you collected the condom wrappers from
2 upstairs?

3 A. That's correct.

4 Q. What does this photo depict then?

5 A. This is in the top bedroom at the end of the hallway.
6 The plastic bag is tied. Actually the photo's sort of
7 diagonal. It should be straightened up.

8 But you can see the door handle. That's the interior
9 door handle of a bedroom at the end of the hallway. And
10 this is my attempt to photograph the contents of that
11 bedroom.

12 Q. You took this photograph?

13 A. Yes.

14 Q. And then you collected that condom wrapper into
15 evidence?

16 A. That's correct.

17 THE COURT: Just make sure you identify which
18 exhibit you're referring to.

19 MR. STACK: Thank you, Your Honor.

20 BY MR. STACK:

21 Q. This is State's Exhibit Number 38. My apologies for
22 not saying that up front.

23 This is State's Exhibit 29 already entered into
24 evidence and the jury has seen it before. But what does
25 this photograph depict?

RANDALL UNTERBRINK - DIRECT

1 A. It's the same bag. I just opened it a little bit
2 further and just made a closer shot of the photo and in it
3 are condoms. That is what you're seeing in center of the
4 photo.

5 Q. The green and yellow objects, are those condoms?

6 A. Yes.

7 Q. Are there two of them?

8 A. Two.

9 Q. And did you collect those in evidence?

10 A. I did.

11 Q. State's Exhibit Number 31. What does this photograph
12 depict?

13 A. That's what I was mentioning earlier as far as putting
14 the tape on top of the arm of the couch. This is that
15 couch you saw in the living room.

16 My goal here again was to collect any hair fibers that
17 might be on the couch. And so I took my sticky tape which
18 is what you can see and I numbered each one of them, you
19 know, for identification later. And I placed the sticky
20 tape on there, and you pull that off and then you store
21 it.

22 Q. This is State's 32. What does this photograph depict?

23 A. That is the light source that we were talking about.

24 The rest of the lights were turned off and the only thing
25 that was on is what we call the alt light.

RANDALL UNTERBRINK - DIRECT

1 And it will then shine and fluoresce certain items
2 such as semen if it's there.

3 Q. I don't know if you can tell if this comes through
4 well enough. This is State's 33. Can you tell whether or
5 not that shines on it?

6 A. I think the previous photo shows it just a little bit
7 better, I think, at least for me. That one there, I can
8 point out these three spots there is what is fluoresced.

9 Q. Which is potentially DNA?

10 A. Potentially.

11 Q. And this photograph, we're back to 33 now, depicts
12 much the same?

13 A. Much the same.

14 Q. And you were -- State's Exhibit 34, with the light on,
15 what does this show?

16 A. What I wanted to do here was to show the contrast.
17 This is with all the lights on. And you really, when you
18 look at it you can see some discoloration on the carpet
19 but for this scene I wasn't interested in that.

20 So, what I wanted to do is just to demonstrate what I
21 was doing in the previous photo so that everybody who
22 observed this could get a better feel of what is going
23 on.

24 So this is with all the lights on and with the alt
25 light on as well and the carpets that we were examining

RANDALL UNTERBRINK - DIRECT

1 which is those to the right. In this area.

2 Q. This is State's Number 35. What does this photograph
3 depict?

4 A. When the lights were off and the alt light was on,
5 there was areas that did fluoresce which we saw in the
6 previous photograph. I made note of where that particular
7 area was. And then when the light was turned on, I cut
8 the carpet out that contained that area where I saw
9 something fluoresce.

10 Q. What did you do with that piece of carpet?

11 A. I removed it completely from the floor and then
12 packaged it and then had it stored.

13 Q. Did any of the -- how many officers were in the
14 building with you, about?

15 A. I don't recall exactly. I know there were two
16 detectives and a couple other officers. I'm going to say
17 five, but I'm not sure.

18 Q. Okay. Were the officers the ones who would tell you
19 based on their knowledge of the case what was potentially
20 important?

21 A. Yes. They would have to because I was not involved
22 really in the case. I was dispatched there to assist them
23 in their search and so they would have to tell me, you
24 know, what it was of that search that was important to
25 them.

RANDALL UNTERBRINK - DIRECT

1 And that's how I got directed to the couch, the floor
2 and the condoms as well.

3 Q. So these officers were familiar with the case?

4 A. Yes.

5 Q. And you were brought in as a detective then?

6 A. That's correct, to assist them.

7 Q. Did any of those officers ask you to photograph and
8 collect any evidence in the downstairs bathroom?

9 A. No, sir.

10 Q. All right. The carpet, what happened with the carpet
11 after you collected it?

12 A. It was stored and then I'm done with it at that
13 point. Other people will then want it to be examined in
14 the lab, will then take it out of storage and then they'll
15 send it to wherever they want it to go. Generally --
16 well, it will go to the lab.

17 Q. Was the carpet sent to a lab?

18 A. It was my understanding that it was.

19 Q. Was the sticky tape sent to a lab for analysis?

20 A. My understanding is that it was.

21 Q. And the condom and condom wrappers?

22 A. That as well.

23 MR. STACK: Thank you. Your Honor, at this point
24 we have a matter of law to address.

25 THE COURT: We're going to take our restroom

RANDALL UNTERBRINK - DIRECT

1 break. During the break, please do not discuss the case
2 and please let your notepads in your seats.

3 When you're done with your break, please knock on
4 the door and let the bailiffs know. If you'd go with the
5 bailiffs, please.

6 (Jury exits courtroom at 3:36 p.m.)

7 THE COURT: What are those numbers?

8 MR. STACK: The evidence the State has entered is
9 State's Exhibit Number 39, 40, 41, 42, 43 and 44.

10 THE COURT: That's without objection correct,
11 Mr. Stidwell?

12 MR. STIDHAM: Yes, ma'am.

13 THE COURT: Please mark it without objection.
14 Let's take a brief restroom break. Sir, you may also step
15 down. Please don't discuss your testimony. It will
16 probably be about a 10-minute break.

17 (Thereupon, State's Exhibits No. 39, condom
18 wrapper, State's Exhibit No. 40, condom wrapper, State's
19 Exhibit No. 41, sofa sticky tape, State's Exhibit No. 42,
20 condom, State's Exhibit No. 43, condom, and State's
21 Exhibit No. 44, carpet cutting, were received into
22 evidence.)

23 (Thereupon, a recess was taken. At 3:27 p.m. the
24 trial resumed as follows:)

25 MS. SHEALY: Your Honor, we have a witness that

RANDALL UNTERBRINK - DIRECT

1 we wanted to call after Officer Unterbrink and before Fay
2 LeBoeuf. And she was testifying earlier today in Berkeley
3 and has not arrived yet, but we do have two SLED agents we
4 can go forward on.

5 It's a bit out of order but it's my understanding
6 defense does not have an objection to that.

7 THE COURT: You can call witnesses in whatever
8 order you like. All right. Ready to proceed? State
9 ready?

10 MS. SHEALY: Yes, yes.

11 MR. STACK: Yes, Your Honor.

12 THE COURT: Defense ready?

13 MR. STIDHAM: Yes, Your Honor.

14 THE COURT: Please bring in the jury.

15 MS. SHEALY: Judge, do we need to go through the
16 process of moving in evidence?

17 THE COURT: They've already been admitted without
18 objection.

19 MR. SHEALY: Thank you.

20 (Jury enters courtroom at 3:39 p.m.)

21 THE BAILIFF: Jurors are all present, Your Honor.

22 THE COURT: You may resume your examination of
23 this witness.

24 MR. STACK: Thank you, Your Honor.

25 THE COURT: You're welcome.

RANDALL UNTERBRINK - DIRECT

1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. STACK:

3 Q. I'm -- Officer, I'm going to hand you in a moment
4 State's Exhibits 39 and 44. These have already been
5 entered into evidence. I'd like for you to take -- we'll
6 go through these one at a time.

7 Looking first at State's Exhibit 39 and 40.

8 A. Yes, sir.

9 Q. Would you please tell the jury what is in those
10 envelopes, what they are?

11 A. Exhibit Number 39 is the condom wrapper which is this
12 one right here.

13 Q. Is that one of the condom wrappers collected during
14 the search warrant of ■ Orrs Street?

15 A. Yes, sir.

16 Q. And State's Exhibit Number 40, what is that?

17 A. Do you have any scissors?

18 Q. It should already be opened.

19 A. I got it. And this is also a second condom wrapper.

20 Q. Collected at the same place?

21 A. That's correct.

22 Q. Okay. Thank you. And State's Number 41?

23 A. Yes, sir.

24 Q. Okay. What is State's 41?

25 A. These would be the sticky tape that we were mentioning

RANDALL UNTERBRINK - DIRECT

1 earlier that I applied to the arm of the sofa.

2 Q. That you collected on the same day at the same
3 location?

4 A. That's correct.

5 Q. Okay. Thank you. Let's go on to 42 and 43. Take
6 your time, there's no rush.

7 A. This would be one of the condoms, that was observed in
8 one of the photographs, found in the upstairs bedroom.

9 Q. Okay. Forty-three?

10 A. And this would be the second condom also found in the
11 same place.

12 Q. Good. Thank you. And Number 44?

13 A. And this would be the carpet that was cut from the
14 floor in the living room. And what is circled on there
15 were the areas that fluoresced so it would be easier to
16 identify later.

17 Q. Was that the carpet that was depicted in the
18 photograph behind you?

19 A. Yes.

20 Q. Thank you. Now, let's talk about something that you
21 don't have in front of you. Did Jennifer Wooley pick up
22 the sexual assault kit from MUSC?

23 A. That's what she told me that she did.

24 Q. Do you know if it was sent out for analysis?

25 A. Normally it would be.

RANDALL UNTERBRINK - CROSS

1 MR. STACK: Beg the Court's indulgence just for
2 one moment. (Pause.)

3 Thank you, Officer Unterbrink. Please answer any
4 questions that the defense counsel has.

5 THE WITNESS: Yes, sir.

6 THE COURT: Any cross-examination?

7 MR. STIDHAM: Thank you, Your Honor. If it
8 please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. STIDHAM:

12 Q. Good afternoon, Officer Unterbrink.

13 A. Good afternoon.

14 Q. You attempted to lift hair fibers on the couch where
15 you were directed by detectives. Correct?

16 A. Yes.

17 Q. Is that a common procedure that you do at the scene of
18 a sexual assault?

19 A. Yes, sir.

20 Q. And the reason for that is there are, assuming two
21 people have pubic hairs, there are lots of opportunities
22 for pubic hair to fall out and remain at the scene. Is
23 that correct?

24 A. Yes, sir.

25 Q. Specifically, in these allegations if somebody pulled

RANDALL UNTERBRINK - CROSS

1 the victim's underwear down, that's an opportunity for
2 hair to fall out?

3 A. Yes, sir.

4 Q. Where there's physical friction or interaction there's
5 opportunity for both the assailant and the victim's pubic
6 hair to fall out?

7 A. Yes, sir.

8 Q. And even probably putting the clothes back on, I would
9 assume?

10 A. Yes, sir.

11 Q. And especially bent over on a couch, if the pubic area
12 was resting directly on the couch, even more likely that
13 there would be pubic hair present?

14 A. Yes, sir.

15 Q. But you didn't find any pubic hair anywhere at that
16 location?

17 A. As I understand, none was found.

18 Q. Now, you spoke about using the UV light. Semen is not
19 the only thing that the fluoresces under UV light. Is
20 that correct?

21 A. That's correct.

22 Q. Could you describe some of the other things that might
23 possibly fluoresce?

24 A. Saliva is a possibility. Urine is another
25 possibility.

RANDALL UNTERBRINK - CROSS

1 Q. Are there other, other non-human secretions or -- I
2 mean, are there other liquids or other things that may
3 fluoresce?

4 A. And materials as well.

5 Q. And, Officer Unterbrink, you boxed up the carpet.
6 Correct?

7 A. That's correct.

8 Q. Or bagged it?

9 A. Correct.

10 Q. And then you sent it off with an evidence request
11 form. Is that correct?

12 A. Correct.

13 Q. And you requested that the -- your forensic
14 laboratory, the Charleston Police Department's Forensic
15 Laboratory, you requested that they try to determine if
16 semen was present?

17 A. That's correct.

18 Q. And Elizabeth Wiggins Mitchell, are you aware of -- do
19 you know who she is?

20 A. Yes.

21 Q. She's a chemical analyst for the Charleston Police
22 Department. And she analyzed the carpet. Correct?

23 A. I don't know.

24 Q. I have what appears to be Charleston Police Department
25 Forensic Laboratory form and it is addressed to Officer

RANDALL UNTERBRINK - REDIRECT

1 Randall Unterbrink, crime scene location, ■ Orrs Court,
2 date April 25th.

3 And it's from, it's signed chemical analyst Elizabeth
4 Wiggins Mitchell. Your Honor, may I approach the witness?

5 THE COURT: You may.

6 BY MR. STIDHAM:

7 Q. Is that report familiar to you?

8 A. Yes sir. I've seen this type of form before.

9 Q. Have you seen that one?

10 A. Ah --

11 Q. And excuse me. That highlighting may be mine.

12 A. It looks like a copy of something I've seen.

13 Q. But it was sent to you. It's addressed to you?

14 A. Yes.

15 Q. And can you read to me what the results are for the
16 carpet?

17 A. The carpet, it says, no human semen indicated.

18 MR. STIDHAM: Thank you. Court's indulgence one
19 moment, Your Honor. (Pause.)

20 That's all the questions I have for this witness.

21 Thank you.

22 THE COURT: Any redirect?

23 MR. STACK: Yes, Your Honor, just briefly. One
24 question.

25 THE COURT: You may proceed.

QUINTES LEON YOUNG, II - DIRECT

1 REDIRECT EXAMINATION

2 BY MR. STACK:

3 Q. Officer, on occasion does the SLED lab find things
4 that the local CPD lab does not find?

5 A. On a personal basis, I'm not aware of that. I don't
6 get really involved in that. It's possible that SLED can
7 find things we cannot.

8 MR. STACK: Okay. Thank you. Nothing further.

9 THE COURT: Any exception to the witness being
10 excused?

11 MR. STACK: Not from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. STIDHAM: No, Your Honor.

14 THE COURT: Sir, you're excused. You may call
15 your next witness.

16 MR. STACK: State calls Quintes Young.

17 QUINTES LEON YOUNG, II, having been duly sworn,
18 was examined and testified as follows:

19 THE CLERK: Please have a seat. Please state
20 your full name and spell your last name for the record.

21 THE WITNESS: Quintes Leon Young the Second, Y.
22 O. U. N. G.

23 THE COURT: You may proceed.

24 MR. STACK: Thank you, Your Honor.

25 DIRECT EXAMINATION

QUINTES LEON YOUNG, II - DIRECT

1 BY MR. STACK:

2 Q. Good afternoon, Mr. Young.

3 A. Good afternoon.

4 Q. Would you tell the jury what you do for a living,
5 please?

6 A. I'm a forensic toxicologist with South Carolina Law
7 Enforcement Division.

8 Q. Is that SLED?

9 A. Yes.

10 Q. How long have you worked for SLED?

11 A. Three years.

12 Q. Three. And what's your job title with them up there?

13 A. Forensic toxicologist.

14 Q. All right. And tell the jury what a forensic
15 toxicologist does, please.

16 A. As a forensic toxicologist -- as a forensic
17 toxicologist, I am responsible for the analysis of
18 biological specimens such as blood and urine to determine
19 the presence or absence of alcohol, drugs and poisons and
20 to interpret those findings for courts of law,
21 pathologists and coroners.

22 Q. Excellent. Thank you. Tell us, please, what is your
23 education background?

24 A. I have my bachelor's of science from the University of
25 South Carolina.

QUINTES LEON YOUNG, II - DIRECT

1 Q. And what type of other training have you received?

2 A. Well, other than being house-trained at SLED, I'm also
3 a graduate of the Morganstein School of Alcohol in
4 Bloomington, Indiana, at Indiana University.

5 Q. And how many times have you testified as an expert
6 witness in court?

7 A. I believe four.

8 Q. And what fields have you been declared an expert in?

9 A. Forensic toxicology.

10 MR. STACK: Your Honor, at this time the State
11 offers this witness as an expert in the field of forensic
12 toxicology.

13 THE COURT: Any questions?

14 MR. STIDHAM: Nothing.

15 THE COURT: Noted. You may proceed.

16 MR. STACK: Thank you, Your Honor.

17 BY MR. STACK:

18 Q. Okay. In connection with this case, did you perform
19 an analysis of the specimens provided by the victim, the
20 victim, [REDACTED]

21 A. Yes, sir.

22 Q. And what analysis did you perform?

23 A. We performed our volatile analysis, blood-alcohol
24 testing.

25 Q. And the purpose of that test is to determine, what?

QUINTES LEON YOUNG, II - CROSS

1 A. The presence or absence of ethanol.

2 Q. And what were the results with regard to [REDACTED] [REDACTED]

3 A. The results were negative.

4 Q. And what day was that specimen collected?

5 A. I believe it was April 9th of '06. Yeah.

6 Q. And do you know what time of day it was collected?

7 A. At 21:30.

8 Q. All right. And when you say it was negative, does
9 that mean [REDACTED] [REDACTED] was sober?

10 A. At the time of the blood draw, yes.

11 MR. STACK: Your Honor, beg the Court's indulgence
12 just a moment. (Pause.)

13 BY MR. STACK:

14 Q. I'm sorry, 21:30 is the collection time you said?

15 A. I believe so.

16 Q. In civilian time, 21:30 what would be, what?

17 A. 9:30.

18 Q. 9:30 at night?

19 A. Yes.

20 MR. STACK: Please answer any questions defense
21 counsel has.

22 THE COURT: Any cross-examination of the
23 witness?

24 MR. STIDHAM: Just briefly, Your Honor.

25 THE COURT: You may proceed.

QUINTES LEON YOUNG, II - CROSS

1 MR. STIDHAM: Thank you.

2 CROSS-EXAMINATION

3 BY MR. STIDHAM:

4 Q. And when you receive blood from a victim in a case
5 such as this, oftentimes people ask you to test for all
6 sorts of substances. Right?

7 A. Correct.

8 Q. Why did you just test for alcohol in this test?

9 A. The history didn't indicate any drug use.

10 Q. There's no indication of -- where did you get --
11 where'd the history come from?

12 A. That is provided in the documentation that we received
13 upon admission of the evidence.

14 Q. Okay. And that comes from the arresting agency?

15 A. Right.

16 Q. And they didn't mention anything about any marijuana
17 or any other drug use?

18 A. Right.

19 Q. So you only test for specifically what they ask?

20 A. Correct.

21 Q. And if someone were to drink two alcoholic beverages,
22 say, three to four hours before their blood was drawn --

23 A. Right.

24 Q. -- what are the chances that their blood-alcohol would
25 be completely negative?

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1 A. It's highly likely that it would be negative.

2 MR. STIDHAM: Okay. Thank you. No further
3 questions.

4 THE COURT: Any redirect of this witness?

5 MR. STACK: No, Your Honor.

6 THE COURT: Any objection to the witness being
7 excused?

8 MR. STACK: No, Your Honor.

9 THE COURT: From the defense?

10 MR. STIDHAM: No, ma'am.

11 THE COURT: Sir, you're excused. You may call
12 your next witness.

13 MS. SHEALY: Robin Taylor.

14 ROBIN TAYLOR, having been duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please state your full name and then
17 spell your last name for the record.

18 THE WITNESS: My name is Robin Taylor, T. A. Y.
19 L. O. R.

20 DIRECT EXAMINATION

21 BY MS. SHEALY:

22 Q. Ms. Taylor, can I get you to speak up just a little
23 bit for us when you're talking, please? Tell the jury
24 where you drove from today.

25 A. South Carolina Law Enforcement Division, SLED, in

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1 Columbia.

2 Q. And if you could, explain to the jury what SLED is.

3 A. SLED is the South Carolina State Police. We're a
4 supporting agency. We assist local agencies in
5 investigation and then we also provide forensic services
6 for local agencies around the state.

7 Q. And regarding the case that we're here for today, were
8 you asked to come and testify regarding some DNA results?

9 A. Yes, ma'am.

10 Q. Tell the jury if you would please, what your position
11 at SLED is.

12 A. I am a lieutenant. I'm a supervisor over the DNA
13 casework laboratory in the forensics building at SLED.

14 Q. And how long have you been in that position?

15 A. I've been in this position approximately two years.
16 I've actually been at SLED in the DNA department for 20
17 years.

18 Q. Would you describe for the jury what your educational
19 background is?

20 A. I have a bachelor of science degree in medical
21 technology from the University of South Carolina. I
22 graduated from the Baptist Medical Center School of
23 Medical Technology in Columbia.

24 I've worked in clinical laboratories for approximately
25 two and a half years prior to joining SLED. I started at

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1 SLED in March of 1990 and since then I've completed
2 intensive training programs in the fields of forensic
3 serology, forensic RFLP-DNA analysis and forensic PCR-DNA
4 analysis.

5 Q. Have you ever testified as an expert in a court of
6 law?

7 A. Yes, ma'am. In excess of 65 times, somewhere.

8 MS. SHEALY: Your Honor, at this time we would
9 offer Ms. Taylor as an expert in the field of DNA
10 analysis.

11 THE COURT: Any exception or questions?

12 MR. SMITH: Without objection, Your Honor,

13 THE COURT: I'm sorry?

14 MR. SMITH: Without objection.

15 THE COURT: So admitted. You may proceed.

16 BY MS. SHEALY:

17 Q. Ms. Taylor, if you could, first explain whether you
18 were the first analyst that touched the DNA in this case.

19 A. Actually I did not do the analysis in this case. The
20 actual analysis was done by an analyst named Kimberly
21 Hahn. She left our laboratory in late 2006, I believe.

22 And I, what I did was adopt her results and ended up
23 reporting them. And I reviewed the entire case file and
24 adopted the results and reported them.

25 Q. When you say you adopted the results, what do you mean

ROBIN TAYLOR - DIRECT

1 by that?

2 A. Well, it's actually not an uncommon practice in the
3 DNA field for multiple people to handle a case prior to
4 reporting, nor -- it's not normal practice in our lab but
5 what I did was, I went over that and did an intensive
6 review of all the records in the case, and all the data
7 that was generated for this case. And I agreed with it
8 and I wrote a report and signed it myself.

9 Q. Okay. If you would, start by telling us what is meant
10 by the term DNA.

11 A. DNA stands for deoxyribonucleic acid, but that's not
12 really important. What concerns you the most is that it's
13 the substance, chemical substance found in the nucleus of
14 cells all throughout your body.

15 And what that means is that DNA is actually not found
16 in your red blood cells. It's found in white cells. It's
17 found in skin cells. It's found in various other organs.
18 It carries genetic information from one generation to the
19 next.

20 And you get half of your DNA from your father and half
21 from your mother.

22 In forensics, of course, we don't test all of your
23 DNA. We target a small portion of DNA that's known to be
24 highly variable from person to person.

25 And actually as far as we know at this point in time,

ROBIN TAYLOR - DIRECT

1 it doesn't code with anything, you know. It doesn't code
2 for anything like hair color or eye color, but again, it
3 is highly variable from person to person. And that's what
4 we do in forensics.

5 Q. In this case, if you would describe for the jury what
6 you were asked to look at and what type of comparisons
7 were made.

8 A. Well, there was some evidence submitted on this case.
9 There was a sexual assault evidence collection kit from
10 [REDACTED] And there was a suspect kit from Antonio
11 Patterson. There were two condoms. There was a piece of
12 carpet and some underwear.

13 And I'd like to explain a little bit about what I just
14 said.

15 A sexual assault evidence collection kit is a
16 standardized kit that we provide to local agencies around
17 the state. And what it does is both instructs and
18 standardizes the collection of sexual assault evidence
19 from case to case.

20 Whatever's important in that case, we collect it. It
21 could vary from vaginal swabs, oral swabs, rectal swabs,
22 swabs from anyplace else on the body, fingernail
23 scrapings, et cetera.

24 And then again the suspect kit's kind of the same
25 idea; standardized collection kit. And normally our known

ROBIN TAYLOR - DIRECT

1 standard is collected. At the time in this case it's a
2 blood standard, and known head and pubic hairs. And then
3 again, also understanding I didn't actually receive it,
4 submitted in this case were two condoms, a piece of
5 carpet, and some panties from [REDACTED]

6 I never actually saw this evidence, but again, I
7 trained the analyst who did. And so I'm very familiar and
8 I supervised her closely. And I went over all worksheets
9 and all testing that was done within the protocol that we
10 used and still use today, and reviewed these results and
11 reported it.

12 Q. So if we could start with the sexual assault evidence
13 collection for [REDACTED] the blood standard was sent
14 to you. Is that correct?

15 A. That's correct. There was a blood standard submitted.

16 Q. And when I say to you, I mean SLED.

17 A. Yes, ma'am.

18 Q. What is the purpose of getting the blood?

19 A. We collect known standards from people involved in a
20 case in order to make a comparison. We're going to run
21 DNA on the unknown stains or swabs on it, and then we're
22 also going to run the known standards. We're going to
23 compare those two profiles, visual comparison, and
24 determine whether or not there's a match.

25 Q. All right. So the blood gives you the DNA

ROBIN TAYLOR - DIRECT

1 information?

2 A. It gives you the information against which you're
3 comparing your unknowns.

4 Q. Now regarding the smears that were taken from Tiffany
5 Graham of her vaginal area, her rectal area and her oral
6 area, could you tell us whether or not there was -- what
7 was identified if anything from that, those swabs?

8 A. Well, in a sexual assault case what we're looking for
9 is actual sperm cells. And there were no spermatozoa that
10 were identified on those smears.

11 Q. Okay. And regarding the vaginal, oral and rectal
12 swabs did you look to determine whether or not there was
13 semen identified?

14 A. The examination was performed to determine presence of
15 semen, and none was found on the vaginal or rectal swabs.

16 Q. For [REDACTED]

17 A. Yes, ma'am.

18 Q. And then it also notes miscellaneous findings. There
19 was no semen was found there. Is that correct?

20 A. That's correct.

21 Q. Okay. Now -- and as part of that kit that you provide
22 to local law enforcement, do they also take fingernail
23 scrapings?

24 A. Yes, ma'am.

25 Q. And head hairs, pubic hairs and pubic hair combings.

ROBIN TAYLOR - DIRECT

1 Is that correct?

2 A. Right.. That's correct.

3 Q. And regarding those, if you could just walk us through
4 that.. What was found by the fingernail scrapings?

5 A. The fingernail scrapings, there is not a screening
6 test we can do on fingernail scrapings. We're looking for
7 DNA foreign to the victim. DNA analysis was performed on
8 those fingernail scrapings but no DNA profile was
9 developed.

10 The known head hairs and pubic hairs, no analysis was
11 performed on those. And in fact, in our most recent
12 version of the sexual assault kit, we don't even ask for
13 collection of those.

14 They were meant to be used as a comparison against any
15 foreign hairs, a visual comparison for our trace
16 laboratory. But we no longer do that. If we find hairs,
17 we take them directly to DNA.

18 So for the known head hairs and known pubic hairs, no
19 analysis was performed in this case.

20 And the pubic hair combings, it's literally that.
21 It's a comb that's combed through the pubic hairs and
22 looking for loose foreign hairs. And none were found in
23 this case.

24 Q. Okay. Now, back to fingernail scrapings, you're
25 literally talking about whatever may be underneath

ROBIN TAYLOR - DIRECT

1 someone's fingernails. Is that correct?

2 A. Yes, ma'am. It's a plastic bindle that we provide, a
3 right and a left. And it's folded up into paper. And
4 that plastic bindle is run underneath the fingernail
5 looking for foreign DNA.

6 Q. And would you agree that that would be important in a
7 case where maybe someone scratched somebody?

8 A. It can be. Often it's mixtures, or in this case
9 nothing was found. It's not always -- actually not often
10 that we find probative evidence on fingernail scrapings,
11 but it's not unusual for there to be no DNA profile or
12 nothing foreign to the victim.

13 Q. It's still part of the standard kit?

14 A. Yes, ma'am. It is.

15 Q. Now also noted on your report is miscellaneous
16 materials. Could you tell us what that references, if you
17 know?

18 A. That is a piece of paper that is probably two feet by
19 two feet that the victim when they're disrobing at the
20 hospital, they stand on it to collect any dirt, debris or
21 hairs that might fall on it, off of their clothing, as
22 they're manipulating the clothes.

23 So what we look for there in DNA is for hairs because
24 we can do DNA on hairs. And no hairs were found that were
25 suitable for DNA on that debris collection.

ROBIN TAYLOR - DIRECT

1 Q. Okay. Now, regarding the suspect kit from Antonio
2 Patterson, would it have contained similar standard
3 specimens from him?

4 A. The suspect kits are quite a lot less, quite a lot
5 fewer samples. There's a known blood standard which of
6 course we need it because it presents us with a known
7 sample of DNA from someone involved in the case for us to
8 compare our evidence. And there were at that time known
9 head hairs and known pubic hairs collected.

10 And once again, we no longer collect those, even in
11 suspect kits, but they were meant to provide a standard
12 against which any hairs and evidence could be compared
13 visually prior to doing DNA. But now we just go ahead
14 with the DNA.

15 There were pubic hair combings also and there was no
16 analysis performed on any of -- any of the hair items.
17 There was no analysis performed.

18 The reason pubic hair combings might -- were not
19 performed is the time of the delay between the actual
20 assault and the collection of the kit. It becomes a
21 non-issue after a very short period of time.

22 Q. And did you bring one of the kits with you today that
23 you also have in your possession and which is --

24 A. Yes. This is the suspect kit.

25 MS. SHEALY: Beg the Court's indulgence.

ROBIN TAYLOR - DIRECT

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 MS. SHEALY: Your Honor, I'd ask first of all
4 that we mark this.

5 THE COURT: Yes, ma'am.

6 MS. SHEALY: Your Honor, I would move this into
7 evidence without objection, State's 49.

8 MR. SMITH: Without objection, Your Honor.

9 THE COURT: Marked and admitted without
10 objection.

11 (Thereupon, State's Exhibit No. 49, suspect kit,
12 was marked and received into evidence.)

13 BY MS. SHEALY:

14 Q. So this is the kit that had been taken from the
15 suspect in this case. Is that correct?

16 A. Yes, ma'am.

17 Q. Now in your report when you discussed the various
18 items -- I'm going to put these in front of you for right
19 now.

20 You referenced them by certain numbers. Is that
21 correct?

22 A. Yes.

23 Q. When it comes to the carpet and the condoms, can you
24 locate in those packages item, SLED item number three?

25 A. That's right here. And I can tell where Kim Hahn

ROBIN TAYLOR - DIRECT

1 labeled it with the case number and the item number at the
2 time that she performed the analysis.

3 Q. Let me see the record.

4 A. Her initials are there.

5 Q. Let me see the red sticker. So State's Exhibit 42 is
6 one of the condoms?

7 A. Yes, ma'am.

8 Q. And that was condom entry number three. Is that
9 correct? I mean, the number is three?

10 A. The number is three on my -- it's a SLED item number
11 three, yes.

12 Q. Okay. Regarding this condom, would you tell the jury
13 whether any semen was identified?

14 A. No semen was identified on that condom.

15 Q. And looking for State's item number four.

16 A. This envelope is marked with the case number and the
17 item number and Kim's initials. This is item number four,
18 State's Exhibit Number 43.

19 Q. And could you tell the jury what the result of the
20 analysis on that condom revealed?

21 A. Semen was identified on that condom. It was a mixture
22 of at least two individuals. And the DNA profile, major
23 contributor to this mixture matches the DNA of Antonio
24 Patterson.

25 But the probability of randomly selecting another

ROBIN TAYLOR - DIRECT

1 individual who would be able to -- who would have that DNA
2 profile matching the major contributor on this condom is
3 approximately one in 100 quintillion.

4 Q. Can you say that a little more specifically to us?
5 What does that mean when you say that that matches Antonio
6 Patterson and what's that statistic mean?

7 A. When a visual comparison is made from the DNA profile
8 that was found on this condom to the known DNA profile of
9 Antonio Patterson, at all locations there were, was a
10 match.

11 The statistic is merely a probability. It is the
12 probability that some other random person would have this
13 same profile. And in fact as you can tell, this is a very
14 rare profile. One in 100 quintillion. That's -- I'm
15 sorry. I forgot. It's either 15 or 18 zeros added onto
16 100. So it's a very rare profile.

17 But, again, it's a probability that any random person
18 would have this same profile.

19 Now there were two people, at least two people in this
20 profile. We had two different levels of DNA present and
21 we can often do that. You can tell based on looking at
22 the data that you've got more of one person's DNA than you
23 do another. And that's the major contributor. And that's
24 the profile that we matched to Antonio Patterson.

25 Now there is a minor profile present in this condom,

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1 and -- but it was very limited value. There wasn't much
2 DNA there. And no match could be made. No, really no
3 further interpretation could really be made but I also
4 went on to say in my report that there is DNA present in
5 this profile that doesn't belong to either Tiffany Graham
6 or Antonio Patterson. There was DNA foreign to both of
7 them.

8 Q. Now is that in relationship to four or to five?

9 A. That's -- that's the condom, item number four.

10 Q. Okay. Your report reads that, partial minor DNA
11 profile with limited value and DNA is present in the minor
12 profile that cannot be attributed to Tiffany Graham or
13 Antonio?

14 A. Right.

15 Q. So does that mean not that it's definitely not
16 Tiffany's and not Antonio's or there's not enough to tell?

17 A. We can't tell. I can't tell. If you look at the --
18 when I look at that minor profile, I can see a couple of
19 locations maybe come from her, but I cannot tell. It's
20 not enough information to really offer any interpretation
21 of, but there is DNA there that's foreign to both of
22 them.

23 That's really all I can offer on that. It's a very
24 limited amount of information. We have to be very
25 careful. The power of DNA is in the profile, it's in the

ROBIN TAYLOR - DIRECT

1 totality of the profile and every time you lessen the
2 information, the less sure you can be of where that DNA
3 could have come from.

4 That's why I only attach the statistic to the major
5 contributor. I had a complete profile across that major
6 contributor, but the minor profile is very, very limited.

7 And that's really all I can say about it.

8 Q. Okay. And regarding SLED item number five, the piece
9 of carpet?

10 A. Item number five was a piece of carpet. Semen was
11 identified on this piece of carpet. Now this was a
12 mixture of at least three individuals.

13 And immediately when we see three individuals present
14 in a profile, you know that there's going to be very
15 limited amount that you can do with that profile unless
16 you can pull out a major contributor.

17 But in this case we weren't able to do that. You
18 can't, you can't tell which parts of the DNA profile goes
19 with each other. So you have to treat it as one big piece
20 of information.

21 And I could not exclude Antonio Patterson as a
22 contributor to that mixture. I could see what DNA across
23 that profile that could be attributed to him.

24 Q. Let me just interrupt you for a second. So, a little
25 bit more specifically, what you saw could have been

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1 Antonio Patterson?

2 A. He could be in that mixture.

3 Q. Okay.

4 A. Now, my report reads that no conclusive statement can
5 be made regarding the inclusion or exclusion of Tiffany
6 Graham as a possible contributor to this mixture.

7 What that means is because there are at least three
8 people in there, there's a lot of information. And I
9 could see pieces of that profile that looked like that
10 could have come from her, but then in other places I
11 couldn't find any indication of her.

12 So, I can't interpret that. I have to be inconclusive
13 as to whether or not she is or is not in that profile.
14 There's just no sure interpretation on that.

15 Q. And then was there remaining DNA that could not be
16 Tiffany Graham's or Antonio Patterson's?

17 A. Yes, ma'am. There is DNA present in that mixture that
18 couldn't be attributed to either one of them.

19 Q. And of course, when you receive items from local law
20 enforcement you have no idea how long those substances may
21 have been on the carpets that they were taken from. Is
22 that correct?

23 A. No.

24 Q. Now regarding the panties that [REDACTED] and the
25 hair collected from the panties, can you tell the jury

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1 whether there was any DNA profile that you could develop
2 from those two items?

3 A. There was nothing of apparent evidentiary value found
4 in the panties but there was a hair collected from the
5 panties and no DNA profile was developed from that hair.
6 It was attempted but there was no, no profile.

7 Q. So in summary, of all the items that you received
8 regarding the condoms, one is a match with Antonio. And
9 the carpet could have Antonio Patterson's DNA on there,
10 you're not really sure about that.

