

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Charleston County
G. Thomas Cooper, Circuit Court Judge

S.C. SUPREME COURT

CLARENCE LOGAN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002390

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON 2010-GS-10-03060
 2010-GS-10-3061

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) June 8 & 9, 2011
CLARENCE LOGAN, JR.,)
) Charleston, South Carolina
)
) Defendant.

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Jarvia O'Neal	28	35	130	--
4		61	96	--	--
5	Andrea Bell	132	--	--	--
6	Virgil Washington	132	--	--	--
7	Aaron Green	155	170	172	--
8	Alex Gray	174	178	180	--
9	Marquise O'Neal	181	188	--	--
10	Rhonda DeVeaux	189	195	--	--
11	Craig McAlheney	195	199	--	--
12	Omar Faison	202	--	--	--
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24

25

(June 8, 2011.)

1 THE COURT: Mr. Logan, you're charged with
2 two counts. The first count is 2010-GS-10-3061. You're
3 charged with strong-arm robbery. Do you plead guilty or
4 not guilty to that?

5 THE DEFENDANT: Not guilty.

6 THE COURT: And attempted criminal sexual
7 conduct first degree is the second indictment,
8 2010-GS-10-3060. You plead guilty or not guilty to that?

9 THE DEFENDANT: Not guilty.

10 THE COURT: Okay. We're getting ready to
11 start a jury trial for you here. We're going to draw a
12 jury to begin this afternoon. Now, I'm sure your lawyer
13 and you have talked about this, but I need to talk with
14 you about it on the record. The state has to prove your
15 guilt. You don't have to prove you're innocent. You
16 don't have to do anything except show up, and you've done
17 that.

18 Now, you do have the right to put up a
19 defense, and you do have the right to testify, if you
20 want to, to tell the jury your side of the story;
21 however, you're not required to do either of those two
22 things, and if you don't put up a defense and you don't
23 testify, then I will instruct the jury that they're not
24 to hold that against you in any way.

25 You can also put up a defense and still not

1 testify; in other words, you can call other witnesses,
2 that sort of thing. But you still don't have to testify,
3 even if you decide to put up a defense. That ultimately
4 is your choice and your choice alone on whether or not to
5 testify and put up a defense, but you certainly should
6 consult with your lawyers and any family members or
7 anything like that about that decision, because it's
8 ultimately a -- it's a big decision, but it's your
9 choice.

10 So you don't have to decide right now. You
11 don't have to tell me what you've decided, but at some
12 point in time after the state presents all of their
13 witnesses, you will have to make a decision as to whether
14 you want to put up a defense and whether or not you want
15 to testify. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. We'll talk again then
18 later on in the trial.

19 All right. Is there anything we need to
20 discuss then before we bring the jury up? No? You're
21 riding solo?

22 MR. FINCH: No. Mr. DuRant was detained
23 briefly.

24 (In open court, jury panel present.)

25 THE COURT: Welcome back, folks. We are now

1 going to draw a jury for another case which we will begin
2 after lunch, but we're going to go ahead and draw the
3 jury this morning, and that way those of you who don't
4 get picked can head on out for the rest of the day.

5 Now, the case that we are going to try is the
6 case of the State of South Carolina versus Clarence
7 Logan, Junior. Mr. Logan is facing two charges: First
8 charge is an indictment for strong-arm robbery. That's
9 indictment 2010-GS-10-3061, and it alleges that in
10 Charleston County, South Carolina, on or about February
11 4, 2010, the defendant, Clarence Logan, Junior, did take
12 and carry away personal property from the person or
13 presence of Jarvia O'Neal, by means of force, threat, or
14 intimidation of Jarvia O'Neal of such property. Such
15 property is described as a South Carolina driver's
16 license and \$20 cash. This is in violation of the common
17 law of South Carolina and section 16-11-325 of the code
18 of laws of South Carolina as amended.

19 Mr. Logan has pled not guilty to that charge.
20 He's also been indicted by the grand jury, indictment
21 2010-GS-10-3060, for a charge of attempted criminal
22 sexual conduct first degree, and that indictment charges
23 that on -- that in Charleston County, South Carolina, on
24 or about February 4, 2010, the defendant, Clarence Logan,
25 Junior, did attempt to commit a sexual battery upon the

1 victim, Jarvia O'Neal, without her consent and with the
2 use of aggravated force, to wit the defendant grabbed the
3 victim around her neck, choking her, and struck her with
4 a closed fist about the face and body, all in violation
5 of 16-3-652 of the South Carolina code of laws, and
6 Mr. Logan has pled not guilty to that as well.

7 So it becomes incumbent upon State of South
8 Carolina to provide Mr. Logan with a trial by a jury and
9 to attempt to prove to that jury that he is guilty of
10 these charges beyond a reasonable doubt.

11 Mr. Logan does not have to prove that he is
12 innocent of these charges. The only thing Mr. Logan has
13 to do is show up for trial, and that is what he has done.
14 The State of South Carolina, again, has to prove he is
15 guilty. He does not have to prove that he is innocent.

16 So the first thing I want to ask, is there
17 any member of the jury panel who knows anything at all
18 about these charges? If so, would you please stand. All
19 right. I find none.

20 Now, when the State of South Carolina
21 prosecutes a case, they do so through the local
22 solicitor's offices, and our local solicitor's office --
23 we are in the Ninth Judicial Circuit, which is in
24 Charleston County and Berkeley County, and our solicitor
25 is Ms. Scarlett Wilson, and Ms. Wilson has designated two

1 people from her office to prosecute this case, and that
2 would be Mr. Timmy Finch and Mr. Rutledge DuRant. Would
3 you two gentlemen please stand? Is there any member of
4 the jury panel who is related by blood or marriage or
5 acquainted in any way with either Ms. Wilson, Mr. Finch,
6 or Mr. DuRant? If so, would you please stand. All
7 right. I found none. You may be seated.

8 Is there any member of the jury panel who is
9 now or currently working for the Ninth Judicial
10 Solicitor's office? If so, would you please stand, or
11 maybe you have an immediate family member that works for
12 the solicitor's office. If so, would you please stand.
13 Okay. I find none.

14 Now, the defendant is Mr. Clarence Logan,
15 Junior. Mr. Logan, would you stand, please. This is
16 Mr. Logan in the middle with the white shirt, and he is
17 standing there with his lawyers. He has two lawyers,
18 Mr. Reese Stidham and Mr. Beatty Butler. Is there any
19 member of the jury panel who is related by blood or
20 marriage or acquainted in any way with Mr. Clarence
21 Logan, Junior? If so, would you please stand. I find
22 none.

23 Is there any member of the jury panel who is
24 related by blood or marriage or acquainted in any way
25 with either Mr. Stidham or Mr. Butler? If so, would you

1 please stand. Yes, ma'am?

2 A PROSPECTIVE JUROR: I'm not related by
3 blood or marriage, but my name is Elizabeth McCullough,
4 and I am a faculty member at the Charleston School of
5 Law. And I was the externship director for five years,
6 and I have provided students to work in both of those
7 areas and have had, as well, donated through the
8 public -- through the school, we have donated to the
9 public defender's office computers and things like that.
10 I just wanted Your Honor to know that.

11 THE COURT: Would that affect your ability to
12 be fair or impartial, either for or against the state or
13 for or against the defendant?

14 A PROSPECTIVE JUROR: No, sir.

15 THE COURT: Thank you. Anyone else? All
16 right. You may be seated.

17 I'm going to call out the names of some
18 people who might be called as witnesses in this case.
19 When I call these names out, if there is any member of
20 the jury panel who is related by blood or marriage or
21 acquainted in any way with any of these potential
22 witnesses, I would ask that you stand when I call the
23 name out.

24 Jarvia O'Neal? I find none. Andrea Bell? I
25 find none. Aaron Bernard Green? I find none. Virgil

1 Washington? I find none. Adisha Lloyd? A-d-i-s-h-a?
2 That's how she spells Adisha. Officer Alex Edward Gray
3 of the North Charleston police department? I find none.
4 Rhonda DeVeaux? I find none. Marquise O'Neal? I find
5 none. Officer Glenn Meza with the North Charleston
6 police? I find none. Officer Craig MacAlheney with the
7 North Charleston police? I find none. Detective Jeremy
8 Schmidt, North Charleston police? I find none.
9 Detective Faison with the Hanahan police? I do not know
10 what the first name is, whether or not Faison is a male
11 or female.

12 MR. FINCH: It's Omar. It's a male.

13 THE COURT: Omar? No? No one? All right.
14 And Jeffrey Floyd, Charleston County Detention Center?
15 And Latesha Waters or Michael Waters? All right. I find
16 none.

17 Any member of the jury panel, either you or
18 an immediate family member, ever had any criminal charges
19 prosecuted by the Charleston solicitor's office? If so,
20 would you please stand.

21 A PROSPECTIVE JUROR: Would you say that
22 again?

23 THE COURT: Have you or an immediate family
24 member ever been prosecuted by the Charleston solicitor's
25 office for a crime?

1 A PROSPECTIVE JUROR: I have a son.

2 THE COURT: What is your name and number?

3 A PROSPECTIVE JUROR: My name is Cynthia
4 Anderson, and I am number eight.

5 THE COURT: Your son was charged in what?

6 A PROSPECTIVE JUROR: I had to come to court
7 for him last year in November.

8 THE COURT: And how long ago was that?

9 A PROSPECTIVE JUROR: November this year will
10 be a year.

11 THE COURT: Is that still currently pending?

12 A PROSPECTIVE JUROR: No, he is out.

13 THE COURT: That charge has been resolved?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: The fact that he was prosecuted
16 before, would that affect your ability to be fair and
17 impartial, either for or against the state or for or
18 against the defendant?

19 A PROSPECTIVE JUROR: Could I speak my mind?
20 Could I speak my heart?

21 THE COURT: Yes. I'll tell you what. Why
22 don't you come up here.

23 (Discussion held at sidebar.)

24 THE COURT: What do you want to tell me?

25 A PROSPECTIVE JUROR: My heart is not going

1 to allow to stand -- I cannot stand this. I don't want
2 to be here. See, my son was in jail at one point, and it
3 throw me like a loop, and I don't wants to see -- I don't
4 know this young man, but I have a son. If I can save
5 him, I will save him.

6 THE COURT: So you don't think you could be
7 fair to the state on this?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: Okay. All right. Well, then I
10 will excuse you from service. Just go back and have a
11 seat right now. Anyone else?

12 A PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Your name and number.

14 A PROSPECTIVE JUROR: Jennifer Scott, 241.

15 THE COURT: Okay.

16 A PROSPECTIVE JUROR: A charge was brought
17 against me by the Ninth Court Solicitor's Office,
18 probably in January of 2010. I went through the pretrial
19 intervention program and completed it in September or
20 October of last year.

21 THE COURT: Do you think that would affect
22 your ability to be fair and impartial in this case,
23 either for or against the state or for or against the
24 defendant?

25 A PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you. That was 241? Okay.

2 All right. Did I see another hand? Yes,
3 sir, name and number.

4 A PROSPECTIVE JUROR: 251, Randolph
5 Singleton. Yes, the charge was illegal use of a
6 telephone, but they dropped the charge when they realized
7 I wasn't the right person.

8 THE COURT: You were the one that was
9 charged?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: How long ago was this?

12 A PROSPECTIVE JUROR: This past February.

13 THE COURT: And the charge had been
14 dismissed?

15 A PROSPECTIVE JUROR: Yes.

16 THE COURT: Would that affect your ability to
17 be fair or impartial in this case, either for or against
18 the state or for or against the defendant?

19 A PROSPECTIVE JUROR: Not really.

20 THE COURT: All right. Thank you. Anyone
21 else? Any member of the jury panel, either you or an
22 immediate family member, ever been the victim of sexual
23 abuse or charged with or accused of a crime of sexual
24 abuse? And if anybody wants to come forward and speak
25 privately about that, I'll certainly understand. Okay.

1 (Following discussion was held at sidebar.)

2 THE BAILIFF: Juror 198.

3 THE COURT: Yes, ma'am.

4 A PROSPECTIVE JUROR: My daughter was raped
5 and molested by my next door neighbor for a period of
6 five years. The man served five years in jail. I don't
7 believe I could be impartial.

8 THE COURT: So you don't think you could be
9 fair for the defense, basically?

10 A PROSPECTIVE JUROR: Not for the second
11 charge. It's been a very traumatic time, and my daughter
12 tried to commit suicide.

13 THE COURT: That's understandable. Your
14 number is 198? We'll excuse you, so go ahead and have a
15 seat back there. Thank you.

16 THE BAILIFF: Juror number 245.

17 A PROSPECTIVE JUROR: I've been a victim of
18 rape.

19 THE COURT: Okay. Do you feel like that
20 would affect your ability to be fair and impartial in
21 this case?

22 A PROSPECTIVE JUROR: I would try not to, but
23 I can't say I could -- I'm not sure I could do my best
24 job. I don't think I could do the best job.

25 THE COURT: So you think you might hold that

1 against the defendant?

2 A PROSPECTIVE JUROR: Well, I would try not
3 to.

4 THE COURT: I need you to tell me.

5 A PROSPECTIVE JUROR: Well, I would -- I
6 don't think I would, but --

7 THE COURT: So you think you could be fair
8 and impartial to both sides?

9 A PROSPECTIVE JUROR: I think so.

10 THE COURT: Okay. What is your number again?

11 A PROSPECTIVE JUROR: 245.

12 THE COURT: Okay. Thank you. Anyone else?

13 THE BAILIFF: Juror number 58.

14 THE COURT: Yes?

15 A PROSPECTIVE JUROR: My name is Deborah
16 Corley. In 2006, my sister, she's deceased since then,
17 she was beaten and raped and sodomized and my niece also.

18 THE COURT: Do you think that would affect
19 your ability to be fair and impartial in this case?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Okay. What is your number again?

22 A PROSPECTIVE JUROR: 58.

23 THE COURT: All right. We'll excuse you
24 then. Thank you.

25 MR. BUTLER: I would move 245 being removed

1 for cause.

2 THE COURT: You're going to have to use one
3 on that one. She said she could be fair.

4 MR. BUTLER: I think she said I guess so.

5 THE COURT: Okay.

6 (End of sidebar.)

7 THE COURT: Anyone else? All right. Any
8 member of the jury panel, either you or an immediate
9 family member, employed by any law enforcement agencies?
10 If so, would you please stand. Okay. Let's start over
11 here and work our way across.

12 A PROSPECTIVE JUROR: My brother is a retired
13 police officer in Anderson, South Carolina.

14 THE COURT: Your name and number?

15 A PROSPECTIVE JUROR: Sean Dickson, 73.

16 THE COURT: All right. Thank you.

17 A PROSPECTIVE JUROR: Number 31, and my
18 stepson is a lieutenant in Charleston County.

19 THE COURT: All right. Thank you.

20 A PROSPECTIVE JUROR: Number 27. My father
21 is a city of Charleston police officer.

22 THE COURT: Thank you.

23 A PROSPECTIVE JUROR: Number 218, Paul
24 Porwoll. I have worked as an intelligence analyst with
25 the Florida Department of Law Enforcement.

1 A PROSPECTIVE JUROR: 157, Sherri Kramer. My
2 husband is a North Charleston police officer.

3 THE COURT: All right. Any member of the
4 jury panel belong to any civics groups, such as Mothers
5 Against Drunk Driving, People Against Rape, Citizens
6 Advocating Decency and Return to Ethics, Parents
7 Empowered to Save Teens, or Citizens Against Violent
8 Crime, or any groups like that? Yes, ma'am, your name
9 and number?

10 A PROSPECTIVE JUROR: 273, Diana Vincent.

11 THE COURT: All right. And what would apply?

12 A PROSPECTIVE JUROR: Mothers Against Drunk
13 Driving, and I have marched for People Against Rape.

14 THE COURT: Would that affect your ability to
15 be fair and impartial in this case?

16 A PROSPECTIVE JUROR: Yes, it would.

17 THE COURT: You think it would?

18 A PROSPECTIVE JUROR: Absolutely.

19 THE COURT: What is your name and number?

20 A PROSPECTIVE JUROR: 273, Diana Vincent.

21 THE COURT: Okay. We'll take her off then.

22 Any member of the jury panel, either you or an immediate
23 family member, been the victim of a crime of violence and
24 you haven't already discussed it with me? Anyone else?
25 Yes.

1 A PROSPECTIVE JUROR: I'm not sure if it's
2 considered a violent crime. I had a gun stolen from my
3 house. A person came into my house when I wasn't home
4 and stole a gun from my house.

5 THE COURT: Your name and number?

6 A PROSPECTIVE JUROR: Sherri Kramer, 157.

7 THE COURT: Okay. Thank you. Any member of
8 the jury panel familiar with the Lovey Dovey nightclub in
9 North Charleston? No? Any member of the jury panel know
10 of any reasons why you don't think you could be fair and
11 impartial in this case for any reason?

12 Some of those reasons might be, well,
13 sometimes people have religious beliefs, and they feel
14 they can't sit in judgment of somebody. Sometimes they
15 might belong to political groups or organizations that
16 say, well, the government is all messed up, and I'm going
17 to get on a jury and just do whatever I feel like is
18 right. Doesn't matter what the judge says, doesn't
19 matter what the facts are, I'm going to do what I feel
20 like is right.

21 Maybe you have a feeling about the crimes
22 that are alleged to have been committed in these charges,
23 such that you don't think you could be fair and impartial
24 for those reasons.

25 Any reason why you don't think you could be

1 fair and impartial to both the state and to the
2 defendant, I need you to stand up, and let's talk about
3 that, if that applies to anyone.

4 Yes? Didn't -- I've already excused you.
5 Anyone else? Okay. Anything further from the state?

6 MR. FINCH: No, Your Honor.

7 THE COURT: From the defense?

8 MR. BUTLER: No, sir.

9 THE COURT: Okay. All right. We're going to
10 go ahead and draw a jury now. We're going to do this
11 process, which you probably are familiar with now, where
12 they call your name, you get your stuff, come up through
13 the doors here, face back to the jury panel, and the
14 state will have the opportunity to strike or present
15 first. Then the state -- or then the defense, if neither
16 party strikes you, then you're on the jury, and if one of
17 the two sides strikes you, then we will just move on to
18 the next person.

19 Okay? Just give us one second. State is
20 five, defense is ten. If you're ready, Madame Clerk, you
21 may begin.

22 THE CLERK: Juror number 262; Mildred
23 Swinton.

24 (The juror, a black female, approaches.)

25 What say you for the state?

1 MR. FINCH: Please excuse the juror.

2 THE CLERK: Please have a seat back in the
3 audience.

4 Juror number 22, Sandra Bjerke.

5 (The juror, a white female, approaches.)

6 What say you for the state?

7 MR. FINCH: Please present juror.

8 THE CLERK: What say you for the state?

9 MR. BUTLER: Please seat Ms. Bjerke.

10 THE CLERK: Ms. Bjerke, please have a seat in
11 the jury box. Juror number 54, Justin Coleman.

12 (The juror, a white male, approaches.)

13 What say you for the state?

14 MR. FINCH: Please present the juror.

15 THE COURT: What say you for the defendant?

16 MR. BUTLER: Please excuse Mr. Coleman.

17 THE CLERK: Please take a seat in the
18 audience. Juror number 242, Emily Scruggs.

19 (The juror, a white female, approaches.)

20 What say you for the state?

21 MR. FINCH: Please present the juror.

22 THE CLERK: What say you for the defendant?

23 MR. BUTLER: Please seat Ms. Scruggs.

24 THE CLERK: Please have a seat in the jury
25 box.

1 Juror number 218, Paul Porwoll.

2 (The juror, a white male, approaches.)

3 What say you for the state?

4 MR. FINCH: Please present the juror.

5 THE CLERK: What say you for the state?

6 MR. BUTLER: Please excuse Mr. Porwoll.

7 THE CLERK: Please have a seat back in the
8 audience.

9 Juror number 102, John Gathers.

10 (The juror, a black male, approaches.)

11 What say you for the state?

12 MR. FINCH: Please present the juror.

13 THE CLERK: What say you for defendant?

14 MR. BUTLER: Please seat Mr. Gathers.

15 THE CLERK: Please have a seat in the jury
16 box.

17 Juror number 245, Kathryn Sellers.

18 (The juror, a white female, approaches.)

19 What say you for the state?

20 MR. FINCH: Please present the juror.

21 THE CLERK: What say you for the defense?

22 MR. BUTLER: Please excuse Ms. Sellers.

23 THE CLERK: Please have a seat back in the
24 audience.

25 Juror number 31 Bruce Brown.

1 (The juror, a white male, approaches.)

2 What say you for the state?

3 MR. FINCH: Please present the juror.

4 THE CLERK: What say you for the defense?

5 MR. BUTLER: Please seat Mr. Brown.

6 THE CLERK: Please have a seat in the jury
7 box.

8 Juror number 173, Barbara Manaker.

9 (The juror, a white female, approaches.)

10 What say you for the state?

11 MR. FINCH: Please present the juror.

12 THE CLERK: What say you for the defendant?

13 MR. BUTLER: Please excuse Ms. Manaker.

14 THE CLERK: Please have a seat back in the
15 audience.

16 Juror number 12, Russell Arvidson.

17 (The juror, a white male, approaches.)

18 What say you for the state?

19 MR. FINCH: Please present the juror.

20 THE CLERK: What say you for the defendant?

21 MR. BUTLER: Beg the clerk's indulgence.

22 Please seat Ms. Arvidson.

23 THE CLERK: Juror number 166, Jonathan Lewis.

24 (The juror, a white male, approaches.)

25 What say you for the state?

1 MR. FINCH: Please present the juror.

2 THE CLERK: What say you for the defendant?

3 MR. BUTLER: Please seat Mr. Lewis.

4 THE CLERK: Please have a seat in the jury
5 box.

6 Juror number 41, Elizabeth Burke.

7 (The juror, a white female, approaches.)

8 What say you for the state?

9 MR. FINCH: Please present the juror.

10 THE CLERK: What say you for the defendant?

11 MR. BUTLER: Please seat Ms. Burke.

12 THE CLERK: Please have a seat in the jury
13 box.

14 Juror number 149, Linda Jones.

15 (The juror, a white female, approaches.)

16 THE CLERK: What say you for the state?

17 MR. FINCH: Please present the juror.

18 THE CLERK: What say you for the state?

19 MR. BUTLER: Please seat Ms. Jones.

20 THE CLERK: Please have a seat in the jury
21 box.

22 Juror number 86, Robin Faass.

23 (The juror, a white female, approaches.)

24 What say you for the state?

25 MR. FINCH: Please present the juror.

1 THE CLERK: What say you for the defendant?

2 MR. BUTLER: Please seat Ms. Faass.

3 THE CLERK: Please have a seat in the jury
4 box. Juror number 100, Jacqueline Frazier.

5 (The juror, a black female, approaches.)

6 What say you for the state?

7 MR. FINCH: Please present the juror.

8 THE CLERK: What say you for the defendant?

9 MR. BUTLER: Please seat Ms. Frazier.

10 THE CLERK: Please have a seat in the jury
11 box. Juror number 90, Margaret Fike.

12 (The juror, a white female, approaches.)

13 What say you for the state?

14 MR. FINCH: Please present the juror.

15 THE CLERK: What say you for the defendant?

16 MR. BUTLER: Please seat Ms. Fike.

17 THE CLERK: Have a seat in the jury box.

18 Juror number 26, Randall Bosart.

19 (The juror, a white male, approaches.)

20 What say you for the state?

21 MR. FINCH: Please present the juror.

22 THE CLERK: What say you for the defendant?

23 MR. BUTLER: Please excuse Mr. Bosart.

24 THE CLERK: Have a seat back in the audience.

25 Juror number 73, Sean Dickson.

1 (The juror, a white male, approaches.)

2 MR. FINCH: Please present the juror.

3 THE CLERK: What say you for the defendant?

4 MR. BUTLER: Please excuse Mr. Dickson.

5 THE CLERK: Please have a seat back in the
6 audience. That is six strikes for the defense..

7 Juror number 27, Kevin Bowie.

8 (The juror, a white male, approaches.)

9 What say you for the state?

10 MR. FINCH: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. BUTLER: Please excuse Mr. Bowie.

13 THE CLERK: Please have a seat back in the
14 audience.

15 Juror number 18, Curt Beilke.

16 (The juror, a white male, approaches.)

17 What say you for the state?

18 MR. FINCH: Please present the juror.

19 THE CLERK: What say you for the defendant?

20 MR. BUTLER: Please seat Mr. Beilke.

21 THE CLERK: Please have a seat in the jury
22 box.

23 THE COURT: One alternate, one strike for the
24 state, two for the defense.

25 THE CLERK: Juror number 196, Robert New.

1 (The juror, a white male, approaches.)
2 What say you for the state?
3 MR. FINCH: Please present the juror.
4 THE CLERK: What say you for the defendant?
5 MR. BUTLER: Please excuse Mr. New.
6 THE CLERK: Please have a seat back in the
7 audience.
8 Juror number 180, Elizabeth McCullough.
9 (The juror, a white female, approaches.)
10 What say you for the state?
11 MR. FINCH: Please excuse the juror.
12 THE CLERK: Please have a seat back in the
13 audience.
14 Juror number 158, Jennifer Krause.
15 (The juror, a white female, approaches.)
16 What say you for the state?
17 MR. FINCH: Please present the juror.
18 THE CLERK: What say you for the defendant?
19 MR. BUTLER: Beg the clerk's indulgence.
20 Please seat Ms. Krause.
21 THE CLERK: Please have a seat in the jury
22 box.
23 THE COURT: All right. Anything from the
24 state?
25 MR. FINCH: No, Your Honor.

1 THE COURT: From the defense?

2 MR. BUTLER: No, Your Honor.

3 THE COURT: Okay. Folks, you are going to be
4 our jury now, and we will start this case after lunch.
5 We've got to do some preliminary things to get it ready,
6 so I'm going to give you a little bit of a long lunch
7 break and ask that you be back in the jury room at 2:15.

8 They will show you where to report back to.
9 Don't come back in here. You go back to the jury room
10 where the bailiff here will instruct you in a little bit.
11 So, again, you don't know anything about the case now,
12 but it's improper to discuss the case with anyone,
13 including other members of the jury, and if anybody
14 approaches you about the case to discuss it with you,
15 please report that to me when you get back, so if y'all
16 would go back, we'll see you back at about 2:15.

17 Thank you.

18 All right. Well, the rest of you folks now
19 are free for the rest of today. I thank you so much for
20 your patience this morning and would tell you just call
21 back after 6:00 tonight, and they will tell you if you
22 need to report back tomorrow or just to call back after
23 6:00 tomorrow night. All right?

24 Thank you again for your patience, and you're
25 free for the rest of the day.

1 (Recess taken.)

2 A F T E R N O O N S E S S I O N

3 THE COURT: Okay. We're ready to go. You
4 got a Biggers motion you want to deal with?

5 MR. DURANT: We do, Your Honor. The state
6 would call Jarvia O'Neal. She's a victim in this case.

7 (Discussion held at sidebar.)

8 JARVIA O'NEAL,

9 having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 THE WITNESS: My name is Jarvia O'Neal,
13 O-N-e-a-l.

14 BY MR. DURANT:

15 Q. We're going to do this not in front of the jury
16 right now. We'll go over a little easier questions
17 first, and I want to take you back to February 4 of 2010
18 to the Lovey Dovey social club. Do you remember being
19 there?

20 A. Uh-huh.

21 Q. And there was an incident there that night?

22 A. Uh-huh.

23 Q. And were you the victim, essentially, that was
24 attacked?

25 A. Uh-huh.

1 Q. And that attack involved one person, right?

2 A. Uh-huh.

3 Q. And the purpose of these questions right now is
4 about an identification procedure that you underwent, on,
5 I believe it was, the 9th, which is five days after this
6 incident. Okay? So I want to talk to you a little bit
7 about the incident on the 4th, first of all.

8 The attack took place at the Lovey Dovey social
9 club?

10 A. Uh-huh.

11 Q. Is that a place you frequent?

12 A. Yes.

13 Q. What kind of place is that?

14 A. It's a nightclub where they have crabs and oysters
15 and things like that, like a bar more so.

16 Q. Where were you when the attack happened?

17 A. Where was I when the attack actually happened --

18 Q. In the club?

19 A. In the bathroom.

20 Q. And who all was present?

21 A. Just myself and Mr. -- just myself and --

22 Q. And the person sitting over here?

23 A. Yeah.

24 Q. Had you ever met this person before?

25 A. No.

1 Q. Did you know him by any name?

2 A. No.

3 Q. What were the lighting conditions like in that
4 bathroom?

5 A. It was very -- it wasn't that light. It was dark.
6 It wasn't too light, but I could see very well.

7 Q. Did you have a -- did you get a good look at the
8 guy's face that did this?

9 A. Yes, sir.

10 Q. And this attack was reported, right?

11 A. Yes, sir.

12 Q. And there is a lot of detail that is involved in
13 this attack, but we're not going to get into that right
14 now. This is just for the purpose of the identification.
15 You reported this incident to the police, right?

16 A. Yes, sir.

17 Q. And moving on to the 9th of February 2010, did a
18 detective ask you to come down to the North Charleston
19 police department?

20 A. Yes, sir.

21 Q. To view some pictures?

22 A. Yes, sir.

23 Q. And, Madame Court Reporter, if I could mark these
24 for the purposes of this in camera hearing, State's 1 and
25 2.

1 THE COURT REPORTER: I've already marked
2 State's 1 through 17.

3 MR. DURANT: Or however you want to do it.

4 THE COURT REPORTER: How about if I do 18 and
5 19?

6 MR. DURANT: That's fine.

7 (Admonition form and photo lineup marked for
8 identification as State's Exhibit Nos. 18 and 19.)

9 BY MR. DURANT:

10 Q. I'm going to show you what is labelled as State's
11 Exhibit 18, ask you to take a look at that. Do you
12 recognize that?

13 A. Uh-huh, I sure do.

14 Q. And what does that appear to be?

15 A. This was pretty much the questions he asked me for
16 me to do up on my own, just saying that no one picked it
17 out or told me what to say.

18 Q. And when you say he, that is Detective Faison?

19 A. Yes, sir.

20 Q. And where did he present to you with this photo
21 admonition form?

22 A. Inside the police station in a room, like a little
23 private room where they question, yeah.

24 Q. Was anybody else present?

25 A. It was just myself, the officer, and my sister.

1 Q. Your sister was there as well?

2 A. Yeah.

3 Q. All right.

4 A. Because I was --

5 Q. And he filled out the top part of this form with
6 the date and the time you came in and the location of
7 where you guys were, the named of the investigating
8 officer, who is Detective Schmidt, and then your name?

9 A. Right, and my initials.

10 Q. And your initials are beside these seven spaces
11 here that were read to you and you understood them?

12 A. Uh-huh.

13 Q. And will you just read those quickly about what
14 you initialed and understood and let the judge know what
15 you understood.

16 A. You would like me to read all the questions?

17 Q. Sure.

18 A. The first one is: I am going to show you a series
19 of photographs of individuals for any era of six
20 photographs of individuals.

21 Number two was: The photographs may or may not be
22 the person who committed the crime. It is just as
23 important to clear innocent people as it is to identify
24 possible suspects. Whether or not you identify someone,
25 the police will continue to investigate.

1 Number three: After you are done, I will not be
2 able to provide you with any feedback or comment on the
3 results of the process.

4 Number four: Do not discuss this identification
5 procedure or the results with any other witness in this
6 case.

7 Number five: Was focus on the place, view,
8 lighting, your frame of mind, et cetera. Take as much
9 time as you need.

10 Number six: People may not appear exactly as they
11 did at the event because features such as clothing,
12 style, hairstyle, et cetera, may change even in a short
13 period of time.

14 Number seven: As you look at the photographs,
15 tell me if you recognize the person in them. If you do
16 not, please tell me how you know the person and, in your
17 own words, how sure you are of the identification.

18 Q. And you initialed beside each one of those?

19 A. I did.

20 Q. And after going over this admonition, were you
21 shown some photographs?

22 A. Yes, sir, I was.

23 Q. And were these individual photographs?

24 A. They were, of different people.

25 Q. And did you ultimately, in one of those

1 photographs, identify somebody as the person who attacked
2 you on the 4th of February?

3 A. I did, instantly.

4 Q. Instantly, upon being shown that photograph?

5 A. Yes, sir.

6 Q. If you remember, was that the first photo you were
7 shown or do you remember what order that photo was shown?

8 A. He had actually shown me one paper, and he wasn't
9 on that paper, and he showed me the next, and he was the
10 third person in the middle, the second in the middle
11 person on the photograph, it was on the second sheet
12 instead of the first.

13 Q. These are -- one, two, three, four, five, six
14 photos, and we have this labelled as State's 19, ask you
15 to take a look at those --

16 A. That's it right there.

17 Q. That photograph right there?

18 A. Uh-huh.

19 Q. Did Detective Faison do anything to influence to
20 you pick one of those photos over another?

21 A. No, sir, he did not.

22 Q. Did he tell you that picking somebody out of these
23 photos would be helpful to the investigation?

24 A. He didn't tell me anything about picking out the
25 photos, no.

1 Q. Did he tell you anything besides what was told to
2 you on that form that influenced your decision one way or
3 another?

4 A. No, sir, he didn't.

5 Q. And it's your testimony that the person that you
6 picked out is the person who attacked you on February
7 4th?

8 A. Yes, sir.

9 Q. Okay.

10 MR. DURANT: That's all the questions I have.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q. Good afternoon, ma'am. I just have a few
15 questions for you. Club Lovey Dovey where this happened,
16 you said you were a frequent customer of the place?

17 A. Uh-huh.

18 Q. Did you ever work there?

19 A. No -- how do you mean work there, like --

20 Q. Was it ever a place where you were employed?

21 A. No. I haven't ever worked there before, but I did
22 part-time things there, but officially working as an
23 employee there, I didn't.

24 Q. Okay. I want to talk to you about your
25 opportunity to see the person that you were with in the

1 bathroom when you say you were attacked, okay?

2 A. Okay.

3 Q. When was the first time you saw that person that
4 night?

5 A. I've never seen him before until that night.

6 Q. That night, when was the first time you saw him?

7 A. That night was the first time I saw him.

8 Q. Is -- the first time you saw him, was it in the
9 bathroom?

10 A. No. The first time I saw him was when he came by
11 me, continuously trying to get with me.

12 Q. That's what I'm asking you.

13 A. Right.

14 Q. Tell me about that. How many times did you see
15 him that night before the bathroom and for how long?

16 A. He kept on talking to me before we got in the
17 bathroom, and we got there about 1:45. Almost the whole
18 time I was standing there before the crabs were ready.

19 Q. And you were engaged in conversation with him or
20 what --

21 A. No. I was totally being mean to him, absolutely.

22 Q. And what was he doing?

23 A. Being consistent about trying to know who I am and
24 where do I live and wanting to get with me.

25 Q. Okay. And how long would you say that those

1 conversations lasted?

2 A. Before I was rude to him, the first time he came
3 back, and I was rude to him again. So maybe he came to
4 me maybe two times before we actually had that big
5 complication in the bathroom.

6 Q. Okay. And when did you -- how did he end up in
7 the bathroom with you?

8 A. I was in the bathroom first, and he followed me in
9 the bathroom.

10 Q. Okay. And it's a one person bathroom?

11 A. Women's rest room.

12 Q. And it's the women's room?

13 A. Uh-huh.

14 Q. And how was he able to get in?

15 A. I walked in the bathroom, and he came in right
16 behind me and was pushing the door in, and that's how he
17 got in.

18 Q. When did you realize he was behind you?

19 A. When I was trying to close the door. When I
20 actually was in the bathroom, trying to get the door
21 closed, and I turned around and he was there.

22 Q. And how long were you in the bathroom with him
23 before you were able to leave the bathroom?

24 A. With him?

25 Q. Right.

1 A. I'm not approximately sure how long we were in
2 there, but we were in there long enough for him to do
3 what he did to me.

4 Q. Was it a matter of minutes, a matter of seconds?

5 A. I wouldn't say seconds. I would say minutes.

6 Q. Okay. Now, if this happens on the 4th, you met
7 with the detective who showed you the pictures on the
8 9th, right, five days later? Don't you also say that you
9 saw the same person in between the 4th and the 9th?

10 A. No.

11 Q. Okay.

12 A. I saw him in the club Lovey Dovey for the first
13 time in my life, and that was it, and after the prior
14 incident, I saw him a couple of times after he did what
15 he did to me.

16 Q. That's what I'm asking you about. After the 4th,
17 after the night in the bathroom at club Lovey Dovey but
18 before the 9th, before you see the pictures, you see the
19 person again, right?

20 A. Repeat that question to me.

21 Q. After the 4th the night you said you were
22 attacked --

23 A. I was attacked.

24 Q. -- after that, but before the 9th, in between the
25 4th and the 9th, don't you say you saw the person again,

1 in between those two times? You say that you saw him at
2 the bus station --

3 A. I did. The Greyhound Bus station, right.

4 Q. I want you to tell us about that.

5 A. When I was at the bus station, I saw the car
6 parked in the parking lot, and I knew it was the car from
7 the license plate tag number, because the owner of the
8 club had told me who he was and what kind of car he
9 drove. I called the cops.

10 Q. Okay. And what did the car look like?

11 A. It was a blue Thunderbird with Tarheels on it..

12 Q. With what?

13 A. The Tarheels football team or basketball team,
14 uh-huh. It was a light blue Thunderbird, sky blue.

15 Q. Did you actually see him or just the car?

16 A. I just saw the car.

17 Q. And the word Tarheels is on the car somewhere?

18 A. It's somewhere on there, yeah.

19 Q. And the next day, you say you saw him and the car
20 again?

21 A. Yeah.

22 Q. Tell us about that, please.

23 A. This is when the guy came by my house, was riding
24 by my house a lot. He also came into my yard one day,
25 stuck up his middle finger, and I saw him a couple times

1 when I was on the porch with some of my family members.
2 He came by routinely after it all happened because he had
3 my ID.

4 Q. And he had your driver's license?

5 A. Yeah.

6 Q. And those times, did you see his face?

7 A. I saw his face twice.

8 Q. And that is when he was driving past your house?

9 A. When he sticks his middle finger at me.

10 Q. In the same car?

11 A. Yeah. When he came -- yeah, yeah, yeah.

12 Q. And you called the police that time too?

13 A. I did.

14 Q. And you're saying that you did not get the license
15 tag, you already knew it?

16 A. Yeah. The owner of the club let me know what kind
17 of car he was driving and the tag number, so I knew
18 exactly that was the car. Like I said, I've never known
19 him until the first time that night.

20 Q. And you've never seen him in the club before?

21 A. I saw him in the club that night, never, ever
22 before that.

23 Q. And the kind of unofficial work you were doing
24 there was what?

25 A. I was an entertainment promotor.

1 MR. BUTLER: I beg the Court's indulgence.
2 That's all I have. Thank you.

3 THE COURT: Redirect?

4 MR. DURANT: No, Your Honor.

5 THE COURT: Okay. You can step down. You
6 have another witness?

7 MR. DURANT: No, Your Honor. We'll rest on
8 that motion.

9 THE COURT: Do you have anybody you want to
10 call?

11 MR. BUTLER: No, sir.

12 THE COURT: Okay. All right. Well, I don't
13 find that -- or I find that the identification procedure
14 was not unduly suggestive, and so any motion to suppress
15 that you might have would be denied, unless you want to
16 argue it.

17 MR. BUTLER: I don't.

18 THE COURT: Okay. All right. Y'all ready to
19 go then?

20 MR. FINCH: Yes, Your Honor.

21 THE COURT: Okay.

22 (Recess taken.)

23 (In open court, jury present.)

24 THE COURT: Before I sent y'all out, I
25 typically say when you're back there introducing

1 yourself, somebody could volunteer to be the jury
2 foreperson. I didn't do that this time. Does anybody
3 volunteer to do it? What is your name?

4 A PROSPECTIVE JUROR: Jonathan Lewis.

5 THE COURT: What number are you?

6 A PROSPECTIVE JUROR: 166.

7 THE COURT: All right. Well,
8 congratulations. You're the jury foreman. All right?

9 Now, before I begin, I need to have y'all
10 take an oath of office, so if you would stand and raise
11 your right hand and the clerk will administer your oath
12 to you.

13 (Jury duly sworn.)

14 THE COURT: We're going to go ahead and get
15 started on this trial now. As I told you before we
16 started, the state has charged Mr. Clarence Logan, Junior
17 with attempted criminal sexual conduct, first degree, and
18 strong-arm robbery. He has pled not guilty to both of
19 these charges, so it's incumbent upon the state to now
20 provide him with a jury trial and attempt to produce
21 enough evidence to convince 12 of you folks beyond a
22 reasonable doubt that he is guilty of these charges.

23 Mr. Logan does not have to do anything other
24 than what he has done, and that is show up for trial. He
25 does not have to prove that he's innocent. The state has

1 to prove that he is guilty, and that is an important
2 constitutional right that not only he possesses but each
3 of us possess, and so he doesn't have to do anything
4 other than show up for trial. He doesn't have to call
5 witnesses, if he doesn't want to, and he doesn't have to
6 testify if he doesn't want to, and if he doesn't end up
7 testifying, then you are not to hold that against him in
8 any way, shape, or form, during your deliberations.
9 You're not even to discuss that matter in the jury room.

10 That is an important constitutional right
11 again that each of us have. Now, he doesn't even have to
12 tell me at this point if he wants to put up a defense or
13 if he plans to testify or not testify. We'll deal with
14 that later on, but I just want you to keep that in mind
15 because, again, the burden of proof rests entirely with
16 the state.

17 As far as the law is concerned, Mr. Logan
18 sets there as an innocent man, and, again, that
19 presumption of innocence stays with him from the time he
20 got arrested through the time that there has been enough
21 evidence presented to convince 12 of you of his guilt
22 beyond a reasonable doubt.

23 Now, you keep hearing me talk about this
24 phrase beyond a reasonable doubt. Well, that is a burden
25 of proof. If any of you have served in a civil jury

1 before, you probably heard the burden of proof being a
2 preponderance of the evidence, or the greater weight of
3 the evidence, maybe if you heard it called that way, and
4 that simply means that whoever is trying to prove
5 whatever they allege in their complaint, it's more likely
6 true than not true, and if you're like me, you probably
7 are still going, I don't get it, and I'm a visual
8 learner.

9 So if you're like me, you might imagine a set
10 of scales, and right now you got both parties, the scales
11 are even. But in a civil case, the party that brings the
12 lawsuit is the plaintiffs, and the defendant is the
13 person that gets sued, so the party that is trying to
14 prove whatever they allege in their complaint in the
15 civil trial just has to tip those scales a little bit and
16 they have met their burden of proof in a civil case, and
17 that is called preponderance of the evidence or greater
18 weight of the evidence.

19 But in a criminal case, the state has a much
20 heavier burden of proof, proof beyond a reasonable doubt.
21 If you would imagine those scales, those scales really
22 have to tip in favor of the state, so they're not allowed
23 to just come in and tip the scales slightly in their
24 favor. You have to imagine them a lot heavier, and in
25 lay people's terms, the law describes beyond a reasonable

1 doubt as the evidence, when viewed as a whole, leaves you
2 firmly convinced of the defendant's guilt.

3 If after you've heard all of the evidence in
4 the trial and after I've told you about the law and you
5 have had a chance to deliberate the verdict amongst
6 yourselves, if you're firmly convinced, then you must
7 convict. On the other hand, if you're not firmly
8 convinced of the defendant's guilt, then you must return
9 an acquittal, and find him not guilty. All right?

10 Now, the state, having the burden of proof,
11 goes forward first with their case. So they will call
12 witnesses first, and they will have the first opportunity
13 to ask questions of the witness.

14 Whoever calls the witnesses first, that is
15 called direct examination, and when the other side
16 examines them, this is called cross examination. We
17 usually allow one round of direct, one round of cross,
18 and then we go on the shorter round, presumably, of
19 redirect and recross, and then we move on to the next
20 witness, all right?

21 Things important to remember, and it sounds
22 so simple as a concept, but it's really difficult to
23 sometimes get your head around as a practical matter:
24 Keep an open mind. Until you've heard all the evidence
25 in this case, it's not proper for you to begin to make up

1 your mind, because trials are like life. You know, you
2 hear things, you start to feel a little bit towards one
3 way, and then you go, you know what? There is usually
4 maybe two sides to every story. That's the adversarial
5 process, examination, cross-examination, witnesses and
6 other witnesses, and so it's not until you've heard all
7 the witnesses in the trial is it proper for you to make
8 up your mind, so keep an open mind until the end of the
9 trial.

10 This trial is not going to be, from what I
11 understand, a real long one. We very likely might finish
12 it by midday tomorrow, but you're going to hear from more
13 than one witness, so just keep that in mind. Now,
14 everybody in this courtroom has a role. The lawyers have
15 a role, the court reporter has a role, you and I have a
16 role. You're the judges of the facts. I'm the judge of
17 the law.

18 As judges of the facts, you're going to
19 decide what actually happened. There's always going to
20 be a discrepancy in the facts; otherwise, we wouldn't be
21 here, but whatever it turns out y'all figure out, sort
22 through, the conflict in evidence, whatever you decide
23 factually happened, we live with that.

24 By the same token, as the judge of the law,
25 whatever I tell you the law is that applies to the facts

1 as you find them, that is what you're bound by to come up
2 with in order to determine whether or not the state has
3 met its burden of proof and you find him guilty or not
4 guilty.

5 I also have a second role in the trial, and
6 that is to provide both sides with a fair trial. All
7 right? So I have to make sure that both sides follow the
8 rules of evidence, follow the rules of procedure. In one
9 respect, I'm a lot like you. We did not go through a
10 formal process of asking these people questions. It's
11 incumbent bond me that if I know anything about the case
12 or any of the parties such that it would affect my
13 ability to be fair and impartial, they would get another
14 judge to try this case, but I don't know any more about
15 this case than you do at this point, so I don't have a
16 dog in the fight, just like you don't have a dog in the
17 fight, so that is why they picked me to try the case..
18 All right?

19 Sometimes you'll hear the lawyers will pop up
20 and say, I have an objection. That is just them trying
21 to alert me that something is coming up. I want to make
22 sure the evidence you hear is proper evidence, it's what
23 you're supposed to hear or not hear, because the bottom
24 line is, when it's all said and done and your verdict is
25 in, if somebody doesn't like the outcome of it, the only

1 thing they can appeal is whether or not I made a mistake,
2 because whatever you factually decide, we're bound by it.
3 All right?

4 But if I charged you the law improperly or I
5 didn't follow the rules of procedure properly or let
6 something in that wasn't supposed to come in or kept you
7 from hearing something you were supposed to be able to
8 hear, I made a mistake, and they'll say, Okay. Got to
9 send it back. We'll do it again.

10 I don't want to do it again. We want to do
11 it one time. So I may, in the context of the objection,
12 just go, overruled, sustained. Sometimes I may bring
13 them up; sometimes I may have to send you out so I can
14 hear what a witness is going to say in order to make a
15 judgment as to whether or not it's something you should
16 or should not hear.

17 We're not trying, again, to keep anything
18 from you. We're just trying to do it one time. That's
19 the only thing that is there. No hidden agenda.

20 All right. So in a minute we're going to
21 begin with opening statements, and opening statements are
22 the lawyers getting up and giving you a brief overview of
23 what the facts are in this case, what the case is about,
24 so they will help you follow a little bit as you hear the
25 witnesses testify a little bit.

1 What is most important about this opening
2 statement is that the lawyers are not witnesses. They
3 weren't there. They didn't see anything. If they were
4 witnesses, they wouldn't be allowed to act as lawyers.
5 They would be called as witnesses. They be would sworn
6 in, and they would tell you what heard, they touched,
7 they felt, they smelt, that sort of thing.

8 So when they get up to talk, remember, they
9 aren't testifying. Whatever they're saying is not
10 evidence. They're only talking about the evidence that
11 you are likely to hear at this point in the trial. So
12 keep that in mind, both in opening arguments and
13 throughout the trial and in the end for closing
14 statements. So, for instance, when a lawyer asks a
15 witness a question, that's not evidence. The answer to
16 the question is evidence. Okay? So keep that in mind.

17 After we have the opening statements, we'll
18 then move into the first witnesses that the state calls,
19 and then we'll probably go till, you know, around 5:00
20 today and then we'll break for the day and come back in
21 the morning at about 9:30 and finish up.

22 So depending on where we are with witnesses
23 and that, we might go a little before 5:00, we might go a
24 little after. We'll just kind of get a flow, and we'll
25 talk throughout the trial to see where we're going,

1 because we understand. We're inconveniencing you, and
2 you've got homes, you've got things to take care of.
3 We're not going to keep you here late, and we're not
4 going to bring you in unmercifully early. We're just
5 going to work through and try to get everything done in a
6 reasonable amount of time.

