

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED

APR 18 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

NATHAN DANIEL MARTINEZ

APPELLANT

APPELLATE CASE NO 2016-002494

RECORD ON APPEAL

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17 Nathan Martinez,)
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19
20 November 28, 2016 - December 8, 2016
21 Columbia, South Carolina
22
23 B E F O R E:
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25
26 A P P E A R A N C E S:
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28 Meghan Walker, Assistant Solicitor
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38 P.O. Box 206, Jackson, South Carolina 29831

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1 MONDAY, NOVEMBER 28, 2016

2 THE COURT: All right. Any motions before we bring
3 up our jury panel, Solicitor?

4 MS. WALKER: Your Honor, the State doesn't have any
5 motions prior to picking a jury.

6 THE COURT: Any motions, Mr. Martinez, before we
7 bring up our jury panel?

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: All right. And speak up for me,
10 please.

11 **PRETRIAL MOTIONS**

12 **MOTION FOR CONTINUANCE**

13 MR. MARTINEZ: Your Honor, I would ask for a motion
14 for a continuance. I have -- Mr. Kata retained PhD
15 Ms. Charlotte J. Word. She's a DNA expert. He retained
16 her last Wednesday. We just received her opinion yesterday
17 and she needs -- she's requesting more -- more -- she needs
18 stuff like, I don't -- evaluation -- she needs the
19 laboratory notes and certain things and something -- I
20 guess they left out -- they left out certain information in
21 the Richland County Sheriff's Department DNA report that is
22 needed for her to be able to determine.

23 But her opinion completely contradicts what the
24 State and it's from -- we gave her what they gave to us and
25 her -- her report is completely -- it says that this

1 profile cannot be a report conclusive due to the number of
2 contributors. The Richland profile is not complete and the
3 risk of two or more related alleles has contributed to the
4 sample.

5 She's saying that this sample is inreadable
6 (verbatim). There's no sample. It shouldn't be labeled as
7 inconclusive or nothing because there's no DNA, there's no
8 evidence to be able to support that conclusion and she --
9 she is in Arizona this week. She won't be here this week
10 to be able to testify to this, to what she states. And --

11 THE COURT: When will she be here?

12 MR. KATA: Your Honor, I'm trying to ascertain that
13 right now. She's unavailable Wednesday, Thursday, and
14 Friday. I'm trying to see if she would be available
15 Monday. I mean I know we wouldn't need her --

16 THE COURT: All right. Well, I'm not going
17 continue the case. If she can get her -- she needs to be
18 here next Monday.

19 All right. As far as lab notes, bench notes, or
20 whatever, Solicitor, see if those types of documents are
21 available, give them to Mr. Kata and he can fax them or
22 e-mail them to -- is it Doctor Ward? Is that what you
23 said?

24 MR. KATA: Word.

25 MR. MARTINEZ: Yes, sir.

1 MS. WALKER: Yes, sir, if we could just get a copy
2 of everything that she's asking for so that way we can get
3 with our -- with the lab and see.

4 THE COURT: All right. Just do that and, you know,
5 as of right now, we won't -- well, as of right now, I'm not
6 going to continue the case. We're going to go forward and
7 if we have to have a break and not come back until next
8 Monday, we're going to press on.

9 MS. WALKER: Thank you, Your Honor.

10 THE COURT: All right. So th motion to continue is
11 denied. I want Doctor Word here next Monday.

12 MR. KATA: Yes, sir, Your Honor.

13 THE COURT: No later than next Monday. No matter
14 what happens in Arizona.

15 MR. KATA: Yes, sir.

16 THE COURT: If she's available earlier, I want her
17 here earlier. And I know you would tell me if she was, Mr.
18 Kata as an officer of the Court. I don't have any question
19 about that whatsoever.

20 MR. KATA: Yes, Your Honor. Well, what she's been
21 e-mailing me so far is that she's at a previously scheduled
22 conference --

23 THE COURT: She's what?

24 MR. KATA: She's in a previously scheduled
25 conference in Arizona.

1 THE COURT: A conference?

2 MR. KATA: Yes, sir.

3 THE COURT: I thought she was in court.

4 MR. KATA: No, Your Honor. She's not -- I don't
5 believe she's in court.

6 THE COURT: Well, I don't do experts like I do
7 jurors. I don't care if she's in a conference or not. He
8 picked this court date, I didn't. So she needs to be here
9 this week.

10 MR. KATA: I understand, Your Honor.

11 THE COURT: And if it's the latter part of this
12 week that's fine, but this Court is not going to be
13 controlled by the conference schedule of an expert, not the
14 States and not the defense.

15 MR. KATA: Yes, Your Honor.

16 THE COURT: All right. Thank you.

17 MR. MARTINEZ: Your Honor, I didn't pick this date,
18 I picked -- I wanted to move the trial to go to trial
19 prepared. I wanted to exercise my rights under --

20 THE COURT: Yes, sir, and I talked to you --

21 MR. MARTINEZ: -- the Sixth Amendment rights --

22 THE COURT: -- don't interrupt me.

23 MR. MARTINEZ: I'm talking.

24 THE COURT: Don't interrupt me.

25 MR. MARTINEZ: You interrupted me.

1 THE COURT: Don't interrupt me. You understand?
2 You understand that, Mr. Martinez? I'm going to lay down
3 those rules right now.

4 I asked you when you would be ready for trial.
5 This is when you said you would be ready for trial. You
6 picked this date. I'm not continuing the case based on a
7 conference schedule of some expert. She needs to be here
8 this week. Now, I'll go as late as Monday. I don't know
9 how long the case is going to take to be tried. I have no
10 idea.

11 Now, anything you'd like to say, Mr. Martinez?

12 MR. MARTINEZ: Yes, Your Honor, I intended to be
13 prepared and have all my rights exercised, meaning that I
14 was going to be able to retain this information ahead of
15 time and be prepared. I didn't expect these -- I didn't
16 expect him to barely retain her a week before trial. I
17 expected to be prepared. I expected to have access to the
18 law library. I expected to be able to communicate. I
19 expected to have my rights exercised. My Sixth Amendment
20 right to call forth witnesses in my defense; and I'm not
21 being allowed that.

22 THE COURT: That is wrong. You are being allowed
23 that. I just told you I want your expert here. I'm not
24 running a court schedule on an expert's conference
25 schedule.

1 And further, initially I told you I would wait
2 until next Monday. If that's a defense you want to present
3 you'll be absolutely allowed to present that defense.

4 Anything further?

5 MR. MARTINEZ: We haven't had -- Mr. Kata hasn't
6 had time to retain a -- a -- an investigator. He hasn't
7 had time to retain a jury expert.

8 THE COURT: See, you didn't bring this all up a
9 minute ago.

10 MR. MARTINEZ: I wasn't done talking. You were
11 talking to Mr. Kata.

12 THE COURT: But I -- you made a motion to continue
13 and then you keep changing the landscape on me. It becomes
14 a moving target. You said you wanted a continuance because
15 of the notes, the lab notes, and your expert's schedule
16 being in Arizona and when I deny that, now it becomes I
17 don't have an investigator, it's Mr. Kata's fault.

18 What are you asking me to do?

19 MR. MARTINEZ: I've already asked you before. I've
20 asked you numerous times in letters to -- I don't have the
21 ability to communicate with these people.

22 THE COURT: I'm sorry.

23 MR. MARTINEZ: I don't have the ability to
24 communicate with investigators, I don't have the ability to
25 communicate with a jury expert. I have to depend upon Mr.

1 Kata.

2 THE COURT: Yes, sir. That's why I appointed him
3 as standby counsel.

4 MR. MARTINEZ: And Mr. Kata started trying to
5 retain people on Wednesday of last week.

6 THE COURT: Is that correct, Mr. Kata?

7 MR. KATA: Your Honor, that's not entirely
8 accurate, no. Your Honor, if we're going to talk about
9 what I've done and haven't done in preparation of the
10 defense, I feel uncomfortable doing that with a full
11 courtroom.

12 THE COURT: I understand.

13 MR. KATA: Your Honor, I'd be happy to go into what
14 I've done. There is an investigator working on the case as
15 we speak. I consulted with a jury -- jury expert. I don't
16 want to go much farther than that.

17 MR. MARTINEZ: Your Honor, could you ask him to
18 please provide some evidence to that? Because...

19 THE COURT: G186.

20 You don't believe Mr. Kata as an officer of the
21 Court.

22 MR. MARTINEZ: No, sir, I do not.

23 THE COURT: All right.

24 MR. MARTINEZ: Mr. Kata came to me yesterday and
25 told me something totally different. My reason for -- I'm

1 ready for trial, I want to provide my defense. It's my
2 right to provide a defense. I want to defend myself in
3 this case. I want to. But I want to be fully prepared.

4 THE COURT: I don't know why you look at them when
5 you're talking to me. I don't understand that. If you're
6 addressing the Court, talk to me. You've got no reason to
7 address the State. That's the way it works. I told you
8 you're going to be controlled by the rules and decorum of
9 the Court. It's not just discussion and this type between
10 the parties. You can discuss with me, they can discuss
11 with me.

12 Anything further, Mr. Martinez?

13 MR. MARTINEZ: No, sir.

14 THE COURT: Reviewing the facts and circumstances
15 of this case and the background and the history, the
16 defendant has been through an array of attorneys. I think
17 the number would be five, perhaps six. He now has standby
18 counsel and he has chosen to represent himself under
19 Ferrata versus California. His motion for a continuance is
20 based upon the contention that he and/or co-counsel, not
21 co-counsel, standby counsel, has not had time to prepare
22 his case.

23 He, in our last hearing, wanted a continuance based
24 on several issues, that being transcripts, experts, and
25 said -- indicated to this Court that he would be prepared

1 for trial 28, November, '16.

2 He's had ample time to prepare this case, the date
3 of the incident being 27, March, 2014. That would be March
4 27th, '15, March 27th of '16, and March of '16 to now
5 November of '16, two-and-a-half years; and when you divide
6 that -- add to that the number of competent attorneys that
7 he has had representing him during a substantial portion of
8 that time. He has chosen to make the decision to represent
9 himself and an individual -- because of the sanctity of an
10 individual under our constitution, he has the right to make
11 that decision. He has the right to make an unwise
12 decision, if he chooses and if he is competent, which he
13 has chosen and he is competent.

14 Based upon the particular facts and circumstances
15 of this case, his motion for a continuance is denied;
16 citing State versus Babb, 299 SC 451, State versus Barrett,
17 416 SC 124, May 20th, 2016.

18 All right. Bring us a jury panel, please, Madam
19 Clerk.

20 THE CLERK: Your Honor, they're still trying to get
21 one together.

22 THE COURT: Ma'am?

23 THE CLERK: They're still trying to get that
24 accomplished.

25 THE COURT: Thank you.

1 MS. GODWIN: Your Honor, may I approach? I have a
2 copy of our witness list.

3 THE COURT: All right. Yes, ma'am.
4 You have one for the court reporter?

5 MS. GODWIN: Yes, sir.

6 THE COURT: And does Mr. Martinez have one?

7 MS. GODWIN: I have a copy for him as well.

8 (There was a pause in the proceedings.)

9 THE COURT: Yes, Solicitor?

10 MS. CAMPBELL: Judge, I have a copy of the proposed
11 voir dire by the defense. I didn't know if you had gotten
12 a copy of that.

13 THE COURT: I do not.

14 (Ms. Campbell handed up the document to the Court.)

15 (There was a pause in the proceedings.)

16 THE COURT: All right. As far as requested voir
17 dire from the defense, any objections to any of the
18 questions, Solicitor?

19 MS. CAMPBELL: Your Honor, whatever you feel is
20 appropriate; however, on Number 2 and Number 6, we would
21 ask that those be made or accused or charged with a crime.

22 THE COURT: All right.

23 MS. CAMPBELL: Which would be the most appropriate
24 language.

25 THE COURT: All right.

1 MS. CAMPBELL: And then on Number 5 he talks about
2 MADD, SADD, SisterCare, The Innocent Projects, and any
3 prisoner rights groups.

4 THE COURT: Right. All right. Both sides of the
5 coin.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: Now, I have an issue with Question
8 Number 9.

9 MS. CAMPBELL: Yes, sir, I wondered about that one.

10 THE COURT: In fact, he can have the jury list, Mr.
11 Martinez. It cannot be copied. Their addresses are on
12 that. At the end of the jury selection process -- well,
13 I'll say at the end of the trial, we want to list that it
14 is to be handed over to the court reporter to be sealed by
15 the Court, the jury list.

16 The clerk informs me that the clerk has -- that
17 right now, there are several judges, civil in the sense of
18 jurisdiction, are striking or selecting jury panels and it
19 will be 1:30 before we can get a panel. So, is there
20 anything y'all would like to address for -- between now and
21 12:30? Or you just want to break until 1:30.

22 MS. CAMPBELL: Yes, Your Honor, I think it would be
23 fine if we just break until 1:30 and then maybe Mr. Kata
24 can go ahead and get us that information so we can make
25 sure we are prepared.

1 THE COURT: Yes.

2 Mr. Martinez, do you have any objections to that?

3 Breaking until 1:30?

4 BRADY MOTION

5 MR. MARTINEZ: I have a Brady Motion I would like
6 to -- I need specific material that I've been denied, they
7 won't give it to me.

8 THE COURT: All right. What is that?

9 MR. MARTINEZ: I filed a motion for it. I'd like
10 to renew my Rule 5 Motion and my Brady versus Maryland for
11 exposure of evidence; that the State still has failed to
12 provide me the policy and procedure for SLED and how they
13 conduct photo lineups.

14 THE COURT: Let me stop you right there.

15 Policies and procedures of SLED, photo lineups,
16 Solicitor?

17 MS. CAMPBELL: Your Honor, I'll check on that at
18 the break.

19 THE COURT: All right. Thank you.

20 MR. MARTINEZ: The SLED training manual for how
21 they train South Carolina police officers to conduct an
22 interrogation, interview of a suspect in custody.

23 THE COURT: Well, that's way too broad, how they
24 train South Carolina police officers?

25 MR. MARTINEZ: Yes, sir.

1 THE COURT: That's too broad. What's your specific
2 request?

3 MR. MARTINEZ: Interrogation, for interrogation.

4 THE COURT: I don't know what you're asking for.

5 MR. MARTINEZ: Do they have a specific manual, they
6 have a specific guideline that they teach officers when
7 they go through their training how to conduct a --

8 THE COURT: Does who have it?

9 MR. MARTINEZ: Does SLED.

10 THE COURT: SLED doesn't teach officers.

11 MR. MARTINEZ: SLED has books --

12 THE COURT: SLED is a law enforcement agency, not a
13 teaching agency.

14 MR. MARTINEZ: So SLED doesn't have it?

15 THE COURT: I didn't say that, I said SLED is not a
16 teaching agency. SLED is a law enforcement agency.

17 MR. MARTINEZ: Well, it was my understanding that
18 they teach -- they have like a qualified class they give
19 that officers have to go to in order to be trained to
20 become like a -- to be qualified as an officer.

21 THE COURT: SLED doesn't do that. SLED is a police
22 agency. SLED is not a training agency. Is there such a
23 thing, Solicitor?

24 MS. CAMPBELL: SLED does not teach officers how --
25 how to be police officers.

1 MR. MARTINEZ: All right. The City of Columbia
2 Police Department 2014 policies pertaining to the audio
3 recording devices issued to the Criminal Investigative
4 Division.

5 THE COURT: I thought that was handled in open
6 court with the lawyer for the City of Columbia that
7 testified in the motion hearing, or at least spoke as an
8 officer of the Court; is that not correct?

9 MR. MARTINEZ: Yes, sir. He stated that there were
10 no policies prescribed of their use or prohibiting their
11 use. Each investigator can use the audio recording device
12 in a manner which was most efficient for each situation.
13 If an investigator elected to use an audio recording
14 device, there were policies in place to instruct how
15 evidence should be collected and retained.

16 THE COURT: So what are you asking me to do?

17 MR. MARTINEZ: I'm asking for that policy that
18 states that --.

19 THE COURT: In 2014?

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: 2014, policies for what?

22 MR. MARTINEZ: The use of the audio recording
23 device.

24 THE COURT: Use of audio recording devices?

25 MR. MARTINEZ: Yes, sir.

1 THE COURT: All right.

2 MR. MARTINEZ: Also the K-9 reports from the search
3 of property for the case at issue.

4 THE COURT: K-9 report, Solicitor?

5 MS. CAMPBELL: None, Your Honor.

6 THE COURT: There is no report. Is that what you
7 said?

8 MS. CAMPBELL: That's my understanding, Your Honor
9 is no report. We've looked for that.

10 MR. MARTINEZ: There was police dogs that went to
11 the -- the thing and did a search. They were supposed
12 to -- I guess they don't do reports when they do searches.

13 THE COURT: I don't know the answer. That wasn't
14 the question, but I'm saying it like I bought it. The
15 State's saying there is no report.

16 MR. MARTINEZ: Officer Warren Cavanaugh's Richland
17 County Sheriff's Office Strike Force, arresting reports and
18 any or -- any and all supplemented reports on the arrest of
19 the defendant on 4/2/14; especially the warrant and/or
20 Court order issued to allow my mother, Sharon Martinez's
21 government phone to be tracked and traced by the Richland
22 County Sheriff's Office Strike Force.

23 THE COURT: All right. Solicitor?

24 MS. CAMPBELL: There's multiple parts to that; the
25 request, I believe. He said he wanted any and all of

1 Warren Cavanaugh's reports?

2 THE COURT: I believe he did, yes, ma'am, he did.

3 MS. CAMPBELL: And then he wanted arrest reports on
4 him?

5 MR. MARTINEZ: Yes.

6 MS. CAMPBELL: Which I believe have been turned
7 over.

8 MR. MARTINEZ: No, sir, I haven't gotten anything.

9 MS. CAMPBELL: Then he wanted -- what was the next
10 item? I'm sorry.

11 MR. MARTINEZ: The warrant and/or Court order
12 issued to allow them to track my mom's phone.

13 MS. CAMPBELL: I thought we addressed that.

14 THE COURT: Ma'am?

15 MS. CAMPBELL: It's sealed. It's sealed.

16 THE COURT: All right. By what Court?

17 MS. CAMPBELL: I assume this Court. I would have
18 to check, but I did check -- we checked with this officer
19 with SLED, Your Honor. But it is sealed, and I believe
20 it's in this courthouse.

21 THE COURT: All right. Well, if you find that --

22 MS. CAMPBELL: I thought we did that, but I'll get
23 a transcript to make sure.

24 MR. MARTINEZ: The CPD case, Elexia Tucker's cell
25 phone, text message record from March 2014.

1 THE COURT: Do we have that?

2 MS. CAMPBELL: We do not.

3 THE COURT: Do y'all have that?

4 MS. CAMPBELL: No, sir.

5 MR. MARTINEZ: All laboratory results from the
6 items gathered and tested, involving latent prints from the
7 CPD case.

8 THE COURT: Solicitor?

9 MS. CAMPBELL: There's no latent print report from
10 the CPD case that I'm aware of.

11 THE COURT: All right.

12 MR. MARTINEZ: What about -- there was a
13 laboratory -- they gathered a bunch of items. They did DNA
14 swab tests, they did multiple items on --

15 THE COURT: What agency are you talking about?

16 MR. MARTINEZ: CPD. There was turned over clothing
17 articles and there was no laboratory results on that.

18 THE COURT: Maybe I wasn't tracking. I thought she
19 just said there were no lab results.

20 MR. MARTINEZ: She said there were no latent, from
21 the prints, latent prints. She said there was no latent.

22 MS. CAMPBELL: Latent prints?

23 MR. MARTINEZ: Latent prints.

24 THE COURT: I thought she said there were no lab
25 reports.

1 MS. CAMPBELL: No, Your Honor, I said there's no
2 latent print report.

3 THE COURT: All right. Well, what report are you
4 asking for then?

5 MR. MARTINEZ: There was DNA -- they did DNA swabs
6 on everybody for multiple items.

7 THE COURT: From the Columbia Police Department.

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: All right. And this is on Ms. Tucker's
10 case?

11 MR. MARTINEZ: Yes, sir.

12 MS. CAMPBELL: There's no DNA report.

13 THE COURT: All right.

14 MR. MARTINEZ: The phone call from jail on 4/2/14.

15 THE COURT: The phone call between who?

16 MR. MARTINEZ: From 4/2/14.

17 THE COURT: From who?

18 MR. MARTINEZ: From me to my mother.

19 THE COURT: All right.

20 MS. CAMPBELL: All jail calls have been provided
21 that we have.

22 THE COURT: All right.

23 MR. MARTINEZ: Colbi Sutton's competency
24 evaluation.

25 THE COURT: Who's evaluation?

1 MS. CAMPBELL: His expert's evaluation. His lawyer
2 at the time got an expert, Dr. Sutton, who testified in
3 this Court when we went to trial last time and she
4 testified about the report and she didn't have a report.
5 However, he has her testimony, I believe.

6 THE COURT: That's Dr. Colbi Sutton?

7 MS. CAMPBELL: Sutton.

8 THE COURT: So there is no report.

9 MS. CAMPBELL: Not that we're aware of. In fact,
10 we were going to talk to her, but we chose not to because
11 it's his expert.

12 THE COURT: And he -- she -- was it she?

13 MS. CAMPBELL: She.

14 THE COURT: She was engaged by the defense?

15 MS. CAMPBELL: The defense.

16 THE COURT: All right.

17 MR. MARTINEZ: Your Honor, she was hired by Ms.
18 Zmroczek.

19 THE COURT: And that was the defense at the time.

20 MR. MARTINEZ: Yes, sir. But Ms. Zmroczek never
21 gave me a copy of the report. She did, however, give
22 Ms. Luck Campbell a copy of it. Ms. Luck Campbell signed
23 for it. I sent that in a motion and I --

24 THE COURT: You have a copy of it, Solicitor?

25 MS. CAMPBELL: There was no report, no, Your Honor.

1 We were told that she wasn't going to have a report.

2 THE COURT: And that was your expert, Mr. Martinez?

3 MR. MARTINEZ: At the time I had an attorney who
4 wasn't communicating with me.

5 THE COURT: That was your expert, Mr. Martinez, not
6 the State's. The State's not required to provide you with
7 information that the defendant already has.