11 A. I can't be sure. He was not excluded as a possible
12 contributor to that mixture.

13 Q. Okay. And to say someone's not excluded means this
14 could be --

15 A. They could contribute. There appears to be DNA across
16 the profile that could be attributed to that person but
17 however, when you cannot separate a major or minor
18 contributor you can't be sure. You can just say that, you
19 know, there's DNA there that's consistent with coming from
20 that person but it's not conclusive.

21 MS. SHEALY: Okay. I beg the Court's indulgence
22 just a moment. (Pause.)

23 Thank you very much. Answer any questions that
24 Mr. Smith may have.

25 THE COURT: Any cross-examination of the

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1 witness?

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: You may proceed.

4 MR. SMITH: Smith. May it please the Court.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. SMITH:

8 Q. Good afternoon, Ms. Taylor.

9 A. Good afternoon.

10 Q. I just have a few kind of follow-up questions for you
11 this afternoon. The solicitor was talking to you a few
12 minutes ago about the fingernail scrapings in a particular
13 case or in any case. You said those are, at times may not
14 be helpful in cases?

15 A. Well, it certainly depends on circumstances of the
16 case. And did the person have fingernails long enough to
17 inflict, you know, scratches. Did they wash their hands.
18 There are quite a few circumstances around a case that may
19 or may not make fingernail scrapings a valuable piece of
20 evidence.

21 Q. So, for example, in a case where someone had not
22 washed their hands, it would be more likely that you would
23 find something?

24 A. It would be more likely but I again reiterate it's not
25 unusual not to find DNA on these collections.

ROBIN TAYLOR - CROSS

1 Q. I understand. And as far as that goes, it can be
2 probably more likely in a situation where there's been
3 indications that force was involved. Would you agree with
4 that?

5 A. That's a very difficult statement for me to go with.
6 It's just going to depend on the circumstances of the
7 case. You know, the victim's going to react differently
8 depending on what kind of force is going on. You can't
9 predict that.

10 Q. But you would agree that that type of evidence would
11 be important if it were able to be collected?

12 A. If it's there and, you know, certainly it could be
13 important evidence but it doesn't mean it is.

14 Q. In this case obviously there was not -- you were not
15 able to detect it?

16 A. No, sir. We did not get a DNA profile off of the
17 fingernail scrapings.

18 Q. With regard to -- I think the solicitor asked you a
19 question like this about the length of time that something
20 has been on a piece of carpet when you're doing DNA
21 analysis.

22 Could you give an estimate about the amount of time
23 that something's been there?

24 A. No, sir. I've done cases on 20-year-old evidence and
25 gotten results. So, no, we do not offer any sort of time,

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1 time estimations based on the results.

2 Q. So it's certainly possible that anything that's found
3 may have been from a particular time but could have been
4 from some time in the past?

5 A. It's possible. I can't speak to particular time
6 frame. I can only speak to the actual DNA results.

7 Q. And in your experience it's been -- you had cases
8 where you say you've looked at evidence that's up to 20
9 years old?

10 A. They were, you know, pretty unique cases but, yes.
11 DNA, with the technology that we're using today, it lasts
12 a long time based on different circumstances and how it's
13 been stored. But it's not, it's not necessarily an
14 unusual thing. Actually it's pretty common for us to
15 re-visit very old cases these days, but I can't offer a
16 time frame based on DNA results.

17 Q. I want to go back to your results as they relate to
18 item 4.0. I think that's the condom. When you make the
19 statement about this being the mixture of at least two
20 people, is there an infinite number that it can be
21 attributed to? You're saying the minimum number is two
22 people involved in this mixture?

23 A. I would not think -- let me restart that.

24 On that condom there is a full profile that appears to
25 be that it's attributable to Antonio Patterson. There is

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1 a limited amount of minor, what I would in turn call minor
2 information in that profile.

3 When you have low level amounts of DNA, it's difficult
4 to determine if it's one person or more than one person.
5 I don't know that. It could mean extremely limited
6 amounts from multiple individuals.

7 There's a minimum of two people present on this
8 profile, but the lower-level profile is low enough such
9 that it could be a little bit more than one person.

10 I don't want to offer that kind of determination. I
11 can tell you that in the other profile that there's at
12 least three people.

13 But in this one, it's a minimum of two people. There,
14 the potential is there for three, but I'm not even
15 offering that up as a theory. I'm just saying there's at
16 least two people.

17 And beyond that with that minor amount of information,
18 I really can't make a determination.

19 Q. With regard to item 5.0 which is the carpet, piece of
20 carpet, it indicates that semen was found. Is that
21 correct?

22 A. Chemical testing done on that piece of carpet did
23 indicate the presence of semen.

24 Q. And with regard to that, you can't say that that was
25 Antonio Patterson's semen?

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1 A. No. There's a mixture of DNA there. And
2 unfortunately there is no way to determine the source of
3 all of that DNA. It can be a mixture of body fluids.
4 There could be skin cells or sweat involved as well, but
5 semen was identified on the carpet.

6 Q. And you can't indicate for sure whether Tiffany
7 Graham's bodily fluids were there. She can't be included
8 or excluded. Is that correct?

9 A. I cannot. Her -- there was DNA in that profile that
10 looked like it could have come from her, but I did not see
11 the entirety of her profile there.

12 And I will add that item of evidence external to a
13 sexual assault victim, it's actually pretty rare for us to
14 find the victim's profile outside of the body, even if
15 there were body fluids.

16 Q. And in this case you didn't find Mr. Patterson's
17 profile?

18 A. Well, he could not be excluded. If you look across
19 the entire profile you can see DNA that could be from him
20 pretty much all the way across. I'd have to re-look at
21 the entire thing to make sure it was at every location,
22 but in looking at it right now I don't see any location
23 where his DNA appears to be missing.

24 That's why I did not exclude him. He is included as a
25 possible contributor.

1 Q. Okay. But, what I think what you're saying in regard
2 to that, and correct me if I'm wrong, he can't be excluded
3 but you can't tell us for sure that that's his?

4 A. No, sir. There's at least three people in that
5 cutting, and I can't say definitely he's in there. I'm
6 saying that out of the number people who could have
7 contributed or could have contributed to this, he can't be
8 excluded and that's all.

9 Q. Even if it were his DNA, you can't tell us how long
10 that particular DNA has been there. Is that correct?

11 A. No, sir. I can't.

12 MR. SMITH: Beg the Court's indulgence. No
13 further questions, Your Honor.

14 THE COURT: Any redirect?

15 MS. SHEALY: No, Your Honor.

16 THE COURT: Any objection to this witness being
17 excused?

18 MS. SHEALY: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SMITH: No, Your Honor.

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

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome. You may call your
24 next witness.

25 MS. SHEALY: Fay LeBoeuf.

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1 FAY LeBOEUF, having been duly sworn, was examined
2 and testified as follows.

3 THE CLERK: Please be seated. Please state your
4 full name and spell your last name for the record.

5 THE WITNESS: Fay LeBoeuf. L. E. B. O. E. U. F.
6 as in Frank.

7 DIRECT EXAMINATION

8 BY MS. SHEALY:

9 Q. Ms. LeBoeuf, I've had to ask everybody this today.
10 Would you try to please speak up for us?

11 A. Yes, ma'am.

12 Q. Did you drive here from Berkeley County?

13 A. Yes, ma'am.

14 Q. Were you testifying over there today?

15 A. Yes, I was.

16 Q. Tell the jury where you're currently employed.

17 A. I'm employed at the Medical University of South
18 Carolina in the Department of the OB-GYN.

19 Q. And in what capacity are you working for MUSC?

20 A. I'm currently a certified nurse examiner for a full-
21 time job. For a part-time job, I was a sexual assault
22 nurse examiner also.

23 Q. And if you would, tell us what a sexual assault --
24 give me your whole title again? Sexual assault --

25 A. Nurse examiner.

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1 Q. -- nurse examiner. What is that position?

2 A. A sexual assault nurse examiner is a nurse who has
3 extra training in the collection of evidence for victims
4 of sexual assault, whether they be female or male.

5 Q. And how long have you been doing that type of work?

6 A. I've been working with sexual assault victims since
7 1994. I've been a sexual assault nurse examiner,
8 certified, since 2002.

9 Q. And have you had the occasion to testify in court
10 before?

11 A. Yes, I have.

12 Q. Were you qualified as an expert?

13 A. Thirteen times.

14 MS. SHEALY: Okay. Your Honor, at this time I
15 would offer Ms. LeBoeuf as a sexual assault nurse
16 examiner, an expert in that field.

17 MR. SMITH: Without objection, Your Honor.

18 THE COURT: Admitted without objection.

19 BY MS. SHEALY:

20 Q. Could you approximate for us how many sexual assault
21 exams you have done in the past?

22 A. I've done over a thousand.

23 Q. Okay. And tell us a little bit about your educational
24 background.

25 A. I have an associate's degree in nursing from the

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1 University of Vermont in 1975. I have a certificate of
2 nursing from the Medical University of South Carolina
3 since 1987. I have a master's in nursing from the Medical
4 University of South Carolina since 1992.

5 Q. If you could focus your attention back, please, to
6 April of 2006, and tell the jury whether or not you did a
7 sexual assault examination on [REDACTED]

8 A. Yes, I did.

9 Q. Okay. And when you were -- back in April of 2006,
10 y'all were located at Cannon Place, if I'm calling it by
11 the right name?

12 A. Women's Health Center.

13 Q. Is that where this examination took place?

14 A. Yes, it was.

15 Q. Tell the jury if you would, what is included in a
16 sexual assault examination?

17 A. A sexual assault examination, we -- you get a medical
18 history from every victim to determine if they have any
19 allergies or medical problems that we would need to be
20 concerned about. We also do a history of the sexual
21 assault. And then we do a complete physical examination
22 and collection of evidence from each victim.

23 Q. And when you say a complete physical examination, what
24 does that include?

25 A. It includes looking at them from head to toe to make

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1 sure if there's been any trauma and then the collection of
2 evidence kit.

3 Q. And involved in the collection of evidence, we've
4 heard, SLED has already testified, you take their blood?

5 A. I -- we take head hairs, swabs of the mouth. We take
6 blood. We take vaginal secretions, fingernail scrapings,
7 any other source that there might be some evidence that
8 needs to be collected. We collect it and we also collect
9 clothing.

10 Q. I'm sorry? I didn't hear the last.

11 A. Clothing.

12 Q. Okay. And in this case in fact, was there clothing
13 taken?

14 A. Yes, it was.

15 Q. And you could, could you tell us -- would you tell us,
16 please, the findings that you have when you examined

17 [REDACTED]

18 A. I found no signs of physical trauma in my exam.

19 Q. Okay. So tell us first, what is meant by the term
20 physical trauma?

21 A. There was no evidence of bruising. There was no
22 evidence of abrasions. There was no evidence of redness
23 in her upper body.

24 Q. No tearing?

25 A. No tearing.

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1 Q. Now if you would tell us, in having done this for so
2 many years, what is the significance of there being no
3 trauma?

4 A. That -- it's actually very common not to find trauma
5 in sexual assault victims for a variety of reasons.
6 Either someone is sexually active, their health and their
7 ages plays a factor in there.

8 Q. What do you mean by their health and their age?

9 A. The older women can have more trauma because their
10 genital area is a little bit more thinned out and trauma
11 can happen from that.

12 Q. The tissue --

13 A. Down there.

14 Q. Okay.

15 A. The younger child is not sexually active and so there
16 could be more trauma or an adolescent, there could be more
17 trauma because they're not a sexually-active person.

18 Q. In a female that's 23, do you -- what significance
19 would that have, if any? But the older women tend to
20 show more trauma and the younger children tend to show
21 more trauma. Is that what you're saying?

22 A. Yes, ma'am.

23 Q. What other factors go into the presence or absence of
24 trauma?

25 A. If there was use of condoms, the lubrication on the

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1 condom will keep the friction down in that area causing
2 them trauma.

3 Also the psychological reaction of a person.

4 Sometimes if a person's really scared for their life they
5 kind of shut themselves down and go away for the moment
6 and there will be trauma because of that reaction.

7 Q. Now tell us whether or not you found any semen in her
8 vaginal area.

9 A. I did not find any semen, any sperm in her vaginal
10 area.

11 Q. Okay. Also regarding her anal area, did you also look
12 at that?

13 A. Yes, I did.

14 Q. Did you find any sperm in her anal area?

15 A. No, I did not.

16 Q. Now the absence of sperm in her vaginal area, could
17 that be attributed to the use of a condom?

18 A. Yes, ma'am. It could.

19 Q. In other words, a condom collects that?

20 A. Yes, it does.

21 Q. And it would not be deposited in a woman. Is that
22 correct?

23 A. That's correct.

24 Q. Do you typically check the anal area?

25 A. I do because there's always a possibility that the

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1 condom might have broken or that the condom could have
2 slipped off as the person was withdrawing the penis from
3 the vaginal area.

4 Q. Do you remember Ms. Graham's demeanor? Do you
5 remember how she was appearing?

6 A. On my -- on my form I said that she was quiet and
7 cooperative.

8 Q. Okay. And do you remember whether or not in fact she
9 had been vomiting?

10 A. She had stated she had vomited prior to my seeing her
11 in the exam room.

12 Q. Were you aware that Detective Antonio was talking to
13 her in the lobby area before she came back with you or did
14 you know that?

15 A. I can't remember. I'm sorry.

16 Q. That's okay. How many of these exams would you say
17 you do a week?

18 A. It varies. It could be nothing up to five to six.

19 Q. And we are talking of 2006. Right?

20 A. Yes, ma'am.

21 Q. Now when you say that she was quiet and cooperative,
22 does that necessarily mean that she wasn't upset?

23 A. No. Every victim reacts in a different manner as
24 every person does to stress, to trauma, to fear. Some
25 people shut down and become very quiet. Other people will

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1 laugh and giggle, and some will just be totally
2 hysterical.

3 MS. SHEALY: Beg the Court's indulgence just a
4 moment. (Pause).

5 BY MS. SHEALY:

6 Q. Are you able to give us a percentage of the time that
7 trauma is present in the number of exams you do? Can you
8 give us a rough estimate of how often you, in fact, see
9 trauma?

10 A. In the amount of exams that I've seen, I would say
11 more than 80 percent are, there's no trauma. The
12 literature, however, will tell that you 25 to 45, 46
13 percent, there's no trauma.

14 Q. Okay. So from what you have seen, 80 percent of the
15 exams that you have done there has been no physical
16 trauma. Is that what you're saying?

17 A. Yes, ma'am. Uh-huh.

18 MS. SHEALY: Beg the Court's indulgence just a
19 moment. (Pause.)

20 I have no further questions. Answer any, please,
21 that the defense may have.

22 THE COURT: Any cross-examination of the
23 witness?

24 MR. SMITH: Yes, Your Honor.

25 THE COURT: You may proceed.

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1 MR. SMITH: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. SMITH:

5 Q. Good afternoon, Ms. LeBoeuf.

6 A. Good afternoon.

7 Q. I believe the solicitor asked you briefly about this
8 and I want you to kind of explain to the jury a little bit
9 more about this.

10 One of your duties when someone comes in is to kind of
11 take their version of what occurred in a case. Is that
12 correct?

13 A. Yes, sir.

14 Q. And when you do that, you're taking them from that,
15 exactly what they told you.. Is that correct?

16 A. Yes, sir.

17 Q. And you're not -- at that point you're not doing any
18 investigation or any type of examination?

19 A. No, I'm not.

20 Q. Do you remember in this particular case speaking with
21 [REDACTED] about what had occurred?

22 A. Yes, I do.

23 Q. And do you remember her indicating to you that there
24 were two incidents of sex that occurred?

25 A. Yes, sir.

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1 Q. Okay. And she told you that one occurred in the den.

2 Is that correct?

3 A. Yes, sir.

4 Q. And then there was another instance in the bathroom.

5 Is that correct?

6 A. I don't remember exactly. Let me see just a second.

7 Q. I'm sorry?

8 A. I don't have all my paperwork exactly. Give me one
9 second.

10 Q. If I could approach I could show you.

11 A. Yes, sir. If you could.

12 MR. SMITH: Your Honor, may I approach?

13 THE COURT: You may.

14 THE WITNESS: Oh, I'm sorry.

15 BY MR. SMITH:

16 Q. Ms. LeBoeuf, do you recognize this?

17 A. Yes, I do.

18 Q. And does that refresh your memory?

19 A. Yes, sir. It does. Thank you.

20 Q. And did she indicate that there was a second incident
21 of sex that occurred in the bathroom?

22 A. The bathroom, when she was standing up by the sink.

23 Yes, sir.

24 Q. Now I want to go back for just a moment and talk about
25 how you kind of memorialize this type of thing after you

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1 talk to someone. Do you kind of write down, just kind of
2 exactly what you're told. Is that correct?

3 A. As much as I can. Yes, sir.

4 Q. And you don't change the story in any manner. You put
5 down exactly what you're told?

6 A. Yes, sir.

7 Q. Because it's important that what you write down is
8 accurate. Is that correct?

9 A. Yes, sir.

10 Q. And what you want to be able to do is preserve it for
11 instances like coming to court today. Is that a fair --

12 A. That and to help guide me for evidence collection.

13 Q. And that's also pretty important because when somebody
14 tells what you what's been alleged, it could influence
15 what you do as far as your examination goes. Is that
16 correct?

17 A. Yes, sir.

18 Q. And in this case, you also take a narrative or write
19 out a narrative of what Miss Graham told you. Is that
20 correct?

21 A. Yes, sir.

22 Q. And if you would look to the second page of your
23 narrative at the top. Do you -- does it indicate that he
24 penetrated her without a condom?

25 A. Yes, sir.

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1 Q. And that would have been what she told you at the
2 time?

3 A. Yes, sir.

4 Q. And you would have written it down as accurately as,
5 as exactly as she told you?

6 A. Yes, sir.

7 Q. Now, in addition to doing the narrative in your case
8 and kind of taking these things down, you also do
9 something that's called a post-assault hygiene kind of
10 checklist. Is that correct?

11 A. Yes, sir.

12 Q. And can you tell me -- can you tell the jury a little
13 bit about what that is?

14 A. The post-assault checklist is a checklist of what I
15 collected during the examination.

16 Q. With regard to specifically to any hygiene activity,
17 can you tell the jury what that is?

18 A. I'm sorry. I don't understand what you're asking.

19 Q. Just a moment.

20 MR. SMITH: Your Honor, I beg the Court's
21 indulgence just a moment.

22 THE COURT: Uh-huh.

23 BY MR. SMITH:

24 Q. Ms. LeBoeuf, what I'm asking you about is, are there
25 certain things that you question the alleged victim about

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1 with regard to what they've done between the time of the
2 assault and the time that they see you?

3 A. Yes, there are.

4 Q. And would -- did you do that in this case?

5 A. Yes, I did.

6 Q. And can you tell me why these events would be kind of
7 important?

8 A. If someone has changed their clothes, they've taken a
9 shower, they've urinated, there's always a possibility of
10 evidence being discarded through the normal bodily
11 functions.

12 Q. And with regard to this, what did you find out about
13 whether [REDACTED] had bathed or showered in this case?

14 A. She had not bathed or showered.

15 Q. Okay. And again, that can be important because of the
16 collection of DNA evidence?

17 A. Or any miscellaneous evidence. Yes, sir.

18 Q. Any type of trace evidence or anything that can be
19 found. Is that correct?

20 A. Yes, sir.

21 Q. What did you find out with regard to whether she had
22 brushed her teeth or used mouthwash?

23 A. She had not done any of those. She had reported to me
24 that she had urinated and she had vomited prior to coming
25 in.

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1 Q. Okay. With regard to that, she had done none of the
2 others. Could you tell the jury what the others are that
3 you generally ask about?

4 A. We ask them if they douche, if they've had a bowel
5 movement, urinated, bathed or showered, had anything to
6 eat, brushed their teeth, changed their clothes, used
7 mouthwash or changed their clothes.

8 Q. And all of those, as you've indicated, are important
9 because of the potential loss of evidence. Is that
10 correct?

11 A. Yes, sir.

12 Q. And could also in a particular case be important
13 because the evidence, if they had not done any of those
14 things evidence would be preserved. Is that correct?

15 A. Yes, sir.

16 Q. And so in this case, she had done a few of those
17 things but there are a number of these activities that she
18 had not engaged in. Would that be fair to say?

19 A. Yes, sir.

20 Q. Now, with regard to doing a history beyond the medical
21 history, beyond the hygiene activities that you had asked
22 about and talked about, sometimes you also need to find
23 out about the use of drugs or alcohol. Is that correct?

24 A. Yes, sir.

25 Q. And in this particular case, you asked about drugs

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1 being used. Is that correct?

2 A. Yes, I did.

3 Q. And what was the response?

4 A. She said that she had had some, two glasses of gin to
5 drink on that same night between three and four o'clock in
6 the afternoon.

7 Q. Okay. Was there any report of any drugs being used in
8 this case?

9 A. No, sir.

10 Q. Now, you spoke briefly with the solicitor about taking
11 a medical history of Miss Graham. Was there anything in
12 her medical history that could have affected her results
13 in this case?

14 A. No, sir.

15 Q. Now, when it comes to the medical examination itself,
16 you do something, you do kind of a fairly unique
17 examination of the skin of the person. Is that correct?

18 A. Yes, sir.

19 Q. And when you look for -- on their skin, you're looking
20 specifically if there's any bodily fluids on the skin. Is
21 that correct?

22 A. Yes, sir.

23 Q. And some of the bodily fluids that you might find
24 would be semen, in some cases?

25 A. Yes, sir.

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1 Q. Saliva, possibly?

2 A. Possibly.

3 Q. With regard to this case, and in doing your
4 investigation at the beginning, do you remember what Miss
5 Graham said about whether there was kissing involved?

6 A. She said that he kissed her on the lips.

7 Q. And you noted that on your report. Is that correct?

8 A. Yes, sir.

9 Q. You also used something called a Woods light. Would
10 you tell the jury what that is?

11 A. It is a black light that can pick up the presence of
12 numerous things, semen being one. But it also will
13 fluoresce anything that has cotton fibers in it and some
14 lotions.

15 Q. And what was the result in this case? Did you detect
16 anything with the Woods light?

17 A. No, sir. I did not.

18 Q. Can you tell the jury a little bit about what trace
19 evidence is and what it is that you look for regarding
20 trace evidence?

21 A. Trace evidence is fibers, hairs, anything that would
22 be picked up off of possibly beds, couches, animals.

23 Q. Part of what you look at as far as trace evidence is
24 so that potentially you can either include a person or
25 exclude a person. Is that correct?

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1 A. Yes, sir.

2 Q. A suspect?

3 A. Yes, sir.

4 Q. And that's important because DNA profiles could be
5 developed as a result of that trace evidence. Is that
6 correct?

7 A. Yes, sir.

8 Q. And one of the things that you look for sometimes are
9 people's head hairs?

10 A. Yes, sir.

11 Q. Okay. You look for some type of body hair from
12 someone?

13 A. Yes, sir.

14 Q. You could look for pubic hair if any were available?

15 A. Yes, sir.

16 Q. And all of that's important again because ultimately
17 that can lead to further testing to further include or
18 exclude somebody. Is that correct?

19 A. Yes, sir.

20 Q. Also you talked about fibers. Tell me a little bit
21 more about that. How could miscellaneous fibers, how
22 could --

23 A. They could -- depending on where the assault happened,
24 if there's fibers or -- for example, if there was a wooded
25 area and somebody said they were assaulted in a wooded

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1 area and they have pieces of bark on them or grass on them
2 or mud on them, they could use that to verify the
3 assailant, the assault.

4 Q. One of the things that the SLED agent that testified
5 before you talked about was fingernail scrapings. Are you
6 familiar with that test?

7 A. Yes, sir.

8 Q. And is that something that's always done in a sexual
9 assault kit?

10 A. Usually, sir. Yes.

11 Q. And would it be more likely done in instances where
12 there's an allegation of force?

13 A. If the victim stated that she had scratched --

14 Q. Or fought back in some manner?

15 A. Right.

16 Q. And what that's important for is that you hope to find
17 a suspect's DNA under the victim's nails. Is that
18 correct?

19 A. Yes, sir.

20 Q. And, again, if you yield DNA evidence that could be
21 helpful at a trial. Is that correct?

22 A. Yes, sir.

23 Q. Now, in this case, you didn't do any type of
24 collection of an oral swab of any type; did you?

25 A. Yes, I did.

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1 Q. You did do an oral swab?

2 A. Yes, sir.

3 Q. Why would an oral swab be important in the case?

4 A. If there had been penetration of the mouth with the
5 penis.

6 Q. With regard to the oral swab, is it of the interior of
7 the mouth?

8 A. It's the cheek pouches, around the gum, the gum line
9 and underneath the tongue.

10 Q. But it's in the mouth so it's in the interior?

11 A. Interior. Yes, sir.

12 Q. In this case there's an allegation that you had taken
13 in the history about kissing on the lips. Was any
14 swabbing done in this particular area?

15 A. No, sir.

16 Q. In this case you went through kind of a protocol and
17 collected all the swabs and smears that were required in
18 the SLED suspect kit, is that -- SLED victim kit. Is that
19 correct?

20 A. Yes, sir.

21 Q. And you basically do the collection and then you
22 package those things and that's all you have to do with
23 those particular items. Is that correct?

24 A. That's true. Yes.

25 Q. Part -- and probably one of the most important parts

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1 of your examination is the actual physical examination of
2 the case. Is that correct?

3 A. Yes, sir.

4 Q. And any time that you're doing that actual physical
5 examination you're noting what you find. Is that correct?

6 A. Yes, sir.

7 Q. And you really note it in two ways. One is on an
8 anatomical model. Is that right?

9 A. Yes, sir.

10 Q. The other is that you do that in writing?

11 A. Yes, sir.

12 Q. And really the written is an explanation, whatever you
13 may have checked or circled on the anatomical finding. Is
14 that correct?

15 A. Yes, sir.

16 Q. And in this particular case, you looked at five
17 distinct areas with regard to [REDACTED] [REDACTED] Is that
18 correct?

19 A. Yes, sir.

20 Q. And what you are trying to find out is to see if there
21 is anything there that has indicated that an assault has
22 occurred. Is that correct?

23 A. Yes, sir.

24 Q. Now, one of the things that's important about this
25 type of exam is the sooner that it is done the more likely

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1 that the results will be good. Is that correct?

2 A. Yes, sir.

3 Q. And in this particular case [REDACTED] came to your
4 office fairly quickly. Is that correct?

5 A. Yes, she did.

6 Q. This is not a situation where it was a day later?

7 A. No, sir.

8 Q. She had not done any of the post hygiene activities
9 that could have disturbed any of these findings. Is that
10 correct?

11 A. That's correct.

12 Q. The body over the course of time also can heal
13 itself. Is that correct?

14 A. Yes, sir.

15 Q. And so that, again, is why it's so important that
16 these are done very quickly. Would that be accurate to
17 say?

18 A. Yes, sir.

19 Q. Probably the most preferable amount of time when these
20 occur is within two hours of when a rape has been
21 reported. Would you agree with that?

22 A. Yes, sir. I would.

23 Q. And in fact [REDACTED] examination of her was within
24 a few hours of the report of this alleged assault. Is
25 that correct?

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1 A. Yes, sir.

2 Q. Now, I want to talk to you kind of specifically about
3 those five areas. First of all, you looked at the area
4 that's called the vulva. Is that correct?

5 A. Yes, it is.

6 Q. And with regard to that, you were looking specifically
7 for trauma, redness or any bruising. Is that correct?

8 A. Yes, sir.

9 Q. And did you find any of those things?

10 A. No, sir.

11 Q. And could you tell the jury anatomically kind of the
12 area of the vulva, which is, specifically what you're
13 looking at?

14 A. The part that he's talking about, the vulva, is the
15 lips of the vaginal area, both the outer part and the
16 inner part as well.

17 Q. Now, with regard to the introitus?

18 A. Yes, sir.

19 Q. Your findings were similar for that. Is that correct?

20 A. That is true.

21 Q. Again there's no bruising, no redness, no tenderness
22 noted in this particular area?

23 A. Yes, sir.

24 Q. And can you explain to the jury where we're at as far
25 as anatomical?

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1 A. The introitus is the more inner part between the
2 lips. The lips kind of protect it. It can include the
3 clitoris and what's called the posterior fore sheath.

4 Q. You also kind of examined the area known as hymen. Is
5 that correct?

6 A. That's correct.

7 Q. And again your findings in this area, no trauma, no
8 bruising, no redness. Is that correct? No trauma, no
9 redness? Is that correct?

10 A. Yes, sir.

11 Q. Can you kind of explain to the jury where that is?

12 A. Behind this beginning part of the vagina. It's the
13 little, it's like a scrunchy. It kind of opens and closes
14 to let the penis go in. It's also known in laymen's terms
15 as the cherry.

16 Q. And with regard -- you also looked at the vagina; is
17 that correct?

18 A. Yes, sir. I do.

19 Q. And the vagina in this case, you found a white
20 discharge. Is that correct?

21 A. Yes, sir.

22 Q. And that would be considered kind of a normal finding?

23 A. Yes, it would.

24 Q. And you also in this case did an exam of the anal
25 area. Is that correct?

FAY LeBOEUF - CROSS

1 A. Yes, sir.

2 Q. You didn't find any bruising there?

3 A. No, sir.

4 Q. You didn't find any trauma of any type?

5 A. No, sir.

6 Q. And you found no redness in that area?

7 A. No, sir.

8 Q. In your report you didn't note anything on the
9 anatomical model that you needed to do any further
10 examination about. Did you?

11 A. No, sir.

12 Q. In your written report you indicated there's no
13 physical signs -- there's no signs of physical trauma in
14 this case. Is that correct?

15 A. That is correct.

16 MR. SMITH: Beg the Court's indulgence, Your
17 Honor (Pause.)

18 BY MR. SMITH:

19 Q. One thing that I didn't ask you, Ms. LeBoeuf is: When
20 you're doing your basic physical examination, would you
21 also make note of any bruises or scratches or injuries to
22 her person, body? For example, on the arms on the legs or
23 anywhere that you could see any signs of physical harm?

24 A. Yes, I would.

25 Q. In this case, did you make any of those findings?

FAY LeBOEUF - REDIRECT

1 A. No, I did not.

2 Q. So you didn't see anything that would indicate
3 bruising, scratches or any type of injury on the outer
4 body?

5 A. No, sir.

6 MR. SMITH: Thank you.

7 THE COURT: Any redirect?

8 MS. SHEALY: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. SHEALY:

11 Q. Just a couple questions. You had testified about the
12 sexual assault kit. I'm showing you what's been
13 previously marked as State's 46.

14 And, Your Honor, it's my understanding there's no
15 objection to it being entered at this time.

16 MR. SMITH: No objection.

17 THE COURT: Marked and entered without objection.

18 (Thereupon, State's Exhibit No. 46, sexual
19 assault kit, was marked and received into evidence.)

20 BY MS. SHEALY:

21 Q. Is this the sexual assault kit that you prepared?

22 A. Yes, ma'am.

23 Q. Okay. Just a couple follow up questions then.

24 When Mr. Smith was asking you about your entry on the
25 form that you were filling in about at the bathroom,

FAY LeBOEUF - REDIRECT

1 standing up by the sink. That's under, what, the summary
2 of the assault. Is that correct?

3 A. Yes, ma'am.

4 Q. Do you recall whether or not Detective Antonio gave
5 you a copy of the statement [REDACTED] had given
6 before you got a chance to talk to her? Did you have an
7 opportunity to look at it?

8 A. I don't remember.

9 Q. Okay. Now, regarding on your form as to whether or
10 not the assailant used a condom, you do note that in fact
11 [REDACTED] told you he did. Is that correct?

12 A. Yes, ma'am.

13 Q. And while he's asking you about fingernail scrapings
14 if there's no allegation of scratches it becomes less
15 interesting as to the fingernail scrapings. Is that
16 correct?

17 A. That is correct.

18 Q. When I'm talking to you about the form, it's one
19 that's been approved by SLED for you to go through and
20 make various observations. Is that correct?

21 A. It's their form that they set up. Yes, ma'am.

22 Q. Okay. And regarding whether or not any coercion was
23 used, you did check that a gun was used and verbal
24 threats. Is that correct?

25 A. Yes, ma'am.

FAY LeBOEUF - REDIRECT

1 Q. Mr. Smith was asking you about your summary of what
2 [REDACTED] told you.

3 A. Yes, ma'am.

4 Q. If you would, please, read to the jury what your
5 summary was or is that she -- when she gave you her
6 description of what happened and you reported what she
7 told to you, would you read that aloud to the jury?

8 A. Yes, ma'am. My friend picked me up from McDonald's.
9 He took me to the county jail to see my people so I could
10 drop off money. He came and picked me up from the county
11 jail.

12 We went riding around. He asked me what I wanted to
13 go, go to his house and grill, grill out or go to the
14 movies. I said let's grill out and chill out for a
15 while. We went to the store, got meat, went back to his
16 house and put the meat on the grill.

17 Then we had a couple of drinks. We were talking and
18 eating. He said, I want to have sex with you. I said,
19 no, I don't want to have sex with you. I just want to go
20 home. He started getting violent with me.

21 He had my arms behind my back. He said, I want to
22 have sex with you. I said, no, I just want to go home.
23 He bent me over the chair -- he bent me over the chair,
24 over the arm, pulled my pants down, put his penis in
25 without a condom. Then he pulled it out and put the

FAY LeBOEUF - RECROSS

1 condom on.

2 He had my arms behind my back and held it there. I
3 tried to get into the living room to the door. He kept
4 putting his foot by the door so I couldn't get out. I was
5 screaming and hollering so he let me out the door.

6 I went to a neighbor's house and called the police.
7 He has my phone. He had a gun, black and silver. Every
8 time I said I wanted to go home he would pull it out and
9 try to cock it to scare me.

10 MS. SHEALY: Thank you, Ms. LeBoeuf. I have no
11 further questions.

12 THE COURT: Any objection to the witness being
13 excused?

14 MR. SMITH: Your Honor, I have one other
15 question.

16 THE COURT: You may proceed.

17 RECROSS-EXAMINATION

18 BY MR. SMITH:

19 Q. Ms. LeBoeuf, in a situation where an individual puts
20 his penis into someone without a condom on, is it more
21 likely that DNA could be found than if a condom had not
22 been used?

23 A. It is more likely. Yes, sir.

24 MR. SMITH: No other questions, Your Honor.

25 THE COURT: Any further questions from the

DAVID ARD - DIRECT

1 State?

2 MS. SHEALY: Nothing further. Thank you.

3 THE COURT: Any objection to this witness being
4 excused, from the State?

5 MS. SHEALY: No, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: No, Your Honor.

8 THE COURT: You're excused.

9 MR. STACK: State calls Mr. David Ard.

10 MS. SHEALY: Your Honor, could we approach for a
11 second?

12 THE COURT: You may.

13 (Off-the-record discussion.)

14 DAVID ARD, having been duly sworn, was examined
15 and testified as follows:

16 THE CLERK: Have a seat, please, you need to
17 speak into the microphone. State your full name and then
18 spell your last name for the record.

19 THE WITNESS: David Ard, A. R. D.

20 THE COURT: You may proceed.

21 MR. STACK: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 DIRECT EXAMINATION

24 BY MR. STACK: [start] [spell check to here]

25 Q. Good afternoon, sir. What do you do for a living?

DAVID ARD - DIRECT

1 A. I'm the general manager for Gerald's Tires and Brakes.

2 Q. And what kind of duties and responsibilities do you
3 have at Gerald's Tire?

4 A. Operating and personnel manager.

5 Q. You're a general manager?

6 A. Yes.

7 Q. Back in April of 2006, were you a general manager back
8 then?

9 A. Yes.

10 Q. Okay. Back then, did the Defendant back then work at
11 Gerald's Tires?

12 A. Yes.

13 Q. And as the general manager, do you keep the work
14 schedules for the employees?

15 A. Yes.

16 Q. The day after the incident, that is, on April 10th,
17 2006, was the Defendant scheduled to work at Gerald's
18 Tires?