7 Remember, this is important to not only the
8 state, but Mr. Logan, all right? This is their day in
9 court, and the state is entitled to a fair trial.
10 Mr. Logan is entitled to a fair trial, and they're
11 entitled to your attention, and so we will now begin with
12 the opening statements, and, Mr. Solicitor, if you're
13 ready, you may begin.

14 MR. FINCH: I am Timmy Finch. I work in the
15 Ninth Solicitor's office. I want to start off by
16 thanking you for your service and for taking your time.
17 Like the judge said, it's an important case, important to
18 everybody involved, not just to the state, but also
19 Mr. Logan, the defendant in this case.

20 I want to tell you a little bit about what
21 the case is and what's alleged and the evidence that
22 you're going to hear. Again, I'm not -- what I'm saying
23 isn't evidence. I want to give you an introductory, tell
24 you a story of what brings us into the courtroom.

25 This all revolves around an incident that

1 started, or took place, February 4, 2010, in a club
2 called Lovey Dovey, in North Charleston, and during the
3 course of this trial, you're going to hear from the man
4 who runs Lovey Dovey, some other patrons who were there,
5 and the victim is one of the patrons there, and the
6 defendant was a patron at this club.

7 What had happened is, like so many times
8 happens in any club. In any social environment, people
9 might be attracted to one another. The defendant was
10 attracted to the victim, just chatting her up. Just
11 talking to her, wanted to get to know her.

12 She didn't want anything to do with him. She
13 told him to leave her alone. She was there for the
14 crabs. It was late at night. It's not as late -- it's
15 later than most people might go out for crabs, but that's
16 the normal time that things happen at the Lovey Dovey.
17 So the victim doesn't want anything to do with the
18 defendant.

19 Ms. Jarvia O'Neal is the victim. She doesn't
20 want anything to do with him. The defendant comes back,
21 wants more to do with her, Hey, whatever they're saying,
22 he's trying just show his interest. Again, she doesn't
23 want anything to do with him.

24 Eventually, she makes her way to the women's
25 room. It's a coed room, one stall, one door, just enough

1 for one person, or maybe girlfriends go in there
2 together. I know sometimes women go to the bathroom
3 together, but this isn't a situation where anybody had
4 permission to be in there. It's the women's room.

5 She go into the women's room and the
6 defendant follows her in there, and he decides that even
7 though she said no, that he was going to take whatever it
8 was he wanted.

9 So he tells her, when he opens the door, or
10 as he gets inside, what it is he wants. He tells you his
11 intentions, or his tells Ms. O'Neal his intentions, and
12 then he grabbed her around the neck and he begins to beat
13 her because she's still saying no. And we'll let Ms.
14 O'Neal tell you what happened in great detail in that
15 bathroom. She's the only one who knows what happened in
16 that bathroom, so we're going to have her tell that you
17 story.

18 I'm not going to be able to tell you the
19 story now, but after that, she left the bathroom, with
20 injuries caused by what happened in that bathroom. And
21 she saw her friends at the club, and they noticed those
22 injuries and they tried to help her out. In the midst of
23 what was going on in that bathroom, the defendant took
24 her ID and had her license with her address on it, and
25 she knew that, so she chose not to go home. She wanted

1 to go to a friend's house where she would be safe in case
2 this guy was coming back. She had no idea. She never
3 met him before.

4 So she left, went to her friend's house,
5 stayed up all night worrying, and she'll tell you about
6 that. You'll hear from her friends, you'll hear from the
7 friends who drove her there, went to the club with her,
8 and left immediately afterwards.

9 About 18 or 20 hours later, she finally
10 decides to go to hospital, and she'll tell you why and
11 tells the hospital personnel to check her out and her
12 injuries and they call the police. The police come down,
13 they take a look at her, and they make a report. And
14 after they make the report, some more investigation
15 happens on the end of the police, and during that time,
16 Ms. O'Neal finds out a few things about who this guy
17 might be, because she still don't know his name. She
18 just knows -- she remembers what he looked like.

19 She doesn't know who he is, so she inquires
20 of a friend at the club who knows him, anything about the
21 guy, gets a few pieces of information, and starts on her
22 end to do what she can to help the police.

23 Well, the defendant comes by her house. He's
24 got the ID. He has the address. So he comes by the
25 house a couple of times for a couple of days. You'll

1 hear from her family members who were there, sitting
2 outside, on the porch. They'll tell you what they saw.
3 They will tell you what they saw the defendant do.

4 So they make another report, and they tell
5 the police and the police come out, and then they got the
6 car description, they got the license plate number, and
7 the police investigate that. Is that license plate
8 attached to any person?

9 They have a person of interest. They show a
10 lineup to Ms. O'Neal, and she picked out the defendant.
11 That is the whole story. That's what brings us into
12 court today, and that is the story that our office gets
13 told when we get the file, and then we do what we need to
14 do to build the case and bring it here to you.

15 So we do some things. We interview Ms.
16 O'Neal and check out her story, and we find some other
17 witnesses that weren't in the original report, weren't
18 mentioned in those initial documents, and we talk to
19 them, and those are the people that are going to be here
20 telling you the story.

21 Your job is to, just like the judge said,
22 keep an open mind. Listen to all those people. Just
23 judge the facts as they're presented. Give it the weight
24 you think it needs to get. Weigh the credibility of
25 those witnesses. Take into account all the documents

1 you're going to see and how the case sits in your minds.
2 And after you do the investigation that she did and
3 weighing the evidence, I think you'll come to the same
4 conclusion we do in our office, that there is enough
5 evidence here, there is enough credibility for the
6 witnesses, and the facts point to the defendant did
7 commit assault with intent to commit criminal sexual
8 conduct in the first degree and did commit the strong-arm
9 robbery and that those two crimes were convicted beyond a
10 reasonable doubt, again, leaving you firmly convinced
11 that that is what took place.

12 It's a pretty straightforward job that you
13 have. It's an incredibly important job, and our system
14 wouldn't work without you, and, again, that's why I
15 thanked you at the beginning and that's why I thank you
16 now.

17 THE COURT: All right. Mr. Butler?

18 MR. BUTLER: All of you are about to learn a
19 very important lesson. Every criminal case is a lesson
20 of sorts. It's already been a lesson for you. It's a
21 lesson in civics and government and roles of citizenship,
22 but this case is a bigger lesson than that.

23 You're about to learn just how easy it is for
24 the state to ask you to convict. You're about to learn
25 just how simple it is for the state to bring against one

1 of its own citizens two of the most serious crimes we
2 have on the books in the State of South Carolina, robbery
3 and attempted criminal sexual conduct, but for all
4 practical purposes, let me make this clear: They're
5 charging Clarence Logan with attempted rape.

6 We don't use that term. I don't know why.
7 The statute and laws uses the word criminal sexual
8 conduct, but it's sanitized, but it's a nicer way of
9 saying rape. Make no mistake about it. They are saying
10 that Clarence Logan is a would-be rapist and an
11 accomplished robber, and whatever you do, do not blink
12 because this is going to be quick, and it's going to be
13 quick for a reason.

14 What you will have before you to make this
15 determination, what they are asking you to say about him
16 will not take a matter of weeks. It will not take a
17 matter of days. The critical testimony, the testimony
18 that is about the only thing that really matters in this
19 case, will not even take hours. It is the word of one
20 person and one person only, and that is Jarvia O'Neal.

21 On February 4, 2010, about 1:46 in the
22 morning, Jarvia O'Neal, she tells police, she's alone at
23 club Lovey Dovey, and if you're not familiar with club
24 Lovey Dovey, don't be embarrassed. You probably
25 shouldn't be. It's little more than a storage shed

1 converted into a dive bar by the side of the road in
2 North Charleston, and Clarence was there and Jarvia was
3 there, and what happened that night happens,
4 unfortunately, all too often, all across the country,
5 every night, any night, and it's not a crime.

6 Jarvia and Clarence got into an argument, and
7 then they got into a scuffle. And, yes, it turned
8 physical, and, yes, there will be evidence that he hit
9 her. It's not nice, but it's not robbery and it's
10 definitely not attempted rape, no matter what you call
11 it. A matter of seconds in this room, and then they both
12 leave.

13 Jarvia doesn't call 911 when she leaves. She
14 doesn't go to the emergency room. She doesn't go to the
15 police station. She goes to her friend's house. The
16 next morning, she doesn't call 911. She doesn't go to
17 the emergency room. She doesn't go to the police
18 station.

19 That afternoon Jarvia O'Neal does not call
20 911. She does not go to the emergency room. She does
21 not go to the police station to admit that someone had
22 tried to rape her. That evening doesn't report anything.
23 It's not until 10:20, the next night, 20 hours after she
24 was in the bathroom with Clarence at club Lovey Dovey
25 does she go to the emergency room and reports to the

1 police for the first time that she was almost raped and
2 robbed, and the story she tells is more or less this:
3 About 2:00 in the morning, she finds herself alone in the
4 women's bathroom with Clarence and the door locked, and
5 with one hand he choked her. She says with another hand,
6 he removed his pants while choking her with one hand, and
7 removing his pants, he somehow tries to remove her pants
8 as well, all the while rummaging through her purse and,
9 for some reason, decides to take \$20 and a driver's
10 license.

11 At which point she manages to kick herself
12 free. That's it. That's the story. And I'm glad
13 Mr. Finch used the word story, because it is a story and
14 that is all you will have before you to decide whether
15 Clarence Logan is a would-be rapist and an accomplished
16 robber. Well, there is a little more.

17 The next day she says, she's at the bus
18 terminal in North Charleston. She says she sees
19 Clarence's car. She calls police and tells police, I got
20 his license plate number. CPL-179, except that's not
21 possible, and we'll talk more about that later. Neither
22 here nor there, because she says, Okay, the next day he
23 drives by my house. I got the tag number. CPL-179,
24 which is the license plate to Clarence's car, but it's
25 not true and it didn't happen.

1 The truth is, a fact she never told police,
2 is that Jarvia got the tag number not from seeing the
3 car, but because Aaron Green, who own club Lovey Dovey,
4 told her that was the tag number to Clarence's car. She
5 never tells the police that.

6 The bottom line is this: This case is about
7 one thing and one thing only. What one person says
8 happened in a matter of seconds in a dingy, dark rest
9 room, in a seedy hole in the wall watering hole by the
10 side of the road at 2:00 in the morning, and what you
11 will not hear, what will not be before you for your
12 consideration, any medical testimony from doctors or
13 nurses about evidence of trauma or injury, consistent
14 with an attempted sexual assault.

15 What you will not hear is any forensic
16 evidence, hairs, fibers, DNA, blood, fingerprints. You
17 will not hear from any eyewitnesses to what happened in
18 this matter of seconds in this very small space, no
19 testimony from police officers or detectives. You'll
20 hear from them, but not about what matters. No testimony
21 from anyone, but Jarvia O'Neal, and the reason why you
22 will have her word and only her word is because it didn't
23 happen.

24 That lesson, the lesson that you are about to
25 learn, we are eager, all of us are eager, Clarence and

1 his family are desperate for you to learn that lesson,
2 because for the last 16 months, he has been branded as a
3 would-be rapist based upon the word of one, and today
4 that story will be tested for the first time, not by
5 police officers, not by lawyers, not even by a judge, but
6 by you.

7 Now, 13, ultimately 12, citizens of the
8 community will decide, will hold this story to the light
9 and see that it's just not true. It didn't happen. He's
10 not guilty. And in a day or so, I'm going to ask you to
11 so find. Thank you.

12 THE COURT: All right. Folks, before we
13 begin, I've got -- I've actually completed another -- we
14 finished up another trial this morning. The jury has
15 been out deliberating, and they have sent in a note.

16 I have to deal with something on that right
17 now, so I need to send y'all to the jury room and deal
18 with that, and then we'll bring y'all back here in a few
19 minutes, so, again, don't begin discussions or talk about
20 the case in any way. We'll have you back in a few
21 minutes.

22 (Recess taken.)

23 (In open court, jury present.)

24 THE COURT: All right. Be seated. All
25 right. Thank you for your patience there, folks. We

1 will now resume with the state calling the first witness.

2 MR. FINCH: Thank you, Your Honor. The state
3 calls Jarvia O'Neal.

4 JARVIA O'NEAL,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 THE COURT: Go ahead.

9 MR. FINCH: Thank you, Your Honor.

10 BY MR. FINCH:

11 Q. Good afternoon, Jarvia. If you would, tell the
12 Court how old you are.

13 A. I'm 30 years old.

14 Q. And if you need -- I think there are tissues over
15 there on your left, if you need them. Where do you live,
16 now, Jarvia? What town do you live in?

17 A. I live in Atlanta, Georgia now.

18 Q. And where did you used to live?

19 A. In Charleston.

20 Q. And how long did you live in Charleston?

21 A. All my life.

22 Q. And what took you to Atlanta?

23 A. Because I couldn't do it in Charleston anymore
24 because of the things that was happening with me with
25 guys. I left. I'm scared to be in Charleston. I hate

1 it. I don't like coming home.

2 Q. I want to talk to you about one of those things
3 that happened back on February 4, 2010. Do you remember
4 that day?

5 A. Yes, sir.

6 Q. Okay. And, actually, I'm going to go the day
7 before, to February 3rd. That would have been just the
8 night before, because we're talking about something that
9 happened early in the morning, right?

10 A. Uh-huh.

11 Q. And what were your plans for that night and early
12 morning?

13 A. We were going to head out to Lovey Dovey and get
14 some crabs and go back home. You need to dress for the
15 club, and I wasn't planning on doing any drinking or
16 anything, and we went there to eat crabs. So that was
17 just the outcome of what we were going to do that night.

18 And besides that, we went to the club at 1:45
19 because it was a last minute thing because we knew we
20 were going to get some crabs and leave.

21 Q. Is that a place where you normally go?

22 A. Yes, sir, to eat crabs.

23 Q. What is Lovey Dovey like for people who haven't
24 been there?

25 A. It's a social club where you can eat crabs and

1 socialize with your friends, and it's never been a bad
2 place until this happened. They don't have cops coming
3 there. People don't fight, except this incident, and
4 that is why I went there, because it was never a place
5 where police officers or fights ever break out.

6 Q. Who did you know at Lovey Dovey?

7 A. I knew Aaron and a couple other people that
8 usually comes there on a regular. Lovey Dovey was always
9 like a place where the regular customers came and where
10 everybody knew each other.

11 Q. Who went with you to Lovey Dovey that night?

12 A. My friend Andrea and my friend Virgil.

13 Q. How did you get to Lovey Dovey?

14 A. My friend Virgil took me to Lovey Dovey.

15 Q. Was anybody else in the car with you?

16 A. Yes, Andrea was.

17 Q. And where -- okay. So do you remember what time
18 you got to Lovey Dovey?

19 A. It was around 1:45.

20 Q. And that was 1:45 a.m., on February 4, 2010?

21 A. And the club is over at 2:00.

22 Q. And tell the Court, if you would, what happened
23 when you got to Lovey Dovey.

24 A. When I got to Lovey Dovey, we went in. I never
25 went too far back into the club because I only came there

1 for crabs, and I didn't come there to socialize with
2 anyone and I really wasn't dressed. I was only dressed
3 to eat crabs that night, so I never went to the back of
4 the club. I stayed further more to the front by the door
5 where the owner was fixing the crabs until the crabs were
6 already done.

7 When the crabs were done, the only time I moved is
8 when I went to the bathroom to freshen myself up and to
9 go outside to eat some crabs, to comb my hair, maybe, and
10 get myself together, because I knew I was going to go
11 outside to eat crabs. So I went in the back in order to
12 grab some napkins and kind of clear myself up, you know,
13 so I could look decent to walk around in the club because
14 I wasn't dressed, so that is pretty much it.

15 Q. And when you walked into Lovey Dovey, who was
16 there?

17 A. Who do you mean, like with me?

18 Q. Well, sure. Who was with you?

19 A. 'Virgil and Andrea was there, but when we were
20 standing by the door, the owner, Aaron, was also there
21 with me. I never left by the door until I went to the
22 rest room and to eat crabs when Aaron told me the crabs
23 were done.

24 Q. I'm going to show you some pictures that have been
25 previously marked as State's Exhibits 1 through 14 and

1 just ask if you could -- just take a look at these
2 photographs and tell me if you can identify them.

3 A. Yes. This is the club Lovey Dovey. Yes, sir.
4 This is the club. This is the club. Yes.

5 Q. What are those all pictures of?

6 A. This is the bathroom where it happened here. This
7 is the long hallway that I walked to by myself.

8 Q. But all 14 of those pictures are all pictures of
9 the club?

10 A. Inside and out.

11 Q. Okay. And we'll go through those one at a time,
12 but do those fairly represent the club?

13 A. Yes, sir.

14 MR. FINCH: At this point state would move
15 for admission of State's 1 through 14.

16 MR. BUTLER: No objection.

17 THE COURT: They're admitted. You can
18 publish.

19 (Photographs marked for identification and
20 admitted into evidence as State's Exhibit Nos. 1 through
21 14.)

22 BY MR. FINCH:

23 Q. I'm just going to go through these one at a time.
24 These are going to appear on the screen behind you, Ms.
25 O'Neal.

1 Would you tell us what we're looking at in
2 that picture there? This is State's Exhibit 1.

3 A. That is the outside of the Lovey Dovey.

4 Q. And is that the door you would have been in?

5 A. Yes, sir.

6 Q. And State's Exhibit No. 2, what are we looking at
7 here?

8 A. That is the inside. That is the inside of the
9 Lovey Dovey.

10 Q. Would that be what we would be looking at when you
11 just open the door?

12 A. Yes, sir.

13 Q. How about this photograph?

14 A. That is right by the door where I was standing at
15 where I never moved till I went to the bathroom.

16 Q. Okay. So you were -- I was having trouble hearing
17 you. You said you were standing there?

18 A. Yes, until I went to the bathroom. I never moved
19 from by the front door.

20 Q. Who was -- was anybody standing there with you?

21 A. Virgil was and Aaron.

22 Q. And Virgil was who?

23 A. He was my friend when I went to the club besides
24 Andrea.

25 Q. And what was happening when you were standing

1 there talking to Aaron?

2 A. The guy keep -- he was so drunk. He was so drunk
3 he kept coming by me, trying to get with me and trying
4 to, you know, take me home and asking me out and just
5 doing what a man, a drunk man, do to a woman who is
6 trying to tell him to leave her alone, I guess.

7 Q. Okay. And what did you say to him when he was
8 saying these things to you?

9 A. I was telling him to leave me alone in a very
10 consistent way, like, cursing him out and being mean to
11 him, like telling him no. And I saw a ring on his
12 finger, and I said, Why do you want to talk to me? He's
13 married. I didn't want to be bothered. His breath
14 smelled like the whole bar. He was leaning all over me.
15 It was disgusting, and I just didn't want to be bothered.
16 That's all I ask.

17 Q. And do you remember anything he said to you?

18 A. Yeah. When I asked him why does he keep trying to
19 talk to me, he said, So? I don't care. I got a wife at
20 home? I don't give a F about her. I just want to see
21 what is going on with you and see if I can get with you.

22 Those were his exact words with me, and we started
23 arguing. And I cursed him and told him to leave me the
24 F alone, don't fuck with me because I really don't feel
25 like this tonight and telling him to get off me.

1 He was leaning over me and stuff. It was very
2 overwhelming for me. I couldn't deal with it, and he
3 kept on doing it, over and over again.

4 Q. Did anybody else see this?

5 A. Well, Virgil and Aaron was standing there so they
6 was just there. They didn't say anything at the time
7 when the guy was there except just looking like, what's
8 wrong with him? That was about it.

9 Q. Do you remember if they said anything or did they
10 say anything to him?

11 A. No, sir. I didn't see them say anything to him.

12 Q. What were Aaron and Virgil doing at this time?

13 A. At the time, Aaron and Virgil were standing there
14 because Aaron was checking, waiting for the crabs to get
15 done. So Aaron and Virgil was just standing there where
16 this guy was begging me for my number and to do it and
17 oh, my God, they were just standing there. And Aaron
18 walked off and when to the crabs, to check on the crabs
19 to get it done. So me and Virgil was up there by ourself
20 by that time. Virgil still didn't say anything to this
21 guy.

22 Q. And then what happened, after Aaron went to go
23 check on the crabs?

24 A. I went to the bathroom to get myself together to
25 go out and eat crabs. I went to brush my hair down a

1 little bit, you know, before I actually walked through
2 the club because I looked horrible, wasn't really
3 dressed, because I only came out there to eat crabs and
4 leave.

5 And when Aaron left to come back in to get the
6 crabs, that is when I went to the rest room as he was out
7 attending to the crabs.

8 Q. Okay. And where is the rest room located in the
9 Lovey Dovey?

10 A. The rest room is all the way in the back, down a
11 long hallway. It was very small where no one can see
12 you, so I was pretty much walking down the hallway by
13 myself. The bathroom is like way back, in, like, a cut.

14 Q. I just put up on the screen State's Exhibit No. 7.

15 A. That's the bathroom right there.

16 Q. Let me hand you this pointer. Just push that
17 button, and if you could just indicate on that photograph
18 where the women's bathroom is.

19 A. This is the women's bathroom right here.

20 Q. If you would, tell the jury, what is that bathroom
21 like?

22 A. It's a really, really small, like a small
23 bathroom. It's really small, and it's just big for one
24 person to actually get in, but another person could fit
25 themselves in. They have to force themselves in the

1 bathroom. And the hallway is so dark. There is no light
2 in the hallway for you to even see somebody else there
3 with you in the bathroom, but I was still taking a chance
4 to go to the rest room in a nightclub because I didn't
5 think nobody was going to do this to me in a nightclub,
6 just using the bathroom. It's never happened to me
7 before.

8 Q. Tell us about the rest of the club. I mean, what
9 is the volume like in there?

10 A. The music is always loud. The music is very loud.

11 Q. How about other people in there? How many other
12 people were in the club?

13 A. There was a lot of people. There was no way that
14 anybody could hear me screaming. There was no way.

15 Q. What were the other people -- when you walked from
16 the front to the bathroom, what were the other people
17 doing?

18 A. Everybody was just around, socializing, drinking,
19 having a good time.

20 Q. Do people dance at this club?

21 A. Yeah.

22 Q. Were people dancing or not?

23 A. Yeah. People were dancing on the floor. People
24 were dancing. The music was very loud. People were
25 hanging out, playing pool.

1 Q. So you went to the bathroom.

2 A. Yes.

3 Q. I want to show you State's Exhibit 14.

4 A. That's is the bathroom right there where all of
5 that happened.

6 Q. This is another view of that bathroom. Is that
7 the same bathroom?

8 A. Yes. That's the bathroom.

9 Q. This is State's Exhibit --

10 A. This is where I was standing, and this is where he
11 was standing over here on the wall, choking me, and I was
12 on this side. My purse was there on the top -- on the
13 counter right there.

14 Q. Okay. Let's just go back to when you walked
15 through the club and then you went to the bathroom. All
16 right? Why don't you please tell the jury what happened
17 from the time you started walking down that hall towards
18 the women's room.

19 A. From the time I started walking down the hall, at
20 this time I walked by myself in the rest room. When I
21 got on top of the ramp, there is a ramp on the bottom,
22 like, a step you have to step up on top of that. By the
23 time I got in to close the door, the guy was standing
24 there, forcing his self inside the bathroom with me.

25 Q. Is this picture --

1 A. And I was already in the bathroom.

2 Q. Does this picture show the step?

3 A. There is the step right there.

4 Q. Okay. And that is State's Exhibit No. 12. So you
5 got up inside the bathroom, and then --

6 A. When I got in the bathroom, I was already in the
7 bathroom, stepping on top of the step. He pushed --
8 forced the door open on me. When he forced the door
9 open, he took me by my neck and threw me right here on
10 the top, lifted me from off of my feet, like, lifted me
11 literally off of my feet, with my hair, off this wall
12 here.

13 I was struggling, trying to fight him. He was
14 choking me like this. I was fighting him with both my
15 arms. He was choking me with his left arm. With his
16 right arm, he was, like, loosening his pants as I am
17 fighting, trying to fight him in the air. I'm fighting
18 because this guy is choking me, like this. He's
19 literally choking me.

20 Q. Did he say anything to you?

21 A. Yeah. He said, Bitch, you think you all that, but
22 I'm going to fuck you tonight.

23 That's what he said to me.

24 Q. What happened next in the bathroom?

25 A. And then he just beat the crap out of me because I

1 wouldn't have sex with him. That's what he did. And
2 nobody didn't understand. No, I told him no, and he did
3 not understand. I was scared for my life in that
4 bathroom by myself.

5 In the bathroom, he choked me on that wall and he
6 loosened his pants as he was choking me, and he tried to
7 loosen my pants. And he got his pants loose. He was
8 choking me up against the wall with his hand, and I can't
9 beat a guy, but I was trying my best. He was so strong.
10 I was trying my best to get out of the bathroom. The
11 last time when he was trying to fix himself up from
12 holding me up here, when I punched him in his face, he
13 got me good, right here in the middle of my nose, and I
14 kicked him between his legs. That's when he went down,
15 and that is when I got out of the bathroom.

16 Q. Okay. Let's talk --

17 A. Oh, and I left out with him digging in my purse.
18 I had my driver's license, and I had \$20 wrapped around
19 my driver's license and he took my driver's license and
20 my \$20 out of my purse.

21 Q. Okay. Let's go back just a little bit. After
22 he's come in here and he's got you against the wall --

23 A. Choking me.

24 Q. And then you said he was loosening his pants?

25 A. Yeah.

1 Q. Were you able to fight back -- or how were you
2 able to fight back?

3 A. Well, he had me on this wall right here, choked up
4 like this, because he was on this wall right here. When
5 he had me choked up with this arm, he was loosening his
6 pants like this, because I was fighting him on this wall
7 with both of my hands like this while his neck -- while
8 his hand was choking me up in the air, kicking and
9 fighting him and everything.

10 When this guy got his pants loose, from opening
11 his pants with this hand, that's when he hold my hand
12 again and he unloosened my jeans. By that time, I got
13 scared out of my wits. He pulled me off of the wall. I
14 started swinging on him more. By this time, he got
15 serious with me. He seen I was fighting him, literally
16 fighting him back, like, literally trying to get him off
17 me, that is when he really started punching me with all
18 his strength.

19 I'm a woman. He's a man. He started punching me
20 by then, punching real hard. He turns me around, choking
21 me, and I'm, like, Please, stop. I'm a female. I'm a
22 female. Let me go. He didn't care about any of that, so
23 what I did was I kicked him, like this, between his leg.
24 He let me go. I go down, and I went out of the bathroom.

25 Q. Okay. Where did he punch you? Where did the

1 punches land?

2 A. In my face. He punched me in the back of my head.
3 My forehead was swollen, my nose was open, bleeding. I
4 got a big knot in the back of my head back there, and he
5 was -- he punched me, punched me and punched me wherever
6 he wanted to punch me, but it's mainly in my face.
7 That's where he punched me at.

8 Q. Let's talk about the digging in your purpose.

9 A. Okay. When I was on the wall there, when he
10 grabbed me to turn me around like this, to choke me
11 around like this, and I, like, kicked him between his
12 leg, before all that happened the first time, he punched
13 me there in my face, and I went back, forward like that.
14 That is when he dug inside my pocketbook to get my ID and
15 my \$20 out of my purse.

16 Q. Okay. Did you see that happen?

17 A. I did.

18 Q. Did you say anything at that time?

19 A. I asked him, why was he doing this? I said, Why
20 are you doing this?

21 And he was, like, Bitch, you think you all that.
22 I'm going to fuck you tonight. I'm going to fuck you
23 tonight. You think you're all that. That's what he said
24 to me.

25 Q. And after -- how much time passed between him

1 grabbing your license until you kicked him and were able
2 to start making your way out?

3 A. Well, he got my license and my money first before
4 I got out of the rest room. Repeat the question again.
5 You said how much time --

6 Q. Yeah, how much long after he grabbed your money
7 did you kick him and start making your way out?

8 A. He grabbed my money first, out of my wallet, out
9 of my pocketbook with my ID wrapped around it. He
10 grabbed that first out of my purse before I kicked him
11 between his legs. When I saw him with my ID, he got my
12 ID, I had to get away out of there.

13 Q. Did you try to get your ID back from him?

14 A. I didn't. I was scared -- I didn't.

15 Q. After you kicked him, what happened next?

16 A. After I kicked him between his legs, he went down
17 like this, and I got out of the bathroom.

18 Q. And how did that -- did you have to unlock the
19 door? Was the door open?

20 A. The door was locked. The door wasn't -- you mean
21 before I went in the bathroom?

22 Q. No, when were you leaving.

23 A. While we were in the bathroom? While we were in
24 the bathroom, the door was locked, but, of course, I had
25 to unlock the door to get out of the bathroom.

1 Q. That is what I was asking you. So after you
2 kicked him, you had to unlock the door to get out.

3 A. Yeah, yeah.

4 Q. And tell us what happened after you unlocked the
5 door.

6 A. I got -- he got -- first of all, he got out of the
7 bathroom first before I unlocked the door. He let me
8 loose, and he went out before me and I came out after
9 him.

10 Q. And how did that go? I mean, who opened the
11 door --

12 A. I unlocked the door, and when I unlocked the door,
13 he see I had the door open. That's when he went out
14 before me, and I was still in the bathroom.

15 Q. And what condition was he in when he left? What
16 did he look like when he left?

17 A. He was fixing up his clothes and trying to get his
18 self together and -- I guess he left. I didn't see him
19 anymore after I came out of the bathroom. He was fixing
20 up his clothes and stuff like that.

21 Q. Who did you see when you left the bathroom, or
22 what was the first thing you saw after you left the
23 bathroom?

24 A. Everybody was scattering the club and coming
25 towards me, trying to see if I was okay and looking for

1 me and seeing, you know, what was going on.

2 Q. And do you know how long you had been in the
3 bathroom at that point?

4 A. I can't --

5 Q. Can you estimate? Do you think it was 30 seconds,
6 two minutes, just some estimation of time.

7 A. We were in that bathroom.

8 Q. If you don't know, it's okay. It's a yes or no
9 question.

10 A. I'm going to be honest. I don't know.

11 Q. Okay. So after you got people walking towards
12 you, what happened after that?

13 A. They wanted to know what was going on and who was
14 in the rest room with me.

15 Q. What did you say?

16 A. I told them that guy was in there trying to rape
17 me and beating on me, and he took my driver's license and
18 my money out of my purse.

19 Q. And who did you tell that to?

20 A. I told that to Virgil and I told it to Aaron.

21 Q. And did anybody do anything at this point?

22 A. They didn't. The only thing Aaron did was comfort
23 me and ask me questions and I left.

24 Q. Who did you leave with?

25 A. Virgil and Andrea.

1 Q. Did you ask anybody to call the police?

2 A. No, because I was scared. This guy took my
3 driver's license, and he knew where I was living. I was
4 scared to call the police because I felt like if I had
5 called the cops with this guy having my driver's license,
6 God knows what this guy would have done to me.

7 So I was scared to call the police because he had
8 already had my driver's license. I didn't know if he was
9 going to come to my house. I didn't know if he was going
10 to come look for me. I didn't know, so I didn't go to my
11 house. I went to my friend's house that night because I
12 was scared to go home because this guy had my driver's
13 license. I couldn't go home.

14 Q. Where did you go in the club after you got out of
15 the rest room? Did you leave immediately?

16 A. I left immediately.

17 Q. Who did you go with?

18 A. Virgil and Andrea. I left.

19 Q. Those were the two people you came with?

20 A. Uh-huh.

21 Q. Where did you go after that?

22 A. We went to my friend Adisha's house.

23 Q. And what did you do there, call the police there?

24 A. No. When I got there, I was very scared. I was
25 bleeding all over the place, trying to get myself

1 together, and he was trying to get me to go to the
2 hospital because I was scared. I was scared to report it
3 because he took my driver's license. I was scared to
4 report it. That's why I didn't call the police.

5 Q. What did you do that night, or after you got back
6 to Adisha's?

7 A. I couldn't sleep. I stayed awake all night. My
8 head was pounding. I had blood from everywhere. I
9 couldn't sleep. I couldn't. I was scared.

10 Q. And how about the next day? Did you eventually
11 fall asleep or did you stay up?

12 A. No, the next day, I went to sleep for a little
13 while. I couldn't really sleep because, like I said, I
14 had knots on my head. I didn't sleep. I really
15 couldn't.

16 Q. And did you eventually -- did you eventually seek
17 medical attention?

18 A. I did.

19 Q. And do you remember what time that was?

20 A. That was in the afternoon I went there. It was
21 not 10:00 at night.

22 Q. Where did you go?

23 A. I went to MUSC -- I think it was MUSC.

24 Q. And why did you decide to wait that long?

25 A. Because my family and friends told me I needed to

1 report this because I shouldn't let this happen to me.
2 Just because it happened before, I shouldn't let it
3 happen to me like that. I need to go report. I need to
4 go tell somebody, and that is when I went and reported
5 it.

6 Q. Okay. So you went to the hospital, and did
7 they -- do you remember what they told you at the
8 hospital, as far as your injuries? Did they tell you
9 anything?

10 A. The police came out and they -- they told me
11 anything about my injuries?

12 Q. Yes.

13 A. They gave me -- they put some cotton -- like, a
14 wet swab thing on here because it was bleeding real bad
15 and my forehead was -- I had knots on it, and they told
16 me I could get some Tylenol for the headaches. And he
17 checked out the back of my head, and that was pretty much
18 it, really.

19 Q. Did you get any stitches?

20 A. I didn't, but I had a big gash there over my nose,
21 and my forehead was swollen.

22 Q. And then you said the police came.

23 A. Uh-huh.

24 Q. And did you speak to the police?

25 A. I did speak to them, and I told him what happened

1 and he filled out an incident report and he looked at my
2 face.

3 Q. Did he take any pictures?

4 A. No, sir.

5 Q. What did you do after you left the hospital?

6 A. After I left the hospital, I went to find out who
7 this guy was.

8 Q. How did you do that?

9 A. I called Aaron, the person who owned the club. I
10 called him.

11 Q. And what did you ask?

12 A. I asked him if he knew the guy in the club, and he
13 said he didn't know him by his real name. He knew him by
14 Blackout.

15 MR. BUTLER: I object. Hearsay at this
16 point.

17 THE COURT: Sustained.

18 BY MR. FINCH:

19 Q. Don't tell us what Aaron said. Tell us what you
20 did in response to things that Aaron said.

21 Let me ask it a different way: Did you get any
22 information from anybody as to who this was?

23 A. Yes.

24 Q. What kind of information did you get?

25 A. I got his nickname and what kind of car he drove.

1 Q. And what was the description of the car he gave?

2 A. It was a powder blue Thunderbird, like the
3 Tarheels color kind of -- I don't know if it's a football
4 team or basketball team, but it was Tarheels and there
5 was a powder blue Thunderbird.

6 Q. Did he give you any other information about the
7 vehicle?

8 A. No. It had tinted windows and a license plate.
9 That was it.

10 Q. And what did you do after that?

11 A. After I got all the information?

12 Q. Uh-huh.

13 A. From Aaron?

14 Q. Uh-huh.

15 A. I actually called the cops so I could inform them
16 who it was.

17 Q. Okay. And what made you call the police after
18 that?

19 A. Because Aaron already let me know who it was, and
20 my family and friends wanted me to do that because they
21 didn't want me to settle for less than -- just because he
22 took my ID and not do anything about it because I was
23 scared.

24 Q. Did anything cause you to call the police? When
25 you called the police, what did you tell them?

1 A. About the car?

2 Q. Yes.

3 A. I told him that I saw the guy who was bothering me
4 inside the nightclub and I needed to see if someone could
5 come out and try to figure out who he was because I only
6 had a nickname. I didn't have a real name.

7 Q. And so you told the police you saw the car?

8 A. Yeah.

9 Q. Where did you see the car?

10 A. The first time I saw it was at the Greyhound bus
11 station, and then several days after that, he kept on
12 coming by my apartment.

13 Q. And did you call the police the first time you saw
14 the car?

15 A. I did, the second time and the third time and so
16 on.

17 Q. Did you see the defendant in the car the first
18 time you saw the car?

19 A. I did not see him the first time in the car. I
20 only saw the car, and I knew it was a car by the color
21 and the license plate. I didn't see who was driving it.
22 I didn't see anybody in it, just the car.

23 Q. And when was the next time you saw the car?

24 A. The next time I saw the car it came by my house.

25 Q. And tell the jury about what happened when the car

1 came by your house.

2 A. The first time the car came by my house, I was
3 inside my car, and I was cleaning my room and I saw the
4 car come by where -- into my apartment complex where the
5 dirt is. He spin the bend, stick up his middle finger,
6 and kept on going, and I ran outside, called the cops.

7 Q. I'm going to show you some photos that have been
8 labelled State's 15, 16, and 17. Tell me if you can
9 identify those photographs.

10 A. Yes. This is my apartment where I lived.

11 MR. FINCH: Your Honor, at this time the
12 state would move for admission of 15, 16, and 17.

13 MR. BUTLER: No objection.

14 THE COURT: Admitted.

15 (Photographs marked for identification and
16 admitted into evidence as State's Exhibit Nos. 15 through
17 17.)

18 BY MR. FINCH:

19 Q. What are we looking at here?

20 A. That is my apartment where I lived.

21 Q. That looks like a duplex. Which side did you live
22 on?

23 A. I lived on this side.

24 Q. Where was your room?

25 A. My room was here. My window was up.

1 Q. What happened while you were there in your room,
2 you said?

3 A. I saw the car come from around the way, on this
4 part right there.

5 Q. Does that help?

6 A. This is the entrance where the car came at, sped
7 around, and he drove off, stick up his middle finger on
8 the way here, kept on going. I called the cops
9 instantly.

10 Q. Were you able to see who was driving the car?

11 A. I did this time. It was him. It was him.

12 Q. And when you say him, who are you referring to?

13 A. Clarence.

14 Q. And is that person in the courtroom today?

15 A. Yeah. He's right over there.

16 MR. FINCH: Let the record reflect the
17 witness identified the defendant.

18 BY MR. FINCH:

19 Q. And you said he came by several times. What other
20 times did you see that car come by your house?

21 A. He came by another time when I was on the porch
22 with my family members, with my nephews and my cousins
23 and my brothers. Then he came around another time when
24 it was just me and my mom and my sister.

25 Q. And was anybody around this first time when he

1 came down this dirt road?

2 A. It was just -- it was my mom, but they were in the
3 house. My sister, they were in the house. They didn't
4 come outside until after they saw me freaking out and
5 calling the cops.

6 Q. And the next time he came by the house, who was
7 around?

8 A. My nephew, my brother, my other nephew, and some
9 of our friends were on the porch when they came by that
10 time.

11 Q. And what were you guys doing?

12 A. We were just standing around, just talking and
13 hanging out, and I saw a car and I took off running. I
14 took my shoes and I took off running, calling the police
15 on my cell phone, trying to keep up with him, and I lost
16 him.

17 Q. And then you called police?

18 A. Uh-huh.

19 Q. Did you make another report?

20 A. I did.

21 Q. Was that on the phone or did the police come to
22 your house?

23 A. No, they came to my house.

24 Q. And then a couple days later, were you asked to
25 come into the station?

1 A. And identify him, yes, sir.

2 Q. Do you recall who called you?

3 A. The officer.

4 Q. Yes.

5 A. Detective Schmidt, S-c-h-m-i-d-t.

6 Q. Schmidt?

7 A. Yeah.

8 Q. And he called you, and what did you do after he
9 called you?

10 A. He called me in to do -- to see, you know, if I
11 saw the person that had done that to me, and I picked it
12 and I signed my name on it.

13 Q. Okay. These have all been premarked as State's
14 Exhibit 19. Can you identify what these are.

15 A. Yeah. Those were the pictures he was showing me.

16 Q. How many different photographs did he show you?

17 A. He showed, me, like, six different ones until I
18 knew exactly who it was.

19 Q. And were you able to pick somebody out?

20 A. Yes, sir.

21 Q. And how did you -- how do you know -- is that
22 picture among those pictures there?

23 A. If it was among these pictures?

24 Q. If it was in that pile of pictures there, that one
25 you identified?

1 A. Yes, sir.

2 Q. How do you know it's the one you identified?

3 A. Because I signed my name on it, and I knew that
4 was him.

5 Q. So you know that's the same one because you signed
6 your name. Is there a date on that?

7 A. Yeah.

8 Q. What is the date on that?

9 A. 2/9/2010..

10 Q. You were able to identify the defendant and sign
11 your name, but had you ever seen him before February 4,
12 2010?

13 A. No, sir. Not when this incident happened to me,
14 no, I've never seen him before. That was the first time
15 I saw him in that club.

16 Q. And then at this time did you know his name?

17 A. His real name?

18 Q. Yes.

19 A. At this time, I didn't know the real name. I only
20 knew the nickname.

21 Q. What was the nickname you knew?

22 A. Blackout.

23 Q. Did you know his name at the club?

24 A. No, I didn't.

25 Q. Did you know his nickname at the club?

1 A. No. I didn't know him at all.

2 Q. Jarvia, I want to talk to you about something
3 else, and let me start with this: When you were in the
4 bathroom, you testified earlier that you -- well, did you
5 fight with the defendant?

6 A. Did I fight back?

7 Q. Yes.

8 A. I did.

9 Q. Okay. And I want to talk to you about another
10 time that you fought with somebody and actually led to
11 some -- did it lead to some charges?

12 A. Yes, it did.

13 Q. And what was just the general nature of that
14 situation? What was going on there?

15 A. It was three guys that tried to gang me, and the
16 guy had had a weapon and he dropped it and I picked it
17 up. They -- the three guys held me was -- one guy beat
18 me. I just came from church that night, and those were
19 my friends. Where the apartment was that I went to,
20 those were my friends, and they came over to invite me
21 over, and I waited a while then I went over there.

22 They were drinking in there and, you know, doing
23 drugs, and one of the guys, Darryl, had asked me if I
24 wanted a drink and I told him no --

25 MR. BUTLER: Judge, I'm sorry. May we

1 approach?

2 (Discussion held at sidebar.)

3 BY MR. FINCH:

4 Q. Jarvia, you can just continue telling us what --

5 A. We were in there and the guy asked me if I wanted
6 a drink and I told him I didn't want one, and we started
7 arguing and he punched me in my face.

8 I was sitting on the stool. He punched me in my
9 face off of the stool, and when I tried to get up, the
10 other three guys, they were holding me and this guy was
11 fighting me.

12 And he had a box cutter, trying to fight me with
13 the box cutter because I was fighting him back, and they
14 dropped it and I picked it up, and I just started
15 swinging so everybody could get off of me, and I stabbed
16 him.

17 Q. And you were convicted?

18 A. Yes, sir. Three guys --

19 Q. What were you convicted of?

20 A. I was convicted of assault and battery with intent
21 to kill.

22 Q. And did you do some time for that?

23 A. I did.

24 Q. And after this incident with Lovey Dovey with the
25 guy you only knew as Blackout, what was going through

1 your mind?

2 A. I'm going through this all over again. That's the
3 only thing that went through my mind. I don't know --
4 somebody would think who is going through this again. I
5 don't want to do it. I was just going to let it happen
6 and just didn't do anything about it, because I go
7 through it so much. That's all I could think about it,
8 my flashbacks.

9 Q. Did you think about doing anything other than
10 calling the police?

11 A. To him?

12 Q. Yes.

13 A. To this guy?

14 Q. Yes.

15 A. You want me to be honest?

16 Q. I want you to be honest, of course.

17 A. You sure? I did.

18 Q. What did you think about?

19 A. Same thing I did to him, because -- to defend my
20 life because it's not fair for them to have me and try to
21 hurt me, and I can't do anything about it, and I wanted
22 to do the same thing to him because I was so hurt.

23 Q. When you say the same thing, what do you mean?

24 A. I wanted to hurt him back for trying to hurt me
25 like the other guy had hurt me, and I tried to hurt him

1 back.

2 Q. But you didn't do that?

3 A. I didn't.

4 Q. What did you do instead?

5 A. I went to the cops for help.

6 MR. FINCH: No further questions at this
7 time.

8 MR. BUTLER: Judge, may we approach?

9 (Discussion held at sidebar.)

10 THE COURT: All right, folks. We are going
11 to go ahead and break for today, and I've got to finish
12 up this thing with this other trial right now.

13 We will resume tomorrow morning with
14 cross-examination at 9:30, so if you would, be in the
15 jury room by about 9:25. They will show you where to
16 report to, where you have been going.

17 Just go in that door, and they'll tell you
18 where to come in the morning. Don't begin deliberations
19 or discussions about the case. Obviously, when you get
20 home tonight, they're going to ask, did you get picked on
21 a jury?

22 You're going to say, yes, I did. The judge
23 said I'm really not supposed to talk about the case, and
24 the reason should be clear, but I'll just reemphasize,
25 what you make your decision on is what you hear in this

1 courtroom, not what other people think about what you
2 heard in this courtroom, not outside influences, not
3 anything else.

4 It's not fair to anybody for you to have
5 discussions about the case or anybody to try to influence
6 you, even subtly or otherwise, about the case, so just go
7 home and relax and we will see y'all in the morning at
8 9:30. Thank you.

9 (Jury recessed.)

10 THE COURT: Okay. We'll resume in the
11 morning before get Mr. Butler what he needs.

12 Ma'am, you're not allowed to talk to anybody
13 about the testimony tonight. You can't talk to the
14 lawyers; you can't talk to anybody about your testimony.
15 You can talk about other things, of course, but it's not
16 proper for you to discuss your testimony, okay? All
17 right. We'll see you in the morning.

18 (Jury recessed.)

19 (June 9, 2011.)

20 THE COURT: Ready?

21 MR. BUTLER: Yes, sir.

22 THE COURT: All right. Bring the witness
23 back up. All right. Bring the jury in.

24 Ma'am, I'll remind you you're still under
25 oath.

1 (In open court, jury present.)

2 THE COURT: Okay. Be seated.

3 All right. You can have the notepads if you
4 want.

5 Okay, folks. We are about to resume now
6 where we left off yesterday, and that is with
7 cross-examination of the witness. Mr. Butler?

8 MR. BUTLER: Thank you. If it please the
9 Court.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q. Ms. O'Neal, I want to talk to you first about club
14 Lovey Dovey in general and that night, okay? You
15 testified yesterday that you arrived at the club at 1:46
16 in the morning, right?

17 A. 1:45.

18 Q. 1:45 is when you arrived, and you were there for
19 crabs only.

20 A. Uh-huh.

21 Q. You said that, I think, three, four, five times,
22 right?

23 A. Uh-huh.

24 Q. Weren't there to drink, you said that as well?

25 A. Uh-huh.

1 Q. Only for the crabs?

2 A. Uh-huh.

3 Q. You dressed for the crabs?

4 A. Uh-huh.

5 Q. You weren't necessarily done up to go out on the
6 town. You were there for the crabs.

7 A. Yes, sir.

8 Q. But you knew that the place closed at 2:00, right?

9 A. Yes, sir.

10 Q. 15 minutes after you said you arrived?

11 A. Yes, sir.

12 Q. Okay. And you also testified that Aaron, who is
13 the owner of club Lovey Dovey --

14 A. Yes, sir.

15 Q. -- while you were there at one point left to go
16 check on the crabs that were cooking?

17 A. Yes, sir.

18 Q. So even though the place was going to close in 15
19 minutes, he was still cooking crabs?

20 A. Yes, sir, the last batch.

21 Q. You sure you hadn't been there a lot longer than
22 15 minutes?

23 A. No, sir.

24 Q. You also testified that you had never seen
25 Clarence Logan before that night.

1 A. Yes, sir.

2 Q. You are a regular patron of club Lovey Dovey?

3 A. Yes, sir.

4 Q. And Aaron is the owner?

5 A. Yes, sir.

6 Q. And you knew Aaron well?

7 A. Yes, sir.

8 Q. And club Lovey Dovey is an establishment where
9 everybody knows everybody?

10 A. Yes, sir.

11 Q. And from what you testified to yesterday, Aaron
12 knew Clarence well enough that he had his phone number,
13 right?