8 Show me the document where Ms. Campbell signed for
9 a report, written report, from Dr. Sutton.

10 MR. MARTINEZ: Excuse me for a moment.

11 (There was a pause in the proceedings.)

12 THE COURT: That's not a report. It says also
13 enclosed is the CV.

14 MR. MARTINEZ: Yes, competency evaluation.

15 THE COURT: No, sir. C-V.

16 MR. MARTINEZ: What is that?

17 THE COURT: V is not the beginning val in
18 evaluation. E is in eval. That is her CV. That is her
19 resume -- resume, Curriculum Vitae. I think that it's some
20 foreign language, perhaps Latin, I don't know. That is not
21 a report.

22 MR. MARTINEZ: All right, Your Honor.

23 THE COURT: This is where Ms. Campbell signed for
24 it or signed a document that she received these items from
25 Ms. Zmroczek and one of those items is not a report of Dr.

1 Sutton.

2 MR. MARTINEZ: I misunderstood because Ms. Zmroczek
3 told me that she gave a copy of her report as well as a
4 copy of the evaluation that I had done by forensics. So I
5 misunderstood.

6 THE COURT: Well -- do what?

7 MR. MARTINEZ: So I misunderstood then.

8 THE COURT: And it does have up here DMH
9 evaluation, 20 pages.

10 MR. MARTINEZ: Yeah.

11 THE COURT: It has other medical records and all,
12 but it does not list a report by Dr. Sutton. That's her
13 CV, that's her resume, that's what it is. Neither one of
14 which -- that I have not seen yet -- that I have seen,
15 recall a CV.

16 MR. MARTINEZ: My other motions are -- I asked for
17 the polygraph test they had taken of me.

18 THE COURT: Polygraph, Solicitor?

19 MS. CAMPBELL: There was a polygraph in the
20 Richland County case, however, we are not going forward
21 with that case. That's not before the Court today. I
22 believe in addition, the results of that is included in the
23 information that was given to him on that case; however,
24 there 's no polygraph associated with the Forest Acres case
25 in any way, shape, or form.

1 MR. MARTINEZ: Still, my motion -- and I keep being
2 denied my motion. All this evidence is being denied to me
3 which is a Brady violation and denying me my due process to
4 be able to have -- to adequately prepare for my case and my
5 defense.

6 THE COURT: Do you have the results of the
7 polygraph examinations of Mr. Martinez from the Richland
8 County Sheriff's Department.

9 MS. CAMPBELL: Everything I have has been provided
10 to him. I can check with the Richland County Sheriff's
11 Department on the case we are not going forward on and see
12 if they have any additional material that I can provide to
13 the defense.

14 And I apologize, Your Honor, this is my first time
15 hearing that request.

16 THE COURT: Please check on that. If they exist,
17 have them to provide them to you and provide them to Mr.
18 Martinez.

19 MR. MARTINEZ: I'd ask that the State establish
20 admissibility of the criminal records of the potential
21 witnesses and the alleged victims.

22 THE COURT: Well, that's not a pretrial motion,
23 necessarily.

24 MS. WALKER: Your Honor, if I may?

25 THE COURT: Certainly.

1 MS. WALKER: Before each witness is called to the
2 stand, I'll be happy to discuss the admissibility of any
3 convictions that they may have with Mr. Martinez.

4 THE COURT: All right.

5 MR. MARTINEZ: The rest is not pretrial.

6 THE COURT: That's it?

7 MR. MARTINEZ: Yes, I just need my motions in
8 limine.

9 THE COURT: You have what now?

10 MR. MARTINEZ: I just have my other motions, my
11 motions in limine.

12 THE COURT: And what motions are those, Mr.
13 Martinez.

14 MOTIONS IN LIMINE

15 MR. MARTINEZ: To sequester the witnesses for
16 pretrial motions and the trial.

17 THE COURT: All right. I do that -- I make -- I
18 use my own discretion on Rule 615. I allow the victims to
19 remain, based on our constitution; I allow the chief
20 investigating officer and the evidence handler to remain.
21 I allow any witness who has given a written statement,
22 sworn statement to remain. I allow expert witnesses to
23 remain. Rule 615 gives me such discretion as does State
24 versus Carmack.

25 MR. MARTINEZ: Doing -- with the witnesses being in

1 the room and families -- last time they was able to bolster
2 each other. They was able to encourage each other. Last
3 time they sat there laughing and playing and --

4 THE COURT: I never heard that in the record
5 before.

6 MR. MARTINEZ: Yeah, they don't record -- they
7 don't do that, but they was up there laughing and playing.
8 When the jury was in here, then they were in here crying.
9 It was a totally different atmosphere. It was at the point
10 where they were so loud at times that the officers right
11 here couldn't even hear themselves talking.

12 THE COURT: Well, wait a minute.

13 Sheriff Locklear, were you here last time?

14 THE OFFICER: Yes, sir.

15 THE COURT: Was there a times the witnesses were so
16 loud you didn't hear yourself talking?

17 THE OFFICER: No, sir.

18 THE COURT: Any sheriff or other sheriff in the
19 courtroom that was in the courtroom last time?

20 (No one stood.)

21 THE COURT: No? Mr. Barefoot? Were you in here?

22 THE OFFICER: Yes, sir, I was in here.

23 THE COURT: Did -- was it such -- the gallery was,
24 their demeanor was such that they were so loud that you
25 couldn't hear yourself talking?

1 THE OFFICER: No, sir.

2 MR. MARTINEZ: Remember, Mr. Martinez, I was here.
3 Okay?

4 MR. MARTINEZ: They were here --

5 THE COURT: Okay. I've ruled. I've ruled under
6 Rule 16, in my discretion. I know what the law is under
7 state versus Carmack and I also know State versus
8 Cabbagestalk -- says, the fact that witnesses may hear each
9 other testify is not sufficient for sequestration. And I'm
10 certainly not going against the law and particularly not
11 only the statutory case law, well, the rules, the case law
12 and the constitution.

13 MOTION TO RECUSE

14 MR. MARTINEZ: Well, I'd ask that you recuse
15 yourself as the judge.

16 THE COURT: Excuse me.

17 MR. MARTINEZ: I'd ask that you recuse yourself as
18 the judge.

19 THE COURT: And what are your grounds?

20 MR. MARTINEZ: You're bias. It's my constitutional
21 right to have a impartial judge. It's my right to have an
22 impartial tribunal. You're partial. Not only are you
23 making adverse calls, but you are going against
24 constitutional and violating my constitutional rights.
25 You're going against case law. You're going against case

1 law, you've taken a personal involvement in this case to
2 where you are adverse or a party to the accusatory process
3 and accusing me and you're partial, you're bias and it's
4 not just on a judicial level, it's on a personal level.

5 THE COURT: All right. Let's start talking about
6 that. What article of the constitution am I violating?

7 MR. MARTINEZ: Well, you're violating -- you've
8 violated my right to confrontation of my witness. You've
9 violated my right to present a defense. You've prevented
10 my due process rights. You've violated my Eighth Amendment
11 right to call for mitigating evidence in my defense.

12 THE COURT: Well --

13 MR. MARTINEZ: As well as my equal protection of
14 the laws. I'm equally as protected as anyone else because
15 I haven't been found guilty yet.

16 THE COURT: Well, you're presumed to be innocent.
17 There's a presumption of innocence -- well, not only have I
18 not allowed you to confront the witnesses, of course, you
19 haven't done it in this case yet because no witnesses have
20 been called; but, you've confronted the witnesses in the
21 last trial. You've cross-examined the witnesses in the
22 last trial.

23 And as far as violating your rights to present a
24 defense, you fully, completely cross-examined the witnesses
25 and the State never rested. So it never got to the stage

1 of the trial for you to present whatever defenses you chose
2 to present.

3 As far as the Eighth Amendment and mitigation --
4 that would only come, could come in some respect during the
5 presentation of your defense, but only if -- only if the
6 State met its burden of proving its case beyond a
7 reasonable doubt you would -- you could fully and
8 completely present whatever evidence you chose to present
9 in mitigation of any sentence and I can't -- I can't
10 predict -- I can't predict the future in that regard.

11 As far as me taking something at a personal level,
12 and accusatory, the only time that I have ever directed any
13 comments towards you was when you failed to follow the
14 rules of court and the decorum of the courtroom. And I
15 have a duty under my judicial authority to maintain the
16 honor and the dignity and the decorum of the courtroom.
17 And that is in no way being bias or impartial in any
18 manner, whether it's you, the solicitor, any officers in
19 this courtroom, any witness in this courtroom. I'm going
20 to maintain the honor and the dignity and the decorum of
21 the courtroom.

22 Now, that addresses the constitution. You also
23 said the case law. So what case law requires me to recuse
24 myself?

25 MR. MARTINEZ: It's your discretion.

1 THE COURT: I asked you a question. I didn't ask
2 you the standards. I asked you what case law requires me
3 to recuse myself.

4 MR. MARTINEZ: There is no case law requiring you
5 to recuse yourself.

6 THE COURT: Well, what case law are you referring
7 to then? When you said case law, I want to look.

8 MR. MARTINEZ: I said that you go against -- you
9 ruled against me -- against case law, against the law.

10 THE COURT: If I make any errors in my ruling on
11 the law and an individual is found guilty or if I'm in
12 civil court and make any errors on the law and a particular
13 individual gets a judgment against him or her in a civil
14 action, there are appellate courts that address that.
15 There are appellate courts that address that.

16 I have no ill will toward you whatsoever, Mr.
17 Martinez. None whatsoever. I presume individuals -- I
18 take the presumption of innocence very seriously. I take
19 jury trials very seriously. They're the foundation of all
20 of our freedoms. And I'm not going to deny any man, woman,
21 the right to present a defense, the right to cross-examine,
22 any of their constitutional rights.

23 The stakes are high. The stakes are high. I
24 understand that. I understand and I have no ill will
25 toward you whatsoever. I would give you the count of the

1 number of murder cases I have tried as a judge because I've
2 got not only the murder cases written down, but every case
3 I've ever tried as a judge and it's somewhere north of 260
4 cases: Civil and criminal, primarily criminal.

5 Do you have any other grounds for my recusal?

6 MR. MARTINEZ: Like I said, it's my constitutional
7 right --

8 THE COURT: Other grounds.

9 MR. MARTINEZ: Other grounds?

10 THE COURT: That is different than the ones you've
11 already presented to me. If there are, I want to hear
12 them. I'm not trying to cut you off, but when I say other,
13 I've addressed these. Do you have any other grounds?

14 MR. MARTINEZ: I just want to say that you're
15 erring because I want to avoid the appellate process. I
16 don't want to be wrongly convicted for something I didn't
17 do. I don't want to go through all that. I want a fair
18 trial and be able to present my defense now in front of an
19 impartial judge and in front of an impartial jury.

20 THE COURT: And I just finished addressing to you,
21 you have your right to present a defense. I -- we haven't
22 even gotten to that point. There hasn't been a witness
23 called. You're trying to predict the future, Mr. Martinez.

24 So I -- again, are there any other grounds?

25 MR. MARTINEZ: No, sir.

1 THE COURT: That's all I'm trying to get at. Give
2 me just a moment.

3 (There was a pause in the proceedings.)

4 THE COURT: All right. Citing State versus Howell,
5 South Carolina Court of Appeals, 384, SC 212, A judge must
6 exercise sound judicial discretion in determining whether
7 his impartiality might reasonably be questioned.

8 State versus Cheatham, 349, SC 101, absence
9 evidence of judicial prejudice, a judge's failure to
10 disqualify himself will not be reversed on appeal. It is
11 not enough for a party seeking disqualification simply to
12 allege bias. The party must show some evidence of the
13 bias. Furthermore, the alleged bias must be personal as
14 distinguished from judicial in nature.

15 Again, I have no personal bias whatsoever as to Mr.
16 Martinez. And my conduct towards him, my conduct towards
17 officers of the Court, as far as maintaining the dignity
18 and the decorum and the honor of the courtroom so that he
19 will be afforded a fair and impartial trial by a fair and
20 impartial jury.

21 All right. The next motion, Mr. Martinez?

22 MOTION FOR CHANGE OF VENUE

23 MR. MARTINEZ: A change of venue. I'd ask for a
24 change of venue due the newspaper that are printing up
25 false reports and the negative publicity from that.

1 THE COURT: All right. I'll take that under
2 advisement. The law in South Carolina, based on State
3 versus Manning, and a long line of cases is such that-- in
4 other words, I'm not going to make my mind up now. It
5 depends on whether or not we can select a fair and
6 impartial jury in the trial of this case.

7 So that's -- that's a motion well thought out, Mr.
8 Martinez, but it really depends on the responses that we
9 may or may not get from the jury panel.

10 And also, remember, just because an individual
11 juror may have heard something, may have read something,
12 may have seen something, they're's not a bright line for
13 disqualification. The question then becomes whether or not
14 that juror can set aside whatever she or he may have heard,
15 read, or listened to, talked about, what have you, whether
16 they can set that aside and make their decision based on
17 the evidence and the testimony they hear from the witnesses
18 testifying under oath, any physical items of evidence that
19 may be introduced, and the law as I tell them the law is.

20 But that motion is well thought out, but it's
21 premature for me to rule on it at this time. I'll just
22 have to see what the response of the jury panel is.

23 MR. MARTINEZ: All right.

24 THE COURT: And there's other cases off of Manning,
25 for example -- well, I don't know if it's an appellate

1 issue in Quattlebaum or not, but there's a line of cases on
2 that. But that's under advisement, okay.

3 MR. MARTINEZ: All right.

4 THE COURT: All right. What's your next motion?

5 MR. MARTINEZ: My motion is to dismiss these
6 indictments.

7 MOTION TO DISMISS THE INDICTMENTS

8 THE COURT: Dismiss the indictments there's one as
9 to -- the ones as to the incident on March 27, of '14?

10 MR. MARTINEZ: Yes, sir.

11 THE COURT: All right. And what are your grounds
12 to dismiss?

13 MR. MARTINEZ: Fourth Amendment, illegal search and
14 seizure.

15 THE COURT: All right. And other grounds?

16 MR. MARTINEZ: State Constitution, Article I,
17 Section 10.

18 THE COURT: All right. Other grounds?

19 MR. MARTINEZ: That's it.

20 THE COURT: All right. Well, I will -- I'll have
21 to hear testimony concerning any Fourth Amendment search
22 and seizure issues, so I would have to take that under
23 advisement also.

24 All right. Your next motion?

25 MOTION TO SEVER

1 MR. MARTINEZ: I'd like to separate -- sever and
2 separate the incidents from one another.

3 THE COURT: I've -- the indictments that have been
4 handed up to me that are being called to trial are the
5 indictments surrounding the event, alleging events of 27,
6 March, 2014. Are there others being called for trial?

7 MS. CAMPBELL: No, sir.

8 THE COURT: All right. So as far as -- these are
9 all part of the same victim, same incident?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Same victim, same incident. And this
12 is a burglary first -- yeah, burglary first degree, armed
13 robbery. The Indictment Number on the burglary first is
14 2014-GS-40-4849; armed robbery is 2014-GS-40-4850;
15 kidnapping, 2014-GS-40-4851; kidnapping, 2014-GS-40-04852;
16 kidnapping 2014-GS-40-0 4853; criminal sexual conduct,
17 2014-GS-40-04854; and possession of a weapon during the
18 commission of a violent crime, 2014-GS-40-04856.

19 And that first indictment is indicated amended on
20 the face of the indictment, so -- as far as you asking me
21 to sever these charges as I just read into the record, I
22 would deny that motion.

23 **MOTION FOR A TAIN T HEARING**

24 M R. MARTINEZ: I'd also ask for a Taint Hearing
25 for the alleged victims Briona Hurshman's perjured

1 testimony.

2 THE COURT: A what hearing?

3 MR. MARTINEZ: A Taint Hearing, her perjured
4 testimony. The State is aware of --

5 THE COURT: I'm sorry, I just didn't understand
6 you.

7 MR. MARTINEZ: I want a Taint Hearing. The State
8 is offering perjured testimony. They know it's perjured.
9 They know that she perjured herself and they're actually
10 encouraging it and exploiting it and they're trying to use
11 it against me which is violating my constitutional rights
12 as well.

13 THE COURT: All right. Solicitor?

14 MS. WALKER: No, we're not. I don't know what he's
15 talking about.

16 MR. MARTINEZ: They're -- they're saying --

17 THE COURT: Can you spell -- can you spell that
18 word for me, please.

19 MR. MARTINEZ: Which one?

20 THE COURT: A what kind of hearing.

21 MR. MARTINEZ: T-A-I-N-T.

22 THE COURT: T-A-I-N-T. And that's a hearing?

23 MR. MARTINEZ: Yeah.

24 THE COURT: All right. You have a case on that?

25 MR. MARTINEZ: As far as perjured testimony?

1 THE COURT: No, sir, I want -- you're using the
2 words Taint Hearing. Is there a case on that?

3 MR. MARTINEZ: No, I'm talking about perjured
4 testimony. It's like a hearing --

5 THE COURT: I'm talking about the word you used
6 with the Court. You want a Taint Hearing. Is there a case
7 on a Taint Hearing? That's what I'm not tracking.

8 MR. MARTINEZ: Umm --

9 THE COURT: And there may not be one, I'm just
10 asking. I didn't know if that was just a -- are you
11 familiar with such a term, Mr. Kata? Such a hearing?

12 MR. KATA: No, Your Honor.

13 MR. MARTINEZ: I believe it's under -- it's under
14 Michaels.

15 THE COURT: You got it under what?

16 MR. MARTINEZ: It's a New Jersey case.

17 THE COURT: You have a copy of it that I can
18 review?

19 MR. MARTINEZ: It's just a hearing where they find
20 out why the testimony is perjured. How it became that way.
21 Who encouraged it and who --

22 (There was a pause in the proceedings.)

23 MR. MARTINEZ: Your Honor, I don't have it on me.
24 It's a New Jersey case. I think it's in '94. It's a
25 hearing where they have -- they hold a hearing of the

1 perjured testimony and they see how it became perjured.
2 Because the State is aware that she's -- she's changing her
3 story. She doesn't know the difference between a finger
4 and a penis. She doesn't know the time. She doesn't know
5 his size. She gave a description though of the person that
6 attacked her, but then she -- it's just -- it's not just
7 mere inconsistencies, her material facts are not -- are not
8 accurate from her original statement that she repeatedly
9 gave.

10 And she's saying that she identified me a couple of
11 days later, yet, she had numerous opportunities. She was
12 going to sexual trauma, she was coming to court dates, she
13 was around -- her husband was around police officers. They
14 never came forward with this information. They came
15 forward the day of the last trial and said now they can
16 identify me. Now they know for sure and the State is
17 allowing them to use that, knowing that it's perjured,
18 knowing that it's false.

19 (There was a pause in the proceedings.)

20 THE COURT: The basic concept as I see in the law,
21 and, I'm not here to rule on the credibility of the
22 testimony of the witnesses. The jury will be the fact
23 finders in that regard, the judges of the credibility of
24 the witnesses and the weight and value to be given to
25 testimony that will be presented, as the jury deems

1 appropriate.

2 The case I'm looking at is the case that involves
3 the failure to correct false testimony. In a 1986 trial,
4 the witness, Jason, was asked more than once whether he had
5 spoken about the case with anyone other than Officer Harris
6 in August of 1985. When he gave his first statement, Jason
7 denied speaking with anyone other than his lawyer,
8 neglecting to mention either the January 22, 1986 statement
9 or the trip on January 24th, 1986; and the solicitor failed
10 to correct that testimony.

11 The PCR judge found that the State did not violate
12 due process by failing to correct Jason's false testimony
13 because the State may have thought either that Jason
14 misunderstood the question or that he simply did not recall
15 the recent events. Since the State did not know why Jason
16 failed to testify truthfully, the petitioner was found not
17 to have met his burden of showing the State knowingly used
18 perjured testimony. The appellate court disagreed with the
19 PCR Court finding that the issue is not why the witness
20 failed to tell the truth, rather it is why the solicitor
21 who knew the witness's testimony to be false failed to
22 correct it.

23 These solicitors, as officers of the Court know
24 their duty to the Court, and to the system, should there be
25 false testimony presented. A prosecutor's deliberate

1 deception of a Court and jurors by the presentation of
2 known false evidence is incompatible with rudimentary
3 demands of justice citing Giglio versus United States. The
4 failure to correct false evidence is as reprehensible as
5 it's presentation; citing Washington versus State, 324 SC,
6 232.

7 Further, this same case, the PCR Court indicated
8 the constitution requires only that a defendant receives a
9 fair trial, not a perfect trial. In that case, the case
10 I'm citing is Riddle versus State, that testimony rendered
11 the trial fundamentally unfair. So your recollection of
12 the testimony of any witnesses testifying in previous
13 hearings, and the solicitor's in that regard, are of no
14 concern at this point to the Court because upon the
15 declaration of a mistrial, it starts from there. The
16 solicitor's know they're responsible as officers of the
17 Court; and Solicitor Walker stood and said it didn't
18 happen. We don't know what you're talking about.

19 They know their duties and responsibilities and
20 this Court has no need to remind them of that. So in that
21 regard, and I'll try to find out what New Jersey case
22 you're talking about. It's been a while since I've read a
23 New Jersey case.

24 MR. MARTINEZ: It's right here. It says competent
25 and reliable evidence remain at the foundation of a fair

1 trial. If crucial and exculpatory evidence is alleged to
2 arise from reliable sources, due process interests are at
3 risk. State versus Michaels, 642(A) 2d edition, 1372,
4 1380, New Jersey, 1994.

5 THE COURT: All right. Thank you.

6 You have other motions?

7 MR. MARTINEZ: Umm --

8 THE COURT: Well, I tell you, before we do that,
9 we're going to start back at 1:30 with the jury. Why don't
10 we take 35 minutes. All right.

11 Court will be in recess until 1:30.

12 Thank you, Mr. Martinez.

13 Thank you, Solicitor.

14 (A recess for lunch was observed.)