19 A. Yes.

20 Q. And didn't show up for work?

21 A. No, sir.

22 Q. Did he call to explain why?

23 A. Not that I recollect.

24 Q. And then did you list him as absent and charge him
25 with a vacation day?

DAVID ARD - DIRECT

- 1 A. Yes.
- 2 Q. Okay. Was he scheduled to work on April the 11th?
- 3 A. Yes.
- 4 Q. Did he show up?
- 5 A. No, sir.
- 6 Q. Did you charge him a vacation day?
- 7 A. Yes.
- 8 Q. And the same with April 12th?
- 9 A. Yes.
- 10 Q. Did he show up?
- 11 A. No, sir.
- 12 Q. Did you charge him with a vacation day?
- 13 A. Yes.
- 14 Q. And the same with the 13th and the 14th of April, did
- 15 he show up?
- 16 A. No, sir.
- 17 Q. And did you charge him with vacation days?
- 18 A. Yes.
- 19 Q. All right. And the following week, was he scheduled
- 20 to work on the 18th, 19th and 20th of April?
- 21 A. Yes, sir.
- 22 Q. Was he -- did he show up for work?
- 23 A. No, sir.
- 24 Q. And did you charge him a vacation day or sick day?
- 25 A. Those days was sick days.

DAVID ARD - DIRECT

1 Q. And why did you change over to sick days?

2 A. He probably ran out of vacation days.

3 Q. So you already took his vacation days?

4 A. Right.

5 Q. And you charged him with sick days?

6 A. Yes, sir.

7 Q. And did the Defendant finally show up for work on

8 April 21, 2006?

9 A. That was a Friday. Yes, sir.

10 Q. And so he missed all his scheduled workdays from April

11 10th through April 21 of '06. Is that correct?

12 A. Yes, sir.

13 Q. At Gerald's Tires, how would employees normally ask
14 for time off if they needed it?

15 A. Usually fill out a vacation request form.

16 Q. A piece of paper?

17 A. Yes.

18 Q. And it's put in his file?

19 A. Yes, sir.

20 Q. Was anything in Mr. Patterson's file that indicated he

21 notified you ahead of time that he was not going to be at

22 work for those two weeks?

23 A. No, sir.

24 MR. STACK: Court's indulgence just for a moment.

25 (Pause.)

1 BY MR. STACK:

2 Q. Okay. Just summarizing. He was scheduled to work 10
3 through 14 of April. Is that correct?

4 A. I believe so. If I could see the Defendant's record,
5 I could verify that better than without looking at it.

6 MR. STACK: Approach the witness?

7 THE COURT: You may.

8 BY MR. STACK:

9 Q. So the Defendant's schedule -- was Mr. Patterson
10 scheduled to work on 10 to 14 April?

11 A. Yes, sir.

12 Q. And did he not show up?

13 A. No, sir.

14 Q. Was he scheduled to work on 18 through 20 April?

15 A. Yes, sir.

16 Q. And did he in fact show up?

17 A. No, sir.

18 MR. STACK: Thank you, Your Honor. Nothing
19 further.

20 THE COURT: Any questions for the witness?

21 MR. STIDHAM: No, Your Honor.

22 THE COURT: Any exception to the witness being
23 excused?

24 MR. STACK: No, Your Honor.

25 THE COURT: From the defense?

1 MR. STIDHAM: No, ma'am.

2 THE COURT: Sir, you're excused.

3 MR. STACK: Thank you, Mr. Ard.

4 THE COURT: Mr. Foreman, ladies and gentlemen,
5 we're going to take advantage of this break in testimony
6 to take our evening recess.

7 During the break, please do not discuss the case
8 among yourselves or with anyone else. Please do not do
9 any independent research, that is, anything that could be
10 found on the Internet. Please do not listen to or watch
11 any news media accounts on this case. It is absolutely
12 essential that you keep an open mind until you've heard
13 all of the evidence, the attorneys' closing arguments and
14 the Court's instruction on the law.

15 I would ask that you strictly comply with those
16 instructions.

17 We will resume in the morning at 9:30. Please
18 come directly to your jury room. Please leave your
19 notepads in your seats. And, again, please refrain from
20 any random conversations. We would not want an innocent
21 conversation to be observed in this courthouse.

22 Have a good evening. We'll see you in the
23 morning at 9:30.

24 (Jury exits courtroom at 5:07 p.m.)

25 THE COURT: Does the State plan to introduce any

1 record to impeach the Defendant's credibility if he were
2 to testify?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: And does the State have any
5 additional witnesses that are still listed? I have
6 Jennifer Wooley and Veronica Evans?

7 MS. SHEALY: Veronica Evans may be a reply
8 witness and Jennifer Wooley, we obviated the need for her.

9 THE COURT: I'm sorry. I could not hear you.

10 MS. SHEALY: We obviated the need for Jennifer
11 Wooly. We do not need Jennifer Wooly.

12 THE COURT: You do not have any other witnesses?

13 MS. SHEALY: We do not.

14 THE COURT: Do you still intend to call the
15 witnesses that you listed? I'm referring to the defense.

16 MR. STIDHAM: Judge, as of right now we plan
17 to --

18 THE COURT: Well, I need to know for scheduling
19 purposes whether I need to go ahead and go over my charge
20 this evening. If that's the case, then we'll need to
21 proceed with closing charge conference.

22 MR. STIDHAM: Well, Judge, all I can tell you is
23 -- yes.

24 THE COURT: Sir, if you would stand for me,
25 please, and raise your right hand to be sworn.

JUDGE'S EXAMINATION OF DEFENDANT

1 (Defendant placed under oath.)

2 THE COURT: You can put your right hand down,
3 sir. State your full name for the record.

4 THE DEFENDANT: Antonio Dieargo Patterson.

5 THE COURT: Sir, at this time I'm going to
6 explain to you certain of your rights. If you do not
7 understand anything I say, please let me know. If you
8 need me to repeat anything I say, let me know, too.

9 Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Sir, I'm advising of your right to
12 testify so that -- you will have the opportunity to
13 discuss this over the evening with your attorneys so that
14 you will be in a position to answer that question in the
15 morning.

16 I anticipate that that will be one of the first
17 things that we will have to deal with. Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Sir, we have reached the stage of the
20 trial where you may present your defense. You have the
21 right to claim the protections given to you by the Fifth
22 Amendment of the Constitution of the United States.

23 This amendment states in part that no person shall be
24 compelled in any criminal case to be a witness against
25 himself. This means that you cannot be required to

JUDGE'S EXAMINATION OF DEFENDANT

1 testify in this case. You have the right to testify in
2 your own behalf, however, no one can make you testify.

3 This is a personal right and no one can waive this
4 right except you. If you decide to testify you will be
5 subject to the same rules that govern other witnesses and
6 you may be examined and cross-examined on any relevant
7 issue in the case.

8 In addition, if you have any convictions involving
9 dishonesty or false statements or for crimes punishable by
10 imprisonment for more than one year and this Court
11 determines that the probative value of admitting this
12 evidence outweighs its prejudicial effect to you, the
13 solicitor will be able to introduce your record to attack
14 your credibility.

15 If you decide to testify, this decision on your part
16 must be made freely, voluntarily and intelligently with
17 knowledge of the protections given to you by the Fifth
18 Amendment and the consequences of your decision to
19 testify.

20 If you decide not to testify, I will instruct the jury
21 that they cannot give the fact that you did not testify
22 any consideration whatsoever. And that there is to be
23 absolutely no prejudice to you because you did not
24 testify. It is left entirely up to you whether or not you
25 want to testify. You may speak with your attorney, family

1 members, friends or others, but the final decision is left
2 entirely up to you.

3 Sir, have you understood your rights as I've just
4 explained them to you?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you have any questions about what
7 I've just explained to you?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: I'm going to give you the opportunity
10 over the evening to discuss with your attorneys whether
11 you wish to testify or not. And then we'll resume that
12 question in the morning.

13 You may take your seat.

14 THE DEFENDANT: (Complying.)

15 THE COURT: Are there any requests to charge that
16 you all need to submit? And please don't say you're going
17 to submit them in the morning because it will be too late
18 as I anticipate moving very quickly into the charge
19 conference and closing arguments in this case and I'm
20 going to be picking another jury when the jury comes in in
21 the afternoon.

22 So it's unfair to the Court to have to try to
23 contemplate something for five minutes to prepare when I
24 have the evening to read. So if you have something you
25 would like for me to consider, I'll be happy to have you

1 to present them to the Court at this time.

2 MS. SHEALY: Your Honor, I think your standard
3 charges are all that we need. I have no additional
4 requests.

5 THE COURT: Is the defense going to be asking for
6 any lesser-included offenses?

7 MR. STIDHAM: Judge, your standard charges are
8 fine with us but can we have the night to discuss with my
9 client whether or not we're going to ask for any lesser
10 included?

11 THE COURT: Uh-huh.

12 MR. STIDHAM: Okay. Thank you.

13 THE COURT: Is there anything further before we
14 break for the evening from the State?

15 MS. SHEALY: No, Your Honor.

16 THE COURT: From the defense?

17 MR. STIDHAM: No, Your Honor.

18 THE COURT: Y'all have a good evening..

19 MR. STIDHAM: Thank you.

20 MS. SHEALY: Thank you, Your Honor.

21 END OF DAY AT 5:15 P.M.

22 * * * *

23 ON WEDNESDAY, SEPTEMBER 1, 2010 AT 9:58 A.M.:

24 THE COURT: Any further witnesses or does the
25 State desire to rest?

1 MS. SHEALY: We desire to rest.

2 THE COURT: Any motions now that the State has
3 rested their case?

4 MR. STIDHAM: Yes, Your Honor. We have a motion
5 for a directed verdict.

6 THE COURT: You may proceed.

7 MR. STIDHAM: Thank you, Your Honor. We would
8 move for a directed verdict on the charge of criminal
9 sexual conduct in the first degree on the basis that the
10 State has failed to provide competent evidence tending to
11 prove the charge in the indictment.

12 There was testimony that there was no physical
13 proof from the sexual assault nurse that a rape had
14 occurred, no corroborating witnesses.

15 And as to the charge of possession of a weapon
16 during the commission of a violent crime, we also move for
17 a directed verdict on the same grounds; that there was no
18 evidence that was found at the scene of crime -- I mean,
19 of the alleged crime and no corroborating witnesses.

20 THE COURT: Does the State want to respond?

21 MR. STACK: Yes, Your Honor. The State has
22 provided evidence in terms of the testimony of the victim
23 in terms of the aggravating force of the body with the
24 arms behind her when the sexual battery occurred, it was
25 non consensual.

1 In terms of the charge for use of a firearm, the
2 State's submitted into evidence the testimony of the
3 victim that a gun was used in the course of the crime.

4 THE COURT: In a motion for directed verdict to
5 the Court, if there is any direct evidence or any
6 substantial circumstantial evidence reasonably tending to
7 prove the guilt of the accused, a directed verdict is not
8 appropriate.

9 The Court would find that there is direct
10 evidence as well as circumstantial evidence reasonably
11 tending to prove the Defendant's guilt, therefore the
12 motion is denied.

13 MR. STIDHAM: Thank you, Your Honor.

14 THE COURT: Now -- sir, please stand for me,
15 please.

16 THE DEFENDANT: (Complies.)

17 THE COURT: I'll remind you that you're still
18 under oath.

19 On yesterday, I explained to you your rights
20 regarding your right to testify and your rights against
21 self-incrimination, your right to remain silent if you
22 desire to do so, and that your silence could never be used
23 against you.

24 Have you had a full opportunity to discuss with
25 your lawyers whether you should or should not testify or

1 whether you wish to testify?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you need to speak with them any
4 more at this time?

5 THE DEFENDANT: Could I probably have a couple
6 minutes?

7 THE COURT: Absolutely. And do you have any
8 other witnesses?

9 MR. STIDHAM: Two other witnesses.

10 THE COURT: Why don't we go ahead and take those
11 witnesses? I'm going to allow the State to rest in the
12 presence of the jury. We'll go ahead and do those
13 witnesses and then we'll take a break and give you an
14 opportunity to have some more discussions with them.

15 THE DEFENDANT: Okay.

16 THE COURT: Okay. Please bring in the jury.

17 (Jury enters courtroom at 10:09 a.m.)

18 THE BAILIFF: All jurors are seated, Your Honor.

19 THE COURT: Thank you. Mr. Foreman, ladies and
20 gentlemen, I hope you all had a pleasant evening. We'll
21 now resume with the trial.

22 The State may proceed.

23 MS. SHEALY: The State would rest at this time.

24 THE COURT: You may proceed.

25 MR. STIDHAM: Thank you, Your Honor.

EMANUEL PATTERSON - DIRECT

1 THE COURT: You're welcome.

2 MR. STIDHAM: Defense calls Emanuel Patterson.

3 EMANUEL PATTERSON, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please be seated. Speak into this
6 microphone. You need to get pretty close. Say your full
7 name and then spell your last name.

8 THE WITNESS: Emanuel Patterson, P. A. T. T. E.
9 R. S. O. N.

10 THE COURT: You may proceed.

11 MR. STIDHAM: Thank you. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. STIDHAM:

16 Q. Good morning, Emanuel. How are you doing?

17 A. All right.

18 Q. I notice you're kind of soft spoken, so please
19 concentrate on speaking right into that microphone loud
20 enough so that everybody can hear. Okay?

21 A. Okay.

22 Q. Emanuel, how old are you?

23 A. Nineteen.

24 Q. And who do you live with?

25 A. My mom.

EMANUEL PATTERSON - DIRECT

1 Q. And are you from Charleston?

2 A. Yes, sir.

3 Q. Where did you go to high school?

4 A. Burke High.

5 Q. And do you remember April 9th, 2006?

6 A. Yes, sir.

7 Q. Where were you that day?

8 A. At [REDACTED] Orrs Court.

9 Q. And whose house is that?

10 A. My grandparents.

11 Q. So, how are you related to Tony?

12 A. He's my uncle.

13 Q. So if you're 19 now, how old were you in 2006? You
14 would have been --

15 A. About 14, 15.

16 Q. Do you know [REDACTED]

17 A. No, I don't know her. I seen her but --

18 Q. But you know who she is?

19 A. Yeah. I know who she is.

20 Q. What time did you get to [REDACTED] Orrs Court that day?

21 A. About the afternoon.

22 Q. Okay. And did you see [REDACTED] there?

23 A. Yes, sir.

24 Q. Was the front door open?

25 A. Yes, sir.

EMANUEL PATTERSON - DIRECT

1 Q. What were you doing there?

2 A. We was having a cookout.

3 Q. Okay. Who was at the cookout?

4 A. It was me, Tony, Tiffany, Timothy, DeWayne, my mom, my
5 auntie came later on that day.

6 Q. Okay. Who's Timothy?

7 A. My uncle.

8 Q. Who's DeWayne?

9 A. My uncle.

10 Q. You said your mother and your aunt?

11 A. Yeah. Came later on that day.

12 Q. Can you describe where the food was being prepared?

13 A. In the kitchen.

14 Q. Was there anywhere else?

15 A. On the grill.

16 Q. Okay. And who was doing the cooking?

17 A. DeWayne.

18 Q. Where was DeWayne cooking?

19 A. On the front yard on the grill.

20 Q. Who was preparing the food in the kitchen?

21 A. Me, Timothy, Tony, Tiffany.

22 Q. So is it fair to say that people were moving back and
23 forth?

24 A. Moving back and forth, yes.

25 Q. Is it fair to say that the -- did you ever see any

EMANUEL PATTERSON - DIRECT

1 doors closed in the house?

2 A. No, sir.

3 Q. Now you're familiar with [REDACTED] Orrs Court. Right?

4 A. Yes, sir. Born and raised.

5 Q. Okay. So the room that is directly behind the
6 kitchen, not the bathroom but the room, the other room?

7 A. Yes, sir.

8 Q. Whose room is that?

9 A. My grandparents.

10 Q. Okay. And when did your grandmother pass away?

11 A. July 17th, '05, 2005.

12 Q. So prior to this day?

13 A. Yes, sir.

14 Q. After she passed, was that door kept locked?

15 A. Always. We wasn't allowed to go in there.

16 Q. Was there any loud music playing that day?

17 A. No, sir.

18 Q. So you say you were born and raised in the house. Is
19 that correct?

20 A. Yes, sir.

21 Q. Okay. Emanuel, if anybody was yelling at the top of
22 their lungs anywhere in that house, is it possible that
23 you couldn't have heard it from the outside?

24 A. No, you could hear. You could hear if somebody was
25 screaming.

EMANUEL PATTERSON - CROSS

1 Q. Is it safe to say that the walls are thin?

2 A. Yeah.

3 Q. Have you ever seen DeWayne -- excuse me. Have you
4 ever seen Tony with a gun?

5 A. No, sir.

6 Q. Have you ever seen a gun at that house?

7 A. No, sir.

8 Q. Did Tony ever tell you to leave that house?

9 A. No, sir.

10 Q. Did you see Tiffany leave?

11 A. Yes, sir. Like, five minutes after I came out the
12 door she left..

13 Q. Can you describe her as she was leaving?

14 A. Like, we were all outside and by the grill and she
15 just came, walked out the door and went around the corner.

16 Q. Did anybody follow her?

17 A. No, sir.

18 MR. STIDHAM: Court's indulgence one moment, Your
19 Honor. (Pause.)

20 All right. Emanuel, that's all the questions I
21 have. Please answer any questions that the solicitor may
22 have.

23 THE WITNESS: Okay.

24 THE COURT: Any cross-examination?

25 MS. SHEALY: Yes, sir.

EMANUEL PATTERSON - CROSS

1 THE COURT: You may proceed..

2 MS. SHEALY: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 CROSS-EXAMINATION

5 BY MS. SHEALY:

6 Q. Mr. Patterson, tell me how many uncles you have.

7 You've got Timothy, Emanuel (sic). Who's your daddy?

8 A. My mama is their sister.

9 Q. Is their sister?

10 A. Yes.

11 Q. And is there a brother named Leroy?

12 A. Yes.

13 Q. Okay. So how many uncles do you have all together?

14 A. Four.

15 Q. Your mom is the sister. Is there another sister?

16 A. Yeah.

17 Q. What's her name?

18 A. Colleen.

19 Q. So you've got four uncles and two aunts?

20 A. No, no.

21 Q. I'm sorry. Four uncles and an aunt in this family?

22 A. Yeah.

23 Q. And Tony is Emanuel's and Leroy's and --

24 A. I'm Emanuel.

25 Q. I'm sorry. I'm sorry. Okay. I'm getting names mixed

EMANUEL PATTERSON - CROSS

1 up. Okay. Timothy, Leroy, Tony --

2 A. And DeWayne.

3 Q. -- and DeWayne are all brothers?

4 A. Yes, ma'am.

5 Q. And you said that you grew up in this house. Is that
6 correct?

7 A. Yes, ma'am.

8 Q. So those brothers stick together. Is that fair to
9 say? They're tight?

10 A. Yeah.

11 Q. They're close?

12 A. Yes, ma'am.

13 Q. And your granddaddy is still alive. Is that right?

14 A. Yes, ma'am.

15 Q. And that -- your uncles and your mom and your aunt and
16 your granddaddy wanted you to come in here to try to help
17 Tony today. Didn't they?

18 A. No, ma'am.

19 Q. They didn't ask you to come here to try to help Tony?

20 A. No, I came -- I came because I know what happened that
21 day. So I came -- they didn't tell me nothing. I just
22 came because I know -- I was there that day.

23 Q. Okay.

24 A. They told me Tony was going to court so I came to
25 court because I was there.

EMANUEL PATTERSON - CROSS

1 Q. Your family's worried about Tony being in court.

2 Aren't they?

3 A. Yes, ma'am.

4 Q. Now the house that you said you grew up in, let me
5 show you a couple of photographs. (Pause.)

6 Let me show you two photographs and ask you if you can
7 tell us which bedroom in the house are depicted in these
8 two photographs.

9 A. (No response.)

10 Q. Well, let me show you a couple other angles from that
11 room.

12 Beg the Court's indulgence just a moment. (Pause.)
13 While we're looking for those photographs, I'll move
14 along.

15 You don't recall which room that is?

16 A. No, ma'am.

17 Q. Okay. Now, you told us that there was some people who
18 came to the cookout later than others. Is that right?

19 A. Yes.

20 Q. Were people calling other family members and saying,
21 we're cooking out, come over. Is that kind of how it
22 worked?

23 A. Yeah.

24 Q. Okay. And tell me who all, again, was in the kitchen
25 cooking?

EMANUEL PATTERSON - CROSS

1 A. It was -- well, DeWayne was boiling the food but --

2 Q. Who was?

3 A. DeWayne.

4 Q. DeWayne was boiling food?

5 A. Yeah. He was back and forth, back and forth in the
6 house. And he was seasoning the food, you know, making up
7 hamburgers, stuff like that.

8 Q. Making hamburgers?

9 A. Yeah.

10 Q. But weren't there ribs and chicken?

11 A. Yeah. Ribs. Yeah. Everything. Seasoning and
12 everything.

13 Q. And you're saying that you and DeWayne and Timmy and
14 Tony and Tiffany were all handling the food in the
15 kitchen?

16 A. Yeah. Together.

17 Q. Together?

18 A. Uh-huh.

19 Q. In that small kitchen?

20 A. Yes, ma'am. We was back and forth. We was back and
21 forth.

22 Q. Now, you told us that you went out the door and five
23 minutes later Tiffany came out of the door. Is that
24 correct?

25 A. Yes, ma'am.

EMANUEL PATTERSON - CROSS

1 Q. So there's no question that Tiffany was inside with
2 Tony for five minutes after you came out. Is that
3 correct?

4 A. No. She was -- all of us was in the kitchen. And we
5 came outside and, like, five, five minutes later she just
6 left out the house and went around the corner and we,
7 like, five or 10 minutes after that when the cops came,
8 the police.

9 Q. Emanuel, the family members were kind of spilling into
10 the area near the grill. Is that right?

11 A. Yeah.

12 Q. Hanging out outside, talking?

13 A. Yeah.

14 Q. And cooking?

15 A. And in the house and outside.

16 Q. Okay. And you looked over at the Defendant's table
17 when you say, in the house. They were outside hanging
18 out. Is that correct?

19 A. And in the house.

20 Q. Okay. And isn't it true, though, that Tony and
21 Tiffany, they were staying inside?

22 A. No. They was back and forth, too.

23 Q. They were back and forth?

24 A. Uh-huh.

25 Q. They didn't eat their food back in the kitchen by

EMANUEL PATTERSON - CROSS

1 themselves?

2 A. They probably ate their food in the kitchen but, I
3 mean, they be back and forth outside, too.

4 Q. Emanuel, tell the jury if would you, Tony loses his
5 temper that day in the house. Does he not?

6 A. No.

7 Q. And tells you to get outside?

8 A. No, he didn't.

9 Q. Who's the other kid that was over there that day?
10 Is that your cousin?

11 A. My brother.

12 Q. What brother?

13 A. Samuel.

14 Q. Samuel is over there, too?

15 A. Yeah.

16 Q. Did he tell you all to get out of the house?

17 A. No, he didn't.

18 Q. Didn't he tell you he wanted some private time?

19 A. No.

20 Q. But you go out of the house and five minutes later
21 Tiffany comes out. Is that correct?

22 A. Yes. He didn't tell me to get out the house.

23 Q. Emanuel, when you came out of the house are you saying
24 she just kind of calmly walked away from the whole event?

25 A. Right.

EMANUEL PATTERSON - CROSS

1 Q. Like nothing had happened?

2 A. Yes.

3 Q. No tears?

4 A. Nothing.

5 Q. No hysteria?

6 A. No, ma'am.

7 Q. No crying?

8 A. No, ma'am.

9 Q. She just walks away from the cookout. Did she stop
10 and tell everybody she had a good time, thanks for
11 inviting me?

12 A. She just walked away.

13 Q. She just walked away?

14 A. Yes, ma'am.

15 Q. Wasn't that family sweating bullets when she ran out
16 of that house from Tony?

17 A. No, ma'am.

18 Q. Weren't you all worried to death about what Tony had
19 done?

20 A. No, ma'am.

21 Q. Tell us Emanuel.

22 A. No.

23 Q. Y'all were scared to death. Was it your mother or
24 your aunt who followed behind her?

25 A. It was nobody followed her.

EMANUEL PATTERSON - CROSS

1 Q. What about DeWayne?

2 A. No, he didn't.

3 Q. They didn't follow behind her?

4 A. Tiffany left out, everybody was still in the yard.

5 Q. Everybody was still in the yard until Tony left out?

6 A. I didn't even see what Tony did.

7 Q. Well tell me about that. You told us that Tiffany
8 just kind of calmly leaves that house, walks down the
9 street, doesn't tell anybody bye. But then, when is it
10 that Tony leaves that house? You don't think he left?

11 A. I didn't even see when Tony left.

12 Q. You didn't see him high-tail it out of there?

13 A. No, ma'am.

14 Q. You all weren't talking about it?

15 A. No, ma'am.

16 Q. You saw the police come. Did you not?

17 A. I saw the police, yeah.

18 Q. You were still --

19 A. We were still -- all of us was still there.

20 Q. Well then, tell the jury where was Tony Patterson when
21 the police showed up.

22 A. I have no idea.

23 Q. He wasn't there, was he, Emanuel?

24 A. He wasn't.

25 Q. He got the heck out of there. Did he not?

EMANUEL PATTERSON - CROSS

1 A. I don't know if he was still in the house. I didn't
2 go in the house. I don't know.

3 Q. What did you do when the police came?

4 A. Sat right there in the yard.

5 Q. Just sat there?

6 A. Yeah. I was standing up while they was talking.

7 Q. Well, weren't you curious as to what was going on?

8 A. I mean, we was trying to figure out what was going on.

9 Q. You were trying to figure it out?

10 A. Yes, ma'am.

11 Q. But Tony Patterson wasn't there. Was he?

12 A. I don't know.

13 Q. But you can tell us that Tiffany calmly left but you
14 can't tell us when your uncle left, when he left, how he
15 left?

16 A. I couldn't tell you. Nobody saw him left the house.
17 I would have told you that he left.

18 Q. So is it your position that he stayed there, talked to
19 the police?

20 A. I don't know. I don't know if he talked to the police
21 over there. I was there but I didn't see, but when he --
22 when the police came they wasn't even there. They just
23 came and filed. As a matter of fact, when they came they
24 was talking to her at first. Then they came -- because
25 she was on the phone then when they came in the house. I

EMANUEL PATTERSON - CROSS

1 was only 14. I don't know, you know, what they was
2 saying, but I mean --

3 Q. Were they looking for Tony? Do you remember if they
4 were looking for Tony?

5 A. I don't remember. I don't remember.

6 Q. You don't remember if the police were looking for
7 Tony?

8 A. No.

9 Q. Now when you saw the police talking to Tiffany down
10 the street, was she still calm?

11 A. Yeah, just like talking to her. She wasn't fussing or
12 crying or nothing. She just --

13 Q. Just calmly talking to the police?

14 A. Uh-huh.

15 Q. Standing out there, calm, just telling them why she
16 left the party?

17 A. Yeah.

18 Q. That's your position? How familiar are you with the
19 upstairs of that house?

20 A. Familiar.

21 Q. Okay. Let me ask you: If this house that you grew up
22 in, you could tell me -- Your Honor, I think we have a
23 matter of law.

24 THE COURT: Please approach.

25 (Off-the-record discussion.)

EMANUEL PATTERSON - CROSS

1 THE COURT: I have a matter to take up with the
2 attorneys. It will be very brief. Please go with the
3 bailiffs and do not discuss the case and leave your
4 notepads on your seats.

5 (Jury exits courtroom at 10:34 a.m.)

6 MS. SHEALY: I'll hand you this, Judge.

7 THE COURT: Yes.

8 MS. SHEALY: Your Honor, may we ask that the
9 witness be excused during this argument?

10 THE COURT: If there's going to be argument.

11 (Pause.)

12 THE COURT: Where's the other picture, not --

13 MS. SHEALY: The other pictures that I wish to
14 put into evidence?

15 THE COURT: Uh-huh.

16 (Pause.)

17 THE COURT: Counsel, approach, please.

18 (Off-the-record discussion.)

19 THE COURT: Bring in the witness. Bring in the
20 jury, please.

21 (Jury enters courtroom at 10:37 a.m.)

22 THE BAILIFF: All jurors are present.

23 THE COURT: You may proceed.

24 MR. STIDHAM: Thank you, Your Honor.

25 THE COURT: You're welcome.

EMANUEL PATTERSON - CROSS

1 BY MS. SHEALY:

2 Q. Mr. Patterson?

3 A. Yes, ma'am.

4 Q. There's a front room, a kitchen, a back living room
5 and then your grandfather's bedroom downstairs. Is that
6 right?

7 A. Yes, ma'am.

8 Q. And then upstairs are how many bedrooms?

9 A. Three.

10 Q. Three. And let me ask you if you can identify these
11 photographs.

12 THE COURT: You need to lay the appropriate
13 foundation for these questions, how often he'd been to the
14 residence.

15 MS. SHEALY: Okay.

16 BY MS. SHEALY:

17 Q. Mr. Patterson, you told us that you grew up at that
18 house?

19 A. Uh-huh. Yes.

20 Q. What does that mean? Does that mean you actually
21 lived there or you were over there a lot?

22 A. Yeah.

23 Q. You used to live there?

24 A. Yeah.

25 Q. How long did you live there?

EMANUEL PATTERSON - CROSS

1 A. Well, really ever since, probably, like, 13, 14,
2 something like that.

3 Q. Okay. And -- but you live with your mother somewhere
4 else now. Is that correct?

5 A. Yeah.

6 Q. Well, back in April of 2006, how often were you going
7 over there, would you say?

8 A. Like, probably mostly every other day.

9 Q. Every other day?

10 A. Yeah.

11 Q. Are you pretty familiar with the upstairs of the house
12 then?

13 A. Yes, ma'am.

14 Q. And there's bedrooms upstairs?

15 A. Yes, ma'am.

16 Q. You're familiar with that and the bathroom upstairs.
17 Is that correct?

18 A. Yes, ma'am.

19 Q. Your Honor, I would now ask him if he can identify
20 these photographs.

21 Could you tell the jury whether or not you can
22 identify these photographs? Which rooms they're in, if
23 you can.

24 A. Yes, ma'am.

25 MS. SHEALY: Your Honor, at this time I would

EMANUEL PATTERSON - CROSS

1 offer these into evidence.

2 THE COURT: ID.

3 (Thereupon, State's Exhibit No. 60, photograph,
4 was marked for evidence as ID only.)

5 BY MS. SHEALY:

6 Q. Okay. Now, I can show you then what has been
7 previously marked as State's Exhibit 61. Could you tell
8 the jury what room that is?

9 A. The front room.

10 Q. The front room?

11 A. Yeah.

12 Q. Who all was living at that house back in April, do you
13 remember, of 2006?

14 A. It was Timothy and Tony.

15 Q. Tony and Timothy?

16 A. Yeah.

17 Q. And when you say the front room, when you go up the
18 stairs, when you get to the top of the stairs --

19 A. Yes, ma'am.

20 Q. -- which way do you turn to see that room?

21 A. Left.

22 Q. Okay. I'm having problems with these pictures today.
23 Hang on just a second. (Pause.)

24 I'm showing you State's Exhibit Number Five. Just a
25 second. We'll have it lit up behind you.

EMANUEL PATTERSON - CROSS

1 Can you turn around, please, Mr. Patterson?

2 A. (Complies.)

3 Q. Do you see the stairs?

4 A. Yes.

5 Q. And when you go up the stairs, you're telling us --

6 which way would you turn to see that bedroom?

7 A. Left.

8 Q. Which way?

9 A. Well, right. Right. Right.

10 Q. Let me show you State's Exhibit 19. Does that help

11 you point out to us where that bedroom is, which way you

12 would go to get to that bedroom?

13 A. No, ma'am.

14 Q. Can you get your bearings or can you -- you can't get

15 your bearings there?

16 A. No.

17 Q. Well, it's an upstairs bedroom. Is that correct?

18 A. Yes, ma'am.

19 Q. And the day of the cookout, were you going upstairs

20 some, too?

21 A. Not that I can remember.

22 Q. Okay. When you usually go over there, were you there

23 on every other day or something?

24 A. I don't go upstairs.

25 Q. You don't go upstairs?

EMANUEL PATTERSON - CROSS

1 A. No, ma'am.

2 Q. But you know that bedroom's upstairs. Right?

3 A. Yes, ma'am.

4 MS. SHEALY: Your Honor, at this time I would
5 move to put the photograph in.

6 THE COURT: I marked it for ID only. We'll deal
7 with it later.

8 MS. SHEALY: Okay. Very well.

9 BY MS. SHEALY:

10 Q. Now, Emanuel, I just want to make sure that I
11 understand your testimony then. Oh. First of all, let's
12 go back to one other room real quick and this may help
13 you.

14 I'm showing you State's Exhibit 62. This was not in
15 evidence yet.

16 It's State's 50 and 51. I just want to ask you
17 whether you can tell us which room that is. Are you
18 familiar with that room upstairs?

19 A. Which, this one?

20 Q. Yes.

21 A. Yeah, I know where this one is --

22 MR. STIDHAM: Excuse me. Can I see those?

23 MS. SHEALY: Yes.

24 MR. STIDHAM: (Reviewing exhibits.)

25 BY MS. SHEALY:

EMANUEL PATTERSON - CROSS

1 Q. I'm sorry. Now, what were you saying? Are those
2 photographs of the same room?

3 A. No.

4 Q. Those aren't the same room? Okay. Well, tell us
5 then -- State's Exhibit 62. If you can tell me which room
6 that is, and where it's located in the house.

7 A. I don't know about this one, but this one here --

8 THE COURT: You need to speak up a little bit,
9 please, sir. Speak directly into the mic.

10 THE WITNESS: I don't know about this one, but
11 this is the middle room right here.

12 BY MS. SHEALY:

13 Q. The middle room upstairs?

14 A. Yes.

15 Q. And that's State's 62?

16 A. Yes, ma'am.

17 Q. State's 62?

18 A. Yes, ma'am.

19 MS. SHEALY: Your Honor, I would offer this in at
20 this time.

21 THE COURT: Any objection?

22 MR. STIDHAM: Relevance, Judge.

23 THE COURT: Overruled. Marked and admitted.

24 (Thereupon, State's Exhibit No. 62, photograph,
25 was received into evidence.)

EMANUEL PATTERSON - CROSS

1 BY MS. SHEALY:

2 Q. Just so the jury can see, Mr. Patterson. Look behind
3 you again for me.

4 A. (Complies.)

5 Q. State's Exhibit 62 is this royal blue room. Is that
6 correct?

7 A. Yes, ma'am.

8 Q. Okay. So, again, as I understand your testimony, you
9 left the house and Tony and Tiffany were still in the
10 house when you left. Is that correct?

11 A. How you know I left the house?

12 Q. You told me us that you left out of the house, and
13 five minutes later Tiffany came out, and Tony was in the
14 house and Tiffany was in the house. Is that correct?
15 When you left.

16 A. No. Tiffany came out the house -- yeah, Tony was
17 still in the house.

18 Q. Still in the house?

19 A. Yeah.

20 Q. And it's your testimony as Mr. Patterson's nephew --

21 A. Yeah.

22 Q. -- that [REDACTED] came out of that house calm,
23 cool and collected?

24 A. Yes, ma'am.

25 Q. Just walked down the street?

EMANUEL PATTERSON - CROSS

1 A. Yes, ma'am.

2 Q. Nothing's suspicious to any of y'all?

3 A. No, ma'am.

4 Q. And that when you saw her talking to a police officer
5 again, she was calm, cool and collected?

6 A. Yes, ma'am.

7 Q. And you don't know what happened to Tony that
8 afternoon?

9 A. No, ma'am.

10 Q. You remember him being missing a good five, six, seven
11 days after this?

12 A. No, ma'am.

13 Q. You don't remember him being missing? He was right
14 back at Orrs Court?

15 A. I don't -- I don't -- after that I didn't come there
16 for a while.

17 Q. Why didn't you?

18 A. Because I was, like, I been to school. We'd been on
19 spring break, then I started school back over there.

20 Q. Yeah, but you told us that every other day you'd be
21 over at Orrs Court?

22 A. Yeah.

23 Q. But after Tiffany calmly walked out of that house, you
24 weren't back over there for a while. Is that correct?

25 A. Not a while but a couple of days. Not a long time.

1 Q. Okay. Well, when you do go back over, is there Tony
2 Patterson there?

3 A. I can't remember.

4 Q. Do you remember your granddaddy and your uncles
5 wondering where Tony was?

6 A. No, ma'am.

7 Q. Do you remember them wanting him to come home?

8 A. No, ma'am.

9 Q. Did you know he was on the run?

10 A. No, ma'am.

11 Q. Did you know he didn't show up for work five, six,
12 seven days in a row?

13 A. No, ma'am. I was in school.

14 Q. Okay. So really all that you do know is how calm
15 Tiffany was?

16 A. Yes, ma'am. That's all I know.

17 Q. That's all you know?

18 A. Yes, ma'am.

19 Q. Okay. Thank you very much.

20 THE COURT: Any redirect for the witness?

21 MR. STIDHAM: No, ma'am.

22 THE COURT: Any objection to the witness being
23 excused, from the State?

24 MS. SHEALY: No, Your Honor.

25 THE COURT: From the defense?

TIMOTHY PATTERSON - DIRECT

1 MR. STIDHAM: No, Your Honor.

2 THE COURT: Sir, you're excused. Counsel,
3 approach.

4 (Off-the-record discussion.)