14 A. If I knew he had his phone number?

15 Q. Aaron gave you Clarence's phone number?

16 A. No. I didn't say --

17 Q. To help you identify who the person was that you
18 say attacked you.

19 A. No, no. Aaron didn't give me the phone number.

20 Q. So you never told police that, right?

21 A. That Aaron gave me his phone number? No.

22 Q. That Aaron gave you Clarence Logan's phone number.

23 A. No.

24 Q. He knew him well enough to give you a license
25 plate number?

1 A. And the car description, uh-huh.

2 Q. But you had never seen Clarence at club Lovey
3 Dovey or anywhere before that night?

4 A. Right.

5 Q. You also worked at club Lovey Dovey?

6 A. Yes.

7 Q. I think in a prior proceeding you said in an
8 unofficial capacity?

9 A. Repeat that?

10 Q. Unofficially, you didn't have -- you didn't fill
11 out a W-2. It wasn't like you got a paycheck.

12 A. No, sir.

13 Q. And you worked as an entertainment promotor for
14 club Lovey Dovey?

15 A. Yes, sir.

16 Q. And what would that entail?

17 A. That entail -- I helped Aaron with parties,
18 getting people to promote, cards and flyers and stuff for
19 him for his parties, different people have different
20 venues, things like that for parties and upcoming events,
21 different occasions that they had there. I helped him a
22 lot with that, because I knew pretty much a lot of
23 people.

24 Q. Okay. All right. Moving on to more about that
25 night, your testimony, as I understand it, is you were

1 there with Virgil?

2 A. Yes.

3 Q. And who is Virgil?

4 A. Yes.

5 Q. And who is Virgil?

6 A. My friend.

7 Q. Andrea?

8 A. Yes, sir.

9 Q. And she's your friend?

10 A. Yes.

11 Q. And Aaron, the owner?

12 A. Yes, sir.

13 Q. And your testimony yesterday was that you were
14 with Virgil and Aaron at the bar the entire time; is that
15 right?

16 A. No. My testimony wasn't that I wasn't with Virgil
17 and Aaron at the bar the entire time. That wasn't my
18 testimony. My testimony was I was with Virgil and Aaron
19 by the door the entire time, by the entrance.

20 Q. My mistake, and that Clarence was there and he was
21 very drunk.

22 A. Yes. He was wasted.

23 Q. He was obnoxious?

24 A. Yes.

25 Q. And persistent?

1 A. Yes, sir.

2 Q. And obviously so?

3 A. Yes, sir.

4 Q. To anybody at all who was paying attention?

5 A. Yes, sir.

6 Q. So much so that you, and tell me if these are your
7 words, cursed him out a lot?

8 A. I did, yes, sir.

9 Q. That was your testimony yesterday.

10 A. Yes, sir.

11 Q. So we can assume that Virgil saw all of this.

12 A. Virgil was standing there.

13 Q. And Aaron saw all of this?

14 A. Uh-huh.

15 Q. And neither one of them intervened in any way?

16 A. No.

17 Q. Neither one said, Hey, man, you know, just leave
18 her alone. She's just here for the crabs?

19 A. I'm not sure -- I'm not sure what their
20 conversation was.

21 Q. Okay. Aaron never said, Hey, you're in my club.
22 This is my place of business. You need to behave?

23 A. Once again, I'm not sure what their conversation
24 was.

25 Q. I want to talk to you now a little bit about what

1 happened in the bathroom.

2 A. Yes, sir.

3 Q. Your testimony yesterday was that you didn't see
4 Clarence until you had already made your way into the
5 bathroom.

6 A. Yes, sir.

7 Q. And I assume, based upon the way that you've
8 described his behavior, had you known he was following
9 you, you wouldn't have gone to the bathroom, right?

10 A. Right. If I had known he was following me, I
11 wouldn't have gone to the bathroom, yes, sir.

12 Q. Okay. And your testimony is that once in the
13 bathroom, he's choking you with his left hand.

14 A. He forced his self in the rest room, yes.

15 Q. Lifted you up off of your feet.

16 A. Yes, sir.

17 Q. With his left hand.

18 A. Yes, sir, with his hand, yes, sir.

19 Q. And while holding you up with one hand, he is able
20 to remove his pants with the other.

21 A. Unbutton his pants, yes, sir.

22 Q. And then tries to take your pants off --

23 A. Yes, sir.

24 Q. -- as well.

25 A. Yes, sir.

1 Q. But you were able to unlock the door with your
2 left hand.

3 A. I was unable to unlock the door when he twisted me
4 around, like this. I was unable to unlock the door, but
5 still yet I couldn't get out, but I unlocked the door.
6 When I kicked him between his legs, he buckled and I fell
7 and that is when he got up first.

8 Q. Okay. I was going to get to that. So you were
9 able to unlock the door, but you couldn't open the door?

10 A. Right, because he -- like, yeah, he was squeezing
11 me to death.

12 Q. Okay. While that warms up, let me ask you a few
13 more questions. You kicked him in the groin, right?

14 A. I did.

15 Q. And that put him to the floor.

16 A. He buckled, uh-huh.

17 Q. Did he go all the way to the floor?

18 A. No, he did not.

19 Q. Okay. All right. And that's what allows you to
20 get away?

21 A. Well, when I did that, he buckled. I fell to the
22 ground, and he got out before me. I was still in the
23 bathroom.

24 Q. So even though you had kicked him and dropped him,
25 he was able to leave the bathroom first.

1 A. I kicked him, he buckled, and he dropped me. I
2 dropped. He still had me like this, right here, in the
3 air. And I couldn't breathe, trying to catch my breath,
4 of course I couldn't breathe, so when he dropped me down,
5 as soon as I kicked him, he buckled. He released me, and
6 he got out of the bathroom first.

7 Q. Well, except from what you testified yesterday,
8 for some reason before he leaves he goes through your
9 purse.

10 A. Yeah, yeah.

11 Q. So he goes through your purse, gets your driver's
12 license and the \$20, yet he still leaves the bathroom
13 before you.

14 A. Yeah.

15 Q. And you saw him doing this?

16 A. I did. I was in the rest room with him.

17 Q. As soon as you were free, you didn't just exit the
18 bathroom as soon as you possibly could because --

19 A. He exited bathroom --

20 Q. No, you did not.

21 A. Well, I had to catch my breath, because imagine
22 someone choking you, like choking you, like this. You
23 can't breathe. I had to fall to my knees to catch -- to
24 actually catch my breath.

25 Q. Okay. And that is when you saw him going through

1 your purse?

2 A. No. I saw him going through my purse when -- he
3 switched me around like this and dug inside my purse.
4 That's when I saw him do that.

5 Q. So he still had you with one hand while he was --

6 A. Digging in my purse.

7 Q. Opening the purse and then going through it?

8 A. It was already open. My purse was already open.

9 Q. And you also noticed that before you leave and
10 before he leaves, you see him adjusting his clothes.

11 A. If I said I saw him adjusting his clothes? No, I
12 didn't see what he did because he left. Like I said, he
13 was already out the bathroom before me. I only can tell
14 you where I was because I was there in the bathroom by
15 myself, and I was trying to catch my breath on the floor.
16 So I had to catch my breath and I adjusted my own
17 clothes.

18 What he did after he escaped out the bathroom
19 before me, I don't know. I didn't see any of that. I
20 didn't see him after that.

21 Q. I misunderstood. I thought you said yesterday he
22 was adjusting his clothes.

23 A. No. I told you he loosened his pants. I don't
24 think I ever told you he adjusted his clothes.

25 Q. I understand. So after he exits the bathroom and

1 you leave, as you describe, you've been choked, right?

2 A. Yes, I was choked.

3 Q. Lifted off your feet by your neck.

4 A. Yes, sir.

5 Q. Right? And referring to State's 14, would you
6 turn around for me, please. And I take it then when you
7 say he picked you up by your neck, you're in this area
8 here?

9 A. Yes.

10 Q. Okay. And it's also in this area that you're able
11 to reach over here and unlock the door or you moved at
12 that point?

13 A. Repeat the question, please.

14 Q. When he's holding you up off your feet, is it in
15 this area here?

16 A. Yes, he was on that side.

17 Q. He's on this side and you're on that side, and the
18 toilet is in between you?

19 A. My purse was there open, my little purse was there
20 open.

21 Q. And the door is over here.

22 A. Yeah, the door -- yeah.

23 Q. Would be here?

24 A. Yeah.

25 Q. You can turn back around, ma'am. And so when you

1 leave, you've also been struck repeatedly in the face.

2 A. Yes.

3 Q. And --

4 A. No, I got struck repeatedly in my face in the rest
5 room.

6 Q. Yes, ma'am. When you left, this is all where it
7 happened. You've been struck in the face repeatedly?

8 A. Uh-huh.

9 Q. By a man who is much larger than yourself.

10 A. Uh-huh.

11 Q. Your testimony is that your forehead was swollen,
12 and you were pleading?

13 A. Uh-huh, and the ring had bust my nose open there.

14 Q. And Virgil is your friend, right?

15 A. Yeah.

16 Q. And Andrea is your friend?

17 A. Uh-huh.

18 Q. And Aaron is your friend?

19 A. Uh-huh.

20 Q. And they don't insist on calling 911?

21 A. Well, at the end, they tried, but I was so scared
22 because the guy had got my driver's license, I just
23 wanted to leave, and I was so embarrassed. I wanted to
24 leave, and that is what I did. I left. Aaron did
25 comfort me. I didn't want to hear anything he had to

1 say, Virgil or Andrea. I just wanted to get out of
2 there, but my friends were there for me.

3 Q. They didn't insist on taking you to the emergency
4 room?

5 A. They did, but I didn't listen to them.

6 Q. Okay.

7 A. Like I said, I was scared because the guy had
8 taken (sic) my ID.

9 Q. All right. And I did want to ask you about that.
10 Because he had taken your ID, that didn't mean he would
11 be at the emergency room, would it?

12 A. No, but he could go to where I live.

13 Q. Why wouldn't that be all the more reason to call
14 the police if you were afraid he would be where you live?

15 A. Because I felt like if he had my ID, that means if
16 I had called the police, he could have come and tried to
17 hurt me at my house. So I was kind of scared to call the
18 police because he already had my ID, and I wouldn't want
19 to come and tell the police that this guy had my ID and
20 he come to my house and kill me or my mom or anybody
21 else.

22 Q. But won't telling the police get them to arrest
23 him and also have them protect you?

24 A. Well, right now, not in this generation now. If
25 someone has your ID and you try to go to the police, they

1 will kill you. And I didn't know what this guy would
2 have done to me after what he done to me in this
3 bathroom.

4 Q. Yes, ma'am. Well, in the subsequent days when you
5 think you saw the car, or you say you saw his car, you
6 called the police immediately then.

7 A. Right.

8 Q. You called 911 right then, right?

9 A. Right.

10 Q. Okay. And based on your testimony yesterday, you
11 even chase after who you say is him, right?

12 A. Right.

13 Q. Barefoot?

14 A. Right.

15 Q. Down the street?

16 A. Right.

17 Q. Not running away from him, running after --

18 A. The car, trying to get the license plate and to
19 calling the cops because I was on the phone.

20 Q. Wait a minute now. This would have been -- trying
21 to get the license plate on the 6th, right?

22 A. I had to make sure it was him. The car was right
23 and also the license plate. Before I called the cops for
24 false information, I had to be truthful.

25 Q. Aaron had already given you the license place the

1 day before?

2 A. Right.

3 Q. So you wouldn't have needed to chase the car to
4 get the license plate.

5 A. You can't go by hearsay. I needed to see the
6 license plates for myself.

7 Q. All right. And when you went to the emergency
8 room, later the next night, they didn't admit you into
9 the hospital, right?

10 A. No, sir.

11 Q. They didn't give you any stitches.

12 A. No, sir.

13 Q. They didn't do any X-rays, CT scans, or MRIs or
14 anything like that?

15 A. No, sir.

16 Q. They didn't refer you to a doctor for a follow-up
17 visit.

18 A. No, sir.

19 Q. They put a bandage on your nose?

20 A. Uh-huh.

21 Q. And gave you some Tylenol.

22 A. Uh-huh.

23 Q. They didn't have to treat any part of your neck
24 from where you had been held up.

25 A. No, sir.

1 Q. Okay. While at the emergency room, you talked to
2 an officer with North Charleston police department,
3 Officer Gray. Do you remember speaking with him?

4 A. Yes, sir.

5 Q. Okay. And is your testimony yesterday and today
6 was you were at the club with friends, right?

7 A. Yes, sir.

8 Q. Do you recall telling Officer Gray -- and you know
9 he's there to help you, right?

10 A. Yeah.

11 Q. And at that point, now that you've reported it,
12 you want to be honest with him?

13 A. Of course.

14 Q. And as you said, failing to be honest, even when
15 you're a victim, can result in you being charged with
16 false information?

17 A. Of course.

18 Q. So you wanted to tell him everything that he would
19 need to know to help solve this crime. Right?

20 A. Of course.

21 Q. And help find this person that, from what you're
22 saying, knew where you lived and would be looking for
23 you, right?

24 A. Of course.

25 Q. And so, of course, telling him about other

1 witnesses would have been critical. You would have
2 needed to tell him, right, about other people, other
3 witnesses, who saw either what happened before or what
4 happened after, right?

5 A. Uh-huh.

6 Q. Okay. But what you told him was you were at the
7 club by yourself, right?

8 A. Huh-uh.

9 Q. Okay.

10 A. At the club by myself?

11 Q. You didn't tell officer Alex Edward Gray with the
12 North Charleston police department when he met with you
13 at the hospital at 10:22 that you were at the club by
14 yourself?

15 A. He must have meant, like, in the bathroom or where
16 I was standing by myself, but I don't think I told him I
17 was absolutely there alone by myself.

18 Q. Okay. And your testimony is that you cursed
19 Clarence, cursed him out, more than once, because of how
20 obnoxious he was being, right?

21 A. Yes.

22 Q. Do you recall telling Officer Gray that you
23 politely told him that you were not -- you did not want
24 to talk to him and you walked away?

25 A. The first time.

1 Q. Okay. Well, and then, February 9th, five days
2 later, you go to the North Charleston police department,
3 right?

4 A. Uh-huh.

5 Q. Headquarters right?

6 A. Uh-huh.

7 Q. And you give a written statement?

8 A. Uh-huh.

9 Q. All right. And now you've had five days to recall
10 everything that happened, right?

11 A. Uh-huh.

12 Q. Make sure that you tell the police everything that
13 they need to know?

14 A. Uh-huh.

15 Q. Right?

16 A. Yes, sir.

17 Q. And they had you write it all out.

18 A. Yes, sir.

19 Q. And you wrote it out in your handwriting.

20 A. Yes, sir.

21 MR. BUTLER: Beg the Court's indulgence.

22 Have this marked just for ID, please. May I approach the
23 witness?

24 THE COURT: You may.

25

1 (Statement marked for identification as
2 Defendant's Exhibit No. 1.)

3 BY MR. BUTLER:

4 Q. I show you Defendant's 1 just for identification.
5 Let me ask you if you recognize that as the statement
6 that you gave to the police on the 9th. Do you recognize
7 that?

8 A. Uh-huh.

9 Q. Because your signature is here, right?

10 A. Uh-huh.

11 Q. They allowed you to write it out in your own
12 handwriting, right?

13 A. Uh-huh.

14 Q. They had you read over it.

15 A. Uh-huh.

16 Q. Told you if you needed to make any changes to do
17 so.

18 A. Uh-huh.

19 Q. And actually you did right there. You didn't
20 agree with that answer, so you crossed it out, initialed
21 it, right?

22 A. Uh-huh.

23 Q. They told you if you needed to add anything you
24 left out you could do that, right?

25 A. Uh-huh.

1 Q. And then they had you sign it, saying this
2 statement is true and correct to the best of my
3 knowledge, and you did that, twice?

4 A. Uh-huh.

5 Q. And just as you told Officer Gray, you said in
6 response to what you told Clarence, I gave him the same
7 answer the whole night. No, thank you, I'm good. Right?

8 A. Uh-huh.

9 Q. So, of course, if you would be so put off by his
10 drunkenness and his obnoxiousness, you would cuss him
11 out, right?

12 A. Yes, sir.

13 Q. But you didn't tell the police that you cussed him
14 out.

15 A. I didn't want the police to know that I cursed the
16 guy out, just being mean, so I just told them I told him
17 leave me alone, get away from me.

18 Q. So you told them something that wasn't true.

19 A. I told them the truth, that I told him to go away,
20 leave me alone, I used it in a proper form instead of
21 saying I cussed you out.

22 Q. No, thank you, I'm good?

23 A. Yes. No, thank you. I'm good.

24 Q. You also told him, unlike your testimony today,
25 that you had only been there for 15 minutes. Later, a

1 couple of hours passed. It was 1:46 when I got to use
2 bathroom, right?

3 A. Uh-huh.

4 Q. That's what you told him.

5 A. Uh-huh.

6 Q. So instead of saying you had only been there 15
7 minutes, or arrived at 1:45, you're saying that by the
8 time you go to the bathroom at 1:45, a couple hours had
9 passed.

10 A. It was 1:45.

11 Q. So you had been there, according to what you told
12 police --

13 A. No, I wasn't there more than 1:45.

14 Q. Okay.

15 A. We wasn't there that long.

16 Q. Make sure I'm reading this right. And this is
17 your handwriting?

18 A. Yeah.

19 Q. I gave him the same answer the whole night: No,
20 thank you. I'm good. Right?

21 A. Yeah.

22 Q. So you would have said that first.

23 A. Uh-huh.

24 Q. Later, a couple of hours pass. It was 1:46 when I
25 got up to use the bathroom because I was on my way home

1 after that.

2 That's what that says?

3 A. Uh-huh.

4 Q. And you wrote that.

5 A. Uh-huh.

6 Q. And you said that was the truth.

7 A. Uh-huh.

8 Q. You never changed it, okay?

9 A. Uh-huh.

10 Q. So does that not say you had been there a couple
11 of hours before 1:46?

12 A. I actually wasn't there before 1:46.

13 Q. I understand that is what your testimony is, but
14 that is what the statement says?

15 A. I must have misunderstood that is what it says. I
16 wasn't there a couple hours. I know I got there at 1:46
17 when I went in that bathroom. I wasn't in there that
18 long before the club was going to be over.

19 Q. So it wouldn't be -- instead of arriving --

20 A. At 1:46, let's say 1:40, maybe, but I know we came
21 in the club -- it was after 1:30 that we came there
22 because the club closed at 2:00.

23 Q. So it wouldn't be that instead of arriving --

24 A. I said we arrived at 1:46. I would say 1:40. I
25 apologize I put 1:46.

1 Q. So it wouldn't be that instead of arriving 15, 20,
2 or 30 minutes before a place closes after 1:00, 1:30 in
3 the morning, it wouldn't be that you actually showed up
4 hours earlier to participate in the evening. It wouldn't
5 be that, right?

6 A. I didn't want to go out earlier because I just
7 wanted the crabs.

8 Q. I got it, just the crabs.

9 A. Yeah.

10 Q. And back to your testimony today and yesterday,
11 you didn't see Clarence until he was already forcing
12 himself, as you say, in the bathroom, right?

13 A. Uh-huh.

14 Q. Tell me if I'm reading this correctly, again, in
15 Defendant's 1, what you told the police: As I walked on
16 the other side of the club down the dark hallway to get
17 to the rest room, this guy was right behind me.

18 A. Uh-huh.

19 Q. So what you told police was that he was behind you
20 going down the hallway.

21 A. No. He was behind me when I got in the bathroom
22 and I saw him. When I got in the bathroom, I saw the guy
23 was right behind me, as soon as I stepped up on the step
24 to get in the rest room.

25 Q. Because, of course, if you had seen him, given the

1 way he had been acting, obnoxious and drunk and
2 persistent, if you had seen him following you down the
3 hallway, you wouldn't have gone to the bathroom?

4 A. Right.

5 Q. Of course. But what you told police was that you
6 did see him, following you down the hallway. Make sure
7 I'm reading this correctly. Please correct me.

8 A. As I walked to the other side of the club down the
9 dark hallway to get into the rest room, this guy was
10 right behind me. Like I said in there, as I got into the
11 rest room, the guy was behind me, as I got into the rest
12 room.

13 Q. The first part of it, as I walked on the other
14 side of the club, down the dark hallway to get to the
15 rest room, this guy was right behind me?

16 A. To get to the rest room, which I was already to
17 the rest room, already to the rest room, the guy was
18 right behind me.

19 Q. And just as when you talked to Officer Gray at the
20 emergency room on the 5th, certainly now on the 9th,
21 after you've had some time to reflect and think about
22 what happened, you would want to tell North Charleston
23 police department the witnesses that they would need to
24 speak to. Right?

25 A. Uh-huh.

1 Q. Most importantly, Virgil, right?

2 A. Uh-huh.

3 Q. Andrea?

4 A. Uh-huh.

5 Q. And Aaron, right?

6 A. Uh-huh.

7 Q. Take as much time as you need to look over
8 Defendant's 1, your written statement. Tell me if there
9 is anything mentioned of Virgil, Andrea, or Aaron in that
10 statement.

11 A. As witnesses to what -- what happened in the rest
12 room?

13 Q. Being with you at all.

14 A. I didn't have to put on there -- I had to tell him
15 that they were there -- in the club with me, but they
16 were not in the bathroom with me, so I couldn't tell them
17 where Andrea or Virgil or anybody was in the bathroom
18 with me to witness that because they didn't see him in
19 the bathroom with me.

20 Q. I understand. But you don't mention them at all
21 in that statement?

22 A. I didn't because the officer asked me what
23 happened to me in the bathroom. They weren't there with
24 me in the rest room.

25 Q. Well, you talk about when you arrived and that you

1 were going to leave, but in any case, there is no mention
2 anywhere about Andrea, Virgil, or Aaron?

3 A. They wasn't in the bathroom with me. They were
4 only in the club with me when they came there. They
5 didn't come in the bathroom, so they couldn't have
6 witnessed what happened in the bathroom.

7 Q. And there is no mention of Clarence being drunk
8 anywhere in that statement, is there?

9 A. No, sir.

10 Q. Okay. I want to talk about the license tag on the
11 car. Your testimony is Aaron gave you that tag number?

12 A. And a description of the car, uh-huh.

13 Q. And a description of the car, on the 5th.

14 A. Uh-huh.

15 Q. You never tell police that, that Aaron gave it to
16 you.

17 A. They asked me how I knew what kind of car he
18 drove. I didn't know him, and I did tell them that Aaron
19 told me.

20 Q. The tag number. For example, in the statement
21 that you just went over, there is nothing in there about
22 Aaron giving you the license tag number.

23 A. On this?

24 Q. Yes, ma'am.

25 A. No. There is no statement on there that says

1 Aaron gave me the license tag number, because this was
2 primarily consistent on what had happened to me in the
3 hospital and what went on in the rest room. That is what
4 this report consists of, me explaining what happened.

5 Q. I understand, but after Aaron gives you the
6 license plate number, you call the police to say you
7 think you've seen his car, and here is the tag number,
8 right?

9 A. No, I didn't say that the next day. I didn't call
10 the police the same exact day Aaron gave me the license
11 plate and tag number. That was the next day I saw the
12 car.

13 Q. At the bus station, that's on the 5th?

14 A. Yes.

15 Q. You just testified Aaron gave you the tag number
16 on the 5th.

17 A. I don't remember what day he gave me the tag
18 number, but of course I didn't call the cops the same day
19 Aaron gave me the tag number and the car. I didn't see
20 the car.

21 Q. Why -- of course. Why didn't you say --

22 A. I called the cops after I seen the car. Then I
23 called -- when I saw it by the Greyhound bus station and
24 Aaron had already given me the information about the
25 license plate tag number and also the description of the

1 car.

2 Q. You were still trying to figure out who this
3 person was?

4 A. I was.

5 Q. Okay. And so when Aaron gives you the tag number,
6 that is so you can give it to police so that they can
7 track down the person that owns the car, right?

8 A. Uh-huh.

9 Q. But you never told police that Aaron gave you that
10 tag number, right? You told them, I saw the car. Here
11 is the tag number.

12 A. Yeah, and they asked me how did I know it was the
13 car and who the person -- you know --

14 Q. I understand that. You told them Aaron gave you
15 the description, but bottom line is, you didn't want to
16 tell them that Aaron gave you that tag number, because
17 Aaron didn't want people to know that. Right?

18 A. If that's what you --

19 Q. So you then had to say you saw the car at the bus
20 station?

21 A. No.

22 Q. And that is how you know what the tag number is?

23 A. No. I saw the car at the bus station, and Aaron
24 had already gave me the description of the car and the
25 tag number, and I know what I saw. When I saw the car

1 there, that is when I called the police and told them I
2 saw the car, who gave me the description of the car. The
3 owner is the person that done that to me.

4 Q. Even though you had never seen the car before,
5 right?

6 A. Aaron told me what kind of car it was.

7 Q. You saw a blue Thunderbird and you said that must
8 be the car Aaron told me about?

9 A. It matched the tag that Aaron gave me. The next
10 day, not the same day.

11 Q. So you're also not saying that when you called the
12 police when you say Clarence drove past your house, you
13 were calling him to give them the tag number?

14 A. I was calling them to tell them he was driving
15 past my house.

16 Q. You already had the tag number, so there would be
17 no reason to give it to them?

18 A. The police?

19 Q. Yeah.

20 A. Yeah, why not? They could find out his right name
21 and they said the car was registered to someone else.

22 MR. BUTLER: Beg the Court's indulgence.

23 BY MR. BUTLER:

24 Q. In 2003 you were convicted of assault and battery
25 with intent to kill, correct?

1 A. Yes, sir.

2 Q. And that was for slicing somebody's neck from
3 behind with a box cutter.

4 A. Yes, sir.

5 Q. I understand that your -- from your testimony
6 yesterday, that you were just coming home from church?

7 A. Uh-huh.

8 Q. Right. And minding your own business, right?

9 A. Uh-huh.

10 Q. And there was some guys who were drinking and
11 doing drugs, right?

12 A. Uh-huh.

13 Q. And they offered you a drink --

14 A. They came over to get me. You left that part out.
15 They came to my house to knock on my door to get me.

16 Q. And they offered you a drink?

17 A. And I went over to their house, yeah.

18 Q. And they offered you a drink?

19 A. Yeah.

20 Q. And you politely declined?

21 A. I was like, I'm good. I just got out of church.
22 I don't want to drink.

23 Q. All right. Get this marked, Defendant's 2 for ID.

24 (Statement marked for identification as
25 Defendant's Exhibit No. 2.)

1 MR. BUTLER: May I approach the witness?

2 THE COURT: You may.

3 BY MR. BUTLER:

4 Q. Showing you Defendant's 2 for identification, and
5 I ask if you recognize that, your statement to Charleston
6 County sheriff's department, September 22, 2002 in
7 regards to the incident with the box cutter. Do you
8 recognize that statement?

9 A. (Nods head.)

10 Q. And just as with this, you wanted to tell them
11 everything you knew. You wanted to be truthful, right?
12 Do you recall writing, We started talking. They was all
13 smoking weed and drinking beer, so I came over to ask for
14 a beer.

15 A. Uh-huh.

16 Q. Okay.

17 A. Later, uh-huh.

18 Q. It wasn't that they offered you a beer and you
19 politely declined, you went over there asking for a beer?

20 A. Yeah, but I didn't know how they were until I got
21 in there.

22 Q. Okay. I thought you just said because you came
23 from church you wouldn't be interested in a beer.

24 A. Yeah. I came from church, and I wasn't interested
25 in a beer, but when I got over there and saw how they all

1 were acting, I really didn't want a beer then.

2 Q. But you asked them for one?

3 A. Yeah.

4 Q. But they wouldn't give you one?

5 A. No. It wasn't the fact that they wouldn't give me
6 one. Darryl got smart and was saying some things.

7 Q. Referring to Defendant's 2 again. I came over to
8 ask for a beer later. I asked Darryl, and he was, like,
9 he wasn't giving it to me.

10 A. Right.

11 Q. Okay. Then you hit him.

12 A. He hit me first.

13 Q. Okay.

14 A. Punched me off the chair.

15 Q. And you cut him from behind, a four inch slash to
16 his neck with a box cutter.

17 A. Well, he had the box cutter.

18 Q. I understand. Your testimony is that you were
19 able to disarm Darryl?

20 A. No. I didn't say I was able to disarm him. There
21 was three guys holding me. Darryl had the box cutter at
22 me. He dropped the box cutter, and I picked the box
23 cutter up.

24 Q. And the only person that was charged was you.

25 A. Right. After three guys had jumped me and Darryl

1 had punched me and beat me up, I was the only one that
2 was charged.

3 Q. And --

4 A. And Darryl didn't press any charges. He came to
5 my house the next day -- days after that to apologize to
6 me.

7 Q. He testified against you in a jury trial.

8 A. After the state picked it up.

9 Q. And 12 people convicted of you assault and battery
10 with intent to kill.

11 A. Uh-huh.

12 Q. Did not believe you were defending yourself,
13 right?

14 A. So they said.

15 Q. Okay. The judge gave you five years in prison,
16 right?

17 A. Right.

18 Q. And the Court of Appeals affirmed your conviction.

19 A. Right.

20 Q. All because of Play Station and a beer, right?

21 A. A Play Station?

22 Q. They were playing Play Station, video games.

23 A. Oh, okay.

24 Q. And what I understand is that somehow that
25 incident is what prevented you from calling the police

1 this time; is that right?

2 A. Darryl -- have I called the police this time for
3 him?

4 Q. No. The reason you didn't call the police right
5 away is because of that incident.

6 A. For Darryl?

7 Q. Yes.

8 A. They called the cops.

9 Q. Okay.

10 A. And I left home. I left.

11 MR. BUTLER: Beg the Court's indulgence.

12 BY MR. BUTLER:

13 Q. Ms. O'Neal, yesterday you testified that the car
14 you saw was Tarheel blue, and that was the color?

15 A. Uh-huh.

16 Q. Do you recall testifying outside of the presence
17 of the jury the word Tarheel somehow somewhere appeared
18 on the car?

19 A. I think so. I know the car was the Tarheel
20 colors, powder blue.

21 Q. But you also testified in a pretrial hearing that
22 the word Tarheel somehow appeared on the car and that is
23 how you recognized it?

24 A. And it was a powder blue Thunderbird.

25 MR. BUTLER: That's all I have.

1 THE COURT: Redirect?

2 MR. FINCH: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. FINCH:

5 Q. Ms. O'Neal, Mr. Butler asked you about that prior
6 ABWIK charge.

7 A. Uh-huh.

8 Q. And he showed you an exhibit labelled Defense
9 Exhibit 2 and asked you about calling the police. Would
10 you take a look at the end of that document. Tell me if
11 that refreshes your memory as to who called the police
12 that night.

13 A. (Reading.) I tried to get him off of me --

14 MR. BUTLER: I'm sorry. She can't read the
15 statement.

16 THE COURT: You got to read that to yourself.

17 THE WITNESS: Okay. No problem. Okay.

18 BY MR. FINCH:

19 Q. In your statement there, you said you called the
20 police?

21 A. Yeah, and they did too, but he asked me if they
22 called the police. Yeah, I called the police.

23 Q. And you testified earlier that you're the only one
24 charged?

25 A. Uh-huh, yes, sir.

1 Q. And that the victim, Darrell, dropped the charges?

2 A. Yes, sir.

3 Q. And how much time did you spend in prison on that?

4 A. A year, two years. I can't remember. I think it
5 was a year -- maybe two years, a year to two years. I
6 can't remember.

7 Q. And Mr. Butler asked you if you were sentenced to
8 five years. Do you recall whether that sentence was
9 actually five years suspended to two years?

10 A. Yes, sir.

11 Q. Okay.

12 MR. FINCH: At this time, the state would
13 move for admission of State's Exhibit No. 2.

14 MR. BUTLER: May we approach?

15 MR. FINCH: Nothing further, Your Honor.

16 THE COURT: Okay. Let's take a ten-minute
17 break before we start up with the next witness. Don't
18 begin deliberations or discussions about the case, and
19 we'll give you ten minutes to use the rest room and we'll
20 come on back and finish up before lunch. We'll finish up
21 whatever we finish up by lunch.

22 (Recess taken.)

23 (In open court, jury present.)

24 THE COURT: Okay. Be seated. All right. We
25 will resume with the state calling their next witness.

1 MR. FINCH: State calls Andrea Bell.

2 ANDREA BELL,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: My name is Andrea Nicole Bell.

7 My last name is spelled B-e-l-l.

8 BY MR. FINCH:

9 Q. Good morning, Ms. Bell.

10 A. Good morning.

11 Q. If you would, tell the Court where you're
12 employed.

13 A. At Harborview Inn.

14 Q. And what do you do at Harborview Inn?

15 A. I'm a housekeeper.

16 Q. And how old are you?

17 A. Twenty-five.

18 Q. Do you have any kids?

19 A. My son is eight.

20 Q. I want to talk to you about an incident that took
21 place on February 4, 2010 at the Lovey Dovey. Do you
22 know what I'm talking about?

23 A. Yes, sir.

24 Q. Were you at the Lovey Dovey that night?

25 A. Yes, sir.

1 Q. And how did you get there?

2 A. I rode with Jarvia and Virgil.

3 Q. Where did you ride to?

4 A. Jarvia's house in Goose Creek, where she was
5 staying at at the time in Goose Creek.

6 Q. Where she was staying in Goose Creek?

7 A. Yes, sir.

8 Q. Okay. And what were you going to club Lovey Dovey
9 for?

10 A. Just to have a good time, to have drinks, and I
11 think it was crab night. I'm not too sure.

12 Q. And Virgil was driving?

13 A. Yes, sir.

14 Q. Do you remember what time you got to the club?

15 A. It was kind of early. I really can't recall
16 exactly what time it was.

17 Q. And do you remember what time you left the club?

18 A. We wasn't in there a good 30 minutes, 30, 45
19 minutes at the most.

20 Q. Okay. When you got in the club, describe the
21 atmosphere in there.

22 A. It was, like -- it wasn't that much people in
23 there. So -- it was, like, closing or whatever.

24 Q. It was about closing time?

25 A. No. It was still kind of early, still early in

1 the afternoon or something.

2 Q. Okay.

3 A. Not too early, but it was already dark.

4 Q. It was dark?

5 A. Yeah.

6 Q. Okay. When you got in there, what did you do?

7 A. When we got in, as soon as we got in, we were
8 standing outside talking to Aaron for a good three, five
9 minutes at the most. When we got in, me and Jarvia were
10 in conversation. She gave me \$20 to get some drinks. Me
11 and Jarvia were standing there having another
12 conversation, and I went to the bar.

13 Q. Where was Jarvia when you went to the bar?

14 A. I went to the bar, and Jarvia was going to the
15 bathroom.

16 Q. She was going to the bathroom?

17 A. Uh-huh.

18 Q. What happened after that?

19 A. I don't recall. All I know is after Jarvia went
20 to the bathroom, I was still standing by the bar, and I
21 saw a young dude, came out pulling up his pants with a
22 white T-shirt on. When he was coming out, that is when I
23 found out it was Jarvia in bathroom. I remembered Jarvia
24 was in the bathroom, and somebody at the bar said, Is
25 something going on in the bathroom? And that is when I

1 walked in bathroom.

2 Q. What did you see when you walked in the bathroom?

3 A. All I see was she was upset, and her face was
4 swollen. Like, I think it was her eye and her lip that
5 were swollen.

6 Q. Her eye and her lip were swollen?

7 A. Uh-huh.

8 Q. Was she bleeding, did you see?

9 A. I don't remember that part.

10 Q. And the person you saw come out of the bathroom
11 that evening, do you see him in the courtroom today?

12 A. To be honest with you, I can't really recall. I
13 remember him having on a white shirt and dark colored
14 jeans.

15 Q. And what was he doing when he came out?

16 A. He was, like, pulling up his pants, finger in his
17 pocket or something. I guess he was looking for
18 something. I don't know.

19 Q. Did you hear him say anything?

20 A. No. I was still by the bar.

21 Q. After you went into the bathroom, did Jarvia --
22 did she say anything to you?

23 A. She just said she just didn't want to talk about
24 it. She was ready to go. She was hysterical.

25 Q. When you say hysterical, could you describe that?

1 A. She was, like, upset, if anything.

2 Q. Like crying?

3 A. Emotional, yes, sir.

4 Q. And what did you do after that?

5 A. We just -- I told her it would be all right and
6 come on, let's go. We went to find Virgil. Virgil was
7 already by the door, so we just ended up leaving.

8 Q. You and Jarvia and Virgil left?

9 A. Yes, sir.

10 Q. And, again, was Virgil driving or who was driving?

11 A. Virgil was driving.

12 Q. Where did you go?

13 A. Back to Jarvia's place in Goose Creek.

14 Q. And what was -- was Jarvia saying anything in the
15 car?

16 A. Not really. I could understand her position at
17 the time. She was upset, so I know it was a hard thing
18 for her to talk about.

19 Q. Do you know why she was upset?

20 A. I didn't even need to know why, but her face, and
21 the way the person came out of the bathroom, it was in a
22 bad manner, so I would rather not talk about it. I could
23 understand she would have been upset because her face
24 was -- and that was enough said.

25 Q. Did you ask her if she needed to go to the

1 hospital?

2 A. To be honest with you, I can't remember.

3 Q. I'm sorry. I didn't hear that.

4 A. To be honest, I can't really exactly remember.

5 Q. Do you remember if you asked her to call the
6 police or --

7 A. Yeah, we did when we were still in the club.

8 Q. And what happened there?

9 A. She was just ready to go home. She didn't want to
10 talk about it. She was just ready to go home.

11 Q. Did she later tell you what happened in the
12 bathroom?

13 MR. BUTLER: Objection. May we approach?

14 (Discussion held at sidebar.)

15 BY MR. FINCH:

16 Q. Just a yes or no question here. Did she
17 eventually tell you what happened in the bathroom?

18 A. No.

19 Q. She did not?

20 A. No.

21 Q. Did you ever have any future discussions with her
22 about what happened in the bathroom?

23 A. No.

24 Q. Okay. But you saw her when she came out of the
25 bathroom?

1 A. Yes. I went in the bathroom to her.

2 Q. Were you with Jarvia for the rest of the night?

3 A. Yes, sir.

4 Q. You stayed at the house in Goose Creek?

5 A. Yes, sir.

6 Q. What was her demeanor then?

7 A. It was still, like, she didn't want to be
8 bothered. She just, like, shut down. I could understand
9 that she was upset and didn't want to talk about it, so
10 that was that.

11 Q. So you weren't able to get any information out of
12 her?

13 A. No. I just know that something happened in the
14 bathroom.

15 Q. Was anybody else attending to her or tending to
16 any injuries or anything?

17 A. It was me and Adisha.

18 Q. And who is Adisha?

19 A. It was her ex-girlfriend, or a girlfriend. I
20 don't know.

21 Q. Just briefly, you said you got to the club. It
22 was early but it was dark out.

23 A. Yeah.

24 Q. What would early mean to you?

25 A. Early would probably be, like, before it gets

1 packed, like probably before 10:30, 12:00, probably.

2 Q. Before 10:30, 12:00 before it gets packed, but you
3 know you stayed for 30 minutes or so?

4 A. Probably 30, 45 minutes. I didn't even get a
5 drink, so I know it wasn't that long.

6 Q. Okay. When you were at the club for 30, 45
7 minutes, you said you didn't get a drink. Did you see
8 Jarvia get a drink?

9 A. No, because I went to the bar to get me and her a
10 drink.

11 Q. And did you guys have any crabs?

12 A. No.

13 Q. Did you see anybody have having any crabs as far
14 as --

15 A. No. I didn't even make it that far to get to the
16 back where the crabs are located.

17 Q. Did you see anybody talking to Jarvia at the
18 front?

19 A. Yeah. When we first got in, me and her was
20 already talking to Aaron. And when we got back in, then
21 we was coming in, we stopped to talk to Aaron again, and
22 she had another conversation. And when she was having
23 that conversation, she was handing me the money to go to
24 the bar.

25 Q. So she stayed up at the front when you went to the

1 bar?

2 A. No. It's, like, she was holding a conversation,
3 that she was handing me money. Both of us was going our
4 separate ways.

5 Q. And you went to the bar and she went to the
6 bathroom.

7 A. Yes, sir.

8 MR. FINCH: Nothing further at this time,
9 Your Honor.

10 MR. BUTLER: No questions.

11 THE COURT: You don't have any questions?

12 MR. BUTLER: No.

13 THE COURT: You can step down. Next witness?

14 MR. DURANT: State calls Virgil Washington.

15 VIRGIL WASHINGTON,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: Virgil Washington,

20 W-a-s-h-i-n-g-t-o-n.

21 BY MR. DURANT:

22 Q. Mr. Washington, good morning.

23 A. Good morning.

24 Q. Would you please tell the jury where you're
25 employed.

1 A. Fades barbershop.

2 Q. How long have you been there?

3 A. About 14, 15 years.

4 Q. That's a good amount of time.

5 A. Too long.

6 Q. Where is that located?

7 A. North Charleston.

8 Q. And how old are you?

9 A. Forty-one.

10 Q. Forty-one?

11 A. Yes, sir.

12 Q. Let me ask you about a couple people. Do you know
13 who Jarvia O'Neal is?

14 A. Yes, sir.

15 Q. Who is that?

16 A. I can't tell you much about that. I just seen her
17 at the clubs.

18 Q. How long have you known her?

19 A. Maybe a couple years. I don't know her, but I see
20 her at the clubs.

21 Q. Just see her at the club?

22 A. Uh-huh.

23 Q. You would consider her a friend?

24 A. No.

25 Q. Just an acquaintance, somebody you know?

1 A. Just at the clubs.

2 Q. What about Andrea Bell?

3 A. No.

4 Q. You don't know who that is?

5 A. No.

6 Q. What about Aaron Green? Do you know who that is?

7 A. Yes, sir.

8 Q. You do know Aaron?

9 A. Yes.

10 Q. Who is Aaron?

11 A. He owns club Lovey Dovey.

12 Q. Have you been to club Lovey Dovey?

13 A. Have I been there?

14 Q. Yes.

15 A. Yes, sir.

16 Q. Do you frequent it often?

17 A. No, sir.

18 Q. How often do you go there?

19 A. Last time I was there, probably maybe eight months
20 ago.

21 Q. About eight months ago. What kind of place is
22 that?

23 A. A social club.

24 Q. People have fun there?

25 A. I guess.

1 Q. They're known for their crabs?

2 A. Say again?

3 Q. Are they known for their crabs?

4 A. Oh, yeah. They're known for their crabs.

5 Q. Do they have good crabs?

6 A. I don't eat crabs.

7 Q. I want to talk about September 4, 2010. Do you
8 remember that day?

9 A. I know what we're here talking about. I'm not
10 sure of the exact date, or what that date was.

11 Q. We're talking about going to Lovey Dovey that day
12 or that night.

13 A. Uh-huh.

14 Q. Do you remember doing that?

15 A. I guess -- if that was the date, then, yes, sir,
16 but I don't know what the date was.

17 Q. But you remember -- we're here to talk about an
18 incident from Lovey Dovey.

19 A. Exactly.

20 Q. Who did you go there with?

21 A. I went with Jarvia and the young female out there.

22 Q. Andrea Bell?

23 A. I don't even know her name, to be honest with you.

24 Q. How did that end up happening? How did y'all end
25 up going to the club?

1 A. Like I said, I knew Jarvia from the club before,
2 and she needed a ride to the club. And since I know
3 Aaron, Aaron called me to pick her up. I picked her up
4 and took her to the club.

5 Q. Okay. So Aaron called you to go get Jarvia?

6 A. Right.

7 Q. And does Jarvia live far from the club?

8 A. That night, yeah, it was pretty bar.

9 Q. What is far to you?

10 A. I think it was probably about maybe -- at least
11 five miles, I guess, from where I picked her up from.

12 Q. Do you remember about what time that was?

13 A. Maybe 10:00; after 10:00 maybe.

14 Q. After 10:00?

15 A. Yes, sir.

16 Q. Kind of hard to say?

17 A. Hard to say.

18 Q. Other than Aaron just asking you to pick up
19 Jarvia, was there any other reason to pick up Jarvia that
20 night?

21 A. No.

22 Q. Nothing specific, like, Go get her. She wants to
23 eat some crabs, or anything like that?

24 A. It was just like going to the club, hanging out at
25 the club.

1 Q. All right. And so you brought her back to the
2 club.

3 A. Yes.

4 Q. What happened when you got back?

5 A. To the club?

6 Q. Right. What is the first thing, probably went
7 inside?

8 A. Yeah, yeah. I think he wanted us to pay, but we
9 didn't want to pay to get in, but, yeah, went inside.

10 Q. They charge a cover to get in there?

11 A. Yeah. I'm pretty sure that night it was.

12 Q. Do you know why they do that?

13 A. Why they charge a cover?

14 Q. Yeah.

15 A. No, I don't know.

16 Q. But, anyway, did y'all go inside?

17 A. Yes, sir.

18 Q. Do you remember where you were inside when you
19 first got back?

20 A. Well, I usually just go to the bar and stand at
21 the bar and talk to Aaron.

22 Q. What about Jarvia and the other girl?

23 A. I'm not exactly sure where they went.

24 Q. Did you notice where they may be or were they
25 around you?

1 A. It was a lot of people in the club that night, and
2 it could have been -- I mean, the club is not that big,
3 so they couldn't have been far. I'm pretty sure they was
4 in there, but exactly where they were, no, I couldn't
5 tell you.

6 Q. And as far as you know, the way the club was, at
7 least that night, you said there was a lot of people in
8 there?

9 A. Uh-huh.

10 Q. What was the noise level like in there? Was it
11 loud or was it kind of light?

12 A. Well, it was dark, and you got music playing and a
13 small environment, so it's pretty loud.

14 Q. So it's dark and loud and a lot of people. Did
15 you see Jarvia again?

16 A. Yes.

17 Q. When was the next time you saw her?

18 A. As far as time, I can't give you the exact time,
19 but I guess it was after the incident occurred.

20 Q. So after walking into the club, the next time you
21 saw her was after the incident?

22 A. After the incident.

23 Q. And how did you know there had been an incident?

24 A. I saw a whole lot of people crowded around the
25 bathroom door.

1 Q. A whole lot of people crowded around the bathroom
2 door. Where were you when you saw that?

3 A. At the bar.

4 Q. How far is the bar from the bathroom door?

5 A. About from here to maybe that door --

6 Q. One of these doors over here behind the judge?

7 A. Behind the young lady.

8 Q. Behind the young lady. And just the layout of
9 Lovey Dovey, the bathroom is in the back, right?

10 A. It's off to the side of the bar.

11 Q. It's over to the side of the bar?

12 A. The bar is here.. Bathroom is to the side.

13 Q. And you were up at the bar.

14 A. Yes.

15 Q. Were you up at the bar kind of near the front
16 entrance?

17 A. What do you mean, the front entrance?

18 Q. Well, let's just look at some of these pictures.
19 Behind' you, I'm going to put up a -- this is State's 1.
20 Do you know what we're looking at there?

21 A. Right.

22 Q. And that is Lovey Dovey?

23 A. Yes, sir.

24 Q. That's the front entrance?

25 A. Yes, sir.

1 Q. When you noticed a lot of people crowded near the
2 bathroom door, just inside that front door, about how
3 close were you to that front door?

4 A. About from here to there, that door.

5 Q. So were you not close to the front door?

6 A. No. This entrance door, no, sir.

7 Q. You were more toward the back of the club?

8 A. Right, where the bar is.

9 Q. Okay. What about State's No. 2? What does that
10 appear to be?

11 A. Say it again?

12 Q. What are we looking at?

13 A. That's inside the club.

14 Q. And that is looking at it from the front door
15 towards the back?

16 A. Right. There is the pool table. There is some
17 chairs and the bar. Those things wasn't there during
18 that time.

19 Q. Okay.

20 A. That wasn't there.

21 Q. Well, can you use this picture to kind of tell us
22 where you were?

23 A. Here is the bar, and I was in this area
24 (indicating).

25 Q. And where is the bathroom area?

1 A. Off to the side, somewhere over there. This is
2 the DJ booth. Got one on the other side of it. Here is
3 the DJ booth, and in between the DJ booth is the dance
4 floor, maybe about 12, 15 feet, maybe. And then there is
5 a little -- I guess a hallway, and then there is a
6 bathroom.

7 Q. And so that is where you were, up at the bar, when
8 you saw a lot of people crowded by the bathroom?

9 A. By the bathroom.

10 Q. What happened when you saw all those people near
11 the bathroom?

12 A. What happened? You mean what did I do?

13 Q. Yeah. What did you do?

14 A. Well, I was trying to see what was going on, and
15 usually in the club, if you see a lot of people crowding
16 around, it's probably time to get out of the club. I
17 don't know if somebody is going to cause some problems,
18 so I was kind of hesitant to see what was going on, and I
19 saw Aaron going over there, so I was kind of concerned
20 for him because he's a friend of mine.