15 THE COURT: All right. Anything, Mr. Martinez,
16 before we bring up our jury panel?

17 MR. MARTINEZ: I've got more motions after that.

18 THE COURT: Oh, yes, sir. Of course.

19 MR. MARTINEZ: Then, no.

20 THE COURT: Anything from the State before we bring
21 up our jury panel?

22 MS. CAMPBELL: No, sir.

23 THE COURT: All right. Madam Clerk.

24 THE CLERK: Yes, sir, Your Honor.

25 (The Clerk called for the jury panel to come

1 upstairs to the courtroom.)

2 OFFICER: Will you hold the jury outside, please.

3 THE COURT: Mr. Martinez, during the jury selection
4 process, I'm going to have the shackles taken off of you
5 and the sheriff is going to put the belt on. Do you
6 understand?

7 MR. MARTINEZ: Yes, sir.

8 THE COURT: Whereby you will be able to come up
9 here if I have to deal with any of the jurors.

10 MR. MARTINEZ: Okay.

11 THE COURT: You would be able to be up here.

12 MR. MARTINEZ: Yes, sir.

13 (The defendant was taken out of the room to remove
14 the shackles and place the belt on him.)

15 (The defendant came back into the courtroom.)

16 THE COURT: All right. Mr. Martinez, would you
17 please stand for me, please.

18 I -- the reason I suggested to put the belt on is
19 so that during the jury selection process if a juror has an
20 issue, I have them come forward to my court reporter and I
21 did not want you being prejudiced in any manner by the fact
22 that you had ankle shackles on. So perhaps I should have
23 given you that option. You're welcome to keep the shackles
24 on. You would remain at your post now behind the defense
25 table and your standby counsel would come forward to hear

1 our conversations that I have because I do not have those
2 conversations about the jurors issue in front of the other
3 members of the jury panel.

4 That was not to be punitive to you in any manner.
5 I don't run -- I run the courtroom, but I leave security
6 also in the hands of those professional experts or security
7 experts that are in the courtroom with the Court. If you
8 do not want the stun belt on, that's fine, but of course,
9 in not putting it on, then the option is you remain there
10 during selection. If I question a juror up here, your
11 standby counsel can come forward. With the stun belt on, I
12 would allow you to come up here.

13 So I'm giving you an option.

14 MR. MARTINEZ: Your Honor, I suffer from a mental
15 illness that has to do with electrotherapy, electric shock,
16 being shocked, and it interferes -- they showed me how it
17 works. I don't want it on.

18 THE COURT: Okay.. That's fine. I don't have any
19 problem with it whatsoever. But you understand now, you
20 would remain there.

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: Mr. Kata can come forward, come back
23 confer with you with whatever issues the juror had.

24 MR. MARTINEZ: Yes, sir.

25 THE COURT: All right. That's fine.

1 So you're ready for the jury panel?

2 MR. MARTINEZ: Yes, sir.

3 THE COURT: Solicitor, are y'all ready for the jury
4 panel?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: Thank you.

7 Madam Clerk.

8 THE CLERK: Yes, sir.

9 (The jury venire panel entered the courtroom.)

10 THE BAILIFF: Your Honor, the jury is present.

11 THE COURT: Thank you, thank you very much
12 Mr. Bailiff.

13 **JURY VOIR DIRE**

14 THE COURT: Good afternoon, ladies and gentlemen.

15 THE JURY: Good afternoon.

16 THE COURT: All right. Solicitor, you may call
17 your first case for trial.

18 MS. GODWIN: Thank you, Your Honor. The State
19 calls the State versus Daniel Martinez, Indictment Number
20 2016-GS-40-4849, for burglary first degree; Indictment
21 Number 2014-GS-40-4850, for armed robbery; Indictment
22 Number 2014-GS-40-4851, for kidnapping; 2014-GS-40-4852,
23 for kidnapping; 2014-GS-40-4853, for kidnapping; Indictment
24 Number 2014-GS-40-4854, for criminal sexual conduct in the
25 first degree; 2014-GS-40-4856, for possession of a weapon

1 during the commission of a violent crime.

2 THE COURT: Thank you. Thank you, Solicitor.

3 Mr. Martinez, you're present along with standby
4 counsel, Mr. Kata.

5 MR. MARTINEZ: Yes, sir.

6 THE COURT: Are you ready for the jury selection
7 process?

8 MR. MARTINEZ: Yes, Your Honor.

9 THE COURT: Thank you, Mr. Martinez.

10 Ladies and gentlemen of the jury panel, if you
11 would please give me your complete and undivided attention.
12 We're going to go through a process whereby we select the
13 trial jury for the trial of this specific case. As you
14 recall, you were generally qualified and no exemptions
15 applied during the process this morning. Also during that
16 process, you may recall, you were placed under oath.

17 I would ask you to please, during this process,
18 consider yourselves still under oath. Your responses would
19 be under oath and I would need full, complete and accurate
20 responses to the questions put to you.

21 Our goal in this process is to select a jury that
22 will be a fair and impartial jury in the trial of this case
23 for both Mr. Martinez and the State. I intend to select
24 twelve members to have primary jury and three alternate
25 jurors. I would advise the jury panel that Mr. Martinez is

1 representing himself and do not use that either for nor
2 against him. In America we have dignity for each and every
3 individual and he or she, if they so choose, may represent
4 himself or herself.

5 As part of this process and the questions I will
6 ask you, I will read the indictments to you. The
7 indictments, ladies and gentlemen are not evidence. The
8 indictments are the formal charging documents by which an
9 individual is placed on notice of charges that have been
10 brought against him or her. Again, the formal charging
11 documents. They contain mere allegations and in no sense
12 are they evidence of the allegations contained therein. I
13 read them to you because of the follow-up questions I will
14 be asking you to determine your eligibility to serve on
15 this jury panel.

16 Indictment 2046-GS-40-04849 reads that Nathan
17 Daniel Martinez did, in Richland County, on or about March
18 27th, 2014, enter the dwelling of Heath and Briona
19 Hurshman, located at [REDACTED], without
20 consent and with intent to commit a crime therein and when
21 in effecting entry or while in the dwelling or in immediate
22 flight therefrom the defendant was armed with a deadly
23 weapon and/or caused physical injury to a nonparticipant in
24 the crime and/or used or threatened the use of a dangerous
25 instrument and/or displayed what or appeared to be -- what

1 was or appealed to be a knife, pistol, revolver, shotgun,
2 or other firearm, and/or in the entering or remaining
3 occurred in the nighttime; in violation of 16-11-311 of the
4 South Carolina Code of Laws, 1976 as amended. That is an
5 indictment for burglary in the first degree.

6 The next indictment, 2014-GS-40-04850 reads that
7 Nathan Daniel Martinez, did in Richland County on or about
8 March 27, 2014, that same day, commit robbery by
9 feloniously taking from the person or presence of Briona
10 Hurshman by means of force or intimidation, goods or monies
11 of Briona and Heath Hurshman; such goods or monies being
12 described as jewelry and/or a debit card, and/or U.S.
13 currency and/or household effects, with intent to deprive
14 the owner permanently of such property while armed with a
15 pistol, dirk, shotgun, metal knuckles, razor, or other
16 deadly weapon; or while alleging either by actions or by
17 words that he was armed while using a representation of a
18 deadly weapon or any object which a person present during
19 the commission of the robbery reasonably believed to be a
20 deadly weapon, all in violation of 16-11-338 of the South
21 Carolina Code of Laws, 1976. That's an indictment for
22 armed robbery.

23 The next three indictments are all separate and
24 distinct indictments for the offense of kidnapping.
25 2014-GS-40-04851 alleges that Nathan Daniel Martinez, did

1 in Richland County on or about that same date, 27, March,
2 2014, unlawfully seize, inveigle, decoy, kidnap, abduct or
3 carry away, one Briona Hurshman, without authority of law,
4 in violation of 16-3-910 of the South Carolina Code of
5 Laws, 1976, as amended. That is an indictment for
6 kidnapping.

7 The next, Indictment 2014-GS-40-04852, alleges
8 again the crime of kidnapping on that same date as to one
9 L.H. That is an indictment for kidnapping.

10 And the next, Indictment 2014-GS-40-40853 alleges
11 the same offense on the same date of March 27 of 2014, as
12 to D.H. That is an indictment also for
13 kidnapping.

14 The next, Indictment 2014-GS-40-06854 alleges that
15 Nathan Daniel Martinez did in Richland County on or about
16 March 27th, 2014, engage in sexual battery with Briona
17 Hurshman by using force to accomplish sexual battery or the
18 victim submitted to sexual battery while the victim was
19 also the victim of forcible confinement and/or kidnapping
20 and/or robbery and/or extortion, and/or burglary and/or
21 house breaking and/or any other similar offense or act in
22 violation of section 16-3-652 of the South Carolina Code of
23 Laws. That is an indictment for criminal sexual conduct in
24 the first degree.

25 The next, Indictment 2014-GS-40-04856 alleges that

1 Nathan Daniel Martinez did in Richland County on or about
2 March 27th, 2014, possess a firearm or visibly what
3 appeared to be a firearm or visibly displayed a knife
4 during the commission or attempted commission of a violent
5 crime in violation of 16-3-490 of the South Carolina Code
6 of Laws 1976 as amended. That is an indictment for
7 possession of a weapon during the commission of a violent
8 crime.

9 The State is represented by Assistant Solicitors
10 Campbell, Walker, and Godwin.

11 If you would please stand, introduce yourselves to
12 the jury panel and any other member of the solicitor's
13 office that will assist you in the presentation of the
14 case.

15 MS. CAMPBELL: My name is Luck Campbell. I'm an
16 assistant solicitor here with the Fifth Judicial Circuit.

17 MS. WALKER: I'm Megan Walker. I'm also an
18 assistant solicitor here in the Fifth Judicial Circuit.
19 Also with us is our paralegal, Arlene Anderson.

20 MS. GODWIN: And I'm Jessica Godwin. I'm also an
21 assistant solicitor here in the Fifth Circuit.

22 THE COURT: Thank you Solicitors Campbell, Walker
23 and Godwin.

24 As I mentioned previously, Mr. Martinez is
25 representing himself.

1 Would you stand and introduce yourself to the jury
2 panel.

3 MR. MARTINEZ: Hello, my name is Nathan Martinez
4 and I'm here to represent myself.

5 THE COURT: Thank you, thank you, Mr. Martinez.

6 As to the attorneys, is any member of the jury
7 panel related by blood or marriage, close personal friends,
8 social friends, acquaintances, have any social, business,
9 or professional relationship with any of the attorneys on
10 behalf of the State being Assistant Solicitors Campbell,
11 Walker, and Godwin? If so, please stand.

12 (No one stood.)

13 THE COURT: Is any member of the jury panel related
14 by blood or marriage, personal friends, acquaintance,
15 social affiliations, business or professional affiliations
16 with Nathan Daniel Martinez who has introduced himself to
17 you? If so, please stand.

18 (No one stood.)

19 THE COURT: Is any member of the jury panel or any
20 member of your immediate family ever been represented in
21 court by any of the assistant solicitors or any member of
22 the solicitor's office staff? If so, please stand.

23 (No one stood.)

24 THE COURT: Is any member of the jury panel or any
25 member of your immediate family been a party to a case in

1 which the solicitor's office was -- in which your family
2 member was being prosecuted, family member, close personal
3 friend, being prosecuted by any of these three assistant
4 solicitors or any member of the solicitor's office staff?
5 If so, please stand.

6 (No one stood.)

7 THE COURT: Is any member of the jury panel related
8 by blood or marriage, close personal friends, have any
9 social, business, or professional relationship with the
10 alleged victims named in the indictment, Heath and Briona
11 Hurshman, L.H. , and D.H. ? If so,
12 please stand.

13 (No one stood.)

14 THE COURT: The indictments allege incidents that
15 occurred on 27 March, 2014 at [REDACTED],
16 Columbia, which is in the Forest Acres area of Richland
17 County. Does any member of the jury panel have any
18 knowledge about the case from any source whatsoever? If
19 so, please stand.

20 (A juror stood.)

21 THE COURT: All right. Yes, ma'am, your number and
22 name, please.

23 THE JUROR: Number 156, Mary King.

24 THE COURT: Would you come forward, please. This
25 is my court reporter to my front right. If you would come

1 forward to my court reporter.

2 (There was a bench conference on the record, out of
3 the hearing of the jury venire.)

4 THE COURT: This is Number 38? Is that right?

5 THE JUROR: I'm number 156.

6 THE COURT: I'm sorry.

7 THE JUROR: That's okay.

8 THE COURT: You're number 38 on my list, the number
9 system.

10 And tell me your response to that question,
11 Ms. King.

12 THE JUROR: I work for WIS. It's vaguely familiar
13 to me. I remember his name. I don't remember many of the
14 details since it was two years ago, I just felt it clicked
15 a bell or rang a bell, that's the face that was reported.

16 THE COURT: So your memory is based on -- it goes
17 back to the time the event allegedly happened.

18 THE JUROR: Correct. And it's just something that
19 seemed familiar, something we reported on. I didn't want
20 to take a chance that it was a case that we covered.

21 THE COURT: And you said you don't remember any
22 details. Can you tell me what --

23 THE WITNESS: Not specifically.

24 THE COURT: -- you remember.

25 THE JUROR: No, and that's why I just wanted to be

1 honest. As the case moves on it may start ringing a bell
2 with me. I just wanted to make sure.

3 THE COURT: Given those facts, can you set aside
4 whatever I may not remember or may remember and be a fair
5 and impartial juror for both Mr. Martinez, and the State?

6 THE JUROR: I believe so.

7 THE COURT: And when you say believe so, have you
8 ever been on jury duty before.

9 THE JUROR: I have not.

10 THE COURT: If I told you -- if I instructed the
11 jury that they had to decide the case based on the evidence
12 and the testimony presented in the courtroom --

13 THE JUROR: Right.

14 THE COURT: -- and the law as I tell them the law
15 was, could you set aside any outside knowledge and follow
16 that --

17 THE JUROR: Yes.

18 THE COURT: -- follow that law?

19 THE JUROR: Yes.

20 THE COURT: Thank you. I believe you can stay with
21 us. Do not say anything to your fellow jurors.

22 THE JUROR: Thank you.

23 (The bench conference was concluded.)

24 THE COURT: Does any member of the jury panel have
25 any bias or prejudice towards the parties, that being

1 either Mr. Martinez or the State or the subject matter
2 alleged in the case? If so, please stand.

3 (No one stood.)

4 THE COURT: Has any member of the jury panel heard
5 or know anything about the case from any course what so --
6 oh, yes, ma'am, I apologize.

7 (There was a juror standing.)

8 THE COURT: Tell me your number, please.

9 THE JUROR: 281.

10 THE COURT: All right. Step up here, if you would,
11 please.

12 This is Ms. Vansyckel; is that correct.

13 THE JUROR: Yes, sir.

14 (There was a bench conference on the record, out of
15 the hearing of the jury venire.)

16 THE COURT: Yes, ma'am, tell me your response to
17 that question.

18 THE JUROR: I -- my daughter was sexually assaulted
19 as a child and I am also --

20 THE COURT: Can you speak up -- can you step up
21 here where my court reporter can get that.

22 THE JUROR: I had to face my ex-husband in court.
23 He served as his own attorney and it strikes me hard. I'm
24 sorry.

25 THE COURT: All right. Based on that -- you know

1 yourself best.

2 THE JUROR: I know myself. I just don't want there
3 to be a personal issue here. I think I could do it, but it
4 would be a challenge. I have to be honest.

5 THE COURT: Oh, of course, of course. And there's
6 no wrong answer. So whatever answer you give is right.

7 THE JUROR: Yes, sir.

8 THE COURT: So you do not feel -- based on those
9 events with your daughter, yourself, you could not be a
10 fair --

11 THE JUROR: That's correct.

12 THE COURT: All right. I'm going to set Number 281
13 aside.

14 THE JUROR: I'm so sorry.

15 THE COURT: No, no, no, ma'am nothing to be sorry
16 for whatsoever. All right they'll direct you to the back
17 of the courtroom where one of the bailiffs are.

18 (The bench conference was concluded.)

19 THE COURT: Has any member of the jury panel or any
20 member of your immediate family ever been a victim of or
21 accused of a crime of burglary, robbery, kidnapping, or any
22 other crime of personal violence? If so, please stand.

23 (Several jurors stood.

24 THE COURT: Your number, please.

25 THE JUROR: 204.

1 THE COURT: Step up here for me.

2 (There was a bench conference on the record, out of
3 the hearing of the jury venire.)

4 THE COURT: Let's see this is 204?

5 THE JUROR: Yes, sir.

6 THE COURT: And tell me your response to that
7 question.

8 THE JUROR: My grandmother was, someone broke into
9 her home and beat her.

10 THE COURT: And can you tell me when this happened.

11 THE WITNESS: I was in elementary school. I'm 48
12 now.

13 THE COURT: And where did it happen?

14 THE JUROR: Spartanburg.

15 THE COURT: Was anybody ever prosecuted for that?

16 THE JUROR: Yes.

17 THE COURT: Okay. Given that fact that that --
18 your grandmother was a victim of a violent crime, can you
19 be a fair and impartial juror in this case, setting aside
20 what may have happen today your grandmother and be fair and
21 impartial to both Mr. Martinez and the State?

22 THE JUROR: I think so.

23 THE COURT: And you could decide the case based on
24 the evidence you hear in the courtroom --

25 THE JUROR: I can.

1 THE COURT: -- and the witnesses testifying under
2 oath, physical items of evidence and the law as I tell you
3 the law is?

4 THE JUROR: Yes.

5 THE COURT: Uninfluenced by the event that happened
6 to your grandmother?

7 THE JUROR: I could, sir.

8 THE COURT: All right. Thank you. I believe you
9 can stay with us.

10 204 is going stay with us.

11 Yes, sir? Tell me your number again, sir.

12 THE JUROR: 221.

13 THE COURT: 221. All right. And tell me your
14 response to this question.

15 THE JUROR: Yes, I do have a cousin, a third cousin
16 maybe, that got convicted for murder in South Carolina.

17 THE COURT: Okay.

18 THE JUROR: There's another relative that got
19 convicted of a murder, I think it's in New Jersey.

20 THE COURT: And the one in South Carolina, what --
21 do you know what County or --

22 THE JUROR: It was Richland.

23 THE COURT: In Richland. Do you know approximately
24 what time frame?

25 THE JUROR: That probably was -- I would say over

1 twenty years.

2 THE COURT: Given those facts can you be a fair and
3 impartial juror in the trial of this case for both Mr.
4 Martinez and the State?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you. I believe you can stay with
7 us.

8 THE JUROR: Okay.

9 THE COURT: Any others?

10 (No one stood.)

11 THE COURT: Thank you.

12 Is there any member of the jury panel or any member
13 of your immediate family that is or in the past been
14 employed by any local, state, or federal law enforcement
15 agency, including, but not limited to Columbia Police
16 Department, Richland County Sheriff's Department, State Law
17 Enforcement Division? If so, please stand.

18 (A juror stood.)

19 (There was a bench conference on the record, out of
20 the hearing of the jury venire.)

21 THE COURT: 204. All right. Tell me your response
22 to that question.

23 THE JUROR: My brother was employed by SLED.

24 THE COURT: All right. And what time frame?

25 THE JUROR: Twenty years ago.

1 THE COURT: And he is no longer employed?

2 THE JUROR: He is no longer employed there.

3 THE COURT: Given that fact can you be a fair and
4 impartial juror in the trial of this case for both Mr.
5 Martinez and the State.

6 THE JUROR: Yes, sir.

7 THE COURT: Thank you very much, you may stay with
8 us.

9 Any others?

10 (A juror stood.)

11 (There was a bench conference on the record, out of
12 the hearing of the jury venire.)

13 THE COURT: Number and name, please?

14 THE JUROR: 57, I'm Camryn Clements.

15 THE COURT: And your response?

16 THE JUROR: My uncle worked for Richland County and
17 is now a drug enforcement agent in Texas now.

18 THE COURT: Given those facts, can you be a fair
19 and impartial juror for both Mr. Martinez and the State?

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you, you may be seated.

22 Any others?

23 (A juror stood.)

24 (There was a bench conference on the record, out of
25 the hearing of the jury venire.)

1 THE COURT: Yes, number?

2 THE JUROR: 46.

3 THE COURT: All right.

4 THE JUROR: My uncle worked for Richland County
5 Sheriff's Department. He's been there -- he's a pastor
6 now, but he was with gang violence.

7 THE COURT: Given those facts, can you be a fair
8 and impartial juror in the trial of this case for both Mr.
9 Martinez and the State?

10 THE JUROR: Yes.

11 THE COURT: Thank you, you may stay with us.
12 Others?

13 (A juror stood.)

14 (There was a bench conference on the record, out of
15 the hearing of the jury venire.)

16 THE COURT: Yes, number?

17 THE JUROR: 262.

18 THE COURT: Response?

19 THE JUROR: My brother used to work for Lexington
20 Sheriff's Department about 25 years ago. He works for DEA
21 now.

22 THE COURT: Given that fact, can you be a fair and
23 impartial juror in the trial of this case for both Mr.
24 Martinez and the State?

25 THE JUROR: Yes, sir.

1 THE COURT: Thank you.

2 Others?

3 (No one stood.)

4 THE COURT: Thank you. Is any member of the jury
5 panel related by blood or marriage or close personal
6 friends with any member of the Forest Acres Police
7 Department, Richland County Sheriff's Department or the
8 Columbia Police Department? If so, please stand.

9 (No one stood.)

10 THE COURT: Is there any member of the jury panel
11 or any member your immediate family that is a contributor
12 to or an employee of any group which has as its primary
13 concern the promotion of law enforcement and/or victims
14 rights such as, but not limited to, DARE, CAVE, CADRE,
15 MADD, SADD, SisterCare or any prisoner rights groups or
16 innocence project or the like? If so, please stand.

17 I'm going to call a rather lengthy list of names of
18 the potential witnesses in the trial of this case. I'll
19 advise the panel that the witnesses do not have to be
20 present during these proceedings. However, I would ask if
21 any witness is present when your name is called, if you
22 would please stand and face the jury panel.