5 THE COURT: Defense may proceed.

6 MR. STIDHAM: Thank you, Your Honor. Defense
7 calls Timothy Patterson.

8 TIMOTHY PATTERSON, having been duly sworn, was
9 examined and testified as follows:

10 THE CLERK: State your full name and then spell
11 your last name for the record.

12 THE WITNESS: Timothy Patterson, P. A. T. T. E.
13 R. S. O. N.

14 THE COURT: You may proceed.

15 MR. STIDHAM: Thank you, Your Honor. May it
16 please the Court.

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. STIDHAM:

20 Q. Good morning, Timothy. How are you doing?

21 A. Fine.

22 Q. Timothy, how old are you?

23 A. Thirty-three.

24 Q. And, how long have you lived in Charleston?

25 A. All my life.

TIMOTHY PATTERSON - DIRECT

1 Q. Where did you go to high school?

2 A. Burke High School.

3 Q. Do you have a job?

4 A. Yes, I do.

5 Q. Where do you work?

6 A. Gerald's Tires and Brakes.

7 Q. How long have you worked there?

8 A. Five and a half years.

9 Q. What do you do there?

10 A. I'm the assistant tire manager.

11 Q. Timothy, do you remember April 9th, 2006?

12 A. Yes.

13 Q. Where were you living?

14 A. ■ Orrs Court.

15 Q. And whose house were you living in?

16 A. My parents.

17 Q. Are you aware that there was a cookout there?

18 A. Yes, I was.

19 Q. Were you at that cookout?

20 A. Yes, I was.

21 Q. Who else was at the cookout?

22 A. My other two brothers, Antonio and DeWayne, and my

23 nephew, Emanuel, my sister, but she was back and forth

24 because she drive cab, and a couple of my friends were

25 there.

TIMOTHY PATTERSON - DIRECT

1 Q. Which sister?

2 A. Pamela.

3 Q. Okay. And are you aware who [REDACTED] is?

4 A. Yes.

5 Q. What time would you say that Tiffany arrived at the
6 house? Do you remember?

7 A. I think it was closer like noontime.

8 Q. And how do you know Tiffany?

9 A. She used to talk to one of my best friends and I saw
10 her talking to one of my cousins, so --

11 Q. Okay.

12 A. -- I knew her for a while.

13 Q. Okay. The day of the cookout, was the front door
14 closed?

15 A. No, it wasn't.

16 Q. Were you drinking any alcohol that day?

17 A. No. I don't drink alcohol.

18 Q. So, do you remember things clearly?

19 A. Yes, I do.

20 Q. What about -- you said the front door was open. Was
21 the back door -- I mean, excuse me. By the back door, I
22 mean the kitchen. Behind the kitchen there's a back room
23 and then there's another room. Whose room is that?

24 A. It was my parents' room. And they always kept those
25 locked off. She didn't want her going through her

TIMOTHY PATTERSON - DIRECT

1 property.

2 Q. Who's she?

3 A. My mom's.

4 Q. And when did she pass away?

5 A. She passed away in '05 and my dad just pretty much was
6 back and forth. So we used to keep that part just locked
7 down.

8 Q. So was anybody in that room --

9 A. No.

10 Q. -- during the cookout? Can you describe where you
11 were during the cookout?

12 A. I was right by the front door because we had the grill
13 right by the porch step and we was right there grilling
14 and we came, going back and forth from the house because
15 we had meat on the stove. And we had to come back and
16 forth from the house and get the meat and carry it on the
17 grill.

18 Q. So who was cooking?

19 A. My other brother, DeWayne.

20 Q. And where was he cooking?

21 A. He was grilling right by the porch.

22 Q. So is it fair to say that several people were in and
23 out of the house during the whole cookout?

24 A. Yes, sir.

25 Q. Did you see Tony and Tiffany together that day?

TIMOTHY PATTERSON - DIRECT

1 A. Yes.

2 Q. Did you ever hear them argue?

3 A. No.

4 Q. Did you ever hear Tiffany scream?

5 A. No.

6 Q. Was there any loud music playing?

7 A. No, there wasn't.

8 Q. Is it possible that somebody could stand in that house
9 and scream at the top of their lungs and you couldn't hear
10 it?

11 A. No, it wasn't.

12 Q. Do you ever see DeWayne with a gun -- excuse me, Tony
13 with a gun. Did you ever see Tony with a gun?

14 A. No.

15 Q. You never saw Tony with a gun that day?

16 A. No, I didn't.

17 Q. Did you see Tiffany leave the house that day?

18 A. Yes.

19 Q. What happened? Can you describe how she appeared?

20 A. She was standing off the side. She walked off the
21 side, off the porch and walked around the corner. I mean,
22 I didn't see her. She just walked out the house, walked
23 out the door.

24 Q. Did anybody follow her?

25 A. No.

TIMOTHY PATTERSON - CROSS

1 MR. STIDHAM: Court's indulgence just one
2 moment.

3 THE COURT: Uh-huh.

4 (Pause.)

5 MR. STIDHAM: Timothy, that's all the questions I
6 have for you. Please answer any questions that the
7 solicitor may have.

8 THE COURT: Any cross-examination of the
9 witness?

10 MS. SHEALY: Yes, Your Honor.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Patterson, were you living at the house at that
15 time?

16 A. Yes, I was.

17 Q. What color was your bedroom?

18 A. I don't recall what color it was. Walls was blue.

19 Q. The walls were blue?

20 A. Yeah, I believe so.

21 Q. And you said you were actually living there?

22 A. Yes.

23 Q. Had you lived there since you were a child?

24 A. Yes.

25 Q. Okay. Now, showing you two photographs. Let me ask

TIMOTHY PATTERSON - CROSS

1 you if that's your bedroom. What bedroom is that?

2 A. I can't say.

3 Q. You need to talk into the microphone for us.

4 A. I can't tell really. Can't really tell.

5 Q. You can't tell what bedroom this is in your house?

6 A. I think it was the back room, but I can't really tell.

7 Q. The back room?

8 A. Yeah.

9 THE COURT: Make sure you're identifying the
10 number of the photograph.

11 MS. SHEALY: Yes, Your Honor.

12 BY MS. SHEALY:

13 Q. And these are photographs that have been marked at
14 this point just for ID purposes, 51 and 50.

15 So is that your -- you're saying that's your father
16 and mother's bedroom?

17 A. No. That look like one of the rooms upstairs.

18 Q. One of the rooms upstairs?

19 A. Yeah.

20 MS. SHEALY: Your Honor, I would offer these at
21 this time.

22 THE COURT: Please approach.

23 (Off-the-record discussion.)

24 (Thereupon, State's Exhibits No. 50 and 51,

25 photographs, were received into evidence.)

TIMOTHY PATTERSON - CROSS

1 BY MS. SHEALY:

2 Q. Mr. Patterson, I'm showing you what's now been marked
3 as State's Exhibit 51 and 50. Mr. Stidham asked you
4 whether Tony had ever owned a gun. Is that correct?

5 A. Yes.

6 Q. Do you see in that photograph a box of Winchester
7 bullets?

8 A. Yes.

9 Q. So you would agree that this is a box of Winchester
10 bullets?

11 A. Yes.

12 Q. And this bedroom is upstairs. Is that correct?

13 A. Yes.

14 Q. Would you -- could point that out to the jury? Where
15 is this room in relationship to Tony's room?

16 A. I -- I guess that was his room. I'm not sure because
17 he just -- I had the front room and he just started back
18 living there, so.

19 Q. So you don't know which room he was primarily in?

20 A. Yeah. He was pretty like much in the whole house,
21 sleeping downstairs.

22 Q. Okay. Now, can you identify for us in that
23 photograph -- it's hard to tell with the lighting, but the
24 jury will have these photographs back with them. Where is
25 that box of Winchester bullets? Do you see them?

TIMOTHY PATTERSON - CROSS

1 A. Right there.

2 Q. Okay. And then that was upstairs in one of the rooms
3 that Tony may have been staying in. Is that correct?

4 A. Yeah. Could have been.

5 Q. Okay. And, showing you what's been previously marked
6 as 61, is this your bedroom?

7 A. Yes.

8 Q. That's your bedroom?

9 A. Uh-huh.

10 MS. SHEALY: May we approach for one moment, Your
11 Honor?

12 THE COURT: You may.

13 (Off-the-record discussion.)

14 (Thereupon, State's Exhibits No. 61, photograph,
15 was received into evidence.)

16 BY MS. SHEALY:

17 Q. Okay. Mr. Patterson, Exhibit 61 then is your room.
18 Is that correct?

19 A. Yes.

20 Q. Let's show the jury that real quick. And I guess
21 those are red walls, maybe. It's sort of hard to tell
22 with the lighting.

23 A. Yeah.

24 Q. You need to -- I'll ask you if you will speak up.

25 A. Yes.

TIMOTHY PATTERSON - CROSS

1 Q. Okay. Very well. Now, showing you what's been marked
2 for ID only, State's Exhibit 53. Could you tell me what
3 that's a picture of?

4 A. Condom.

5 Q. Excuse me?

6 A. Condoms.

7 Q. A box of condoms?

8 A. Yeah.

9 Q. And those were upstairs. Is that correct?

10 A. Yes.

11 Q. Now, do you remember talking to Detective Lisa Altine?

12 A. I don't know her name, but I -- a detective came to my
13 job, yes.

14 Q. And that's at Gerald's Tires?

15 A. Yes.

16 Q. So you and Tony were working there together for a
17 while. Is that correct?

18 A. Yes.

19 Q. Now, you know, do you not, that the Monday, Tuesday,
20 Wednesday, Thursday, Friday, after the incident, Tony
21 didn't show up for work. Did he?

22 A. No.

23 Q. Lisa Altine was looking for him. Is that correct?

24 A. Yes.

25 Q. She talked to you about where he would be. Tell the

TIMOTHY PATTERSON - CROSS

1 jury, did you know where your brother was?

2 A. No, I didn't.

3 Q. Did you tell the police officer you didn't know where
4 he was?

5 A. Yes, I did.

6 Q. Did you tell the police officer your father didn't
7 know where he was?

8 A. I didn't tell her that.

9 Q. You don't remember telling her that?

10 A. No.

11 Q. Did you tell her that your father had tried to call
12 Mr. Patterson and get him to come home but he wouldn't?

13 A. I don't remember telling her that.

14 Q. You don't remember telling her that?

15 A. Huh-uh.

16 Q. Okay. But you do remember talking to her and that
17 would have been on April 14th, 2006, at Gerald's?

18 A. Yeah. In the office at Gerald's they said that they
19 called.

20 Q. I'm sorry?

21 A. They said that they had called. They was asking me
22 all kind of questions.

23 Q. Okay. And you told her you hadn't seen Tony?

24 A. Yes.

25 Q. Even though you and Tony had been living together?

TIMOTHY PATTERSON - REDIRECT

1 A. Yes, but he wasn't at the house at that time.

2 Q. And you and Tony had been working together?

3 A. Yes.

4 Q. But Tony was nowhere to be found?

5 A. No.

6 Q. And you're telling this jury, as Tony's brother, that
7 when [REDACTED] left that house that day she was fine?

8 A. Yes.

9 Q. Calm?

10 A. Yes.

11 Q. Cool?

12 A. Uh-huh.

13 Q. Collected?

14 A. Yes.

15 Q. Just going for a stroll?

16 A. Yes. She just walked out the house and walked down
17 the street.

18 Q. Did she skip?

19 A. No.

20 MS. SHEALY: Beg the Court's indulgence.

21 (Pause.) I have no further questions. Thank you.

22 THE COURT: Any redirect for this witness?

23 MR. STIDHAM: One question.

24 THE COURT: You may proceed.

25 MR. STIDHAM: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. STIDHAM:

Q. Timothy, the picture of the condoms just identified, the box of condoms, whose room was that?

A. That was in my bedroom.

MR. STIDHAM: That's all the questions I have.

THE COURT: Any objection to the witness being excused?

MS. SHEALY: None from the State, Your Honor.

THE COURT: And from the defense?

MR. STIDHAM: No, Your Honor.

THE COURT: Sir, you are excused. Defense may proceed.

MR. STIDHAM: Court's indulgence one moment.

THE COURT: Why don't y'all approach for me?

MR. STIDHAM: Okay.

(Off-the-record discussion.)

THE COURT: Ladies and gentlemen, we're going to take a very brief recess. During this recess, please don't discuss the case. Please leave your notepads in your seats. We appreciate your patience. If you'll go with the bailiffs.

(Jury exits courtroom at 11:06 a.m.)

THE COURT: Okay. We'll take a brief recess. Please discuss with your client whether or not he wants to

1 testify.

2 MR. STIDHAM: Thank you, Your Honor.

3 (Thereupon, a brief recess was taken at
4 11:07 a.m., thereafter the trial resumed as follows:)

5 THE COURT: If the Defendant will please rise.

6 THE DEFENDANT: (Complies.)

7 THE COURT: Sir, I'll remind you you're still
8 under oath. Have you had an opportunity to discuss with
9 your lawyers whether or not you desire to testify?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you need to speak with them any
12 more at this time?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Do you have any questions regarding
15 your right to testify?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: And, sir, do you wish to testify?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: You may take your seat.

20 THE DEFENDANT: (Complies.)

21 THE COURT: Does the defense have any further
22 witnesses?

23 MR. STIDHAM: No, Your Honor.

24 THE COURT: Does the defense rest?

25 MR. STIDHAM: Yes, Your Honor.

1 THE COURT: Are there any motions?

2 MR. STIDHAM: Yes, Your Honor. We would renew
3 our motion for a directed verdict on the two counts, of
4 CSC first degree and the possession of a weapon during the
5 commission of a violent crime, on the grounds previously
6 stated.

7 THE COURT: Does the State wish to respond?

8 MR. STACK: Only with our earlier statements.

9 THE COURT: Considering the evidence in the light
10 most favorable to the State which is how I'm required to
11 view the evidence, the Court is concerned with the
12 existence or non-existence of evidence and not its
13 weight. If there is any direct evidence or any
14 substantial circumstantial evidence reasonably tending to
15 prove the Defendant's guilt or from which his guilt can be
16 logically deduced, a directed verdict is not appropriate.

17 And pursuant to 16-30-657, a victim's testimony
18 does not need to be corroborated regarding the allegations
19 of a sexual assault.

20 And as such there is more than direct evidence
21 that there is substantial circumstantial evidence
22 reasonably tending to prove the Defendant's guilt. And,
23 therefore, the motion is denied.

24 Now, is there going to be any rebuttal testimony
25 from the State?

1 MS. SHEALY: There is not, Your Honor.

2 THE COURT: Then we're up to closing arguments.
3 Is that correct?

4 MS. SHEALY: Yes, Your Honor.

5 MR. STIDHAM: Yes, ma'am.

6 THE COURT: Is the State going to open and
7 close?

8 MS. SHEALY: Just close, Your Honor.

9 THE COURT: How long do you all think your
10 closing arguments will be?

11 MR. STIDHAM: Mine's probably no longer than 10
12 minutes, Judge, maybe 15.

13 THE COURT: And, Ms. Shealy?

14 MS. SHEALY: I would think mine's in that general
15 area as well, Your Honor.

16 THE COURT: Is the defense requesting any lesser-
17 included offenses?

18 MR. STIDHAM: No, Your Honor.

19 THE COURT: Okay. So just CSC, nothing else?

20 MR. STIDHAM: Yes, ma'am.

21 THE COURT: Is there any exception from the
22 State?

23 MS. SHEALY: No, Your Honor. And we do have the
24 weapons charge.

25 THE COURT: Well, no, I just needed to make sure

1 because there are no lesser included for possession of a
2 firearm.

3 MS. SHEALY: Yes.

4 THE COURT: But there's five for CSC first and I
5 needed to make sure he's not requesting any of those
6 charges.

7 MS. SHEALY: Yes, Your Honor.

8 THE COURT: I'll give the jury a general
9 instruction regarding their responsibility and my
10 responsibility, how they are to judge witness credibility
11 and believability.

12 I give a general instruction regarding expert
13 witness testimony as well as a general charge on direct
14 and circumstantial evidence from the State versus Grapon.
15 I will give a general instruction regarding the indictment
16 not being evidence as well as the presumption of
17 innocence.

18 And then I will instruct the jury that the fact
19 that the Defendant did not testify cannot be considered in
20 any manner whatsoever nor discussed in any manner
21 whatsoever.

22 Then instruct, Victor versus McGrath, on
23 reasonable doubt. I'll then instruct the elements of
24 first degree criminal sexual conduct from 16-3-652 and
25 those which are applicable. And the only one that would

1 be applicable would be that the Defendant used aggravated
2 force because the other parts of the statute would not be
3 applicable.

4 There's been no testimony -- well, there has been
5 some testimony of forcible confinement in the light of her
6 testimony that he restricted her from leaving. But the
7 rest of it, which is kidnapping, robbery, extortion or
8 burglary, would not be applicable. So I would instruct
9 the jury that she said she was a victim of a forcible
10 confinement but nothing further.

11 And the remainder of the statute deals with
12 causes for how a person can become mentally incapacitated
13 and there's no evidence of that.

14 I'll then instruct 16-3-657 which is the
15 testimony of the victim need not be corroborated. And I
16 will instruct that a victim is defined as a person alleged
17 to have been subjected to criminal sexual conduct.

18 Then I'll instruct the elements of possession of
19 a firearm during the commission of or attempt to commit a
20 violent crime pursuant to 16-23-490. CSC first is defined
21 as a crime pursuant to 16-1-60.

22 I'll then instruct that there are multiple
23 charges, those being CSC first and the possession of a
24 firearm during the commission of a violent crime, and that
25 the jury is to consider the elements of each of those

1 offenses separately and independently of one another, and
2 that he may be convicted or acquitted or any or all of
3 them and they will be asked to write a separate verdict.

4 And then I will give them a general instruction
5 regarding unanimity of the verdict and how the foreperson
6 leads the deliberations and fills out the form, et cetera.

7 And then the verdict forms will be quite simple
8 which is guilty or not guilty. And we'll print those so
9 that you can look at them.

10 Are there any exceptions to the charge as
11 proposed, from the State?

12 MS. SHEALY: No, Your Honor.

13 THE COURT: From the defense?

14 MR. STIDHAM: No, ma'am.

15 THE COURT: Just give us one moment so that we
16 can print those verdict forms so you can take a look at
17 them and then what we'll do is we'll proceed with closing
18 arguments and the Court's instructions.

19 I need y'all to go over the evidence and make
20 sure it's all in place before we begin.

21 (Off-the-record discussion.)

22 THE COURT: Any exception to the verdict form,
23 from the State?

24 MS. SHEALY: No, ma'am.

25 THE COURT: From the defense?

1 MR. STIDHAM: No, Your Honor.

2 THE COURT: I'd like to state in there, I let
3 lunch creep up on me. I apologize.

4 State ready to proceed?

5 MS. SHEALY: Yes, Your Honor.

6 THE COURT: Is the defense ready to proceed?

7 MR. STIDHAM: Yes, Your Honor.

8 THE COURT: Please bring in the jury.

9 I'm going to allow the defense to rest in the
10 presence of the jury. And y'all went through all the
11 evidence, Ms. Shealy?

12 MS. SHEALY: We did, Your Honor.

13 THE COURT: Defense have gone over everything?

14 MR. STIDHAM: Yes, ma'am.

15 THE COURT: Everything together?

16 THE COURT REPORTER: Yes, ma'am.

17 (Jury enters courtroom at 12:10 p.m.)

18 THE BAILIFF: Jurors all present, Your Honor.

19 THE COURT: Mr. Foreman, ladies and gentlemen.
20 We appreciate your patience. Is the defense ready to
21 proceed?

22 MR. STIDHAM: Your Honor, the defense rests.

23 THE COURT: Are there any rebuttal witnesses?

24 MS. SHEALY: No, Your Honor.

25 THE COURT: Does the State rest?

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 MS. SHEALY: Yes, Your Honor.

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 both the State and the defense have rested their case. We
4 have now reached the stage of the trial where we will have
5 closing arguments and the Court's instructions on the
6 law.

7 I would ask that you give the attorneys your
8 undivided attention. We estimate that your lunch should
9 arrive at approximately one o'clock.

10 You may proceed, Mr. Stidham.

11 MR. STIDHAM: Thank you, Your Honor.

12 THE COURT: You're welcome

13 MR. STIDHAM: May it please the Court.

14 THE COURT: Yes, Sir.

15 MR. STIDHAM: Ms. Shealy, Mr. Stack, ladies and
16 gentlemen of the jury.

17 As I stated in my opening, there's only two
18 options in a case like this. Number one, [REDACTED]
19 was raped and, number two, [REDACTED] was lying and
20 that she falsely accused my client of rape.

21 Well, I think we now know that [REDACTED] was
22 lying. I told you both of those options were tragic.
23 Right? Well, it's not a tragedy yet that my client's
24 falsely accused. It's only a tragedy of course if this
25 innocent man goes to prison.

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 Of course, that leads to the obvious question in
2 a case like this of why. Why would somebody go through
3 all of this? Why would they go through all the
4 testimony? All the exams? All the police officers?

5 The answer to that question is, of course, I
6 don't know. I sure would like to know. It would be nice
7 if we knew. But we can't know for sure.

8 The fact is that human beings are fragile. There
9 are a million ways, a million reasons that somebody can
10 become broken enough to the point where they may fabricate
11 a story such as this. Could it be that there's shame and
12 regret about the incident that we heard about with
13 DeWayne? Is it against -- revenge against the family that
14 she believes did her wrong? Was it because Tiffany went
15 to go see her boyfriend at the jail? She went back with
16 Tony, she smoked marijuana and she started getting
17 paranoid, people seeing me with Tony, I need to do
18 something about it.

19 Again, I don't know why. I sure would like to
20 know. But the fact is, again, we don't know. What we do
21 know is that she has fabricated this.

22 I'm sure you know that you have a very important
23 job. It's also a very tough job because what you have to
24 do is you have to go and try to determine what happened to
25 a degree of certainty beyond a reasonable doubt over four

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 years ago at an event where none of you were there.

2 Now, of course, we can't travel back in time. So
3 you're left to use your own powers of perception, your own
4 common sense, and your own logic to determine what
5 happened.

6 So that means you have to rely on what was
7 testified to at trial, and the evidence that was
8 presented. Well, ladies and gentlemen, the only person
9 who was present who says that a crime was committed is
10 lying. And that makes your job a whole lot harder,
11 doesn't it? It makes it impossible for you to determine
12 what happened.

13 It makes it harder, it makes it impossible to
14 determine what happened to any degree of certainty, let
15 alone beyond a reasonable doubt. It's like trying to
16 drive a car down through the market with your eyes
17 closed. You can't do it. And if you do, somebody
18 innocent's probably going to get hurt.

19 There sure were a lot of miscommunications in
20 this case, weren't there? The prosecution would have you
21 believe that the first officer on the scene, Officer
22 Light, well, he just must have misunderstood Tiffany when
23 he wrote, while in the bathroom the subject penetrated the
24 complainant's vagina. The subject placed a condom on in
25 the living room.

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 Well, that sure is an important detail, that he
2 had unprotected sex in the bathroom first. The solicitor
3 says, well, Tiffany doesn't understand what the word
4 penetrate means. Tiffany testified, I believe, that she
5 only went through the eighth grade. You all know any
6 eighth graders that don't know what penetrate the vagina
7 with a penis means?

8 Detective Antonio, she wrote in her report,
9 subject pulled her pants down in the bathroom and forced
10 her to have vaginal intercourse. Then the subject grabbed
11 [REDACTED] by her right arm, twisted it behind her back,
12 subject led her into the living room from the bathroom
13 where again he pulled her pants down, put a condom on and
14 forced vaginal penetration.

15 Again, unprotected sex in the bathroom. And,
16 again, Tiffany, well, I guess she just must have been
17 misunderstood again. Detective Antonio testified, you
18 know, she said, well, you know, I was seven months
19 pregnant. I was kind of nauseated. I didn't want to
20 upset her, so, you know, maybe I didn't write that down as
21 accurately as I could have. A trained detective?

22 Let's talk about the statement that Detective
23 Antonio took from [REDACTED] at 8:45 the night of the
24 incident. So this thing is full of misunderstandings.
25 She asked a question: Have you ever had consensual sex

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 with Tony? Answer: Yes, when I was 13 or 14.

2 Again, maybe -- okay. Maybe Tiffany doesn't know
3 what consensual is, she knows the word sex. She knows the
4 word Tony. Well, you know what, there's not any evidence
5 of that. So yeah, you know now that Tiffany thinks about
6 it, oh, that's not really what I -- that's not really what
7 I meant. I didn't mean consensual sex with Tony. What I
8 meant was DeWayne forced himself on me.

9 She asked her another question: Where did Tony
10 penetrate you? Answer: First it was in the bathroom,
11 then again in the den.

12 Again, I guess Tiffany didn't understand the word
13 penetrate. I guess when she took the time to sign every
14 page of that statement and to initial every answer and to
15 circle, circle every answer, put her initials by it, that
16 she didn't say, you know what, I've been hearing the word
17 penetrate a lot. What does that word mean?

18 I guess Detective Antonio never saw any confusion
19 on her face because if she did, wouldn't she have taken
20 some time to clarify it?

21 Fay LeBoeuf wrote in her report, two incidents of
22 sex; standing up by the sink and then again on the love
23 seat.

24 You know, Tiffany testified. She said, well, I
25 was distraught. I was afraid and confused. That's why

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 she made such glaring errors in her report.

2 But do you remember how Fay LeBoeuf characterized
3 her right after that? She characterized her as quiet and
4 cooperative.

5 Finally Detective Altine who said that she was
6 meticulous in her report writing, she stated that the
7 suspect put a condom on after her first entry. Again, I
8 guess Tiffany must have misunderstood because isn't it
9 convenient that Tiffany's story is consistent with
10 everybody that she meets with about the time of the event,
11 unprotected sex in the bathroom. And then he puts a
12 condom on later.

13 So she testifies she met with the solicitor, went
14 over the evidence in this case. Oh. There's no DNA
15 evidence. The sexual assault didn't show up any sperm.
16 Well you know what, now that I think about it there was no
17 sex in the bathroom. Yeah. It was just protected sex one
18 time. All those other times were, were just, I was
19 misunderstood.

20 Now let's talk about the actual alleged act.
21 Tiffany says that Tony grabbed her right arm, put a gun to
22 her head. He pulled her pants down. He pulled a condom
23 out from somewhere. He exposed himself. He put the
24 condom on. Got his penis into her vagina.

25 Sure is a lot of things he's doing at one time,

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 all the while Tiffany is allegedly screaming and hollering
2 as loud as she can for him to stop.

3 Now let's talk about the physical evidence in
4 this case. You heard a lot of testimony about the back
5 living room. You heard from Officer Unterbrink, the crime
6 scene investigator. All the opportunities for pubic hair
7 to fall out when clothes would have been taken off,
8 underwear taken off, the portion of the event, the leaning
9 over on a piece of furniture, even when the clothes were
10 put back on.

11 He testified about how careful he was about
12 collecting evidence and none was found.

13 He took a piece of carpet up. Charleston
14 Forensic Lab didn't find any human semen. SLED turned up
15 three peoples' DNA. They can't tell you how long it's
16 been there or whose it was.

17 Condoms found at the scene. Condoms found
18 upstairs in Tony's room. And one of the condoms had
19 Tony's DNA. And then there's also somebody else's DNA
20 that can't be attributed to either Tony or Tiffany.

21 So we're not here to say that Tony is a virgin.
22 We're not here to say that he's even a nice guy. We're
23 just saying that he didn't rape [REDACTED]

24 Again, the condoms were upstairs. [REDACTED]
25 never testified that she went upstairs. If he left in a

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 hurry as the solicitor will tell you, why would he leave
2 condoms? Why would he take the condoms upstairs?

3 Now, we've heard about an alleged gun. Of
4 course, the police didn't find a gun so the solicitor
5 said, well, he took it with him. He took the time to take
6 the gun but he left condoms around?

7 Now you heard testimony that there was what
8 appears to be a box of bullets upstairs in the room, in
9 one of the rooms. Now take the time to look at the
10 pictures. We know which room is Tony's. It had tan walls
11 and it had a big T-shirt or sweatshirt hanging there with
12 Tony's name on it.

13 You heard testimony that the blue room -- or,
14 excuse me -- the red room was Timothy's. And that a third
15 room was his brother DeWayne. That's where the bullets
16 were found -- or excuse me, what appears to be a box of
17 bullets.

18 Tiffany told every police officer that DeWayne --
19 or, excuse me, that Tony pulled the gun out of his back
20 pocket, a nine millimeter.

21 Well that doesn't make much sense, does it? If
22 you're hanging out with somebody all day and they've got a
23 gun in their back pocket and you never see it, well, again
24 she gets a chance to maybe meet with the solicitor and
25 that story just doesn't make sense. So, yeah, you know

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 what, I never told any police officers this but now that I
2 think about it, Tony went upstairs and came back down with
3 a gun.

4 Let's talk about the sexual assault nurse, Fay
5 LeBoeuf. A sexual assault nurse is a nurse with extra
6 training in the collection of evidence of sexual assaults.

7 She testified that time's of the essence because
8 the evidence can go away. Well, they did everything right
9 in this case. They took Tiffany from the scene of the
10 alleged crime. They took her directly to the Women's
11 Center so she could have an exam. It was a thorough exam.

12 You heard testimony that there was no hygiene
13 acts that could have destroyed evidence. They swabbed her
14 mouth, vaginal area, and anal area.

15 No evidence. No semen. No DNA. Under her
16 fingernails, nothing. They had her disrobe on a piece of
17 paper so that any potential evidence any hairs might
18 fall. None.

19 They looked at every square inch of her body with
20 a light looking for any bruising, any trauma, any redness,
21 any swelling, any scratches. Nothing.

22 And the allegations are that she had her arm
23 twisted behind her back to the point where it was so
24 painful that that's what I was thinking about when I
25 called the police. I completely forgot that somebody put

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 a gun to my head. That was so painful I forgot about the
2 gun.

3 Nobody ever saw any swelling, any redness any
4 bruising, any scratches. Nothing.

5 The officers that responded to the scene that
6 day, they didn't find any witnesses. Nobody heard a
7 thing. You heard testimony that at ■ Orrs Court, in that
8 neighborhood the houses are close together.

9 No neighbor walked out and said, you know what,
10 yeah, I heard somebody screaming. Is everybody okay.
11 Nobody else picked up the phone called the police, I hear
12 screaming across the street.

13 Detective Altine even talked to a neighbor.
14 Didn't hear anything. Now, I'm sure the solicitor is
15 probably going to get up here and talk a lot about the
16 fact that Tony ran. You know, we don't dispute this
17 fact. It's important that you understand that he's not on
18 trial for that.

19 He was scared. Somebody lied to the police about
20 him that he had raped them. He got scared and he did what
21 probably a lot of people would do; he got the heck out of
22 there.

23 But that's our first instinct when something's
24 scary. Right? I mean, when you're faced with a scary
25 situation, there's something deep down in our brains, it's

CLOSING STATEMENTS ON BEHALF OF THE DEFENDANT

1 an instinct, is to run.

2 Now, the solicitor might say, well, what would an
3 innocent man have to be afraid of? What did he have to be
4 afraid of? If he didn't do anything, why didn't he stay?
5 Well, he had plenty to be afraid of. Somebody was
6 accusing him of rape. You don't think innocent people go
7 to prison in this country?

8 Tony was gone for, I think it was, nine days. He
9 eventually worked up the courage to do the right thing.
10 He didn't flee the state. He didn't even leave the city.
11 He called the lawyer and he did the right thing, he turned
12 himself in.

13 Now, ladies and gentlemen, this is the last
14 you're going to hear from me. The solicitor gets to speak
15 to you last..

16 I want to leave you with this. Everybody that
17 works in this courtroom, the lawyers, every witness that
18 takes the stand, the Judge, yourselves, it's not the same
19 role, but it all serves the same purpose. And that's to
20 ensure that just justice is done. And what that means is
21 that we don't take away a man's liberty without following
22 the letter of the law, even if you're not happy with the
23 results.

24 The State has the burden of proof in this case.
25 It's a heavy burden. They have to prove to you, all of

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 you, beyond a reasonable doubt every element of the crimes
2 that the man's accused of. And if they fail to prove to
3 you all beyond a reasonable doubt, even one element, you
4 must return a verdict of not guilty.

5 Ladies and gentlemen, I submit to you that the
6 State has failed to prove, failed to carry their burden on
7 every element. And I'm asking you to return the only just
8 verdict, the only verdict that the evidence shows and it's
9 one of not guilty. Thank you.

10 THE COURT: Ms. Shealy?

11 MS. SHEALY: May it please the Court.

12 THE COURT: Yes, ma'am.

13 MS. SHEALY: Mr. Stidham. Mr. Smith. Good
14 afternoon.

15 How did Tony Patterson know that Tiffany Graham
16 was accusing him of rape? Remember? He did get the heck
17 out of Dodge. He got the heck out of there before the
18 police came.

19 And if his family wasn't pounding behind her, how
20 would he have known that? He wasn't there for the police
21 to tell him what [REDACTED] was saying.

22 The reason he knew it is because he raped her.
23 The reason he knew he was in hot water is because she was
24 hysterical. She ran out of that house to seek safety.

25 Antonio Patterson didn't, he didn't go to work on

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 Monday, Tuesday, Wednesday, Thursday, Friday, Saturday,
2 Sunday. But what's even more telling, he's not an
3 innocent man scared to death he's going to be wrongfully
4 accused. Who do you call when you're worried about being
5 wrongfully accused? You call your brother, your father,
6 your sisters, your nephews. Help me.

7 Well, what did Timothy Patterson tell you? He
8 didn't know where he was. My dad didn't know where he
9 was. Oh yeah, he got the heck out of there. It wasn't
10 because he was scared he was going to be falsely accused.
11 It's because he knew he was going to be rightfully
12 accused.

13 It blew up in in his face. Why did Tony
14 Patterson call Detective Altine and say, I want to come
15 give you my side? She said, okay, let's do it face to
16 face. Let me talk to you.

17 Let me call you back in 10 minutes is what
18 Antonio Patterson told Detective Altine. He didn't call
19 her back in 10 minutes. He didn't call her back in an
20 hour. He didn't call her back.

21 He didn't return the four messages that she left
22 him. Why did he tell her, I'm in MUSC? Did he want her
23 to believe he was in the hospital?

24 But his dad didn't know? His brother didn't
25 know? Baloney. He thought for a second, I can schmooze

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 her. I can get her to delay. I'll get her to believe
2 what I have to say. That's what he thought for a moment
3 and she said, okay, let's have a face to face.

4 Antonio Patterson sexually assaulted Tiffany
5 Graham on April 9th, 2006.

6 Now the Judge will tell you that you as the
7 jurors decide the facts of the case. And you do it based
8 on the evidence that's been presented. But you also use
9 your common sense.

10 All of y'all are from different walks of life,
11 you have had different life experiences. But in our
12 country, this system is indeed everywhere, because you
13 will use your common sense in evaluating what came in
14 through testimony from that witness chair.

15 It's your job to look at [REDACTED] when she
16 testifies and decide, did she look like for one second
17 that she was lying, or did she come in here and tell you
18 about the most painful day of her life.

19 Her genuineness is raw. You can tell that she
20 came in here and was telling you the truth. Still four
21 years later, she gets choked up thinking about what
22 happened to her.

23 Antonio Patterson started that day early at
24 McDonald's. He saw somebody he knew. And he thought,
25 maybe he thought, I'll get lucky. Maybe that's really

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 what he thought. I'll take her to the movies, buy her
2 something to eat, have her over. I'll get lucky. Maybe
3 that's what he thought would happen.