21 So I went over there and asked him what was going
22 on, and that is when I saw Jarvia coming out of the
23 bathroom, and --

24 Q. So you saw Jarvia actually come out of the
25 bathroom?

1 A. Right.

2 Q. What did she look like?

3 A. She look like?

4 Q. I mean, what was her demeanor? What did she look
5 like --

6 A. She was upset. She was highly upset. I saw some
7 blood on her face.

8 Q. Was that pretty noticeable to you?

9 A. Yeah.

10 Q. Right off, no doubt, she looked upset?

11 A. Right.

12 Q. And you saw blood?

13 A. Yeah.

14 Q. Was she crying?

15 A. I don't remember seeing tears, but just, like,
16 upset.

17 Q. And you don't really even know her, do you?

18 A. No, not really.

19 Q. What about now? Are you friends with her now?

20 A. I haven't seen her since that night.

21 Q. Since that night?

22 A. Since that night.

23 Q. Did you want to know what had gone on? What had
24 happened?

25 A. Did I want to know?

1 Q. Did you want to know?

2 A. Well, everybody was asking what was going on, what
3 happened?

4 Q. Did you try to find out?

5 A. Yeah, I asked her what happened.

6 Q. You asked Jarvia?

7 A. Yeah. I said, What's going on? What happened?

8 Q. Did she tell you what happened? I'm not asking
9 you what she told you. I'm just asking you if she told
10 you what happened.

11 A. Well, she was kind of like in -- I guess if you're
12 upset, you kind of just shouting what happened, it's not
13 like she detailed anything to me, so she -- yeah, she did
14 mention that he hit her.

15 Q. So your understanding was that something happened
16 in that bathroom.

17 A. Right.

18 Q. Did you try to help Jarvia out?

19 A. I took her home.

20 Q. Immediately?

21 A. Probably -- I'm not sure how long it was. There
22 was a lot of chaos, so I said, Why don't I just go ahead
23 and take you on back home.

24 Q. Was anybody trying to figure out who did this?

25 A. Could be. I don't know.

1 Q. Did you ever figure out who did this?

2 A. No, no, sir.

3 Q. You still don't know who did this?

4 A. I wasn't trying to figure out who did it.

5 Q. Were you trying to get out of there?

6 A. Just trying to get out of there, before something
7 else happens, to me.

8 Q. So do you remember walking in to just -- you said
9 you remember walking into the club and saw Jarvia when
10 you walked in, and the next time you saw her was when
11 people were crowded around that bathroom.

12 A. Right.

13 Q. So you don't ever remember being with her at the
14 bar?

15 A. Sitting there and talking with her at the bar?

16 Q. Right.

17 A. No.

18 Q. Had nothing else to do with her, just those two
19 moments inside the club, right?

20 A. Right.

21 Q. Who all did you take home that night?

22 A. It was Jarvia and the other young lady that was
23 outside.

24 Q. Did you take her back to the same place you picked
25 her up from?

1 A. No. I took her to -- somewhere in Goose Creek, I
2 think it was.

3 Q. Were you at all concerned about her health?

4 A. You mean as far as the injuries?

5 Q. Right.

6 A. Well, I mean, yeah. That's why I wanted to get
7 her out of there, take her home.

8 Q. Did you do anything to maybe see if she needed
9 some help?

10 A. You mean if I took her to the hospital or anything
11 like that?

12 Q. Did you ask her if she --

13 A. No, I didn't ask her. She didn't mention it to
14 me.

15 Q. So you just took her back to Goose Creek?

16 A. Took her home.

17 Q. And you dropped her off and the other lady?

18 A. Yes, sir.

19 Q. Do you remember what time that might have been?

20 A. I can't tell you.

21 Q. So have you seen Jarvia since you dropped her off
22 there?

23 A. No.

24 Q. Have you talked to her since that time?

25 A. No.

1 . Q. Do you have any idea who this man sitting over
2 here is?

3 A. I guess he's the one that they say did it.

4 Q. But you don't know him, do you?

5 A. No, sir.

6 Q. About Jarvia's injuries, did you see her again
7 when she got in your car?

8 A. Yes, sir.

9 Q. Where did she sit in your car? Was she in the
10 front or the back?

11 A. I think she was probably in the front. I think
12 she was in front. I think that the other young lady was
13 in the back.

14 Q. Did you see her face and stuff again when she was
15 in your car?

16 A. I probably did, yeah.

17 Q. I mean, did you or --

18 A. Well, I mean --

19 Q. Do you remember seeing her?

20 A. Yeah. She was in my car.

21 Q. Did you see any -- if you would, just describe for
22 the jury the kind of injuries that you saw on her.

23 A. Well, I saw -- all I seen was a cut to the lip and
24 maybe a cut somewhere else on her face, on the same side
25 where the cut on the lip was, you know. That's all I

1 saw, and she was bleeding.

2 Q. She was bleeding.

3 MR. DURANT: Thank you. Please answer any
4 questions the defense may have for you.

5 MR. BUTLER: I don't have any questions.

6 THE COURT: You may step down. Thank you.
7 Call your next witness.

8 MR. FINCH: The state calls Aaron Green.

9 AARON GREEN,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Aaron Bernard Green, G-r-e-e-n.

14 BY MR. FINCH:

15 Q. Good morning, Mr. Green.

16 A. Good morning.

17 Q. What do you do for a living?

18 A. Right now I manage, like, associated with three
19 different buildings, rental halls and still two clubs.

20 Q. You run two clubs?

21 A. No. I manage one of them, and I work at another
22 one and also manage a rental hall.

23 Q. Is one of those clubs Lovey Dovey?

24 A. Yes.

25 Q. And do you have any other business enterprises?

1 A. Not right now.

2 Q. How long have you run Lovey Dovey?

3 A. A little over three years now.

4 Q. And do you have any children?

5 A. Yes, three.

6 Q. What are their ages?

7 A. 19, 17, and 3.

8 Q. Regarding Lovey Dovey, what kind of place is that?

9 A. It's pretty much an older place, been around for a
10 long time. They just do different things there,
11 different events in there, a pretty older place.

12 Q. And the different things you do, is that all just
13 to generate income?

14 A. Yes.

15 Q. Do you try to get a varied crowd in there?

16 A. Yes.

17 Q. How many nights is it open?

18 A. Right now, it varies. Probably about three to
19 four.

20 Q. And is the crowd pretty regular crowd?

21 A. Mostly right now it's regular people.

22 Q. About a little over a year ago, back in February
23 2010, pretty much the same situation?

24 A. Pretty much.

25 Q. I want to talk to you about February 2010, more

1 specifically February 4th, 2010. Do you remember that
2 date?

3 A. Somewhat, yeah. I know what you're talking about.

4 Q. Okay. What was going on? What was going on in
5 the club that night?

6 A. I think I was having some kind of seafood event,
7 some event. I'm not exactly sure, but I think it was an
8 event, but I probably was having seafood with it, so just
9 pretty much a regular night.

10 Q. And do you remember Jarvia O'Neal coming in there?

11 A. Yes.

12 Q. How do you know Jarvia?

13 A. She used to be a regular off and on, come into the
14 club a couple times, you know.

15 Q. Did she also help promote some things there?

16 A. Yeah. She did that a couple times.

17 Q. How long have you known Jarvia?

18 A. Couple years, a few years, something like that.

19 Q. Would you consider you guys friends?

20 A. I mean, associate. She was pretty cool. We never
21 had no problem.

22 Q. You remember she came to the club that night.

23 A. Yes.

24 Q. And did you have a conversation with her?

25 A. Yeah, I'm pretty sure.

1 Q. What were you doing in the club that night?

2 A. Well, every time I'm there, I'm just managing, a
3 little bit of everything.

4 Q. Okay. Where do you -- do you roam around the
5 club? I know it's not that big, or do you sort of
6 station yourself in one place or do you roam around?

7 A. I usually roam.

8 Q. Do you recall spending some time by the front
9 door?

10 A. Yes.

11 Q. Do you check IDs there?

12 A. Yeah. Usually having somebody do that, and I be
13 there back and forth too.

14 Q. Where is that in the club?

15 A. That's up front.

16 Q. Referring to State's Exhibit No. 4, and is that a
17 place where you might stand if you're checking IDs and
18 things?

19 A. No. Over to the right side of it.

20 Q. Closer to the door?

21 A. Yeah, by the door.

22 Q. And --

23 A. Usually check it outside, but if someone checking
24 inside, right on the other side of that jukebox.

25 Q. Okay. Do you remember spending some time in that

1 area right there, with Jarvia O'Neal?

2 A. Back and forth, yeah, a couple times.

3 Q. Do you remember -- did anybody approach you?

4 A. Different people. We was talking. I know I was
5 back and forth, and she probably be talking to a couple
6 people. There was other people standing there.

7 Q. And was it pretty loud in there?

8 A. Yes.

9 Q. People like the music loud?

10 A. Yeah, always.

11 Q. Pretty crowded?

12 A. It wasn't too crowded.

13 Q. What does that mean? About how many people in
14 there?

15 A. 20, 25. I don't think that many, about 20.

16 Q. Anybody causing any trouble early on?

17 A. No.

18 Q. When you saw people talking to Jarvia, could you
19 hear anything they were saying?

20 A. No.

21 Q. Is that because of the music?

22 A. Yeah. Always because the music real loud. It's a
23 small place, so you can't hear over the music. You got
24 to be right next to them.

25 Q. In order to hear somebody, right up next to them?

1 A. Uh-huh.

2 Q. So sometimes people might talk mouth to ear?

3 A. Yeah.

4 Q. Did you also cook the crabs?

5 A. Yes.

6 Q. And how late do you have the crabs going?

7 A. It all depends on the amount of people there, so,
8 you know, if a little bit of people come early, we're out
9 early.

10 Q. If it's not that busy, it might last a little
11 longer?

12 A. Yeah.

13 Q. What time does the club close?

14 A. 2:00.

15 Q. Do you sometimes cook all the way up to closing?

16 A. Probably, no. Usually stop before the end of the
17 evening.

18 Q. On that night, did you see Mr. Clarence Logan
19 talking to Jarvia O'Neal?

20 A. Yes.

21 Q. Do you know Clarence Logan?

22 A. I just know him -- I know him through another
23 friend of his. Well, a friend of mine brought him to the
24 club.

25 Q. Do you recognize him?

1 A. Yes.

2 Q. Would you point him out in the courtroom?

3 A. Yes, right there. (Indicating.)

4 Q. And so you saw him talking to Jarvia.

5 A. Yes.

6 Q. But you didn't know what they were talking about?

7 A. Huh-uh.

8 Q. At some point did you leave that front area to go
9 check on the crabs?

10 A. Either -- yeah, I left. It could have been for
11 different things, but I know I left for that, maybe a
12 couple times.

13 Q. And whenever you returned, was Jarvia there or was
14 she moving around? Do you remember?

15 A. I don't really recall.

16 Q. How about one time when you went out to get the
17 crabs? You walk down -- how do you get there? Do you
18 walk down that bathroom hall?

19 A. ' Yeah. There is a door right there next to the
20 bathroom.

21 Q. And that leads to the outside?

22 A. Yes.

23 Q. If you refer to State's 7, is that the hallway
24 we're talking about?

25 A. Yes.

1 Q. And if you could just indicate where on that
2 picture where the bathrooms are.

3 A. These two doors to the left.

4 Q. There is a pointer if you want to use that. Push
5 that button. Use that.

6 A. That is one, and that is one right here.

7 Q. And how many bathrooms are there?

8 A. Two.

9 Q. One for men, one for women?

10 A. Yeah. That's the women; that's the men.

11 Q. And how big are those bathrooms?

12 A. Four by five, four by -- something like that. One
13 of them may be six by six and the other one is a little
14 small.

15 Q. Do you know which one is small?

16 A. The female one is a little small.

17 Q. So maybe four feet by four feet, something like
18 thank?

19 A. Yeah, close to that.

20 Q. And typically people go in there one at a time?

21 A. Usually.

22 Q. Does the door lock?

23 A. From the inside.

24 Q. Is there a handle or is there a dead bolt or --

25 A. Handle.

1 Q. Just on the handle. Did you see some people -- do
2 you know if anything happened in that bathroom that
3 night?

4 A. Well, I mean, afterwards, I didn't see nothing
5 going on. Afterward, when I saw -- when I saw them
6 coming out.

7 Q. What did you see when you saw people coming out?
8 What did you see?

9 A. Jarvia came out and -- I don't know by his name,
10 we -- when they came out, all I saw them coming out the
11 bathroom, and pretty much that was it. Jarvia was -- it
12 was, like, she was -- her hair was pretty wild and stuff
13 like that.

14 Q. Where were you when you saw that?

15 A. I pretty much was, like, coming into the hallway
16 at the same time.

17 Q. From the outside?

18 A. No, actually I was inside. I was coming, like,
19 from the bar area towards the outside.

20 Q. Were you planning on going outside?

21 A. Yes.

22 Q. And when you said you saw people coming out, you
23 saw the guy whose name you didn't know, and what was he
24 doing?

25 A. When he was coming out he just said he was looking

1 for his cell phone. He was ready to leave, that's all.

2 Q. Was he doing anything?

3 A. No. He was just looking around for his cell
4 phone, saying he was looking for his phone, that's it.

5 Q. Did you notice anything about his clothes, his
6 shirt, his pants?

7 A. I mean, it was, like, baggy. You know, I ain't
8 remember.

9 Q. And what about Jarvia? What was she doing?

10 A. She was just coming out and -- she came out. I
11 don't remember what was said, I don't remember actually
12 what happened. She was saying they got into a
13 confrontation, and I asked her did she want me to do
14 anything, call the police or anything? And she said no,
15 she was ready to go home. And after that moment,
16 probably three minutes after that, she was gone.

17 Q. Describe her appearance. What did she look like
18 when you saw her?

19 A. Her hair was, like, wild, and there was a bruise
20 somewhere on her face. I could tell it was, like,
21 bleeding, that's all, but I can't remember exactly where
22 it was.

23 Q. A bruise and some bleeding?

24 A. Yes.

25 Q. And her hair was messed up.

1 A. Yeah.

2 Q. And you asked her if she wanted you to call 911 or
3 something?

4 A. Yes.

5 Q. You were okay with calling 911?

6 A. Yeah, all the time. We deal with the police on
7 the regular.

8 Q. Lovey Dovey?

9 A. I'm talking on behalf of regulars that come by. I
10 call the police too because I know several of them.

11 Q. Jarvia didn't want you to call the cops?

12 A. No.

13 Q. Where was Mr. Logan at that time? Did you see
14 him?

15 A. At the time -- no, he was just -- he was looking
16 for his phone, and he pretty much was gone, probably when
17 I was talking to her. He was right there. He looked
18 around for his phone. I think he just left then. I
19 don't remember speaking to him.

20 Q. Do you remember which way he went out?

21 A. He went out the front.

22 Q. Do you remember how much time that took?

23 A. Several minutes. It was -- like I say, she was
24 gone after him, but it had to have been a total of --
25 less than five minutes altogether, that she was there.

1 He left --

2 Q. He left first. Then she left, and the whole thing
3 is less than five minutes. Did you see him get into a
4 car?

5 A. No. I wasn't outside. I have no idea.

6 Q. Do you know what kind of car he drives?

7 A. After the fact, yeah.

8 Q. And how did you learn that?

9 A. Like his friend, the guy I met him through, told
10 me what kind of car he drove.

11 Q. So you had never -- you've never seen him driving
12 a car?

13 A. Huh-uh.

14 Q. But the friend told you what kind of car he drove?

15 A. Yeah.

16 Q. Did he give you any other information, a name or a
17 nickname or anything?

18 A. The nickname for --

19 Q. For the guy who you saw coming out of the
20 bathroom?

21 A. I didn't -- I met him. I know him by Blackout.

22 Q. Okay. Did the friend that you knew him through
23 give you any other information, say, describe the car?

24 A. Yeah. I link he said -- not powder blue, royal
25 blue. I think it was a Thunderbird or something. I

1 can't remember.

2 Q. After Jarvia left for that night, did you see who
3 took her out of there?

4 A. No. Later on I found out who took her, but --

5 Q. Who was that?

6 A. A guy named Virgil.

7 Q. Is he a friend of yours?

8 A. Yes.

9 Q. When is the next time you spoke to Jarvia?

10 A. I don't know if it -- it was probably a couple
11 days. Maybe it was the next day, I don't remember. I
12 know it was a short period after that.

13 Q. What did you guys talk about? What was the
14 subject you talked about?

15 A. I just asked her what was going on, what had
16 happened.

17 Q. What did she tell you?

18 A. She told me --

19 MR. BUTLER: I'm going to object to the
20 hearsay, knowing the parameters.

21 BY MR. FINCH:

22 Q. Did she disclose to you that somebody had tried to
23 assault her, sexually assault her.

24 A. Yes.

25 Q. Did she say where that happened?

1 A. Yes.

2 Q. Where was that?

3 A. In the bathroom.

4 Q. Did she say when that happened?

5 A. You mean at night? Yeah, that particular night,
6 the last time I saw her in there.

7 Q. She told you that the night before when you saw
8 her in the bathroom?

9 A. If that was the night before. I don't recall if I
10 talked to her the next day. It could have been a couple
11 days.

12 Q. But the night you saw her in the club, it happened
13 that night in the bathroom. Okay. Did you -- did she
14 want you to help her figure out who this guy was?

15 A. She asked me and I told her -- I didn't know him
16 at all.

17 Q. Were you going to try to help her?

18 A. Well, I didn't really have no way. Like I said, I
19 only know him through the other guy.

20 Q. Were you able to give her -- what information
21 could you give her about him?

22 A. Only thing I think we talked about was his car.
23 That was it.

24 Q. And you gave a physical description, the color and
25 the kind of car it was?

1 A. I think that was it, yeah.

2 Q. How about the license plate number? Did you do
3 that?

4 A. No.

5 Q. You didn't give her the license plate number?

6 A. No, I don't think -- no, I didn't know that. I
7 didn't know the license plate number.

8 Q. Okay. Did you talk to Jarvia after that?

9 A. I think I may have talked to her once or twice, I
10 don't recall. I mean, I think after that night, I talked
11 to her several times, at the most, maybe three or four
12 times. I think.

13 Q. At the most three or four times. Is it all right
14 around that same time or was it later? Have you talked
15 to her recently?

16 A. No.

17 Q. When was the last time you think you talked to
18 her?

19 A. Seem like it been about a year.

20 Q. Over a year?

21 A. Yeah.

22 Q. So close in time to when this happened?

23 A. Yeah. I haven't seen her neither.

24 MR. FINCH: No further questions at this
25 time. Please answer any questions the defense may have

1 for you.

2 THE WITNESS: All right.

3 CROSS-EXAMINATION

4 BY MR. BUTLER:

5 Q. Good morning, Mr. Green. I just have a few
6 questions. You're the manager of club Lovey Dovey?

7 A. Yes.

8 Q. I think we may have promoted you to owner over
9 last few days, but just so it's clear, you manage it but
10 somebody else owns it?

11 A. Yes.

12 Q. Okay. And while you're managing it, part of your
13 duties is to make sure there is no trouble in the club,
14 right?

15 A. Yes.

16 Q. Okay. And if there is any trouble in the club --
17 I mean, I don't know if it happens in your club, but when
18 people drink and there is men and there is women, there
19 can be trouble, right?

20 A. Yes.

21 Q. Okay. And when there is trouble in a club, if
22 somebody is being obnoxious, for example, right, or
23 bothering a woman, right, or starting trouble, right, you
24 would be the person to know about that, right?

25 A. Sometimes.

1 Q. Well, you would want to know about it.

2 A. Yes.

3 Q. And if you saw it, you would put a stop to it.

4 A. Yes.

5 Q. All right. And there was no trouble at all until
6 the incident in the bathroom, and you only saw what
7 happened after?

8 A. Yes.

9 Q. All right. And what Jarvia said to you was she
10 had a confrontation, I believe is the word you said, in
11 the bathroom?

12 A. Yes.

13 Q. And as I understand your testimony, you never gave
14 Jarvia a license plate number?

15 A. No, I don't remember doing --

16 Q. You don't remember or you know that you didn't?

17 A. I don't remember at all.

18 Q. Or a phone number?

19 A. No, I don't know about the phone number.

20 Q. So you may have or you don't remember, or you
21 remember that you didn't?

22 A. I don't remember that. I don't.

23 Q. Okay. And the only thing that you noticed about
24 the man coming out of the bathroom is he was looking for
25 his cell phone.

1 A. Yeah.

2 MR. BUTLER: Beg Court's indulgence.

3 That's all I have, Mr. Green. Thank you.

4 THE COURT: Redirect?

5 MR. FINCH: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. FINCH:

8 Q. Mr. Green, just to recap, when you saw the man
9 coming out of the bathroom, he didn't have any injuries
10 on him.

11 A. No, I don't think so, no.

12 Q. The only injuries you saw were to Jarvia.

13 A. Yes.

14 Q. And the club is loud, right?

15 A. Yes.

16 Q. So you can't hear what everybody is saying to each
17 other, can you?

18 A. No.

19 Q. Do you know if anybody was being rude to Jarvia,
20 saying rude things?

21 A. No.

22 Q. Do you know any of these people involved, really?
23 Are you friends with any of them?

24 A. No.

25 MR. FINCH: Nothing further.

1 THE COURT: You can step down. Okay. I
2 think this is where we'll go ahead and break for lunch.

3 Folks, if you would, you are free to go
4 wherever you want to go for lunch, and you can go with
5 any member of the jury panel if you want, but please do
6 not discuss the case, comment on any of the witnesses,
7 talk about the case in any way, shape, or form, and if
8 anybody approaches you to talk about that, please report
9 that back to me.

10 If you would, be back in the jury room at
11 1:30 and we'll begin at that time. Thank you.

12 (Jury recessed.)

13 A F T E R N O O N S E S S I O N

14 (In open court, jury not present.)

15 MR. BUTLER: Judge, I wanted to place an
16 objection on the record.

17 THE COURT: What is it?

18 MR. BUTLER: Never mind. Thank you.

19 (In open court, jury present.)

20 THE COURT: Okay. Be seated.

21 All right. We'll resume with the state
22 calling their next witness.

23 MR. FINCH: Thank you, Your Honor.

24 The state calls officer Alex Gray.
25

1 ALEX GRAY,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Officer Alex Gray, North
6 Charleston police department, G-r-a-y.

7 BY MR. FINCH:

8 Q. Good afternoon, Officer Gray.

9 A. Good afternoon.

10 Q. If you would, tell the Court where it is that
11 you're employed.

12 A. North Charleston police department.

13 Q. And what is your position at NCPD?

14 A. I'm a patrolman.

15 Q. What are the duties and responsibilities of a
16 patrolman?

17 A. Primary duties, I respond to call for service, 911
18 calls, calls that come in on an admin line, things of
19 that nature.

20 Q. How long have you been with the NCPD?

21 A. Three years in November.

22 Q. Were you employed with NCPD around the time of
23 February 2010?

24 A. Yes, sir.

25 Q. And employed in the same capacity?

1 A. Yes, sir.

2 Q. Did you have occasion then to be dispatched or did
3 you respond to a call regarding an assault at the Lovey
4 Dovey?

5 A. Yes, sir.

6 Q. And did you get dispatched, or how did you get to
7 that call?

8 A. I was dispatched to Roper Hospital downtown with
9 regard to an assault that occurred the previous evening
10 at Lovey Dovey.

11 Q. And when you got there, what did you do?

12 A. I was led by security to one of the rooms where I
13 made contact with the victim of the assault, Jarvia
14 O'Neal.

15 Q. And do you have independent recollection of that
16 meeting?

17 A. No, sir.

18 Q. I mean, you remember it in your head?

19 A. Yes, sir.

20 Q. Okay. Do you recall Ms. O'Neal's physical state?

21 A. Yes.

22 Q. Did she have injuries to her?

23 A. Yes. Ms. O'Neal had a black left eye, laceration
24 across the bridge of her nose, and on the left side of
25 her face, cuts on the inside of her mouth that she showed

1 me, and a knot on the right side of her head.

2 Q. Do you know how big that knot was?

3 A. I don't recall.

4 Q. Do you recall if it was on the front or the back?

5 A. I do not recall.

6 Q. Did you take any photographs of those injuries?

7 A. No, sir, I did not.

8 Q. Why not?

9 A. I did not have a camera at the time and contacted
10 my supervisor, and he was not able to get the camera to
11 me, so I just documented the best I could in my report
12 and went forward from there.

13 Q. And what you just told us now, is that information
14 you recall from your report?

15 A. Yes, sir.

16 Q. Did you use your report to refresh your memory?

17 A. Yes, sir.

18 Q. Outside of what you read in your report, do you
19 remember anything else about -- anything physical about
20 Ms. O'Neal?

21 A. With regards to injuries or --

22 Q. Either, regarding injuries or her emotional state
23 or demeanor.

24 A. She was visibly upset. I noticed the injuries
25 upon walking into the room. It took a little bit of

1 coaxing to get her to talk about what had happened. She
2 was, like I said, visibly upset, reluctant to get
3 started, but once she got started everything kind of came
4 forward.

5 Q. Did she tell you that she would have been
6 assaulted at Lovey Dovey?

7 A. Yes, sir.

8 Q. And did she tell you the nature of that assault?

9 A. Yes, sir.

10 Q. Did she tell you where it happened?

11 A. Yes, sir. She said it happened in the women's
12 rest room at the Lovey Dovey.

13 Q. And did she tell you what date that happened?

14 A. Yes, sir. She said that happened on February 4,
15 2010.

16 Q. Were you able to get any other information about
17 the suspect at that time?

18 A. The only information she had about the suspect was
19 it was a black male, approximately, 5'10", known only to
20 her as the street name Blackout.

21 Q. Did you include all that in your report?

22 A. Yes, sir.

23 Q. What other investigative measures did you take
24 with regard to this case?

25 A. Upon -- I took the information that she gave me.

1 I completed the incident report, and that was as far as I
2 did.

3 Q. You may not know, but -- just what happened with
4 this report, but, in general, what happens to a report
5 after a patrol officer takes it?

6 A. Depending on the nature of the report, for
7 example, this report would get forwarded on to the
8 detective bureau and gets assigned to a detective, and
9 then they carry it forward with the investigation,
10 contacting us as needed for further information or
11 assistance.

12 Q. And did you have any further contact with this
13 file or this incident report?

14 A. I did not.

15 MR. FINCH: No further questions at this
16 time. Please answer any questions the defense may have.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MR. BUTLER:

20 Q. Good afternoon, Officer. I just have a couple
21 quick questions. Were you dispatched to Roper Hospital
22 February 4, at 10:25 in the evening?

23 A. Yes, sir.

24 Q. Okay. And you've already testified a little bit
25 about your report. Report writing is just something that

1 police officers do, as part of the job?

2 A. Yes, sir.

3 Q. You're trained at the academy in how to write
4 reports?

5 A. Yes, sir.

6 Q. Part of what you do, as any police officer, is
7 when you respond to crime scenes, you make
8 observations --

9 A. Yes, sir.

10 Q. Of -- the scene itself, not in this case, but of
11 the scene itself, of the people involved, witnesses,
12 victims, right?

13 A. Yes, sir.

14 Q. And then you document what you've observed or
15 learned in a report?

16 A. Yes, sir.

17 Q. That's so you can, as you've done today, look back
18 and recall what happened over a year ago. It's written
19 down?

20 A. Yes, sir.

21 Q. Okay. You pass it on to other people. Like, if
22 there is a lead detective, if he can't reach you, he can
23 look at your report, he's got it?

24 A. Yes, sir.

25 Q. And so for that reason, you're accurate, complete,

1 and true in things you write down?

2 A. Yes, sir.

3 Q. All right. And Ms. O'Neal told you when you
4 talked to her that she was at the club by herself, right?

5 A. Yes, sir.

6 Q. And that is what you wrote down in your report.
7 May I approach?

8 A. I got it.

9 Q. Okay. She told you she was there by herself?

10 A. Yes, sir.

11 MR. BUTLER: Okay. Beg Court's indulgence.

12 BY MR. BUTLER:

13 Q. While you were there with her, she's not admitted
14 to the hospital. They treat her and release her, right?

15 A. As far as I know. I don't recall, though, sir.

16 MR. BUTLER: Nothing further.

17 THE COURT: Redirect?

18 MR. FINCH: Briefly, thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FINCH:

21 Q. Officer Gray, you were not able to develop a
22 suspect based on your interview with Ms. O'Neal, were
23 you?

24 A. No, sir.

25 Q. Because she didn't know who this guy was, correct?

1 A. That's correct.

2 Q. Just the street name?

3 A. Yes, sir.

4 Q. And what was that?

5 A. Blackout.

6 MR. FINCH: Nothing further.

7 THE COURT: Recross?

8 MR. BUTLER: No.

9 THE COURT: You can step down. Next witness.

10 MR. FINCH: State calls Marquise O'Neal.

11 MARQUISE O'NEAL,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: My name is Marquise D'Angelo

16 O'Neal, O-N-e-a-l.

17 BY MR. FINCH:

18 Q. Good afternoon, Mr. O'Neal.

19 A. How are you?

20 Q. I'm doing well. How are you doing?

21 A. Doing pretty good.

22 Q. You have a baby on the way?

23 A. Yes, I do.

24 Q. Any day?

25 A. Any day.

1 Q. We'll try to get you out of here very quickly.

2 Where is home?

3 A. My home base is Charleston County, South Carolina.

4 Q. Where do you live now?

5 A. Whiteville, North Carolina.

6 Q. And how far of a drive is that?

7 A. Three-hour drive.

8 Q. And how long have you lived up there?

9 A. I've lived there since January 28th.

10 Q. Of this year?

11 A. This year.

12 Q. Where did you live before that in Charleston?

13 A. West Ashley.

14 Q. And you're related to Jarvia O'Neal?

15 A. Yes, sir. That's my aunt.

16 Q. And so you've known her your whole life?

17 A. Whole life.

18 Q. What do you do up there in Whiteville?

19 A. Well, I work at Smithfield, ham packing company.

20 Q. What do you do for them, pack the hams?

21 A. Yes, slaughter hogs, pack, cut, and pre-wrap.

22 Q. Like I said, I'm going to try to get you out of
23 here early because I do know you have a baby on the way.

24 I just want to take you through a couple things.

25 A. Okay.

1 Q. Do you recall an incident that your aunt was
2 involved in back in February 2010?

3 A. Yes.

4 Q. And just -- there was some assault at a club?

5 A. Yes.

6 Q. Okay. Back in February 2010, in that time frame,
7 you said you were living in West Ashley?

8 A. Actually, I was living with my mother in West
9 Ashley, and I moved to North Charleston.

10 Q. Did you have an occasion to be at [REDACTED]
11 [REDACTED]

12 A. Yes.

13 Q. Who lives at [REDACTED]

14 A. My grandmother and my aunt.

15 Q. They don't live there anymore, do they?

16 A. No.

17 Q. Okay. I'm going to show you a picture. It's
18 going to come up in a minute. If you turn around, what
19 is that a picture of?

20 A. That is my aunt house and the front porch right
21 there.

22 Q. Okay. And February 2010, February 6th, 2010, were
23 you -- did you have occasion to be over at the house?

24 A. Yes, yes.

25 Q. What were you guys doing over there?

1 A. We were standing on the front porch. I had my
2 white Suburban truck parked on the side here. It was me,
3 my mother, and my aunt, family members generally standing
4 outside on the front porch area.

5 Q. Doing what?

6 A. Basically, we were out there because she was
7 letting us know what had happened and informed us of the
8 person that keep coming by the house.

9 Q. Okay.

10 A. Right.

11 Q. Who was this person coming by the house, do you
12 know?

13 A. I don't know the name; no, I don't.

14 Q. Who did you understand him to be?

15 A. The person that assaulted my aunt.

16 Q. And what, if anything, did you know about this
17 person?

18 A. Anything, just that the fact what she tell me
19 happened and what I saw.

20 MR. BUTLER: I object to hearsay.

21 THE COURT: Sustained.

22 BY MR. FINCH:

23 Q. Did you know this person's name?

24 A. No, I didn't.

25 Q. Did you know what he looked like?

1 A. No, I didn't.

2 Q. Did you -- were you aware of any kind of vehicle
3 he drove?

4 A. Yes.

5 Q. And what was that?

6 A. It was a greenish or blue Thunderbird.

7 Q. When you were out at this house, did this vehicle
8 ever come by?

9 A. Three times.

10 Q. While you were there?

11 A. Yes.

12 Q. What happened when this vehicle came by?

13 A. The first time, actually, I heard the vehicle
14 before I could see the vehicle. What I mean by that is
15 that the steering system that he had. I heard it before
16 I see it the first time. I caught the back end of the
17 vehicle, right, and the second time he sped past the
18 other way.

19 The third time was the last time that he came up
20 and came past the house again. Once that had happened,
21 my aunt, Jarvia O'Neal, she was screaming, That's him,
22 that's him, that's him, crying and screaming, running
23 after him, running after the car, down the street.

24 Q. Were you able to see the person driving the
25 vehicle?

1 A. I saw the figure. I didn't see the face, no, I
2 didn't.

3 Q. I'll show you another picture. What does that
4 picture show?

5 A. That basically shows the dead end street in front
6 of the house where my truck was parked where the trash
7 can was, and I was standing up in the street area in
8 front.

9 Q. Relative to -- you know, in relationship to where
10 you were standing, where did this vehicle pass?

11 A. The vehicle passed -- I forgot the name of the
12 street that was in front, in front of the apartment
13 complex.

14 Q. About how far away is that from where you were
15 standing?

16 A. I would probably say two or three feet, maybe.

17 Q. I'm sorry. Two or three feet?

18 A. Yes, away, yes.

19 Q. And did the person in the vehicle say anything?

20 A. No, he didn't.

21 Q. Did he make any hand gestures?

22 A. No, he didn't.

23 Q. Just drove up slowed down and sped off?

24 A. Yes.

25 Q. And you said that happened three different times?

1 A. Three different times, three times.

2 Q. Do you remember at any point in time whether this
3 person in the car said anything?

4 A. No.

5 Q. Okay. Have you ever been to club Lovey Dovey?

6 A. Yes, I have.

7 Q. And that is located on 2721 Carner Street?

8 A. Yes, sir.

9 Q. And you're aware that address is in Charleston
10 County?

11 A. Yes, sir.

12 Q. Do you frequent that place, go there a lot?

13 A. No. I went once.

14 Q. Okay. Not your cup of tea?

15 A. No.

16 Q. So just -- and how many different days did you see
17 this vehicle, or was it three times in one day?

18 A. Three times in one day.

19 Q. Time wise, was it in a short amount of time or
20 over how many hours or do you remember?

21 A. To me, it happened, like, minutes at a time,
22 basically. Mainly, in an hour, I would say an hour, I
23 probably saw the vehicle three times within an hour.

24 Q. And did anybody call the police about this?

25 A. From my understanding, my aunt did report it when

1 that happened and reported the vehicle riding past the
2 house.

3 Q. Were you there when the police arrived?

4 A. No, I wasn't. I left.

5 Q. Who else was at the house with you?

6 A. It was my aunt, myself. I had my cousins and
7 other family members and my mom.

8 Q. Okay.

9 MR. FINCH: No further questions at this
10 time. Please answer any questions the defense may have.

11 THE WITNESS: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q. Mr. O'Neal, you never spoke to the police about
15 what you saw that day?

16 A. No, I haven't.

17 Q. Police never interviewed you; you never gave a
18 written statement?

19 A. I haven't.

20 MR. BUTLER: That's all I have. Thank you.

21 THE WITNESS: Okay.

22 THE COURT: Anything further?

23 MR. FINCH: Nothing further. We just ask the
24 witness be excused.

25 THE COURT: You can step down. Next witness.

1 MR. FINCH: State calls Rhonda DeVeaux.

2 RHONDA DeVEAUX,

3 having been first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: Rhonda Deveau, D-e-v-e-a-u-x.

7 BY MR. FINCH:

8 Q. Good afternoon, Ms. Deveau. Are you a little
9 nervous?

10 A. No, I just got a little cold, that's all.

11 Q. How long have you lived in the Charleston area?

12 A. Almost all of my life.

13 Q. And whereabouts in town do you live?

14 A. I live in West Ashley.

15 Q. And your son's Marquise?

16 A. Yes.

17 Q. And do you work?

18 A. No, I don't.

19 Q. Do you have any other children besides Marquise?

20 A. Yes, I do. I have two others.

21 Q. And how old are they?

22 A. Eighteen and three.

23 Q. And how about Jarvia? She's your sister?

24 A. Yes. That's my baby sister.

25 Q. And were you there -- where did you live when she

1 was living on [REDACTED] [REDACTED]

2 A. Same place, West Ashley now.

3 Q. But did you go over and visit [REDACTED]

4 A. Yes, every day.

5 Q. And who else lives in that house?

6 A. My mom.

7 Q. Would you go over and visit your mom and Jarvia?

8 A. Uh-huh.

9 Q. And so did you go over and visit them around
10 February 2010?

11 A. Yeah.

12 Q. And do they still live there now?

13 A. No.

14 Q. Whereabouts does your mom live now?

15 A. With me.

16 Q. Okay. Makes it easier to visit, I assume?

17 A. Yeah.

18 Q. How about around February 6, 2010? Do you
19 remember that date?

20 A. Yeah.

21 Q. Do you remember? Were you over at your mom's
22 house?

23 A. Yes.

24 Q. What you were you doing over there?

25 A. Actually, I had gone over there for a little

1 while, just hanging out, watching TV, sitting on the
2 porch.

3 Q. And who else was there?

4 A. My mama and Jarvia.

5 Q. Was Marquise there?

6 A. Marquise came after -- they came, like, later on,
7 after -- not -- you know, not exactly the same time I was
8 there.

9 Q. When you were there, did you -- well, did Jarvia
10 tell you about an attack that had happened to her?

11 MR. BUTLER: I have to object. Hearsay.

12 THE COURT: Sustained.

13 BY MR. FINCH:

14 Q. Were you aware that Jarvia had been involved in an
15 incident?

16 A. Yes, sir, I was.

17 Q. And were people talking about that at the
18 residence?

19 A. We wasn't talking about that exactly that
20 particular -- at that time, but we had been talking about
21 that beforehand.

22 Q. Was anybody in that family looking for any -- was
23 anybody in the family concerned about anything regarding
24 that incident?

25 A. Actually, we was all upset about it because she

1 had already been in a similar incident before, and it
2 really took a toll on her and the family of the different
3 things she went through.

4 Q. Did you see -- were you aware of the type of
5 vehicle that somebody -- were you aware of the type of
6 vehicle that a suspect in this most recent incident was
7 driving?

8 A. Actually, I wasn't until -- excuse me. Can I --
9 do I just need to go ahead and explain -- to answer that
10 question?

11 THE COURT: Well, you really just need to
12 answer his questions.

13 THE WITNESS: Okay. I don't know type of
14 car, per se, you know, exactly what make, model, the car
15 is.

16 BY MR. FINCH:

17 Q. Do you know what color it was?

18 A. I think white or beige, something like that.

19 Q. Did you see this vehicle near [REDACTED]

20 A. I did. I was sitting on the porch, me and Jarvia,
21 and I was sitting on the porch, and he -- the car and the
22 young man was, like, driving past, doing little hand
23 things and --

24 Q. What kind of hand things?

25 A. Shooting the birdie.

1 Q. Middle finger?

2 A. Yes, and just riding back and forth past.

3 Q. I'm going to show you a picture that has been --
4 this is State's Exhibit 17, and that is the front of your
5 mom's house, mom's old house, correct?

6 A. Correct.

7 Q. Where was the person driving, on that road?

8 A. No, no. We was parked right here. It was on this
9 street right here.

10 Q. So the next street over?

11 A. Yeah. This is Meeting Street, or Meeting Street
12 Road here, and you got to come in here and turn in here
13 for, like, the driveway right here, and we was all
14 parked -- this where I normally park, right here in front
15 of the trash can, and we was all in the porch, and he
16 was, like, riding past on Meeting Street Road.

17 Q. And about how many times did you see that person?

18 A. Maybe two or three.

19 Q. And did Jarvia have any reaction to that?

20 A. Yes. She got really hysterical, so I called the
21 police, because she kept saying, That's him, that's him,
22 because at first I just saw the person, you know,
23 shooting the bird. I didn't think anything of it, and
24 that is when she said, That's him, that's him.

25 And then she said, well, I'm just going to call

1 the police.

2 Q. And did you call the police?

3 A. Yes, we called the police.

4 Q. And did the police arrive?

5 A. Yeah, the police came. It was, like, two police
6 officers, they came and we -- I explained what happened.
7 She was still upset, and he was telling her, you know,
8 she had to really calm down so he could understand
9 exactly what is going on.

10 And they had already got a couple of police calls
11 already before, prior to the address about the situation,
12 and he said he was going to handle it, and he said we
13 know -- I guess it's hearsay. But the police was just
14 telling us they knew the car of the person that was
15 driving.

16 Q. And did you give a statement to the police? Did
17 you write something down to the police?

18 A. No. We didn't write anything.

19 Q. Did you just tell them?

20 A. Yeah, we just told -- talked to them.

21 Q. Okay.

22 MR. FINCH: No further questions at this
23 time, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BUTLER:

1 Q. The car you saw was white or beige?

2 A. Yes, sir.

3 MR. BUTLER: That's all I have. Thank you.

4 THE COURT: Do you have any further
5 questions?

6 MR. FINCH: Nothing.

7 THE COURT: You can step down. Next witness.

8 MR. FINCH: Your Honor, could I approach?

9 (Discussion held at sidebar.)

10 MR. FINCH: Officer Craig McAlhaney.

11 CRAIG McALHANEY,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: My name is Craig McAlhaney,
16 M-c-a-l-h-a-n-e-y.

17 BY MR. FINCH:

18 Q. Good afternoon, Officer McAlhaney.

19 A. Good afternoon.

20 Q. If you would, tell the Court where it is you're
21 employed.

22 A. City of North Charleston police department.

23 Q. What is your position with NCPD?

24 A. I'm a metro officer.

25 Q. What are your duties and responsibilities of that

1 position?

2 A. My position at the moment is patrolling the south
3 end of the town.

4 Q. And when you're patrolling the south end of the
5 town, you're responding to calls, making reports, things
6 like that?

7 A. Correct.

8 Q. Do you also have supervisory duties or no?

9 A. I do not.

10 Q. Is [REDACTED], is that considered in
11 the south end of town?

12 A. It is.

13 Q. Were you employed in that capacity in February of
14 2010?

15 A. I was.

16 Q. Did you have occasion to respond to a call to [REDACTED]

17 [REDACTED]

18 A. I did.

19 Q. What was the nature of that call?

20 A. It was in reference to information about an
21 assault.

22 Q. And what information about an assault?

23 A. When I arrived, I met with Ms. O'Neal, who said
24 that while she was on her front porch that a blue Ford
25 Thunderbird drove past the front of her house. It had

1 tinted windows. The window went down. She said that she
2 saw the suspect that assaulted her make a gesture with
3 his middle finger and then drove away.

4 Q. Did you get a description of the vehicle at that
5 time?

6 A. I did.

7 Q. And did you include that in a report?

8 A. I did.

9 Q. Did you take any statements at that time, any
10 written statements?

11 A. No written statements.

12 Q. It's fair to say, then, everything that was told
13 to you you captured in a report?

14 A. Correct.

15 Q. And what do you do with that report once you
16 create it?

17 A. It's a supplemental report to another report, to
18 the assault report.

19 Q. And just so the jury understands, what is a
20 supplemental report?

21 A. It means that the original incident had already
22 been taken, and I just add new information to it.

23 Q. So it becomes part of the bigger file?

24 A. Correct.

25 Q. And just so we understand, what happens to that

1 bigger file? Do you have any further investigation with
2 that file, or was it handled by someone else?

3 A. It was handled by a detective.

4 Q. Aside from a description of the car, was there any
5 other vehicle information that you received?

6 A. She advised me of the tag of the vehicle. It was
7 CPL-179. I ran that registration through NCIC, and it
8 came back to 1993 Ford two-door, registered to a Lakeshia
9 Waters.

10 Q. And at that point were you able to develop a
11 suspect?

12 A. At that point, I searched the area for that same
13 vehicle and did not locate the vehicle, and that was the
14 end of my report.

15 Q. Were you familiar with that vehicle from
16 patrolling the south end?

17 A. I am not.

18 Q. Was the victim able to provide you any
19 descriptions of the suspects at that time?

20 A. She advised me that it was the same suspect that
21 assaulted her on the 4th.

22 Q. But no physical descriptions --

23 A. Black male, and that was about the general
24 information I obtained.

25 Q. And did you have any other -- well, let me ask you

1 this: What was Ms. O'Neal's demeanor when you
2 interviewed her?

3 A. She was upset due to the assault and suspect
4 driving by her house.

5 Q. When you say upset, can you describe that.

6 A. She was shaking a little bit, and you could just
7 hear it in her voice that she was upset about the
8 situation.

9 Q. Did you speak to anybody else at the scene?

10 A. I did not.

11 Q. Did you have any other investigative
12 responsibilities regarding this case?

13 A. No further effort after the supplemental report.

14 Q. You create the supplemental, and then you submit
15 it and that was it?

16 A. That was it. I was not the original case officer

17 for this case.

18 MR. FINCH: I have nothing further, Your
19 Honor. Please answer any questions the defense may have.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. Good afternoon, Officer. When you go out there on
23 the 6th, right?

24 A. Correct.

25 Q. And the only person you spoke to was Jarvia

1 O'Neal?

2 A. Correct.

3 Q. You didn't speak to anybody else, and she provided
4 the license plate number that you just gave?

5 A. That's correct.

6 Q. And told you that she got that license plate
7 number when that car had driven past her house.

8 A. She advised me that she got that tag number from
9 acquaintances.

10 Q. Who were there?

11 A. Who were not on the scene that I talked to at that
12 time.

13 Q. But were there when the car drove past the house?

14 A. I don't really know for certain. She just
15 provided that information, and I went ahead and ran that
16 day.

17 Q. Was it your understanding that they got that
18 information right before you got there, when the drive-by
19 occurred, or some other time?

20 A. That was my understanding of it.

21 Q. The first thing?

22 A. Correct.

23 Q. They got it right then.

24 A. I'm --

25 Q. Or shortly before you got it?

1 A. She didn't specifically say a time, but I didn't
2 ask either, so I was assuming that it occurred before she
3 called the police.

4 MR. BUTLER: Got it. Thank you. Nothing
5 further.

6 THE COURT: Redirect?

7 MR. FINCH: Nothing, Your Honor.

8 THE COURT: You can step down.

9 THE WITNESS: Thank you.

10 THE COURT: You need a few nines? The last
11 state's witness is on the way. I think he's coming over
12 the bridge, so we just need about ten minutes, so go
13 ahead and go on back to the jury room.

14 Again, don't begin deliberations or
15 discussions, and we will resume here shortly. Thank you.

16 (Recess taken.)

17 THE COURT: All right. You got your witness?

18 MR. FINCH: Yes.

19 THE COURT: All right. Bring in the jury.

20 (In open court, jury present.)

21 THE COURT: Be seated. All right.

22 Call your next witness.

23 MR. FINCH: State calls Detective Omar
24 Faison.

25

1 OMAR FAISON,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Omar Faison, last name
6 F-a-i-s-o-n.

7 BY MR. FINCH:

8 Q. Sergeant Faison, how are you doing today?

9 A. Great.

10 Q. Could you tell the Court, please, where it is that
11 you're employed.

12 A. Right now I'm currently employed at the city of
13 Hanahan.

14 Q. And what is your position at the city of Hanahan?

15 A. I'm a sergeant in uniform parole.

16 Q. How long have you been with city of Hanahan?

17 A. Approximately about one year.

18 Q. And back in February 2010, were you working with
19 Hanahan?

20 A. No, I did not.

21 Q. Where were you working then?

22 A. I was employed with the city of North Charleston.

23 Q. What was your position with North Charleston?

24 A. I was a detective in the person unit.

25 Q. And as a detective in the person unit, what are

1 the responsibilities of that position?

2 A. We handle crimes against person, assaults, sexual
3 assaults, anything.

4 Q. And on February 9th, 2010, did you have an
5 opportunity to be involved in investigation of an alleged
6 assault and battery at the Lovey Dovey club?

7 A. Yes, I did.

8 Q. What was your role in that investigation?

9 A. The lead detective, which is Detective Schmidt, he
10 came to me and said that he needed for me to show a photo
11 lineup to Ms. O'Neal, which I did when she got to the
12 police station, put her in our little interview room, and
13 I lined up the pictures and gave it to her. And she
14 pointed out an individual that did the assault to her,
15 and I gave it back to Detective Schmidt.

16 Q. And prior to your getting that assignment from
17 Detective Schmidt, did you know anything else about this
18 case?