23 The question, of course, is, is any member of the
24 jury panel related by blood or marriage, close personal
25 friends, have any social, business, professional

1 relationship, or acquaintance with any of these individuals
2 whose names I now call.

3 Briona Hurshman, L.H. , Ashley Culpepper,
4 Melissa Rone, Charlisa McRae.

5 This is Ms. McRae to my front towards the rear of
6 the courtroom.

7 Thank you, Ms. McRae.

8 The next five names: Kendall Decker, Mr. Decker.

9 Thank you, Mr. Decker.

10 Lia Foster, Brigitte de Guzman, Brittany Steen.

11 This is Brittany Steen. Thank you.

12 Lakeisha Vasser.

13 The next five names: Elexia Tucker.

14 Ms. Tucker, Thank you.

15 Christopher Tucker, Nancy Martin, Marion Sealy,
16 Forest Acres Police Department; Russell Shumard, Forest
17 Acres Police Department.

18 Thank you.

19 The next five names: Charles Morrison, Matt
20 Harrell, Francis Reynolds, Jerry Russell, Forest Acres
21 Police Department; Tina Johnson, Forest Acres Police
22 Department.

23 All five of those names are with the Forest Acres
24 Police Department.

25 Next: Gabriel Denizard, with SLED; Deborah Goff,

1 also with SLED; Holly Wagner, James Abraham, Warran
2 Cavanaugh, all three with the Richland County Sheriff's
3 Department.

4 Next: Colin Bailey, Detective Bailey with the
5 Columbia Police Department; Laurie Caldwell, SLED and the
6 Dickerson Center; Christine Barrickman, Richland County
7 Sheriff's Department; Will Cedarstaff, Richland County
8 Sheriff's Department; Heidi Jackson, Richland County
9 Sheriff's Department.

10 The next five names: Rachel Grant, Richland County
11 Sheriff's Department; Ashley Dixon, Richland County
12 Sheriff's Department; A. McFarland, Forest Acres Police
13 Department; Kristen Massetti, Sexual Trauma Services;
14 Melanie Snipes, Sexual Trauma Services.

15 The next five names: Three of them, the first
16 three are with Sexual Trauma Services: Melanie Snipes,
17 Bahiyyih Young, Heather Newman; again all with Sexual
18 Trauma Services.

19 Jacquelyn Richburg, 911 Custodian; Preston Avery,
20 Columbia Police Department.

21 The next five names: Somsak Intravichit, I
22 apologize for my pronunciations, Columbia Police
23 Department; Manny Dejesus, Columbia Police Department;
24 Johnathan Braboy, Columbia Police Department; April Merrill,
25 SLED.

1 The next five names: Jan Nobles, Columbia Police
2 Department. Is this Ms. Nobles?

3 MS. WALKER: Yes, sir.

4 THE COURT: All right. Ms. Nobles. Thank you.

5 Jennifer Lee, Richland County Police Department;
6 Gale Heath, with SLED; J. S. Smith, is that J. S?

7 MS. WALKER: Yes, Your Honor.

8 THE COURT: All right. J. S. Smith, Richland
9 County Police Department; Antonio Green, Columbia Police
10 Department.

11 The next five names: Yvonne Woods, Richland County
12 Sheriff's Department; Stephen Oliphant; Beatrice Fields,
13 Columbia Police Department; Amy Stevens; Seteve,
14 S-E-T-E-V-E, McDougall.

15 The next five names: Benjamin Bolding; Melody
16 Galinski; Margita Friedley, Alvin S. Glenn Detention
17 Center; Robert Waters, Alvin S. Glenn Detention Center; Dr.
18 Colby Sutton; and Dr. Rozanna Tross.

19 Again, ladies and gentlemen, the question was is
20 any member of the jury panel related by blood or marriage,
21 close personal friends, have any social, business,
22 professional relationship, or acquaintance with any of
23 those individuals whose names I just called and/or who
24 stood before you? If so, please stand.

25 MS. WALKER: Your Honor, may we approach?

1 THE COURT: Yes, ma'am.

2 (There was a bench conference out of the hearing of
3 the jury venire and the Court Reporter.)

4 THE COURT: A number of these may be duplicative,
5 ladies and gentlemen. Rather than delay and try to -- what
6 do you call that on the computer, merge the list, rather
7 than try to do that, it would probably be prudent if I just
8 call this entire list, which is twenty names.

9 Dana Oree, Columbia Police Department; Warran
10 Cavanaugh, who was on the other list, Richland County
11 Sheriff's Department; Officer William K. Clark, Forest
12 Acres Police Department; Lauren Czlok, C-Z-L-O-K, with
13 SLED; Tarra D. Robinson, Dispatch; Sergeant Kevin
14 Isenhoward, Richland County Sheriff's Department; Heidi
15 Jackson, Holly Wagner, Richland County Sheriff's
16 Department; Dr. Jose Chavez, PhD, Alvin S. Glenn Detention
17 Center, Psychiatrist; Colby Sutton, Doctor, was on the
18 other list also; Detective Bailey, who has been introduced
19 to you, stood before you; the handler, I have no name, for
20 the Richland County Sheriff's Department K-9 Officer Number
21 21; the handler for the Richland County Sheriff's
22 Department K-9 Officer Number 19; Bob Hickman --

23 Is that Richland County Parks?

24 MR. MARTINEZ: Yes, sir, it is.

25 THE COURT: Thank you.

1 -- Richland County Parks; Charles Morrison, Forest
2 Acres Police Department; Christopher Tucker, who was also
3 on the list. Mr. Tucker stood -- he did not stand, but he
4 was on the other list.

5 A name of an officer with the Columbia Police
6 Department that I'm sure that I will pronounce differently
7 than I did before and it will be mispronounced both time:
8 Somsak, S-O-M-S-A-K, Intravichit, I-N-T-R-A-V-I-C-H-I-T,
9 Columbia Police Department.

10 Taylor Bell, Richland County Pubic Defender's
11 Office; Charlotte J. Ward, PhD; and Patricia, manager of
12 Kangaroo Express.

13 Again, ladies and gentlemen, is any member of the
14 jury panel related by blood or marriage, close personal
15 friend, any social, business, acquaintance, or relationship
16 with any of those individuals whose names I have called
17 and/or who stood before you? If so, please stand.

18 Any additional requested voir dire from the State?

19 (A juror had stood.)

20 THE COURT: All right. This is Juror 156.

21 THE JUROR: Yeah.

22 THE COURT: All right. If you'd step up here for a
23 minute, please.

24 (There was a bench conference on the record, out of
25 the hearing of the jury venire.)

1 THE COURT: Yes, ma'am.

2 THE JUROR: Sergeant Isenhoward with the Drug
3 Division Department. I've worked professionally with him
4 before, and also some of the K-9 handlers, without knowing
5 which ones, like I've worked with some, without really
6 knowing which one it is, I don't know -- I didn't want to
7 not speak up on that as well.

8 THE COURT: And given those facts, can you be a
9 fair and impartial juror in the trial of this case for Mr.
10 Martinez and the State?

11 THE JUROR: I wanted to mention this to while we're
12 up here, I am good friends with Kassy Allen, who is the
13 wife of fallen Officer, Greg Allen, with the Forest Acres
14 Police Department and I have been heavily involved as well.
15 And we cover a lot of our law enforcement on a -- I want to
16 say I could be impartial, but it's hard with those
17 relationships, working with them on a daily basis. I would
18 say that in my reporting, I have to be biased in that, and
19 I'd like to say that I could be in this, but...

20 THE COURT: Well, you know yourself best.

21 THE JUROR: Yes.

22 THE COURT: And I'm going to ask this question to
23 the entire jury. Knowing yourself best, what little bit of
24 information you've been given about the allegation in the
25 indictments and the allegations or the offenses that are

1 alleged, your professional and/or perhaps personal
2 friendships with individuals in law enforcement or spouses
3 as you say of fallen officers, knowing yourself best, do
4 you feel like you could be a fair and impartial juror for
5 Mr. Martinez?

6 THE JUROR: Yes, I could, sir.

7 THE COURT: And you could base your verdict on the
8 evidence and testimony you hear in this courtroom, physical
9 items of evidence and the law as I tell you the law is?

10 THE JUROR: Yes.

11 THE COURT: Setting aside any professional or
12 personal -- not setting side yourself, you know, what you
13 end up believing and evaluating people's credibility
14 because we all do every day in life, every waking moment,
15 even when we're alone, perhaps. But any way, knowing
16 yourself best, you could do that? You can say I can give
17 Mr. Martinez a fair trial; I can give the State a fair
18 trial?

19 THE JUROR: I believe everybody has a right to a
20 defense, yes.

21 THE COURT: All right. Yes, ma'am. All right.
22 Thank you. I believe you can stay with us. Thank you,
23 thank you, Ms. King.

24 (The bench conference was concluded.)

25 THE COURT: Solicitor, if you answered my last

1 question, I don't remember your response. Do you have any
2 further requested voir dire from the State?

3 MS. WALKER: No, Your Honor.

4 THE COURT: Thank you.

5 Any additional voir dire questions from the
6 defense, Mr. Martinez?

7 MR. MARTINEZ: No, sir.

8 THE COURT: Thank you, thank you very much.

9 Finally, ladies and gentlemen, I have read to you
10 the allegations in the indictments, mere allegations,
11 alleging the events that occurred on or about 27th of
12 March, 2014, at [REDACTED] in the Forest Acres
13 area of Richland County.

14 You've heard -- you've been introduced to Mr.
15 Martinez and the prosecutors in the case. You have heard
16 the names of the victims, Briona, D.H. and L.H. and
17 Heath Hurshman. You've been asked a series of questions
18 concerning your ability to be fair and impartial in the
19 trial of this case for both Mr. Martinez and the State of
20 South Carolina. That's our goal is to select a jury that's
21 going be fair and impartial in the trial of this case.

22 And I have found that people know themselves best.
23 You know yourself. So if there's any member of the jury
24 panel know of any reason why you feel like you could not be
25 a fair and impartial juror as to both the State and Mr.

1 Martinez, please stand. I want to deal with that issue now
2 and not when you're sitting over here in the jury box.

3 If you know of any reason whatsoever why you feel
4 like you could not be fair and impartial in the trial of
5 this case, please stand.

6 (No one stood.)

7 THE COURT: Thank you, thank you very much.

8 I find our panel is qualified with the exception
9 of, is it 281? With the exception of Juror Number 281 who
10 was set aside for cause.

11 The strikes, Solicitor?

12 MS. WALKER: Ten and five, Your Honor.

13 THE COURT: Five for the State?

14 MS. WALKER: Yes, sir, and ten for Mr. Martinez.

15 THE COURT: All right. You understand that, Mr.
16 Martinez?

17 MR. MARTINEZ: Yes, sir.

18 THE COURT: Do you agree? It's ten for the defense
19 an five for the State.

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: All right. Thank you, thank you very
22 much.

23 **JURY SELECTION**

24 THE COURT: Madam Clerk, would you instruct our
25 panel and -- instruct our pool and give us a jury, please.

1 THE CLERK: Yes, Your Honor. Ladies and gentlemen
2 of the jury panel, as I call your name, call your juror
3 number, please come to the microphone here at the center of
4 the courtroom. At the microphone, please state your
5 occupation. Please bring any personal items which you may
6 have with you.

7 Juror Number 210 (Asian female)

8 THE JUROR: I'm name is Rachel Pikul and I'm a
9 registered nurse.

10 THE CLERK: What says the State?

11 MS. WALKER: Please present the jury.

12 THE CLERK: What says the defense?

13 MR. MARTINEZ: Please swear the juror.

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

15 Juror Number 93 (white female)

16 THE JUROR: I'm a registered nurse as well.

17 THE CLERK: What says the State?

18 MS. WALKER: Please present the jury.

19 THE CLERK: What says the defense?

20 MR. MARTINEZ: Please swear the juror.

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

22 Juror Number 135 (black female) 135?

23 THE JUROR: Licensed Social Worker.

24 THE CLERK: What says the State?

25 MS. WALKER: Please present the juror.

1 THE CLERK: What says the defense?
2 MR. MARTINEZ: Please swear the juror.
3 THE CLERK: Please have a seat in the jury box.
4 Juror Number 45 (white male)
5 THE JUROR: Executive director for the house of
6 representatives for the republican parties.
7 THE CLERK: What says the State?
8 MS. WALKER: Please present the juror.
9 THE CLERK: What says the defense?
10 MR. MARTINEZ: Please swear the juror.
11 THE CLERK: Please have a seat in the jury box.
12 Juror Number 91 (black male.)
13 THE JUROR: Truck driver.
14 THE CLERK: What says the State?
15 MR. MARTINEZ: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. MARTINEZ: Please swear the juror.
18 THE CLERK: Please have a seat in the jury box.
19 Juror Number 118 (black female).
20 THE JUROR: I'm with the South Carolina Department
21 of Special Needs.
22 THE CLERK: What says the State?
23 MS. WALKER: Please excuse the juror.
24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror Number 33 (black female).

2 THE JUROR: I'm a para-professional at School
3 District Two.

4 THE CLERK: What says the State?

5 MS. WALKER: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. MARTINEZ: Please strike the juror.

8 THE CLERK: Please return to the back of the
9 courtroom.

10 Juror Number 286 (white female).

11 THE JUROR: I'm a customer service rep for an
12 industrial distribution company.

13 THE CLERK: What says the State?

14 MS. WALKER: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. MARTINEZ: Please swear the juror.

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

18 Juror Number 46 (black female).

19 THE JUROR: Patient support at Richland.

20 THE CLERK: What says the State?

21 MS. WALKER: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. MARTINEZ: Please strike the juror.

24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror Number 217 (black male).
2 THE JUROR: Retired, and I volunteer at the VA.
3 THE CLERK: What says the State?
4 MS. WALKER: Please present the juror.
5 THE CLERK: What says the defense?
6 MR. MARTINEZ: Please swear the juror.
7 THE CLERK: Please have a seat in the jury box.
8 Juror Number 159 (white female).
9 THE JUROR: I work in custodial services for
10 Lexington Richland School District One.
11 THE CLERK: What says the State?
12 MS. WALKER: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. MARTINEZ: Please swear the juror.
15 THE CLERK: Please have a seat in the jury box.
16 Juror Number 158 (black female).
17 THE JUROR: I'm a registered nurse.
18 THE CLERK: What says the State?
19 MS. WALKER: Please present the juror.
20 THE CLERK: What says the defense?
21 MR. MARTINEZ: Please strike the juror.
22 THE CLERK: Please return to the back of the
23 courtroom.
24 Juror Number 101 (black male).
25 THE JUROR: Truck driver.

1 THE CLERK: What says the State?
2 MS. WALKER: Please excuse the juror.
3 THE CLERK: Please return to the back of the
4 courtroom.
5 Juror Number 57 (white female).
6 THE JUROR: Agent, call center at a dealership.
7 THE CLERK: What says the State?
8 MS. WALKER: Please present the juror.
9 THE CLERK: What says the defense?
10 MR. MARTINEZ: Please strike this juror.
11 THE CLERK: Please return to the back of the
12 courtroom.
13 Juror Number 293 (black female).
14 THE JUROR: I do janitorial work.
15 THE CLERK: What says the State?
16 MS. WALKER: Please present the juror.
17 THE CLERK: What says the defense?
18 MR. MARTINEZ: Please swear the juror.
19 THE CLERK: Please have a seat in the jury box.
20 Juror number 193 (black female).
21 THE JUROR: I'm a machine operator at --
22 THE CLERK: What says the State?
23 MS. WALKER: Please present the juror.
24 THE CLERK: What says the defense?
25 MR. MARTINEZ: Please strike the juror.

1 THE CLERK: Please return to the back of the
2 courtroom.

3 Juror Number 141 (black female).

4 THE JUROR: Currently employed at the Department of
5 Health.

6 THE CLERK: What says the State?

7 MS. WALKER: Please excuse the juror.

8 THE CLERK: Please return to the back of the
9 courtroom.

10 Juror Number 154 (black female).

11 THE JUROR: Retention specialist.

12 THE CLERK: What says the State?

13 MS. WALKER: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. MARTINEZ: Please strike the juror.

16 THE CLERK: Please return to the back of the
17 courtroom.

18 Juror Number 247 (white female).

19 THE JUROR: I'm a registered nurse.

20 THE CLERK: What says the State?

21 MS. WALKER: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. MARTINEZ: Please strike the juror.

24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror Number 221 (black male).

2 THE JUROR: I'm training manager for the Social
3 Services at the University of South Carolina as well, as a
4 pastor.

5 THE CLERK: What says the State?

6 MS. WALKER: Please excuse the juror.

7 THE CLERK: Please return to the back of the
8 courtroom.

9 Juror Number 42 (black male).

10 THE JUROR: I'm a recycle manager.

11 THE CLERK: What says the State?

12 MS. WALKER: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. MARTINEZ: Please swear the juror.

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

16 Juror Number 5 (black female).

17 THE JUROR: I'm a paralegal at a law firm.

18 THE CLERK: What says the State?

19 MS. WALKER: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. MARTINEZ: Please present the juror.

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

23 Juror Number 171 (white male).

24 THE JUROR: I'm a teacher.

25 THE CLERK: What says the State?

1 MS. WALKER: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. MARTINEZ: Please present the juror.
4 THE CLERK: Please have a seat in the jury box.
5 Juror Number 204 (white female).
6 THE COURT: This is the first alternate, Madam
7 Clerk?
8 THE CLERK: Yes, Your Honor.
9 THE COURT: Thank you.
10 THE JUROR: I'm a student.
11 THE CLERK: What says the State?
12 MS. WALKER: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. MARTINEZ: Please present the juror.
15 THE CLERK: Please have a seat in the jury box.
16 Juror Number 304 (black male).
17 THE JUROR: Structural designer.
18 THE CLERK: What says the State?
19 MS. WALKER: Please present the juror.
20 THE CLERK: What says the defense?
21 MR. MARTINEZ: Please present the juror.
22 THE CLERK: Please have a seat in the jury box.
23 Juror Number 90 (black female).
24 THE JUROR: I'm retired.
25 THE CLERK: What says the State?

1 MR. MARTINEZ: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. MARTINEZ: Please strike this juror.

4 THE CLERK: Please return to the back of the
5 courtroom.

6 Juror Number 160 (white male).

7 THE JUROR: Financial consultant.

8 THE CLERK: What says the State?

9 MS. WALKER: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. MARTINEZ: Present the juror.

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

13 THE COURT: Any motions regarding the jury
14 selection process from the State?

15 MS. WALKER: No, Your Honor.

16 THE COURT: From the defense, Mr. Martinez?

17 MR. MARTINEZ: No, sir.

18 THE COURT: All right. Solicitor, Mr. Kata, would
19 you step up here, please, for a moment.

20 (There was a bench conference out of the hearing of
21 the jury and the Court Reporter.)

22 Ladies and gentlemen of the jury panel that were
23 not selected as members of this trial jury, momentarily,
24 I'm going release you from this courtroom and ask you to
25 please report back to your jury assembly room. Therein,

1 you will receive instructions concerning your jury service
2 for the remainder of the week. If I do not get to serve
3 any further with you this week, it has been my pleasure and
4 my privilege to be with y'all this morning and this
5 afternoon as well.

6 I realize the vital duty that a jury performs.
7 These folks could not be about the very important business
8 of administering our/your civil and criminal justice system
9 without participation of citizens, just like yourselves in
10 all 46 of our counties in South Carolina throughout all our
11 State and throughout our country.

12 I further realize it is the last true draft left in
13 America. You don't volunteer. People -- you may not
14 realize -- do not lineup at 9 o'clock on Monday morning
15 clamoring to get in the courthouse to serve on jury duty.

16 With that being said, again, thank you for your
17 service and remember that last great duty of draftees.
18 Thank you very much, you're excused to report to your jury
19 assembly room.

20 (The jury venire left the courtroom.)

21 THE COURT: Ladies and gentlemen of the jury panel,
22 momentarily, I'm going to release you from your jury
23 service for the remainder of the day. This case is no
24 different than many, if not most, others. There are
25 certain pretrial matters I must take up outside of your

1 presence. It's always very difficult to determine how long
2 those matters may take. As I say, I can predict anything
3 but the future. Your time is very valuable to me and I do
4 not want to hold you captive any further today in your jury
5 room awaiting to see how long I will be with these matters,
6 as I say I have to take up outside your presence.

7 Quite frankly, I do not think I will finish them
8 this afternoon and we'll start back on them in the morning.
9 Momentarily, I will give you a report time.

10 I would remind you that during your jury service,
11 you shall not discuss this case with others, including your
12 fellow jurors, family, friends, or anyone else. You would
13 not be authorized to discuss the case until you've heard
14 all the evidence, all the testimony, closing arguments by
15 the attorneys and Mr. Martinez, instruction on the law by
16 the Court and then directed by the Court to begin your
17 deliberations with your fellow jurors in your jury room.

18 You may not read, listen to, or watch any news
19 reports about the case should there be any: Radio,
20 television, print media, internet or otherwise. Of course,
21 you may not use your computer, cellular phone, or any other
22 electronic device with communication capabilities while in
23 attendance at trial or during deliberations. These devices
24 can be used during luncheon breaks, but may not be -- and,
25 of course, you will have them during your overnight

1 recesses -- but may not be used to obtain or disclose
2 information which is prohibited.

3 Information which is prohibited includes, but is
4 not limited to the following: Information about a party, a
5 witness, an attorney or a court officer; news accounts
6 about the case, present or past, should there have been
7 any; information collected through juror research on any
8 topics raised or testimony offered by any witness; or
9 information collected through juror research on any other
10 topic the juror might think would be helpful in deciding
11 the case.

12 You decide it -- you've been selected as fair and
13 impartial jurors to serve as a fair and impartial jury in
14 the trial of this case for both Mr. Martinez and the State.
15 You decide the case based on the evidence of the sworn
16 witnesses testifying before you from this witness stand,
17 any reasonable inferences you think may properly be drawn,
18 and the law as I tell you the law is.