4 That's not what [REDACTED] thought. Tiffany
5 Graham never told him that was going to be part of the
6 deal. And then when he makes that romantic move towards
7 her after he's eaten the ribs and the chicken and says, I
8 want to have sex with you. She says, oh no, I just want
9 to go home. Wow. That didn't sit well with Antonio
10 Patterson.

11 And what did she tell you he did? He didn't take
12 the gun out of his back pocket. She never said that at
13 that point he takes the gun out of his back pocket. He
14 goes upstairs. He goes upstairs where in one bedroom
15 there are bullets or a box of bullets. He goes upstairs
16 where in one room there's a box of condoms. And he goes
17 upstairs where on a doorknob are some used condoms.

18 Now, Mr. Stidham misses the point about the used
19 condom. Not for one second am I saying those condoms are
20 the condoms used in this case. I'm telling you the man
21 uses condoms. [REDACTED] had no idea there were used
22 condoms upstairs.

23 But that's something to tell you that when she
24 tells that a condom is put on, there's a box of them
25 upstairs and there's some used condoms. Antonio Patterson

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 used a condom and it was lubricated.

2 He can't believe that his kind gestures didn't
3 pay off for him. He had something on his mind early in
4 that day. He wanted somebody to woo, but when he wasn't
5 given the sex and when she wasn't wooed by his charms, he
6 got the gun, he got the condom, he told those kids to get
7 out of the house.

8 She is forced into that bathroom. And that's
9 where -- what happens in the bathroom is significant.
10 That's where he closes the door and tells her what's
11 getting ready to happen. You're going to have sex with
12 me.

13 He pulls that gun out in that bathroom and tells
14 her what's getting ready to happen. And he opens that
15 door and he forces her, cranking that arm, into that
16 living room area, puts her over the arm of the chair, the
17 arm of the sofa and has sex with her.

18 Mr. Stidham is right. The weapon she keeps
19 mentioning is the cranking of the arm. And I think there
20 are very few of us who have never had that done in some
21 fashion. It hurts like crazy. It immobilizes you because
22 you're in some awkward pain.

23 And that's how he, with a gun in one hand and
24 cranking her arm with the other, leads her into that
25 living room.

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 When we started this trial, Mr. Stidham told each
2 of you that Antonio Patterson has been waiting for his day
3 in court. I'll tell you who's been waiting for this day
4 in court; [REDACTED] Four long years she's been
5 waiting.

6 Keep in mind that [REDACTED] agreed to go
7 over to Antonio Patterson's mid-day on a Sunday. We're
8 going to cook out. Now, knowing her past with his
9 brother, was it a good idea for her to get in that vehicle
10 with Antonio Patterson? Well, now, I-told-you-so.

11 She should not have gone to the store with him
12 that day, but nothing is more flattering than someone
13 wanting to do something nice for you. He said, I'll take
14 you. I'll take you down to the jail. I'll pick you back
15 up. And someone was showing her kindness.

16 [REDACTED] is a young woman who works hard,
17 has worked from fast food location to fast food location,
18 Ross's Department Store, and then now at Wal-Mart.

19 She and her mother didn't have a car back then.
20 She lived with her mother. Her boyfriend's in the county
21 jail. So to have somebody who wants to take you and buy
22 some barbecue and go to his house and cook barbecue
23 sounded like a lot of fun, and it sounded innocent. And
24 if there were other people around, she had no reason to
25 believe that this day was going to accelerate to the level

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 that it did and that she was going to be violated.

2 Now I advise you to look at the details of
3 Tiffany Graham's version of what happened. What she told
4 police officer after police officer, Nurse LeBoeuf. She's
5 consistent. The only place that we have some quirkiness
6 is about the bathroom.

7 And the defense wants to jump on that and tell
8 you that that young girl over there is lying and that this
9 whole thing is preposterous. And she's just having a good
10 time going through all of this. That's why I'm here.
11 It's ridiculous. You can see the pain her eyes. You can
12 hear the pain in her voice.

13 But what's more telling is this: Each of those
14 people, Jenny Antonio, Lisa Altine, Fay LeBoeuf, they who
15 have notes, notes that they've looked at on the stand,
16 when they look back at what Tiffany actually told them and
17 they were writing it down, there is nothing about sex in
18 the bathroom.

19 The one thing that becomes confusing is when Fay
20 LeBoeuf swore, and I asked her specifically how it read, I
21 said, where did the assault occur. And Fay LeBoeuf wrote,
22 in the bathroom and in the living room.

23 Now, every day in this courthouse we prosecute
24 people for assault that has nothing to do with sex. The
25 first time she is assaulted is when he forces her in that

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 bathroom, closes the door and brandishes a gun. That is
2 an assault.

3 The first time he had sex with her is in the
4 living room.

5 Let's look back over the language. The first
6 person, Jenny Antonio, who takes notes, when Tiffany is
7 talking, writes this: Tony picked me up at McDonald's on
8 Rivers Avenue around eight or 8:30. He said he'd take me
9 to the county jail where I was going to see my family.
10 Tony said he'd come back and pick me up when I was done.
11 He came back around 11:30 and asked me if I wanted to go
12 to a movie or go hang out or grill some food.

13 I told him we could go cook on the grill because
14 I had nothing else to do. I told him I'd go hang out with
15 him. So we picked up some food and we go back to his
16 father's house on Orrs. Court.

17 I cooked the food. He put it on the grill. We
18 were drinking our drinks and we started eating. After
19 that he wanted to have sex with me, and I told him no.

20 Then he started getting violent with me by
21 grabbing me by my arms and pulling my pants.

22 Y'all saw her pants. She had those little light-
23 weight sweat pants on with the elastic band.

24 Pulled my pants. I told him to stop and I wanted
25 to go home. He grabbed me by my arm pulling me. He was.

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 twisting my arm behind my back. I was yelling and
2 screaming that I wanted to go home.

3 Let's pause there for a second.

4 Mr. Stidham wants to make a huge deal about why
5 the neighbors weren't coming out of their house and
6 calling the police when she was yelling and screaming. If
7 you recall, she is a very quiet spoken person. I am
8 confident she was yelling and screaming. I'd like to
9 think that some of those guys sitting over there heard it
10 because one said, shut the B. up.

11 Well, who would expect neighbors to hear it?

12 That's ridiculous.

13 He pulled me into the living room while he was
14 pushing my arm behind my back. He leaned me over the arm
15 of the chair. He pulled my pants down and had sex with
16 me. Every time I tried to move he strained my arm more. I
17 told him to please let me out. I wanted to go home.

18 Then when I went by the front door he put his
19 foot in the door and he wouldn't let me out. He had
20 pulled out a black and silver nine millimeter gun from his
21 pants pocket. He held it over my head and pulled the
22 slide back.

23 This is the statement that Jenny Antonio is
24 writing it down as she said it. Absolutely not one thing
25 about the bathroom and sex because it didn't happen in the

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 bathroom. The assault begins there but the sex is not in
2 the bathroom.

3 Fay LeBoeuf, the next person who sits down and
4 takes notes as Tiffany tells what happened. Now, this is
5 after Tiffany had been throwing up because she's so sick.
6 She's one heck of an actress if she can vomit on command.
7 One heck of an actress.

8 Fay LeBoeuf writes: He said, I want to have sex
9 with you. I said, no, I don't want to have sex with you.
10 I just want to go home.

11 He started getting violent with me. He had my
12 arm behind my back. He said, I want to have sex with
13 you. I said no, I just want to go home. He bent me over
14 a chair, over the arm and pulled my pants down. Put his
15 penis in without a condom, he pulled it out and put that
16 condom on. He had my arm behind my back and held it
17 there. I tried to get into the living room to the door.
18 He kept putting his foot by the door so I couldn't get
19 out.

20 I was screaming and hollering so he let me out
21 the door. I went to a neighbor's house and called the
22 police.

23 He had a gun -- he had a gun, black and silver.
24 Every time I said that I wanted to go home he would pull
25 it out and try to cock it to scare me.

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 The note is written by Fay LeBoeuf as Tiffany is
2 telling her. Nothing about sex in the bathroom. Nothing
3 about sex in the bathroom.

4 And then a few days later when Detective Altine
5 and Jenny Antonio go back over to talk to Tiffany, show
6 her the lineup, it has Mr. Patterson's picture in it. And
7 Lisa Altine is sitting in the driver's seat and Tiffany's
8 sitting in the passenger seat. And Lisa Altine is writing
9 down what she said. Writing it down.

10 Tiffany said the Defendant pushed her into the
11 bathroom. They, they -- they -- excuse me. The Defendant
12 pushed her into the bathroom, then sent his two nephews
13 out of the house. He was ready for some action. Two
14 nephews and brother were outside during the assault.

15 From the bathroom, from the bathroom he was
16 forced -- she was forced by taking her right arm behind
17 her and pushing it up. The Defendant bent her over the
18 arm of the sofa, put his knees against her body, undid --
19 unzipped his pants, put his condom on and forced his penis
20 into her vagina.

21 The Defendant also produced a black and silver
22 automatic and would grasp the gun to frighten her into
23 submission.

24 The Defendant took the victim's Nokia red cell
25 phone. While the victim attempted to leave, he put his

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 foot against the front door and pushed her. The victim
2 immediately went to a neighbor and called 9-1-1.

3 Altine. LeBoeuf. Antonio. [REDACTED]
4 Consistent.

5 Now, there's been this issue about the use of
6 language. And Mr. Stidham asked you a minute ago, do any
7 of y'all know an eighth grader who doesn't know the term
8 penetrate vagina. Yeah. Some of the kids know. You hope
9 to penetrate someone's vagina one day? That's not the
10 language children use. That's not the language people use
11 on the streets. That's the language police officers use.
12 That's the language sexual assault nurses use. That's the
13 language lawyers use. Not [REDACTED]

14 So when asked, did he penetrate you in the
15 bathroom, she doesn't understand that word. Does that
16 mean he put his penis in your vagina? That's a
17 non-issue. The defense is chasing nothing. Nothing.

18 She has told you exactly what happened. She's
19 told you. She's told Antonio. She's told Altine. She's
20 told LeBoeuf. She's completely consistent.

21 Oh, yeah. There's some confusion about did you
22 have consensual sex with Tony? She didn't have consensual
23 sex with Tony when she was 13 or 14. She didn't have
24 consensual sex with his brother. His brother attacked her
25 when she was 13 or 14.

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 And the sad thing is, they want you to believe
2 that, oh, she told them then that she had been having sex.
3 with Tony when she was 13 or 14.

4 That's ridiculous. And he poo-pooed what Antonio
5 said. She was vomiting. It just happened. The test of
6 what Tiffany said comes from the notes they wrote. The
7 notes they wrote. That's what they were quoting, Tiffany.

8 When I say the defense is chasing nothing. There
9 is one thing that makes it more clear to me -- and maybe
10 it's that I'm a lawyer and evaluating the case that way --
11 that nothing sexual happened in the bathroom, and that's
12 the search warrant.

13 You heard the crime scene detective and Lisa
14 Altine talk about the search warrant. That is when they
15 were going in to see if we can find physical evidence.

16 Now let's talk about physical evidence. It is
17 great when you can get physical evidence. It's excellent.
18 But you don't have to have it to prosecute someone. And
19 not having it absolutely does not mean it did not happen.

20 But the purpose of the search warrant was to go
21 in there with that goal, what can we find. And Lisa
22 Altine, the lead detective on the case, what did she tell
23 Mr. Unterbrink? Go into the living room. Go to the arm
24 of that chair and see what you can find. And he looked at
25 the carpet. He looked at the wall. And he looked at arm

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 of the chair.

2 She never said, and go to the bathroom, see if
3 there's something in that bathroom.

4 The reason she didn't is because Tiffany never
5 said it happened in the bathroom. She didn't say the sex
6 happened in the bathroom. If she had told them that the
7 sex had happened in the bathroom, they would have gone to
8 that bathroom first, especially since supposedly there was
9 no condom. Tiffany never said it. She didn't say it to
10 Antonio, Altine or LeBoeuf. The bathroom is a non-issue.

11 The defense wants you to focus on that and forget
12 how Tiffany sat here on the stand, forget how Tiffany
13 looked on the stand, forget how Tiffany sounded on the
14 9-1-1 tape.

15 Unterbrink would have that light lit up if anyone
16 had told him, we think they had sex in the bathroom.

17 Let's just talk about the physical aspects of the
18 case. As I have said, it is great when you can get
19 physical evidence. It makes my job a little easier
20 sometimes.

21 And I tell you when it's really important. It's
22 important in cases when you don't know at the beginning of
23 the investigation who the suspect is. Here [REDACTED]
24 knew Antonio Patterson but when you don't know who the
25 suspect is, you better hope to God they've got physical

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 evidence. If not, it's another unsolved case in
2 Charleston County.

3 But here, thankfully, we have a victim who knew
4 exactly who did this to her.

5 So the reason I brought in Randy Unterbrink,
6 Robin Taylor from SLED, Quintes Young from SLED, was to
7 show -- and Fay LeBoeuf, was to show you the police did
8 what they were supposed to do, what you want them to do,
9 what I want them to do. They investigated this case
10 thoroughly.

11 And so what does the physical evidence tell us?
12 It tells us Antonio Patterson used a condom.

13 The physical evidence tells us that there's a box
14 of bullets in that house upstairs where he went to get the
15 gun.

16 It tells us there's a box of condoms in that
17 house, upstairs, where he went to get the condoms.

18 And it tells us something else. Over in the area
19 where they cut the piece of carpet out, there are three
20 peoples' DNA in that carpet. Tony Patterson cannot be
21 excluded from that. And what did SLED, the State Law
22 Enforcement Division, find on that piece of carpet?
23 Semen. In the exact location where Tiffany Graham told
24 them the sex happened.

25 Wow. She's not only an actress, she is darn

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 lucky that she happens to tell the exact place that
2 there's semen on the floor that very well could be Antonio
3 Patterson's.

4 Oh. And Quintes Young, the gentleman who came in
5 about her alcohol level. The only reason that's important
6 is to say this: At the time they take her blood at the
7 Women's Clinic, she's zero. She's zero percent for any
8 intoxication.

9 Why is that important? It's not overly
10 important, but it tells you she wasn't roaring drunk at
11 that cookout that day. It tells you she had her wits
12 about her. It tells you that when she said no, she meant
13 no. Tony Patterson didn't care.

14 Now had she had some marijuana earlier with
15 Mr. Patterson? Yes. She told you. She told the
16 officers. They shared a blunt.

17 Now, again, regarding those condoms that are
18 found upstairs, not one second do I think those are the
19 condoms in this case. Tony Patterson didn't take the time
20 after assaulting [REDACTED] to remove the condom, to
21 walk up the stairs, and to deposit it into a little bag on
22 the doorknob.

23 He was moving quick once she started screaming
24 and yelling. He got what he wanted. He's not taking the
25 time right then to go upstairs and dispose of that

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 condom.

2 But I can assure you he got rid of it. He got
3 rid of that condom because he knew he was in trouble. She
4 wasn't calming down. What do you do with a woman when
5 she's not calming down? Finally she got out of that house
6 and he is not going to leave the gun. Whoa. Left the
7 bullets but he didn't leave the gun.

8 Wouldn't you have just liked to have seen him
9 getting the heck out of there when he knew he was in
10 trouble?

11 But let's talk about their witnesses for a
12 second. Timothy and Emanuel. When Tiffany Graham left
13 she was calm, cool and collected. She didn't just walk
14 off and down the street. Baloney. She ran to the first
15 place she thought she was safe to try to use the phone.

16 What happens? Two of them followed her because
17 they know Tony Patterson. They know him. They know what
18 a shut door means for Tony Patterson, and they knew he was
19 in trouble. He leaves.

20 When you listen to that 9-1-1 tape and some parts
21 of it are harder to hear than others, you can absolutely
22 hear that she is answering the questions of the dispatcher
23 and that she is talking to someone else. You can hear her
24 talking to his family members.

25 Let's talk about Fay LeBoeuf for just a second

CLOSING STATEMENTS ON BEHALF OF THE STATE

1 and her findings. She told you, as did Detective Altine
2 and Detective Antonio, that they take women in after a
3 rape and they have them examined. They are looking to see
4 if there is anything physical that can link them with the
5 suspect. Okay.

6 But what each of them told you, Altine who works
7 sexual assault cases, Antonio who works sexual assault
8 cases and Fay LeBoeuf and her credentials, her background,
9 her number of sexual assaults, you often do not see any
10 signs of trauma in the female area.

11 And at first you might think, well, gosh, I would
12 think there would be tearing and blood, et cetera. Well,
13 women have sex everyday. And there's not bruising,
14 there's not tearing.

15 That rarely happens, but if it happens you surely
16 want to document it. You sure want to take a photo of
17 it. But it wasn't here. But as Fay LeBoeuf told you, in
18 80 percent of the cases that she examines there's no
19 evidence of trauma. That's just a non-issue.

20 Here, when Tony had her bent over that arm chair,
21 it's like she's an object. He takes that condom wrapper,
22 bites it open. He's handy with a condom and he enters
23 her. That condom was lubricated. There's no reason to
24 believe that there would be lacerations and tears if a
25 condom was used.

JUDGE'S CHARGE TO THE JURY

1 Ladies and gentlemen, what really speaks volumes
2 in this case is the 9-1-1 tape. Thank goodness we have
3 it. Because this is the moment after she fled that house
4 of horrors, this is when she is first telling somebody
5 what happened to her.

6 When you listen to it, you'll hear the
7 genuineness in her voice. You can feel the fear, the
8 terror. This woman had absolutely no reason to run down
9 that street and to report this crime except for the fact
10 that it happened.

11 And we all need to be thankful to rape victims
12 who do report those crimes. It would have been a lot
13 easier for [REDACTED] to suck it up and just leave
14 that day.

15 But that would leave the Antonio Pattersons of
16 the world still out. Tiffany Graham didn't deserve what
17 happened to her that day.

18 What we're interested in is justice. Antonio
19 Patterson doesn't deserve to get away with it.

20 Listen to the voice of [REDACTED]

21 (Thereupon, the 9-1-1 call, State's Exhibit No.
22 38, was played for the jury.)

JUDGE'S CHARGE TO THE JURY

24 THE COURT: During this trial, ladies and
25 gentlemen, you and I have certain duties to perform. As

JUDGE'S CHARGE TO THE JURY

1 the Trial Judge, it is my responsibility to preside over
2 the trial of this case.

3 And I also have the duty to rule upon or pass
4 upon the admissibility of evidence offered during the
5 course of this trial.

6 You are to consider only the competent evidence
7 that is before you. You are to disregard and disabuse
8 your mind of any testimony ordered stricken from the
9 record in this case during the progress of this trial, if
10 there has been any.

11 You are to consider only the testimony which has
12 been presented from this witness stand together with any
13 exhibits which have been made a part of the record in this
14 case and any stipulations of counsel. And a stipulation
15 is an agreement of counsel made into the record if there
16 has been any.

17 I have the additional duty to charge or instruct
18 you on the law applicable to this case. As the Presiding
19 Judge, I'm the sole judge of the law in this case and it
20 is your duty as jurors to accept and apply the law as I
21 now state it to you.

22 If you have a preconceived idea as to what the
23 law is or what the law ought to be in a case or in this
24 case and it should not agree with what I now tell you the
25 law is, you're obligated under the oath which you have

JUDGE'S CHARGE TO THE JURY

1 taken to abandon this preconception on your part because
2 you were sworn to accept the law and apply the law
3 precisely as I now state it to you.

4 In every case tried in this court before a jury,
5 the jury becomes the sole and exclusive judges of the
6 facts. You, the jury, are the judges of the facts in this
7 case. This Court is the judge of the law.

8 The constitution of our state has declared that a
9 trial judge shall not intimate, state, comment upon, or
10 make any statement to a trial jury about the facts in a
11 case.

12 Since you, the jury, are the sole judges of the
13 facts in this case, you are not to infer anything from
14 what I have said during the course of this trial in ruling
15 upon the admissibility of evidence or otherwise, or
16 anything that I say now to you during the course of this
17 instruction, that I have any opinion about the facts of
18 this case.

19 The law does not permit me to have an opinion
20 about the facts. This is a matter solely for you, the
21 jury, to determine. As jurors then, it is your duty, as I
22 have instructed you, to determine the effect, the value,
23 the weight and the truth of the evidence presented during
24 this trial.

25 Necessarily, you must assess the credibility of

JUDGE'S CHARGE TO THE JURY

1 witnesses who have testified in this case. Credibility is
2 simply a legalistic term which means believability. It
3 becomes your duty as jurors to analyze and to evaluate the
4 evidence and determine that evidence which convinces you
5 of its truth.

6 I instruct you that in determining the question
7 of the credibility or believability of witnesses who have
8 testified, you may believe one witness as against several
9 witnesses, or several witnesses as against one witness.
10 You may believe a part of the testimony of a witness and
11 reject the remaining part of the testimony of that same
12 witness.

13 If you have a good and sound reason, you may
14 believe the testimony of a witness in its entirety or
15 reject the testimony of a witness in its entirety. You
16 may consider whether any witness has exhibited to you any
17 interest, any bias, any prejudice or other motive in this
18 case.

19 You may consider the demeanor of a witness. That
20 is, the appearance and manner of the witness from the
21 witness stand. You can believe as much or as little of
22 each witness's testimony as you think proper.

23 Throughout this process, ladies and gentlemen,
24 you have but one objective, to seek the truth regardless
25 of its source.

JUDGE'S CHARGE TO THE JURY

1 I further instruct you that the rules of evidence
2 ordinarily do not permit witnesses to testify to opinions
3 or conclusions. An exception to this rule exists for
4 witnesses we call expert witnesses.

5 A witness who by their education, training and
6 experience has become an expert in some art, science or
7 profession may state an opinion as to relevant and
8 material matters in which the witness claims to be an
9 expert and may also state their reasons for that opinion.

10 You should consider any expert opinion received
11 in evidence in this case like any other evidence; give it
12 the weight you think it deserves. If you decide that the
13 opinion of an expert witness is not based on sufficient
14 education and experience, or if you conclude that the
15 reasons given in support of the opinion are not sound or
16 that the opinion is outweighed by other evidence, you may
17 disregard the opinion entirely.

18 An expert witness's testimony is to be given no
19 greater weight than that of other witnesses simply because
20 the witness is an expert. And, further, you are not
21 required to accept an expert's opinion even though it may
22 not be contradicted.

23 There are two types of evidence which are
24 generally presented during a trial; direct evidence and
25 circumstantial evidence. Direct evidence is the testimony

JUDGE'S CHARGE TO THE JURY

1 of a person who asserts or claims to have actual knowledge
2 of a fact such as an eyewitness.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a
5 fact.

6 The law makes absolutely no distinction between
7 the weight or value to be given to either direct or
8 circumstantial evidence, nor is a greater degree of
9 certainty required of circumstantial evidence than of
10 direct evidence.

11 You should weigh all of the evidence in this
12 case. After weighing all of the evidence, if you are not
13 convinced of the guilt of the Defendant beyond a
14 reasonable doubt, then you must find the Defendant not
15 guilty.

16 Conversely, if you are convinced of the guilt of
17 the Defendant beyond a reasonable doubt, then you must
18 find him guilty.

19 I instruct you that the fact that the Defendant
20 was arrested, charged, and indicted is not evidence in
21 this case and cannot be considered by you as evidence of
22 guilt in this case, nor does it create any presumption or
23 inference of guilt.

24 This documentation, ladies and gentlemen, is
25 simply the formal written instruments which contain the

JUDGE'S CHARGE TO THE JURY

1 charge or charges made against the Defendant. They serve
2 as the formal documents by which the case is processed or
3 brought into this court.

4 The Defendant has pled not guilty to the
5 indictments. And that plea casts the burden on the State
6 to prove the Defendant guilty, because a person charged
7 with committing a criminal offense in South Carolina is
8 never required to prove himself or herself innocent.

9 I instruct you, Mr. Foreman, ladies and
10 gentlemen, that it is a cardinal and important rule of the
11 law of evidence that the defendant in a criminal trial, no
12 matter what the seriousness of the charge made against him
13 or her may be, will always be presumed to be innocent of
14 the crime for which he or she is indicted unless their
15 guilt has been proven by evidence satisfying you of that
16 guilt beyond a reasonable doubt.

17 This presumption of innocence does not cease when
18 you retire to deliberate but it accompanies the Defendant
19 from the time of his appearance throughout the trial until
20 you reach a verdict based upon evidence satisfying you
21 beyond a reasonable doubt.

22 Our Supreme Court has said that the presumption
23 of innocence is like a robe of righteousness placed about
24 the shoulders of the Defendant and it remains with him and
25 assigns him to that class of innocence until that

JUDGE'S CHARGE TO THE JURY

1 presumptive robe of righteousness has been stripped from
2 his person by evidence satisfying you of that guilt beyond
3 a reasonable doubt.

4 Mr. Foreman and ladies and gentlemen, the
5 presumption of innocence is not a mere legal theory. It
6 is not just a legal phrase. It is a substantial right to
7 which every defendant is entitled unless you, the jury,
8 are satisfied from the evidence of his guilt beyond a
9 reasonable doubt.

10 The State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt. Some of you may have
12 served as jurors in civil cases where you were told that
13 it is only necessary to prove that a fact is more likely
14 true than not true.

15 In criminal cases the State's proof must be more
16 powerful than that. It must be beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt. There are very
19 few things in this world that we know with absolute
20 certainty. And in criminal cases the law does not require
21 that -- does not require proof that overcomes every
22 possible doubt.

23 If, based on your consideration of the evidence,
24 you are firmly convinced that the Defendant is guilty of
25 the crime charged, you must find him guilty. If, on the

JUDGE'S CHARGE TO THE JURY

1 other hand, you think there is a real possibility that the
2 Defendant is not guilty, you must give him the benefit of
3 that doubt and find him not guilty.

4 I instruct you, ladies and gentlemen, and
5 emphasize that the fact that the Defendant did not testify
6 is not a factor to be considered by you in any manner
7 whatsoever in your deliberations and in your consideration
8 on the question of the guilt or innocence of the
9 Defendant. It must not be considered by you in any manner
10 whatsoever.

11 A defendant has the constitutional right to
12 remain silent. And the assertion of this right must not
13 be considered by you in your deliberations in any manner
14 whatsoever.

15 I repeat. Under your oath, you are to draw no
16 conclusion whatsoever from the fact that the Defendant in
17 this case did not testify. The fact that this Defendant
18 did not testify should not even be discussed in the jury
19 room in any manner whatsoever.

20 The burden of proof, as I have stated to you, is
21 on the State. The Defendant is not required to prove his
22 innocence. The burden of proof remains on the State to
23 prove guilt beyond a reasonable doubt.

24 The Defendant is charged with criminal sexual
25 conduct in the first degree. The first element which the

JUDGE'S CHARGE TO THE JURY

1 State must prove beyond a reasonable doubt is that the
2 Defendant engaged in a sexual battery with the victim.

3 A sexual battery is sexual intercourse,
4 cunnilingus, fellatio, anal intercourse or any intrusion,
5 however slight, of any part of a person's body or any
6 object into the genital or anal opening of another
7 person's body except when the intrusion is accomplished
8 for medically-recognized treatment or diagnostic purposes.

9 If you find that the State has not shown beyond a
10 reasonable doubt that a sexual battery occurred, you must
11 stop deliberating and your verdict would have to be not
12 guilty. If you find that a sexual battery did occur, you
13 must then decide whether the State has proven beyond a
14 reasonable doubt that the Defendant used aggravated force
15 to accomplish the sexual battery.

16 Aggravated force means that the use -- aggravated
17 force means the use of physical force or physical violence
18 of a high and aggravated nature to overcome the victim.
19 This includes the threat of using a deadly weapon or that
20 the victim submitted to the sexual battery while the
21 victim was the victim of forcible confinement.

22 I further instruct you that South Carolina Code
23 of Laws 16-3-657 provides that the testimony of the victim
24 need not be corroborated and Code 16-3-651 defines victim
25 to mean the person alleged to have been subjected to

JUDGE'S CHARGE TO THE JURY

1 criminal sexual conduct.

2 I further instruct you that the Defendant is
3 charged with possession of a weapon during the commission
4 of or attempt to commit a violent crime. The State must
5 prove beyond a reasonable doubt that the Defendant was in
6 possession of a firearm or visibly displayed what appeared
7 to be a firearm during the commission of a violent crime.

8 A firearm means any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will and is designed
10 to or may be readily converted to expel a projectile.

11 In order to find the Defendant guilty of
12 possession of a weapon during the commission of a violent
13 crime, you must first find the Defendant guilty of either
14 committing a violent crime or attempting to commit a
15 violent crime.

16 I instruct you that pursuant to 16-1-60 of the
17 South Carolina Code of Laws, that criminal sexual conduct
18 in the first degree is defined as a violent crime.

19 Ladies and gentlemen, there are two indictments
20 in this case and they allege two different offenses.
21 Indictment 2006-GS-10-9248 is an indictment for criminal
22 sexual conduct in the first degree. And 2007-GS-10-5911
23 is an indictment for possession of a firearm during the
24 commission of a violent crime.

25 Each indictment charges a separate and distinct

JUDGE'S CHARGE TO THE JURY

1 offense. You must decide each indictment separately on
2 the evidence and the law applicable to it, uninfluenced by
3 your decision as to any other indictment. The Defendant
4 may be convicted or acquitted on any or all of the
5 offenses charged.

6 You will be asked to write a separate verdict of
7 guilty or not guilty for each indictment.

8 Ladies and gentlemen, there are two possible
9 verdicts that you may consider on each indictment. And
10 you don't have to try to write these down because these
11 will go into the jury room with you. There's no
12 significance whatsoever to the order which I state these
13 potential verdicts. It's simply that one must be stated
14 first.

15 As to the indictment 2006-GS-10-9248, we, the
16 jury, by unanimous consent, find the Defendant guilty --
17 and I apologize. I did it in the opposite order. And
18 actually that is, one of them we have a scrivener's error
19 and I need to correct that. And I apologize.

20 As to indictment 2007-GS-10-5911 -- and actually
21 there's another scrivener's error. I apologize.

22 As to indictment 2006-GS-10-9248, an indictment
23 for criminal sexual conduct in the first degree, your
24 options are as follows: We, the jury, by unanimous
25 consent, find the Defendant guilty of criminal sexual

JUDGE'S CHARGE TO THE JURY

1 conduct in first degree, or not guilty.

2 And there will be a place for the foreperson to
3 sign and date the form. And also he will be responsible
4 for filling out the form.

5 And as to indictment 2007-GS-10-5911 which is an
6 indictment for possession of a firearm during the
7 commission of a violent crime, the options are as
8 follows: We, the jury, by unanimous consent, find the
9 Defendant guilty of possession of a firearm during the
10 commission of a violent crime, or not guilty.

11 Again, there is a place for the foreperson to
12 sign and date the form.

13 Again, there are two possible verdicts that you
14 may consider on each indictment. There's absolutely no
15 significance whatsoever to the order in which the Court
16 has stated these potential verdicts.

17 Ladies and Gentlemen, your verdict must be a
18 unanimous one which means all 12 of you must agree in
19 order to reach a verdict.

20 Mr. Foreman, it is your responsibility once the
21 jury has reached a verdict to fill out the verdict form
22 and to sign and date the form, then knock on the door and
23 advise the bailiff that the jury has reached its verdict.

24 Also if there are any questions during the course
25 of deliberations, it is your responsibility to write those

1 out and follow the same procedure, by knocking on the door
2 and advising the bailiff that the jury has a question.

3 Ladies and gentlemen, if you have any questions
4 during deliberations, please note that there will be a
5 delay in our response and that's because there's a
6 procedure that we must follow in answering your
7 questions. So if you have a question and we don't respond
8 immediately, please don't think we're ignoring you, we're
9 simply following that procedure.

10 I'm hoping that your lunch has arrived. We'll
11 double-check and see. So I'm going to ask that you return
12 to your jury room, but do not yet begin your
13 deliberations.

14 I have some matters of law that may require me to
15 clarify an instruction or give further instruction. If
16 there is no further instruction, we will send in your
17 notepads, the evidence and the verdict forms. At that
18 time you will be allowed to begin your deliberations.

19 Again, please do not yet begin your deliberations
20 until notified to do so. Please leave your notepads in
21 your seats. And please go with the bailiffs. We
22 appreciate your patience.

23 (Jury exits at 1:28 p.m.)

24 THE COURT: Give us a few moments to correct
25 these. There were some scrivener's errors on the date of

1 the indictment. We need to correct it.

2 MS. SHEALY: I'm so --

3 THE COURT: I'm sorry.

4 MS. SHEALY: I was going to add the tape into
5 evidence.

6 THE COURT: Are there any exceptions to the
7 charge from the State?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: From the defense?

10 MR. STIDHAM: None from the defense.

11 THE COURT: All right. Give us just a few
12 moments to correct those verdict forms and I'll send those
13 in and I'll also check if their lunches are here.

14 THE BAILIFF: Lunch is here, Your Honor.

15 THE COURT: Thank you.

16 (Pause.)

17 THE COURT: The record should reflect the jury
18 began its deliberations at 1:34.

19 The jury has their lunch. I would suggest that
20 you all go get some lunch but please leave your cell
21 phones on so if there's a question, I can call and get you
22 all back here.

23 (Jury deliberates from 1:34 p.m., until
24 5:40 p.m., when the trial resumed as follows:)

25 THE COURT: Is there anything from the State

VERDICT OF THE JURY

1 before we bring in the jury?

2 MS. SHEALY: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. STIDHAM: No, ma'am.

5 THE COURT: Please bring in the jury.

6 And I know that this is an emotionally-charged
7 case, but I will tell the gallery I do not expect there to
8 be any outbursts or any other emotional reactions to the
9 jury's verdict.

10 If there are, I am instructing the sheriff's
11 staff to remove you immediately without any further
12 complications from the Court.

13 (Jury enters courtroom at 5:40 p.m.)

14 THE BAILIFF: All present, Your Honor.

15 THE COURT: Thank you. Mr. Foreman, is it
16 correct that the jury has reached a verdict?

17 FOREPERSON OF THE JURY: Yes, ma'am.

18 THE COURT: If you would give the verdict form to
19 the bailiff for me, please?

20 FOREPERSON OF THE JURY: (Complying.)

21 THE COURT: Sir, can you stand for publication of
22 the verdict?

23 THE DEFENDANT: Yes, Your Honor.

24 THE CLERK: The verdict forms. In the matter of
25 the State of South Carolina versus Antonio D. Patterson,

POLLING OF THE JURY

1 the Defendant, as to Indictment Number 2006-GS-10-9248, we
2 the jury, by unanimous consent, find the Defendant guilty
3 of criminal sexual conduct, first degree. Signed by the
4 Foreperson of the Jury on September 1st, 2010.

5 Ladies and gentlemen of the jury, if this was
6 your verdict, please raise your right hand.

7 THE JURY: (All comply.)

8 THE CLERK: Thank you. Please let the record
9 reflect that all 12 jurors raised their right hand.

10 As to the verdict form, State of South Carolina
11 versus Antonio D. Patterson, the Defendant. As to
12 indictment 2007-GS-10-5911, we, the jury, by unanimous
13 consent, find the Defendant not guilty of possession of a
14 firearm during the commission of a violent crime. Signed
15 by the Foreperson of the Jury on September 1st, 2010.

16 Ladies and gentlemen of the jury, if this was
17 your verdict, please raise your right hand.

18 THE JURY: (All comply.)

19 THE CLERK: Thank you. Please let the record
20 reflect that all 12 jurors raised their right hand.

21 THE COURT: Is there any request to poll the
22 jury, from the State?

23 MS. SHEALY: No, Your Honor.

24 THE COURT: From the defense?

25 MR. STIDHAM: Yes, Your Honor.

POLLING OF THE JURY

1 THE COURT: Please poll the jury, Mr. Clerk.

2 Ladies and gentlemen, if you would give the clerk
3 your attention.

4 THE CLERK: Ladies and gentlemen of the jury,
5 what we're going to do now is called polling the jury.
6 When I call your juror number, if you'd please just raise
7 your hand until I acknowledge you, then you can put your
8 hand down.

9 I'll then ask you two questions, and that is:
10 Were those your verdicts? And are they still your
11 verdicts? If you would please answer me verbally.