19 A. At that time, no, I did not. She just came to me,
20 grabbed me, and asked if I could show her a photo lineup,
21 and I said yes.

22 Q. Is that standard operating procedure for lineups,
23 or was it at that time?

24 A. At that time, it was. It had to be an independent
25 person that don't know nothing about the case to actually

1 show them a photo lineup.

2 Q. What is the reason for that?

3 A. So it won't come up later on that he already knows
4 the suspect and the defendant, and he might had pointed
5 it out to the victim himself.

6 Q. So you had a collection of six photographs to show
7 the victim?

8 A. Yes, I did.

9 Q. And do you know why those six pictures were
10 together?

11 A. Usually when we do a photo lineup, we try to get
12 right around the same age, the same height, same kind of
13 facial feature, if the person had a tattoo, you try to
14 get them -- we try to back it up as best we can with the
15 individual that, you know, who actually may have
16 committed the crime at the time.

17 Q. So the suspect.

18 A. Yes.

19 Q. You take the suspect, and then you get people that
20 kind of look like them?

21 A. Yes.

22 Q. Okay. And do you know in this case how the
23 defendant became a suspect?

24 A. Yes. With the work of Detective Schmidt, after
25 everything was over with and she pointed out, I later

1 learned that he actually had --

2 MR. BUTLER: I'm sorry. I have to object to
3 hearsay at this point.

4 THE COURT: Sustained.

5 BY MR. FINCH:

6 Q. How was this lineup put together?

7 A. A series of pictures of the same person, of the
8 same height, weight, features, like I said before.

9 Q. I'm going to show you what's been marked State's
10 Exhibit 18, 7 pages. Just take a look at that and
11 identify that, if you would.

12 A. Yes. These are the six forms that I actually
13 showed Ms. O'Neal at the time on February the 9th.

14 Q. And was she able to identify?

15 A. Yes, and she identified by her signature and also
16 on the date that she signed it and also signed this form
17 that I have to sign, saying that I'm the one that
18 actually presented it to her and my name is right there.

19 Q. And when she chose that individual, was there any
20 hesitation?

21 A. No, sir.

22 Q. Did you indicate to her any -- who she should
23 choose?

24 A. No, sir. After I read these, I just gave her the
25 picture, and she took her time and pointed it out.

1 Q. And you said prior to that identification
2 procedure, you didn't have any knowledge of this case.

3 A. No, sir, I did not.

4 Q. How about afterwards?

5 A. Afterwards I did.

6 Q. And what do you know about this case?

7 MR. BUTLER: I'm sorry. Objection. Hearsay.

8 THE COURT: Sustained.

9 MR. FINCH: No further questions. Thank you,
10 Officer Faison.

11 MR. BUTLER: No questions.

12 THE COURT: You can step down. Anything
13 further from the state?

14 MR. FINCH: No. The state rests.

15 THE COURT: Okay. I'm going to send you back
16 to the jury room right now so we can take up some legal
17 matters and then prepare for the last phase of the trial.

18 So, again, don't begin deliberations or
19 discussions, and we'll have you back here in about 10, 15
20 minutes, max. All right?

21 (In open court, jury not present.)

22 THE COURT: Okay. Mr. Butler?

23 MR. BUTLER: I would move for a directed
24 verdict pursuant to I believe it's criminal Rule 19.

25 THE COURT: Well, I think there is enough

1 direct evidence based on the victim's testimony to get
2 past the directed verdict, so I'll deny those.

3 All right. What have you guys decided about
4 a defense?

5 MR. BUTLER: I invite the Court to inquire of
6 Mr. Logan, but my understanding is that we will not be
7 calling any witnesses, including Mr. Logan.

8 THE COURT: All right. Mr. Logan, will you
9 stand up there a second? We talked at the beginning of
10 the trial about your rights to put up a defense and not
11 put up a defense and to testify and not testify. Do you
12 recall that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Well, we're at that point in the
15 trial now where you have to make a decision as to whether
16 or not you want to put up a defense and whether or not
17 that would include you testifying.

18 Your lawyer has indicated to me that you do
19 not wish to call any witnesses to testify on your behalf;
20 is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that includes you do not want
23 to testify and tell the jury your side of the story.

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Well, that is

1 certainly your right. I need to make sure that you
2 understand now that I will instruct the jury that they
3 are not to hold that against you while they are
4 deliberating, but, again, it is your --

5 MR. BUTLER: I'm sorry to interrupt. I need
6 a moment with him, if it please the Court.

7 (Discussion held off the record.)

8 MR. BUTLER: No, he will not testify. If you
9 want to get a final answer from him, that's fine.

10 THE COURT: Okay. Mr. Logan, now, you've
11 gone back and talked with your lawyer and some family
12 members and friends. Have you made a final decision
13 about whether or not you want to present any witnesses?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what is your decision?

16 THE DEFENDANT: No, sir, I don't want to
17 testify.

18 THE COURT: You don't want to testify?

19 THE DEFENDANT: No, sir.

20 THE COURT: You want me to instruct the jury
21 they're not to hold that against you while they're
22 deliberating?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: That's what we'll do. Let's talk
25 about the jury charges then.

1 Does anybody have any changes they want to
2 talk about?

3 MR. BUTLER: I have an objection to -- I know
4 it's now routine, but the now standard direct and
5 circumstantial evidence charge, particularly the portion
6 that says -- beg the Court's indulgence -- the law makes
7 absolutely no distinction between the weight or value to
8 be given to either direct or circumstantial evidence.

9 I think that after our Supreme Court opinion
10 in Bostick that came out, I want to say, earlier this
11 year where the Supreme Court said that the trial Court
12 should have directed a verdict because the case was
13 entirely circumstantial, they appealed to four different
14 pieces of circumstantial evidence, this was a homicide
15 and an arson where they found some of the belongings of
16 the victim in a back yard fire that the defendant had
17 access to, that line of cases, Shropp and Arnold and now
18 Bostick, they are now dealing with this jury charge, so I
19 guess what I'm asking is to argue against precedent to
20 say that the standard charge, I think this is from Ripon,
21 that says that the direct and circumstantial evidence are
22 equally --

23 THE COURT: I'm not familiar with the exact
24 case you're referring to, but I usually on -- there is a
25 difference when it comes to directed verdict between

1 direct and circumstantial evidence.

2 MR. BUTLER: Yes.

3 THE COURT: But it has to be substantial
4 circumstantial evidence.

5 MR. BUTLER: Yes, sir.

6 THE COURT: I'm not sure if they have changed
7 that rule.

8 MR. BUTLER: In case they want to, I have to
9 give them the opportunity to do it, and I think the
10 proposition -- the law makes absolutely no distinction
11 between the weight or value to be given to either direct
12 or circumstantial evidence is no longer valid.

13 THE COURT: Okay. All right. I'll deny that
14 then. Anything else you want to bring out?

15 MR. BUTLER: No, sir, and I think it's
16 already clear you're not going to be charging assault and
17 battery high and aggravated nature.

18 THE COURT: Correct.

19 MR. FINCH: Your Honor, the state would ask
20 the inclusion of the assault and battery of the high and
21 aggravated nature as a lesser included and that the facts
22 of this case could easily bear on a conviction of assault
23 and battery of a high and aggravated nature. It's
24 perfectly reasonable to believe the jury could come to
25 the conclusion that the assault did, indeed, happen in

1 the rest room there and still discount, or not believe,
2 that the circumstances were with the intent to commit a
3 criminal sexual conduct.

4 THE COURT: Do you want to respond to that?

5 MR. BUTLER: Yes. I need to.

6 First of all, if they thought this was ABHAN,
7 they should have brought it as an ABHAN. I haven't
8 presented any testimony that would have altered their
9 perception of their case. If the evidence of the ABHAN
10 had come out through my witnesses, I could perhaps
11 understand it, but I didn't put up anything. This is all
12 their case.

13 If they thought it was an ABHAN, they should
14 have indicted an ABHAN, so I would just object on the
15 basis of just basic fairness. What they're trying to do
16 is their case, perhaps, has not gone as well as they
17 like, and they're trying to hedge their bets, so I would
18 object on that basis, but, also, the cases do not stand
19 for the proposition that ABHAN is always appropriate when
20 there is an indictment for criminal sexual conduct.

21 I think the case is State vs. Nicky White,
22 which is from Richland County, which is the first case
23 that recently recognized that ABHAN can be lesser
24 included.

25 There has to be some testimony in the record

1 that only an ABHAN occurred and not a CSC, so, for
2 example, let's say Mr. Logan did testify and said, yes, I
3 hit her, but I did not try to sexually assault her. Then
4 it will be appropriate, but the only person who testified
5 to any form of assault is Jarvia O'Neal, and she said
6 that it was an assault with intent to commit CSC, so
7 under these facts, the ABHAN would be inappropriate, even
8 if I wanted it.

9 THE COURT: Well, I have to agree with
10 Mr. Butler, there is only evidence in the record that
11 there was an attempt at criminal sexual conduct. There
12 is no attempt that there was anything other than that.
13 There was no -- there's no basis in the record other than
14 they just don't believe what the witness had to say as to
15 assault and battery of a high and aggravated nature. All
16 right.

17 MR. FINCH: Your Honor, just to be heard,
18 just the last bit on this is that the state would believe
19 that -- the state's position is that that is enough that
20 the jury could reasonably believe a portion of their
21 testimony, just like they're charged. They can believe a
22 portion of the witness's testimony regarding the assault
23 and disregard, not believe, the portion regarding the
24 intent and that the facts do bear for the inclusion of
25 charge on assault and battery of a high and aggravated

1 nature. The state has a right to request those lesser
2 included, particular facts would bear out the inclusion
3 from that charge.

4 THE COURT: All right. Well, I'm still going
5 to deny your request. All right?

6 So he has not put up any defense, so he gets
7 to close. How long are you going to need on your
8 closing?

9 MR. FINCH: Fifteen minutes.

10 THE COURT: All right. How long do you think
11 you'll need?

12 MR. BUTLER: Everybody always laughs,
13 especially the deputies, when I say 20, so I'll say 30,
14 but I'll aim for 20.

15 THE COURT: All right. Let's bring the jury
16 in.

17 (In open court, jury present.)

18 THE COURT: All right. Be seated. All
19 right. Does the defense wish to call any witnesses?

20 MR. BUTLER: No, sir.

21 THE COURT: All right. Now, folks, you have
22 heard all of the witnesses in this case. Now the defense
23 has rested, the state has rested, and so we are going to
24 move into the closing arguments, and I will instruct you
25 on what the law is and you will retire to deliberate and

1 consider your verdict.

2 Under our rules, the state has the burden of
3 proof, and, typically, they would have the right to
4 close; however, since the defense did not present any
5 evidence, they will have the right to close, so you will
6 hear from the solicitor first on his closing argument,
7 and then the defense will close, and then I will charge
8 you on the law.

9 Another important thing to remember about
10 this is my reminder at the beginning of the trial the
11 lawyers are not witnesses, they are not testifying, and
12 what they are doing now is going over evidence with you.
13 They will give you a preview of the law, argue that to
14 render a verdict in an attempt to get you to render a
15 verdict on their behalf.

16 So, Mr. Finch, if you're ready, you may
17 begin.

18 MR. FINCH: Thank you, Your Honor.

19 Just yesterday you heard the opening
20 arguments, and now we're here in closing arguments, and
21 my job is to tell you what, regarding the evidence that's
22 been introduced, what that does regarding the state's
23 burden to prove the crimes beyond a reasonable doubt.

24 I want to start off talking about reasonable
25 doubt, because it's a phrase that gets used a lot, but

1 it's not real easy to define, and in a little bit, the
2 judge is going to give you instructions on the law,
3 called charging you with the law, and he'll tell you the
4 elements of the crime and go through some other things,
5 and, of course, you've heard the judge on that with
6 regard to what the law is since he's the judge of the
7 law, but I just want to talk to you about a couple of
8 concepts you're going to hear about.

9 The first is reasonable doubt, and the judge
10 will tell you that is not beyond all doubt, but that
11 which leaves you firmly convinced of the defendant's
12 guilt.

13 If you're not firmly convinced, your job
14 would be to acquit, find the defendant not guilty. If
15 you are firmly convinced, your job is to find the
16 defendant guilty. It's not possible for anyone to remove
17 all doubt from any person's mind, and the standard
18 doesn't call for that, but what is reasonable, and that
19 is something you should take with you and think about and
20 consider when you're reviewing the evidence.

21 The evidence in this case comes mostly
22 through testimony, testimony through eyewitnesses,
23 testimony from the victim, testimony from the officers.
24 There is a couple of exhibits, mostly in the form of
25 pictures, that will go back to the jury room with you.

1 But, by and large, what you have is the
2 testimony of witnesses, and one of the jobs that you have
3 is to weigh their credibility, or their believability,
4 and there is lots of reasons to believe people.
5 Sometimes you believe part of what they say or believe
6 none of what they say, or believe all of what they say,
7 and each one of you has experiences in life, and you have
8 your common sense that allows you to look at somebody and
9 decide whether or not you believe them.

10 Twelve of you are going to have to come
11 together and believe a story, and I know Mr. Butler had
12 fun with me saying story, because he was referring to a
13 story only being fictional. Just because somebody says
14 story doesn't mean it's all made up. It's just somebody
15 telling the elements of what happened, for instance, what
16 happened in this assault, in this event, on February 4th,
17 2010, was in the early morning hours at club love Lovey
18 Dovey, Jarvia O'Neal went to the bathroom. She didn't
19 want any company. She didn't invite any company.

20 The defendant went in the bathroom with her
21 and assaulted her. You've heard from Jarvia O'Neal, how
22 ferocious that attack was, how vicious it was in that
23 very small bathroom. You heard from Mr. Green about how
24 small that bathroom is, about four by four feet, maybe
25 four feet by five feet. Not a very big bathroom. It may

1 be the size of the powder room in your own house, and the
2 kind of attack that took place in this small, confined
3 area.

4 And I know that Mr. Butler alluded to in his
5 opening that nobody heard this and nobody saw it. Of
6 course they didn't see it. It was a small bathroom
7 designed for one person to use at a time. Two people
8 were in there. Nobody had X-ray vision. They couldn't
9 see what was going on in there. The music was really,
10 really loud. Everybody testified to the volume of the
11 music. You could only hear somebody talking if they were
12 right in your ear.

13 You heard Mr. Green talk about that. He said
14 he could see people talking but he had no idea what
15 anybody was saying. The idea that you could look in
16 there and see what was going on was just not possible.

17 The other thing that Mr. Butler talked about
18 in his opening is that this is the kind of thing that
19 happens all the time. People go to clubs. And even
20 talking to some of the witnesses, this is what happens.
21 Guys get a little bit too drunk, too much to drink, and
22 then they chat up a girl. They get interested. Sure,
23 that happens all the time.

24 What doesn't happen all the time is that
25 somebody who has gotten pushed back decides to go to the

1 bathroom and take what he wants, or show that person how
2 it's going to go, by punching them in the head, by
3 choking them, such that they have swelling and knots,
4 split skin, running blood, all testified by witnesses.

5 Let's think about some of those witnesses.
6 You heard lots of testimony that they're not friends.
7 They're not doing this for each other. They're not doing
8 this because they're friends. We asked them to come here
9 and tell the truth. They swore to tell you the truth,
10 and not every witness was consistent on every single
11 thing. They were consistent in the fact that Jarvia
12 O'Neal was in that bathroom and she came out, bloody,
13 beaten. The only other person in there was the
14 defendant. And you heard from Ms. O'Neal what he said to
15 her when he was in that bathroom: It's crude language,
16 but in no uncertain terms he made it clear that she
17 thought she was one way, well, he was going to take what
18 he wanted. He was going to show her, essentially, who
19 was in control of that situation, but she fought back.

20 You also heard how she has a history of
21 fighting back and that fighting back has her in trouble,
22 it got her in trouble, so all the discussion of why
23 didn't she call the police? Why didn't she report this
24 right away? She told you. She was scared. The guy took
25 her license and the \$20 out of her purse, in the middle

1 of that fight. She sees that happen, right after she has
2 almost been choked unconscious and beaten, and now she's
3 on the ground and has an opportunity to get out. She is
4 thinking life and death. Get the air in. Breathe.
5 Recover. He's on his way out of the door. You heard
6 testimony he's the first one out the door. Jarvia O'Neal
7 is rich with details.

8 She was cross-examined extensively about
9 those details. She set the record state on when things
10 happened, how things happened. Things called into
11 question: So you had your head here, but couldn't reach
12 the door. That is a four foot wide bathroom. You can
13 reach one side to another with four feet. You can reach
14 a doorknob.

15 It's not Jarvia O'Neal's fault she couldn't
16 get the door open and get out of there. That's not what
17 we tell people in South Carolina. It's not what we tell
18 people in America. Well, if you can't reach the door to
19 the bathroom, then you deserve to get beaten up, and
20 maybe raped.

21 That's something where people blame the
22 victim and say this happens all the time and dismiss it.
23 There was also some discussion about whether or not there
24 was any medical evidence, CAT scans, MRIs. The state
25 brings forth the evidence that it has. You can't

1 manufacture CAT scans or MRIs. A medical professional
2 determines that isn't necessary for treatment. It
3 doesn't exist. It still doesn't change the fact that a
4 police officer and disinterested parties saw swelling,
5 broken skin, blood, hair messed up, crying, distraught
6 individual.

7 You saw Ms. O'Neal on the stand. You saw how
8 she reacted to being here. She told you she moved to the
9 Atlanta area to get away from this. She came back to
10 help make sure the story was told, the true story was
11 told, so that you would have the information to make the
12 decision as to the defendant's guilt or innocence because
13 that is what we're asking you to do, weigh the evidence,
14 weigh the credibility of the witnesses, and their
15 testimony, and make that decision, and it's not an easy
16 decision. It's not a light decision.

17 Mr. Butler talked about how easy it is to
18 bring a case. It's not easy to bring a case. The case
19 starts with the testimony of one witness. That's true.
20 But if nobody could see what was happening in there, it
21 does take the testimony of one witness. It takes one
22 person to say what happened to them. If that wasn't
23 available to us as individuals and citizens, what lesson
24 would that teach us about civics in our country, that if
25 you're all alone and nobody can hear you, you're fair

1 game?

2 Also, there is some illusion to the idea that
3 you're not going to hear any testimony from the police
4 about what they saw that night, or DNA evidence or,
5 again, that's not stuff that was available. It does not
6 dispute -- the lack of that does not dispute what people
7 saw, the injuries they saw, the reactions they saw, and
8 there is -- it's absolutely understandable, as part of
9 your deliberations, to consider how someone responds, but
10 you must also consider that not every individual responds
11 in exactly the same way to violent crime, sexual crime,
12 crimes that leave someone injured.

13 Each individual, no matter how they are
14 situated, comes with their own past, comes with their own
15 information that makes them do what they do. Again, none
16 of that changes the undisputed testimony that Ms. O'Neal
17 went in the bathroom and she wasn't cut and bleeding and
18 swollen. When she came out of the bathroom, she was.
19 She told you what happened when she was in the bathroom,
20 and what the defendant said. She told you what his
21 intent was.

22 If he just wanted to beat her up, he just
23 wanted to show her what was what, he could have done that
24 out where they eat crabs. He could have done that
25 outside. He could have done that outside of the Lovey

1 Dovey. He could have done it in one of the dark corners.
2 You heard it was a dark, loud place. There was lots of
3 people. If he just wanted to punch her in the face, he
4 could have, but he didn't, but he's not outside bathroom.
5 He went into a place where nobody else could see, where
6 no one else could interrupt, where nobody else could
7 help, a place where she was most vulnerable, where she
8 was alone.

9 Regarding those injuries, obviously, you
10 heard from Ms. O'Neal. You heard from Ms. Bell, a friend
11 of Jarvia's again, not every bit of her testimony winds
12 up exactly with the testimony of the next person or the
13 next person, but that is the nature of things. That's
14 the nature of individuals that have that individual
15 response. Their memories are a little bit different.
16 Some people remember what could be a five minute time
17 frame. Some people might think it's longer, some people
18 might think it's shorter. It's their perception. There
19 are bits of things of anybody's testimony at any given
20 time are slightly unreliable. That is the nature of
21 people, but what is not different in any of their
22 accounts, again, an assault happened inside that
23 bathroom, inside the Lovey Dovey, February 4th, 2010.
24 It's correct.

25 The only testimony you heard about what was

1 said in there, and the expressed intent of the defendant,
2 was from Jarvia O'Neal. It's impossible for anybody else
3 to have been there to hear it and to come in and testify.
4 It might have been impossible, based on the volume in
5 that club, if he had said it right outside that door, if
6 he said it in the front, if he was saying other crude
7 things to her.

8 Aaron Green told you that. Andrea Bell told
9 you that. Virgil Washington told you that. Think about
10 what else Virgil Washington said. He's been in that
11 club. He's friends with Aaron Green. He doesn't really
12 know Jarvia. He was doing a favor for Aaron. Didn't
13 know Andrea Bell. Still doesn't know her. They set out
14 in the hall for a day and a half, still doesn't know her.
15 He doesn't have a dog in this fight, he's just telling
16 you the truth, what he saw.

17 What else did he tell you? He saw something
18 going down, and he wanted out. When something like that
19 is going down in the club, get out. Save yourself. It's
20 a bad scene. No question, it was a bad scene. It was
21 chaos, in his words. The defendant was gone. Out.
22 Aaron Green, right out the front door. He was dealing
23 with Jarvia who he knew, semi co-worker, maybe done some
24 promotions, et cetera, together, tending to her, making
25 sure she was okay.

1 Should he call the cops? Again, how she
2 responds, that's her response, and that is for you to
3 weigh, her response, and decide if it's indicative of
4 something or whether you can just chalk that up to that's
5 how she responded based on her life.

6 You heard from Officer Gray who went down to
7 Roper Hospital. He's not a detective. His job is to
8 make that first contact, so he did. He didn't have a
9 camera, but he did the smart thing, and he noted
10 injuries. And he looked at that report and he was able
11 to pull from that report and remember independently these
12 are the injuries I saw, this lump on her head, the cuts,
13 the swelling. Again, undisputed. And, again, what
14 happened in the timeline? A couple days later, the
15 defendant starts showing up.

16 How do you know that? How do you know where
17 to show up? He didn't show up in Goose Creek where she
18 was staying. He didn't show up at the Lovey Dovey. He
19 showed up on [REDACTED], [REDACTED], [REDACTED],
20 same address that was on her driver's license that he
21 took out of her purse along with \$20.

22 There it was, sitting open on the vanity
23 there. He reached in, took it. Again, why didn't she
24 report that? She didn't she say he got my ID? That's
25 for you to weigh. She just fought her way out of a

1 brutal attack in a bathroom. Her first thought was, Get
2 out of there, same thought that Virgil Washington had.

3 Virgil Washington was a regular club goer,
4 but he also knew when stuff goes down, get out. That's
5 the same thing that Jarvia O'Neal did. She told you what
6 happened the last time she got in a scuffle like that.
7 She didn't make any bones about it. She told you she
8 served time in prison. She didn't back away from that.
9 She didn't hedge on any of the facts.

10 She told you what happened. She knew what
11 that would do. She knows how people see convicts. And
12 that is for you to weigh. That tells -- another way to
13 look at that, though, that she's telling you the truth.
14 Her face isn't lying when she comes out of that bathroom.
15 You then have to say, yeah, something happened in there.
16 Maybe not like that.

17 Well, then, that means you have to imagine a
18 whole different set of circumstances, that she went in
19 there and she did get beat up and then just threw in this
20 extra stuff for whatever reason, and that just doesn't
21 make sense.

22 It's not reasonable to think that she's just
23 going to add something on there, add some words that are
24 said by the defendant in the midst of this struggle.

25 It's not her job to charge crimes, come up with elements

1 of crimes.

2 She's just telling you what happened as she
3 remembers it, vivid in her mind today as it was on
4 February 4, 2010. Think back to when she testified. She
5 had a hard time. She was shaking. She was crying.
6 That's for you to decide, how people respond.

7 You heard from the officers. Again, they
8 have no dog in this fight. Officer Gray just puts down
9 the facts. We wish we had pictures to show you.
10 Fortunately, we have disinterested parties that can tell
11 us what Ms. O'Neal looked like, why she's scared. She
12 can tell you how he got the address to drive by the
13 house.

14 You heard from Marquise, her nephew, drove
15 three hours to be here, to tell you this. He thought it
16 was important.

17 This guy came around the house, continued
18 this assault by being present and making her feel unsafe
19 and letting her know, yeah, I know where you live because
20 I got your ID, and here is what I think of you. Here are
21 a couple hand gestures.

22 I don't know what the defense is going to
23 tell you. It's not my job to worry about the defense,
24 necessarily. My job is to present a case, to meet the
25 elements of the crime, and provide enough evidence so

1 that you can make a decision.

2 The burden, again, is beyond a reasonable
3 doubt. Burden on the state is then to prove the case
4 with the evidence we have beyond that reasonable doubt.
5 It's our position you have the evidence. You have the
6 testimony of the injuries, injuries to Ms. O'Neal, no
7 injuries to the defendant. Police reports, Ms. O'Neal,
8 witnesses see the defendant come to her house.

9 Essentially, it does boil down to you have to
10 believe, though, what Jarvia O'Neal tells you happened in
11 that bathroom, what he said, that he was going to have
12 sex with her that night. Not in those gentle terms, and
13 then in the scuffle, when she fought back, he reached
14 into her purse and grabbed her money and license and ran,
15 looked for his cell phone and got out of there.

16 The judge is going to tell you about the law,
17 the elements of the law that you need to make sure that
18 we have proven, that an assault took place and that the
19 intent of that assault was a criminal sexual conduct.
20 And they'll tell you about the assault and he'll instruct
21 you on what an assault is. The state is confident that
22 it has met its burden to that. As to the intent, the
23 words of the defendant, clear on his intent, what he
24 wanted to have happen in that bathroom, what his goal of
25 being in that bathroom was.

1 He'll tell you what sexual contact and sexual
2 conduct is, and in that law as charged, you'll hear about
3 the circumstances by which that has to happen, aggravated
4 physical force, again, felt like we met that burden, or
5 the results of the kidnapping, which, in our state, is
6 just confining someone to a state and not allowing them
7 to leave, and the robbery, strong-arm robbery, common law
8 robbery, and the judge will instruct you on the finer
9 points and nuances of that law, but it boils down to
10 taking something from somebody with aggravated threats or
11 intimidation or use of force, taking something that
12 doesn't belong to you with the intent of keeping it
13 forever, taking that license and that \$20 out of that
14 purse.

15 He didn't know her. He wanted to know her,
16 real bad. When she said no, he decided to take things
17 into his own hands. If he didn't know her, didn't know
18 where she lived, how did he get there? Because it was
19 written on her license.

20 You saw Jarvia's face when she was
21 testifying. You can imagine her face through
22 descriptions of all the testifying witnesses. You saw
23 the injuries. An assault took place in that bathroom.
24 The intent was for sexual assault, sexual in nature, and
25 then he took what didn't belong to him when he couldn't

1 get what he wanted, which didn't belong to him, and he
2 used it to continually intimidate Ms. O'Neal. That's
3 what the evidence will show you.

4 That's what you have before you. That's what
5 you can take back to the jury room and analyze and
6 discuss, and your memories and your notes of those who
7 testified.

8 Weigh that evidence. Do what the judge asks
9 you to do. Keep an open mind, but remember, reasonable
10 doubt is that which is reasonable, not all doubt, not any
11 doubt. I'm going to ask you to return a verdict of
12 guilty on the assault with intent to commit sexual
13 conduct on a first degree and guilty on strong-arm
14 robbery.

15 THE COURT: Mr. Butler?

16 MR. BUTLER: You know, every time I think
17 about my closing, I have my notes and I imagine what it's
18 going to be like, the first words out of my mouth, and I
19 think I got it all planned, and then the other side says
20 something that makes me change it. I don't know why I
21 bother writing it out anymore, but I want to make one
22 thing clear: I stopped counting at nine how many times
23 Mr. Finch said an assault took place. I stopped counting
24 how many times he said evidence that she was injured.

25 I hope this is clear, and I hope it was clear

1 from the beginning: Clarence is not charged with
2 assaulting Jarvia O'Neal and only assaulting her. He's
3 charged with assault with intent to commit criminal
4 sexual contact. He's charged with attempting to rape
5 her. I hope that that is clear so that this bait and
6 switch isn't persuasive to you. In other words, well,
7 it's obvious an assault happened. It happened in the
8 bathroom. He is the only one in the bathroom; therefore,
9 he's guilty, bait and switch, no, wrong, that's not what
10 he's charged with.

11 You know, there is a line from one of my
12 favorite films that says, I never say I told you so, and
13 I hate people who do, but I told you so.

14 I do say I told you so when it's important,
15 and I told you yesterday not to blink, this was going to
16 be quick, and this is a one witness case and only a one
17 witness case, and it still is and that one witness,
18 Jarvia O'Neal, is not telling the truth, and with the
19 exception of that last point, I think Mr. Finch largely
20 agrees with me.

21 I think I could sum up his closing argument
22 in one sentence: You can find him guilty because she
23 says it happened.

24 I want to make clear that I am not asking you
25 to judge her or anyone else in this case, and what I mean

1 by that is, I'm not asking you to judge their character
2 or their quality of life, what kind of people they are.
3 It doesn't matter to me, and it doesn't matter to you, it
4 shouldn't matter to you. It shouldn't matter in this
5 room. This room is supposed to be the great equalizer,
6 where people are treated equally.

7 I didn't ask about her tattoos or what she
8 does now. I don't care. The only thing that matters is,
9 is she telling the truth about this particular thing that
10 happened on this particular day. Beyond that, who cares?
11 I made fun of club Lovey Dovey. I have a different sense
12 of humor. Not important.

13 No problem if people want to go to Lovey
14 Dovey, eat crabs, whatever you want to do. The only
15 think I'm asking you to judge, the only thing I'm
16 critical of and I'm strongly critical of, is she took an
17 oath to tell the truth, and it meant nothing to her. And
18 if I can't convince you that that's dangerous to him and
19 that should bother him and me, as his lawyer, I hope I
20 can convince you that that should bother you.

21 If we could go back in time, if we had video
22 cameras everywhere, we wouldn't need jury. We wouldn't
23 have to have trials, you know? We would just go back and
24 see happens. You wouldn't have to have witness stands
25 and witnesses to take the stand and swear to tell the

1 truth, the whole truth, and nothing but the truth, and we
2 can't go back in time, so this is all you have.

3 We're asking a lot of you to go back to a
4 place where you've probably never been, but you certainly
5 weren't when this happened, to go back in time, and this
6 witness stand, all of your senses, your eyes, your ears,
7 your sense of smell, your sense of touch, it is your
8 world, and the judgement that you're about to make, what
9 you have to make, is entirely what comes from that
10 witness stand, and if the person who is testifying is not
11 telling you the truth, you cannot judge correctly.

12 It's like trying to drive down Alpine Road
13 with your eyes sewn shut. Not only can you not do it,
14 it's dangerous. So how is he not telling the truth? I
15 think everyone in here knows she's not telling the truth,
16 and not just in otherwise insignificant ways about
17 details. Everybody knows that. You put ten people in a
18 room, they all see the same thing. They're all going to
19 tell you something different in small details.

20 But what she's telling you, it doesn't make
21 sense in and of itself internally. It's contradicted by
22 her own words, either from the witness stand or what she
23 said earlier, and it's contradicted by her other
24 witnesses.

25 Oh, I agree, by all means, listen to what

1 these other witnesses tell them. You know why I didn't
2 ask questions of any of those other people from the bar,
3 Andrea, Virgil, and I asked Aaron a few, is because what
4 they said helped me and proved that she was not telling
5 the truth.

6 The time she arrived, why is that
7 significant? Is that just a minor detail? Remember what
8 she testified to? She got there at 1:46 when the bar
9 closed at 2:00. Well, that's important because if she's
10 only there for the crabs, and she's not there to
11 socialize or, I don't know, party, then she was only
12 going for the tail end and only going to be there for 15
13 minutes, dressing for crabs. I stop counting how many
14 times she emphasized she was only there for the crabs.
15 But why would she go 15 minutes, 14 minutes before an
16 establishment closes? Well, she didn't, and you know she
17 didn't because she told the cops that she had been there
18 several hours.

19 Why not just tell the truth about that? She
20 already doesn't want to have been there for any reason
21 other than for the crabs. Her own friends say otherwise.
22 I know they say -- first of all, they say they're not
23 friends. She called them friends. What difference does
24 it make, but they say they were there much earlier. Not
25 telling the truth about that.

1 Clarence's behavior, why does that matter?
2 Well, she says he's obnoxious, persistent, drunk. His
3 mouth smelled like the entire bar. Well, why does that
4 matter? Is that an insignificant detail? No, because
5 it's just as Mr. Finch said, that is what is supposed to
6 give him the motive to commit this sexual assault, this
7 would-be rape, this attempted rape, is that he's chatting
8 her up, as Mr. Finch said, hitting on her, and she's
9 blowing him off and he's getting angry and he's getting
10 drunk and he's getting obnoxious, and he's not taking no
11 for an answer. That's his motive, except it didn't
12 happen.

13 You know how you know it didn't happen? Is
14 because nobody else saw it, and that is not something
15 that would be insignificant to them. Everybody knows a
16 guy like that or has been to a party like that where
17 somebody has had too much to drink and is acting like a
18 fool, and you know what is most striking about it? The
19 next day everybody remembers it, and that is what
20 everybody talks about.

21 Not here. Nobody notices anything out of the
22 ordinary. You know why else you know it didn't happen?
23 She doesn't tell the police about it. She doesn't say
24 that he was drunk and out of control and obnoxious. She
25 didn't tell the police about it because it didn't happen.

1 And if that didn't happen, he has got no reason to try to
2 sexually assault her, and he doesn't, because he didn't.

3 What else does she now tell you the truth
4 about? That she cussed him out loudly. She even had
5 some few choice words that she gave by way of example,
6 although she says that she's not comfortable using those
7 words to police. She had no problem telling you that,
8 but why is that important? Because, well, of course she
9 would, cuss somebody out and react and get defensive, and
10 if anybody would, Jarvia O'Neal would.

11 She shouldn't take it and she wouldn't take
12 it. She would be loud. She would be cursing him. There
13 would be a scene, and everybody would have seen it.
14 Somebody, one person, her friends who were there and
15 heard what she says? She says she's with them the whole
16 time until she goes to the bathroom.

17 I think I got it wrong. I think I said she
18 was at the bar, and she corrected me and said, no, I was
19 at the door the whole time. How come nobody sees the
20 scene about to happen, the bar manager? He doesn't want
21 anything like that happening in his establishment. I'll
22 tell you why. The same reason she didn't tell the police
23 about it, it didn't happen.

24 And also, it's not just an omission.
25 Sometimes we might forget to tell people things. She

1 might have forgotten to tell the police things, but she
2 told the police, not once, but twice what she said. I
3 politely said no. Okay. That's a huge difference, and
4 why does that matter? Because you wouldn't say, no, I'm
5 good to someone who is being drunk and obnoxious in the
6 way she described. You would cuss him out. I would.
7 Anybody would.

8 Why didn't it happen? There wasn't a scene
9 because Clarence wasn't causing a scene, and the only
10 evidence to the contrary was her word and her word alone.

11 What also doesn't make sense? Jarvia's own
12 behavior, the way she acts upon leaving the bathroom and
13 the things she says and, more importantly, what she
14 doesn't say. Was she upset? Yeah, she told you. Was
15 there a scuffle? Of course there was, but you want to
16 know the best explanation why nobody insisted that the
17 police be called, or no one insisted that she go to the
18 emergency room? You know why Virgil, Andrea, and Aaron,
19 nobody insisted? Because it wasn't a big deal at the
20 time. Because it didn't happen.

21 You know, you might notice that we lawyers
22 object when a witness wants to say what other people have
23 said, and that's hearsay. You heard me say it a lot.
24 There are times when it's okay, and when a person is
25 excited because of an event that has happened to them,

1 they can talk about -- other witnesses can talk about
2 what that person said, okay? No one said that she came
3 out and said, He raped me. He tried to rape me. He
4 robbed me. No one said that, and it's not that she
5 didn't say anything.

6 Remember what Virgil said? She mentioned
7 that he hit her, so she's talking. What did Aaron say?
8 She mentioned this is the night of the incident -- a
9 confrontation. Come on. A guy says I'm going to F you
10 whether you like it or not, holds you up by your neck
11 against the wall, punches you repeatedly in the face and
12 says, I'm going to F you whether you want me to or not,
13 and her description from her friends, the state's
14 witnesses, she mentioned that he hit her.

15 She mentioned that there was a confrontation,
16 and, you know, what better explanation for why her
17 friends or acquaintances don't insist on these calls
18 being made? Because there was no reason to call them
19 because a crime didn't happen, at least not the crime
20 they're asking you to find Clarence guilty of.

21 The hallway, why is that important? Remember
22 what she testified to? She says, I didn't even know he
23 was behind me until I tried to get in the bathroom and he
24 was right behind me and he was trying to force his way
25 in.

1 Well, that's important for the reason that
2 she admitted. She said, If I had known somebody so drunk
3 and obnoxious and persistent was behind me, I wouldn't
4 have gone to the bathroom.

5 Well, of course she wouldn't. Well, what she
6 told the police was he was right behind her when she went
7 walking down the hallway. She didn't act like she was
8 almost raped. She didn't act like she was bothered. She
9 didn't act like or show that he was being persistent,
10 because none of those things happened.

11 At the end of the day, all you have is her
12 word, and that is it, and it's not true and it doesn't
13 make sense and her own witnesses, their own witnesses,
14 tell you different.

15 Don't you know she would have been like she
16 was on day one with you on direct if this had happened?
17 Is she a shrinking violet? Is she shy? No. Does she
18 not speak her mind? No. Somebody call the police.
19 Arrest him. Arrest that MF. He tried to rape me.

20 And not everybody, sure, maybe not everybody,
21 but is she quiet? Is she reserved? So what really
22 happened? Look, you know, in some ways it doesn't
23 matter. Okay. I know that sounds strange for me to say.
24 This isn't like television. We would like for everything
25 to be wrapped up nice and neat at the end and to have a

1 story of either guilt or a complete story of innocence
2 where you know everything, but this isn't television.

3 You aren't going to know what happens. There
4 are always going to be unanswered questions, but the
5 route this case has taken has derailed from the
6 beginning, because she told a lie, and the state is
7 trying to fit a round hole into a square peg and they
8 made a mess and now they want you to clear it up.

9 So we will never know, but does it matter?
10 We know what didn't happen. We know what could have
11 happened is what she said. I don't know. What, she
12 found herself in places she wasn't supposed to be,
13 perhaps doing something she wasn't supposed to do.

14 She gets into a scuffle with Clarence,
15 undoubtedly stupid, I'm sure, and, you know, we know that
16 she's not one to take -- how should I put this --
17 confrontation lightly. We know that. We know what
18 happens when you disagree with her. You get your throat
19 cut with a box cutter, and she did hedge on the facts.

20 I don't know what Mr. Finch is talking about.
21 She didn't hedge on those facts. Well, if she did, I was
22 just minding my own business, on the way home from
23 church, and they offered me a beer and again I politely
24 declined.

25 Well, no, you have her own words, what she

1 said when it happened. She asked for beer, they said no,
2 and it results in a fight again over something stupid.
3 At that time, somebody got sliced up and she went to
4 prison for it.

5 So she gets in a scuffle with him, she's
6 upset and embarrassed. She doesn't go to the emergency
7 room; she doesn't call 911; her friends don't do it
8 because no crime happened, or not this crime, because she
9 wasn't seriously injured. Then somebody else like her
10 family sees these injuries and she's got to come up with
11 something. They get her, remember? They get her report.
12 The people that you love and care about the most, those
13 are the ones that sometimes you have to hide things from.

14 And now you hear the excuses. I don't know
15 how many excuses the state should get in a criminal case,
16 how many times they should be able to explain away what
17 should be there but what's not? I don't know how many.
18 How many do they got? Not this many.

19 Well, it was loud in the club. Well, it was
20 crowded in the club. But not everybody said that it was
21 dark in the club. Well, how many times are you going to
22 explain away the absence of the facts that should be
23 there and still expect us to believe this thing happened?
24 I don't know. Not this many.

25 Well, you know, she didn't call 911 and

1 report it because not everybody reacts the same way to
2 something like this. Well, she didn't have a problem
3 chasing who she thought was Clarence down the road. She
4 didn't have any problem calling the police then. She
5 didn't call the police that night because it didn't
6 happen.

7 And this thing about the license plate, the
8 license driver's license, and that is how Clarence
9 supposedly knows -- I don't know why that matters a whole
10 lot. There is no testimony from anybody that her
11 driver's license had that address on it. Nobody from the
12 DMV says that. That is probably neither here nor there,
13 but, you know, I did notice that one thing that got
14 skipped over until I asked her is that her -- I believe
15 it's her sister said, Oh, yeah, the car. I didn't see
16 the person, but that was definitely the car. She was
17 upset. It was beige or white.

18 Okay. There is a difference between gray and
19 dark gray and black and navy blue and light blue, but
20 there is no confusing beige and blew. Forget it. You
21 know? And remember what she told you? I think it was on
22 cross, I got her to admit, no, Aaron gave her the tag
23 number.

24 That's what had happened. She dose want to
25 find out who the solicitor is because she's angry and

1 there is more ears out there than I have, but I thought
2 what she said at the close of her direct is that she was
3 thinking about going to battle herself. She's trying to
4 find him. She gets it from Aaron, and you know that
5 because why else would she be calling the police to say,
6 I got a tag number? She already had the tag number she
7 just didn't want to say how she got it.

8 I'm almost done, I promise. Judge has
9 already talked about it some, and I feel that I have to
10 mention as well, you're not allowed to even think, let us
11 bring up, that Clarence didn't testify or I didn't put up
12 any evidence, but I want to tell you why.

13 First is we don't require people to do that
14 in this country, and the reason is that it's too hard for
15 us to ask you to set aside when a witness stumbles over a
16 word or pauses too long or appears nervous, so we don't
17 make people do that when they're on trial for facing long
18 terms in prison. We don't make them do that, but there
19 is a good reason, and I want to address it.

20 You always heard that people's most biggest
21 fear is public speaking. I'm nervous right now. Maybe
22 you can tell, maybe you can't. And I do this for a
23 living, so we don't make people take the stand, but there
24 is another reason for this. I get to go last, and I want
25 to go last, because I think it this is wrong and I want

1 you to hear from me last.

2 You know, I'm trying not to be too dramatic,
3 but this evidence isn't sufficient to convict somebody of
4 spitting on the sidewalk, much less raping somebody, but
5 the reason there was no reason to have him testify,
6 besides those, you want to call this he said she said,
7 because it's only what she said. Okay? It's he said she
8 said, and what she said is not true, and what else do you
9 need to know? Forget it. It didn't happen.

10 When I used to live in Columbia, I had a
11 friend, and I think I was in graduate school, and he was
12 out one night in Five Points. And he came back with a
13 small cardboard box that was taped up with, like, duct
14 tape, and it seemed odd to me, and I said, What is that?

15 And he said, It's supposed to be a CD player.
16 I said, Where did you get it? He said a bum sold it to
17 me for \$5.

18 I didn't need for him to open the box to know
19 there wasn't a CD player. I didn't need him to open the
20 box to know it was nothing but garbage, you know why?
21 Because a bum sold it to him for \$5? It was ceramic
22 tile.

23 You don't need to know what is in the box.
24 What she said makes no sense, and what she said is
25 physically impossible and what she said is contradicted.

1 not only by her words, but the words of her friends. It
2 didn't happen.

3 You're about to make one of most important
4 decisions that you're ever going to make, and the fact
5 that this was so quick doesn't make any of this less
6 serious. If anything, quite the contrary, it should be
7 more serious, and I want to make sure you understand
8 something. The judge sort of alluded to it on day one.

9 You only get one chance to get to a trial,
10 okay? And you hear about somebody getting a new trial
11 after an appeal, okay, or you'll hear about somebody
12 sitting in prison forever and ever and there is some new
13 evidence so maybe they get a new trial.

14 Other Courts may sit in judgment of decisions
15 I've made, or even the decision that judges make, but
16 nobody can question the verdict. You cannot call me
17 tomorrow, and, believe me, this happens, and say, you
18 know what? I was thinking that didn't really add up. I
19 want to change my vote.

20 You can't do that. You can't just assume,
21 well, let's just do it this way and err on the side of
22 caution and somebody will straighten it out later.
23 Huh-uh. Your verdict exists forever, in stone and in
24 blood, and it exists starting today. Today is the day.

25 There are no repeats. There are no do overs.

1 You took an oath. Everybody in this process, witnesses,
2 judges, lawyers, we all take oaths, and that is to ensure
3 justice. That is to ensure that innocent people don't go
4 to prison based upon contradiction, physical
5 impossibility, lie, innuendo, gossip, and garbage, and
6 you took an oath. You took an oath to apply the law of
7 the State of South Carolina and render a verdict, and
8 that is whether you like it, whether people are popular,
9 whether you agree with the law or not.

10 That's your oath, and it's as simple as that.

11 I have to sound like a lawyer occasionally. Do you
12 believe Jarvia O'Neal beyond a reasonable doubt that this
13 happened the way she said it? And you can't, and that is
14 what justice is, and it's not about winning or losing.

15 You have no friends to reward or enemies to
16 punish. Just do your duty, and justice will be served
17 and justice today says 16 months for nothing is too long.
18 Justice today, not later.

19 Thank you.

20 THE COURT: All right. Well, folks, it is
21 that time where you have heard all the evidence and all
22 the arguments of the parties, and it is my job to explain
23 the law to you as it applies to the facts of this case.

24 As I explained at the beginning of the trial,
25 under the constitution and laws of this state, only you,

1 the jury, can make a finding of fact in this case, and
2 I'm not permitted to indicate to you how I might feel
3 about the facts, so if I have said anything or done
4 anything in this case which you think indicates to you
5 that I have an opinion about the facts of this case, then
6 you should disregard that.

7 You, the jury, must independently weigh the
8 evidence presented in this case and render a verdict
9 based solely on that evidence. Now, the same
10 constitution and laws that designate and make you finders
11 of facts make me the instructor of the laws, and if you
12 have some idea as to what you think the law is or what
13 the law ought to be and it does not agree on what I tell
14 you the law is, you're obligated, under the oath which
15 you have taken, to abandon that preconception on your
16 part and to accept and apply the law precisely as I now
17 state it to you.

18 Now, I remind you as I told you at the
19 beginning of the trial, the fact that the defendant was
20 arrested, charged, and indicted in this case is not
21 evidence in this case and cannot be considered by you as
22 evidence of guilt in this case, nor does it create any
23 presumption or inference of guilt.

24 The indictments are simply the formal written
25 instrument which contains the charges made against the

1 defendant. It is the formal document by which this case
2 is brought into this court, and, again, there are two
3 separate charges against the defendant.

4 The first is indictment 2010-GS-10-3060,
5 which charges the defendant with attempted criminal
6 sexual conduct in the first degree, and the second
7 indictment was 2010-GS-10-3061, which charged the
8 defendant with strong-arm robbery.

9 Each of these indictments contains a separate
10 and distinct offense. You must decide which
11 indictment -- or each time separately on the evidence and
12 the applicable law, uninfluenced by your decision as to
13 any other indictment. The defendant may be convicted or
14 acquitted on any or all of the charges.

15 You will be asked to write a separate verdict
16 of guilty or not guilty for each indictment. Now, the
17 defendant pled not guilty to this indictment, and that
18 plea casts a burden on the state to prove the defendant
19 is guilty beyond a reasonable doubt.

20 As I told you at the beginning of the trial,
21 a person charged with a crime in this state is never
22 required to prove himself innocent. This is an important
23 rule of law in this country, that a defendant in a
24 criminal trial will always be presumed to be innocent of
25 the charge for which he is indicted unless and until his

1 guilt has been proven by evidence satisfying you of that
2 guilt beyond a reasonable doubt.

3 The presumption of innocence is not a mere
4 legal theory. This isn't just a legal phrase. This is a
5 substantial constitutional right which every defendant is
6 entitled to. This presumption of innocence accompanies
7 the defendant from the time he is charged throughout this
8 trial until you reach a verdict of guilt, based upon
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt.

11 Now, some of you may have served on a jury in
12 a civil trial, as I explained at the beginning of the
13 trial, and you were told there that it is only necessary
14 to prove a fact is more likely true than not true, such
15 as by the greater weight of the evidence. In criminal
16 cases, the state's evidence must be more powerful than
17 that. It must be beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendant's guilt.
20 There are very few things in this world that we know with
21 absolute certainty, and in criminal cases, the law does
22 not require proof that overcomes every possible doubt.