19 You, ladies and gentlemen, are the judges of the
20 facts in this case; I am the judge of the law.

21 All right. Any questions from any member of the
22 jury panel before I release you for your evening recess?

23 (No one stood.)

24 THE COURT: All right. Thank you, thank you very
25 much. I would ask you to please report back promptly at 11

1 o'clock in the morning. Report back promptly at 11 o'clock
2 in the morning. If you go to your back left with your
3 bailiff, he will show you out, show you to your new
4 temporary home, show you how to exit and how to return in
5 the morning. I hope you all have a pleasant evening.

6 Thank you, thank you very much.

7 THE BAILIFF: Follow me, ladies and gentlemen.

8 (The jury left the courtroom at 3:39 p.m.)

9 THE COURT: Any objections to anything I've told
10 the jury from the State?

11 MS. WALKER: No, Your Honor.

12 THE COURT: Defense? Any objection to anything
13 I've told the jury, Mr. Martinez?

14 MR. MARTINEZ: No, sir.

15 THE COURT: All right. We have some motions. I'm
16 going to take about a ten minute recess. Thank you.

17 (A brief recess was observed.)

18 **PRETRIAL MOTIONS CONTINUED**

19 THE COURT: All right. First, while it's up in my
20 radar, as to one motion I had under advisement, the motion
21 to change venue, I would deny that motion based on the voir
22 dire of the jury. As I recall, there was only one member
23 of the jury panel that had any knowledge about the case
24 from the responses or lack of responses from the members of
25 the jury panel, Juror 156. The motion for a change of

1 venue is -- based on that line of cases, State versus Manor
2 and others -- is denied.

3 All right. Motions?

4 MS. WALKER: Your Honor, there's going to be a
5 Jackson v Denno. There was a statement that was given in
6 this case. There's a number of photo lineups as well.
7 There's the Lyle issue regarding Ms. Tucker and her
8 testimony.

9 THE COURT: All right. And which order would y'all
10 like these presented, Solicitor? And Mr. Martinez?

11 MS. CAMPBELL: Your Honor, the only person that we
12 need to have for sure, Jerry Russell needs -- if we could
13 get him out by five, he -- he just showed a photo lineup,
14 if Mr. Martinez doesn't mind.

15 THE COURT: Any objections to that Mr. Martinez?

16 MR. MARTINEZ: No, sir.

17 THE COURT: All right. And this will be on what
18 issue?

19 MS. CAMPBELL: He showed one photo lineup.

20 THE COURT: All right. Of course.

21 MS. CAMPBELL: And, Your Honor, if I can just
22 respond to some of things that went on before the break?

23 THE COURT: All right. You're talking about some
24 of those discovery issues?

25 MS. CAMPBELL: Yes, sir.

1 THE COURT: Yes, ma'am.

2 MS. CAMPBELL: I did contact SLED. If I may
3 approach, I've got a copy of their policy you wanted about
4 photo lineups. I just -- just wanted you to preview that
5 before I turned it over.

6 (The Court is looking over the document.)

7 THE COURT: All right. This is a three page
8 document entitled, 13.37 Photographic Lineup Procedure.

9 MS. CAMPBELL: Yes, sir.

10 THE COURT: Stamped with SLED, third page signed by
11 chief of SLED, Mark A. Keel.

12 You may take and make copies of these.

13 MS. CAMPBELL: Your Honor, in addition I did check
14 with the Richland County Sheriff's Department and this is
15 the result on the polygraph that he was requesting, that I
16 would also turn in.

17 (The Court is looking at the document.)

18 THE COURT: All right. Make me a copy of that too
19 and turn that report over.

20 MS. CAMPBELL: You want this made a Court's
21 Exhibit?

22 THE COURT: Yes.

23 MS. CAMPBELL: Your Honor, this has been turned
24 over before, but just to make sure -- may I approach the
25 defendant?

1 (Court's Exhibit Number 1 and Number 2 were marked
2 for the record.)

3 THE COURT: Of course.

4 MS. CAMPBELL: Your Honor, additionally, I did
5 contact the City of Columbia's attorney who was here before
6 as he, I believe, he, in court, stated there is no policy
7 as far as whether or not to record or not record; or
8 there's no policy about a recorder would have been issued.
9 He did indicate to me if they record it, it's preserved as
10 evidence, there could be policies about if it had been
11 made, which it was in this case; how then to document that
12 as far as evidence or something to that effect. But
13 there's no policy, per se, about whether or not to record
14 or not to record as he stated before in court.

15 But I can get the policy about if it had been
16 recorded, what they should do with the evidence in that
17 situation.

18 THE COURT: Well what -- all right.

19 I'll address that with Mr. Martinez in a moment.

20 What about the K-9 reports, Richland County
21 Sheriff's Department?

22 MS. CAMPBELL: Your Honor, there is a mention of
23 the K-9's in a report coming to the scene, but as far as a
24 separate K-9 report, the dog handler himself, we have
25 checked and there are none. We've checked two or three

1 times.

2 I think there was a reference to the dogs --

3 THE COURT: Can you show me that reference.

4 MS. CAMPBELL: Here it is.

5 Your Honor, should I show it to the defendant first
6 or you first?

7 THE COURT: You can show it to Mr. Martinez first.
8 I would like to see them.

9 (The defendant was looking at the document.)

10 MS. CAMPBELL: Your Honor, I've shown the defendant
11 what I'm handing up.

12 THE COURT: Do what now?

13 MS. CAMPBELL: I've shown the defendant what I'm
14 handing up to you.

15 He informed me that there's also reference to it in
16 the 9-1-1 call.

17 THE COURT: So the incoming 9-1-1 caller
18 referenced --

19 MS. CAMPBELL: There is reference to the dogs going
20 to the scene in the incident detail report, which is
21 basically the log of who responded; which I can hand up.

22 (Showing the document to the defendant .)

23 (Handing the document to the Court.)

24 MS. CAMPBELL: Finally, Your Honor, I would also
25 hand up the first page of Investigator Shumard's followup.

1 (Showing the document to the defendant.)

2 MS. CAMPBELL: May I approach?

3 THE COURT: Yes, ma'am.

4 (Handing the document to the Court.)

5 THE COURT: Directing my attention on the
6 investigator notes.

7 MS. CAMPBELL: The investigator notes that I just
8 handed up, Your Honor.

9 THE COURT: Yes, ma'am.

10 MS. CAMPBELL: And it's just the first paragraph of
11 Shumard's followup that the can K-9 was at the scene.

12 (There was a pause in the proceedings.)

13 THE COURT: Are there any specific reports of the
14 K-9 officers?

15 MS. GODWIN: Your Honor, I checked with those
16 officers and they do not have any reports.

17 THE COURT: And who are those officers?

18 MS. GODWIN: Abraham, J. Abraham with Richland
19 County Sheriff's Department.

20 THE COURT: And another one?

21 MS. GODWIN: He is the one I spoke to, but I
22 believe the records indicate that he and Grant responded,
23 but he did not have to do any reports.

24 THE COURT: Make sure, Mr. Martinez has those names
25 so he can subpoena those officers if he wants to. The

1 incident detail report appears that the officers were on
2 the scene -- well, these are kind of difficult to read.
3 But it looks like can K-9 #21 arrived at 7:49:14 and K-9,
4 19 arrived at 7:51, excuse me, 43 and did not complete that
5 assignment until K-9, until 8:25:51 K-9, 19, at 8:26:09, so
6 if he wants to have subpoena's prepared for them, have
7 someone serve those subpoenas on those officers.

8 Do you have all these reports, Mr. Martinez? The
9 investigative notes of Detective Shumard, the incident
10 detail report? It is a two-page document and the incident
11 report, reporting officer, Harrold and Clark.

12 Do you have those documents?

13 MR. MARTINEZ: Harold Clark?

14 THE COURT: Yes, sir. Incident report 034 -- I
15 guess that's 1404 on that. It's the first responding
16 officer's report, I think.

17 Would that be correct, Solicitor?

18 MS. CAMPBELL: Yes, sir.

19 MS. GODWIN: Yes, sir.

20 MR. MARTINEZ: No, sir, I don't have Clark's.

21 THE COURT: Harold Clark, you don't have the
22 initial incident report.

23 MR. MARTINEZ: Is this it here? Williams Clark?

24 THE COURT: Officer M. S. Harold and Officer
25 William K. Clark.

Jerry Russell - Direct Examination - In Camera by Ms. Walker

1 MR. MARTINEZ: Oh, yes, I have it, sir.

2 THE COURT: All right. So you have all of these
3 documents?

4 MR. MARTINEZ: Yes, sir.

5 THE COURT: Thank you.

6 All right. Anything else on the discovery,
7 Solicitor?

8 MS. CAMPBELL: Not that I'm aware of.

9 THE COURT: All right. So that takes care of the
10 photo lineup, recording devices of the CPD, K-9, polygraph,
11 all right.

12 Do you want to do detective --

13 MS. CAMPBELL: Russell?

14 THE COURT: Detective Russell.

15 MS. CAMPBELL: Yes, sir.

16 **NEAL V BIGGERS HEARINGS**

17 THE COURT: All right. You may call your witness.

18 MS. WALKER: Your Honor, we'd call Jerry Russell to
19 the stand.

20 JERRY RUSSELL,

21 having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat. State your full
23 name for the record.

24 THE WITNESS: My name is Jerry Russell.

25 **DIRECT EXAMINATION - IN CAMERA**

Jerry Russell - Direct Examination - In Camera by Ms. Walker

1 BY MS. WALKER:

2 Q : Good afternoon, sir. Can you tell the Court where
3 you work?

4 A I'm presently employed with Lamar Police
5 Department, but during the incident that year --

6 Q In 2014, where did you work?

7 A I was a criminal investigator for the Forest Acres
8 Police Department.

9 Q In 2014, did you become involved in the
10 investigation of this case?

11 A Yes, ma'am.

12 Q Can you tell me how you became involved in that
13 investigation?

14 A I got information from my lieutenant when I got
15 to -- arrived at work the morning of the incident. He kind
16 of briefed me on what was going on, myself and Agent
17 Denizard, kind of just followed directions trying to canvas
18 folks, this, that, and the other. The composite was
19 actually put in the media, the news media.

20 And we got a call from Ms. McRae and Agent Denizard
21 and myself met her at the [REDACTED] Apartments where her
22 children got on the school bus.

23 Q And when you made contact with Ms. McRae, what was
24 the purpose of your making contact with Ms. McRae?

25 A She had given information that she thinks she --

Jerry Russell - Direct Examination - In Camera by Ms. Walker

1 she said she thought she could identify the guy seen --

2 because the composite that was placed on the news media.

3 Q Okay. And did you have a photo lineup prepared
4 when you went out there?

5 A Yes, ma'am.

6 Q And did you come up -- did you create that photo
7 lineup?

8 A No, ma'am, I did it through the Fusion Center out
9 at SLED. They created a lineup. Of course, we ended up
10 letting her look at the lineup.

11 Q I've already shown State's Exhibit 8 to Mr.
12 Martinez. And I want to approach you and ask you if you
13 recognize this.

14 A Yes, ma'am.

15 MS. WALKER: Your Honor, may I approach?

16 THE COURT: Yes, ma'am.

17 BY MS. WALKER:

18 Q Is that the photo lineup that you showed Ms. McRae?

19 A Yes, ma'am.

20 Q Can you describe for the Court the circumstances
21 under which you showed Ms. McRae that photo lineup.

22 A I can't recall exactly how she got in touch with
23 the police department, but she had left work somehow and
24 Agent Denizard and myself got that information and went
25 out. We were kind of canvassing the apartment complex. We

Jerry Russell - Direct Examination - In Camera by Ms. Walker

1 knew she was going to be at the bus stop because that's
2 where she'd actually seen the individual prior. And we met
3 up with her -- made up arrangements to meet up with her
4 once she let her kids get on the bus and then we let her
5 view the lineup.

6 Q And when you allowed her to view the lineup, did
7 you suggest to her who to pick?

8 A No, ma'am.

9 Q Can you actually tell us what you said to her when
10 you, I guess when you gave her the lineup, or did you --

11 A We told her that we had a lineup, or I told her
12 that I had a police term six pack, six pictures, and myself
13 and Agent Denizard explained to her that it could or could
14 not be the person that she'd seen on the news, that, you
15 know, we at least wanted her to look at these six pictures
16 and see if anything rang a bell or she recalled anything
17 that she could let us know which one of the photos
18 resembled the person she had seen that morning and on the
19 news media.

20 Q Okay. And when you displayed the photo lineup to
21 her, which is State's Exhibit Number 8, did she -- was she
22 able to make a pick?

23 A Yes, ma'am.

24 Q Did she hesitate at making a pick?

25 A No, ma'am.

Jerry Russell - Cross- Examination - In Camera by Mr. Martinez

1 Q Did she indicate the person that she picked out
2 with a -- by circling it and initialling it?

3 A Yes, ma'am.

4 Q Okay. Did you influence her in any way as to who
5 to pick?

6 A No, ma'am.

7 Q Did she indicate how certain she was of her pick?

8 A When we showed her the lineup, actually on the hood
9 of my vehicle and had explained to her that it could or
10 could not be the person, you know, she suspected. And when
11 we placed it on the hood, I told her to take her time, look
12 at the photo lineup, and if she thought anybody in the
13 photo lineup resembled the individual; and she immediately
14 pointed to the bottom -- I think it's the bottom middle
15 picture.

16 Q Okay.

17 A And I had her initial, date, and circle that.

18 Q Was that the extent of your involvement with
19 Ms. McRae, was showing her this photo lineup?

20 A Yes, ma'am.

21 Q Okay. Thank you, sir, I don't have any further
22 questions for you.

23 THE COURT: Mr. Martinez?

24 CROSS-EXAMINATION - IN CAMERA

25 BY MR. MARTINEZ:

Jerry Russell - Cross- Examination - In Camera by Mr. Martinez

1 Q Mr. Russell?

2 A Yes, sir.

3 Q You said you met Ms. McRae at the bus stop?

4 A It was in the parking lot there at the apartment
5 complex.

6 Q In the parking lot complex?

7 A You know, at the [REDACTED] Condos. The kids get on
8 a bus at the driveway down toward Ivy Hall and that's where
9 she'd been prior to that and then she notified the police
10 department. And myself and Agent Denizard went over and
11 met with her over there.

12 Q You didn't meet with her at her house?

13 A No, sir.

14 Q Did she mention anybody else that was there that
15 seen -- that could have seen the suspect?

16 A I think there was another lady there, but that
17 other lady didn't actually see the suspect. Ms. McRae was
18 the only one that actually said she'd witnessed him coming
19 through the parking lot.

20 Q So Ms. -- there wasn't another lady that came --

21 A I can't recall, sir. I know there was several kids
22 at the bus stop. But I know Ms. McRae was there. She went
23 out to get her kids on the bus every morning and pick them
24 up in the afternoon.

25 Q So Ms. McRae told you that there was another lady

Jerry Russell - Cross- Examination - In Camera by Mr. Martinez

1 that probably seen the suspect?

2 A Yeah, you know, there were other kids there, but
3 she was the one that actually notified us at the police
4 department and requested that we come out and speak with
5 her.

6 Q So -- what I'm asking about is, Ms. McRae told you
7 that there was someone else out there that morning that
8 could have seen him?

9 A No, sir.

10 MS. WALKER: I would object to the relevancy of
11 this during the hearing as to the initial photo lineup,
12 Your Honor.

13 THE COURT: Restate your question, Mr. Martinez.
14 Restate your question to the officer.

15 BY MR. MARTINEZ:

16 Q Did Ms. McRae notify you that there was someone
17 else at the bus stop with her that could have possibly seen
18 the suspect?

19 A No, sir, she --

20 THE COURT: I would sustain that objection. A,
21 it's hearsay; and B, it's not a part of a Neals versus
22 Biggers totality of the circumstances in the photo lineup
23 hearing.

24 You may ask your next question, Mr. Martinez.

25 BY MR. MARTINEZ:

Jerry Russell - Cross- Examination - In Camera by Mr. Martinez

1 Q Did you went -- did you go to the Kangaroo?

2 A I believe we -- I believe myself and Agent Denizard
3 might have gone in there and asked if, you know, after the
4 composite came out, if they recognized him.

5 Q And you spoke to a Ms. Patricia?

6 MS. WALKER: Your Honor, I would again object as to
7 the relevancy of this photo lineup of Charlisa McRae.

8 THE COURT: And tell me the relevancy under Rule
9 401.

10 MR. MARTINEZ: The relevancy is that -- the
11 relevancy is that he's a witness and reliability is the
12 lynch pin of proper identification.

13 THE COURT: I do understand that concept in the
14 very limited manner. But tell me how if Detective Russell
15 going to the Kangaroo, and I'm assuming that's the Kangaroo
16 at Bethel Church and Covenant Road. That's just an
17 assumption on my part.

18 THE WITNESS: Yes, sir, Your Honor.

19 THE COURT: But how is that relevant to a hearing
20 on the photographic lineup standards? That's what I'm not
21 tracking, Mr. Martinez.

22 MR. MARTINEZ: Because Ms. McRae -- he's testifying
23 to Ms. McRae's credibility.

24 THE COURT: No, sir. He's testifying --

25 MR. MARTINEZ: All right, sir.

Jerry Russell - Cross- Examination - In Camera by Mr. Martinez

1 THE COURT: -- he is testifying to what he did as
2 far as showing the photographic lineup to Ms. McRae, A; and
3 B, his observations of what she did. I'm just trying to
4 figure out how this officer's going to or not going to the
5 Kangaroo or that location has anything do with a
6 photographic lineup in-camera hearing.

7 If you can explain it to me -- I'm not tracking
8 you.

9 MR. MARTINEZ: Okay. Can I show the --

10 BY MR. MARTINEZ:

11 Q How long have you been a criminal investigator?

12 A Twenty years.

13 Q How important is identification to you?

14 A Pardon me?

15 Q How important is identification?

16 A Identification is very important.

17 Q So in that photo lineup --

18 MR. MARTINEZ: No further questions, Your Honor.

19 THE COURT: You sure you have no further questions,
20 Mr. Martinez.

21 MR. MARTINEZ: No.

22 THE COURT: Well, I'd be delighted to let you
23 continue to examine the witness.

24 MR. MARTINEZ: I'm good.

25 THE COURT: Sir?

Charlisa McRae - Direct Examination - In Camera by Ms. Walker

1 MR. MARTINEZ: No, thank you.

2 THE COURT: Redirect, Solicitor?

3 MS. WALKER: None, Your Honor.

4 THE COURT: Thank you, Detective Russell, you may
5 step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: All right, your next witness.

8 MS. WALKER: Your Honor, the State calls Charlisa
9 McRae.

10 THE COURT: All right. Ms. McRae, if you'd come
11 around and be sworn for us, please.

12 CHARLISA MCRAE,

13 having been duly sworn, testified as follows:

14 THE CLERK: Please have a seat. State your full
15 name for the record.

16 MS. WALKER: May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 **DIRECT EXAMINATION IN CAMERA**

19 **BY MS. WALKER:**

20 Q Good afternoon Ms. McRae.

21 A Good afternoon.

22 THE COURT: And speak up for me a little bit
23 Ms. McRae. Thank you so much.

24 **BY MS. WALKER:**

25 Q I want to take your attention back to March 27,

Charlisa McRae - Direct Examination - In Camera by Ms. Walker

1 2014. What area of town were you living in?

2 A Forest Acres.

3 Q And who lived with you?

4 A My daughters.

5 Q That morning, did you take your daughters to the
6 school bus stop?

7 A Correct.

8 Q And tell the Court, what, if anything, you saw that
9 morning?

10 A Well, 6:40, that's what time their bus normally
11 comes, and I saw Mr. Martinez walk into our neighborhood
12 and I noticed him because he was very unfamiliar. I've
13 lived out there for a number of years and I've never saw
14 him out there before.

15 Q At this point, at 6:40, was the sun up?

16 A Yes. Morning time.

17 Q Could you -- when you saw him, how close did get to
18 Mr. Martinez? Tell me when to stop. I'll come to you and
19 you tell me when to stop.

20 A That's fine.

21 Q Right here?

22 A Yes.

23 Q Was there anything obstructing your view of Mr.
24 Martinez?

25 A No. There's a light pole there. In fact, there

Charlisa McRae - Direct Examination - In Camera by Ms. Walker

1 are a couple of light poles there.

2 Q Okay. And go ahead and tell the Court about what
3 you saw.

4 A Well, I saw Mr. Martinez walk in the neighborhood.
5 He was smoking a cigarette, listening to his music, he had
6 headphones in his ears, walking into our con do complex.

7 Q And you said -- did you notice any identifying
8 characteristics about him?

9 A I did notice a tattoo he had around his neck. That
10 was one of the first things I noticed. He was wearing
11 glasses as well as with a hat with a red hoodie.

12 Q And did you speak to him?

13 A I did say hello.

14 Q And did he respond?

15 A He said hey.

16 Q Did you see that same image again?

17 A Yes, the very next day.

18 Q And how did you see that?

19 A I was watching the news as I do every morning and
20 that sketch popped up and I knew it was him because of the
21 tattoo around his neck.

22 Q Did you make contact with law enforcement?

23 A Yes.

24 Q And did you make -- did they come out and meet you?

25 A Well, I called. I had just gotten 9-1-1 first and

Charlisa McRae - Direct Examination - In Camera by Ms. Walker

1 they transferred me to Forest Acres Department and that's
2 when someone came out to talk to me.

3 Q Now, do you remember the investigator that just
4 testified, is that who came out to talk to you?

5 A Yes.

6 Q Can you remember where he met you?

7 A The first time I saw them, me, I was at the bus
8 stop. It was kind of hard for them to keep up with me
9 because after the bus stop, we drove down to in front of my
10 apartment complex door, and that's where we further started
11 talking.