12 Juror number 32, were those your verdicts?

13 THE JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Thank you. Juror number 22, were
17 those your verdicts?

18 THE JUROR: Yes, sir.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Juror number 38, were
22 those your verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

POLLING OF THE JURY

1 THE CLERK: Thank you. Juror number 43, were
2 those your verdicts?

3 THE JUROR: Yes, sir.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes, sir.

6 THE CLERK: Thank you. Juror number 111, were
7 those your verdicts?

8 THE JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Thank you. Juror number 163, were
12 those your verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: Thank you. Juror 177, are they --
17 were those your verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes, sir.

21 THE CLERK: Thank you. Juror 201, are those your
22 verdicts?

23 THE JUROR: Yes, sir.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes, sir.

1 THE CLERK: Thank you. Juror number 204, were
2 those your verdicts?

3 THE JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes.

6 THE CLERK: Thank you. Juror 223, were those
7 your verdicts?

8 THE JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Thank you. Juror 264, were those
12 your verdicts?

13 THE JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes, sir.

16 THE CLERK: Juror number 89, were those your
17 verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Was there any juror whose number I
22 did not call? Please raise your hand. Thank you.

23 Your Honor, the jury has been polled and the
24 verdicts stand.

25 THE COURT: Thank you. You may take your seats.

1 Mr. Foreman, ladies and gentlemen, we thank you for your
2 time and your attention to this case. I have already
3 selected another jury and we have already done that trial
4 and Judge Harrington has already selected her last civil
5 jury for the week. So I am able to excuse you from your
6 service.

7 If you need a work excuse, we can provide that
8 for you before you leave, otherwise it will be mailed out
9 to you on Friday along with your checks.

10 You are free to discuss this case, but I would
11 ask that you not do that until the entire panel is
12 released which will be after Friday. However, if someone
13 should persist in trying to speak with you and you do not
14 desire to discuss the case, please report that to the
15 clerk's office so that we can take every action necessary
16 to protect your privacy.

17 On behalf the State as well as the Defendant and
18 the defense counsel, we thank you for your time and your
19 attention to this case. We know that jury service is a
20 great sacrifice to you and the pittance that we pay you,
21 the \$10 a day, I'm almost embarrassed to say that that is
22 all that we are able, statutorily, to compensate you for.

23 So please know that that small amount of money is
24 no indication of our appreciation for your service.

25 I hope that it has also been educational for you

1 and I hope that it leaves you knowing how very important
2 you are to us. We cannot try cases without individual
3 citizens being willing to sit as jurors and listen to
4 cases and give of your time, both personally and
5 professionally.

6 So you are excused with the Court's profound
7 thanks. If there's anyone that wishes to stay for
8 sentencing, please let Mr. Brown know that and we will
9 bring you back into the courtroom and seat you in the jury
10 box so that you will be able to observe that process.

11 If you will get the sentence sheets for me,
12 please, and I'll hear post-trial motions and sentencing in
13 the next few moments.

14 MS. SHEALY: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 (Jury excused and exits courtroom.)

17 THE BAILIFF: All rise.

18 THE COURT: You may be seated. Are there any
19 post-trial motions, from the State?

20 MS. SHEALY: I'm sorry. No, Your Honor.

21 THE COURT: From the defense?

22 MR. STIDHAM: Judge, we -- I would move for a new
23 trial based on the grounds previously stated in my
24 directed verdict motion.

25 THE COURT: Would the State like to respond?

1 MR. STACK: No, Your Honor.

2 THE COURT: The Court would find that there is
3 direct evidence as well as substantial circumstantial
4 evidence that supports the jury's verdict.

5 There is no indication in the record that the
6 Court should substitute its judgment for that of the
7 jury. And, based on the record as I have been able to
8 observe it, there is no basis upon which the Court could
9 grant a new trial.

10 There again, as I've indicated, it's more than
11 substantial circumstantial evidence as well as direct
12 evidence to support the jury's verdict of criminal sexual
13 conduct in the first degree as well as their not-guilty
14 verdict on the possession of a firearm during the
15 commission of a violent crime.

16 Are we ready to proceed with sentencing?

17 MS. SHEALY: We are, Your Honor. Does the Court
18 prefer that Mr. Stidham signs the sentencing sheet or just
19 my signature is enough?

20 THE COURT: I don't have any preference. What
21 does Court Administration say?

22 MS. SHEALY: I don't know that.

23 THE COURT: I don't know, either. Well, I don't
24 know that I've ever really paid attention to who is
25 signing it, to tell you the truth.

1 MS. SHEALY: Can I approach, Your Honor?

2 THE COURT: Yes, ma'am. Thank you so much.

3 MS. SHEALY: Uh-huh.

4 THE COURT: Does the State have anything further
5 that it wishes to present regarding sentencing and does
6 the Defendant have a prior record?

7 MS. SHEALY: The Defendant does have record.

8 THE COURT: If you'd publish that, please.

9 MS. SHEALY: In 1995 he was convicted of indecent
10 exposure. And, Your Honor, I will tell you that he had
11 another indecent -- CSC.

12 MR. STIDHAM: Objection to any mention -- to any
13 mention of that.

14 THE COURT: What's your objection to me hearing
15 that?

16 MR. STIDHAM: Well, I'm going to object to
17 hearing that.

18 THE COURT: I'm a Judge. I know how to disregard
19 it. I've been doing this a long time. I know how to
20 disabuse it from my mind for purpose of enhancement.

21 I know that the law presumes him to be innocent
22 and I'm not going to hold any charge against him; however,
23 he has a pending charge.

24 If the State is amenable to resolving it and you
25 all are amenable to resolving it, you might want to have a

1 chat about it. If you don't, then it doesn't matter to me
2 one way or the other.

3 But I would hate for him to have to serve time
4 and then have to come back out and have them wait.

5 MR. STIDHAM: Yes, ma'am. I'm just objecting to
6 the mention of it in sentencing.

7 THE COURT: Well, you understand my theory now?

8 MR. STIDHAM: Yes, ma'am.

9 THE COURT: And what does he have pending?

10 MS. SHEALY: A CSC.

11 THE COURT: A first?

12 MS. SHEALY: Third.

13 THE COURT: Third. So that would not count as a
14 strike then. Correct?

15 MS. SHEALY: That's correct.

16 THE COURT: And have you all provided Mr. Stidham
17 with any discovery or anything on that charge?

18 Mr. Stidham, do you represent him on that charge?

19 MR. STIDHAM: Yes, ma'am. That trial was
20 actually on the docket prior to this. The State decided
21 to try this one first.

22 THE COURT: And what is the maximum penalty on a
23 CSC third? Is that five years? I can't remember.

24 MR. STIDHAM: I believe it's 10.

25 THE COURT: Is it 10?

1 MS. SHEALY: Ten.

2 THE COURT: Have y'all made any offers to him
3 regarding that charge?

4 MS. SHEALY: We had a previous offer in the case.

5 THE COURT: And what was that?

6 MS. SHEALY: That was to have the Defendant plead
7 to two CSC thirds.

8 THE COURT: So you all want to reduce this one as
9 well?

10 MS. SHEALY: We were, Your Honor. The Defendant
11 was not --

12 THE COURT: Plead straight up to two CSC thirds
13 with a max of 10; is that correct?

14 MS. SHEALY: That was, Your Honor, before the
15 victim had to come through the process of --

16 THE COURT: I understand that part. But my
17 question now is: Are you extending any offer to him on
18 the pending CSC third such that Mr. Stidham could address
19 that with him?

20 MS. SHEALY: We'd like him to plead straight up
21 to the CSC third.

22 THE COURT: Do you want to discuss that with your
23 client?

24 MR. STIDHAM: Yes, Your Honor. (Conferring with
25 Defendant.) May we approach?

1 THE COURT: Absolutely.

2 (Off-the-record discussion.)

3 MR. STIDHAM: Judge, we're having a little
4 trouble communicating the situation.

5 THE COURT: Well, it's up to him. What's his
6 position? I wanted to give him that option today versus
7 him serving this sentence and then try him.

8 MR. STIDHAM: He's having a little bit of trouble
9 understanding the gist of the, I guess --

10 THE COURT: Maybe he'd be acquitted. I mean,
11 it's up to him. I wasn't there. I don't know what the
12 State has on that other case, so I can't make that
13 assessment.

14 MR. STIDHAM: (Conferring with Defendant.)
15 (Pause.).

16 THE COURT: Your client wishes to plead guilty to
17 the CSC third on indictment 1010-GS-10-4311?

18 MR. STIDHAM: That's my understanding, Your
19 Honor.

20 THE COURT: Are there any recommendations or
21 negotiations from the State or is he pleading straight up
22 to that charge?

23 MS. SHEALY: He's pleading straight up, Your
24 Honor. May I try to get the victim on the phone or --

25 THE COURT: Mike will do it.

1 MS. SHEALY: Okay.

2 THE COURT: Just need to give him the phone
3 number.

4 (Telephone call placed but did not connect.)

5 MR. STIDHAM: Your Honor, my client --

6 THE COURT: If he's not committed to what he's
7 doing, then he needs to have a trial. I'm a great
8 believer in the trial system and only he can make that
9 decision.

10 He should not feel pressured in any way at all
11 whatsoever. If he has any second thoughts, he might want
12 to make sure that's what he wants to do. Appealing a
13 guilty plea is unlikely that it's ever going to be
14 overturned because you're waiving rights.

15 So he needs to make sure that that's what he
16 wants to do.

17 Again, the Court takes no preference. I don't
18 have any preference one way or the other. It doesn't
19 matter to me what you do. It's up to you. It's your
20 decision.

21 MR. STIDHAM: Yes, Your Honor. (Conferring with
22 Defendant.)

23 (Pause.)

24 THE COURT: Your client's decided what he wants
25 to do?

1 MR. STIDHAM: Yes, ma'am.

2 THE COURT: And what is that?

3 MR. STIDHAM: Plead guilty.

4 THE COURT: Can you get the victim on the other
5 case?

6 (Telephone call placed.)

7 MS. SHEALY: Ms. Evans. This is Jennifer Shealy.
8 Can you hear me?

9 WOMAN'S VOICE ON TELEPHONE: Yes, I can.

10 MS. SHEALY: Okay. We're in the courtroom and
11 Mr. Patterson is getting ready to enter a guilty plea in
12 the case involving you.

13 WOMAN'S VOICE ON TELEPHONE: All right.

14 MS. SHEALY: At the appropriate time the Judge
15 will hear from you. Okay. If you'll refrain from talking
16 until we ask you what you would like to say.

17 WOMAN'S VOICE ON TELEPHONE: All right.

18 MS. SHEALY: Okay. Thanks.

19 THE COURT: Mr. Stidham, are you ready to
20 proceed?

21 MR. STIDHAM: Yes, Your Honor.

22 THE COURT: Sir, could you stand for me, please?

23 THE DEFENDANT: (Complies.)

24 THE COURT: Mr. Stidham, have you explained to
25 your client the charges contained in the indictment, the

1 possible punishment, his constitutional rights?

2 MR. STIDHAM: Yes, ma'am.

3 THE COURT: Do you believe he understands the
4 charge, the punishment and his rights?

5 MR. STIDHAM: Yes, ma'am.

6 THE COURT: Is it correct that he wishes to enter
7 a plea of guilty on 2010-GS-10-4311 which is criminal
8 sexual conduct in the third degree?

9 MR. STIDHAM: Yes, ma'am.

10 THE COURT: Do you agree with that decision?

11 MR. STIDHAM: Yes, ma'am.

12 THE COURT: To your knowledge has he ever been
13 evaluated to determine his competency?

14 MR. STIDHAM: No, Your Honor.

15 THE COURT: Sir, raise your right hand to be
16 sworn.

17 THE DEFENDANT: (Complies.)

18 (Defendant placed under oath.)

19 THE COURT: You can put your right hand down,
20 sir. State your full name for the record.

21 THE DEFENDANT: Antonio Dieargo Patterson.

22 THE COURT: Sir, how old are you?

23 THE DEFENDANT: Forty years old.

24 THE COURT: How far have you gone in school?

25 THE DEFENDANT: Twelfth grade.

1 THE COURT: Did you graduate?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: What kind of work do you generally do
4 for a living?

5 THE DEFENDANT: Automotive.

6 THE COURT: Are you a mechanic?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Are you married?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you have any children?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: How many?

13 THE DEFENDANT: Five.

14 THE COURT: What are their ages?

15 THE DEFENDANT: Nineteen, 18 -- 19, 17, 11 --
16 let's see. Five and three.

17 THE COURT: Have you ever been treated for the
18 abuse of alcohol, drugs or mental illness?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Have you had any drugs, alcohol or
21 medication in the last 72 hours?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Are you aware of any physical,
24 emotional or nervous problem that might keep you from
25 understanding where you are right now or understanding

1 what you're doing?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Are you currently on probation or
4 parole?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: On indictment 2010-GS-10-4311 which
7 is criminal sexual conduct in the third degree, how do you
8 plead; guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Sir, do you understand that that
11 carries a maximum penalty of 10 years?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You may discuss parole or parole
14 eligibility with your lawyer or with others, but until
15 you're sentenced no one can tell you when, if ever, you
16 will be eligible for parole and under what conditions.
17 You should assume that you will serve the entire time in
18 jail and do your sentence day for day. Do you
19 understand?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: I want you to listen very carefully
22 to the facts. Madam solicitor?

23 MS. SHEALY: Thank you, Your Honor. On June 1st,
24 2008 at approximately 02:04 hours, officers were
25 dispatched to 2003 Clifton Street in reference to an open

1 9-1-1 telephone line with a female voice in the background
2 screaming for someone to let her go.

3 Upon the officers arrival Veronica Evans, the
4 victim, advised that she was awakened around 01:45 hours
5 by Antonio Patterson pulling her pants off while she
6 was -- while he's lying between her legs.

7 Evans further stated that he was fondling her
8 breasts. She also stated that she advised Mr. Patterson
9 to stop but he would not stop. He then -- she then stated
10 that Patterson held her down by her pants and inserted his
11 finger within her vagina and kept telling her to relax.

12 Evans stated that she began to cry and yell at Patterson
13 at which time he placed his penis within her vagina.

14 Evans advised that she began to kick and scratch
15 at Patterson to which Patterson just kept going and
16 advising her that it felt good.

17 Evans stated that Patterson then questioned her
18 if she ever had anything like that done to her before and
19 finally he got off of her.

20 Evans stated that she laid there for about five
21 minutes and then called 9-1-1 again for help -- or excuse
22 me, called 9-1-1 for help.

23 Evans stated that she was unable to say anything
24 on 9-1-1, due to Patterson attempting to get the phone
25 from her and trying to keep her from leaving.

1 Your Honor, in this case the police arrived and
2 Ms. Evans is still present in the Defendant's home with
3 her two children who were sleeping in a room next door.

4 In a similar way to the case that we just got
5 finished trying, he offers Ms. Evans, who was getting her
6 children for the weekend and who was going to rent a hotel
7 room, the use of his house for the evening because he
8 would not be home and that she and her children instead of
9 getting a hotel room could stay at his house because he
10 was going to be absent.

11 Then in fact in the later hours of the evening he
12 came home and when she was in the bed sleeping, the events
13 that I just articulated occurred.

14 Your Honor, she was taken for her sexual assault
15 exam, oral swabs, rectal swabs and miscellaneous body
16 fluids and her panties all had semen identified on each
17 item. And those items came back to Antonio Patterson with
18 the same statistic that Fay LeBoeuf testified to in the
19 trial that we just completed, that being one in 100
20 quintillion. That really --

21 THE COURT: Actually it wouldn't have been
22 Ms. LeBoeuf. It's the SLED agent.

23 MS. SHEALY: I'm sorry. You're correct. Robin
24 Taylor. The same statistic, that it was one in 100
25 quintillion.

1 Veronica Evans is on the phone, Your Honor.

2 THE COURT: I'll hear from her at the appropriate
3 time.

4 Sir, do you agree or disagree with the facts?

5 THE DEFENDANT: I agree.

6 THE COURT: Do you feel anything needs to be
7 changed or added to the facts?

8 THE DEFENDANT: No, I don't.

9 THE COURT: Are you ready to plead guilty, sir,
10 because you're guilty?

11 THE DEFENDANT: Uh --

12 THE COURT: You're the only one that can answer
13 that question. There's no right or wrong answer. You
14 have to search yourself.

15 And I would advise you very strongly, again, that
16 if you have any question or ambivalence about pleading
17 guilty you should not do it because hindsight is 20/20.
18 And you won't be able to do anything about hindsight in
19 this circumstance because once you appeal a guilty plea,
20 the Supreme Court's going to dismiss it because you pretty
21 much waive everything once you plead guilty.

22 So you need to make sure that this is what you
23 want to do.

24 And the Court again emphasizes it takes
25 absolutely no position. You're the only person that can

1 make this decision.

2 And if you have any question, I strongly suggest
3 you have a trial.

4 THE DEFENDANT: I want to go -- I'm going to go
5 with it.

6 THE COURT: Well, you have to answer the question
7 for me. Are you pleading guilty because you're guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Sir, I want you to listen very
10 carefully. When you plead guilty you give up certain
11 important constitutional rights. Those rights include
12 your right to a jury trial.

13 At a jury trial you're entitled to the
14 presumption that you're innocent and the State has the
15 burden of proving your guilt beyond a reasonable doubt.

16 You have the right to confront and cross-examine
17 the State's witness and call witnesses in your own
18 defense. You would have the right to present any defenses
19 that you may have. You would also have the right to
20 remain silent and, just as in this trial, if you remain
21 silent your silence can never be used against you.

22 You would have the right to challenge any
23 statements that you may have made.

24 Do you understand all of your rights?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you understand that you're giving
2 up each and every one of those rights?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Other than what has been stated for
5 the record, have there been any other plea negotiations
6 made on your behalf?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Have you been satisfied with your
9 lawyers' services?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Have they answered all of your
12 questions?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Done everything you asked or expected
15 in representing you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And that would be for as long and as
18 often as you felt necessary to represent you?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Have you understood your talks with
21 them?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you have any complaints about
24 their services?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Sir, do you understand that as a
2 result of this guilty plea you will have to register for
3 the sex offender registry for the rest of your life?

4 As a result of your convictions you're going to
5 have to register anyway, but do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you also understand that once you
8 have completed your sentence that you still will be
9 subject to review by the multi-disciplinary team who will
10 decide whether to make a recommendation as to whether you
11 should be committed for treatment which that treatment
12 could be indefinite. Do you understand that?

13 It's a civil commitment that you will become
14 subject to. You'll become subject to that as a result of
15 your conviction in this case in any event, but in this
16 guilty plea you will be subject to the same evaluation.

17 A group of individuals including therapists will
18 determine whether you have a mental defect such that
19 requires you to have treatment in a civil setting for, as
20 a sexually-violent predator. Do you understand that?

21 THE DEFENDANT: You mean, I have to go to some
22 kind of class or something like that?

23 THE COURT: No, I'm not saying that. I'm saying
24 that once you max-out, when you reach the point where
25 you're about to max-out your sentence --

1 THE DEFENDANT: Right.

2 THE COURT: -- there are a group of individuals
3 that are going to look at your file.

4 THE DEFENDANT: Right.

5 THE COURT: And they're going to look at it and
6 they're going to do a report. And that report is either
7 going to say that you're a sexually-violent predator in
8 need of treatment or it's going to say that you're a
9 person who's been convicted of a sexually-violent offense
10 that is not in need of treatment.

11 In other words, they're going to look at you.
12 They're going to evaluate you. They're going to talk to
13 you. And they're going to decide whether you have a
14 mental abnormality that makes it more likely that you're
15 going to do this again.

16 So they look at your records and they say, we
17 think you're going to do it again, that you have a mental
18 abnormality that makes you subject to that. Then they
19 will look at you and then they will make a recommendation
20 to the Court as to whether you should be subject to civil
21 commitment which means that you would go to a civil
22 facility where you would get treatment for it in a
23 sexually-violent status.

24 Now having said that, even if they recommend it,
25 you're still entitled to a jury trial on that issue. And

1 a jury can decide whether you'd be committed or not.

2 THE DEFENDANT: Well, I went to a class something
3 like that.

4 THE COURT: Well, this is different. This is
5 civil commitment. So in other words, when you get ready
6 to max-out your sentence, they're going to look at you and
7 they're going to say either they think you have a mental
8 abnormality or they think you don't have a mental
9 abnormality.

10 If they say you don't have a mental abnormality,
11 the State still has the option of getting a private
12 therapist to look at you and evaluate you and see if they
13 come up with that same option, with that same
14 presumption.

15 If -- and they may not. Sometimes they determine
16 that people are not -- that they have -- that they've
17 committed a sexual offense but they don't have a mental
18 abnormality, so they don't recommend further treatment and
19 people are released.

20 The worse case scenario, they say you have a
21 mental abnormality. They want you committed civilly for
22 treatment. You can still request a jury trial on that and
23 then a jury will decide whether you get civilly committed
24 or not.

25 Worse case scenario, the jury decides that you're

1 civilly committed. Then you would go to a secure facility
2 where they would give you treatment and it could be a
3 year. It could be five years. It could be -- you hold
4 the keys to your confinement in that situation.

5 There are certain series of treatments you have
6 to go through and benchmarks that you have to meet before
7 the therapist will recommend that you are released.
8 That's the worse case scenario.

9 Best case scenario is they look at you and they
10 say that you don't have a mental abnormality and they
11 recommend that you be released.

12 But I have to advise you of worse case scenarios
13 so that you understand the full scope of everything you're
14 facing because I would not want you to get ready to
15 max-out and then say, I didn't know that was going to
16 happen to me.

17 But having told you that, with your convictions
18 with the CSC first, it's going to happen anyway. There's
19 still, at your max-out date, an evaluation to decide
20 whether you're subject to civil commitment. So it's not
21 anything extra. That's going to happen. They're going to
22 look at all your convictions.

23 And I need to tell you as well that even if you
24 didn't do this, the multi-disciplinary team is going to
25 look at anything that's pending against you anyway. They

1 look at whether you -- they look at any behavior, whether
2 you've been convicted of it or not.

3 So the fact that you have a CSC third pending,
4 the multi-disciplinary team's going to look at that and
5 when they look -- when you're getting ready to max-out on
6 the CSC first that you were convicted of, it's not
7 required to be a conviction for them to look at it.

8 THE DEFENDANT: All right.

9 THE COURT: So they're going to look at all your
10 behavior. They're going to look at all your records.
11 They're going to look at everything.

12 Do you understand what I'm explaining to you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And knowing all of that, do you still
15 wish to plead guilty?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. And do you have any questions
18 about what I've just explained to you?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Okay. Has anyone promised you
21 anything or held out any hope of reward to cause you to
22 plead guilty?

23 THE DEFENDANT: No, ma'am. No, ma'am.

24 THE COURT: Has anyone used threats, coercion,
25 force or pressure, intimidation or duress to cause you to

1 plead guilty?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Have you had enough time to make up
4 your mind about pleading guilty?

5 THE DEFENDANT: Let's say what I'm doing now,
6 just taking the one shot anyway.

7 THE COURT: Well, you could always plead guilty
8 straight up. That's not the issue. It's just a matter of
9 when. And you'll get credit for any time -- let's say you
10 go to the Department of Corrections and you spend a year
11 on this charge that you were convicted on and you decide
12 you're going to plead guilty, you're not going to get
13 credit for any of this time.

14 Because you can plead guilty straight up any time
15 you want to, but when you leave here today after I
16 sentence you, they're going to take you to R&E tonight or
17 in the morning sometime. You're not going to be at the
18 county jail very long.

19 THE DEFENDANT: All right.

20 THE COURT: I just don't want you to be misled.
21 I don't want you to think you're going to sit in the jail
22 till Friday. That's not going to happen. Space is a
23 premium over there.

24 So whenever they get ready to send a van to R&E
25 you're going to be transported. And I don't know whether

1 that's tonight or in the morning. I have no idea, but I
2 doubt it would be Friday.

3 When do they do transports?

4 UNIDENTIFIED SPEAKER: I'd say every other day.

5 THE COURT: So it'd probably be tomorrow.

6 THE DEFENDANT: Where's that? Columbia?

7 THE COURT: Yes, sir. And from there they'll do,
8 I guess, your physical. You'll meet with your
9 counselors. They'll go over your sentence with you and
10 then they'll decide which institution they're going to
11 send you to.

12 THE DEFENDANT: Okay.

13 THE COURT: Do you have any other questions?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Okay. Did the Court adequately
16 answer your questions?

17 THE DEFENDANT: I want to make sure, okay, when I
18 do this here, you know, it take of this --

19 THE COURT: Would be everything. And all the
20 other charges that are pending, the solicitor's going to
21 nolle pros those or dismiss them because there's some
22 other ones hanging out there and they're going to dismiss
23 those as well.

24 THE DEFENDANT: I got more charges hanging out
25 there?

1 THE COURT: Well, there's some other ones, I
2 think, that are scrivener's errors. There are problems in
3 the way the case was charged. So they're going to dismiss
4 all of those. Is that correct?

5 MS. SHEALY: He originally was indicted on the
6 case that we're discussing right now as a CSC first. It
7 was not appropriately a CSC first.

8 So he was then indicted for CSC third but because
9 there was digital penetration and vaginal penetration,
10 there were two indictments.

11 So if he pleads, two CSC indictments will be
12 nolle prossed, dismissed, as will the other digital
13 penetration indictment.

14 THE COURT: So it's more of just administratively
15 cleaning up the record.

16 MS. SHEALY: Well, the State certainly could go
17 forward with two counts of CSC --

18 THE COURT: It could.

19 MS. SHEALY: -- third --

20 THE COURT: It could.

21 MS. SHEALY: -- but if he pleads tonight, just
22 having to plead to the one.

23 THE COURT: Do you understand, sir?

24 THE DEFENDANT: So they can change it to two
25 charges?

1 THE COURT: Well, they can charge you with two,
2 digital and vaginal. Every act -- every separate act
3 within that is a criminal activity.

4 THE DEFENDANT: So I would have two charges?

5 THE COURT: Yes, sir. That's the way they
6 charged it.

7 THE DEFENDANT: So, I'm pleading guilty to just
8 one?

9 THE COURT: They're going to dismiss everything
10 else.

11 THE DEFENDANT: All right.

12 THE COURT: You're fine with that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And, sir, I ask you again: Do you
15 feel that you've had enough time to make up your mind
16 about pleading guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And are you doing this freely and
19 voluntarily and of your own will?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you understood the Court's
22 questions?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Is there anything else you --
25 anything you need to ask me about what we've been over?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Okay. Have you been absolutely
3 truthful with each and every answer that you've given to
4 the Court?

5 THE DEFENDANT: I'm guilty of that but I'm not
6 sure about that, but --

7 THE COURT: I'm talking about the CSC third.
8 Have you been absolutely truthful in the conversation that
9 you and I have been having for the last few moments?
10 Every question that I've asked you --

11 THE DEFENDANT: Oh, yes, ma'am.

12 THE COURT: -- have you been absolutely truthful
13 in those questions -- in those answers?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. Do you understand that you
16 have the right to appeal this guilty plea and sentence of
17 the Court but that you must do so in writing within 10
18 days of today?

19 THE DEFENDANT: That's appealing what?

20 THE COURT: This guilty plea. You can always
21 appeal your other sentence. You have 10 days to do that
22 as well.

23 THE DEFENDANT: Okay. So appealing it means I go
24 back to court?

25 THE COURT: Depends on what the Court of Appeals

1 or the Supreme Court does. Your conviction could be
2 affirmed. It could be reversed. This has no affect on
3 that.

4 If your conviction gets reversed, it will come
5 back for a new trial.

6 THE DEFENDANT: I mean, say you sentence me on
7 that, and I put an appeal on it, would I still be able to
8 come back to court for it?

9 THE COURT: If the Supreme Court or the Court of
10 Appeals reverses your conviction, which is a three-year to
11 four-year process. So we won't know that until another
12 four years from now.

13 THE DEFENDANT: Okay.

14 THE COURT: Did I answer your question?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: So, just so we're clear. You were
17 convicted today by a jury on 2006-GS-10-9248 which is a
18 criminal sexual conduct in the first degree. I'm going to
19 sentence you on that.

20 You can appeal that. I don't know what the
21 appellate court will do with it. They could affirm it.
22 They could reverse it. They could affirm it in part and
23 reverse it in part.

24 But either way, the best case scenario if they
25 reversed it, it would just come back for a new trial. It

1 wouldn't go away. The State can always still re-try it,
2 and in all likelihood they will.

3 I won't speak for them, but having had experience
4 now with them many, many years, that's what they'd do.

5 So if it's reversed, it will just get tried
6 again. I'm just being honest with you.

7 THE DEFENDANT: I had to ask, you know.

8 THE COURT: I want to be completely forthright so
9 that you understand exactly procedurally how it works
10 because the Court of Appeals -- well, if the Court of
11 Appeals reverses it, they can apply for cert to the
12 Supreme Court of the State, and the Supreme Court might
13 reverse the Court of Appeals.

14 In other words, if you go -- it could go back to
15 court for a number of years but with the best case
16 scenario --

17 THE DEFENDANT: Say three years.

18 THE COURT: -- it's going to take three years for
19 the Court of Appeals to resolve your appeal.

20 THE DEFENDANT: If I appeal, I got to do it
21 within 10 days.

22 THE COURT: Within 10 days. And then after that
23 let's just say worse case -- best case scenario for you,
24 the Court of Appeals says that some error was made and the
25 case is reversed, the State can still appeal that to the

1 Supreme Court.

2 It would probably take a year for them to decide
3 whether they were going to hear it or not.

4 THE DEFENDANT: And then it can go back to
5 court?

6 THE COURT: And then the Supreme Court can affirm
7 the Court of Appeals or they can reverse the Court of
8 Appeals, or the Court of Appeals may say nothing went
9 wrong and affirm it and your lawyers could appeal it to
10 the Supreme Court, the Supreme Court could say the Court
11 of Appeals was right or wrong.

12 But either way, the best case scenario, in terms
13 of what we're talking about for you, let's just say they
14 all reverse it, it still comes right back here. It gets
15 remanded back to this court for the solicitor to re-try
16 your case.

17 So it doesn't go away. A reversal doesn't mean
18 that your case is dismissed. It just simply means that
19 the State has a chance to try you again and correct
20 whatever errors were made.

21 Did I answer your questions?

22 THE DEFENDANT: Now if they let them bring me
23 back and they retry it, so are you saying I can do the
24 same sentence again? You know what I'm saying?

25 THE COURT: Well, they could retry it again and

1 who knows what might happen. I mean, you might get a
2 guilty verdict. You might get a not-guilty verdict. I
3 don't know.

4 You know, I can't see into the future. I don't
5 know what could happen there. Those are the two
6 possibilities. On a retry you could be convicted or you
7 could be acquitted. Of course, if you're convicted you
8 always run the risk of having an increase of sentence as
9 well.

10 So the worse case is -- I have to tell you the
11 whole picture because your exposure is 30 years. Let's
12 say, for example, I give you less than 30 years and you
13 come back and it all gets reversed on error. Comes back
14 and it's retried. You always run the risk of getting the
15 maximum penalty.

16 THE DEFENDANT: Okay.

17 THE COURT: Worse case scenario. So there are
18 lots of -- what's the word that I'm looking for.

19 There are just so many variations on what could
20 happen. I'm just telling you worse case, what could
21 happen. And what your maximum exposure would be. Did I
22 answer all your questions?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you have any other questions for
25 the Court?

1 THE DEFENDANT: Do me a favor and take it easy on
2 me, please.

3 THE COURT: Your lawyers will argue mitigation
4 and you will have an opportunity to make any statements to
5 the Court regarding mitigation at the appropriate time.

6 Sir, have you understood the Court's questions?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you been absolutely truthful in
9 your answers to the Court's questions?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you have any questions regarding
12 what we've gone over?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Do you understand that you have the
15 right to appeal this guilty plea and sentence of the Court
16 but that you must do so in writing within 10 days of
17 today?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you understand that if you cannot
20 afford an attorney for this process that one will be
21 appointed to you at no cost?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And, sir, I want to make sure. Do
24 you have any questions about your desire to plead guilty
25 to the offense of criminal sexual conduct in the third

1 degree?

2 THE DEFENDANT: Say that again.

3 THE COURT: Are you absolutely certain about your
4 desire to enter a plea of guilty to the charge of criminal
5 sexual conduct in the third degree?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And are you pleading guilty, sir,
8 because you are in fact guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: I find there's a substantial factual
11 basis for the plea, that the Defendant has entered the
12 plea freely, voluntarily, knowingly and intelligently,
13 that he has had the advice and assistance of counsel with
14 whom he has indicated to the Court that he's satisfied and
15 I will accept the plea.

16 Anything further from the State regarding either
17 case, that being the one we just tried or the case that
18 Mr. Patterson has just now entered the plea of guilty on?

19 MS. SHEALY: Yes, Your Honor. [REDACTED]
20 would like to address the Court. Her mother maybe as
21 well.

22 Tiffany, if you could stand up.

23 THE COURT: Yes, ma'am?

24 [REDACTED] I would like to say that --

25 THE COURT: We're going to need you to speak up a

1 little bit for us, ma'am.

2 MS. SHEALY: Judge, would it be okay if she came
3 forward?

4 THE COURT: It's not me. It's security. It's
5 too much volatility. I just need you to speak up a little
6 bit more.

7 MS. SHEALY: Talk real loud.

8 [REDACTED] I feel -- I don't think that I
9 feel -- I'm still afraid from what he did to me. And I'm
10 trying to keep focused and tough and motivated and stuff,
11 but I think about it every day and think about things that
12 happened.

13 I'm trying to keep working this out and I just
14 want to say that I hope he gets put away for a very long
15 time and I thank you.

16 MS. SHEALY: Your Honor, Tiffany's mother. Would
17 you state your name, please?

18 [REDACTED] CHANDLER: My name's Melissa Graham
19 Chandler.

20 THE COURT: I'm going to need you to say that one
21 more time.

22 [REDACTED] CHANDLER: Melissa Graham Chandler.

23 THE COURT: Yes, ma'am.

24 [REDACTED] CHANDLER: I'm asking the Court to
25 restrain him. I'm asking, please. This has put a very

1 big strain between me and my daughter and between her and
2 her boyfriend through this stuff.

3 I'm just, you know, pleased with the verdict and
4 I just would like him to be put away.

5 THE COURT: Thank you, ma'am.

6 MS. SHEALY: Your Honor, just briefly about
7 [REDACTED] I inherited the case from someone else in our
8 office.

9 Every time that I had asked her to come up here,
10 even when it's been with great difficulty for her to find
11 transportation, she always came and met with me. She was
12 completely consistent with me from day one to three years
13 later.

14 And every time she was in my office she was
15 tearful. I could see how palpable this is and how this
16 affects her day in and day out.

17 Veronica Evans is on the phone. She's the victim
18 in the second case that he's pleading guilty to.

19 I would like to point out, Judge, that while
20 Ms. Graham's case took place in 2006, Mr. Patterson was
21 out on bond for a CSC first, the second incident
22 occurred. Ms. Evans?

23 FEMALE VOICE ON TELEPHONE: Yes, ma'am.

24 THE COURT: Could you tell the Judge what you'd
25 like to tell her regarding his sentencing, please?

1 FEMALE VOICE ON TELEPHONE: Yes, ma'am. I just
2 would like to say that I'm also happy to hear that he is
3 definitely going to pay for the pain that he caused me.
4 Mr. Patterson assaulted me and he raped me with my kids
5 asleep in the next room.

6 And I believe that if he is on the street, he
7 will do it again. And I would say that he really needs
8 help.

9 MS. SHEALY: Is that all that you'd like to say,
10 Ms. Evans?

11 FEMALE VOICE ON TELEPHONE: Yes, ma'am.

12 MS. SHEALY: Okay. Thank you.

13 Your Honor, just so the Court is aware, I know
14 that we've shared with the Court about Ms. Graham's
15 employment history. Veronica Evans similarly is someone
16 who's hard working. She used to be a correctional
17 officer, taking care of two children. These are fine
18 women who unfortunately were not as cautious, I guess, as
19 they should have been when he extended kindness towards
20 them.

21 Mr. Patterson was very successful in making these
22 two women, in a very similar fashion, think he was helping
23 them out with both having disastrous outcomes.

24 Thank you, Your Honor.

25 THE COURT: Thank you very much. Anything from

1 the defense?