23 If, based on your consideration of the
24 evidence you are firmly convinced that the defendant is
25 guilty of the crime charged, then you must find the

1 defendant guilty.

2 If, on the other hand, you think there is a
3 real possibility that the defendant is not guilty, then
4 you must give the defendant the benefit of the doubt and
5 find him not guilty. There are two types of evidence
6 generally presented in a trial. There is direct evidence
7 and circumstantial evidence. Direct evidence is
8 testimony of a person who claims to have actual knowledge
9 of a fact, such as an eyewitness, and this is evidence
10 which immediately establishes the main fact to be proved.

11 Circumstantial evidence is proof of a chain
12 of facts and circumstances which indicate the existence
13 of a fact, and this is evidence which immediately
14 establishes collateral facts from which a main fact may
15 be inferred.

16 Circumstantial evidence is based on inference
17 and not on personal knowledge or observation. The law
18 makes absolutely no distinction between the weight or
19 value to be given either direct or circumstantial
20 evidence, nor is a greater degree of certainty required
21 of circumstantial evidence than direct evidence.

22 You should weigh all the evidence in this
23 case, and, after weighing the testimony, if you are not
24 convinced of the defendant's guilt beyond a reasonable
25 doubt, you must find the defendant not guilty.

1 I also instruct and emphasize the fact that
2 the defendant did not testify is not a factor to be
3 considered by you in any way in your deliberation and in
4 your consideration on the question of guilt or innocence
5 of the defendant. It must not be considered by you in
6 any manner whatsoever. A defendant has a constitutional
7 right to remain silent, and the assertion of this right
8 must not be considered by you in your deliberations.

9 I repeat that under your oath you are to draw
10 no conclusion whatsoever to the fact the defendant in
11 this case did not testify. The fact that the defendant
12 did not testify should not even be discussed in the jury
13 room. The burden of proof, as I have stated to you, is
14 on the state, and the defendant is not required to prove
15 his innocence.

16 The burden of proof remains on the state to
17 prove guilt beyond a reasonable doubt. Now, necessarily,
18 you must determine the credibility of witnesses who have
19 testified in this case, and credibility simply means
20 believability. It's your duty as jurors to analyze and
21 evaluate the evidence and determine what evidence
22 convinces you of its truth.

23 In determining the believability of witnesses
24 who have testified in this case, you can believe one
25 witness over several witnesses or several witnesses over

1 one witness. You can believe part of the testimony of a
2 witness and reject the remaining part of the testimony of
3 that same witness. You may believe the testimony of a
4 witness in its entirety, or you can reject the testimony
5 of a witness in its entirety.

6 You may consider whether any witnesses
7 exhibited to you any interest, bias, prejudice, or other
8 motive in this case, and you can consider whether the
9 appearance -- and you can consider the appearance and
10 manner of a witness while on the witness stand.

11 I also instruct you that a person who has a
12 past criminal record is competent to testify during a
13 trial. A past record does not affect the ability of that
14 witness to testify. The past record may only be
15 considered by you, if at all, in determining the
16 witness's believability. Remember, you are the sole
17 judges of the facts in this case and the believability of
18 any and all witnesses.

19 Now, I'll go over with you first the
20 strong-arm robbery elements. The defendant is charged
21 with strong-arm robbery, which is the taking of something
22 of value from a person or in the immediate presence of a
23 person by violence or intimidation. When determining
24 whether a robbery was committed with intimidation, the
25 jury should determine whether an ordinary reasonable

1 person in the victim's position would feel a threat of
2 bodily harm from the perpetrator's act.

3 For you to find the defendant guilty of
4 strong-arm robbery, the state must prove beyond a
5 reasonable doubt that property was taken from the person
6 of another or in his presence, that not only must the
7 taking be without the consent of the owner, it must be
8 accomplished by violence or putting the person in fear.

9 His violence must be actual personal violence
10 or the threat of it. The degree of force used is
11 immaterial, so long as such force or threat of force is
12 actually sufficient to overcome the victim's resistance.
13 This violation or intimidation must either precede or be
14 contemporaneous with the taking.

15 Now, the second charge is attempted criminal
16 sexual conduct, first degree. An attempt is an effort to
17 accomplish a crime which does not succeed. Attempt
18 includes a specific attempt to do a particular criminal
19 act, along with an act falling short of the act intended.
20 The state must show more than mere threat -- excuse me,
21 the state must show more than mere preparation and
22 intent. There must be some overt act committed in the
23 effort to commit the crime.

24 Intent means intending the result which
25 actually occurs, not accidentally or involuntarily.

1 Intent may be shown by acts and conduct that the
2 defendant in other circumstances from which he may
3 naturally and reasonably infer intent. In order to prove
4 this offense, the state must first prove beyond a
5 reasonable doubt that the defendant attempted to engage
6 in a sexual battery with the victim.

7 Sexual battery is sexual intercourse,
8 cunnilingus, fellatio, anal intercourse, or any
9 intrusion, however slight, of any part of a person's body
10 or any object into the genital or anal openings of
11 another persons's body, except when the intrusion is
12 accomplished for medically recognized treatment or
13 diagnostic purposes.

14 If you find that the state has not shown
15 beyond a reasonable doubt that a sexual battery was
16 attempted, you would stop deliberating and your verdict
17 would have to be not guilty. If you find sexual battery
18 was attempted, then you must decide whether the state has
19 proven beyond a reasonable doubt that the defendant used
20 aggravated force to attempt to accomplish the sexual
21 battery.

22 Aggravated force means the use of physical
23 force or physical violence of a high and aggravated
24 nature to overcome the victim. This includes the threat
25 of using a deadly weapon. In determining the guilt or

1 innocence of the defendant, you cannot consider any
2 possible penalty for any particular crime.

3 The punishment for the crime is a matter for
4 me to determine and should never be considered by you in
5 any matter in arriving at a fair and impartial verdict as
6 to the guilt or innocence of the defendant.

7 Finally, your verdict must be unanimous. In
8 other words, all 12 must agree. Now, Mr. Foreman, this
9 is where you earn your pay. There is two indictments,
10 and I'll send them back to you, and, again, these are not
11 evidence. They're simply going back with you for the
12 purpose of writing what the verdict is on the back of it.
13 And on the back, you'll see there is a little red stamp
14 that says true bill.

15 Well, right underneath that is where it says
16 verdict, and you write what the verdict is, and the
17 choices are guilty or not guilty as to the strong-arm
18 robbery, and guilty or not guilty for the attempted
19 criminal sexual conduct, first degree.

20 Once you've reached a verdict on both of
21 those, you write that down, sign it, date it, let the
22 bailiff know you've reached a verdict. All right?

23 Now, I'm going to send you back to the jury
24 room. Don't begin your deliberations just yet. We have
25 to get the evidence together, and I have to give the

1 lawyers the opportunity to say if I misspoke something so
2 they can ask me to correct it. Just a formality we have
3 to do, and I'm sure in five minutes we'll have it back.

4 When I send the indictments and evidence
5 back, the bailiff will tell you you can begin
6 deliberations at that point. All right? Thank you.

7 (In open court, jury not present.)

8 THE COURT: Anything from the state?

9 MR. FINCH: Yes, Your Honor. Actually, when
10 I heard you reading the charge for criminal sexual
11 conduct first degree, I don't know why, but the first
12 time it's just -- I think when I was looking through the
13 jury charge, I saw assault and battery of a high and
14 aggravated nature. I don't know why. Maybe my eyes saw
15 assault on both pages, but you read the charge for
16 16-3652. He's actually charged with 16-3656, assault
17 with intent to commit first degree criminal sexual
18 conduct, and I had printed those, not attempted criminal
19 sexual conduct first degree. I printed those off of the
20 Charleston Bar web site, and I had them with me so I
21 quickly was reading as you were reading. I don't know --

22 THE COURT: You have in your indictment 652.

23 MR. FINCH: If that's is what was on the
24 indictment, I stand corrected. Okay.

25 THE COURT: Okay?

1 MR. FINCH: That's fine.

2 THE COURT: All right.

3 MR. FINCH: That's why I brought it up, just
4 in case.

5 THE COURT: Anything else?

6 MR. FINCH: Nothing from the defendant.

7 THE COURT: Anything from the defendant?

8 MR. BUTLER: Only my previously made
9 objections.

10 THE COURT: Anybody have an objection with
11 the charge going out?

12 MR. BUTLER: I do not.

13 MR. FINCH: I do not.

14 THE COURT: Let's get the evidence together
15 then.

16 (4:12 jury retires to deliberate.)

17 (5:56 p.m. verdict.)

18 (In open court, jury present.)

19 THE COURT: Be seated. All right.

20 Mr. Foreman. I understand the jury has reached a
21 verdict; is that correct?

22 THE FOREMAN: Yes, Your Honor.

23 THE COURT: That is as to both indictments?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: It's unanimous as to both?

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: All right. Would you hand that
3 to the bailiff. Thank you.

4 All right. Mr. Logan, would you rise. The
5 indictment 2010-GS-10-3060, attempted criminal sexual
6 conduct first degree, the verdict is guilty. Indictment
7 2010-GS-10-3061, strong-arm robbery, the verdict is not
8 guilty.

9 If this, in fact, is your verdict, would you
10 indicate that by raising your right hand? Let the record
11 reflect that the jurors have all raised their right hand.
12 Do you wish to have them polled?

13 MR. BUTLER: Yes, as to only attempted
14 criminal sexual conduct.

15 THE COURT: As to the criminal sexual conduct
16 charges, will you poll the jury.

17 (Whereupon, the jury was polled, and all
18 jurors indicated their agreement with the verdict.)

19 THE CLERK: Judge, the jury has been polled,
20 and the verdict stands.

21 THE COURT: I want to thank you for your
22 service this week. This will complete your jury service
23 for the week. You don't have to call after 6:00, and you
24 don't have to come back tomorrow. We're finished up with
25 trials, and I'll be handling some pleas off the trial

1 docket tomorrow, but I want to sincerely thank you for
2 your service this week.

3 We always appreciate when people show up like
4 they're asked to, and it's always an interesting
5 experience, and I hope that y'all found the experience to
6 be enjoyable. Not everybody gets to be on a jury, but I
7 think, most folks, it's been my experience in talking to
8 them, that they enjoy it when they actually get to serve
9 on a jury. And, you know, you find out a lot about the
10 process. It's a lot different than what it appears in
11 the newspaper, certainly a lot different than TV, but you
12 read little things and get snippets in the newspaper and
13 there are times when I'm thinking, I don't think that
14 reporter was in the same room I was in, but even when
15 they do a good job, they don't get the whole flavor of
16 what you folks heard over a couple of days, and so it's
17 an interesting experience.

18 In government, we have three branches,
19 judicial, executive, and legislative, and we had you
20 participating in the judicial branch this week.
21 Typically, people just get asked to vote and pay taxes,
22 and that is all you get to do, but this is important. We
23 thank you for your service.

24 You're free to go. I know traffic -- it's a
25 little bit late, so if you're heading toward the north

1 part, the bad stuff is gone. You're not required to stay
2 any longer, so we want to thank you for your service.

3 (Jury dismissed.)

4 THE COURT: All right. What would the state
5 like to tell me before sentencing?

6 MR. FINCH: Well, Your Honor, if you would
7 like to hear from the victim regarding sentencing.

8 THE COURT: Sure, if she would like to say
9 something.

10 THE WITNESS: I would like to say I feel like
11 this was very fair for me because I have been through
12 this a lot, and I'm very, very happy about the conviction
13 because I haven't had my life for myself since then. I
14 haven't worked since then. I don't go out. I don't do
15 anything. I haven't had a crab since that night. I hate
16 the smell of it, and I just need my life back, and the
17 fact that I can get back on track now and I'm glad I'm
18 ready to put this behind me because I needed this for me
19 to go on, and I'm not coming back to Charleston.

20 I like my life where I'm living, but now I
21 have a sense now of who I am, just for me to know that I
22 can stand up for myself and I don't have to deal with
23 what people have for me.

24 I don't need it, and, Your Honor, I would
25 just like to tell you thank you very, very much and

1 everybody who was on my side and the support for
2 believing in me and trusting in me, and I just can't stop
3 thanking y'all.

4 That's about it. I thank y'all so much.

5 THE COURT: I hope you begin your healing
6 process. All right. Anything else from the state?

7 MR. FINCH: Just that due to the serious
8 nature of the crime, of course, the state is asking for
9 time to run consecutive to any federal time -- the state
10 is asking for time to run consecutive to the federal
11 crime.

12 THE COURT: What is the prior record?

13 MR. FINCH: My investigator is bringing it
14 over. I believe he has a 2002, 2003 conviction. I
15 believe one was possession of marijuana. I'm just going
16 off the top of my head, and Mr. Butler might have it in
17 front of him. I know there is a 2010 conviction for
18 federal drug crimes. I do not know what that was, and my
19 investigator is going to get his record. It's printed
20 out. Everything is drugs, in his past.

21 THE COURT: Okay. So it's just prior drugs.

22 MR. FINCH: All prior drugs, I believe 2002,
23 2003, and 2010. They're all drugs.

24 THE COURT: All right. Mr. Butler?

25 MR. BUTLER: Well, obviously, this is my

1 least favorite part of the job because I'm not used to
2 having to give mitigation for something my client
3 maintains he didn't do, but I would have to point out
4 that he has no prior record of violence.

5 He's going to do an 85 percent federal
6 sentence for 78 months for which he's gotten no credit
7 for the 16 months he's been in jail, unless they start
8 giving him credit for Monday when you granted the
9 PR bond.

10 So I think consecutive time would be unduly
11 punitive. I don't want to minimize the impact this would
12 have had on Ms. O'Neal; however, he is 25 with no prior
13 record of violence. He's married. His wife is here.
14 His mother is here. The other family is here. He has
15 two children, ages seven and four. At the time of his
16 arrest, he was working at the shipyard, so we would ask
17 the Court to consider whatever time to be concurrent.
18 Let me see if anybody has anything to say.

19 THE COURT: I thought the feds wouldn't give
20 him concurrent time.

21 MR. BUTLER: Well, I think that it can --
22 since our last conversation, if you put the magic
23 language in the sentencing sheet, which I'll have to find
24 out, but it's that he is released from state custody
25 starting now, and that the sentence was to run concurrent

1 with the federal sentence.

2 Everybody will be here tomorrow. I can find
3 out exactly what the magic language is, if that's what
4 Your Honor wants me to do, but that is what his federal
5 public defender responded to me in an e-mail earlier
6 today, is that if it's clear that he is now in --
7 released from state custody -- I don't know if I'm going
8 to get that right, so I should probably just ask to
9 figure it out, and maybe get back to you tomorrow if I
10 can do that. I don't know if anybody wants to speak on
11 his behalf.

12 Judge, his mother would like to speak.

13 THE WITNESS: Nell Drayton Logan. I stand
14 here because I know my son, and I know that he worked
15 hard and he tried to live a good life. Yeah, granted, he
16 made some mistakes along the way, but for him to have to
17 go through this, and he already lost 16 months of his
18 time in jail and 16 months he missed his children and his
19 children missed him.

20 I'm constantly hearing his daughter ask,
21 Granny, when daddy coming home? When daddy coming home?
22 And I'm trying to keep her from thinking that he isn't
23 here, but lying to her, telling her that, Your daddy is
24 working out of town, and don't worry. He'll be home
25 soon.

1 And I know he's a good person and I know he
2 didn't hurt anybody like that because I taught him
3 differently. I taught him to love God and to love the
4 righteous life. That's it.

5 THE COURT: All right. Mr. Logan, you want
6 to say anything?

7 THE DEFENDANT: Yeah. Your Honor, I
8 apologize for being in front of you. I'm not guilty of
9 these charges. I'm a married man. I got a wife I be
10 home with every night, man.

11 Sir, I've been on the monitor two years and
12 get in no trouble, just go to work, go home. I love my
13 kids. They ain't involved in that. I made mistakes
14 messing with drugs years ago, Your Honor. I wish this
15 person -- I wish this young lady here would be up front
16 and really tell y'all what really went on. For her to
17 stand up in front of the jury, in front of you, Your
18 Honor, and all these people and lie? Your Honor, yes, I
19 was convicted, but I didn't try to rape her. How could
20 people be so heartless? That's what I don't understand.
21 How could people be so heartless? My wife -- I can't get
22 into the details why I was there, because there would be
23 no proof, but I should have just take my time and just
24 go.

25 MR. BUTLER: I can actually speak to that. I

1 told him he can't talk about it, but Clarence had pled
2 guilty but had sentencing deferred in federal court for
3 his crimes in federal court and was working with the
4 federal government, and I guess I'll leave it at that.

5 He was trying to reduce his sentence, and
6 they agreed to let him out to do that, and that is why he
7 was at -- why he's always told me he was at club Lovey
8 Dovey that night.

9 THE COURT: Well, you know, the jury found
10 that you were guilty of what you got charged with. I
11 don't know what happened that night. It sounded like a
12 lot of different discrepancies and things, but,
13 ultimately, they found that you attempted to sexually
14 assault this young lady, and that was the thrust of the
15 charge. The particulars of when exactly it happened, I
16 guess they worked through that. All things considered,
17 you were facing up to 30 years for the charge.

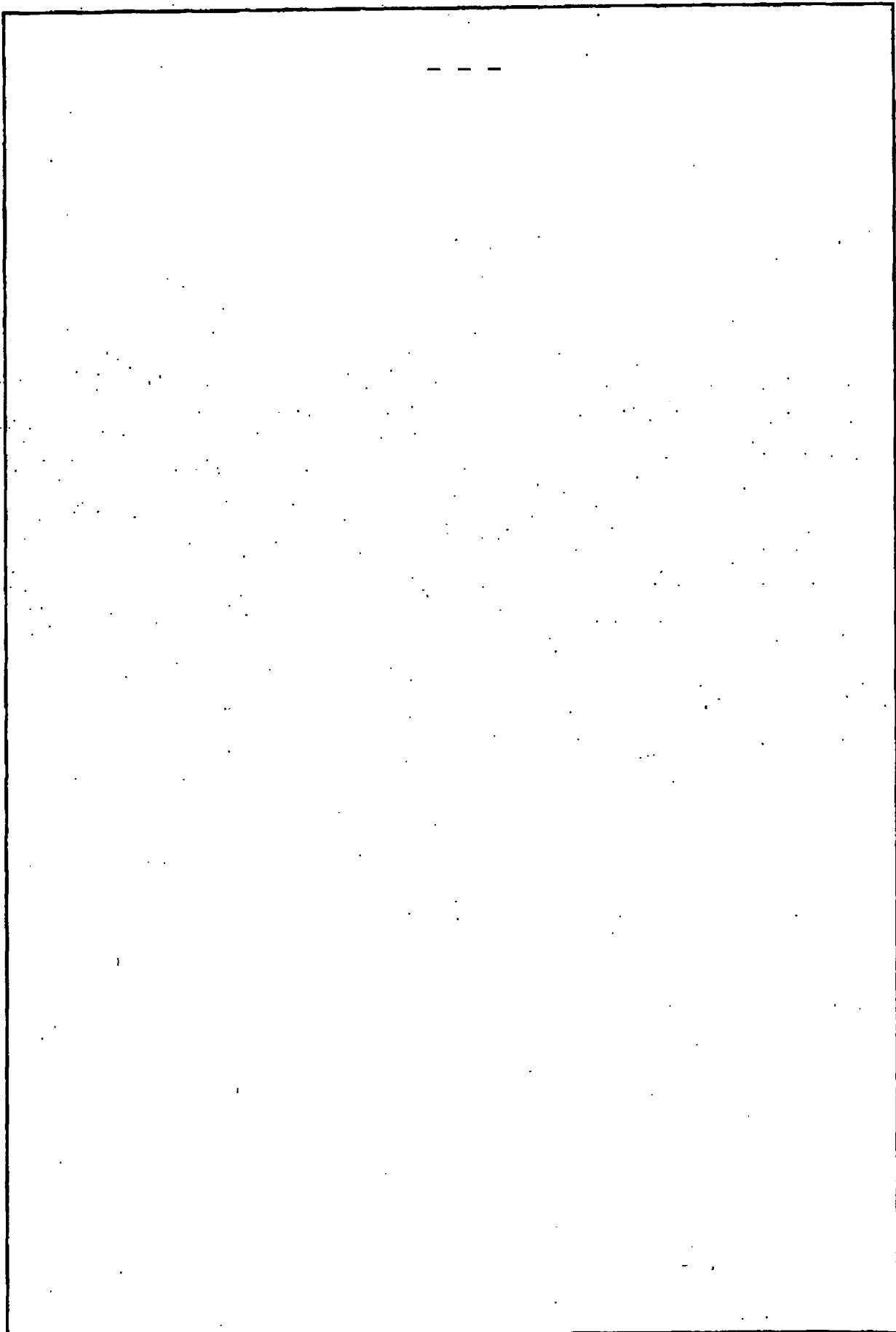
18 I think, under the circumstances, I find the
19 sentence of ten years to be appropriate. I will allow it
20 to run concurrent with the federal time, and you'll get
21 credit for the 16 months that you've been in jail while
22 you were incarcerated pending trial.

23 Good luck.

24

25 (Whereupon, the proceedings were concluded.)

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 8th and 9th of June 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 12, 2011



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston

2014-08-10-1913

IN THE COURT OF COMMON PLEAS

Clarence Logan JR #17442-171
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFFILED
MAR 21 PM 2:40
CLERK OF COURT
ANDRE STRONGINSTRUCTIONS - 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 United States Penitentiary - Allenwood -
P.O. Box 3000 - White Deer, PA 17887
2. Name and location of Court which imposed sentence Court of General Sessions,
Charleston County - Charleston, SC
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) 2010-C.S.-10-3060

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 9th 2011 - 10 years to run Concurrent with Federal Sentence,
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not 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?
Both, Judgment of Conviction and the imposition of Sentence.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellate Court
- ii. South Carolina State Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. (SCAC) rules, this appeal is hereby Certified for review by the SC Supreme Court.
- ii. Affirmed Conviction
- iii. _____
- (c) the date of each such result:
- i. Order, dated December 28, 2012
- ii. August 14, 2013
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. not known
- ii. Appellate Case No. 2011-194406 - opinion No. 27296 (See Both sheets)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY
O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850

EXHIBIT A

To support Claims

September 9, 2013

Clarence Logan, Jr. Inmate #17442-171
c/o Unites States Penitentiary
PO Box 1000
Lewisburg, PA 17837

Re: State of South Carolina v. Clarence Logan

Dear Mr. Logan:

I received your letter. I never take it personally when a client files a PCR. Don't worry about it at all. I will have to get your file from storage before the hearing before I can say why I did or did not do certain things as suggested in your letter. But don't be concerned that I may deny something you allege. I won't.

I don't recall the audiotape you refer to and would need more details. It may be that the tape was hearsay and inadmissible.

I don't know offhand why I would not have put a photo of your car into evidence. It may have been I wanted last argument, which I would waive if I put up any evidence at all.

The testimony about your car being in the shop sounds familiar. Again, I will need to look at the file. Going strictly from memory, seems to me I recall I had a concern about the testimony in that we could not substantiate that claim with receipts or other documents. I'm not certain. Also, I may have here too wanted to preserve last argument and the testimony about your car driving past the victim's house on some other day did not seem important enough to give up last argument. I'll have a better idea after reviewing the file and transcript.

My general recollection is that I thought the victim came across so poorly I did not want to give up last argument because I thought we had won. Obviously I was wrong, at least as to one charge. I don't know whether that is enough to get you a new trial. Usually strategy decisions a lawyer make are not grounds for a new trial. But I cannot say for certain.

The other consideration is my recollection is that the judge gave you a good sentence, that ran concurrently with your federal time such that you were not going to do much more

time on the State charges. If so, keep in mind success at PCR means you start over, at least as to the charge you were convicted of.

That said, again I do not at all mind if you file a PCR. If I made a mistake I'll own up to it.

Sincerely,

Beattie I. Butler

Beattie I. Butler
Assistant Public Defender

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY
O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850

EXHIBIT B
To support claims

October 1, 2013

Clarence Logan, Jr. Inmate #17442-171
c/o Unites States Penitentiary
PO Box 1000
Lewisburg, PA 17837

Re: Response to Letter dated 9-19-13

Dear Mr. Logan:

I received your most recent letter. You need to file a PCR application and have counsel appointed. I will give your lawyer access to everything in the file. I recall the request for money to drop the charges. I certainly do not recall that person saying "I know you did not do this." If we have a recording with that on it, it will be easy enough to prove.

Sincerely,

Beattie I. Butler

Beattie I. Butler
Assistant Public Defender

Opinion: question (8:d=11)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Clarence Logan, Jr., Appellant.

Appellate Case No. 2011-194406

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Opinion No: 27296
Heard April 2, 2013 – Filed August 14, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, of Columbia,
for Respondent.

RECEIVED

AUG 14 2013

OFFICE OF
APPELLATE LITIGATION

treatment for her injuries. O'Neal provided the police with a statement during her hospital visit.

O'Neal then contacted Aaron Green, the Lovey Dovey's manager. Green informed O'Neal that while he did not personally know Appellant, he knew Appellant used the nickname "Blackout," and owned a blue Thunderbird. O'Neal supplied police with this information. O'Neal noticed a blue Thunderbird near her home on several occasions following the attack, and on at least one of those occasions, O'Neal recognized Appellant as the vehicle's driver. O'Neal notified police on each occasion. Police contacted O'Neal and asked her to choose Appellant's photograph out of a group of six photographs. O'Neal chose Appellant.²

Andrea Bell testified that O'Neal excused herself to the restroom at some point during their visit to the Lovey Dovey. Bell stated that a short time later she observed a "young" man, wearing a white t-shirt, walking away from the bathroom, and "pulling up his pants."³ Bell then overheard someone inquire whether "something going [sic] on in the bathroom," prompting Bell to walk over to the restroom. Bell described O'Neal's demeanor, stating, "All I see was she was upset, and her face was swollen. Like I think it was her eye and her lip that were swollen." Bell testified that she could not identify Appellant as the man she observed coming out of the bathroom that night. Bell assisted O'Neal with her injuries, but did not discuss anything that might have happened between O'Neal and Appellant.

Virgil Washington testified that he knew O'Neal, but did not consider her a friend. Washington testified that on the night of the attack he merely provided transportation for O'Neal at the request of his friend, Aaron Green. According to Washington, he noticed a commotion near the restroom, and when O'Neal exited the restroom she "was highly upset." Washington also observed blood on O'Neal's face. O'Neal mentioned to Washington that Appellant hit her. Washington

² Omar Faison, a North Charleston police officer at the time of the incident, testified that he presented O'Neal with pictures of six individuals with the same height, weight, and physical features, and that O'Neal identified Appellant without hesitation.

³ At trial, Bell could not identify Appellant as the "young" man she observed that night.

that after our Supreme Court opinion in *Bostick* that came out, I want to say, earlier this year where the Supreme Court said that the trial court should have directed a verdict because the case was entirely circumstantial, they appealed to four different pieces of circumstantial evidence . . . that line of cases, *Shropp*⁵ and *Arnold* [361 S.C. 386, 605 S.E.2d 529 (2004)] and now *Bostick*, they are now dealing with this jury charge, so I guess what I'm asking is to argue against precedent to say that the standard charge, I think this is from *Ripon*⁶ that says that the direct and circumstantial evidence are equally—

The trial court interrupted the argument, stating, "I'm not familiar with the exact case you're referring to, but I usually on—there is a difference when it comes to directed verdict between direct and circumstantial evidence." The trial court then acknowledged that circumstantial evidence had to be "substantial," and that he was not sure that "they," presumably this Court, "had changed that rule." Appellant's trial counsel responded:

In case they want to, I have to give them the opportunity to do it, and I think the proposition—the law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence is no longer valid.

The trial court denied the motion, and then delivered the following instruction regarding direct and circumstantial evidence:

There are two types of evidence generally presented in a trial. There is direct evidence and circumstantial evidence. Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness, and this is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact, and this is evidence which immediately establishes collateral facts from which a main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction

⁵ Appellant's trial counsel appears to have been referring to *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984).

⁶ Appellant's trial counsel appears to have been referring to *Grippen*.

In *Bostick*, the fire department arrived at the victim's house on a Sunday afternoon after her house caught fire. 392 S.C. at 136, 708 S.E.2d at 775. Firefighters discovered the victim's body in the house. *Id.* Although the victim had been struck in the head with a blunt force object, she ultimately expired as a result of carbon monoxide poisoning from the fire. *Id.* Two days later, investigators discovered the following items in a burn pile at a neighboring house belonging to Bostick's mother: two sets of car keys, toe nail clippers, pens, burned paper, a metal clasped ring of a purse, and a watch. *Id.* at 137, 708 S.E.2d at 775. All of these items belonged to the victim. *Id.* Investigators later determined that the person responsible for the fire at the victim's house used a heavy petroleum product, such as kerosene or diesel fuel. *Id.* Bostick's mother stated that she did not use either of these products in the burn pile. *Id.* Investigators interviewed Bostick, and asked for his clothing and shoes. *Id.* Blood was found on Bostick's jeans, but a DNA analysis proved inconclusive. *Id.*, 708 S.E.2d at 775-76 ("[T]he agent who reviewed the DNA analysis findings . . . testified that while ninety-nine percent of the population could be excluded as contributing to the sample, she was unable to determine whether the blood sample actually came from [the victim]"). However, a chemical analysis of Bostick's shoes revealed a fresh gasoline pattern. *Id.*, 708 S.E.2d at 776. Bostick moved for a directed verdict at the close of the State's case, which the trial court denied. *Id.*

Bostick argued on appeal that the evidence submitted did not constitute substantial circumstantial evidence necessary to submit the case to the jury. *Id.* at 138-39, 708 S.E.2d at 776. This Court agreed, and found that the State's evidence raised only a suspicion of Bostick's guilt. *Id.* at 141, 708 S.E.2d at 778.

In *Odems*, this Court addressed the same substantial circumstantial evidence issue. In that case, the defendant appealed his convictions for first degree burglary, grand larceny, criminal conspiracy, and malicious injury. *Odems*, 395 S.C. at 585, 720 S.E.2d at 50. At trial, the State relied solely on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located the defendant in the get-away vehicle with the burglars and the stolen goods; (2) the defendant fled from law enforcement; and (3) the defendant asked an uninvolved person to lie to authorities on his behalf. *Id.* at 588, 720 S.E.2d at 51. This Court found that even when viewed in the light most favorable to the State, the circumstantial evidence did not reasonably tend to prove the defendant's guilt. *Id.* The Court illustrated this point through an analogy to what is commonly referred to as the "traditional" circumstantial evidence jury charge:

this Court abandoned the traditional circumstantial evidence charge, and that the Court referred to the charge merely as an illustration of the "deficiency in the State's evidence" against the defendant in that case. *See Odems*, 395 S.C. at 592, 720 S.E.2d at 53 ("The State asks this Court to uphold [the defendant's] convictions based on evidence which does not satisfy the standard adopted by this Court regarding the proof necessary in a circumstantial evidence case." (citing *Bostick*, *supra*, identifying fundamental opinions analyzing the circumstantial evidence standard)).⁷

Accordingly, the trial court did not err in providing a circumstantial evidence charge consistent with *Grippon*.⁸

⁷ See also *Hernandez*, 382 S.C. at 625 n.2, 677 S.E.2d at 605-06 n.2 ("Although in *State v. Cherry* . . . the Court abandoned [the traditional circumstantial evidence] charge and held that it may confuse a jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless illustrates the lack of evidence against Petitioners." (emphasis added)).

⁸ Additionally, erroneous jury instructions are subject to a harmless error analysis. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions which may be misleading do not constitute reversible error. *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. *State v. Burkhardt*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

In the instant case, the trial court clearly instructed the jury regarding the reasonable doubt burden of proof, explaining:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty . . . You

courts should utilize in ruling on directed verdict motions in circumstantial evidence cases),⁹ *abrogated by Cherry*, 361 S.C. at 601-02, 606 S.E.2d at 482.

However, in *Grippon*, the majority of the Court determined that, once a trial court provides a proper reasonable doubt instruction, the jury need not be instructed regarding whether the circumstantial evidence proved the defendant's guilt to the exclusion of every reasonable hypothesis other than guilt. *Grippon*, 327 S.C. at 83-84, 489 S.E.2d at 464 (relying on *Holland v. United States*, 348 U.S. 121, 140 (1954); *United States v. Russell*, 971 F.2d 1098, 1108-09 (4th Cir. 1992), *cert. denied*, 506 U.S. 1066 (1993)).¹⁰

⁹ *Edwards v. South Carolina*, 493 U.S. 895 (1989) (denying petition for writ of certiorari to this Court):

¹⁰ Several courts have followed the Supreme Court's reasoning and found a distinct circumstantial evidence charge unnecessary. *See, e.g., Russell*, 971 F.2d at 1109 ("It is well settled that as long as a proper reasonable doubt instruction is given, a jury need not be instructed that circumstantial evidence must be so strong as to exclude every reasonable hypothesis other than guilt."); *Hebron v. Maryland*, 627 A.2d 1029, 1031-37 (Md. 1993) (holding that the proposition that a conviction based solely on circumstantial evidence cannot stand unless the circumstances are inconsistent with any reasonable hypothesis of innocence is a matter of the sufficiency of the evidence, rather than jury instruction); *North Carolina v. Adcock*, 310 S.E.2d 587, 607 (N.C. 1983) ("We hold that an instruction on circumstantial evidence to the effect that a conviction may not be based upon it unless the circumstances point to guilt and exclude to moral certainty every reasonable hypothesis except that of guilt is unnecessary when a correct instruction on reasonable doubt is given."); *but see Mainor v. Georgia*, 387 S.E.2d 882, 884 n.2 (Ga. 1990) (holding the trial court did not err in providing a circumstantial evidence jury charge providing that circumstantial evidence must be "entirely consistent with the defendant's guilt"); *Brown v. Virginia*, 381 S.E.2d 225, 229-30 (Va. 1989) (explaining that the circumstances contemplated by the traditional circumstantial evidence charge are those proved and consistent with each other and the defendant's guilt); *West Virginia v. Bratcher*, 206 S.E.2d 408, 410 (W. Va. 1974) (holding the trial court erred in refusing to provide a circumstantial evidence charge and citing with approval precedent relying on the traditional circumstantial evidence charge).

But, as observed in *Grippon*, the question is not whether circumstantial evidence carries the same probative weight as direct evidence, it clearly does. Instead, the pertinent inquiry is the proper means for evaluating circumstantial evidence and how the trial court may best instruct a jury as to its analytical responsibility. *Grippon*, 327 S.C. at 88, 489 S.E.2d at 466–67 (Toal, J. concurring). While direct and circumstantial evidence carry the same value, a jury cannot accurately analyze these two types of evidence using identical approaches.

Unlike direct evidence, evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence. *Cherry*, 361 S.C. at 603, 606 S.E.2d at 483 (Toal, C.J. dissenting); cf. 31A C.J.S. *Evidence* § 5 (2008) ("Direct evidence is evidence that proves the fact in dispute without inference or presumption."). Analysis of circumstantial evidence is plainly a more intellectual process. *Grippon*, 327 S.C. at 87–88, 489 S.E.2d at 466 (citing Irène Rosenberg & Yale Rosenberg, "Perhaps What Ye Say Is Based Only On Conjecture"—Circumstantial Evidence, Then and Now, 31 Hous. L. Rev., 1371, 1412–13 (1995)). We have previously observed that this process requires two steps: "After concluding that a particular fact is true, the individual juror is called upon to ask: First, can I infer guilt from that fact? Second, if so, is there any reasonable explanation other than guilt?" *Id.* at 87–88, 489 S.E.2d at 466. However, requiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant's guilt comes perilously close to shifting the burden of proof from the State to the defendant. See, e.g., *State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000) ("Jury instructions on reasonable doubt which charge the jury to 'seek the truth' are disfavored because they '[run] the risk of unconstitutionally shifting the burden of proof to a defendant.'"). Therefore, the circumstantial evidence instruction is best characterized as a construct requiring the State to prove its case beyond a reasonable doubt, while at the same time providing a framework for a "rational" and "cumulative" assessment for guiding the jury's consideration of circumstantial evidence. See *Grippon*, 327 S.C. at 87–88, 489 S.E.2d at 466 (citing Rosenberg, 31 Hous. L. Rev. at 1412–13).¹²

¹² For example, in *Cherry*, the State relied on the following evidence to prove that the defendant's guilt for possession with intent to distribute crack cocaine:

(1) the defendant's presence in a vehicle located in a high crime area known for drugs; and (2) police recovered eight rocks of crack cocaine and \$322.00,

consisting primarily of \$20 bills. *Cherry*, 361 S.C. at 604, 606 S.E.2d at 483. The

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Cf. Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926 (explaining the traditional circumstantial evidence charge); *Grippon*, 327 S.C. at 83–84, 489 S.E.2d at 463–64 (finding a circumstantial evidence jury instruction including "reasonable hypothesis" language unnecessary); *Cherry*, 361 S.C. at 600–02, 606 S.E.2d at 481–82 (holding the *Grippon* charge as the exclusive charge for circumstantial evidence cases). This holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* and *Cherry*. However, trial courts may not exclusively rely on that charge over a defendant's objection.

Our *Grippon* and *Cherry* decisions commendably sought to remove confusion from the jury's consideration regarding the weight and value afforded to circumstantial evidence. However, at times, a separate framework is necessary to the jury's analysis of circumstantial evidence. Thus, we modify *Grippon* and *Cherry* to allow the additional language provided above if requested by a defendant.

9

6-1-05

JUSTICE KITTREDGE: I concur in result. I write separately because I would adhere to, and not overrule, *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), and *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2005).

The United States Supreme Court has held that there is no difference between direct and circumstantial evidence. See *Holland v. United States*, 348 U.S. 121, 140 (1954) (noting that circumstantial evidence is "intrinsically no different from testimonial evidence," for both instances require a jury "to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference," and in both instances, "the jury must use its experience with people and events in weighing the probabilities"). All of the federal courts and the vast majority of state courts have adopted *Holland*. The reasoning and rationale for following *Holland* was persuasively set forth by this Court in *Cherry*, and I see no basis for rejecting *Holland* and overruling *Grippon* and *Cherry*.

PLEICONES, J., concurs.

- (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) Denial of Fair Due process & Equal protection of laws
- (c) Circumstantial Evidence / Inufficient Evidence to convict
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (See attached pages)
- (b) (See attached pages)
- (c) (See attached Pages)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. The Direct Appeal - Case No. 2011-194406
- ii. S.C. State Supreme Court - Writ of Certiorari - Case No. 2011-194406
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina - Court of Appeals - Columbia, SC
- ii. SC State Supreme Court - Columbia, SC
- iii. _____

Ineffective Assistance of Counsel

Question 11. (A)

Ineffective Assistance of Counsel occurred when counsel failed to obtain an audio tape recording evidence of extortion when state witness asked defendant to give them money to drop charges. Counsel refused to play the audio recording to the trial jury stating, "it would hurt the prosecution's case". Counsel's performance meets the criteria set forth in Strickland v. Washington 466 US 668 (1984) "to make a claim of ineffective assistance, a defendant must show that there is a reasonable probability that for Counsel's unprofessional errors the results of the proceedings would have been different."

Here defence counsel knowingly allowed for the prosecution to withhold a key piece of evidence - an audio tape recording - showing that the defendant was the subject of extortion by prosecution's witness. Defence counsel was well aware that such evidence was needed to establish a defence for the defendant. Instead, defence counsel agreed with the prosecution that this evidence would hurt the prosecution's case and withheld it from the jury. Defence counsel was only willing to state to the jury "There was an altercation, it's the only piece of evidence", but failed to state what the evidence was and only told the defendant, "let's leave it to the jury's imagination and see if they'll believe the state's witness."

Defence counsel is well aware that Amendment 6 US Constitution guarantees all persons charged with a crime are entitled to compulsory process for obtaining evidence and witnesses in his favor and to have the assistance of counsel for his defence.

Counsel's deficient performance has in fact subjected defendant to actual injury - a conviction and sentence - which is greatly prejudicial towards defendant.

The U.S. Supreme Court has ruled in Burghuis v. Thompson - 560 U.S. 370 (2010) "To establish ineffective assistance of counsel, a defendant must show that there is a reasonable deficient performance and prejudice. To establish prejudice, a defendant must show that there is a reasonable probability that, for counsel's unprofessional errors the results of the proceedings would have been different."

The due process clause of the 14th Amendment of the U.S. Constitution allows for defendant to have access to the evidence he sought - D.A.'s Office vs. Osborne 557 U.S. 52 (2009).

For defence counsel to allow the prosecution to withhold evidence and then fail to build a defence, altered the outcome of trial proceedings and subjected defendant to an actual injury. This is a clear violation of Amendments 6 and 14 of the U.S. Constitution and grounds for reversal.

In addition to the defence counsel failing to object to the prosecution withholding evidence, defence counsel knowingly failed to present evidence - the photos of defendant's vehicle - that would clearly prove that the vehicle that the prosecution witness described was clearly not the defendant's vehicle.

Defence Counsels unprofessional Conduct subjected the defendant to actual injury because Counsel had the photo of defendants Vehicle Prior to trial and purposely withheld this evidence from the Jury. In Strickland v. Washington a 2 prong test must be met to support an ineffective assistance claim.

1. Counsel unprofessional Conduct must have caused some type of prejudice towards defendant and 2. The outcome of the proceedings would have been different, but for Counsels errors.

In this instant matter defence Counsel withheld evidence from the Jury that would prove that the witness describe a vehicle that did not belong to the defendant and if such evidence was presented to the Jury this evidence would overwhelmingly prove, or at the very least show reasonable doubt, to make a not guilty finding.

Counsels unprofessional Conduct continued when he claimed to have made a mistake when telling the Jury "In other words, well, it's obvious an assault happened. It happened in the bathroom. He is the only one in the bathroom; therefore, he's guilty, bait and switch, no, wrong, that's not what he's charged with." (See Transcript of Record- page: 229 Line 16-- 245 Line 19; Specific Statement- page 230- Line 6-10.)

Defence Counsel knew that the defendant was never at that location nor had defendant ever stated that to him. Moreover, no evidence except (victims) perjuring statements places defendant at location.

Counsel later realized his mistake stating that his statement to the jury "could be damaging to the case." Counsel failed to correct himself on record or to the jury. This statement is obviously prejudicial especially coming from a defense counsel and has misled the jury to believe something that's not true which changed the proceedings to suggest guilt rather than innocence or reasonable doubt. Again, defendant's claim of ineffective assistance meets the 2 prong test set forth in Strickland v. Washington - 466 U.S. 668 (1984). Here defense counsel made a damaging statement and refused to correct himself for the record or to the jury and because of counsel's unprofessional conduct defendant suffered an actual injury - conviction and sentence. Therefore rising to the level of plain error which is grounds for reversal.

Denial of Fair Due Process and Equal Protection of the Law.

Question 11.(B)

Petitioner was denied his Right To Fair Due Process under Amendments 6 and 14 of the US Constitution. First - All persons charged with a crime shall enjoy the right to a fair trial and the right to admit evidence in his favor - 6 Amendment U.S. Constitution

Such evidence - an audio tape recording did exist and was withheld by the prosecution. This audio recording if presented in court would prove that the defendant was subjected to extortion when a prosecution witness asked for money in order to drop charges. This withholding of evidence rises to the level of a due process violation as stated in Brady v. Maryland 373 US 83 (1963) where

"The US Supreme Court held that the prosecution must turn over to the defence, upon request, any information within its possession that is material to either the defendant's innocence or his punishment. The duty to disclose extends to any information within the possession and/or control of cooperating law enforcement," also see Cigillo vs. US 405 US 150 (1972)

Here the prosecution knowingly and intelligently withheld a key piece of evidence - an audio tape recording - showing that the defendant was being extorted when the prosecution's witnesses asked for money in order to drop charges. The prosecution withheld this audio tape after defence requested it stating that "putting this audio tape before a jury would hurt the prosecution's case". This withholding of evidence and defence counsel's failure to make an objection denied defendant's 6th Amendment Right to Fair Due Process.

Because being without such evidence, defence could not build a defence in his favor. The U.S. Supreme Court held in Jencks v. United States - 353 U.S. 657 (1957) "Government in a criminal prosecution must turn over to the defence, for impeachment purposes, certain statements made by government witness. The government's failure to provide discovery of all relevant Jencks Act material is error".

Also see Agurs v. United States 427 U.S. 97 (1976)

In sum The 6th Amendment - Right of the accused - is clear.

It guarantees all persons the right to a fair trial and assistance of counsel for his defence.

The 14th Amendment - Citizens of the United States - is clear.

It guarantees all citizens will not be deprived of life, liberty or property without due process or denied equal protection of the laws.

The prosecution's witness as well as defence counsel has in fact subjected defendant to constitutional rights violations which are grounds for reversal.

Circumstantial Evidence / Insufficient Evidence to Convict

Question (11.C)

The trial court erred in giving the charge on circumstantial evidence as stated in State v. Grippen, 327 S.C. 79, 489 S.E.2d 462 (1997) when in light of the recent Supreme Court decision in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Grippen charge is no longer valid, and the traditional charge as provided in State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) should apply when the only evidence of rape was the word of the adult victim? or in Logan's case Attempted Rape?

The only "evidence" against Logan of rape/attempted rape was the word of Jarvia as there was no DNA, and no forensic evidence. (See transcript: 221, 11.1-12.) Defence Counsel stated in his opening that Jarvia and Logan did get into a confrontation, and he hit her. However, there was no rape. (See transcript: 56, 11.1-25)

Counsel failed to present to the jury that Logan told him "yes there was a confrontation, and he, Jarvia, and her 'brother' had a fight at the bar." Logan presented to his lawyer that Jarvia wanted him to give her \$150 to prostitute her. She got upset when he rebuffed her requests. Later her and her "brother" met Logan at the bar when she tried to grab Logan's money, they got into a fight. Because Logan fought back, and they did not succeed in their attempted robbery, it led to Jarvia making up this story about an attempted sexual encounter.

Even after 24 hours to come up with a story to "get back" at Logan, prosecutors witnesses tried to extort Logan to get \$5000 to "drop the charges". If presented at trial, this conviction would have never happened.

In State v. Cherry, 348 S.C. 281, 559 S.E. 2d 297 (2001), the trial judge issued the jury instruction on Circumstantial evidence which had recently been recommended by the supreme court in State v. Crippen, Supra. Defence Counsel requested the Model Charge on Circumstantial evidence written by Judge Tom Brvin. The supreme court cited the charge as stated in State v. Edwards, 298 S.C. 272, 379 S.E. 2d 888 (1989) which the court described as the "traditional" Charge. This Charge provided: "Every Circumstance relied upon by the State must be proven beyond a reasonable doubt; and ... all of the Circumstances so proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every reasonable hypothesis" State v. Cherry, Supra, Citing State v. Edwards supra. The supreme court held that the trial court in Cherry's case correctly instructed the jury with the Crippen Charge.

In State v. Bostick, Supra, the supreme court held that the state presented insufficient evidence to submit the murder charge to the jury. The court held that the trial court should have granted a directed verdict because the state's evidence only raised a "suspicion of guilt". Bostick was charged with the murder of his neighbor, who was an older woman. The evidence against Bostick consisted of items (Car top, Calculator) belonging to the victim which were found in the Bosticks family burn pile; the fire accelerant in the burn pile was not used by Bostick's mother; Bostick had a pattern on his shoes that matched the accelerant which was gasoline; The blood

found on Besticks Jeans did not match the victims.

In State v. Odems, supra, The Supreme Court held that the Circumstantial evidence did not tend to prove the defendant's guilt, and the defendant was entitled to a directed verdict because the state failed to produce evidence of the offense charged.

The evidence against Odems consisted of his location in the getaway car in this burglary case ninety minutes after the burglary; the defendant fled from the police. The Supreme Court cited the traditional Circumstantial evidence definition to illustrate the "deficiency in the State's evidence against Odems." The Court wrote that this definition provided that if the State relied on Circumstantial evidence, the Jury could not convict unless:

Every Circumstance relied upon by the state be proven beyond a reasonable doubt and... all ~~the~~ the Circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Despite the Court's abandonment of the use of this particular definition as a Jury Charge in State v. Cherry, the definition illustrates the lack of evidence against petitioner.

The trial Court in the petitioner, Logan's case should have given the traditional Jury Charge on Circumstantial evidence because it, too, would have illustrated the lack of evidence by the state of an attempted CSC first degree by Logan. The only evidence was the word of the alleged victim who did not want to call the police, and did so only because her friends told her she should.

Logan, a hard working young man, father of two. A five year old son, and a three year old daughter. Logan at the time was a Newlywed only married for about four months. (October 30, 2009)

There is no way that Logan could have done what he was charged and convicted of.