12 Q Okay. And at that point in time, did they show you
13 a photo lineup?

14 A Yes.

15 Q Let me show you what's been marked as State's
16 Exhibit Number 8 and ask you if you can recognize this?

17 A That's Mr. Martinez.

18 Q Is this the photo lineup that you were shown?

19 A Yes, ma'am.

20 Q When they showed you this photo lineup, did they
21 tell you who to pick out?

22 A No.

23 Q Did they suggest to you in any way which number the
24 suspect was?

25 A No, ma'am.

Charlisa McRae - Cross-Examination In Camera by Mr. Martinez

1 Q Did they tell you, you had to pick someone?

2 A (Witness shook head.)

3 Q Okay. You've got to say yes or no so that she can
4 take it down.

5 A No.

6 Q And did you indicate the individual in the photo
7 lineup that you recognized?

8 A Yes, I did.

9 Q And how did you indicate that?

10 A I initialled it, dated it, and circled it.

11 MS. WALKER: Beg the Court's indulgence?

12 THE COURT: Yes, ma'am.

13 MS. WALKER: I don't have anything else. Thank
14 you, ma'am.

15 THE COURT: Thank you, thank you, Ms. Walker.

16 Mr. Martinez.

17 MR. MARTINEZ: Yes, Your Honor, I do.

18 **CROSS-EXAMINATION - IN-CAMERA**

19 **BY MR. MARTINEZ:**

20 Q You said on your testimony, on your statement, your
21 statement that you saw the person in the -- at what time?

22 A Approximately about 6:40 in the morning.

23 Q In your statement, you said it was still dark
24 outside?

25 A It was dark at that time. It was beginning to be

Charlisa McRae - Cross-Examination In Camera by Mr. Martinez

1 light. Between 6:40 and 7 o'clock, it's beginning to
2 become light.

3 Q You just told the solicitor that the sun was up?

4 A Sunrise at 6:15 in the morning. That's sunrise.
5 You were there, let's not do that today.

6 Q You also said that, in your testimony, did you
7 notice him. You said yes. You said the person walked by
8 you within inches?

9 A You were that close to me.

10 Q When she just said, you was not that close.

11 A No, you were close to me.

12 Q How close was you?

13 A You were close enough to me for me to get a good
14 look at you. And to speak to. And you walked right past
15 me. You were that close.

16 Q Okay. Would you describe me to the Court, please?

17 A You were wearing a red hat with a red jacket. You
18 had a book bag on. You were listening to music with
19 headphones in your ear and you were smoking a cigarette
20 wearing those glasses right there. You walked past me. I
21 speak to everybody and I said hello and you said hey. And
22 that was it.

23 Q Did -- was there a South Carolina on the front
24 of --

25 A You had graffiti on the jacket. It was white. I

Charlisa McRae - Cross-Examination In Camera by Mr. Martinez

1 don't remember what it said.

2 Q You just said that it was a red jacket?

3 A The white is on the red jacket as well.

4 Q So was there South Carolina on the jacket?

5 A You know what you were wearing.

6 Q I'm asking you, you're the witness.

7 A I did not notice the South Carolina, but you had on
8 a red jacket that had white letters in the middle of it.

9 Q If someone passes you within inches, are you not
10 going to notice a South Carolina across the front of the
11 jacket?

12 A No, I'm going to notice it, but I'm not paying
13 attention to what it says.

14 Q You're not -- I just --

15 A I noticed the colors. I noticed the clothing you
16 were wearing. What I'm saying is I'm not going to notice
17 what it's saying.

18 Q Okay. You said that you met the police at your
19 house?

20 A The first time I met them over at the bus stop.

21 Q You didn't say that. You said --

22 A That's exactly what I said.

23 Q Oh. Okay. So you didn't say that you met them at
24 your house?

25 A We met at the bus stop first. As I got my children

Charlisa McRae - Cross-Examination In Camera by Mr. Martinez

1 off the bus stop, so it was hot, we did not stay at the bus
2 stop. We drove down in front of my condo complex and I
3 spoke with them there.

4 Q Okay. You told -- you said that you told the
5 police that there was somebody else at the bus stop?

6 A There is a number of people that was at the bus
7 stop. I may have been the only one to identify you. No
8 one else probably was paying any attention to you, but I
9 was.

10 Q You said that you told the police that there was
11 other people there at the bus; that there was a Caucasian
12 lady at the bus sitting in the car. Did you not tell the
13 police that?

14 A I mentioned that.

15 MS. WALKER: I would object to the relevancy of
16 this, Your Honor.

17 THE COURT: Overruled. You may answer the
18 question, Ms. McRae.

19 THE WITNESS: I did mention that.

20 BY MR. MARTINEZ:

21 Q You did mention that?

22 A Yeah.

23 Q You mentioned that to the officer that just
24 testified?

25 A Yeah.

Charlisa McRae - Redirect Examination In Camera by Ms. Walker

1 MR. MARTINEZ: Beg the Court's indulgence?

2 (There was a pause in the proceedings.)

3 BY MR. MARTINEZ:

4 Q So you're saying -- was there light outside?

5 A There were light poles that you walked past into
6 our neighborhood; therefore, I was able to identify you.
7 That's how close you were to me, my mailbox, and the light
8 pole from my mailbox.

9 Q So it wasn't -- the sun was up or was it lighted?

10 A 6:30 in the morning, it's clearly still dark
11 outside. The light that I'm talking about are the lights
12 from the light posts in our neighborhood.

13 Q Okay. So when you -- you just said the sun was up.

14 A I did not say the sun was up. Typically the sun is
15 rising during that time.

16 MR. MARTINEZ: Is there any way we can have the
17 reporter say what she just said about the sun being up?

18 THE COURT: No, sir.

19 MR. MARTINEZ: Okay. No further questions.

20 THE COURT: Redirect?

21 **REDIRECT EXAMINATION - IN CAMERA**

22 BY MS. WALKER:

23 Q The man who walked by you in the hoodie with the
24 headphones, smoking a cigarette, do you see him in here in
25 the courtroom?

Charlisa McRae - Recross-Examination In Camera by Mr. Martinez

1 A Yes, ma'am.

2 Q Can you point him out for me?

3 A That man right there, Nathan Martinez.

4 MS. WALKER: Your Honor, can the record reflect
5 that she identified the defendant?

6 THE COURT: So reflected.

7 Recross, Mr. Martinez?

8 **RECROSS EXAMINATION - IN CAMERA**

9 BY MR. MARTINEZ:

10 Q Do you have any friends that live in The Landings?

11 A I have --

12 THE COURT: I'm sorry, say that again. Ask that
13 question again.

14 MR. MARTINEZ: I'm asking her if she has a friend
15 who lives in The Landings.

16 THE WITNESS: I have no friends that live in the
17 area.

18 MR. MARTINEZ: No further questions.

19 THE COURT: Thank you. Thank you very much,
20 Ms. McRae. You may step down. Thank you for being with us
21 this afternoon.

22 THE WITNESS: You're welcome.

23 THE COURT: All right. Solicitor, you may call
24 your next witness.

25 MS. WALKER: Your Honor, for that particular

1 lineup, we don't have anymore witnesses.

2 THE COURT: All right. Mr. Martinez, do you have
3 any evidence or testimony you wish to present in this
4 in-camera hearing as to photographic lineup, State's 8 for
5 identification.

6 MR. MARTINEZ: Yes, I would like -- this goes back
7 to my motion to dismiss on the illegal search and seizure
8 because all of this photographic lineup --

9 THE COURT: Wait just a minute. Listen to what I
10 just asked. Do you have any evidence or testimony you wish
11 to present during this in-camera hearing and the
12 photographic lineup, Number 8, with Ms. McRae and Detective
13 Russell? Are you going call any witnesses on your behalf.

14 MR. MARTINEZ: No, sir.

15 THE COURT: All right. Tell me your motion you're
16 referring to now, Mr. Martinez..

17 MR. MARTINEZ: My motion to dismiss these
18 indictments. That photographic lineup was a produced -- my
19 name as well as that photograph of mine was conducted
20 solely because my -- a picture showed up and an officer who
21 seen --

22 THE COURT: None of that's in the record. Nobody
23 has testified to that. That's why I'm asking you, do you
24 have any witnesses. I can only rule on the record, the
25 testimony of witnesses.

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 MR. MARTINEZ: I don't.

2 THE COURT: I can't -- I can't -- I can no more
3 rule on your statements as I can just rule on -- as I could
4 on the solicitor's statements. I have to rule on the
5 testimony of the witnesses testifying under oath to decide
6 the linchpin of the identification under the totality of
7 the circumstances. And I haven't heard any evidence or
8 testimony except the detective talked -- the lieutenant, he
9 got information on the name, he had SLED Fusion Center
10 prepare the photographic lineup and so that's why I'm
11 asking you, do you have any witnesses you want to present.

12 Do you have any evidence you want to present?

13 MR. MARTINEZ: Yes, I'd like to have Mr. Shumard,
14 Investigator Shumard.

15 THE COURT: Call him as a witness if you want to
16 for purposes of this hearing.

17 Come around, please, Lieutenant.

18 RUSSELL SHUMARD,
19 having been duly sworn, testified as follows:

20 THE CLERK: Please have a seat. State your full
21 name for the record.

22 THE WITNESS: Russell Shumard, S-H-U-M-A-R-D.

23 **DIRECT EXAMINATION - IN CAMERA**

24 **BY MR. MARTINEZ:**

25 Q Mr. Shumard, can you tell the Court exactly how my

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 name -- how I became a suspect at 7 o'clock in -- that same
2 exact night with no evidence and with no --

3 A Yes, sir. The composite drawing was done by a SLED
4 artist. It was generated and was e-mailed to multiple news
5 outlets, investigators with different agencies, to include
6 the Richland County Sheriff's Department, Kevin Isenhoward.
7 Kevin Isenhoward called me that evening and advised me that
8 the composite looked similar to an individual who is the
9 suspect in another -- or in a case that they were
10 criminally investigating. He gave me your name, your date
11 of birth, and some other particulars; and from that point
12 on, you were a suspect in the case.

13 Q I was the only suspect; is that correct?

14 A You were --

15 THE COURT: How is that -- wait just a minute.

16 Again, how is that relevant to the photographic
17 lineup hearing? Just tell me, Mr. Martinez. I'm not
18 sparring with you, I'm just trying to track.

19 MR. MARTINEZ: It's relevant because I wasn't
20 supposed to be in there. I wasn't supposed to be a
21 suspect. They didn't have no evidence. They didn't have
22 no evidence. They went and showed the victims -- I don't
23 even match the description that they gave besides the
24 tattoo on my neck.

25 They went to the victims the next day to show them

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 the photographic lineup and then they didn't pick me out.
2 And I still was a suspect, I was still targeted. They
3 had --

4 THE COURT: Ask your next question. Just ask your
5 question.

6 BY MR. MARTINEZ:

7 Q What was the description that the victims gave to
8 you?

9 THE COURT: What victim?

10 MR. MARTINEZ: Briona Hurshman and L.H.

11 THE COURT: That's hearsay. This is not the
12 photographic lineup on Ms. Briona or L.H. This
13 is a photographic lineup hearing, in-camera, as to the
14 identification by Ms. McRae.

15 MR. MARTINEZ: So this is not the hearing for the
16 whole photographic lineup.

17 THE COURT: No, it's State's photographic lineup
18 Identification Number 8, which Ms. McRae just testified to.
19 She initialled, she dated, she circled it. It was shown to
20 her by Detective Russell. This is just for that -- for
21 that witness, for Ms. McRae as to being shown the
22 photographic lineup by Detective Russell.

23 MR. MARTINEZ: All right.

24 BY MR. MARTINEZ:

25 Q Did you speak with Ms. McRae?

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 A I don't believe I did. I'm not certain on that. I
2 may have, but I can't be certain about that.

3 MR. MARTINEZ: So did -- so this is simply the --
4 about Ms. McRae's testimony?

5 THE COURT: That's my understanding. Is that -- am
6 I tracking this hearing correctly?

7 MS. WALKER: Yes, Your Honor, that's my
8 understanding as well.

9 BY MR. MARTINEZ:

10 Q Did the officers come back -- you sent two officers
11 out?

12 A Correct.

13 Q Russell and Denizard?

14 A Denizard, yes, sir.

15 Q Denizard. You sent them out and they canvassed
16 everything?

17 A Correct.

18 Q Did they report back to you that Ms. McRae notified
19 them of another possible witness who could have seen the
20 suspect at the same time that he supposedly came into the
21 apartment complex --

22 MS. WALKER: I would object to double hearsay.

23 MR. MARTINEZ: They would report to him, Your
24 Honor.

25 THE COURT: Yes, sir.

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 MR. MARTINEZ: Them officers, he's the reporting --
2 he's their lieutenant. They go back and report to him.

3 THE COURT: There's no reporting to your lieutenant
4 exception under the hearsay rule.

5 MR. MARTINEZ: Her identification is hearsay as
6 well.

7 THE COURT: No, sir, because she testified and she
8 was cross-examined. It's your right to confront the
9 witnesses against you. That's not hearsay. That's what
10 Ms. McRae testifies to that she saw and the circumstances
11 under which she saw that. As I recall Ms. McRae's
12 testimony, she has said there were other people around, but
13 none were that close to you as she was. That's my
14 understanding.

15 MR. MARTINEZ: Yeah, but -- the officer -- I'm not
16 going to argue.

17 THE COURT: No, it's not an argument. The argument
18 is -- the answers to the argument are right here in Rule
19 401 of the South Carolina Rules of Evidence.

20 MR. MARTINEZ: Relevance.

21 THE COURT: Yes, sir, what is and what is not
22 relevant. And what is 801, 803? What is hearsay? What is
23 exceptions to hearsay?

24 MR. MARTINEZ: False testimony is also in the rule
25 book as well too.

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 THE COURT: Well, show me that under the South
2 Carolina Rules of Evidence, 101 to 1000.

3 Under the South Carolina Rules of Evidence.
4 There's Rule 403, that says evidence can't be presented as
5 misleading; needless waste of time, that it's prejudicial
6 value outweighs -- well, probative value outweighs the
7 prejudicial effect. Let's see misleading the jury,
8 needless waste of name, confusion of issues. I guess you
9 could say misleading to the jury. I guess perjury would be
10 perhaps included in that, by inference.

11 But you may ask the officer the questions --
12 whatever your next question.

13 MR. MARTINEZ: No further questions.

14 THE COURT: Any cross, Solicitor?

15 MS. WALKER: No, sir.

16 THE COURT: Thank you, thank you, Lieutenant, you
17 may step down.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Any other evidence or testimony -- any
20 other witnesses you'd like to call, Mr. Martinez.

21 MR. MARTINEZ: For -- just for Ms. McRae's
22 testimony?

23 THE COURT: Yes, sir.

24 MR. MARTINEZ: I'd like -- I don't know if he's
25 here, but there was another officer that questioned her.

Gabriel Denizard - Direct Examination In Camera by Mr. Martinez

1 THE COURT: There was another what?

2 MR. MARTINEZ: I think it was -- there was two
3 officers that went with Mr. Jerry Russell. Mr. Denizard.

4 THE COURT: All right. You want to call him as a
5 witness?

6 MR. MARTINEZ: Yes, sir.

7 THE COURT: All right. If you'd come around,
8 please, officer, and be sworn.

9 GABRIEL DENIZARD,
10 having been duly sworn, testified as follows:

11 THE CLERK: Please have a seat. State your full
12 name for the record.

13 **DIRECT EXAMINATION - IN CAMERA**

14 **BY MR. MARTINEZ:**

15 Q Mr. Denizard, you was -- you're the one that went
16 and questioned Ms. McRae; is that correct?

17 A I was with Investigator Russell at the time. I was
18 assisting, but I didn't question her, exactly.

19 Q But you was present during the --

20 A Yes, sir.

21 Q And you heard the interaction, what she was saying,
22 what happened and how she said what she said and --

23 A Yes, sir.

24 Q And did she say what time it was when the
25 incident -- when she said she seen the suspect?

Gabriel Denizard - Direct Examination In Camera by Mr. Martinez

1 A I don't remember.

2 Q Where did you -- where did you guys meet her at?

3 A I remember meeting her at the [REDACTED] Condos at
4 some point.

5 No, I remember when we were in front of her condo
6 or unit at her vehicle in the parking lot.

7 Q Did you testify the last time that we had this
8 trial, we had a trial?

9 A I did, but not in reference to Ms. McRae.

10 Q I believe you stated that you met her at a bus
11 stop?

12 A Sir?

13 Q I believe you stated -- when you testified last
14 time with Ms. Zmroczek --

15 A I didn't testify in reference to Ms. McRae last
16 time.

17 Q You didn't?

18 A No, sir.

19 Q You testified that you when you canvassed the area
20 you questioned other people?

21 A No, sir.

22 Q What did you testify to last time?

23 MR. MARTINEZ: I was --

24 MS. WALKER: I would object to the question of what
25 he testified to last time.

1 THE COURT: Where you headed, Mr. Martinez?

2 MR. MARTINEZ: I'm trying to see his exact
3 involvement. He was present with Ms. McRae.

4 THE COURT: He's answered that question. He said
5 he was present with Detective Russell, at the [REDACTED]
6 Condominiums. And at one point in time they were in front
7 of her house, her home.

8 MR. MARTINEZ: Okay. But --

9 THE COURT: So what --

10 MR. MARTINEZ: He's saying he don't remember -- he
11 doesn't remember what was said or what happened with the
12 interaction.

13 THE COURT: Well, what are you asking me to do?
14 Find him in contempt of court until he remembers.

15 MR. MARTINEZ: No.

16 THE COURT: I mean if a witness -- if an individual
17 says, I don't remember, it's been two and a half years.

18 MR. MARTINEZ: Okay. All right. No further
19 questions.

20 THE COURT: Mr. Martinez, you can ask him any
21 relevant question.

22 MR. MARTINEZ: I'm good.

23 THE COURT: I'm good, that confirms you have no
24 further questions?

25 MR. MARTINEZ: Yes, sir.

1 THE COURT: Thank you, Detective. You may step
2 down --- oh, excuse me.

3 Any questions, Solicitor?

4 MS. WALKER: No, sir, I don't have any questions.

5 THE COURT: Thank you, detective. You may step
6 down.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Any other witnesses you
9 wish to call, Mr. Martinez.

10 MR. MARTINEZ: For what?

11 THE COURT: I'm not -- I'm not defending you. I'm
12 not your attorney. I can't give you advice. I can't try
13 the case for you.

14 MR. MARTINEZ: I can't try my case for me either.

15 THE COURT: I'll call -- I'll have any -- stand up
16 when you talk to me, when you address me.

17 I'll have any witness you want subpoenaed here on
18 in issue or any other issue. Don't respond to me like, for
19 what. I have given you every opportunity to call
20 witnesses, to examine witnesses. Just because I rule a
21 particular way, according to the law as I understand it
22 don't let that change your respect for the Court. I tell
23 everyone in this courtroom, Solicitors and everybody, I
24 don't care a whit if anybody respects me personally. I
25 don't care. I really don't. It's just the man or the

1 woman in this right here (indicating) that's all it is. So
2 don't disrespect that. Okay?

3 So if there's any witnesses you want to call in
4 this in-camera hearing and they're not here now, I'll get
5 them here. You can present anything you want. I'm here --
6 Mr. Martinez, I'm here until I retire.

7 MR. MARTINEZ: The witnesses that are relevant,
8 they're not willing to answer the questions that are
9 going -- that are relevant to identification. It's an
10 improper identification. The reliability, I'm not able to
11 prove that she's unreliable, she's untrustworthy.

12 THE COURT: Well, what witnesses do you want to
13 present to this Court that will forward that goal for you.

14 MR. MARTINEZ: I just presented them.

15 THE COURT: And so --

16 MR. MARTINEZ: I couldn't ask him the questions
17 that would have shown that.

18 THE COURT: So there -- what was the question --
19 you couldn't ask him a question what?

20 MR. MARTINEZ: She's contradicting herself. She's
21 told a different story almost every time. She's saying
22 that she seen someone in the sun. Then she said she seen
23 someone in the dark. She seen someone with a -- with the
24 street lights. She said she was within inches.

25 THE COURT: And that's what cross-examination is.

1 That's why you have direct examination and
2 cross-examination. I'm not -- these comments are not
3 directed to the testimony of Ms. McRae whatsoever, but
4 cross-examination is the greatest invention ever invented
5 for getting the truthfulness. That's why you have the
6 rules in the rule book about prior inconsistent statements,
7 prior testimony. And that -- if that comes out in front of
8 the fact finder, in front of the jury, the jury weighs the
9 believability, credibility of the witnesses. That's what
10 the truth seeking process is and that's why testimony is
11 presented in this manner.

12 If you want -- again, if you want any witness to
13 testify additionally, on your behalf in this hearing, I
14 will do all I can do within my judicial authority to get
15 that witness here.

16 As far as me and you are concerned, Mr. Martinez,
17 don't -- we don't have to get sideways with each other just
18 because you may not like the responses or lack of responses
19 from a witness. We don't have -- we don't have to do that.

20 MR. MARTINEZ: All right.

21 THE COURT: You got me now?

22 MR. MARTINEZ: Yes, sir.

23 THE COURT: Thank you.

24 All right. Solicitor?

25 MS. WALKER: Your Honor, for Ms. McRae, we don't

1 have any other -- we don't have any other witnesses, but we
2 can go to Mr. Decker at the appropriate time.

3 THE COURT: All right. Thank you.

4 Anything as to the admissibility of Ms. McRae's
5 identification and Detective Russell? Any objections as
6 far as under Neal versus Biggers identification.

7 MR. MARTINEZ: Yes, I would object to the
8 suggestiveness that -- of the photographic lineup as well
9 as the -- as well as the improper -- excuse me.

10 THE COURT: Improper what?

11 (There was a pause in the proceedings.)

12 THE COURT: Do you have the lineup?

13 THE COURT REPORTER: I do not.

14 THE COURT: Where's the lineup?

15 MS. WALKER: Right here.

16 MR. MARTINEZ: I object because this identification
17 is because of an impermissible and suggestive and
18 unnecessary identification procedure that violates my 14th
19 Amendment rights to due process of law and a fair trial
20 under South Carolina Constitution, Article 1, Section 3.