2 MR. STIDHAM: Yes, Your Honor. Briefly.

3 Judge, as you heard, Tony is 40 years old. He's
4 been in Charleston all his life. He worked at -- excuse
5 me. He graduated from Burke High School and then went on
6 to get a Culinary Arts Degree from Trident Tech. He then
7 worked at Gerald's Tires from 1998 to 2009.

8 He comes from a large family, many of which are
9 here. And as he said, he does have five children, some of
10 them small.

11 Judge, I had Dr. Bill Burke evaluate
12 Mr. Patterson.

13 THE COURT: Uh-huh

14 MR. STIDHAM: In anticipation of a situation such
15 as this.

16 THE COURT: Uh-huh.

17 MR. STIDHAM: Our concern is is that Dr. Burke's
18 evaluation comes with a warning: The information in the
19 summary should be released to the evaluatee because of the
20 possible emotional detriment.

21 THE COURT: Do you want me to just read it?

22 MR. STIDHAM: Yes, ma'am. And I've discussed the
23 report with the solicitor. I don't know if you want to
24 take a look at it.

25 THE COURT: I assume you don't want it made a

1 part of the record?

2 MR. STIDHAM: No, Your Honor, I don't. Thank
3 you.

4 THE COURT: Thank you very much. Anything
5 further?

6 MR. STIDHAM: Yes, Your Honor. Mr. Leroy
7 Patterson, Tony's father, his only remaining parent alive,
8 you heard his mother passed away in '05. He has been --
9 Tony takes him to dialysis twice a week.

10 And he's here in the courtroom. I know he's
11 struggling emotionally, but he wishes to address the
12 Court.

13 THE COURT: I'll certainly be glad to hear from
14 him. Yes, sir.

15 MR. L. PATTERSON: I can say that we try in the
16 family to be good to the community. Our house was always
17 open to everyone, to try to be a part of the community and
18 to teach our children to be part of the church.

19 THE COURT: Sir, would you speak a little bit
20 louder?

21 MR. L. PATTERSON: I don't want to go back
22 through what I just said but I just think that we tried to
23 be a good figure in the church and I'm just embarrassed by
24 this situation with whatever he done.

25 THE COURT: Thank you, sir. Tell us your name

1 for the record.

2 MR. L. PATTERSON: My name is Leroy Patterson.

3 THE COURT: Thank you, sir. All right. Anything
4 further from the defense?

5 MR. STIDHAM: Not at this time, Your Honor.

6 THE COURT: Sir, anything you want to state for
7 the record on your own behalf?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: ON THE OFFENSE OF CRIMINAL SEXUAL
10 CONDUCT IN THE FIRST DEGREE, SIR, YOU ARE SENTENCED TO THE
11 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.
12 THIS SENTENCE IS CONCURRENT WITH 2010-GS-10-4311.

13 ON THAT OFFENSE YOU'RE SENTENCED TO THE STATE
14 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 10 YEARS. AGAIN
15 THESE SENTENCES ARE CONCURRENT WITH ONE ANOTHER. YOU'LL
16 GET CREDIT FOR ANY TIME THAT YOU SERVED pursuant to 24-13-
17 40 to be calculated and applied by the Department of
18 Corrections.

19 I'm ordering ATU if it's available to you in the
20 diagnosis of alcoholism which I'm certain was contributing
21 to all of these events.

22 MR. STIDHAM: Thank you, Your Honor.

23 MS. SHEALY: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 END OF PROCEEDINGS

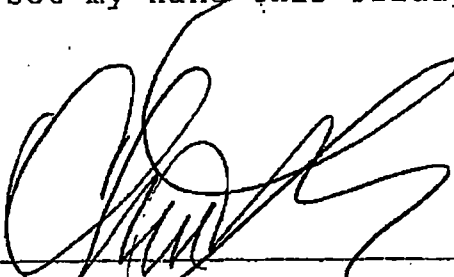
* * * * *

CERTIFICATE OF REPORTER

I, Cheri L. Young, Registered Professional Reporter, and Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing transcript of proceedings heard on Monday, August 30, Tuesday, 31 and Wednesday, September 1, 2010, in Charleston, South Carolina, was reported by Gayle Burns, RMR, using machine shorthand, and transcribed into English format by me using computer-aided transcription, and is a true, accurate and complete transcript of the proceedings had and evidence introduced in the hearing of the matter.

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

I have hereunto set my hand this Friday, the 25th day of March, 2011.



Cheri L. Young, RPR
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of

Charleston

2014-CP-10-1212

IN THE COURT OF COMMON PLEAS

ANTONIO DI CARO PATERSON

Full name and prison number (if any) of Applicant

342594

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

BY

JULIE A. ANDERSON
CLERK OF COURT

2014 FEB 25 PM 4:51

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MAC DOUGALL CORRECTIONAL INST
2. Name and location of Court which imposed sentence Charleston County Court
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006-GS-10-09248

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) Sept 1, 2010 12 YEARS
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) ☒ after a plea of not guilty _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
(a) the name of each Court to which you appealed:
i. Court of Appeal
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. DISMISSED
ii. _____
iii. _____
(c) the date of each such result:
i. JUNE 19, 2013
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. Unpublished opinion No 2013-up-254
ii. _____
iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
(a) _____

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL.
 (b) NO EVIDENCE EXIST TO SUPPORT THE OFFENSE OF CSC, 1ST
 (c) DNA
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL FAILING TO FILE A MOTION TO QUASH INDICTMENT
 (b) BECAUSE STATE DID NOT PROVE THE NECESSARY ELEMENTS
 (c) OF CSC FIRST DEGREE, BEFORE GRAND JURY AT TRIAL.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? DNA PCR FORENSIC APP.
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. DNA FORENSIC APPLICATION WILL PROVE COMPLETE INNOCENT
 ii. WILL PROVE THERE ARE NO DNA THAT MATCHES VICTIM:
 iii. DEFENDANT IS HELD IN CUSTODY UNLAWFULLY
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. CHARLESTON COUNTY COURT 101 MEETING ST
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. NONE

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NONE

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NONE

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NONE

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. NONE

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NO EVIDENCE EXIST TO SUPPORT THE OFFENSE CSC 1st DEGREE.
 (b) DNA DON'T MATCH VICTIM'S / ATTORNEY DIDN'T OBJECT AT TRIAL
 (c) INEFFECTIVE ATTORNEY NOT AWARED

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. BRESE M. Stidham
CHAS. County office 101 Meeting St. CHAS. S.C. 29401.
 ii. ROBERT M. DUDEK
S.C. COMMISSION ON INDIGENT DEFENSE Columbia 29211
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. AT TRIAL
 ii. ON APPEAL
 iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE VACATED
TIME RECONSIDERATION
FURTHER RELIEF AS THIS COURT MAY DEEM JUST AND PROPER

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, ANTONIO DIEAGO PATTERSON, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 19th
day of January 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires March 9, 2014

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, ANTONIO DIEGO PATTERSON, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Antonio Diego Patterson
Applicant

SWORN or affirmed and subscribed before me this
19th day of February, 2014.

[Signature]
Notary Public
My Commission Expires March 9, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	
Antonio Dieargo Patterson, #342594,	)	2014-CP-10-1212
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 25, 2014, would respectfully show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's order of commitment. The Applicant was indicted at the September 2006, term of the Charleston County Grand Jury for Criminal Sexual Conduct, 1st degree (2006-GS-10-9248). On September 1, 2010, the Applicant proceeded to a jury trial and was found guilty of Criminal Sexual Conduct in the first degree as indicted.¹ At trial, the Applicant received representation from Reese M. Stidham, Esquire. The Honorable Deadra L. Jefferson sentenced the Applicant to a term of twelve (12) years' imprisonment.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeal affirmed Applicant's conviction and sentence. State v. Patterson, Op. No. 2013-UP-254. (filed June 19, 2013). The Remittitur was issued on July 17, 2013.

¹ The Applicant also plead guilty on this day to Criminal Sexual Conduct in the third degree (2006-GS-10-4311). The Applicant is currently serving the sentence of ten (10) years concurrent with the sentence for the charge of Criminal Sexual Conduct in the first degree. A prior PCR application for this charge was dismissed on January 18, 2012.

The applicant filed an application for Forensic DNA testing on August 2, 2013, and later amended the application on February 11, 2014. An order to deny this request was filed on October 7, 2014.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the Record on Appeal and the Order of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. Failure to move to quash indictment
2. Insufficient evidence to support the conviction

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant alleges "insufficient evidence to support the conviction" as a ground for PCR. However, this allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IV.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

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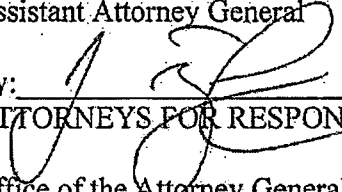
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

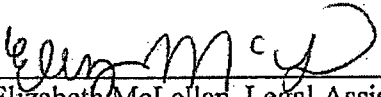
May 22, 2015.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-1212
	)	
ANTONIO D. PATTERSON, #342594,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Antonio D. Patterson, #342594
MacDougall Correctional Institution
1516 Old Gilliard Rd.
Ridgeville, SC 29472

DATED this 22nd day of May, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2014-CP-10-1212
4 ANTONIO DIEARGO PATTERSON,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: January 11, 2017
9 _____)

10 B E F O R E:

11 THE HONORABLE WILLIAM SEALS
12

13 A P P E A R A N C E:

14 CHRIS MURPHY
15 Attorney for the Applicant

16 ALICIA OLIVE
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

INDEX

EXAMINATION

Witness Name	Page
ANTONIO DIEARGO PATTERSO	
Direct By Mr. Murphy	4
Cross By Ms. Olive.....	21
REESE STIDHAM	
Direct By Ms. Olive	27
Cross By Mr. Murphy	31
ANTONIO PATTERSON	
Re-Direct By Mr. Murphy.....	35

EXHIBITS

Exhibit	Description	Identification	Evidence
Court's 1	SLED report	11	
Court's 2	Forensic report	11	

1 MS. OLIVE: May it please the Court, Your Honor.
2 First case is Antonio Patterson. This is 2014-CP-10-1212.
3 Mr. Patterson was indicted in September of 2006 for criminal
4 sexual conduct in the first degree. He was represented by
5 Reese Stidham on that charge. He proceeded to trial on
6 September 1st, 2010, after which a jury found him guilty of
7 criminal sexual conduct in the first degree as indicted.

8 Judge Jefferson sentenced him to 12 years.
9 Subsequently, a timely notice of appeal was filed on his
10 behalf and an appeal was perfected. That was -- the Court of
11 Appeals affirmed his conviction and sentence by an
12 unpublished opinion dated June 19th, 2013. The remittitur
13 was issued on July 17th, 2013. This application for
14 post-conviction relief was filed on February 25th, 2014.

15 Mr. Patterson alleges ineffective assistance of
16 counsel. He is present and represented today by Chris
17 Murphy. I will turn it over to Mr. Murphy at this time.

18 MR. MURPHY: Thank you, Your Honor. I know
19 everybody alleges ineffective assistance of counsel, but I
20 tried to narrow down the issues. And we narrowed them down
21 to two issues, which I've informed Ms. Olive of.

22 The first would be that we are focusing on the
23 improper advice given to Mr. Patterson when making a decision
24 as to testifying at his own defense.

25 And the second would be the failure to ask for any

1 lesser-included offenses on the jury verdict form. He was
2 entitled to five lesser-included offenses and none of them
3 were asked for.

4 So that would be it, Your Honor. And at this time,
5 we would call Mr. Patterson to the stand.

6 ANTONIO DIEARGO PATTERSON,
7 having been duly sworn, testifies as follows:

8 THE WITNESS: Is there any way I can be unhandcuffed
9 to get to my paperwork?

10 THE COURT: That will be fine. If you want to
11 uncuff his hands.

12 THE CLERK: Sir, for the record, if you will please
13 state your name, spelling your last name.

14 THE WITNESS: Antonio Patterson, P-a-t-t-e-r-s-o-n,
15 Patterson.

16 DIRECT EXAMINATION

17 BY MR. MURPHY:

18 Q. All right. Thank you, Mr. Patterson. You were
19 charged with two different sets of charges in Charleston
20 County; is that correct?

21 A. Yes, sir.

22 Q. And you were represented by Mr. Reese Stidham?

23 A. Yes, sir.

24 Q. That's with the Charleston Public Defender's
25 Office?

1 A. Yes, sir.

2 Q. Did he represent you on both sets of charges?

3 A. Yes, he did.

4 Q. Now, both sets of the charges allege some type of
5 criminal sexual misconduct; is that correct?

6 A. Yes, sir.

7 Q. And they were two separate incidents on different
8 dates?

9 A. Yes, sir.

10 Q. Now, when you were represented by your attorney, how
11 many times did you meet with him? Do you recall?

12 A. Never. I never meet with him, never met with him
13 since I've been out on bonds.

14 Q. When you say you never met with him, did you make
15 bond or were you incarcerated?

16 A. I made bond. As soon as I got locked up, I bond out
17 the same day.

18 Q. All right. And then after that, prior to going to
19 trial, how many times did you talk to Mr. Stidham or did you
20 meet with him?

21 A. I never met with him.

22 Q. How many times did you talk with him on the phone?

23 A. Once, one time when he was telling me when we bond
24 out of court.

25 Q. And how long before you were going to court or going

1 to -- when I say "court", are you talking about trial in this
2 case?

3 A. Trial, yes, sir, trial.

4 Q. How long before your trial date did you talk to him?

5 A. Well, like a week or two before trial.

6 Q. All right. And there was also a co-counsel that
7 helped, that assisted with trial. Do you remember that?

8 A. Yes, sir.

9 Q. What was his name?

10 A. Mr. Smith or something.

11 Q. Ted Smith?

12 A. Yes, sir.

13 Q. Did you talk to Ted Smith at all before going to
14 trial?

15 A. No, sir. I saw him at the trial.

16 Q. And did your attorney, Mr. Stidham, did he send you
17 any letters or correspondence explaining what was going on?

18 A. No, sir.

19 Q. Now, did you talk to your attorney about any offers
20 to resolve these charges against you prior to going to trial?

21 A. No, sir.

22 Q. Did you know of any offers out there?

23 A. No, sir.

24 Q. Now, as you are going to trial, did you have any
25 understanding of what your trial defense was, or what was

1 your trial defense?

2 A. No, I didn't. I usually had a lawyer, Mr. Tommy
3 Bolus, who, you know, he went there and took me to get a
4 bond, and that's it.

5 Q. But that was -- that would have been way back in the
6 beginning. Tommy Bolus represented you just on the bond
7 hearing?

8 A. Just on the bond hearing.

9 Q. He doesn't have anything to do with this.

10 A. No.

11 Q. We are jumping now to trial. What was your trial
12 strategy going forward with these charges?

13 A. Okay. As far as me taking the stand?

14 Q. Let's just say, did you maintain your innocence?

15 A. Yes, sir. Yes, sir.

16 Q. Now, when we say maintain your innocence, the State
17 alleged that you had sex with the victim in this case,
18 correct?

19 A. Right.

20 Q. Did you have sex with her?

21 A. No, sir.

22 Q. Did you convey that to your attorney?

23 A. Yes, I did.

24 Q. Now, when you conveyed that to your attorney, what
25 was his response?

1 A. Well, I never -- once I talked to him at trial, let
2 him know that -- because I didn't talk to him before that,
3 but I let him know that I weren't -- you know, as a matter of
4 fact, I did meet with him, spent the \$40 to get him to
5 represent me. And at that time, I let him know that I was
6 innocent and I don't even know the victim in this case.

7 Q. Okay. Now, you started the trial in your case,
8 correct?

9 A. Yes, sir.

10 Q. And the State would have been starting to put up its
11 witnesses and its testimony?

12 A. Yes, sir.

13 Q. After the State put up its testimony, it came time
14 for you to decide whether or not to take the stand,
15 correct?

16 A. Yes, sir.

17 Q. Do you recall the judge asking you whether or not
18 you wanted to take the stand?

19 A. Yes, sir.

20 Q. And after that, the record shows that the judge gave
21 you some time to talk with your attorney about whether you
22 wanted to take the stand or not?

23 A. Yes, sir.

24 Q. Did you talk with your attorney about whether or not
25 you wanted to take the stand?

1 A. Yes, sir.

2 Q. Tell us about those conversations.

3 A. Your Honor, do you mind if I read off my papers?

4 All right.

5 THE COURT: Where in the transcript is that; do you
6 know?

7 MR. MURPHY: I don't have a date or exact page
8 number.

9 THE WITNESS: Trial counsel was ineffective
10 assistance for advising defendant not to take the stand.
11 Trial counsel was ineffective assistance in advising the
12 defendant not to take the stand. If trial counsel would have
13 allowed the defendant to take the stand, the defendant would
14 have presented exculpatory evidence that would prove complete
15 innocence, such as sworn affidavits, certain testimony and
16 forensic report. Because trial counsel failed to discredit
17 the testimony of the witness by raising prior inconsistencies
18 (sic) statement, when evidence of such inconsistencies (sic)
19 statement was already available, counsel's deficiency to
20 perform undermined the confidence in the outcome of the
21 trial.

22 And see exhibits, I've got exhibits where SLED Agent
23 Robin Taylor, she said at trial that she found DNA on Antonio
24 Patterson. She said semen was identified on the condom and
25 possible chance that it would be anybody else would be one to

1 a quadrillion chance. And she said may be contributing to
2 me. And then she said minor contribute on the condom, she
3 said she could see in a couple of locations where it was
4 contributed to Tiffany, the victim on the case, alleged
5 victim on this case. And she said a piece of carpet was
6 submitted to SLED. And she could see on the carpet where DNA
7 was found on the carpet that belongs to Antonio Patterson.

8 Now, I later received SLED report and a forensic
9 report that was done in 2006. And they test two condoms.
10 One of the condoms did have DNA on it, but they said the
11 victim was unknown. The victim was unknown and the subject
12 was unknown. And they also tested carpet. They said no DNA
13 was found on the carpet. And that's when the forensic
14 department and Charleston County Police, and this is from
15 SLED department, they said six things were tested, the
16 condom, the carpets. And I had DNA test and Ms. Tiffany had
17 a DNA testing. And there was no match on the DNA that was
18 found. And this is my two exhibits, my SLED reports and
19 Charleston County report.

20 Q. Do you want to mark those as Court's exhibits?

21 A. Yes, sir, Court's exhibits.

22 MS. OLIVE: Your Honor, I believe the question was
23 what Mr. -- what his attorneys advice to him was concerning
24 his right to testify. So I object to this coming in.

25 MR. MURPHY: And I will loop back to that, Your

1 Honor.

2 THE COURT: Go ahead.

3 BY MR. MURPHY:

4 Q. If we could just mark those as Court's exhibits for
5 the record, I believe they already are in the record, since
6 they were exhibits at trial.

7 (Court's Exh. 1, SLED report, was marked for
8 identification.)

9 (Court's Exh. 2, Forensic report, was marked for
10 identification.)

11 A. These were never presented as exculpatory
12 evidence.

13 Q. We are going to get to that, sir. The question was,
14 Mr. Patterson, I know you want to say a lot, but we are
15 trying to focus on errors of counsel here.

16 Now, you did not take the stand and testify on your
17 behalf, correct?

18 A. Yes, sir.

19 Q. And the reason why you -- did your attorney give you
20 any advice as to that that caused you to make that decision
21 not to take the stand?

22 A. My attorney told me that the solicitor would have
23 brought my prior charges.

24 Q. Okay. When you say prior charges, what prior
25 charges are you talking about?

1 A. The CSC third.

2 Q. Were you convicted of that CSC third or did you
3 plead guilty to that CSC third?

4 A. No, I didn't plead to anything like that.

5 Q. Is this the second set of pending charges that we
6 talked about earlier?

7 A. This is the -- okay. I went to court on two
8 charges, the CSC first and the possession of weapon.

9 Q. Correct. And that is what you are here about,
10 correct?

11 A. Yes, sir. Yes, sir.

12 Q. You then had a second set of charges. You were
13 charged with CSC third; is that correct?

14 A. Yes, sir.

15 Q. Now, when you talk about -- you said your attorney
16 mentioned that a CSC third could come into evidence. Is that
17 the set of charges -- the second set of charges that we are
18 talking about?

19 A. Yes, sir.

20 Q. Did you plead guilty to that set of charges prior to
21 trial?

22 A. No, sir. No, sir.

23 Q. So these would have been pending charges?

24 A. Yes, sir, pending charges.

25 Q. You just got to let me finish here. These would

1 have been pending charges that your attorney told you could
2 be brought up?

3 A. Yes, sir.

4 Q. Okay. And did you have any discussion other than
5 that as to why you would not take the stand on your own
6 defense?

7 A. No, sir.

8 Q. Did you understand that those were -- that you were
9 not convicted of those charges and they could not come into
10 evidence?

11 A. No, sir.

12 Q. Is that the reason why you did not take the stand in
13 your defense?

14 A. Only reason I didn't take the stand was because of
15 the advice of my attorney.

16 Q. Now, had you taken the stand, you've already
17 testified that you maintain that you did not have any type of
18 sexual relations with this lady, correct?

19 A. Yes, sir.

20 Q. What would you have testified to? And I want to
21 talk briefly about -- and I will walk you through it. That
22 day, tell me what was going on that day.

23 A. On that day, I came and stopped by my house. My
24 brothers -- I had a lot of brothers and sisters. They were
25 having a cookout at my parents' house. My mom died in 2005.

1 They had a cookout in 2006 celebrating representing my mom.

2 Q. How many people were at this cookout?

3 A. A whole bunch of people at the cookout.

4 Q. And was this during the summer?

5 A. Yes, sir, April, back in April.

6 Q. All right. And you got a call from your family?

7 A. I got a call from one of my brothers saying they
8 were having a cookout at the house.

9 Q. What happened then?

10 A. I stop by the house and grab a plate, talked to a
11 couple of people at that residence, and I left. I was living
12 in North Charleston.

13 Q. All right. And were you married at the time?

14 A. Yes, sir.

15 Q. Did you have children?

16 A. Yes, sir.

17 Q. When you went to the cookout, did you talk to
18 anybody or --

19 A. I talked to my brothers and sisters. And I grab a
20 plate and I left.

21 Q. Did you see the victim at the cookout?

22 A. She was hanging out with one of my brothers.

23 Q. Did you talk to her at all?

24 A. No, sir.

25 Q. And when you left -- what time of day did you get to

1 the cookout?

2 A. Cookout, probably like two or three in the
3 afternoon.

4 Q. Okay. And when you left, how long were you there?

5 A. Probably no more than about an hour, if that.

6 Q. When you left, did you talk to anybody and say you
7 were leaving?

8 A. Well, my brother and him -- one of my brothers who
9 was standing out front talking to this girl, his wife and his
10 kids, and I let them know I was going to leave.

11 Q. And after you left, did you have any communications
12 with the victim at all?

13 A. No, I didn't.

14 Q. Not even a hello?

15 A. No, sir.

16 Q. Okay. And did you have any sexual relations with
17 her that day?

18 A. No, sir.

19 Q. Have you ever had any relations with her?

20 A. No.

21 Q. Now, did you explain all of this to your attorney,
22 the facts of what you say happened that day?

23 A. I talked to my attorney -- the one who was
24 representing me?

25 Q. That's correct.

1 A. Yes, I let him know all that, yes, sir.

2 Q. Did you talk to him about and say, I want to be able
3 to tell my story at trial?

4 A. Well, I didn't tell him -- I didn't say that.

5 Q. And did you even get a chance to talk about your
6 version of the facts with your attorney?

7 A. I told him exactly what happened.

8 Q. And after you told him what happened, what was his
9 response in terms of, how should we defend this case?

10 A. Well, he didn't say anything to me about defending
11 the case.

12 Q. And then did you talk about the prior -- the pending
13 charges that you had as well?

14 A. Are we going back to when I first talked to this
15 attorney or at trial?

16 Q. We are at trial.

17 A. We are at trial?

18 Q. Yes, sir.

19 A. Okay. I talked to him at trial, you know. And he
20 was -- only thing he did advise me not to take the stand
21 because of the prior charge. We didn't discuss how --
22 strategy or anything like that.

23 Q. All right. And as a result, you did not take the
24 stand?

25 A. No, sir.

1 Q. And that was because of this advice about the
2 pending charge being able to come into evidence?

3 A. Yes, sir.

4 Q. Now, you also had a chance -- after you presented
5 your case, correct, the judge talked to you about any
6 lesser-included charges?

7 A. Yes, sir.

8 Q. Do you know what a lesser-included charge is?

9 A. Now I do. I didn't know back then what a
10 lesser-included was.

11 Q. I want to ask you first back then. Let me first ask
12 these questions. At the time of trial, did you know --

13 A. No, sir.

14 Q. Now, did you talk to your attorney about
15 lesser-included charges?

16 A. No, sir.

17 Q. Now do you understand what a lesser-included charge
18 is?

19 A. Yes, sir.

20 Q. And do you understand that there were five possible
21 lesser-included charges?

22 A. Yes, sir.

23 Q. And that's what the Court said on the record,
24 correct?

25 A. Yes, sir. I've got a transcript.

1 Q. And did you talk to your attorney about what those
2 lesser-included charges would be?

3 A. No, sir.

4 Q. Now, looking back, had you understood what they
5 were, would you have wanted the judge to ask the jury for
6 those lesser-included charges?

7 A. Yes, sir, definitely.

8 Q. Why would you have wanted that?

9 A. If I was found guilty, I would have been doing less
10 than 50 percent of the time I'm doing now. And it also would
11 have given the jury a chance to find me not guilty on this
12 charge here, if guilty on the lesser-included offense.

13 Q. Now, I think -- did you have any discussions with
14 your attorney about the lesser-included charges?

15 A. At trial?

16 Q. At trial. At trial.

17 A. No, sir.

18 Q. You recall when your attorney said he did not want
19 the judge to include any lesser-included charges? Do you
20 remember that?

21 A. Yes, sir.

22 Q. And you ended up getting convicted of the CSC first,
23 is it correct?

24 A. Yes, sir.

25 Q. Immediately after you were convicted -- or let me

1 ask you this. How long after you received that guilty
2 verdict did you plead to the second CSC charge?

3 A. The same day.

4 Q. What was --

5 A. Sir?

6 Q. What was the time in between the guilty -- being
7 found guilty and the second plea?

8 A. The time in between it?

9 Q. Yes. Was it the same day?

10 A. It was the same day.

11 Q. Did you talk to your attorney about the guilty plea?

12 A. No, sir.

13 Q. Did you talk to your attorney about the facts of
14 that plea?

15 A. No, sir.

16 Q. Did you talk about that case at all --

17 A. No.

18 Q. -- prior to actually getting up there and pleading
19 guilty?

20 A. No, sir.

21 Q. I would assume your attorney was focused on the
22 trial of the immediate issues, correct?

23 A. Yes, sir.

24 Q. Or is that your understanding?

25 A. That's my understanding.

1 Q. Did you have an understanding of what you were
2 pleading to?

3 A. Well, when a judge said inside the trial, she asked
4 the solicitor, what did I have pending? And solicitor said
5 third, a third degree. And later on, as it goes on, she
6 said, that's a problem the way the case was charged. And the
7 solicitor said that she know the first degree were charged
8 directly. So she indicted me twice. And if I plead, I would
9 have to plead right then. And my lawyer didn't say anything.

10 And, I mean, the solicitor said, if I plead, I had
11 to plead right then and they would go with two third degree
12 charges.

13 Q. What was your understanding of the sentence you
14 would get if you pled guilty right then?

15 A. That I would get 10 years for the third degree
16 charge.

17 Q. Was that for both sets of charges?

18 A. Yes, sir. I was thinking that they were going to
19 change the first degree into a third degree and plus the
20 pending charge -- I mean, third degree. They would have
21 charged me with two third degree charges for 10 years.

22 Q. And did you and your attorney talk about a ten-year
23 sentence that you would receive?

24 A. No, sir.

25 Q. Okay. But tell me, why did you think -- have this

1 expectation that you would get 10 years then, you would get
2 sentenced to 10 years?

3 A. Because the judge asked them, the judge said, what
4 is the sentence, what is the maximum time on the third
5 degree? And they said they believe it was 10 years.

6 Q. So you were basing your expectation based on what
7 the judge said, rather than what your attorney said?

8 A. Well, the judge was talking. She was asking
9 questions how much time that the charge took.

10 Q. And did you and your attorney have any conversations
11 about the sentence that you would receive or as opposed to a
12 sentence you could possibly receive?

13 A. No, sir.

14 Q. After you pled guilty to this charge, there was an
15 appeal filed in your case, correct?

16 A. Yes, sir.

17 Q. And, ultimately, the ruling or the guilty verdict
18 was affirmed, correct?

19 A. Yes, sir.

20 MR. MURPHY: That's all I have. Thank you, Your
21 Honor.

22 THE COURT: Cross.

23 MS. OLIVE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. OLIVE:

1 Q. This guilty plea that you are talking about, you
2 already previously filed a PCR application as to that charge,
3 correct?

4 A. Yes, ma'am.

5 Q. And it's already been dealt with. So that's not why
6 we are here today, right?

7 A. Right.

8 Q. We are here about this trial?

9 A. Now, what you've just said, you said prior to the
10 trial?

11 Q. I'm saying the guilty plea, you've already filed a
12 post-conviction relief in that case?

13 A. Yes, sir.

14 Q. And that's been dealt with?

15 A. Yes, ma'am.

16 Q. So we are here today about this trial on criminal
17 sexual conduct first degree?

18 A. Yes, ma'am.

19 Q. Just wanted to verify that. You testified earlier
20 that there were no plea offers. You didn't know of any plea
21 offers, but then you just testified that there was some offer
22 for pleading to two counts of CSC third?

23 A. Yes, I got it right here.

24 Q. So which is it? There was an offer or there wasn't?

25 A. No. I mean, during the trial, she said if I plead,

1 I would have to plead right then and they would straighten up
2 that. Because the judge said the charges were not charged
3 correctly. And the solicitor said, if I plead, I would have
4 to plead right then to the charge. I got it right here.
5 They brought in that third degree during the trial.

6 Q. She made an offer for you to plead rather than --
7 rather than finishing your trial on the criminal sexual
8 conduct in the first degree, there was an offer to plead to
9 criminal sexual conduct in the third degree? Is that what
10 you are saying?

11 A. I'm saying this. When the judge asked them what
12 charges do I have pending, they said third degree. And as it
13 went on, the judge said, this charge is not charged
14 correctly. And the solicitor said that she would -- she
15 indicted me -- she indicted me twice on two third degrees.
16 And if I plead tonight, the Court would go forward with two
17 third degree charges. Maybe I'm not explaining it right.
18 Here you go.

19 Q. Well, you testified in the beginning of your
20 testimony that you were unaware of any offers other than
21 proceeding to trial on the first degree charge. Is that
22 correct?

23 A. Right, right.

24 Q. So there was never an offer to plead?

25 A. There was never an offer. I don't remember any

1 offers.

2 Q. So your testimony today is that if you had testified
3 at trial, you would have testified that you never talked to
4 the victim that day?

5 A. Right, right.

6 Q. But didn't Timothy and Emmanuel both testify that
7 they saw you with her that day?

8 A. They said they saw me with her in the house. I went
9 in the house, but I didn't -- I weren't with Tiffany.
10 Everybody was back and forth inside at the cookout.

11 Q. But they were asked if they saw you that day with
12 the victim and they said yes, right?

13 A. Well, I don't know about -- I don't know why they
14 would say I was with the victim, because I weren't.

15 Q. But that was their testimony, right, at trial?

16 A. Yes, ma'am.

17 Q. So then you would have gotten up there and testified
18 that you didn't talk to her at all?

19 A. Right, right.

20 Q. Was your defense not that this was a consensual --
21 that the sexual intercourse was consensual?

22 A. What did you say, ma'am?

23 Q. Wasn't your attorney's defense at trial that this
24 sexual intercourse was consensual?

25 A. No, ma'am, he didn't say anything about consensual

1 sex.

2 Q. Okay. But -- your attorney never told you that his
3 defense at trial was going to be that this was consensual
4 sex?

5 A. No, ma'am.

6 Q. But he had to explain somehow -- I mean, you and the
7 victim were both at this cookout together at some point,
8 right?

9 A. Right.

10 Q. And she testified as to what happened?

11 A. Right.

12 Q. Okay. And then other people testified that they saw
13 you with her that day?

14 A. Okay.

15 Q. And was there not a used condom that was collected
16 from the home that was introduced at trial?

17 A. As a matter of fact, there was two used condoms
18 there that was brought in, yes, ma'am.

19 Q. And, again, you were advised of your right to
20 testify by the judge?

21 A. Ma'am?

22 Q. You were advised by the judge regarding your right
23 to testify?

24 A. Yes, ma'am. The judge asked did I want to
25 testify.

1 Q. And you ultimately decided you did not?

2 A. After speaking to my attorney and he advised me not
3 to.

4 Q. There's no other reason you decided not to testify?

5 A. No, ma'am.

6 MS. OLIVE: And, Your Honor, you asked earlier what
7 page that was on. It was page 307, for the record.

8 THE COURT: Thank you.

9 MS. OLIVE: Thank you. That's all the questions I
10 have.

11 THE WITNESS: Ma'am, for one minute, can I ask a
12 question?

13 THE COURT: Hold on a second. Let your lawyer ask
14 you.

15 MR. MURPHY: No further questions.

16 THE COURT: Anything you want to say?

17 THE WITNESS: Yeah, I would like to straighten this
18 out about the plea. If you don't mind, it says: There's A
19 problem the way this case was charged and they are going to
20 dismiss all of them. He originally was indicted on the case
21 we discussed right now as a CSC first. It was probably a
22 first. So we indicted him on third because there was digital
23 penetration and vaginal penetration. So if he plead to CSC
24 indictment, it will be dismissed as well as the other. And
25 he said the Court would go forward with two counts of CSC,

1 the third. But if he plead, he just have to plead to one
2 tonight.

3 So I'm thinking from there, that there would have
4 been two CSCs, the pending one and the one that they are
5 changing -- the first degree they are changing to the third.
6 That's why I pled to the charge.

7 THE COURT: All right. Thank you. You may step
8 down.

9 MR. MURPHY: We would rest at this point.

10 THE COURT: The State would call your witness.

11 MR. MURPHY: Yes, the State would call Reese
12 Stidham.

13 REESE STIDHAM,
14 having been duly sworn, testifies as follows:

15 THE CLERK: Sir, for the record, if you will please
16 state your name, spelling your last name.

17 THE WITNESS: Reese Stidham, S-t-i-d-h-a-m.

18 DIRECT EXAMINATION

19 BY MS. OLIVE:

20 Q. Good morning, Mr. Stidham.

21 A. Good morning.

22 Q. Were you retained or appointed in this case?

23 A. I was appointed.

24 Q. And how long have you been practicing law?

25 A. I was sworn in November 2006.

1 Q. What portion of your practice has been criminal?

2 A. The first five years and continuing, I guess. I was
3 a law clerk first nine months of my career and joined the
4 Charleston Public Defender's Office and I was there close to
5 five years. And I've been in private practice since.

6 Q. Had you represented defendants on criminal sexual
7 conduct charges prior to this trial?

8 A. I have.

9 Q. Did you meet with Mr. Patterson to discuss these
10 charges?

11 A. Multiple times in-person and over the phone.

12 Q. Do you recall about how many meetings you had with
13 him?

14 A. I know that we met in my office at least twice. I
15 have office notes from both those visits and met for an
16 extensive period of time. I know I went out to the house,
17 his family's house where the incident was alleged to have
18 occurred. And I know I went out to the jail to corroborate
19 his story that he had given the victim, Ms. Graham, a ride to
20 the jail to visit her boyfriend or someone. I checked the
21 visitation logs to corroborate that story.

22 Q. So he discussed with you his version of the facts of
23 the case?

24 A. Many times and at length. And they were nothing
25 similar at all to what he just testified to.

1 Q. Did you discuss with him his right to testify?

2 A. I did.

3 Q. What was your advice to him concerning whether or
4 not you advised him to testify?

5 A. Well, the entire trial and ever since the first time
6 he met with me, the defense had always been consent. The
7 defense was that he met Tiffany Graham, gave her a ride to
8 the jail in the morning, brought her back home to his house.
9 They had gone to the store to buy some meat. They went back
10 to their house and had a cookout. And they began drinking.
11 She smoked marijuana. And they had consensual sex.