The prosecutor's witness and statements was so riddled with contradictions and inconsistencies that no reasonable person could conclude that I the defendant were guilty.

Based on the above, Logan's conviction and sentence should be reversed, and the case remanded for a new trial.

Conclusion

There is one overriding reason why this case has been such a protracted and exhausting ordeal: Namely, the petitioner Clarence Logan SR have never enjoyed a fair and unforced disclosure of the facts to which they have been constitutionally entitled. For the prosecution & States public defender to hold back exculpatory evidence at trial is insufferably galling. It is akin to plucking a man's eyes out and condemning him because he cannot see. The petitioner has always sought swift and effective administration of Justice. It has consistently been the misconduct of State, under the color of law, which has frustrated and prolong its realization.

I Mr. Logan was denied information which would have supported my claims of innocence. To permit conviction to stand which have as my foundation appears to the withholding of evidence critical to the defence, is to commit a violation of the constitution as heinous as the crime for which I were tried and convicted.

Further more, the prosecution has resources unavailable to the average criminal defendant. Therefore, it is imperative that information which is essential to the defence in the hands of the prosecution be made available to the accused. If trials are indeed searches for the truth rather than efforts to conceal it, full and fair disclosure is necessary to protect and preserve the rights of the accused against the awesome power of the state.

This case, should have never happened. Its a case of passion and prejudice that was wrong from the beginning.

This case, conviction and sentence should be reversed, and remanded for a new trial.

- iv. _____
- (c) the disposition thereof:
 - i. Case was certified from the court of Appeals for review by SC Supreme Court.
 - ii. Affirmed conviction
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. January 29, 2013
 - ii. August 14, 2013
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. (unknown)
 - ii. ("See Attached pages")
 - 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?

yes, 'State' Direct Appeal

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. Circumstantial Evidence / Insufficient Evidence to convict
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. on Direct Appeal
 - ii. _____
 - iii. _____

Opinion: question, 13: (e. 11)

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Clarence Logan, Jr., Appellant.

Appellate Case No. 2011-194406

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Opinion No: 27296
Heard April 2, 2013 - Filed August 14, 2013

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, of Columbia,
for Respondent.

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AUG 14 2013

OFFICE OF
APPELLATE COUNSEL

treatment for her injuries. O'Neal provided the police with a statement during her hospital visit.

O'Neal then contacted Aaron Green, the Lovey Dovey's manager. Green informed O'Neal that while he did not personally know Appellant, he knew Appellant used the nickname "Blackout," and owned a blue Thunderbird. O'Neal supplied police with this information. O'Neal noticed a blue Thunderbird near her home on several occasions following the attack, and on at least one of those occasions, O'Neal recognized Appellant as the vehicle's driver. O'Neal notified police on each occasion. Police contacted O'Neal and asked her to choose Appellant's photograph out of a group of six photographs. O'Neal chose Appellant.²

Andrea Bell testified that O'Neal excused herself to the restroom at some point during their visit to the Lovey Dovey. Bell stated that a short time later she observed a "young" man, wearing a white t-shirt, walking away from the bathroom, and "pulling up his pants."³ Bell then overheard someone inquire whether "something going [sic] on in the bathroom," prompting Bell to walk over to the restroom. Bell described O'Neal's demeanor, stating, "All I see was she was upset, and her face was swollen. Like I think it was her eye and her lip that were swollen." Bell testified that she could not identify Appellant as the man she observed coming out of the bathroom that night. Bell assisted O'Neal with her injuries, but did not discuss anything that might have happened between O'Neal and Appellant.

Virgil Washington testified that he knew O'Neal, but did not consider her a friend. Washington testified that on the night of the attack he merely provided transportation for O'Neal at the request of his friend, Aaron Green. According to Washington, he noticed a commotion near the restroom, and when O'Neal exited the restroom she "was highly upset." Washington also observed blood on O'Neal's face. O'Neal mentioned to Washington that Appellant hit her. Washington

² Omar Faison, a North Charleston police officer at the time of the incident, testified that he presented O'Neal with pictures of six individuals with the same height, weight, and physical features, and that O'Neal identified Appellant without hesitation.

³ At trial, Bell could not identify Appellant as the "young" man she observed that night.

that after our Supreme Court opinion in *Bostick* that came out, I want to say, earlier this year where the Supreme Court said that the trial court should have directed a verdict because the case was entirely circumstantial, they appealed to four different pieces of circumstantial evidence . . . that line of cases, *Shropp*⁵ and *Arnold* [361 S.C. 386, 605 S.E.2d 529 (2004)] and now *Bostick*, they are now dealing with this jury charge, so I guess what I'm asking is to argue against precedent to say that the standard charge, I think this is from *Ripon*⁶ that says that the direct and circumstantial evidence are equally—

The trial court interrupted the argument, stating, "I'm not familiar with the exact case you're referring to, but I usually on—there is a difference when it comes to directed verdict between direct and circumstantial evidence." The trial court then acknowledged that circumstantial evidence had to be "substantial," and that he was not sure that "they," presumably this Court, "had changed that rule." Appellant's trial counsel responded:

In case they want to, I have to give them the opportunity to do it, and I think the proposition—the law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence is no longer valid.

The trial court denied the motion, and then delivered the following instruction regarding direct and circumstantial evidence:

There are two types of evidence generally presented in a trial. There is direct evidence and circumstantial evidence. Direct evidence is testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness, and this is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact, and this is evidence which immediately establishes collateral facts from which a main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction

⁵ Appellant's trial counsel appears to have been referring to *State v. Schrock*, 283 S.C. 129, 322 S.E.2d 450 (1984).

⁶ Appellant's trial counsel appears to have been referring to *Gripton*.

In *Bostick*, the fire department arrived at the victim's house on a Sunday afternoon after her house caught fire. 392 S.C. at 136, 708 S.E.2d at 775. Firefighters discovered the victim's body in the house. *Id.* Although the victim had been struck in the head with a blunt force object, she ultimately expired as a result of carbon monoxide poisoning from the fire. *Id.* Two days later, investigators discovered the following items in a burn pile at a neighboring house belonging to Bostick's mother: two sets of car keys, toe nail clippers, pens, burned paper, a metal clasped ring of a purse, and a watch. *Id.* at 137, 708 S.E.2d at 775. All of these items belonged to the victim. *Id.* Investigators later determined that the person responsible for the fire at the victim's house used a heavy petroleum product, such as kerosene or diesel fuel. *Id.* Bostick's mother stated that she did not use either of these products in the burn pile. *Id.* Investigators interviewed Bostick, and asked for his clothing and shoes. *Id.* Blood was found on Bostick's jeans, but a DNA analysis proved inconclusive. *Id.*, 708 S.E.2d at 775-76 ("[T]he agent who reviewed the DNA analysis findings . . . testified that while ninety-nine percent of the population could be excluded as contributing to the sample, she was unable to determine whether the blood sample actually came from [the victim]."). However, a chemical analysis of Bostick's shoes revealed a fresh gasoline pattern. *Id.*, 708 S.E.2d at 776. Bostick moved for a directed verdict at the close of the State's case, which the trial court denied. *Id.*

Bostick argued on appeal that the evidence submitted did not constitute substantial circumstantial evidence necessary to submit the case to the jury. *Id.* at 138-39, 708 S.E.2d at 776. This Court agreed, and found that the State's evidence raised only a suspicion of Bostick's guilt. *Id.* at 141, 708 S.E.2d at 778.

In *Odems*, this Court addressed the same substantial circumstantial evidence issue. In that case, the defendant appealed his convictions for first degree burglary, grand larceny, criminal conspiracy, and malicious injury. *Odems*, 395 S.C. at 585, 720 S.E.2d at 50. At trial, the State relied solely on three pieces of circumstantial evidence: (1) the fact that less than ninety minutes after the burglary, police located the defendant in the get-away vehicle with the burglars and the stolen goods; (2) the defendant fled from law enforcement; and (3) the defendant asked an uninvolved person to lie to authorities on his behalf. *Id.* at 588, 720 S.E.2d at 51. This Court found that even when viewed in the light most favorable to the State, the circumstantial evidence did not reasonably tend to prove the defendant's guilt. *Id.* The Court illustrated this point through an analogy to what is commonly referred to as the "traditional" circumstantial evidence jury charge:

this Court abandoned the traditional circumstantial evidence charge, and that the Court referred to the charge merely as an illustration of the "deficiency in the State's evidence" against the defendant in that case. *See Odems*, 395 S.C. at 592, 720 S.E.2d at 53 ("The State asks this Court to uphold [the defendant's] convictions based on evidence which does not satisfy the standard adopted by this Court regarding the proof necessary in a circumstantial evidence case." (citing *Bostick, supra*, identifying fundamental opinions analyzing the circumstantial evidence standard)).⁷

Accordingly, the trial court did not err in providing a circumstantial evidence charge consistent with *Grippon*.⁸

⁷ *See also Hernandez*, 382 S.C. at 625 n.2, 677 S.E.2d at 605-06 n.2 ("Although in *State v. Cherry* . . . the Court abandoned [the traditional circumstantial evidence] charge and held that it may confuse a jury by leading it to believe that the standard for measuring circumstantial evidence is different from that for measuring direct evidence, it nonetheless illustrates the lack of evidence against Petitioners." (emphasis added)).

⁸ Additionally, erroneous jury instructions are subject to a harmless error analysis. *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). Jury instructions should be considered as a whole, and if as a whole, they are free from error, any isolated portions which may be misleading do not constitute reversible error. *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. *State v. Burkhardt*, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

In the instant case, the trial court clearly instructed the jury regarding the reasonable doubt burden of proof, explaining:

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty You

courts should utilize in ruling on directed verdict motions in circumstantial evidence cases),⁹ *abrogated by Cherry*, 361 S.C. at 601-02, 606 S.E.2d at 482.

However, in *Grippon*, the majority of the Court determined that once a trial court provides a proper reasonable doubt instruction, the jury need not be instructed regarding whether the circumstantial evidence proved the defendant's guilt to the exclusion of every reasonable hypothesis other than guilt. *Grippon*, 327 S.C. at 83-84, 489 S.E.2d at 464 (relying on *Holland v. United States*, 348 U.S. 121, 140 (1954); *United States v. Russell*, 971 F.2d 1098, 1108-09 (4th Cir. 1992), *cert. denied*, 506 U.S. 1066 (1993)).¹⁰

⁹ *Edwards v. South Carolina*, 493 U.S. 895 (1989) (denying petition for writ of certiorari to this Court).

¹⁰ Several courts have followed the Supreme Court's reasoning and found a distinct circumstantial evidence charge unnecessary. See, e.g., *Russell*, 971 F.2d at 1109 ("It is well settled that as long as a proper reasonable doubt instruction is given, a jury need not be instructed that circumstantial evidence must be so strong as to exclude every reasonable hypothesis other than guilt."); *Hebron v. Maryland*, 627 A.2d 1029, 1031-37 (Md. 1993) (holding that the proposition that a conviction based solely on circumstantial evidence cannot stand unless the circumstances are inconsistent with any reasonable hypothesis of innocence is a matter of the sufficiency of the evidence, rather than jury instruction); *North Carolina v. Adcock*, 310 S.E.2d 587, 607 (N.C. 1983) ("We hold that an instruction on circumstantial evidence to the effect that a conviction may not be based upon it unless the circumstances point to guilt and exclude to moral certainty every reasonable hypothesis except that of guilt is unnecessary when a correct instruction on reasonable doubt is given."); but see *Mainor v. Georgia*, 387 S.E.2d 882, 884 n.2 (Ga. 1990) (holding the trial court did not err in providing a circumstantial evidence jury charge providing that circumstantial evidence must be "entirely consistent with the defendant's guilt"); *Brown v. Virginia*, 381 S.E.2d 225, 229-30 (Va. 1989) (explaining that the circumstances contemplated by the traditional circumstantial evidence charge are those proved and consistent with each other and the defendant's guilt); *West Virginia v. Bratcher*, 206 S.E.2d 408, 410 (W. Va. 1974) (holding the trial court erred in refusing to provide a circumstantial evidence charge and citing with approval precedent relying on the traditional circumstantial evidence charge).

But, as observed in *Grippon*, the question is not whether circumstantial evidence carries the same probative weight as direct evidence, it clearly does. Instead, the pertinent inquiry is the proper means for evaluating circumstantial evidence and how the trial court may best instruct a jury as to its analytical responsibility. *Grippon*, 327 S.C. at 88, 489 S.E.2d at 466–67 (Toal, J. concurring). While direct and circumstantial evidence carry the same value, a jury cannot accurately analyze these two types of evidence using identical approaches.

Unlike direct evidence, evaluation of circumstantial evidence requires jurors to find that the proponent of the evidence has connected collateral facts in order to prove the proposition propounded—a process not required when evaluating direct evidence. *Cherry*, 361 S.C. at 603, 606 S.E.2d at 483 (Toal, C.J. dissenting); cf. 31A C.J.S. *Evidence* § 5 (2008) ("Direct evidence is evidence that proves the fact in dispute without inference or presumption."). Analysis of circumstantial evidence is plainly a more intellectual process. *Grippon*, 327 S.C. at 87–88, 489 S.E.2d at 466 (citing Irène Rosenberg & Yale Rosenberg, "Perhaps What Ye Say Is Based Only On Conjecture"—Circumstantial Evidence, Then and Now, 31 Hous. L. Rev., 1371, 1412–13 (1995)). We have previously observed that this process requires two steps: "After concluding that a particular fact is true, the individual juror is called upon to ask: First, can I infer guilt from that fact? Second, if so, is there any reasonable explanation other than guilt?" *Id.* at 87–88, 489 S.E.2d at 466. However, requiring a jury to inquire as to whether there is any other reasonable explanation other than the defendant's guilt comes perilously close to shifting the burden of proof from the State to the defendant. See, e.g., *State v. Aleksey*, 343 S.C. 20, 26, 538 S.E.2d 248, 251 (2000) ("Jury instructions on reasonable doubt which charge the jury to 'seek the truth' are disfavored because they [run] the risk of unconstitutionally shifting the burden of proof to a defendant."). Therefore, the circumstantial evidence instruction is best characterized as a construct requiring the State to prove its case beyond a reasonable doubt, while at the same time providing a framework for a "rational" and "cumulative" assessment for guiding the jury's consideration of circumstantial evidence. See *Grippon*, 327 S.C. at 87–88, 489 S.E.2d at 466 (citing Rosenberg, 31 Hous. L. Rev. at 1412–13).¹²

¹² For example, in *Cherry*, the State relied on the following evidence to prove that the defendant's guilt for possession with intent to distribute crack cocaine:

(1) the defendant's presence in a vehicle located in a high crime area known for drugs; and (2) police recovered eight rocks of crack cocaine and \$322.00, consisting primarily of \$20 bills. *Cherry*, 361 S.C. at 604, 606 S.E.2d at 483. The

There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact and does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact.

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Cf. Littlejohn, 228 S.C. at 328, 89 S.E.2d at 926 (explaining the traditional circumstantial evidence charge); *Grippon*, 327 S.C. at 83–84, 489 S.E.2d at 463–64 (finding a circumstantial evidence jury instruction including "reasonable hypothesis" language unnecessary); *Cherry*, 361 S.C. at 600–02, 606 S.E.2d at 481–82 (holding the *Grippon* charge as the exclusive charge for circumstantial evidence cases). This holding does not prevent the trial court from issuing the circumstantial evidence charge provided in *Grippon* and *Cherry*. However, trial courts may not exclusively rely on that charge over a defendant's objection.

Our *Grippon* and *Cherry* decisions commendably sought to remove confusion from the jury's consideration regarding the weight and value afforded to circumstantial evidence. However, at times, a separate framework is necessary to the jury's analysis of circumstantial evidence. Thus, we modify *Grippon* and *Cherry* to allow the additional language provided above if requested by a defendant.

for part D.

9

JUSTICE KITTREDGE: I concur in result. I write separately because I would adhere to, and not overrule, *State v. Grippon*, 327 S.C. 79, 489 S.E.2d 462 (1997), and *State v. Cherry*, 361 S.C. 588, 606 S.E.2d 475 (2005).

The United States Supreme Court has held that there is no difference between direct and circumstantial evidence. See *Holland v. United States*, 348 U.S. 121, 140 (1954) (noting that circumstantial evidence is "intrinsically no different from testimonial evidence," for both instances require a jury "to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference," and in both instances, "the jury must use its experience with people and events in weighing the probabilities"). All of the federal courts and the vast majority of state courts have adopted *Holland*. The reasoning and rationale for following *Holland* was persuasively set forth by this Court in *Cherry*, and I see no basis for rejecting *Holland* and overruling *Grippon* and *Cherry*.

PLEICONES, J., concurs.

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) Defense Counsel stated it's inappropriate to raise ineffective assistance.
- (b) Defense Counsel stated: Due process violation can not be raised after on direct appeal.
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Beattie I. Butler - Charleston County public Defender - of wallace County office Bldg - 101 Meeting Street 5th Floor - Charleston, SC 29401-2214
 - ii. Reese Stidham - Charleston County public Defender - of wallace County office - Bldg. 101 Meeting Street 5th Floor - Charleston, SC 29401-2214
 - iii. Lanette Cantey Durnit - Appellate Defender - Division of Appellate - Defence, P.O. Box 11589 Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
 - i. (A)(B)(C) Arraignment, trial, and Sentencing.
 - ii. (B)(C) Trial and Sentencing.
 - iii. (D)(E) For my Appeal, preparation, presentation and Consideration of petitions, motions, and applications with respect of Conviction.

19. State clearly the relief you seek in filing this application:

For this Conviction and Sentence to be reversed and/or
Case remanded for a new trial

20. Are you now under sentence from any other court that you have not challenged?

yes, a Federal Sentence.

Revised 3/2003

Pennsylvania
 STATE OF ~~SOUTH CAROLINA~~)
 County of Charleston Union)

VERIFICATION

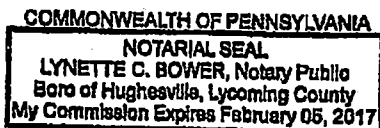
I, Clarence Logan JR, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Clarence Logan

SWORN to and subscribed before me this 13
 day of March, 2014.

Lynette C Bower (L.S.)
 Notary Public

My Commission Expires: 2/5/17



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Clarence Logan JR, 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:

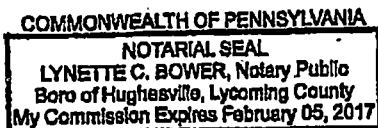
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Clarence Logan JR
Applicant

SWORN or affirmed to and subscribed before me this
13 day of March, 2014.

Lynette C Bower
Notary Public

My Commission Expires: 2/5/17



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Clarence Logan #223087,	)	2014-CP-10-1913
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed on March 21, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the Federal Bureau of Prisons. The Applicant was indicted by the May, 2010, term of the Charleston County Grand Jury for Criminal Sexual Conduct in the First Degree (2010-GS-10-3060). Beattie Butler, Esquire, and Reese Stidham, Esquire, represented the Applicant at trial and sentencing. On June 8-9, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of Assault with Intent to Commit Criminal Sexual Conduct in the First Degree. The Honorable Roger M. Young, Sr., sentenced the Applicant to confinement for ten (10) years. The sentence was ordered to run concurrently with unrelated federal charges and the Applicant received credit for time served in the amount of sixteen (16) months.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. On appeal, Lanelle Cantey Durant, Esquire, represented the Applicant. The South Carolina Supreme Court granted certiorari and, in an opinion filed on August 14, 2013, affirmed the Applicant's conviction and sentence. State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). The Remittitur was

issued on August 30, 2013.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to obtain an audio tape recording evidence of extortion when state witness asked defendant to give them money to drop charges"
2. "Denial of Fair Due Process & Equal Protection of laws"
 - a. Withholding of evidence
3. "Circumstantial Evidence/ Insufficient Evidence to convict"
 - a. "The trial court erred in giving the charge on circumstantial evidence as stated in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997)."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the trial transcripts, and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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 that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing

which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Respondent further submits that the doctrine of *res judicata* bars the Applicant's claim. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

Applicant had a full opportunity to litigate the circumstantial evidence claim concerning the Grippons charge during the Supreme Court's review of his case. Applicant raises the exact same issue in his circumstantial evidence claim in this action. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court should summarily dismiss this claim as barred by *res judicata*.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

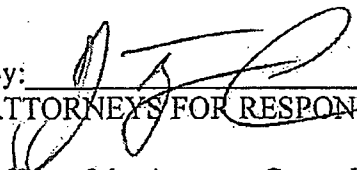
Respectfully submitted,

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

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P.O. Box 11549
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Telephone: (803) 734-3737

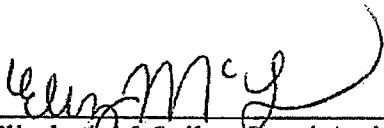
June 1, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-1913
	)	
CLARENCE LOGAN, #17442-17,	)	
	)	
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:

Clarence Logan, Jr. #17442-171
 USP Coleman II
 US Penitentiary
 PO Box 1034
 Coleman, FL 33521

DATED this 1st day of June, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF CHARLESTON) Court of Common Pleas
4) Case No. 2014-CP-10-1913
5 CLARENCE LOGAN JR.)
6 Applicant,)
7 vs.) Transcript of Record
8 STATE OF SOUTH CAROLINA,)
9 Respondent.) DATE: December 7, 2016

10
11 B E F O R E:

12 THE HONORABLE G. THOMAS COOPER

13
14 A P P E A R A N C E:

15 RODNEY DAVIS
16 Attorney for the Applicant

17 ALICIA A. OLIVE
18 Attorney for the Respondent

19
20 Karen V. Andersen, RMR, CRR
21 Circuit Court Reporter
22
23
24
25

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1 (Whereupon, Clarence Logan appears by telephone.)

2 MR. DAVIS: Mr. Logan, this is Rodney. I'm in the
3 courtroom with Judge Cooper and the attorney general. Can
4 you please tell us where you are located?

5 MR. LOGAN: Coleman, Florida, USP 2.

6 MR. DAVIS: And what is your registered number,
7 inmate number?

8 MR. LOGAN: 17442171.

9 MR. DAVIS: And what's your date of birth?

10 MR. LOGAN: [REDACTED].

11 MR. DAVIS: Mr. Logan, the attorney general is going
12 to announce the case and the judge has some information for
13 you.

14 MR. LOGAN: Yes, sir.

15 MS. OLIVE: May it please the Court, Your Honor.

16 This is the case of Clarence Logan, 2014-CP-10-1913.

17 Mr. Logan is currently incarcerated in the Federal Bureau of
18 Prisons. He was indicted May 2010 for attempted criminal
19 sexual conduct in the first degree. He was represented by
20 Beattie Butler, proceeded to trial June 8th through 9th,
21 2011.

22 He was found guilty of assault with attempt to
23 commit criminal sexual conduct in the first degree. Judge
24 Young sentenced him to confinement for 10 years. And that
25 sentence was ordered to run concurrently with his federal

1 charges.

2 Notice of appeal was filed on his behalf and an
3 appeal was perfected. The Supreme Court -- I'm sorry --
4 affirmed his conviction and sentence. And that was in
5 published opinion.

6 The remittitur was returned on August 30th, 2013.
7 He filed this application for post-conviction relief on March
8 21st, 2014, alleging several grounds of ineffective
9 assistance of counsel.

10 And he is present via telephone today and
11 represented by Rodney Davis. I will turn it over to
12 Mr. Davis at this time.

13 THE COURT: Mr. Logan, can you hear me?

14 MR. LOGAN: Yes, sir.

15 THE COURT: This is Judge Cooper. I have your PCR
16 application. I've been reviewing it while we were waiting to
17 get on to this call. Before we begin, sir, I need to make
18 sure that you understand that if you prevail in this
19 post-conviction relief action, that the only relief I can
20 grant to you is a new trial, at which time, you would again
21 have to face the indictment of attempted criminal sexual
22 conduct in the first degree. Do you understand that?

23 MR. LOGAN: Yes, sir.

24 THE COURT: All right. And with that understanding,
25 do you wish to proceed with this post-conviction relief

1 hearing today?

2 MR. LOGAN: Yes, sir.

3 THE COURT: All right. You may proceed, Mr. Davis.

4 Mr. Logan, I would like for you to raise your right
5 hand. Do you solemnly swear or affirm that the testimony you
6 are about to give in this hearing today will be the truth,
7 the whole truth and nothing but the truth so help you God.

8 MR. LOGAN: Yes, sir.

9 CLARENCE LOGAN,
10 having been duly sworn, testifies as follows:

11 THE COURT: All right. Mr. Davis.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. One last thing, just to follow-up on what the judge
15 said, you understand that attempted criminal sexual conduct,
16 first, carries 0 to 30 years?

17 A. Yes, sir.

18 Q. You understand any sentence you get, if convicted of
19 any sentence you get, you must serve 85 percent of that?

20 A. Yes, sir.

21 Q. And knowing that if we are successful today, you
22 would start again with that charge pending against you, you
23 still want to go forward?

24 A. Yes, sir.

25 Q. Okay. At trial, there was a charge you were found

1 not guilty of, correct?

2 A. Yes, sir.

3 Q. What was that charge?

4 A. Strong-arm robbery.

5 Q. Now, at your trial, who was your attorney?

6 A. Beattie Butler and, I think, Reese Stidham.

7 Q. Is it fair that Mr. Butler was the lead attorney on
8 the case?

9 A. Yes, sir.

10 Q. Let me go back before the trial. Was there ever any
11 discussions about any guilty plea on these charges?

12 A. Yes, sir.

13 Q. Was there a discussion about a smaller charge, an
14 assault and battery of a high and aggravated nature charge?

15 A. Yes, sir.

16 Q. What was the advice of your attorney to that offer?

17 A. I want to say, if I would plea out, he would be able
18 to get that. But I told him I'm not guilty of the charge, so
19 I'm not pleading out to anything.

20 Q. What was your understanding if you pled to that
21 smaller charge about whether you would be on the sex offender
22 registry or not?

23 A. Yes, he said that I would have to register.

24 Q. And so knowing all that and even with your
25 attorney's advice, did you accept or reject that offer?

1 A. Yes, sir.

2 Q. Which, accept or reject?

3 A. Accept or reject.

4 Q. You had an offer to plead guilty. Did you accept
5 the offer to plead guilty or reject the offer to plead
6 guilty?

7 A. Reject.

8 Q. Thank you. During those discussions, did Mr. Butler
9 talk to you about the range of punishment for attempted
10 criminal sexual conduct, first?

11 A. As in the charge?

12 Q. Yes, sir.

13 A. Yes, sir.

14 Q. Did he talk to you about whether it was an 85
15 percent or no-parole offense?

16 A. I already know that. I already had knew that.
17 There was a discussion on that.

18 Q. Was there any discussions with Mr. Butler about
19 whether this was a strike offense or not?

20 A. No, sir.

21 Q. Was there any discussions -- I think you've said
22 this, but were there discussions about the sex offender
23 registry?

24 A. What you were talking about the other day?

25 Q. When you spoke with Mr. Butler, when he was your

1 attorney, were there any discussions about the sex offender
2 registry?

3 A. Just about me registering, yes, sir.

4 Q. Were there any discussions about what's called
5 sexually violent predator?

6 A. No, sir.

7 Q. You had an offer of assault and battery of a high
8 and aggravated nature. Did he talk to you about the range of
9 punishment on that charge?

10 A. No, sir. He just said he could get the charge down
11 to that and serve a little time, or something like that.

12 Q. And so moving on, you did not want that offer and
13 you wanted on a trial, correct?

14 A. Yes.

15 Q. And why?

16 A. Because I'm innocent of these charges.

17 Q. Did you, in fact, request for him to file a speedy
18 trial motion?

19 A. Yes, sir.

20 Q. At some point up close for trial, were there
21 discussions about whether you would accept an offer, even if
22 it was for time served?

23 A. Yes, sir.

24 Q. Can you tell the judge what your reaction to that
25 was?

1 A. I think he said -- I want to be correct, I want to
2 be 100 percent correct -- time served, but I would still have
3 to register or something like that. I'm not too familiar. I
4 can't remember exactly what was said.

5 Q. And were you interested in an offer like that or
6 not?

7 A. No, sir, because I'm innocent of these charges.

8 Q. Was there a discussion of pleading guilty under
9 *North Carolina v. Alford* case? Did you have discussions
10 about that?

11 A. No, sir, I never heard of that.

12 Q. Now, when you actually then got your trial request,
13 do you recall meeting with Mr. Butler leading up to your
14 trial?

15 A. I think I met with him once before I came to the
16 courthouse.

17 Q. So how many total meetings would you have had with
18 your attorney?

19 A. Maybe three or four.

20 Q. Now, you just mentioned meeting him once before
21 going to the courthouse. Would that have been on the eve of
22 trial?

23 A. Yes, sir.

24 Q. Was there some discussion -- go ahead.

25 A. In the basement.

1 Q. In the basement of the courthouse?

2 A. Yes, sir.

3 Q. Okay. Was there some mention during that discussion
4 that caused you to be concerned about his readiness to go to
5 trial?

6 A. Yes, sir.

7 Q. What was that?

8 A. Well, he came in, he was dressed in a suit, he had a
9 bunch of dandruff on his clothes, and he was telling me that
10 he was on a trip with his girlfriend and I made him come down
11 for this trial.

12 Q. Prior to that meeting here at the courthouse before
13 trial, had you ever discussed trial strategy with Mr. Butler?

14 A. No, sir. He came up with an idea of what happened.
15 And I told him that's not what would happen, so we are not
16 going in there with that.

17 Q. What was his idea about what happened?

18 A. That me and the girl had some kind of dealing and
19 altercation, and she got upset because of what he said at the
20 jail. We probably were in the bathroom and we probably did
21 something, but she got upset about the money, and that's why
22 she's doing that. And I said, I told him I was never in
23 there with her, so why would you even come up with this
24 theory? And he said he was just asking.

25 Q. And for the judge to understand, you were accused of

1 being in a bathroom with a female and attempting to have sex
2 with her against her will; is that the accusation?

3 A. Yes, sir.

4 Q. And specifically as to being in the bathroom with
5 her, what did you tell Mr. Butler?

6 A. We never were in the bathroom. The fight
7 happened -- there was a fight at the bar where I hit her
8 twice and fought with her brother, but there was never an
9 altercation in the bathroom.

10 Q. And you made it clear to Mr. Butler that any tussle,
11 any fight, was at the bar?

12 A. Yes, sir. I told him exactly what happened.

13 Q. And who was the fight with at the bar, you and
14 who?

15 A. Me and Jarvia and her so-called brother, who I found
16 out that is not even her brother after everything gone on.

17 Q. Jarvia is the accuser, Jarvia O'Neil?

18 A. Yes, sir.

19 Q. Okay. Did Mr. Butler advise you to testify or not
20 to testify?

21 A. He advised me not to testify.

22 Q. Did you follow that advice?

23 A. Yes, sir.

24 Q. Did you want to testify?

25 A. Yes, sir.

1 Q. How long had you been incarcerated prior to your
2 trial?

3 A. 16 1/2 months.

4 Q. So you do recall talking to the judge and indicating
5 you did not wish to testify; do you remember that?

6 A. Yes, sir.

7 Q. But you are telling Judge Cooper today that you wish
8 you had testified; is that right?

9 A. Yes, sir.

10 Q. What would -- if you had testified, what would you
11 have told the jury about -- let's start with the owner of the
12 club where this allegedly happened. What was your
13 familiarity with him?

14 A. I thought we were friends, because we were throwing
15 parties and stuff at the club, or whatever, because I had to
16 do my --

17 Q. I just want to clear up. So what is the owner of
18 the club's name?

19 A. Aaron Green, Aaron Jarad Green.

20 Q. On this particular night, what was the event that
21 was going on?

22 A. That night, I think it was shrimp night that night.

23 Q. Was there some connection to you about the party
24 that evening?

25 A. No, sir, I just went out.

1 Q. And what would you have testified about any
2 physicality, any fight that occurred? What would your
3 testimony have been?

4 A. It was all based on the robbery, me being robbed,
5 which I didn't let happen. And these charges were placed on
6 me because I defended myself.

7 Q. Hold on just a second. Let's explain that to Judge
8 Cooper a little bit. And I'm going to start you out. You
9 were at the bar. And then can you tell the judge how it went
10 from you being at the bar to a fight happening?

11 A. For starters, as soon as we came in somewhat, when I
12 told everybody what's up, went and got a drink, and two young
13 ladies came to the club. So I was sitting there. It was
14 probably around early ten o'clock. You could hear the young
15 girl saying that my car wasn't out there. And because of
16 that, she didn't know if I was here.

17 And Aaron introduced me to her. So after that, she
18 was like -- excuse me. She was trying to get me to
19 prostitute her for \$150. So I laughed at her, you know, and
20 started tripping off her, or whatever. And she got kind of
21 upset.

22 Q. Now, who is she that you are talking about?

23 A. Jarvia.

24 Q. Ms. O'Neil?

25 A. Yes, sir.

1 Q. Okay. Then what happened?

2 A. Then she got upset. And she said that she was going
3 to call her brother. So, I mean, it was not even three, four
4 minutes before this guy came in. So my first reaction is to,
5 like, push him off me. So I pushed him off me, whatever. We
6 grab lock. And we kind of -- everybody kind of, like, break
7 it up for the moment.

8 So I went back to the bar and I bought another
9 drink. I probably sat there for about probably about five,
10 ten minutes before they came back. So I was talking to the
11 bartender some more. I gave her like, I think, \$50, inside
12 her shirt pocket. And I had my money out of my pocket at the
13 bar. And Jarvia tried to grab my money. So I hit her with
14 my left hand twice. And that's when he came over. We got
15 into a big altercation.

16 Q. Who is "he"? Who is "he" that came over?

17 A. I don't -- the guy, her so-called brother. I don't
18 even remember his name. I seen him in Charleston, though.

19 Q. Okay. And what did you do after that?

20 A. When Aaron came over, asked what's going on, I told
21 him what's going on. And he told me to leave. So I left.
22 And that was, I think, that was Thursday night.

23 Q. Okay.

24 A. February 4th.

25 Q. Was there any other physical contact with Ms. O'Neil

1 other than what you've just testified?

2 A. No, sir.

3 Q. Did you ever attempt to have sex with her?

4 A. No, sir.

5 Q. Were you ever in the bathroom at that club with her?

6 A. No, sir.

7 THE COURT: Ask him about this audiotape recording
8 that's part of this.

9 MR. DAVIS: Yes, sir.

10 BY MR. DAVIS:

11 Q. In tying in with what you were just talking about,
12 that the fight was with Ms. O'Neil and another person, did
13 they at some point try to talk to you about exchanging money
14 for dropping charges?

15 A. Yes, sir. This was through a phone call or recorded
16 phone call when I was in the county jail.

17 Q. And --

18 A. Excuse me, through the third-party, Aaron.

19 Q. And how did you become aware of that phone call
20 recording? Was that through Mr. Butler?

21 A. No, sir. I told Mr. Butler about the phone call
22 that I used on the friends who was at the county jail form,
23 because it was in -- the phone call wasn't under my name,
24 because I didn't have any money on my card to call my family.
25 So I used his phone. And that's where the records came from.

1 Q. And you told Mr. Butler about that call?

2 A. Yes, sir.

3 Q. Okay. Did you also -- there was some talk to the
4 police about Ms. O'Neil seeing your car drive by her
5 residence. Did you have discussions with Mr. Butler about
6 the condition of your car during that time frame?

7 A. Yes, sir.

8 Q. And what was the condition of your car during that
9 time frame?

10 A. At the time, I just bought a new motor and my car
11 was in the shop. I had a flashy car at the time, rims, nice
12 paint job, certain emblems that stands out, TV. My car was
13 in a running condition. I had the receipts and everything.
14 The property manager who runs the place that took my
15 transmission and motor in, they came to court.

16 Q. Finally, did Mr. Butler have a photograph of your
17 vehicle that he could use?

18 A. I gave him three photographs.

19 Q. Now, there were a couple of other things that we had
20 talked about that you had an issue with at trial. Do you
21 remember Mr. Butler's closing argument on your behalf?

22 A. Yes, sir.

23 Q. Is that what you expected him to argue, or not?

24 A. No, sir.

25 Q. Did you discuss with him about why he made some

1 admissions in the closing argument?

2 A. Explain what you've just said, sir.

3 Q. Sure. Did you ask him about why -- for example, he
4 admitted during closing that you were in the bathroom with
5 her. Did you confront him about that?

6 A. Yeah, I asked him why he would say something like
7 that. And he was like, don't worry about it, because the
8 testimony was so bad that the judge wouldn't believe it, or
9 something like that, something like that there.

10 Q. One final thing we had discussed. You were
11 concerned that there was some information about you that the
12 jury was not able to hear about. Were you single or married
13 at the time of the trial?

14 A. I just got married four months prior.

15 Q. And prior to being incarcerated, were you employed
16 or not?

17 A. Yes, sir.

18 Q. And are those factors that you wish had been
19 presented to the jury?

20 A. Yes, sir.

21 MR. DAVIS: Your Honor, if I could have just one
22 moment. Mr. Logan, just one moment.

23 MR. LOGAN: Yes, sir.

24 BY MR. DAVIS:

25 Q. Mr. Logan, back to one issue about you testifying or

1 not, do you remember the discussions you had with Mr. Butler
2 about that decision?

3 A. Yes, sir.

4 Q. And what was it that he advised you not to testify;
5 do you recall?

6 A. Because I was upset what the victims were saying,
7 so-called victims were saying. And I didn't want to go out
8 there like that, because the prosecutor would eat me up.

9 Q. Were there any discussions about who got to argue
10 last in front of the jury? Were there any discussions about
11 that?

12 A. Yes, sir. He said he didn't present certain things
13 because he wanted last arguments.

14 Q. Finally, was there any discussion about your prior
15 record at the time of the trial and whether that could be
16 used if you testified? Were there any discussions about
17 that?

18 A. Say that again.

19 Q. Sure. Were there any discussions about the prior
20 record that you had at the time of the trial, and whether
21 that could be used against you if you did testify? Were
22 there any discussions about that?

23 A. No, sir. He said something at the end, but it
24 didn't even matter, because the trial was over.

25 Q. Did Mr. Butler present the defense that you wanted

1 him to present?

2 A. No, sir.

3 Q. Did you want to testify at your trial?

4 A. Yes, sir.

5 Q. Why didn't you?

6 A. What did you say?

7 Q. Why didn't you?

8 A. Because I was advised by Mr. Butler I shouldn't.

9 Q. And if you could testify in a trial about your guilt
10 or innocence on this charge, would you do so?

11 A. Yes, sir.

12 MR. DAVIS: Mr. Logan, that's all the questions I
13 have. The attorney general may have some questions for you.

14 MR. LOGAN: Okay.

15 CROSS-EXAMINATION

16 BY MS. OLIVE:

17 Q. Good morning, Mr. Logan.

18 A. Good morning, ma'am.

19 Q. So your testimony today is that Mr. Butler advised
20 you not to testify because you were upset?

21 A. Yes, ma'am, that's one of them.

22 Q. And you said, I didn't want to go out there like
23 that? Is that how you felt? You didn't want to testify?

24 A. No. Mr. Butler said I shouldn't go out there like
25 that because the prosecutor would chew me up on the stand.

1 Q. Okay. Weren't there multiple witnesses that
2 testified that they saw you at that club that night?

3 A. I think it was two.

4 Q. Were there not multiple witnesses who testified that
5 they observed an altercation going on either in or outside of
6 the bathroom?

7 A. Yes, ma'am.

8 Q. So the prosecutor would have been able to impeach
9 you with those statements that other witnesses testified to
10 at trial?

11 MR. DAVIS: Objection, Your Honor. Calls for
12 speculation.

13 THE COURT: Sustained.

14 THE WITNESS: Say again, ma'am.

15 THE COURT: Nevermind, I sustained the objection.

16 BY MS. OLIVE:

17 Q. How were you going to explain the inconsistencies
18 between what all of these other witnesses were saying?

19 MR. DAVIS: Objection, Your Honor, pitting.

20 THE COURT: Overruled. Go ahead.

21 THE WITNESS: Well, all of their testimony was
22 bogus. All of it was lies. All of it was made up. You had
23 people saying that -- you had one witness saying that they
24 didn't even know if it was me at the bar that had the
25 altercation. I forgot what her name was. That was the young

1 lady that came with Jarvia.

2 Aaron and Virgil, I don't know, because they were
3 part of the whole scheme about getting me robbed and getting
4 this money from me. Their aunt, I think their aunt and
5 nephews, they were made-up stories. Because at the time, my
6 car was in the shop, and there was no way it could have been
7 driven. They said that my car was green. One said my car
8 was white. One said it was beige. One said my car had
9 Italian stickers on it. It was all made-up story. They said
10 they got my license plate number from coming by their house.
11 And that was impossible, again, because my car was in the
12 shop, which Aaron had my -- somehow Aaron had my license
13 plate number. I think he said that they got it from me
14 driving past a bus station, where he lives right on that road
15 too.

16 Q. Okay. But your vehicle really didn't have anything
17 to do with what happened at the bar, right?

18 A. Well, they were looking for my vehicle. That's how,
19 I guess, they were going to know that it was me.

20 Q. Okay. But weren't others able to identify you by
21 seeing you at the bar that night?

22 A. Aaron had to show them who I were.

23 Q. I'm sorry. Can you repeat that?

24 A. Aaron showed them who I were. Aaron introduced me
25 as soon as we came in to the club, when I heard them talking

1 about the car.

2 Q. Okay. But at trial, I mean, multiple witnesses
3 testified they knew you either by your name or your street
4 name, right?

5 A. Ma'am, only person I knew is Aaron Green. I never
6 saw those people before, except for the guy who she claimed
7 was her brother. I saw him throughout the Charleston area.

8 Q. Are you saying that Aaron introduced you to these
9 people that night?

10 A. Yes, ma'am.

11 Q. And Aaron testified at trial?

12 A. Yes, ma'am.

13 Q. Okay. But he didn't testify anything about this
14 scheme that you are talking about?

15 A. No, ma'am.

16 Q. So did your attorney advise you that you would not
17 be a good witness against yourself?

18 A. Yes, ma'am.

19 Q. And it's still your -- you are not alleging today
20 that you would have preferred to plead guilty, right?

21 A. No, ma'am, I wouldn't plead guilty to that. It
22 never happened.

23 Q. This phone call that we are talking about, what was
24 on this call? Because you were one of the speakers on this
25 call, right?

1 A. Yes, ma'am.

2 Q. And what was the conversation on this call that you
3 feel your attorney should have presented at court?

4 A. Well, I asked Aaron Green what he had going on. And
5 he was like, it's not me, it's them. So I was like, so what
6 do you all want? Y'all want money? What do you all got
7 going on? And I think he said she want 5 grand or something
8 like that. And I said, man, why are you all doing this to
9 me? You know, I didn't even do this. And I think he said
10 something, little mutter, like, you know how it goes, or
11 something like that.

12 I can't speak exactly what he said. That's why
13 Beattie Butler went and retrieved the tape.

14 Q. You are saying your attorney retrieved the tape and
15 he listened to the tape?

16 A. Yes. And he said the prosecutor wouldn't present
17 it, or something like that, because it would hurt the case.

18 Q. Okay. Did he give you a reason why he wouldn't
19 present it?

20 A. I think it was because of the last arguments. We
21 didn't bring it up because of the last argument.

22 Q. No other reason besides last arguments?

23 A. I'm not sure, ma'am.

24 Q. Did he say anything about it being hearsay?

25 A. Yeah, I think so. I think so. I think he said he

1 didn't -- I'm trying to be exact. I think he said he didn't
2 know for sure -- he don't remember the tape saying that I
3 know you didn't do this. He remembered the people asking
4 about the money to drop the charges.

5 Q. Okay. Did he say whether he thought that was going
6 to be good evidence for you?

7 A. I don't recall, ma'am. I thought it would be good
8 evidence.

9 Q. But you don't recall what he thought?

10 A. Yes, ma'am.

11 MS. OLIVE: Beg the Court's indulgence a moment,
12 Your Honor.

13 Thank you. That's all the questions I have,
14 Mr. Logan.

15 MR. LOGAN: Yes, ma'am. Thank you, ma'am.

16 THE COURT: Mr. Davis.

17 MR. DAVIS: that is all the questions I have for
18 you, Mr. Logan.

19 We will call Mr. Butler as our next witness.

20 THE COURT: Come around, Mr. Butler.

21 MR. DAVIS: Mr. Logan, we are going to have
22 testimony from Mr. Butler now. You need to be on the phone
23 listening, but please do not interrupt. Okay?

24 MR. LOGAN: Yes, sir.

25

1 BEATTIE BUTLER,

2 having been duly sworn, testifies as follows:

3 THE CLERK: Please state your first and last name,
4 and spell your last loudly and clearly into the microphone.

5 THE WITNESS: Beattie Butler, B-u-t-l-e-r.

6 DIRECT EXAMINATION

7 BY MR. DAVIS:

8 Q. Mr. Butler, let's go a little bit in reverse order
9 here. Do you recall having your investigator check out the
10 claim by Mr. Logan that his car was in the shop?

11 A. I remember that being an issue. I don't have an
12 independent recollection of what we found out, but I looked
13 at a report that you have that looks like my investigator did
14 talk to the person.

15 Q. And confirmed that it was in the shop until
16 Mr. Logan and his wife picked it up on February the 6th; do
17 you recall that?

18 A. If that's what the report says, then that's what she
19 found.

20 Q. That was not presented at all at trial?

21 A. I gather that it was not, from listening to
22 Mr. Logan and from reviewing the transcript here this
23 morning.

24 Q. Do you recall that the accuser from that night who
25 claimed that he attempted to rape her said that -- claimed

1 she saw his car driving by his residence at a later date?

2 A. At some other time, that's right.

3 Q. And, also, is it true that you were provided
4 photographs of this vehicle to use at trial depending on the
5 description given during testimony?

6 A. I don't recall, but I do recall being able to
7 introduce through some witness that she got the description
8 of the car wrong and that she got the license plate number,
9 not from viewing the call, but because Aaron, the owner of
10 the bar, told her. So I may not have introduced the
11 photographs because we were able to impeach her testimony in
12 that regard through other witnesses.

13 Q. There were efforts to resolve these charges prior to
14 trial by guilty plea, correct?

15 A. I don't independently recall, but I heard
16 Mr. Logan's testimony, and I don't have any reason to dispute
17 what he said.

18 Q. If I show you notes that appear to be in your
19 handwriting, would that refresh your recollection?

20 A. Yes.

21 MR. DAVIS: May I approach, Your Honor?

22 THE COURT: Yes.

23 (Plaintiff's Exh. 1, Handwritten notes, was marked
24 for identification.)

25 BY MR. DAVIS:

1 Q. I'm showing you what's been marked as Plaintiff's
2 Exhibit 1 for identification purposes. Take a look at if
3 that document is in your handwriting; and if so, if that
4 refreshes your memory about plea discussions.

5 A. These are my handwritten notes from my meeting with
6 Mr. Logan at the detention center. I can't read the date,
7 but it must be May of 2011. Let me read this real quick.

8 It looks like that the offer was that he plead to a
9 strike offense, PFC, first. He could enter a plea under
10 *North Carolina vs. Alford* for time served. And that
11 Mr. Logan was not interested. And he was not interested in
12 any plea, even misdemeanor assault for time served. And I
13 wrote that Mr. Logan understood he will get no credit towards
14 his federal time after conviction.

15 And I remember that being an important
16 consideration, because at the time I represented him, he had
17 already either been convicted or pled guilty in federal
18 court. And all the time that he was sitting in the county
19 was downtime.

20 Q. That led to his request for a speedy trial, correct?

21 A. It probably did.

22 Q. In your -- let me ask you this. At the time of this
23 trial, which was June 8th and 9th of 2011, how long had you
24 been an attorney at that point?

25 A. Well, I will do it backwards.

1 Q. Okay.

2 A. That would be 15 years.

3 Q. You had handled cases as serious as attempted rape
4 prior to this, right?

5 A. Yes.

6 Q. When you reviewed this case, when you got discovery,
7 was it your practice to list out good facts and bad facts?

8 A. That document is what I had when I prepared for
9 trial.

10 Q. Is it fair to say that you assessed Ms. O'Neil, the
11 accuser, to be -- her story to be incredible?

12 A. Yes. And that was especially true after she
13 testified.

14 Q. So following direct and cross, you felt she did
15 poorly in front of the jury?

16 A. I think everybody thought she did poorly.

17 Q. Is it fair to say that as you were leading up to
18 trial, based on your assessment of the case, that if you
19 could retain last argument, you felt that would be
20 beneficial?