21 THE COURT: All right. Thank you.

22 A criminal defendant may be deprived by the due
23 process of law by an identification procedure which is
24 unnecessarily suggestive and conducive to irreparable
25 mistaken identification, citing Manson versus Braithwaite

1 432, U.S. 98.

2 The United States Supreme Court has developed a two
3 prong inquiry to determine the admissibility of an
4 out-of-court identification. First, a court must determine
5 whether the identification process was unduly suggestive.

6 As to that, both -- Detective Russell testified
7 there was no suggestiveness. He testified to what language
8 he used with Ms. McRae that there may or may not be someone
9 and no indication of any suggestiveness in any manner.
10 Only if it's unduly suggestive, the Court must next
11 determine whether out-of-court identification, nevertheless
12 so reliable that no substantial likelihood of
13 misidentification existed. Only with the suggestiveness
14 may the Court consider the second question of ID'ing, along
15 with the totality of the circumstances.

16 The alert and awareness of Ms. McRae, the location
17 she was at, the fact that she testified she was not
18 familiar with you or with the suspect that she identified
19 that she thought it was a stranger, that she was within
20 speaking distance of that individual and he in speaking
21 distance of her or ear distance I guess you could say; that
22 she could describe specific details of the individual,
23 manner of address and such like that, body markings and
24 such like that.

25 I would find that the identification by Ms. McRae

1 Individual Number 5 -- and looking at the photo lineup
2 further, I would note that the six photographs all appear
3 to be of the same age range; all appear to be wearing
4 glasses, all appear to have similar, not exactly, but
5 similar facial hair. Also on this particular photograph,
6 they have some type of red markings on each individual's
7 faces. She has identified -- I said State's 8, this is 4,
8 State's 4.

9 THE COURT REPORTER: It should be 8, Your Honor.

10 THE COURT: It's 8?

11 MS. WALKER: It should be 8. I should have handed
12 you 8.

13 THE COURT: Well, why do I have 4.

14 MS. WALKER: I'm sorry, Your Honor, I handed you
15 the wrong one.

16 (Showing the correct document to the defendant.)

17 THE COURT: Well, I retract that last part because
18 State's 8 does not have the red lines on the face and
19 appears to be the same photographic lineup without the
20 different shades of red on the face. And I'd also cite
21 State versus Moore, 343, South Carolina 282.

22 All right. What did you say next, Solicitor?

23 MS. WALKER: Your Honor, Kendall Decker, we can do
24 his photo lineup.

25 THE COURT: Say again?

Kendall Decker - Direct Examination In Camera by Ms. Walker

1 MS. WALKER: Kendall Decker, there's another photo
2 lineup.

3 THE COURT: That's two more witnesses?

4 MS. WALKER: Yes, Your Honor.

5 THE COURT: All right. You may call your witness.

6 MS. WALKER: Your Honor, the State calls Kendall
7 Decker.

8 KENDALL DECKER,
9 having been duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: My name is Kendall Decker.

13 **DIRECT EXAMINATION IN CAMERA**

14 **BY MS. WALKER:**

15 Q Mr. Decker, where are you from? Do you live near
16 Columbia?

17 A I do.

18 Q And where do you work?

19 A Now, I work at Dick Dyer Toyota.

20 Q In 2014, where did you work?

21 A Quick Cash.

22 Q What's Quick Cash?

23 A Pawnshop.

24 Q At some point, did you come into contact with
25 Nathan Martinez?

Kendall Decker - Direct Examination In Camera by Ms. Walker

1 A Yes, sir.

2 Q Can you tell the Court the circumstances under
3 which you came into contact with Mr. Martinez?

4 A Mr. Martinez came into my place of business,
5 bringing in jewelry. Basically that's how I came into
6 contact with him.

7 Q About how long do you come -- were you in contact
8 with Mr. Martinez when he brought in jewelry?

9 A About five minutes.

10 Q And what jewelry did he bring in?

11 A A couple of rings.

12 Q The lighting when you saw him, can you describe
13 that for the judge?

14 A Mr. Martinez was from here to here to me. The
15 counter was just separating us.

16 Q And was it well lit?

17 A Very well lit, ma'am.

18 Q Did you get a good look at Mr. Martinez?

19 A Yes, ma'am.

20 Q At some point, as -- describe the process that
21 happens when someone comes in to pawn something.

22 A Basically he brings in an item. It's jewelry, so
23 we do jewelry by weight. I weighed the jewelry up, took
24 his driver's license from him, entered all his information
25 into the computer system. Once that is done, a contract is

Kendall Decker - Direct Examination In Camera by Ms. Walker

1 printed out along with the tag that tags the envelope the
2 jewelry was put in.

3 Q And you said all this took about five minutes?

4 A Yes, ma'am.

5 Q And at some point did you contact -- or did you
6 make contact about this?

7 A They contacted me.

8 Q And when they contacted you, did they show you a
9 photo lineup?

10 A They did.

11 Q Let me show you what's been marked as State's
12 Exhibit 4 and ask if you recognize this.

13 A (Looking.) Yes, ma'am.

14 Q And how do you recognize this?

15 A It was handed to me that morning when the police
16 came in to visit me. And he asked me if I know a person
17 out of the lineup and I did.

18 Q When they asked you if you could pick a person out
19 of the lineup, did they tell you who to pick?

20 A No, ma'am.

21 Q Did they suggest to you in any way which number to
22 pick?

23 A No, ma'am.

24 Q Were you certain of your pick when you circled
25 this?

Kendall Decker - Cross-Examination In Camera by Mr. Martinez

1 A Dead on.

2 MS. WALKER: Your Honor, may I approach the bench?

3 THE COURT: Yes, ma'am.

4 (Handing the document to the Court.)

5 THE COURT: All right. Thank you.

6 BY MS. WALKER:

7 Q And when you circled number -- the picture in
8 State's Exhibit 4, you were circling that to indicate what?

9 A That was the individual. I initialled it.

10 Q And do you see that individual in the courtroom?

11 A I do.

12 Q Can you point him out for me?

13 A The gentleman sitting right here.

14 Q Closest to me?

15 A No, gentleman sitting right there with that blue
16 shirt on, his finger on his lips.

17 MS. WALKER: Thank you, sir, I don't have any
18 further questions.

19 THE COURT: Mr. Martinez?

20 **CROSS-EXAMINATION IN CAMERA**

21 BY MR. MARTINEZ:

22 Q Mr. Decker, when you seen me, what was I wearing?

23 A You were wearing a hoodie and a skull cap.

24 Q Was that a short sleeve hoodie or a long sleeve?

25 A I don't even recall, sir.

Kendall Decker - Cross-Examination In Camera by Mr. Martinez

1 Q You don't recall?

2 A No.

3 Q I used my own ID, correct?

4 A You used your driver's license to be exact.

5 Q Did I seem nervous, anxious?

6 A Didn't seem nervous at all.

7 Q Did I seem like, paranoid?

8 A No.

9 Q Was I walking?

10 A No, sir.

11 Q I was driving, correct?

12 A Correct. You were driving a red minivan.

13 Q And do you remember -- do you remember my height

14 and weight that you put into the computer?

15 A It was from your driver's license, sir.

16 Q You remember that?

17 A No, sir.

18 Q Do you remember -- do I appear the same size as I

19 did when you seen me?

20 A I don't remember that, to be honest with you.

21 Q You don't remember the same exact size I was --

22 build -- do I seem smaller?

23 A In two-and-a-half years, sir, everybody's changed,

24 whether you've gained weight or lost weight. So I not

25 know.

Gabriel Denizard - Direct Examination In Camera by Ms. Walker

1 Q But you seen me -- what time was it?

2 A Nine -- about 9:04, 9:05. You were the first
3 customer in the building.

4 Q All right. Thank you.

5 THE COURT: Redirect?

6 MS. WALKER: No, sir.

7 THE COURT: Thank you. Thank you very much for
8 being with us, sir.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Your next witness,
11 Solicitor?

12 MS. WALKER: Your Honor, the State calls Agent
13 Denizard.

14 THE COURT: All right. He's still under oath,
15 correct?

16 **DIRECT EXAMINATION - IN CAMERA**

17 **BY MS. WALKER:**

18 Q Sir, over the course of this investigation, did you
19 have the occasion to show a photo lineup to Mr. Kendall
20 Decker?

21 A Yes, ma'am.

22 Q Can you -- did you create that photo lineup?

23 A I did not.

24 Q Can you tell the Court how that photo lineup was
25 created?

Gabriel Denizard - Direct Examination In Camera by Ms. Walker

1 A I didn't ask for it to be printed. I believe it
2 was done by either Shumard or Morrison or it could be
3 Russell, I can't remember exactly. But typically we e-mail
4 the Fusion Center the information and they create a lineup
5 for us.

6 Q And where were you when you showed this photo
7 lineup to Mr. Decker?

8 A I was at the pawnshop on Decker Boulevard.

9 Q And once you showed the -- when you showed the
10 photograph, can you describe that to the Court?

11 A I arrived at the pawnshop. I spoke with
12 Mr. Decker. I learned earlier that the suspect had pawned
13 some rings at the pawnshop and I was asked go there and
14 show a lineup to see if he recognized the person who came
15 in and pawned the rings.

16 I spoke with him briefly and asked him to look at
17 the photo lineup and see if he recognized anyone in the
18 photo lineup. And he then picked out the defendant in this
19 case.

20 Q Did you suggest to him in any way who to pick out?

21 A No, ma'am.

22 Q Did you tell him that the suspect was definitely in
23 the photo lineup?

24 A No, ma'am.

25 Q I'm sorry?

Gabriel Denizard - Cross-Examination In Camera by Mr. Martinez

1 A Can you say that -- repeat the question.

2 Q Did you tell Mr. Decker that the suspect was
3 definitely in the photo lineup?

4 A No, ma'am.

5 Q Did he hesitate picking someone out?

6 A I don't remember him hesitating.

7 Q Was that the extent of your involvement in terms of
8 showing Mr. Decker the photo lineup?

9 A Yes, ma'am.

10 MS. WALKER: I don't have any other questions, Your
11 Honor.

12 THE COURT: Thank you, Solicitor.

13 Mr. Martinez?

14 **CROSS-EXAMINATION IN CAMERA**

15 **BY MR. MARTINEZ:**

16 Q You said you didn't generate the photo lineup,
17 correct?

18 A No, sir, I didn't.

19 Q How many people in that photo lineup had a tattoo?

20 A How many people in the photo lineup have a tattoo?

21 Q How many tattoos, visible?

22 A I remember the necks were covered up. I don't
23 remember or recall if there was any other tattoos on the
24 rest.

25 Q Did you say that the necks were covered up?

Gabriel Denizard - Redirect Examination In Camera by Ms. Walker

1 A For the most part I believe the necks was cut off.

2 Q Is it the same ones -- my neck's the only one that
3 appears to be cut off; is that correct?

4 A That I can see, yes, sir.

5 Q That you can see, correct?

6 MS. WALKER: I can't see what you're --

7 MR. MARTINEZ: The same photo lineup that you guys
8 talked about.

9 BY MR. MARTINEZ:

10 Q My neck's the only neck that appears to be cut off;
11 is that correct?

12 A Yes, sir.

13 MR. MARTINEZ: No further questions.

14 THE COURT: Redirect?

15 MS. WALKER: Your Honor, may I approach --

16 THE COURT: Yes, ma'am.

17 MS. WALKER: -- to collect State's Exhibit Number

18 4?

19 THE COURT: Yes, ma'am.

20 MS. WALKER: Thank you.

21 **REDIRECT EXAMINATION IN CAMERA**

22 BY MS. WALKER:

23 Q Sir, let me get this closer to you.

24 A Yeah.

25 Q What is the difference in the necks on those

Gabriel Denizard - Recross-Examination In Camera by Mr. Martinez

1 pictures.

2 A They all look pretty much the same as far as
3 revealing the necks.

4 Q Thank you, sir. I don't have any other questions.

5 THE COURT: Recross?

6 **RECROSS-EXAMINATION IN CAMERA**

7 BY MR. MARTINEZ:

8 Q They all look the same as in what?

9 A The view of the necks.

10 Q Okay. Can you see my neck on that picture?

11 A When she showed it up close, I had a tearily good
12 view of it, yes, sir. It was visible. A good bit of the
13 necks involved were pretty much the same.

14 MR. MARTINEZ: Can we show it to him again, please?

15 THE COURT: Well, I guess so.

16 BY MR. MARTINEZ:

17 Q Tell me how many of those chins are touching that
18 white line?

19 A (The lineup was given to the witness.)

20 THE COURT: What was that question? Tell me how
21 many what?

22 BY MR. MARTINEZ:

23 Q How many chins are touching that white line?

24 A Just your neck. But I can still see everyone else.
25 I can still see some of your neck. I can still see

Gabriel Denizard - Recross-Examination In Camera by Mr. Martinez

1 everyone else's neck, but your chin is touching the white
2 line.

3 Q Okay. But -- how many of those people have a
4 tattoo on their neck?

5 A I can tell yours.

6 Q How many of those people have a -- how many of
7 those people look Hispanic?

8 A I don't -- I don't want to comment on who looks
9 Hispanic or not. That can -- that can be any --

10 THE COURT: You can't answer that question?

11 THE WITNESS: Sir?

12 THE COURT: You can't answer that question?

13 THE WITNESS: I can't. I come from a Hispanic
14 culture. Anyone on this picture can be Hispanic.

15 THE COURT: My son-in-law does too, but I can see
16 that he's Hispanic.

17 BY MR. MARTINEZ:

18 Q You're saying that Number 3 looks Hispanic?

19 A You said number 3 what?

20 Q Did he resemble Hispanic?

21 A He can look Hispanic, yes, but I don't want to say
22 he is Hispanic.

23 Q What about Number 4?

24 A I mean he can be Hispanic, he can be Caucasian, he
25 can be any other race. I'm not sure. I don't want to say

Gabriel Denizard - Recross-Examination In Camera by Mr. Martinez

1 who's the same and who's not in this photographic lineup.

2 Q So you're saying that you can see everybody's neck
3 the same way from this picture?

4 A I can see everyone's neck, including yours, but
5 your chin is touching the white line.

6 Q All right. Thank you.

7 A Yes, sir.

8 THE COURT: Thank you, Detective. You may step
9 down.

10 Any further witnesses, Solicitor?

11 MS. WALKER: No, sir, not as -- not for that photo
12 lineup.

13 THE COURT: Ma'am?

14 MS. WALKER: Not for Mr. Decker's photo lineup, no,
15 sir.

16 THE COURT: All right. Anything, any witnesses or
17 testimony, Mr. Martinez, on this issue.

18 MR. MARTINEZ: No, sir.

19 THE COURT: I'll be glad to hear from you.

20 MR. MARTINEZ: Yes, I just want to say that the
21 suggestiveness of this -- I know you've already ruled on
22 that, but I just want to say that according to --

23 THE COURT: I haven't already ruled on it. I've
24 ruled on Ms. McRae and Detective Russell. I haven't ruled
25 on this one.

1 MR. MARTINEZ: I just want to say that -- let you
2 know about the SLED photo lineup, there policy and
3 procedure and it states that, Create a consistent
4 appearance between the suspect and fillers with respect to
5 any unique or unusual feature, scars, marks, tattoos,
6 jewelry, present in the suspect's photo. Do not alter the
7 suspects photograph, rather use software to add similar
8 features to the filling photos.

9 As -- with undisputed testimony, I'm the only one
10 in there with tattoos, which makes it highly suggestive.
11 You could see the other people's necks. They put mine --
12 from a mug shot. This picture they got for me is from a
13 mug shot, but they're trying to cover up the numbers that
14 was right there. But more importantly, you can see the
15 other people's necks. Identifying factors in the news
16 release was a prominent neck tattoo.

17 Even if you can't see my neck, I can clearly see
18 the other people's necks. These people do not resemble --
19 we don't have a same resemblance. We don't have the same
20 features, other than maybe -- there's a couple, maybe four
21 has a round face similar to mine besides the glasses.

22 You know what I'm saying? It's highly suggestive
23 with a tattoo, especially with a tattoo that makes it --
24 that enhanced it to cause me unfair prejudice.

25 THE COURT: All right. Thank you, Mr. Martinez.

1 Solicitor?

2 MS. WALKER: Your Honor, this photo lineup, they
3 are all men, same age range, they all have on glasses, they
4 all kind of have squinty eyes, they are all bald; they all
5 have the same facial hair. Your Honor, Mr. Martinez does
6 have a tattoo above his left eyebrow, which is quite
7 visible in person, but on this photo lineup, it just kind
8 of looks like he has bushy eyebrows. So I don't know that
9 that face tattoo is of relevance or of importance in this
10 photo lineup.

11 And regarding the neck, Your Honor, you can see a
12 slight portion of each individual's neck in this case.
13 There's not a full neck display of anyone and there's not
14 any writing that is visible in picture number five, nor is
15 there writing of visible pictures numbered one through four
16 or six in this photo lineup, Your Honor. This lineup
17 features men of similar characteristics. It is not
18 suggestive in its nature, nor was it suggestive in its
19 presentation.

20 We'd ask that this item be admitted into evidence.

21 THE COURT: Refresh my memory, when did Mr. Decker
22 testify to the tattoo?

23 MS. WALKER: He did not testify to the tattoo.

24 Because --

25 THE COURT: Well, isn't that what we're talking

1 about?

2 MS. WALKER: Yes, Your Honor, he didn't mention the
3 tattoo.

4 THE COURT: And when did Ms. McRae testify to the
5 tattoo above the eye?

6 MS. WALKER: Excuse me, Your Honor?

7 THE COURT: When did Ms. McRae testify to the
8 tattoo above the eye?

9 MS. WALKER: Oh, she did not.

10 THE COURT: All right. All right. I do not think
11 it's suggestive. I think it goes to it's weight and not
12 it's admissibility. I would rely on the same -- the same
13 record I made as to Ms. McRae's identification as far as
14 State versus Moore, Neal versus Biggers, Manson versus
15 Braithwaite.

16 Quite frankly, Photograph Number 5 in State's
17 Exhibit Number --

18 THE COURT REPORTER: 8.

19 THE COURT: I want Mr. Decker's -- is that 8?

20 THE COURT REPORTER: 4.

21 THE COURT: Well this has got CM.

22 THE COURT REPORTER: I'm sorry, that was my --

23 THE COURT: Yeah, State's Exhibit Number 4,
24 photographic lineup shown to Mr. Decker is the one with all
25 the lines across everybody's face. It looks like -- I

1 don't know what caused that. But it's the same photographs
2 with these reddish and yellowish lines across everybody's
3 face and the tattoo above the eye, which was not part of
4 the testimony, quite frankly, you can't -- I can't see it.
5 Now, with that being said, I've had eleven eye operations,
6 but I can't see it.

7 But it goes to the weight, not the admissibility,
8 as to State's 4.

9 All right. Any other motions, Solicitor?

10 MS. WALKER: Your Honor, there is an additional
11 photo lineup that was shown to Ms. Culpepper. She is
12 unable today to do her photo lineup. We can do her Neal v
13 Bigger's Hearing right before she testifies, if that's okay
14 with the Court.

15 THE COURT: We'll do what?

16 MS. WALKER: We'll -- Ms. Culpepper, she's a
17 witness and she picked this defendant out of the photo
18 lineup. She's had a medical emergency with her child and
19 is unavailable right now. Can we do her photo lineup right
20 before she testifies?

21 THE COURT: Yes, ma'am.

22 MS. WALKER: Okay. Then, Your Honor, the other --
23 there's a statement I was given by this defendant, so we
24 can go onto that, if that's okay.

25 THE COURT: All right. Well, I'm fixing to go in

1 recess.

2 MS. WALKER: Yes, sir.

3 THE COURT: I'll be in recess. Anything further
4 before we take our recess this evening, Mr. Martinez?

5 MR. MARTINEZ: Yes, I was wondering if you could
6 give me an order to take the box so I can transfer my -- my
7 legal work back and forth.

8 THE COURT: Any problem with that sheriff?

9 THE OFFICER: No, sir.

10 THE COURT: Well, what do I have to do to get it
11 ordered? Go back there and type it? I don't mind doing
12 it.

13 MR. KATA: Your Honor, I think we can handwrite
14 that.

15 THE COURT: Say again?

16 MR. KATA: I can probably draw one up real quick.

17 THE COURT: All right. Draw me one up real quick.

18 MR. KATA: Real quick.

19 THE COURT: Thank you. Thank you very much. Court
20 will be in recess --

21 You need anything else, Mr. Martinez?

22 MR. MARTINEZ: No, sir.

23 THE COURT: Thank you, thank you very much. Court
24 will be in recess until 9:30 in the morning.

25 (Court was in recess until the following day.)

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

TUESDAY, NOVEMBER 29, 2016

THE COURT: All right. What is our next motion, Solicitor? Mr. Martinez?

MS. CAMPBELL: Your Honor, at this time, if it suits the Court, we could put up Ms. Tucker for the Lyle issue.

LYLE MOTION

THE COURT: All right. You may call your witness, Solicitor.

MS. CAMPBELL: State calls Elexia Tucker.

ELEXIA TUCKER,

having been duly sworn, testified as follows:

THE CLERK: Please have a seat. State your full name for the record.

DIRECT EXAMINATION IN CAMERA

BY MS. CAMPBELL:

Q Ms. Tucker, how old are you?

A I'm 22.

THE COURT: Speak up for me, please, Ms. Tucker. If you would get up closer to the mic perhaps.

BY MS. CAMPBELL:

Q You're how old?

A 22.

Q And did you used to live near Columbia?

A Yes, ma'am.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Q And how long did you live in the Columbia area? Do
2 you know?

3 A For a while. I just moved.

4 Q And before you moved from Columbia who did you live
5 with?

6 A My father.

7 Q And where did y'all live?

8 A On [REDACTED].

9 Q [REDACTED]?

10 A Yes, ma'am.

11 Q And is that in the City of Columbia?

12 A Yes, ma'am.

13 Q I want to turn your attention back to March 25th of
14 2014. Were you at your dad's house that night?

15 A Yes, ma'am.

16 Q What were you doing that night?

17 A I was in my bed asleep.

18 Q You were asleep?

19 A Yes, ma'am.

20 Q Can you tell the judge what happened after you went
21 to sleep?

22 A After I went to sleep, I was sleeping for a little
23 bit and then I felt someone touch my hand and that's what
24 woke me up and I woke up to a knife at my neck telling me
25 if I said anything or screamed or made any noise that I

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 will -- he was going to kill me.