12 At some point, according to Mr. Patterson, she
13 became upset. He didn't know why. He thought maybe she was
14 running out of the house to get sick or vomit. He had known
15 her for some years. His family had known her for some years.
16 And so that was -- it was key for him to be able to take the
17 stand and explain that.

18 We had prepared him to testify. We put two
19 witnesses up first, I believe, or maybe just one. His
20 brother specifically is the one who stands out. The
21 solicitor, Ms. Shealy, was extremely effective at
22 cross-examining his brother. She was very emotional. She
23 was very forceful and very effective.

24 And I can't speak to exactly what Tony was thinking.
25 I know he was hesitant after seeing that. My co-counsel and

1 I spent a fair amount of time visiting with him in the side
2 room talking about his decision to testify. I cannot tell
3 you, I have no recollection of, did I say I don't think you
4 should testify, or, I think you should testify. I don't know
5 if I said one way or the other. I do know I would have left
6 it up to him. And I do know I would have told him the
7 importance of him testifying, because he had to explain to
8 the jury that it was consensual. And they needed to hear
9 that from him.

10 Did I think that he would have done well on the
11 stand? Probably not. We had him evaluated by Dr. Burke.
12 And Dr. Burke had given the opinion he didn't think he would
13 be a good witness.

14 So that's my recollection of that.

15 Q. So this story has changed a little bit today from
16 what he told you?

17 A. Everything he said, I heard for the first time
18 today. And every time he met with me, it was always the same
19 story, or relatively the same story, that he had known Ms.
20 Graham, they had partied together, and it was consensual sex.

21 Q. That would have been consistent with what the other
22 witnesses testified to, with the exception that it was
23 consensual?

24 A. That's correct.

25 Q. Is there a reason why you did not request a

1 lesser-included, a charge of a lesser-included offense in
2 this case?

3 A. My best recollection to that is, we did not want to
4 give the jury something to compromise on. There was also an
5 accompanying charge of a violent crime with use of a weapon.
6 And there was not -- we thought we had a pretty strong
7 defense on that charge. And we eventually got a not-guilty
8 on that charge. And I think we did not want to give the
9 jury something to compromise on and wind up with him getting
10 a CSC second or third.

11 I can say I know without a doubt that my co-counsel
12 and I discussed the lesser-included charges with
13 Mr. Patterson, and we would not have gone forward without his
14 permission.

15 Q. And, again, I believe your testimony was that your
16 trial strategy was that the intercourse was consensual?

17 A. That's correct.

18 MS. OLIVE: Beg the Court's indulgence.

19 Thank you. That's all the questions I have.

20 MR. MURPHY: Thank you, Your Honor. May it please
21 the Court.

22 CROSS-EXAMINATION

23 BY MR. MURPHY:

24 Q. Mr. Stidham, you mentioned you had multiple meetings
25 with Mr. Patterson?

1 A. Correct.

2 Q. Do you have any notes to memorialize those meetings?

3 A. I have notes from one office visit with me. I know
4 that there's notes from another office visit. Apparently, I
5 either left them in my office or they are in the file from
6 the public defender's office.

7 Q. But it sounds like you were very diligent about
8 keeping notes and a record of your communications with
9 Mr. Patterson?

10 A. I was.

11 Q. And is it your testimony that even though you don't
12 have those notes today, you've seen those notes prior to this
13 hearing?

14 A. Correct. I have one set of notes from an office
15 visit on October 26th.

16 Q. And I believe you testified that it was
17 Mr. Patterson's defense that the sex was consensual?

18 A. Correct.

19 Q. And that was, as you testified, it would be
20 imperative that he testify on his own behalf to explain that
21 consensual sex, correct?

22 A. Correct.

23 Q. Now, at the time after you said the witness was --
24 Ms. Shealy did a very good job cross-examining the witness,
25 at some point, your testimony is he decided not to take the

1 stand, correct?

2 A. That's correct.

3 Q. Now, I understand this stuff happens. That kind of
4 forces you to kind of change midstream what your strategy is,
5 correct?

6 A. Correct.

7 Q. Now, did you have any specific discussions or do you
8 recall discussions about the importance of Mr. Patterson
9 taking the stand, even though there was that effective
10 cross-examination?

11 A. We did. I remember a long period of time in the
12 visitation room adjacent to the court, to the courtroom, with
13 co-counsel and myself and Mr. Patterson discussing the
14 importance of him testifying.

15 Q. And Ted Smith was helping you with this trial,
16 correct?

17 A. Correct.

18 Q. And did he have any role prior to going to trial or
19 any dealings with Mr. Patterson?

20 A. No. Typically, in the public defender's office, the
21 chief counsel or first chair would handle preparing the case.
22 And the investigation and co-chair would handle some
23 witnesses.

24 Q. But you did all heavy lifting in this trial, so to
25 say?

1 A. Yes.

2 Q. In terms of the lesser-included offense, there was
3 an option to have those lesser-included charges given on the
4 verdict form, correct?

5 A. Correct.

6 Q. Do your notes reflect that you had any conversations
7 with Mr. Patterson about that issue?

8 A. My notes -- I do not have those in my notes, no.

9 Q. You testified that Mr. Smith had that conversation
10 with Mr. Patterson about whether to include that?

11 A. No. If I said that, I misspoke. It would have been
12 Mr. Smith and myself.

13 Q. But you don't recall any specific conversations with
14 him about those lesser-included charges?

15 A. I cannot recall a -- I cannot say for certain that I
16 remember that exact conversation. I seem to remember it, but
17 I can't tell you definitely. I can tell you in every trial
18 or plea, I have always had that conversation with my
19 client.

20 Q. I will represent to you that the record indicates
21 that it appears that you were getting ready to break for the
22 evening. The judge asked that question and you asked to
23 sleep on it or think about it overnight. Does that ring a
24 bell or jog your memory at all?

25 A. It does. And now I want to say that I went to the

1 jail that night to discuss that with Mr. Patterson.

2 Q. Now, would you agree that based on the fact that he
3 had already decided not to take the stand, that it would be
4 even more imperative to get those lesser-included offenses on
5 the jury verdict since there wasn't a change in trial
6 strategy?

7 A. No, because I can't -- I had to -- it's been so many
8 years, I have to trust my best judgment at the time.

9 MR. MURPHY: All right. No further questions, Your
10 Honor.

11 THE COURT: All right. Anything further?

12 MS. OLIVE: Nothing further from the State, Your
13 Honor.

14 THE COURT: You can step down. Any other witnesses?

15 MS. OLIVE: No, Your Honor.

16 MR. MURPHY: One rebuttal witness, Your Honor. And
17 we would call Mr. Patterson.

18 ANTONIO PATTERSON,

19 having been previously sworn, testifies as follows:

20 REDIRECT EXAMINATION

21 BY MR. MURPHY:

22 Q. You are still under only, sir. Two questions: Do
23 you recall talking to Ted Smith about the lesser-included
24 offenses issue?

25 A. No, sir.

1 Q. Do you recall him going to the jail that evening to
2 discuss with you whether or not to include lesser-included
3 offenses?

4 A. No, sir.

5 MR. MURPHY: That's all I have, Your Honor.

6 THE COURT: Any cross?

7 MS. OLIVE: No, Your Honor.

8 THE COURT: All right. You can step down. Thank
9 you.

10 All right. I will take the matter under advisement
11 and let you know something this week. Thank you.

12 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

FORENSIC LABORATORY

TO: Officer Randal Unterbrink
Crime Scene

LOCATION: 24 Orris Court

SUBJECT(S): Unknown

DATE: 25 April 2006

CASE NUMBER: 0607133
LAB NUMBER: 111060935

VICTIM(S): N/A

CONFIDENTIAL: This is an official report of the Charleston Police Forensic Laboratory and is to be used in connection with an official criminal investigation. The items and the results of laboratory examinations are reported below:

Reuben M. Greenberg, Chief

ITEM(S) SUBMITTED	RESULTS OF EXAMINATION(S)
Envelope with carpet	No human semen indicated
Envelope with condom	No human semen indicated
Envelope with condom	Human semen indicated

I am a Chemist employed by the Charleston Police Department to perform chemical and physical examination(s) on evidence submitted by Law Enforcement Agencies in criminal cases, and have been qualified in courts of record in the State of South Carolina to testify on such examination(s).

On 21 April, 2006, Officer Randal Unterbrink submitted the above item(s) to the Laboratory for examination(s). This (these) item(s) was (were) tested using accepted reliable forensic procedures and the above results reflect conclusions based on the examination(s).

Sworn to before me this 25 day of

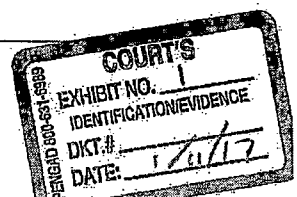
Elizabeth N. Wiggins Mitchell
Chemical Analyst

April, 2006

Susan M. Moody
Notary Public

25 April 2006 Date

My Commission expires August 3, 2015





Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

CPD DAB # 111060935

REQUESTING OFFICER Det L. AltineCASE NUMBER 0607133AGENCY CPD F-1OFFENSE CSCAGENCY PHONE NUMBER 577-7434DATE OFFENSE _____ COLLECTION 4-13-06INCIDENT LOCATION 24 Orr's CtLOCATION COLLECTED same

SUSPECT _____

VICTIM _____

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
1-A	Carpet	 OX07	Lab	no Human Semen	4-20-06 PLE
7-A	Condom # A		Lab.	Semen Comments	4-20-06 PLE
3-A	Condom # B		Lab	" "	4-20-06 PLE

Visual: ☐ Present ☐ AbsentAlternate Light Source: ☐ Present ☐ Absent

Reagents Tested/Test Prints:

Comments: Items above sent to Lab

ONE OF THE TWO ~~CONDOMS~~ ^{IN CASE} CONDOMS: Human Semen indicated

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE.

CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Unterbrink
 Print Name

Randal L. Unterbrink
 Signature
DATE/TIME 4-13-06/1000 hr
Miller
 Print Name

J. Miller
 Signature
DATE/TIME 5-9-06/0900

Print Name

Signature

DATE/TIME

Print Name

Signature

DATE/TIME

AR By MRS Date 4/27/06TR By MRS Date 4-27-06

BIOHAZARD

500

LAB NUMBER 111060935

CHARLESTON POLICE DEPARTMENT

Evidence Examination Request

Requesting Officer R. Unterbrink

Case Number 0607133

Agency CPD F-1

Offense CSC

Agency Phone Number 577-7434

Dates: Offense _____ Collection 4-13-06

Subject(s)	

Analysis Requested/Instructions Try to determine if semen is present in the condoms and top surface of carpet (circled areas).

DESCRIPTION OF EVIDENCE	
<u>(4-A)</u>	<u>Carpet in envelope enmm</u>
<u>(7-A)</u>	<u>Condom #7A in envelope enmm</u>
<u>(8-A)</u>	<u>Condom #8A in envelope enmm</u>

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Submitted By Randal Unterbrink
Print

Randal Unterbrink
Signature

Date/Time 4/21/06
0824

CHARLESTON POLICE DEPARTMENT CHAIN OF CUSTODY ONLY		
Date/Time	Print Name	Signature
<u>4/21/06 0824</u>	<u>Susan M. Moody</u>	<u>Susan M. Moody</u>
<u>4/21/06 1000</u>	<u>Elizabeth N. Wiggins-Mitchell</u>	<u>Elizabeth N. Wiggins-Mitchell</u>
<u>5/5/06 0735</u>	<u>Susan M. Moody</u>	<u>Susan M. Moody</u>

Returned To M. Ham
Print

J. Smith
Signature

Date/Time 5-9-06/0900



Charles Crime Scene Unit

EV ONXO 3 PROCESSING REPORT

REQUESTING OFFICER Cecile

AGENCY CPD

AGENCY PHONE NUMBER 577 7434

INCIDENT LOCATION _____

SUSPECT _____

CASE NUMBER 0607133

OFFENSE 1 CSC

DATE OFFENSE _____ COLLECTION 4-13-06

LOCATION COLLECTED MUSC

VICTIM Tiffany Graham

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	Scaled Sealed Assault kit	 OXNN	NP	NP	4-13-06 BX

Visual: ☐ Present ☒ Absent

Alternate Light Source: ☐ Present ☒ Absent

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

J. Worley
Print Name

J. Worley
Signature

DATE/TIME 4-13-06 / 1313

DATE/TIME _____

Signature

DATE/TIME _____

Signature

DATE/TIME _____

AR By MRS Date 4-17-06

TR By MRS Date 4-17-06

502



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

QUESTI ER Det L. Altine
 HENCY PD F-1
 HENCY PHONE NUMBER 577-7434
 CIDENT LOCATION 24 Orr's Ct
 SPECT

CASE NUMBER 0607133
 OFFENSE CSC
 DATE OFFENSE COLLECTION 4.19.06
 LOCATION COLLECTED 1623 Wappoo Rd
Crime Scene Office
 VICTIM

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	Suspect Evidence Collection Kit	OXPL	N/P	N/P	4.19.06

Visual: ☐ Present ☐ Absent N/P Alternate Light Source: ☐ Present ☐ Absent

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Unterbrink
 Print Name

Randal L. Unterbrink
 Signature

DATE/TIME 4.19.06/1420h

Print Name

Signature

DATE/TIME

Print Name

Signature

DATE/TIME

AR By [Signature] Date 4.25.06

TR By [Signature] Date 4.19.06

CASE # 0607133 STG. C



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

REQUESTING

Det L. Altine

CASE NUMBER 0607133

AGENCY

CRD FI

OFFENSE CSC

AGENCY PHONE NUMBER

577-7434

DATE OFFENSE

COLLECTION 4-13-06

INCIDENT LOCATION

24 Orr's Ct

LOCATION COLLECTED

Same

SUSPECT

VICTIM

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
1-A	Glass bottle		GLU Flu PWD	Ø Pics	4-20-06
			PWD	Ø lift	PB
2-A	Box (#A) (Betty Crocker)		NIN	Ø pics	4-20-06
			ORO	Ø pics	PB
3-A	Box (#B) (Betty Crocker)		NIN	Ø pics	4-20-06
			ORO	Ø pics	PB
5-A	Condom Wrapper (#A)		GLU Mag PWD	Ø lift	4-20-06
					PE
6-A	Condom Wrapper (#B)		GLU Mag PWD	Ø lift	4-20-06
					PE

Visual: ☐ Present ☒ AbsentAlternate Light Source: ☐ Present ☒ Absent

Reagents Tested/Test Prints:

GLU (RU) 4-20-06 RU NIN (AM) 4-4-06 RU ORO (AM) 4-19-06 (RU)

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Unterbrink
Print Name

Randal Unterbrink
Signature

DATE/TIME 4-13-06/1000

DATE/TIME

DATE/TIME

Print Name

Signature

DATE/TIME

Print Name

Signature

AR By [Signature] Date 4-25-06TR By [Signature] Date 4-25-06



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

REQUESTING OFFICER Det L. Altine
 AGENCY CPD F-1
 AGENCY PHONE NUMBER 577-7434
 INCIDENT LOCATION 24 Orr's Ct
 SUSPECT _____

CASE NUMBER 0607133
 OFFENSE CSC
 DATE OFFENSE _____ COLLECTION 4-13-06
 LOCATION COLLECTED same
 VICTIM _____

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
7-A	(5) Tape lifts of possible hair fibers	Ox PP	N/P	N/P	4-26-06 [PE]

Visual: ☐ Present ☐ Absent N/P Alternate Light Source: ☐ Present ☐ Absent

Reagents Tested/Test Prints: N/P

Comments: _____
 [RU]

AR By [Signature] Date 4-25-06

TR By [Signature] Date 4-25-06

CASE # 0607133 STG. A-11 to E



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

OXNP

REQUESTING OFFICER CecileCASE NUMBER 0607133AGENCY CPAOFFENSE CSCAGENCY PHONE NUMBER 577 7434DATE OFFENSE _____ COLLECTION 4-13-06

INCIDENT LOCATION _____

LOCATION COLLECTED MVSC

SUSPECT _____

VICTIM Tiffany Graham

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	White bag said to contain:	 OXNP	NP	NP	4-13-06 PB
	a) Black Camisole				
	b) Gray sweat pants				
	c) black sweat jacket				
	d) Gray sweatshirt				

CASE # 0607133

STG

EVisual: ☐ Present ☒ AbsentAlternate Light Source: ☐ Present ☒ Absent

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

J. Wooley
Print Name

J. Wooley
Signature

DATE/TIME 4-13-06 / 1:13

DATE/TIME _____

DATE/TIME _____

Print Name

Signature

Print Name

Signature

DATE/TIME _____

AR By MRS Date 4-17-06TR By MRS Date 4-17-06



SLED LABORATORY FORENSIC SERVICES REQUEST

SLED LAB No. L06-10692Submission: 18/2/2006 11:18:52AMName of Investigating officer: Lisa AltineAgency: Charleston City Police DepartmentPhone No: 577-7434

Fax No: _____ Email: _____

Mailing Address: 180 Lockwood DrCity / State / Zip: Charleston, SC 29403

CC: _____

ORI No: SC0100100Agency Case No: 0607133Offense: SEXUAL ASSAULTCounty: CharlestonOffense Date: 04/09/2006Officer Involved Shooting ☐ YesRush: ☐ Yes

Is this evidence related to another lab number?

☐ Yes ☒ No

If yes, Lab Number: _____

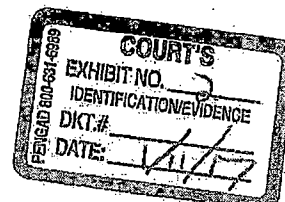
SLED ITEM NO. LAB ONLY	Agency Item No.	Description of Evidence	Analysis Requested
1		CSC kit - Tiffany Graham	DNA ANALYSIS
2		Suspect Kit - Antonio Patterson	DNA ANALYSIS
3	✓	Condom - One condom	DNA ANALYSIS
4	✓	Condom - One condom	DNA ANALYSIS
5	✓	Miscellaneous - Piece of carpet	DNA ANALYSIS
6		Underwear - Tiffany Graham	EVIDENCE PROCESSING

Subject(s)	Sex	Race	DOB	SSN
Antonio Patterson	M		02/20/1970	

Victim(s)	Sex	Race	DOB	SSN
Tiffany Graham	F		02/08/1983	

Comments

See comment section regarding items #3- #5. AES



This Space Reserved For Lab Receipt Barcode



**SLED LABORATORY
FORENSIC SERVICES REQUEST**

SLED LAB No. L06-10692

Submission: 1/8/2/2006 11:18:52AM

Submitted By :

J. Miller

Jeffrey Curtis Miller

Received By :

Amy Stephens

Amy Stephens

Forensic Technician



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

Sled # L06-10692

EQUESTIN

PR Det I. Altine

CASE NUMBER

0607133

GENCY CPD T-1

OFFENSE CSC

GENCY PHONE NUMBER 577-7434

DATE OFFENSE COLLECTION 1-10-07

ICIDENT LOCATION

LOCATION COLLECTED 24 Oris Ct

SUSPECT: Patterson, Antonio Diearg

VICTIM Graham, Tiffany

ITEM	EVIDENCE DESCRIPTION	BAR.	PROCESSING	RESULTS	DATE
	Sled pouch L06-10692-#1		NP	Sled return	1-10-07 TPB
	Sled pouch L06-10692-#2		NP	Sled Return	1-10-07 TPB
	Sled pouch L06-10692-#6		NP	Sled Return	1-10-07 TPB

Visual: ☐ Present ☐ Absent NP

Alternate Light Source: ☐ Present ☐ Absent

Reagents Tested/Test Prints:

NP

Comments:

SLED Return

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Yuterbrink
Print Name

Randal L. Yuterbrink
Signature

DATE/TIME 1-10-07/1230 hrs

DATE/TIME

Print Name

Signature

DATE/TIME

Print Name

Signature

DATE/TIME

AR By [Signature] Date 1-22-07

TR By [Signature] Date [Signature]



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

STED 4 LOC 10692

REQUESTING OFFICER Cecile

CASE NUMBER 0607133

AGENCY CPD

OFFENSE 1 CSC

AGENCY PHONE NUMBER 577 7434

DATE OFFENSE _____ COLLECTION 4-13-06

INCIDENT LOCATION _____

LOCATION COLLECTED MUSC

SUSPECT Antonio Patterson

VICTIM Tiffany Graham

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	Scaled Sealed Assault kit	 OXNN	NP	NP	4-13-06 BXC

Why is the
SEXUAL ASSAULT
KIT SEALED

Visual: ☐ Present ☒ Absent

Alternate Light Source: ☐ Present ☒ Absent

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

1 J. Wooley
Print Name

J. Wooley
Signature

DATE/TIME 4-13-06/1313

0 M. Miller

M. Miller

DATE/TIME 8-20-06/0200

0 STED
Print Name

Signature

DATE/TIME 8-20-06/1118

0 _____
Print Name

Signature

DATE/TIME _____

AR By MRS Date 4-17-06

TR By MRS Date 4-17-06



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

SLED # L06-10692

QUESTIN

3R Altier, L

CASE NUMBER 0607133

AGENCY CRD: F1

OFFENSE CSC

AGENCY PHONE NUMBER 577-7434

DATE OFFENSE COLLECTION 11-16-06

IDENT LOCATION 24 On 13 Pt

LOCATION COLLECTED SLED

SPECT Anthony Patterson

VICTIM

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	SLED Box L06-10692		N/P	SLED Return	11-16-06 BX

Visual: ☐ Present ☐ Absent N/P Alternate Light Source: ☐ Present ☐ Absent N/P

Reagents Tested/Test Prints: N/P

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randel Unterbrink
Print Name

Randel Unterbrink
Signature

DATE/TIME 11-16-06/1230

DATE/TIME _____

DATE/TIME _____

Print Name

Signature

DATE/TIME _____

Print Name

Signature

AR By JP Date 11-18-06

TR By JP Date JP



Charleston Crime Scene Unit

EVIDENCE PROCESSING REPORT

5/17/06 # 206 10 692

REQUESTING OFFICER Det L. Altine
 AGENCY CPD F-1
 AGENCY PHONE NUMBER 577-7434
 INCIDENT LOCATION 24 Orr's Ct
 SUSPECT Antonia Patterson

CASE NUMBER 0607133OFFENSE CSCDATE OFFENSE _____ COLLECTION 4-19-06LOCATION COLLECTED 1023 Wappoo Rd
Crime Scene OfficeVICTIM Tiffany Henderson

ITEM	EVIDENCE DESCRIPTION	BAR	PROCESSING	RESULTS	DATE
	Suspect Evidence Collection Kit	 OXPL	N/P	N/P	4-19-06
	RAPE	066890			
	WEAPONS	K066811			

Visual: ☐ Present ☐ Absent N/P Alternate Light Source: ☐ Present ☐ Absent N/P

Reagents Tested/Test Prints:

Comments:

EVIDENCE SUBMITTED IN SEALED CONTAINER(S) IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED AS LISTED ABOVE.
 CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY CONDUCTED BY THE EXAMINER WILL BE THE CORRECT INVENTORY.

Randal Unterbrink
 Print Name

Randal L. Unterbrink
 Signature

DATE/TIME 4-19-06/1420hrs

Mullen
 Print Name

J. Mullen
 Signature

DATE/TIME 8-2-06/0900

S/GD
 Print Name

Signature

DATE/TIME 8-2-06/1118

Print Name

Signature

DATE/TIME

AR By [Signature] Date 4-25-06TR By [Signature] Date [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Antonio Patterson, SCDC No. 342594,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2014-CP-10-1212

ORDER OF DISMISSAL

2017 SEP 20 PM 3:37
JULIE E. GRIFFIN, CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed February 25, 2014, by Antonio Patterson (Applicant), alleging ineffective assistance of counsel. Respondent made its Return on May 22, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened January 11, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. Following the hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2006 term, the Charleston County Grand Jury indicted Applicant for first-degree criminal sexual conduct (2006-GS-10-9248). Reese Stidham, Esquire, of the Charleston County Public Defender's Office represented Applicant. The case was prosecuted by Assistant Solicitors Jennifer Shealy and James Stack. On August 30, 2010,

Applicant proceeded to a jury trial before the Honorable Deadra L. Jefferson. The jury convicted Applicant as indicted. Judge Jefferson sentenced Applicant to twelve years imprisonment.¹

Applicant filed a timely notice of appeal and Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense—Division of Appellate Defense represented him on appeal. Following the submission of an Anders² brief, the South Carolina Court of Appeals affirmed the conviction and sentence. State v. Antonio Patterson, Op. No. 2013-UP-254 (Ct. App. filed June 19, 2013). The Remittitur was returned to the circuit court on July 17, 2013.³

FACTUAL HISTORY

This case arose from a sexual assault occurring on April 8, 2006, at a home in Charleston. T.G. (the victim) testified she had been invited to a cookout at Applicant's home and, while there, they grilled food, drank alcohol, and smoked marijuana with members of Applicant's family. (Tr.p.88, lines 9-17; p.96, line 7-p.97, line 9). Later that evening, the victim told Applicant she wanted to go home; however, Applicant told her he wanted to have sex and when she refused, Applicant went upstairs and returned with a gun. (Tr.p.98, lines 9-16). The victim testified Applicant forced her into the bathroom, where she again told him she did not want to

¹After he was convicted, Applicant also pled guilty to the third-degree criminal sexual conduct and Judge Jefferson sentenced him to a concurrent ten year sentence. Applicant already challenged this conviction in a separate post-conviction relief application, dismissed on January 18, 2012.

²Anders v. California, 386 U.S. 738 (1967).

³Applicant subsequently filed an application for post-conviction forensic DNA testing filed on August 2, 2013. On October 6, 2014, a hearing on this application was held before On October 6, 2014, a hearing was held before the Honorable Roger M. Young, Sr. Jennifer Kneese Shealy of the Ninth Circuit Solicitor's Office represented the State and Applicant proceeded pro se. On October 7, 2014, Judge Young entered an order denying the application, finding Applicant failed to meet his burden of proof as required by S.C. Code Ann. § 17-28-90 to show by a preponderance of the evidence that any further DNA testing would be appropriate. He subsequently appealed this ruling and was represented on this appeal by Appellate Defender Tiffany L. Butler of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Applicant filed a petition for a writ of certiorari on October 26, 2015. The State filed its return to this petition on November 25, 2015. By order dated June 7 2016, the South Carolina Court of Appeals denied certiorari. The Remittitur was issued on June 27, 2016.

have sex. (Tr.p.99, lines 9-13). The victim stated she was crying and screaming, but Applicant would not let her leave—locking the front door and taking her cell phone. (Tr.p.100, lines 16-18; p.101, lines 5-7; p.101, lines 21-25). The victim testified Applicant grabbed her arm, twisted it behind her back, and took her to the living room, where he bent her over the arm of the sofa. (Tr.p.103, lines 1-6). The victim stated Applicant pulled her underwear and pants down, she saw him put on a condom, and he sexually assaulted her. (Tr.p.104, lines 1-5). When Applicant was finished, the victim testified she escaped and ran to a neighbor's house to call police. (Tr.p.107, lines 6-14).

Officers who interviewed the victim on the night of the incident testified she was shaking, visibly upset, crying, and so distraught she vomited twice. (Tr.p.153, lines 18-21; p.169, lines 9-14). A Sexual Assault Kit, and the victim's underwear and clothes were collected and sent to SLED for DNA analysis. (Tr.p.274, line 17-p.275, line 11). Officers obtained a search warrant for Applicant's home where they took into evidence two used condoms and a carpet cutting from the living room and sent them to SLED for DNA analysis. (Tr.p.207, line 17-p.208, line 22; p.209, line 11-p.210, line 5; p.226, line 22-p.227, line 1; p.228, lines 2-20). Further, officers obtained a search warrant for Applicant's DNA, which was collected and sent to SLED for DNA analysis. (Tr.p.259, lines 14-16).

Prior to the trial in 2010, SLED analyzed the DNA from six items, including the samples from the victim and Applicant.⁴ (App.pp.35-38). In the DNA report dated April 30, 2010, Lieutenant Robin Taylor reported: one of the condoms had a DNA profile that was a mixture of

⁴ No semen was found in the swabs taken from the victim's mouth, vagina, or rectum during the sexual assault exam, and none was found in the victim's underwear. (App.pp.35-36).

at least two people and Applicant's DNA matched that of the major contributor, while the DNA profile of the minor contributor could not be matched to the victim. Taylor testified to and was cross-examined on the findings during Applicant's trial. (Tr..pp.253-71).

Applicant asserted a defense of consent. He presented two witnesses on his behalf: his nephew Emanuel Patterson and his brother Timothy Patterson, who both testified about the cookout and seeing the victim at the cookout. Both denied seeing anything inappropriate occur between the victim and Applicant.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of ineffective assistance of counsel for failing to file a motion to quash the indictment and insufficient evidence to support the conviction. At the start of the evidentiary hearing, Applicant informed this Court he was proceeding forward on two grounds of ineffective assistance of counsel: failure to properly advise Applicant about testifying in his own defense and failure to ask for jury instructions on lesser-included offenses. (PCR Tr. p. 3-4).

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was represented by Reese Stidham of the Charleston County Public Defender's Office and never met with him the entire time he was released on bond. (PCR Tr. p. 4-5). He testified a different attorney, Tommy Bolus, represented him at his bond hearing. (PCR Tr. p. 7). He testified he spoke with counsel once by telephone a week or two before trial. (PCR Tr. 5-6). He testified counsel never discussed plea offers with him. (PCR Tr. 7). However, he testified he was aware of a plea offer to third-degree criminal sexual conduct. (PCR Tr. p. 23).

Applicant testified he told counsel he did not have sexual relations with the victim and he did not know the victim. (PCR Tr. 7-8, 13). He testified he recalled the trial judge asking him if he wanted to testify at trial and the judge giving him time to discuss the issue with counsel. (PCR Tr. p. 8-9, 25). He testified he discussed the issue with counsel and counsel advised him not to take the stand because the State would introduce his prior charges. (PCR Tr. p. 8-13). Applicant testified that if he would have taken the stand in his defense, he would have testified that he stopped by his family's cookout to eat and saw the victim, but did not converse with her. (PCR Tr. p. 13-15). However, he acknowledged he called two family members as defense witnesses who both testified they saw Applicant conversing with the victim that day although they denied anything improper occurred. (PCR Tr. p. 24, 25). He testified he told counsel his version of events, but counsel still advised him not to testify because of his prior convictions. (PCR Tr. p. 15-16). He denied that his defense at trial was a consensual sexual encounter. (PCR Tr. p. 24-25).

Applicant also testified counsel should have requested jury instructions on the lesser-included offenses. (PCR Tr. p. 17). He testified he never discussed whether to ask for lesser-included offense with counsel and he would have wanted counsel to get instructions on lesser-included offenses because he "would be doing less than 50 percent of the time [he's] doing now." (PCR Tr. p. 17-18). He testified he pled guilty to an unrelated charge following his conviction and counsel did not discuss this with him. (PCR Tr. 20-21).

Counsel testified next. Counsel testified he was appointed to represent Applicant and has been practicing law since 2006. (PCR Tr. p. 27). He testified he met with Applicant multiple

times and also discussed his case by telephone. (PCR Tr. p. 28, 32). He testified he went to various locations, including the family home where the sexual assault occurred and the county jail, in an attempt to corroborate Applicant's story that he gave the victim a ride to the jail to visit her boyfriend. (PCR Tr. 28). He testified he discussed Applicant's version of events "many times and at length" and "they were nothing similar at all to what he just testified to." (PCR Tr. p. 28, 30). Counsel elaborated Applicant advised him that he had known the victim for years, the two had partied together earlier before having consensual sex and that the whole defense was premised around this. (PCR Tr. p. 29, 31-32). Counsel testified this defense needed Applicant to testify and he prepared Applicant to testify. (PCR Tr. p. 29, 32). He testified he put up two defense witnesses first and the assistant solicitor was "extremely effective at cross-examining" the witnesses, particularly Applicant's brother. (PCR Tr. p. 29, 32). He testified Applicant was hesitant after that and he and co-counsel then spent a significant amount of time in a side room talking to Applicant about whether he should testify. (PCR Tr. p. 30, 32). He testified he does not recall ever telling Applicant whether or not he should testify and the decision would have been Applicant's choice. (PCR Tr. p. 30). However, he testified he stressed the importance of Applicant testifying "because he had to explain to the jury that it was consensual. And they needed to hear that from him." (PCR Tr. p. 30). He testified he does not think Applicant would have done well on the stand, noting he had Applicant evaluated by Dr. Burke prior to trial and Dr. Burke opined Applicant would not be a good witness. (PCR Tr. p. 30).

Counsel testified he did not request any lesser-included offenses because he "did not want to give the jury anything to compromise on and wind up with him getting a CSC second or third." (PCR Tr. p. 31). He elaborated there was an accompanying weapons charge of which the

jury acquitted Applicant. (PCR Tr. p. 31). He testified he is certain "without a doubt" that he and co-counsel discussed lesser-included charges with Applicant and they would not have gone forward without Applicant's permission not to request those lesser-included charges. (PCR Tr. p. 31, 34-25).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation: Failure to properly advise Applicant about testifying in his defense

Applicant alleges counsel failed to properly advise him about testifying on his own behalf. Applicant testified he wanted to testify on his own behalf, but counsel advised him against testifying because the State would introduce his prior convictions. He testified if he had taken the stand, he would have testified he did not speak with the victim at the cookout and did not have any sexual encounter with her. However, counsel testified Applicant had always asserted he had a consensual sexual encounter with the victim after a part of partying, in stark contrast to the testimony Applicant gave at the evidentiary hearing. Counsel testified that based on these conversations with Applicant, their defense theory was that Applicant and the victim had consensual sex and he discussed with Applicant the need for him to testify to support this

defense of consent. Counsel testified had prepared Applicant to testify and had him evaluated by Dr. Burke in anticipation of him testifying. He testified Applicant changed his mind about testifying after observing the assistant solicitor's vigorous cross-examination of his brother and he discussed whether Applicant should testify with him at length. Counsel testified it was ultimately Applicant's decision to make and Applicant decided not to testify.

This Court finds counsel's testimony to be credible as to this issue and finds counsel adequately conferred with Applicant both before and during trial about his decision to testify. This Court finds Applicant's testimony on this issue to be not credible and find this allegation is without merit. Therefore, this allegation is denied and dismissed with prejudice.

Allegation: Failure to request jury instructions on lesser-included offenses

Applicant alleges counsel was ineffective for failing to request jury instructions on lesser-included offenses and denied counsel ever discussed this with him. In contrast, counsel testified he and his co-counsel discussed this with Applicant at length and all were in agreement not to request lesser-included offenses because they did not want to risk the jury compromising on a lesser-included offense such as second-degree or third degree criminal sexual conduct rather than acquitting Applicant.

This Court finds counsel's testimony to be credible as to this issue and finds counsel adequately conferred with Applicant about the decision not to request any jury instructions on lesser-included offenses. This Court finds Applicant's testimony on this issue to be not credible and find this allegation is without merit.

Additionally, this Court finds counsel's reasoning for not requesting jury instructions on lesser-included offenses was a valid trial strategy. "Counsel must articulate a valid reason for

employing a certain strategy to avoid a finding of ineffectiveness.” Abney v. State, 408 S.C. 41, 46, 757 S.E.2d 544, 546–47 (Ct. App. 2014) (citing Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). When counsel articulates a strategy, it is measured under an objective standard of reasonableness. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Strickland, 466 U.S. at 691. Counsel’s decision not to request jury instructions on lesser-included offenses was a valid trial strategy. See Abney, 408 S.C. at 46-47, 757 S.E.2d at 546–47 (recognizing counsel’s decision not to request a jury instruction on lesser included offenses can be a valid trial strategy). Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 14th day of September, 2017.



WILLIAM N. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

SAW 2006-04-02172

DOCKET NO. 2006-GS-10-9248

WITNESSES

JEFF OLBURN AND/OR
MATT CASEY

CPD, L. ALTINE

OCA#: 0607133

ARREST WARRANT NUMBER

K066810

April 18, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2006

THE STATE

v.

ANTONIO DIEARGO PATTERSON

Indictment for

CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

At a Court of General Sessions, convened on September 11, 2006, the Grand Jurors of Charleston County present upon their oath:

That in Charleston County on or about April 9, 2006, with the use of aggravated force, Antonio Dieargo Patterson did commit a sexual battery upon Tiffany Graham against her will and without her consent. This being in violation of Section 16-3-652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT WILSON
CHIEF DEPUTY SOLICITOR