21 A. You know, I think it's beneficial in every case. I
22 think it's also a little bit over-rated. If I have something
23 good, I don't mind losing last argument. But in this case, I
24 mean, it turns out I was wrong. I thought we didn't need to.
25 I really thought -- I thought we won. The judge didn't

1 believe her, which is reflected in the sentence that Clarence
2 received.

3 I don't think that we were really necessarily
4 intending to present anything other than Clarence. And I
5 remember the discussion that we had with his -- with members
6 of his family. But, yes, I'm sorry. I'm getting off track.
7 All else being equal, I would rather have last argument. But
8 if I have something that's worth putting up, I don't mind
9 waiving it either.

10 Q. Depending, of course, on how things go at trial, but
11 prior to trial, this is the type of case that you felt, based
12 on the inconsistencies with her information to the police,
13 that you might be able to retain last argument if the trial
14 went the way you thought it would; is that fair?

15 A. I can't say that I had that thought beforehand.

16 Q. Okay. You mentioned discussions about Mr. Logan
17 testifying or not when the family was present. Isn't it
18 correct that his record was not discussed at that point?

19 A. I couldn't say. I can tell you that the main reason
20 that -- Clarence is right about one thing. He wanted to
21 testify. That's true. And he was upset. And I remember
22 that. And -- but I and his family were advising him not to.

23 Now, I can't make him not, but, you know, that's
24 what I'm there for, is to give him advice. And I thought
25 that she was so unbelievable that he didn't need to testify.

1 And I also thought that some of the things that he wanted to
2 testify to were not going to help him, but were going to hurt
3 him, and that's the bathroom thing.

4 Q. But it was clear that if allowed to testify, he
5 would have denied -- he intended to deny being in the
6 bathroom and attempting to rape her?

7 A. Right. And I didn't think he needed to deny going
8 in the bathroom. There were several witnesses that saw him
9 coming out of the bathroom. And I thought it was -- what's
10 the phrase? -- protesting too much. I didn't think he needed
11 to deny being in the bathroom. He was accused of attempting
12 to rape her. So the fact that he was in the bathroom and
13 they might have gotten into a scuffle over something stupid
14 didn't make him a rapist.

15 And Aaron, who I think is his friend, the owner of
16 the bar, saw Clarence coming out of the bathroom. And saw
17 the complainant, I can't remember, Jarvia, coming out after
18 him with her hair mussed and in some degree of distress. So
19 I didn't think that we needed to engage in a conspiracy
20 theory to explain why all these people would lie and place
21 Clarence in the bathroom. He wasn't accused of being in the
22 bathroom. He wasn't even accused of assaulting her. He was
23 accused of attempting to rape her. And I didn't think they
24 could prove it.

25 Q. Is it fair, based on your assessment pretrial and

1 your assessment of the State's case, that Clarence,
2 therefore, did not need to testify?

3 A. Right.

4 Q. There was very little prep about his testimony,
5 correct?

6 A. I don't recall how much we talked about his
7 testimony.

8 Q. You don't recall meeting with him prior to trial to
9 go over questions and answers with him?

10 A. I don't remember doing it, but I don't remember not
11 doing it either.

12 Q. And the conversation with his family involved, that
13 would have been somewhere here in the courthouse and during
14 the break at trial?

15 A. Right. That's when we were having to make the
16 decision.

17 Q. And that would have been a relatively brief period
18 of time?

19 A. Relatively brief, yes.

20 MR. DAVIS: Your Honor, if I could have just one
21 moment.

22 BY MR. DAVIS:

23 Q. Just a couple of final things. At some point during
24 your representation, Mr. Logan grieved you about not filing
25 the speedy trial motion. Do you recall that; not filing as

1 quickly as he wanted?

2 A. I don't recall that.

3 Q. If he filed it and if it was subsequently that that
4 grievance was dismissed, would that surprise you?

5 A. No.

6 Q. Do you recall him contacting you after conviction
7 about some of the very issues we are talking about?

8 A. I do.

9 Q. Do you recall responding back to him in letter form
10 addressing some of these very issues?

11 A. I recall it, because I believe the attorney general
12 read it to me earlier today. I looked over it. And do
13 recall it now, having looked at it.

14 Q. Having looked at that, is there anything in that
15 that would change your testimony here today?

16 A. No.

17 MR. DAVIS: Thank you, Mr. Butler. No other
18 questions.

19 MS. OLIVE: May it please the Court.

20 CROSS-EXAMINATION

21 BY MS. OLIVE:

22 Q. Good morning, Mr. Butler.

23 A. Good morning.

24 Q. Do you recall how many times you met with Mr. Logan
25 prior to trial?

1 A. I do not.

2 Q. You heard him testify it was about three or four?

3 A. I heard that.

4 Q. Do you think that's accurate?

5 A. I would have thought it had been more, but I can't
6 say.

7 Q. Is there a typical number of times you would meet
8 with a client before going to trial?

9 A. There are no hard-and-fast rules with respect to
10 that. I tried -- I would try to see people as soon as I got
11 the file. And then after that, I would try to see them every
12 other month. But, you know, trying and actually achieving
13 that are two different things.

14 Q. And just for the record, was Mr. Reese Stidham
15 involved? Did he take an active role in the trial at all?

16 A. No. As I often tell lawyers in my office, if you
17 sit with me, you take notes.

18 Q. I just want to clarify that for the record. And in
19 your meetings with Mr. Logan, did you discuss with him what
20 the State was going to have to prove at trial?

21 A. I'm sure I did. I don't independently recall it,
22 but I'm sure I did.

23 Q. Would you have reviewed the discovery with him?

24 A. Yes.

25 Q. Would you have reviewed -- was that phone call part

1 of discovery, the jail phone call?

2 A. No. We would have had to obtain it. And I didn't
3 remember getting it or listening to it. That doesn't mean
4 that we didn't. But from reviewing my file, I know why I
5 didn't present it.

6 Q. And why is that?

7 A. Because when we talked to Aaron, Aaron said that,
8 yes, there was some discussion about paying Jarvia to have
9 the charges dropped, but that those discussions were
10 initiated not by Jarvia, but by Clarence. So I didn't want
11 to get into that.

12 Q. And did you discuss with Mr. Logan his version of
13 the facts?

14 A. Yes.

15 Q. And what did he tell you?

16 A. I couldn't recall everything, but from reviewing the
17 parts of the file that I looked at and from hearing his
18 testimony, I believe that his position was that he never went
19 in the bathroom.

20 Q. Did you need him to testify to that at trial?

21 A. Did I need him to testify to that at trial? I
22 didn't think it mattered whether he was in the bathroom. I
23 know that makes him upset, because it concedes something that
24 he says is false. But, you know, I have to try to stand back
25 from the evidence and the facts and try to determine what I

1 think is going to matter to the jury. I think that if we had
2 denied that he had been in the bathroom, it would have hurt,
3 because I think the jury is going to believe he was in the
4 bathroom, because other witnesses with no reason to lie said
5 he was in the bathroom. I didn't need to make anyone out a
6 liar except for Jarvia.

7 Q. How did you feel about her performance at trial?

8 A. I thought she bombed.

9 Q. I know we talked a lot about the victim's
10 credibility, but did you have an overall theory or strategy
11 going into this trial?

12 A. Yes.

13 Q. And what was that?

14 A. That nothing that she said that was credible could
15 amount to attempted rape.

16 Q. Did you discuss this theory with Mr. Logan?

17 A. I'm sure I did. But like I say, a lot of times, I
18 don't have an independent recollection of that.

19 Q. Did you discuss with Mr. Logan his right to testify?

20 A. Yes.

21 Q. And your testimony was -- do you have a specific
22 recollection of a discussion concerning the pros and cons of
23 him testifying?

24 A. I don't remember the details, but I remember his
25 family was there. And after hearing the parents testify, I

1 remember he wanted to testify. And he was upset. And I was
2 advising him that he shouldn't. And his family was advising
3 him that he shouldn't. So I can understand why he's now
4 frustrated that he didn't.

5 Q. Did you think he would be a good witness against
6 himself?

7 A. I think that -- I think he comes across credible in
8 his presentation of what he says. But what he wanted to say
9 I was worried was going to hurt him, because he was going to
10 deny going into the bathroom, when I thought he didn't need
11 to.

12 Q. Were you concerned at all about the
13 cross-examination of him?

14 A. Yeah. I was surprised that Clarence's recollection
15 is that that was what my emphasis was, that he was going to
16 get eaten up on cross. I thought what he was going to say on
17 direct was going to hurt him.

18 MS. OLIVE: Beg the Court's indulgence.

19 BY MS. OLIVE:

20 Q. With regard to Mr. Logan's vehicle, do you recall
21 why you did not introduce any evidence concerning whether his
22 vehicle had been in the shop?

23 A. I'm going strictly by memory, so if you have
24 something that says that I'm remembering it incorrectly, I
25 hope that you present it. But my recollection is that there

1 was an allegation that some time other than when the incident
2 happened, he was to have driven past her house. I didn't
3 think that that mattered a whole lot. The date that she says
4 he drove by the house, Clarence claims his car was in the
5 shop and, thus, could not have -- he could not have driven by
6 the house.

7 I didn't think whether he drove by the house or not
8 added a whole lot or took away from whether he attempted to
9 rape her in the bathroom or some other time. And my
10 recollection is that I was able to impeach her through other
11 witnesses. I think I testified to this already, which is
12 that she got the color of the car wrong, being beige versus
13 blue, which isn't close. And I got Aaron to admit that he
14 gave her his license tag number. So that when she reported
15 it to police, it wouldn't necessarily be because she saw his
16 car, but because Aaron told her the license plate number.

17 I really didn't see -- I doubt that the jury -- I
18 don't know. I would be speculating, but I didn't see the
19 driver-by's being a real central issue in the case.

20 MS. OLIVE: Thank you, Mr. Butler. That's all the
21 questions I have.

22 REDIRECT EXAMINATION

23 BY MR. DAVIS:

24 Q. If, however, you had been able to refute that claim
25 by showing the car was in the shop, that would have been

1 another falsehood you could argue for the jury, correct?

2 A. Yes.

3 Q. Any worries about how a witness might perform under
4 cross-examination, those can be somewhat alleviated by more
5 in-depth preparation?

6 A. Yes.

7 Q. But what is actually testified to, that also can be
8 structured through preparation between attorney and defendant
9 prior to testimony, correct?

10 MS. OLIVE: Objection. Counsel is testifying.

11 THE COURT: Overruled. Keep going.

12 THE WITNESS: Yes, I could prepare him. But he
13 wasn't coming off that he didn't go in the bathroom. And I
14 wasn't going to talk him into saying something that he was.
15 That he was maintaining was true.

16 BY MR. DAVIS:

17 Q. And your testimony a second ago was something to the
18 effect of, nothing that the victim Ms. O'Neil said equaled
19 attempted CSC?

20 A. I didn't think so. I didn't think the jury would
21 find him guilty of -- I said it in my opening and I think I
22 said it in my closing -- that they were accusing her --
23 accusing Clarence of trying to rape her. And I didn't think
24 that -- I mean, I don't think the judge thought it happened,
25 which is reflected in the sentence. I didn't think that it

1 happened. And I thought that we had, even though it wasn't
2 our burden, I thought we had proven that it didn't happen.

3 Q. And that's kind of the thrust of the closing, is
4 whatever he did, it's not attempted CSC?

5 A. Right.

6 Q. The risk there is, you are admitting that he might
7 have done a lesser-included crime?

8 A. I think I was admitting that -- no, not necessarily.
9 I was admitting that he was in the bathroom and that maybe
10 they got into a tussle. But, you know, Jarvia was no
11 shrinking violet, you know. She was not timid at all. So I
12 don't know what happened in the bathroom, but I could equally
13 see as that Jarvia having an issue with someone.

14 Q. Let me rephrase it slightly. Admitting there was a
15 tussle, whether in the bathroom or not, could be an admission
16 of an uncharged crime, though?

17 A. It could be, yes, but I wouldn't say that I was
18 necessarily saying, hey, he beat her up, but he didn't rape
19 her. I wasn't saying that.

20 Q. But, finally, to be clear, that theory of the case
21 you presented to the jury to show the State had not met its
22 burden of proof was not the factual information that
23 Mr. Logan was telling you?

24 A. That's right.

25 MR. DAVIS: No other questions, Your Honor.

1 THE COURT: Anything further?

2 MS. OLIVE: Your Honor, I have just one brief
3 question.

4 RECROSS-EXAMINATION

5 BY MS. OLIVE:

6 Q. You mentioned before that you didn't think you
7 needed to go into a conspiracy theory.

8 A. Right.

9 Q. And is the conspiracy theory that you are referring
10 to, is that the story that Mr. Logan had given you?

11 A. No. I don't remember if he told me this, but it was
12 what he testified to today on direct, which was that Aaron
13 was involved with it because he was going to get money, and
14 that some other witnesses that saw him in the bathroom had
15 some motive to put him in the bathroom. I didn't think we
16 needed to call all of these people liars. The fewer people
17 you have to accuse of lying, the better. And I thought we
18 only needed to make out Jarvia to be a liar, because I didn't
19 think she was credible.

20 MS. OLIVE: Thank you.

21 MR. DAIVS: That's the applicant's presentation,
22 Your Honor.

23 THE COURT: You may come down.

24 Witnesses on behalf of the State?

25 MS. OLIVE: No witnesses for the State.

1 THE COURT: All right, Counsel. That will conclude
2 this hearing. I'll expect proposed orders from you within 30
3 days.

4 MR. DAVIS: Mr. Logan, that concludes the hearing.
5 I will be in touch with you soon. Okay? Thank you very
6 much.

7 (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



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Clarence Logan, Jr. #223087,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-10-1913

ORDER OF DISMISSAL

FILED
2017 OCT 10 PM 4:33
JULIE J. ARABSTROM
CLERK OF COURT

This matter comes before the Court by a *pro se* application for post-conviction relief filed on March 21, 2014 by Clarence Logan, Jr. (Applicant). The Respondent, through Assistant Attorney General J. Rutledge Johnson, made a return dated June 1, 2014. Applicant was appointed Rodney D. Davis as appointed counsel. On December 7, 2016, an evidentiary hearing was convened in the matter. Applicant was in custody at the Federal Bureau of Prisons at Coleman and appeared by telephone. Mr. Davis was present at the hearing on Applicant's behalf. The State was represented by Assistant Attorney General Alicia A. Olive. Testimony was received from Applicant and his trial counsel, Beattie Butler. The Court had before it the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcripts, and the Record on Appeal. This Court has also been provided a transcript of the PCR hearing of December 7, 2017.

Upon review of the trial testimony, the appellate court record, the records of the Clerk of Court and the evidence presented in this proceeding, this Court denies relief. Pursuant to S.C. Code Section 17-27-80, this Court make the following findings of fact and conclusions of law.

I.

Applicant was indicted by the May, 2010, term of the Charleston County Grand Jury for Criminal Sexual Conduct in the First Degree (2010-GS-10-3060). Applicant was also indicted for strong armed robbery. 2010-GS-10-3061. Beattie Butler, Esquire, and Reese Stidham, Esquire, represented Applicant at trial and sentencing. On June 8-9, 2011, Applicant proceeded to a jury trial pursuant to which he was found guilty of Assault with Intent to Commit Criminal Sexual Conduct in the First Degree. The Honorable Roger M. Young, Sr., sentenced Applicant to confinement for ten (10) years. The sentence was ordered to run concurrently with unrelated federal charges and Applicant received credit for time served in the amount of sixteen (16) months.

STATEMENT OF FACTS FROM TRIAL

On February 4, 2010, Aaron Green, the manager of a social club called Lovey Dovey, was conducting a seafood event when he observed Jarvia O'Neal ("Victim") enter the club. (Tr. p. 155; p. 157). After Victim arrived, Green saw Applicant Clarence Logan, Jr., who Green knew as "Blackout," speaking with Victim. (Tr. p. 160; p. 166). Applicant, who was drunk, repeatedly approached Victim, but she told him to leave her alone. (Tr. p. 67; p. 86). However, Applicant continued to harass Victim and leaned over her in a "disgusting" manner. (Tr. pp. 67-68).

Thereafter, Victim went to the bathroom, which was located in an isolated area at the rear of the club, and was followed by Applicant. (Tr. pp. 68-71). When she tried to close the door to the bathroom, Applicant forced his way inside, grabbed her by the neck, and lifted her off of her feet. (Tr. pp. 71-72). Applicant then choked her, beat her, stole \$20 in cash and a driver's license out of her purse, loosened his pants and her pants, and told her: "Bitch, you think you all that, but I'm going to fuck you tonight." (Tr. pp. 71-74). Terrified, Victim fought back, and Applicant

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responded by punching her, turning her around, and choking her from behind. (Tr. p. 74). However, Victim was able to kick Applicant between the legs, and he released her. (Tr. p. 74).

After Applicant released Victim, both of them exited the bathroom.¹ (Tr. pp. 76-77; p. 103). After exiting the bathroom, Applicant approached Green, advised him that he was looking for his cell phone, and quickly left the club. (Tr. pp. 164-165). Green then spoke with Victim, and she told him that she got into a confrontation and wanted to go home. (Tr. p. 78; p. 164). Green noticed Victim's face was bruised and bleeding and Victim's hair looked "pretty wild," and he asked her if she wanted him to call the police. (Tr. p. 75; pp. 163-165). Victim declined Green's offer and left with Virgil Washington. (Tr. pp. 164-165; p. 167). Victim chose not to contact the police that night because she was frightened by the incident and by the fact that Applicant was in possession of her address from her driver's license. (Tr. p. 79).

The next day, Victim went to the hospital to receive medical attention for the injuries she sustained during the confrontation that occurred at the club. (Tr. p. 80). Hospital staff alerted the authorities of Victim's injuries, and Officer Alex Gray of the North Charleston Police Department responded to the hospital to speak with Victim. (Tr. p. 81; pp. 174-175). Victim informed the officer that she was assaulted in the women's restroom at Lovey Dovey on the preceding night and described her assailant as a black male known as "Blackout." (Tr. pp. 81-82; p. 177). During their conversation, Officer Gray noticed Victim was visibly upset and was suffering from a black eye, lacerations on the bridge of her nose and the side of her face, cuts on the inside of her mouth, and a knot on the side of her head. (Tr. pp. 175-176).

¹ Green testified during trial that he observed Victim and Applicant come out of the bathroom together. (Tr. pp. 163-165). Victim's friend, Andrea Bell, testified she saw a "young dude" come out of the bathroom and pull up his pants before she found Victim, who was hysterical, upset, and injured, inside of the bathroom. (Tr. pp. 134-136). Virgil Washington, a friend of Green's, testified he saw a crowd gathering at the bathroom door, went to see what was happening, and observed Victim come out of the bathroom with blood on her face. (Tr. p. 142; p. 146; pp. 149-150; p. 167).



Thereafter, Victim spoke with Green and informed him that someone tried to sexually assault her in the bathroom at Lovey Dovey. (Tr. p. 82; pp. 167-168). In response, Green spoke with a friend, discovered Applicant drove a blue Ford Thunderbird, and provided that information to Victim. (Tr. pp. 82-83; pp. 166-168). Subsequently, over the course of the next few days, Victim saw Applicant's car at a bus station and outside of her home. (Tr. p. 84). Victim called the authorities after seeing Applicant's vehicle, and Officer Craig McAlhaney of the North Charleston Police Department responded to Victim's home. (Tr. p. 87; p. 196). After meeting with the officer, Victim advised him that the man who drove by her home in the blue Thunderbird was the man who assaulted her. (Tr. pp. 196-197). She then provided the vehicle's tag number to the officer and stated the driver made an inappropriate hand gesture towards her before driving away.² (Tr. pp. 196-198).

Subsequently, on February 9, 2010, officers contacted Victim and asked her to come to the police department to view a photographic line-up. (Tr. p. 87; p. 203). Detective Omar Faison of the North Charleston Police Department showed six photographs to Victim, and she selected Applicant from the line-up without any hesitation.³ (Tr. p. 88; pp. 202-205). Thereafter, Applicant was arrested and indicted for attempted first-degree criminal sexual conduct and strong-arm robbery, and he proceeded to trial. (Tr. pp. 6-7; Indictments).

Direct Appeal

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. On

² Victim's sister, Rhonda Deveau, and nephew, Marquise O'Neal, were present when Applicant allegedly drove by Victim's home on February 6, 2010. (Tr. pp. 183-185; p. 190; pp. 192-193). Deveau testified she saw a young man drive by the home repeatedly while "shooting the birdie" with his hand. (Tr. pp. 192-193).

³ Victim also identified Applicant as her attacker in the courtroom during trial. (Tr. p. 86).

appeal, Lanelle Cantey DuRant, Esquire, represented Applicant. In the direct appeal, the following issue was raised:

Did the trial court err in giving the charge on circumstantial evidence as stated in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) when in light of the recent Supreme Court decision in State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) and State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Grippon charge is no longer valid, and the traditional charge as provided in State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) should apply when the only evidence of rape was the word of the adult victim?

The South Carolina Supreme Court granted certiorari and, in an opinion filed on August 14, 2013, affirmed Applicant's conviction and sentence. State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013). The Remittitur was issued on August 30, 2013.

PCR proceeding

In his *pro se* application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. EXTORTION CLAIM : "Counsel failed to obtain an audio tape recording evidence of extortion when state witness asked defendant to give them money to drop charges"
 - i. Applicant asserted that counsel refused to play the audio recording to the jury stating "it would hurt the prosecution's case."
 - ii. Applicant asserts that defense counsel knowingly allowed for the prosecution to withhold a key piece of evidence – an audio tape recording – showing that the defendant was the subject of extortion by prosecution witness. Defense counsel was well aware that such evidence was needed to establish a defense for the defendant. Instead, defense counsel agreed with the prosecution that this evidence would hurt the prosecution's case and withheld it from the jury.
 - iii. Defense counsel was only willing to state to the jury "there was an altercation, it's the only piece of evidence," but failed to state what the evidence was and only told the defendant, "let's leave it to the jury's imagination and see if they'll believe the state's witness."
- b. PHOTO OF VEHICLE CLAIM: Counsel knowingly failed to present evidence the photos of the defendant's vehicle that would clearly prove that the vehicle that the prosecution witness described was clearly not the

defendant's vehicle.

- i. Defense counsel had the photos prior to trial and withheld the photographs of defendant's vehicle.
- ii. In the instant matter defense counsel withheld evidence from the jury that the witness described a vehicle that did not belong to defendant and if such evidence was presented to the jury this evidence would overwhelmingly prove or at least show reasonable doubt to make a not guilty finding.
- c. CONCESSION OF BATHROOM CLAIM: Counsel was unprofessional when he claimed to have made a mistake when telling the jury "in other words, it's obvious an assault happened. It happened in the bathroom. He is the only one in the bathroom; therefore he's guilty; bait and switch, no wrong, that's not what he's charged with." Citing TR. 229, l. 16 – p. 245, l. 19; TR. p. 230, l. 6-10).
 - i. Defense counsel knew that defendant was never at that location nor had defendant ever stated that to him. Moreover, no evidence except victims perjuring statements places defendant at location.
 - ii. Counsel later realized his mistake stating that his statement "could be damaging to the case."
 - iii. Counsel failed to correct himself on the record or to the jury.
 - iv. The statement is prejudicial especially coming from the defense counsel and has misled the jury to believe something that's not true which changed the proceedings to suggest guilt rather than innocence and a reasonable doubt.

2. "Denial of Fair Due Process & Equal Protection of laws"

- a. Withholding of evidence.
 - i. Applicant claims the prosecution withheld evidence of the audio tape from the jury which denied him the right to present evidence in his favor. Applicant equates the state's failure to present the evidence to the jury the equivalent of a *Brady* non-disclosure claim.

3. "Circumstantial Evidence/ Insufficient Evidence to convict"

- a. "The trial court erred in giving the charge on circumstantial evidence as stated in State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997)."
- b. The only evidence against Logan of the rape/attempted rape was the word of Jarvia as there was no DNA and no forensic evidence, citing TR. p. 221, l. 1-12. Defense counsel stated in opening that Jarvia and Logan did get into a confrontation and he did hit her. However, there was no rape." TR.p. 56, l. 1-25.
- c. Counsel failed to present to the jury that Logan told him "yes there was a confrontation and he, Jarvia and her "brother" had a fight at the bar." Logan presented to his lawyer that Jarvia wanted him to give her \$150 to prostitute her. She got upset when he rebuffed her request. Later her and her "brother" met Logan and the bar when she tried to grab Logan's

Ex 6

money, they got into a fight. Because Logan fought back and they did not succeed in their attempted robbery, it lead to Jarvia making up this story about an attempted sexual encounter. Even after 24 hours to come up with a story to "get back" at Logan, prosecutor's witnesses tried to extort Logan to get \$5000 to drop the charges." If presented at trial, the conviction would never have happened. . . .

- i. "Logan, a hard working young man, father of two. A five year old son, and a three year old daughter. Logan at the time was a newlywed only married for about four months (October 30, 2009). The prosecutor's witness and statement was so filled with contradictions and inconsistencies that no reasonable person could conclude that I the defendant were guilty."

During the PCR hearing, the following issues were presented concerning ineffective assistance at trial:

1. Counsel did not appear to be prepared for trial and claimed he had to return from a trip with his girlfriend to try the case.
2. Counsel had suggested a version of a story to Applicant that Applicant was dealing (drugs) with the victim and was upset about the money leading to the physical encounter in the bathroom, which Applicant rejected because he claimed he was never in the bathroom.
3. He was advised not to testify after he was upset about the state's version of the case because he claimed he would be eaten up on cross-examination because his version was that he was never in the bathroom and did not attempt a sexual assault, but that the victim approached him as a prostitute for \$150 which he rejected and she got upset, called her "brother" who arrived and Applicant pushed her at the bar and Applicant went back for a drink and he struck the victim after she tried to take \$50 from him which lead to an altercation with the "brother" after which the club manager Aaron Green kicked applicant out of the club.
4. Applicant claims that there was an audiotape of a jail phone call with Aaron which he told his counsel about which he claims suggested the victim would drop the charge in exchange for money.
5. Applicant claims that false testimony was given that after the incident he was seen driving his car near the victim's home which was not impeached by available evidence that his car was in the shop at the time. He also gave photographs of his car to his counsel.
6. Counsel asserted in his closing that Applicant was in the bathroom which Applicant complained about because he claimed he was not in the bathroom despite the witnesses who testified that he entered the bathroom and counsel told

his not to worry because the victim's testimony was so bad no one would believe it.

7. Applicant also complains that the fact he was married was not presented to contradict the alleged sexual assault.
8. Counsel asserted that he did not put up evidence or Applicant's testimony to retain the last argument.

GROUND ONE – Ineffective Assistance of Counsel

This Court denies Applicant's allegation of ineffective assistance of trial counsel. The Court finds that 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, 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, 466 U.S. 668 (1984)). 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. 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 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).

This Court finds that Applicant has failed to prove either deficient performance or prejudice under *Strickland*. Applicant was represented by Beattie Butler, an experienced criminal defense lawyer for more than 15 years. He had previously handled serious felony cases in the state court. Counsel met with Applicant regularly to prepare for the trial.

This issues before this Court consisted of the following matters: 1. whether counsel erred in failing to put into evidence an audio tape recording of a jail telephone call between Applicant and Aaron Green the manager of Lovey Dovey where the incident took place; 2. the failure of defense counsel to further impeach the victim and other witnesses about the type of car Applicant drove and may have been seen days after the incident when he was provided evidence that Applicant's car was in the shop and the photographs of the vehicle that may have been useful and; 3. applicant's disagreement with counsel's statement in his closing argument about being in the bathroom where the alleged incident took place when Applicant was consistent that he had not gone into the bathroom and indicated to counsel the altercation occurred in the bar area. This Court concludes that each of the specifications asserted were the product of sound trial strategy and not neglect or ignorance.

At the PCR hearing, it was developed that in the numerous meeting with his counsel prior to and during the trial, Applicant consistently maintained that he did not attempt to sexually assault the victim and that he had never entered the bathroom while the victim was in there on that night. However, Applicant admitted to counsel that he did strike the victim in an altercation over money in the bar area. Applicant's version was markedly different than the version



presented by the prosecution at trial and he indicated that he was actually the victim of an attempted robbery after he rebuffed a solicitation for prostitution by the victim at the bar and never entered the bathroom.

Evidence was presented at the hearing that in May 2011, defense counsel Beattie presented Applicant with a plea offer to plead to a strike offense of criminal sexual conduct first degree under North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) for time served that Applicant rejected. PCR 27-28. Counsel confirmed that Applicant was not interested in any plea, even a misdemeanor assault charge. (Plaintiff Exh. 1). It was further presented that Logan understood that he would not get credit against his federal time after the conviction.

In hindsight, defense counsel Butler believed that the victim had done poorly in her testimony before the jury. Counsel accepted that the right to make the last argument was an important strategy which required the defense introduce no evidence, but believed that strategy standing alone was overrated and if there was evidence that was worth presenting, Butler believed that he would have no problem waiving it. PCR 28-29. He stated it was dependent on how things went in a trial. PCR 29.

This Court finds, based upon the credible testimony of Mr. Butler, that counsel had discussed with Applicant prior to trial what the state would introduce against him and had gone over discovery with him. PCR 32-33.

Counsel had initially intended to present Clarence Logan as the only potential witness leading up to the trial. PCR 29. A discussion was held with Applicant and the family meeting to address Applicant being upset about the state's evidence during the trial and a desire to testify. PCR 36. The Court finds that Applicant's counsel and his family were recommending to

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Applicant not to testify. Counsel's belief was that after the victim testified that she was so unbelievable that he did not need to testify. Further, from a strategic standpoint, counsel advised Applicant that some things that Applicant would have testified would not have been helpful, specifically his denial that he went into the bathroom. Counsel believed that this denial would create an issue about whether there was an attempted sexual assault (as opposed to an assault and altercation) between Applicant and the victim in the bathroom. Counsel was aware that apparently neutral witnesses testified about Applicant coming out of the bathroom and then later the victim came out with her hair messed up. Counsel was of the strategic opinion that they did not need to engage in a conspiracy theory with all the witnesses (other than the victim) and explain why they would lie, when the crux of the case was between Applicant and the victim and whether an assault elevated to an attempt to rape her, which was out of the witnesses presence. Counsel did not think the state had proved it at that time in the trial. PCR 30-31. Simply put, the strategy was to "make out the only liar to be Jarvia" and counsel opined that she "bombed" in her testimony. PCR 35, l. 6 -8. Counsel was more concerned about what Applicant would say on direct was going to hurt him with the jury, more than that he was going to get eaten up on cross-examination, as the basis to recommend that he not testify. PCR 36.

The record at trial reflects that Judge Young fully questioned Applicant about whether he wanted to testify after the state completed its case. The defense indicated that it did not intend to call any witnesses, including Applicant. Tr.p. 207. The following colloquy occurred where Applicant waived his right to testify:

THE COURT: All right. Mr. Logan, will you stand up there a second? We talked at the beginning of the trial about your rights to put up a defense and not put up a defense and to testify and not testify. Do you recall that?

THE DEFENDANT: Yes, sir.

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THE COURT: Well, we're at that point in the trial now where you have to make a decision as to whether or not you want to put up a defense and whether or not that would include you testifying. Your lawyer has indicated to me that you do not wish to call any witnesses to testify on your behalf is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: And that includes you do not want to testify and tell the jury your side of the story.

THE DEFENDANT: No, sir.

THE COURT: All right. Well, that is certainly your right. I need to make sure that you understand now that I will instruct the jury that they are not to hold that against you while they are deliberating, but, again, it is your —

MR. BUTLER: I'm sorry to interrupt. I need a moment with him, if it please the Court.

(Discussion held off the record.)

MR. BUTLER: No, he will not testify. If you want to get a final answer from him, that's fine.

THE COURT: Okay. Mr. Logan, now, you've gone back and talked with your lawyer and some family members and friends. Have you made a final decision about whether or not you want to present any witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: And what is your decision?

THE DEFENDANT: No, sir, I don't want to testify.

THE COURT: You don't want to testify?

THE DEFENDANT: No, sir.

THE COURT: You want me to instruct the jury they're not to hold that against you while they're deliberating?

THE DEFENDANT: Yes, sir.

Tr. 207, l. 8- 209, l. 23. See also PCR 30-31.

This Court finds that counsel was not deficient in failing to introduce the audiotape of the telephone conversation from jail between Applicant and Aaron Green (or the conversation). The tape was not introduced at the PCR hearing. However, the credible testimony of counsel reflects that he was aware of the phone call recording and investigated it. However, counsel could not recall specifically listening to it at the hearing but recalled why they did not present it. PCR 34. Counsel recalled there was a strategic reason why he did not place the tape into evidence at the trial after a discussion with Aaron Green. Contrary to his client's assertion at the PCR hearing, rather than being initiated by Jarvia, the discussion was initiated by Applicant through Green to Jarvia to pay her to drop the charges against him. PCR 34. Compare PCR 15-16. Counsel was firm that they did not want to introduce that. PCR 34.

It should be noted that Aaron Green testified as a state witness. Tr.p. 155-174. At no point during his testimony did the State bring up the jail conversation with Applicant. However, it is clear the State was aware of the jail audio based upon counsel's testimony. Although it is clear that there was a difference in the testimony of Applicant about the contents of the recording and counsel, counsel's investigation of the tape with Green and the circumstances revealing Applicant initiated the contact with the victim about seeking to have the charges dropped in return for money, albeit rejected by the victim and possibly countered is found to be credible. As counsel wisely recalled "I didn't want to get into that." PCR 34. This was a reasonable strategic decision based upon counsel's reasonable investigation.

The Court further finds that counsel was not deficient in failing to present evidence about Applicant's car being in the repair shop at the time after the crime when it was allegedly viewed a number of times by the victim and her family. It is uncontested that the victim, after the crime,

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learned about the type of car Applicant drove and his license number from Aaron Green. Tr. p. 83, 121, 166-67. At trial, the victim asserted that she learned it was a powder blue Thunderbird. Tr.p. 83. She claimed that since Applicant had stolen her driver's license ID, he knew where she lived and that she was telling the police who "Blackout" was so he could be arrested. Tr. 83-84. At trial, she described seeing the car at various times, first at a Greyhound Bus station and other times driving by her apartment. She called the police on those occasions, identifying him on one occasion as the driver. Tr.p. 84-88, 108-109, 122-124. Marquise O'Neal, the victim's cousin, testified she was over at the victim's house on February 6, 2010 and saw a greenish or blue Thunderbird come by the house, which caused the victim to scream that it was him who assaulted her. The victim started running after the car after it slowed down and then sped off. The witness did not see the face. Tr.p. 184-186. Rhonda Deveaux, the victim's sister and Marquise mother, testified that on February 6, she was there and saw a vehicle come by that was "white or beige" and the driver was "shooting the birdie." She saw the person two or three times and each time the victim "got really hysterical" and claimed "that's him" and called the police. Tr.p. 192-194.

Counsel did not use the information about Applicant's vehicle based upon a sound strategy. He stated the issue was not whether Applicant drove by the victim's home days later, but whether he had attempted rape at the bathroom of the bar. There was no dispute that Aaron gave her the description and plate number of the car. It was not developed from her own visual recollection of seeing Applicant. Counsel recalled that he may not have sought to use Applicant's photos (not introduced at the PCR hearing) because he had been able to impeach her with the other testimony and witnesses. PCR 25-26. Counsel was aware that the date the victim claimed Applicant drove by her house, Applicant's car was in the shop so that it could not have



been that car that she saw. PCR 37. However, counsel opined that he did not think that it mattered that much when the claim was that he had attempted to rape her at some other time. PCR 36-37. He was able to impeach her. Counsel asserted that the witnesses got the color wrong as to whether it was blue or white or beige. The fact that she was able to give a license number to the police was because that was what Aaron had given her. Further, a review of the record revealed that counsel's assessment that the victim had been impeached was reasonable.

The defense used sound strategy in recognizing the impact of challenging all the witnesses who testified that they saw Applicant leaving the bathroom. Andrea Bell saw the person pulling up his pants after leaving the bathroom but could not identify the person. Tr.p. 134. Aaron Green saw Applicant and Jarvia come out of the bathroom and then saw Applicant looking for his cell phone. Tr.p. 163-164. Green recalls the victim telling him that they got into a confrontation and he saw a bruise, some bleeding and her hair messed up. Tr.p. 164. Green said she rejected calling 911 at the time. Tr.p. 165. Green noted that days later she told him that somebody had tried to sexually assault her. Tr.p. 167.

Applicant further complains that counsel erred in arguing in his closing argument that there was a confrontation in the bathroom between them. Counsel was aware that there were facial injuries on the victim and medical proof of the injuries that was not contested. This was consistent with counsel's strategy about not challenging the neutral witnesses but to use them to attack the credibility of the victim and minimize the effect of her recollection about what occurred in the bathroom. Further, there were witnesses who described her injuries when they saw her in the bathroom and upon leaving that were documented the next day when she went to Roper Hospital. It was uncontested that the victim suffered facial injuries, but the defense theory was that those were the only injuries the victim suffered.

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In his argument, defense counsel opened with the fact that stated that:

Clarence is not charged with assaulting Jarvia O'Neal and only assaulting her. He's charged with assault with intent to commit criminal sexual contact. He's charged with attempting to rape her. I hope that that is clear so that this bait and switch isn't persuasive to you. In other words, well it's obvious an assault happened. It happened in the bathroom. He is the only one in the bathroom; therefore he's guilty, bait and switch, no, wrong, that's not what he's charged with.

Tr.p. 230, l. 2-10. The remainder of the argument is to focus on the inconsistencies in her actions upon leaving the bathroom, how she acted when she had her earlier confrontation and stabbed and individual, yet was hesitant in this setting.

Although Applicant was upset about this strategy based upon his insistence to his counsel that he was not in the bathroom, this strategy was not a concession of guilt for the charged offense, but a strategic decision based upon the evidence the jury had before it. In Florida v. Nixon, 543 U.S. 175 (2004). In Nixon, the Supreme Court held that, while a defendant "has 'the ultimate authority' to determine 'whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal,'" trial counsel's strategy to concede guilt does not automatically render counsel's performance deficient. Nixon, 543 U.S. at 187-92. Instead, counsel's effectiveness is determined under the standard established in Strickland. Id. at 192.

"Standing alone, unsuccessful trial tactics neither constitute prejudice nor definitively prove ineffective assistance of counsel." Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).⁴ "For a lawyer's trial performance to be deficient, his errors must have been so serious that he was not functioning as the counsel guaranteed the defendant by the Sixth Amendment." United States v. Roane, 378 F.3d 382, 404 (4th Cir. 2004) (internal citations and quotation marks omitted).

⁴ In Bell v. Evatt, counsel conceded that Bell was guilty of kidnapping but not murder to mitigate the case. Counsel's strategic decision was upheld by the state court and no due process violation was found by the federal court in the habeas setting.

The Supreme Court has recognized that strategies devised after extensively investigating the law and facts relevant to any and all probable options are virtually unchallengeable. Strickland, 466 U.S. at 690, 104 S.Ct. at 2065-66. A reviewing court may not permit the benefit of hindsight to impact its review. Id. at 689, 104 S.Ct. at 2065; see Lockhart v. Fretwell, 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993). To succeed in his ineffective assistance of counsel claim, Applicant must overcome the presumption that the challenged action may be considered an appropriate and necessary trial strategy under the circumstances. Strickland, 466 U.S. at 689, 104 S.Ct. at 2065.

Federal courts have previously distinguished statements that amount to mere tactical retreats from those that parlay a complete surrender. See Clozza v. Murray, 913 F.2d 1092, 1099 (4th Cir.1990). Some remarks of complete concession may constitute ineffective assistance of counsel, but tactical retreats may be reasonable and necessary within the context of the entire trial, particularly when there is overwhelming evidence of the defendant's guilt. Id. at 1099-1100. See Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

Here, each of the decisions made by counsel Butler are reasonable to support the challenge to the credibility of the victim's version without suggesting a complete conspiracy of the club against Applicant. To the contrary, Counsel was advised by the client that he did hit the victim, albeit in a different part of the bar. The counsel appropriately assessed the state of the state's case against the risk of re-directing the case to unnecessary collateral matters of impeachment or risky concerns about his apparent attempt to secure the charges being dropped by offering money to the victim. The closing argument was consistent with the defense theory throughout the trial. PCR 39. Applicant has failed to show deficient performance based upon the

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reasonable strategic decisions.⁵

This Court concludes Applicant failed in his burden of proof to show ineffective assistance of counsel under the standard of Strickland v. Washington because he failed to prove deficient performance. As to the prejudice prong, the Court is similarly required to find that prejudice was not proven. As noted, Applicant failed to present any tape of the jail telephone call or Aaron Green. This Court found Counsel's testimony credible about what the telephone call revealed about Applicant, rather than the victim initiating the attempt to get the charges dropped. Further, Applicant failed to present at the hearing evidence to support that the car was in the shop at the critical time it was allegedly seen by the witnesses. However, prejudice was not shown where the identification of the vehicle was impeached by the independent witnesses asserting a different color vehicle. Nevertheless, this issue was a collateral issue which would not have created a reasonable probability that the result of the proceeding would have been different on whether a sexual assault as opposed to an assault occurred. Further, the closing argument was based upon the defense strategy that the State had not met its burden of proof and based upon the record where independent witnesses had seen Applicant leave the bathroom followed by the victim, who had injuries that she did not have prior to entering the bathroom. Since Applicant had waived his right to testify, Counsel's argument was not prejudicial. There is no reasonable probability that the result of the proceeding would have been different had counsel not stated "In other words, well it's obvious an assault happened. It happened in the bathroom. He is the only one in the bathroom; therefore he's guilty, bait and switch, no, wrong, that's not what he's

⁵ The Court further notes that Applicant freely and voluntarily waived his right to testify in the case and confirmed his understanding that no witnesses would be presented. These statements by Applicant at the trial of the trial carry a presumption of verity. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977) ("Representations of the Defendant, his lawyer and the prosecutor at [arraignment], as well as any findings made by the judge accepting the plea, constitute a formidable barrier in any subsequent collateral proceedings. Solemn declarations in open court carry a strong presumption of verity").

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charged with." His protestations otherwise are defeated by a reasonable reading of the entire record.

GROUND TWO

Applicant alleges he was denied due process of law in violation of Brady v. Maryland, 373 U.S. 83 (1963). Applicant claims that the State failed to present evidence to the jury of the audio recording of the alleged jail telephone call between Applicant and Aaron Green about an attempt to have the charges dropped with the victim. Applicant failed in his burden of proof to show a Due Process violation by failing to introduce evidence to the jury at his trial. First, the alleged tape was not presented in the PCR proceeding. Second, it is clear that Applicant and his counsel were aware of the existence of the telephone call and investigated it. Third, Applicant failed to show that the tape was not disclosed to the defense, only that it was not presented by the State or the defense during the trial. This is not a Due Process violation. The government need not disclose evidence available to the defense from other sources and evidence the defense already possesses. *Discovery and Access to Evidence*, 46 Geo. L.J. Ann. Rev. Crim. Proc. 406, 414-17 (2017).⁶ Here, Applicant expressly stated he was aware of the recording from jail and was complaining the State should have presented it to the jury.

Contrary to the conclusory statement in his application, the government is under no obligation to present in a trial all favorable and unfavorable evidence as Applicant suggests.

⁶ See, e.g., U.S. v. Paulino, 445 F.3d 211, 224-25 (2d Cir. 2006) (no Brady violation despite failure to reveal codefendant's phone call to prosecutors where defendant had prior knowledge that codefendant would seek to take sole responsibility for drugs found in defendant's bedroom); Pondexter v. Quarterman, 537 F.3d 511, 526 (5th Cir. 2008) (no Brady violation despite failure to disclose statements made by defendant to cellmate because defendant presumably knew of his own statements); U.S. v. Erickson, 561 F.3d 1150, 1165 (10th Cir. 2009) (no Brady violation where government failed to disclose information that defendant already obtained); Boyd v. Comm'r, Ala. Dep't of Corr., 697 F.3d 1320, 1335 (11th Cir. 2012) (no Brady violation despite failure to disclose defendant's statement to police because he was present at interview and aware of his statements). See *Discovery and Access to Evidence*, 46 Geo. L.J. Ann. Rev. Crim. Proc. 406, 447 (2017).

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Nevertheless, no objection was raised at trial by the defense to the failure to present evidence of the conversation between Applicant and Aaron Green through a jail telephone call.

This ground must be dismissed for this additional reason. Free-standing trial error claims are not cognizable in PCR. S.C. Code § 17-27-20 (b) provides: "This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." Because a PCR action is not a substitute for those proceedings, a PCR applicant may not assert issues in this PCR action that could have been raised at trial and on direct appeal. This prohibition has long been recognized. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("Errors in petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."). See also Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("The Simmons rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal."). This claim must be dismissed.

GROUND THREE.

In his final ground, Applicant contends the evidence that convicted him was circumstantial and he was entitled to an instruction under State v. Grippon.⁷ This portion of the ground is dismissed for the following reasons. First, to the extent he complains that the evidence was insufficient because it was allegedly circumstantial, it is not a ground available for post-conviction relief. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during

⁷ This Court recognizes that the testimony by the victim about the nature of the assault was direct evidence, not circumstantial evidence.

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the original trial or by review on motion for a new trial or on appeal. *Irick v. State*, 264 S.C. 632, 216 S.E.2d 545 (1975); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

Applicant also claims his counsel failed to present his alternate version of the events. As stated above, in ground one, Applicant waived his right to testify and present his version of what occurred in contrast to the victim's version. The informed decision to not testify and present the evidence was presented to the trial judge in open court and was waived. As stated above, Applicant's statement in open court carries a presumption of verity. The fact that he now wishes he would have presented his testimony does not create a cognizable claim where the defense counsel's advice was reasonable and based upon a reasonable investigation. For the reasons previously stated, this portion of ground three is dismissed.

Applicant further asserts Counsel did not present in mitigation the fact he was recently married and a father of two. It is unclear why this is presented in the allegation. In his testimony, he asserts the fact he was married should have been presented to the jury to contradict the sexual assault. However, the record reveals that he waived his right to testify. However, the record reveals at sentencing, Applicant stated he was married, but while denying the attempted rape stated: "my wife – I can't get into the details why I was there, because there would be no proof, but I should have just take my time and go." Tr.p. 263. Defense counsel then stated that he told Applicant he could not talk about it and asserted that he was trying to reduce his federal sentence and was there that night to do that. Tr.p. 263-264. However, his assertion does not create a cognizable state PCR ground.

Applicant complains that he was entitled to a jury instruction under Grippon. This issue was raised and ruled upon in the direct appeal. It cannot be relitigated in a PCR action. Simmons.

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supra. Further, *res judicata* bars Applicant's claim. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. Applicant had a full opportunity to litigate the circumstantial evidence claim concerning the Grippon charge during the Supreme Court's review of his case. Applicant raises the exact same issue in his circumstantial evidence claim in this action. The public interest in finality of judgments requires that litigation must eventually come to an end. The Court dismisses this claim as barred by *res judicata*. See State v. Logan, 405 S.C. 83, 87, 747 S.E.2d 444, 446 (2013) (the trial court did not err in providing a circumstantial evidence charge consistent with Grippon).

CONCLUSION

Applicant has failed to show he is entitled to relief on any of the claims for all the forgoing reasons. As such, this Court must deny relief.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5th day of October, 2017.


 G. THOMAS COOPER
 Presiding Judge

Cameron, South Carolina.

FCH20100200848

DOCKET NO. 2010GS1003060

WITNESSES

JEREMY SCHMIDT

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2010005272

COURT OF GENERAL SESSIONS

May Term 2010

ARREST WARRANT NUMBER

K610895

DATE OF ARREST

February 10, 2010

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

CLARENCE LOGAN JR

DOB: 1985-[REDACTED]

B/M

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Attempted Criminal Sexual Conduct
1st Degree

Guilty

Foreperson of Petit Jury

Date:

INDICT

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P. GS, S.F.
 BY *[Signature]*
 DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on May 10, 2010 the Grand Jurors of Charleston County present upon their oath:

Attempted Criminal Sexual Conduct 1st Degree

That in Charleston County, South Carolina, on or about February 4, 2010, the Defendant, CLARENCE LOGAN JR, did attempt to commit a sexual battery upon the victim, Jarvia O'Neal, without her consent, and with the use of aggravated force, to wit: the defendant grabbed the victim around the neck, choking her, and struck her with a closed fist about the face and body; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

ATTEST: A TRUE COPY
 JULIE G. ARMSTRONG (SEAL)
 CLERK OF COURT
 BY *[Signature]*
 DEPUTY CLERK

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 TIMMY FINCH
 ASSISTANT SOLICITOR