2 Q And you said you woke up to a knife at your neck?

3 A Yes.

4 Q And at that point were you able to see the person
5 who was holding the knife?

6 A Yes.

7 Q What kind of lighting is going on in your room that
8 night?

9 A My TV light was on.

10 Q Your TV light was on?

11 A Yes.

12 Q So was it light enough for you to be able to see?

13 A Yes.

14 Q And did you get a look at the person's face?

15 A Yes, ma'am.

16 Q What did he say to you?

17 A That if I said anything or made any noise that he
18 would kill me.

19 Q What happened next?

20 A After that, I just kind of laid there. I didn't
21 know what do and he started going through some of my things
22 and he tied my wrists together.

23 Q Do you know what he tied your wrists together with?

24 A There were -- it was two shirts tied together and
25 the string to -- that goes to your robe.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Q And you said he was going through your things.

2 Where were your things he was going through?

3 A There was a clear bucket of clothes at the bottom
4 of my bed stand on the floor. And I don't know how he got
5 my blow-dryer, I believe it was in my bathroom.

6 Q Did he say anything else to you about that?

7 A He asked me if I was a slut.

8 Q Did he ask you about anybody else in the house?

9 A Yes, he asked where my father was.

10 Q And what did you tell him?

11 A In his room.

12 Q Did you mention that anybody else was in the house
13 that night?

14 A No, ma'am.

15 Q Was there another person in the house?

16 A Yes.

17 Q And where were they?

18 A He was downstairs asleep in the living room.

19 Q You said that he tied up your wrists first?

20 A When I woke up, he was tying my wrists. My feet
21 were already tied together.

22 Q Okay. You said he was going through your things.
23 Specifically, did he pick up any items that belonged to
24 you?

25 A Yes.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Q What was that?

2 A My cell phone.

3 Q Do you remember where he put it?

4 A It was sitting on a night stand right beside my
5 bed.

6 Q What happened next?

7 A He took my phone and put it in his jacket pocket so
8 I couldn't get to it; and he asked if my dad had a gun and
9 I told him no. And he told me that if he found out that I
10 was lying to him that he was going to kill my father and I
11 both.

12 Q At some point, did he get you to move?

13 A Yes.

14 Q Tell the judge about that.

15 A He tried to make me give him oral sex and I
16 wouldn't do it. And he asked where my job was and I told
17 him I didn't know and he asked where my dad's keys were to
18 his car and I told him downstairs by the door.

19 Q So what happened next?

20 A He made -- he made me sit up and he untied my legs
21 and made me walk down the stairs; and then he told me I had
22 to go with him.

23 Q Where was the knife at this point?

24 A I'm not sure, honestly.

25 Q While he was in your room, did he still have the

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 knife?

2 A Yes.

3 Q And what was going through your mind? Why were you
4 doing this?

5 A I was just -- I was terrified.

6 Q Did you go downstairs?

7 A Yes.

8 Q Where did you go next?

9 A I went straight down the stairs because my front
10 door is right there in front of my stairs and I went
11 downstairs and he grabbed the keys and we went out the
12 front door.

13 Q Where did you go?

14 A He drove to Airbase Road in Hopkins.

15 Q So y'all got into the car?

16 A Yes.

17 Q Where were you seated?

18 A I was in the back passenger seat.

19 Q Where was he?

20 A In the driver seat.

21 Q Was it just the two of you?

22 A Yes.

23 Q Where was the knife at this point?

24 A In the passenger seat..

25 Q Next to him?

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 A Yes.

2 Q What was going through your mind?

3 A Everything. I was terrified. I didn't know what
4 do.

5 Q You said that he drove where?

6 A To Airbase Road.

7 Q And where did y'all go from there?

8 A I believe it was a daycare. I'm not really sure
9 because I'm not familiar with that area, but it was behind
10 a brick building.

11 Q Behind a brick building?

12 A Yes.

13 Q And you weren't familiar with the area?

14 A No.

15 Q What happened once the car stopped?

16 A He told me to take my clothes off.

17 Q And did you?

18 A Yes.

19 Q What happened next?

20 A He got out of -- he stopped the car and he put
21 it -- he turned the car off and he got in the backseat, in
22 the driver's backseat, and made me have sex with him.

23 Q Did you say anything to him?

24 A I don't remember. I don't -- I can't honestly
25 answer that question.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

- 1 Q Okay. What was going through your mind?
- 2 A I had to do what he said or I'm going die.
- 3 Q And that's why you did? What he said?
- 4 A Yes.
- 5 Q Did he have sex with you?
- 6 A (Witness nodded head.)
- 7 Q I need you to be more specific, what kind of sex
- 8 did y'all have?
- 9 A He stuck his penis in my vagina.
- 10 Q And after that, did he continue to want more sex?
- 11 A Yes.
- 12 Q What happened next?
- 13 A He told me that I can put my clothes back on and
- 14 then maybe two or three minutes later he told me to take my
- 15 clothes back off.
- 16 Q Did you do it?
- 17 A Yes.
- 18 Q Where was the knife at this point?
- 19 A Still on the front passenger seat.
- 20 Q How old were you when this happened?
- 21 A I was 19.
- 22 Q Once he told you to take your clothes off again,
- 23 what happened?
- 24 A He tried to stick his penis in me again and I began
- 25 to tell him that it hurt.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Q That it hurt?

2 A (Witness nodded head.)

3 Q At that point what did he do?

4 A Then he told me that I had to give him oral sex
5 until he was satisfied.

6 Q Until he was satisfied?

7 A Yeah.

8 Q And did you do that?

9 A Yes.

10 Q And where were you when that happened?

11 A In the backseat.

12 Q Were your clothes on or off at that point?

13 A I believe my clothes were on.

14 Q You'd put them back on at that point?

15 A Yes.

16 Q Eventually, did he stop?

17 A Yes.

18 Q When was that?

19 A I don't know how long it took. It wasn't a long
20 time, but I'm not sure exactly how long.

21 Q Once he was satisfied, what happened?

22 A He told me -- I asked him what time it was and he
23 said that it was, like he had to look at his phone, which
24 was also in the passenger seat and he said that it was
25 going on 6 o'clock. And I told that I mean my dad would be

Ellexia Tucker - Direct Examination In Camera by Ms. Campbell

1 home -- or be awake soon and he would notice that I was
2 gone. And so he drove me to a road right beside Lower
3 Richland High School and he asked if I could drive and I
4 told him yes. So he told me to go. And he was like okay,
5 then you can drive yourself the rest of the way home.

6 Q And did he get out of the car?

7 A Yes.

8 Q Before he got out of the car, did he check for
9 anything?

10 A He grabbed all of his belongings and he reached in
11 the, like the back passenger seat because I was on my
12 period and he grabbed the tampon out of the backseat and
13 took it with him.

14 Q Once he left, what did you do?

15 A I climbed over the backseat into the driver's seat
16 and I went home.

17 Q Once you got home, what did you do?

18 A My dad heard the front door close so he called my
19 name just to make sure it was me and I went to see if he
20 was in his room and he asked me what I was doing coming
21 home at 6, 6:30 in the morning. And I broke down and I had
22 to tell him.

23 Q You told him what had happened?

24 A Yes, ma'am.

25 Q Did he want you to do anything once you told him?

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 A Yes. He wanted me to call the police, but I was
2 scared.

3 Q What happened next? Did you tell anybody else?

4 A Yes.. I contacted my girlfriend at the time, she's
5 now my wife; but I contacted Brittany and I texted her
6 because I knew she would be awake because she had to go to
7 work that morning. So I texted her and I told her
8 everything.

9 Q And what did she want you to do?

10 A She wanted me to call the police.

11 Q Why didn't you call the police?

12 A Because I was scared that he was going to come back
13 or something.

14 Q Who had he threatened to kill?

15 A Me and my father.

16 Q Did you believe he would do it?

17 A Yes.

18 Q Did you call the police that day?

19 A Not that day, no, ma'am.

20 Q A few days later, did something happen that made
21 you call the police?

22 A My dad sent me a picture of a sketch.

23 Q Of a sketch?

24 A Yes.

25 Q And I -- did you describe the person to your

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 father?

2 A I told that, I mean, I knew -- I had seen him
3 before, I just didn't know where I had seen him or how I
4 had seen him before, so yes, I did describe him the best
5 that I could.

6 Q The best you could?

7 And was there anything specific about his
8 appearance that you remember?

9 A The eyebrow tattoo.

10 Q Were there any other tattoos?

11 A There was one around his neck. I couldn't read it.
12 I just know that there were letters and there was a big one
13 on his -- one of his hands.

14 Q One of his hands?

15 A I'm not sure which one though.

16 Q When you saw the sketch -- where were you when you
17 saw the sketch your dad sent you? How did send it?

18 A He sent it through a text message and I was at
19 Brittany's cousin's house.

20 Q When you saw the sketch, what happened?

21 A I just looked at Brittany, and I had started crying
22 and I was just like, that's him.

23 Q That's the person?

24 A Yes.

25 Q The person who you had seen before, but at that

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 point did you know his name?

2 A I did not know his name.

3 Q Once you saw the sketch, what did you do after you
4 told Brittany?

5 A We looked on the news, the actual news to see why
6 his picture's on there and I seen something about -- that
7 happened to another -- similar incident happened to another
8 family and I felt that it was my fault.

9 Q You felt what?

10 A Like it was my fault.

11 Q And did you tell the police what had happened to
12 you?

13 A Yes.

14 Q Did you meet with Investigator Bailey?

15 A Yes, ma'am.

16 Q And once you met with Investigator Bailey, did he
17 take a statement from you?

18 A Yes.

19 Q Did he also show you some photos?

20 A Yes, ma'am.

21 MS. CAMPBELL: Beg the Court's indulgence.

22 (There was a pause in the proceedings.)

23 MS. CAMPBELL: I'm sorry, Your Honor.

24 BY MS. CAMPBELL:

25 Q I'm going to show you what's been marked as State's

Ellexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Exhibit Number 1. Do you recognize that?

2 A Yes, ma'am.

3 Q And is that the set of photos that you looked at
4 with the police that day?

5 A Yes, ma'am.

6 Q Do you remember what date that was? Is it on here?

7 A Yes, it was the 27th.

8 Q You want to look?

9 A Oh, the 28th, I'm sorry.

10 Q And when you looked at these photographs, did
11 anybody tell you who to pick?

12 A No. He said that he doesn't have to be on here,
13 it's just a lineup that he could be in here or not.

14 Q So he didn't tell you he had to be in there or tell
15 you who did it?

16 A No, ma'am.

17 Q Did he influence you in any way?

18 A No, ma'am.

19 Q And when you looked at those photographs, what did
20 you notice?

21 A I automatically pointed at Number 5.

22 Q As soon as you looked at the photos?

23 A Yes.

24 Q And why did you point to Number 5?

25 A Because it was of his eyebrow tattoo.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

- 1 Q Is that the person that raped you?
- 2 A Yes.
- 3 Q And when you looked at these photographs, was any
- 4 of this writing on there?
- 5 A No, ma'am.
- 6 Q And of course the sticker wasn't on there?
- 7 A No.
- 8 Q Once you pointed to Number 5 with Investigator
- 9 Bailey, did he then ask you to do anything to the front to
- 10 say which one you picked?
- 11 A He asked me to circle it and then sign it and date
- 12 it and write the reason why I circled the person that I
- 13 circled.
- 14 Q The person that raped you, did you get a good look
- 15 at his face?
- 16 A Yes.
- 17 Q All right. And was that when you were in the
- 18 bedroom?
- 19 A Yes.
- 20 Q Did you also go look at his face at other points?
- 21 A Yes. He was -- there were light poles like around
- 22 the building.
- 23 Q Uh-huh.
- 24 A It was dark, but there were light posts with some
- 25 light and once he got in the backseat, I could see his face

Ellexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Like I can see his face right now.

2 Q Is there any doubt that that's the face of the
3 person that raped you?

4 A No.

5 Q Once you circle the picture, do you also sign it?

6 A Yes.

7 Q And date it?

8 A Yes.

9 Q And you wrote in -- is that your writing?

10 A Yes, it is.

11 Q And what does it say, for the judge?

12 A This is the man that took me.

13 Q That took you?

14 A Yes.

15 Q And raped you?

16 A Yes.

17 Q And no one told you who to pick?

18 A No, ma'am.

19 MS. CAMPBELL: Your Honor, may I approach Mr.

20 Martinez?

21 (Showing Mr. Martinez the exhibit.)

22 BY MS. CAMPBELL:

23 Q Did you realize how you knew him before you gave
24 your statement that day?

25 A Yes.

Elexia Tucker - Direct Examination In Camera by Ms. Campbell

1 Q And where had you seen him before?

2 A He has been to my house twice whenever I was there.

3 Q And who does he go to see when he came to your
4 house on those two prior occasions?

5 A He came to my house with his brother and his
6 brother is friends with my father.

7 Q Do you remember his brother's name?

8 A I'm not sure what his name is, I just know that he
9 goes by the name of E.

10 Q E?

11 A Yes.

12 Q And did you remember the name of the person that
13 raped you went by?

14 A I asked my dad what E's brother's name was and he
15 told me Nate.

16 Q But that's information that you got after he
17 assaulted you?

18 A Yes.

19 Q All right. The person that raped you and kidnapped
20 you, do you see him here in the courtroom?

21 A Yes, I do.

22 Q Can you point him out for the judge?

23 A He's at that table with the blue colored shirt on.

24 Q With the blue shirt on?

25 A Yes.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 MS. CAMPBELL: Your Honor, may the record reflect
2 she's identified the defendant.

3 THE COURT: Yes, ma'am, so reflected.

4 MS. CAMPBELL: Thank you, Your Honor, I don't have
5 any further questions at this time.

6 THE COURT: Thank you, Solicitor.

7 Mr. Martinez?

8 **CROSS-EXAMINATION IN CAMERA**

9 **BY MR. MARTINEZ:**

10 Q Did you tell Collin D. Bailey that you was raped at
11 knife point?

12 A I'm sorry?

13 Q Did you tell Mr. Collin D. Bailey that you was
14 raped at knife point?

15 A No, I did not.

16 Q Did -- did Mr. Collin D. Bailey ever ask you about
17 Mr. Mike Warren?

18 A Yes.

19 Q He asked you about him?

20 A Yes.

21 Q What did you tell him about him?

22 A He was asleep in the living room.

23 Q And your living room, how far -- let's say I'm
24 standing at your door, the front door -- I'm at your door
25 and I'm looking into where he was sleeping at, would I be

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 able to see him at night?

2 A Yes.

3 Q I would be able to see him?

4 A Yes.

5 Q With the light off?

6 A The light was not off. You waved your hand to him
7 as if he seen you or you seen him. Like, you know where he
8 was.

9 Q I know where he was because he was up and he wasn't
10 asleep.

11 A Okay.

12 Q Okay. What?

13 A Continue with your question, please.

14 Q Was he up and he watched us leave?

15 A I did not see him awake. I did not look at him.
16 You walked down the stairs right behind me and did your
17 hand as if you were waving at him. It was 3:30 in the
18 morning. I'm sure he was asleep.

19 Q Was the light on in the room?

20 A In my room my bedroom --

21 Q In the main room.

22 A In the living room?

23 Q Yes.

24 A There was a lamp on, yes.

25 Q So in order for me -- I would have to know that he

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 was up in order know that someone was there?

2 MS. CAMPBELL: Objection, Your Honor. Speculation.
3 He's asking speculation.

4 THE COURT: She can't testify to what you may or
5 may not have known or whoever the male suspect was.

6 MR. MARTINEZ: She can testify to the man staying
7 in her house.

8 THE COURT: Yes, sir, she can testify as she has
9 done to the lighting in the room and distances and such
10 like that, but she can't testify. She wouldn't know what
11 another witness may or may not know. But she can testify
12 to all the -- the lay out of the house, of course; and the
13 lighting.

14 BY MR. MARTINEZ:

15 Q How do you -- you told Mr. Collin D. Bailey that I
16 entered through the back door; is that correct?

17 A Yes.

18 Q How do you know that?

19 A Because whenever the investigation people came that
20 day, they were -- that's what they came up with and I'm
21 sure that -- that back door was never locked, so...

22 That's the only door in my house that's rarely ever
23 locked.

24 Q So you don't know that I entered that door?

25 A No, I'm not positive that you went through that

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 door, but that's the only door that you could have went
2 through that we wouldn't have heard it or no one else would
3 have seen you come through the door.

4 Q You didn't let me into the house?

5 A No.

6 Q Do you -- did you -- you know who I am, correct?

7 A Yes.

8 Q You know who -- you met me -- I went to your dad's
9 house --

10 A Twice. Yes.

11 Q And I mentioned at, from me to him in a well lit
12 room, you look at me, I had a tank top on, you see all my
13 tattoos; is that correct?

14 A I don't think I seen all of your tattoos, no. I
15 glanced at you because my father was introducing you as,
16 this is E's brother.

17 Q But you --

18 A Yes, I was in --

19 Q Didn't you say hello and how you doing?

20 A No, I don't believe we said how are you doing. I
21 said hey and you said hey and I exited the room.

22 Q And I met your girlfriend as well, correct?

23 A You didn't meet her, you seen her.

24 Q Your dad introduced us?

25 A No --

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q He didn't introduce all of us? We was all sitting
2 there --

3 A No, that is not correct.

4 Q So you're saying that we wasn't in the room
5 listening to your dad's music. He was showing us how he
6 downloads music and new stuff that he was working on and
7 you and your girlfriend came in there and your dad
8 introduced us, Oh, this is my daughter, Elexia. Hey this
9 is Nate right here and this is his brother, you know, this
10 and that?

11 A No, that is not what happened.

12 Q That's not what happened?

13 A No.

14 Q How did that happen?

15 A The first time you came to my house is the day --
16 Brittany was not at my house the first time that I had seen
17 you. The first time I seen you I was in my bedroom and I
18 walked in my dad's yes. Yes, y'all were through his music.
19 And he was showing you how to do it on a computer. But I
20 was -- I went in my dad's room to ask him a question and I
21 asked who are you because I'd never seen you before and he
22 was like, Oh this is Nate. This is E's brother. I said
23 okay. And I said hello to you because you said hello to
24 me. And after that I walked out of my dad's bedroom and
25 went back into my bedroom.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 The next time that I seen you, Brittany, our
2 friend, and I were sitting in the living room from the room
3 that you walked into from the back door. We were sitting
4 in that living room just hanging out and you walked -- you
5 and E walked in my living room -- you walked up the stairs
6 right in front of the door that we walked out of.

7 Q Why would we be in the back door?

8 A You were not entering the back door. I just said
9 you were entering the front door.

10 Q You said back door?

11 A Yeah, you entered the night you took me and raped
12 me, yes.

13 Q How do you know that I came in that back door.

14 THE COURT: That's been asked and answered.

15 MR. MARTINEZ: She just stated that I --

16 THE COURT: She's answered it and said.

17 MR. MARTINEZ: -- there's no evidence to support
18 it.

19 THE COURT: She's already said she wasn't positive.

20 MR. MARTINEZ: Well, she told the police that.

21 THE COURT: She's already answered that question
22 Mr. Martinez.

23 BY MR. MARTINEZ:

24 Q Okay. So you've added today some new stuff that I
25 asked if you were a slut?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 A You did.

2 Q What else did I ask you?

3 A I'm pretty sure that's all you asked me if I was
4 a -- I don't know if it was a slut or are you a dirty
5 little slut. It was something along those lines.

6 Q How come you didn't tell that to that investigator
7 when you first made a statement?

8 A I'm not sure.

9 Q And you said -- and you said that you were -- did
10 I -- did I ejaculate in you -- inside of you?

11 A Did you ejaculate inside of me?

12 Q Yes.

13 A I -- I hope not. You stuck your penis in my
14 vagina, whether you ejaculated inside of me or not, I'm not
15 positive of.

16 Q You're not positive of?

17 A No.

18 Q You turned over some evidence that supposedly it
19 was the clothes, the same clothes that you wore that day,
20 correct? That --

21 A That night?

22 Q Yeah.

23 A Correct.

24 Q Okay. When me and you left, who opened the car
25 door to your dad's car door?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

- 1 A You did.
- 2 Q I opened the car door?
- 3 A Yes, you had the keys, you opened the door.
- 4 Q Okay. And -- so you went home and told your dad, I
- 5 was just abducted at knife point in our own house and
- 6 raped, and he didn't do nothing about it?
- 7 A He wanted me to call the police. He told me that I
- 8 needed to call the police, but I did not.
- 9 Q And you called your girlfriend and told her the
- 10 same thing?
- 11 A Yes.
- 12 Q And she just consoled you?
- 13 A Yes. And she told me to call the police as well,
- 14 which I did not listen to her either.
- 15 Q So you say you went home and told your dad the
- 16 descriptive -- description of the person who abducted you
- 17 with tattoos and everything and your dad didn't say, Oh,
- 18 well, that's what's his name?
- 19 A I asked my father if you -- I asked my father, I
- 20 asked him if E's brother had a tattoo above one of his
- 21 eyebrows. And he said, yes. That's how I knew that it was
- 22 you. And I said -- I asked him what his name was, or what
- 23 your name was and he told me Nate.
- 24 Q And when was that?
- 25 A When was what?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q When did he tell you that? As soon as you went
2 home?

3 A No.

4 Q How long after you went home and you told him the
5 description did he tell you -- and you asked him what --
6 does E's brother have a tattoo over his eye?

7 A Yes, that was the same day.

8 Q So the same day, you knew exactly who I was?

9 A Yes, I asked you if I knew who you were whenever
10 you were in my room and you said no.

11 Q Okay. But when you got home -- when you got home,
12 you told your dad that you'd been abducted at knife
13 point --

14 MS. CAMPBELL: Objection, Your Honor. Asked and
15 answered.

16 MR. MARTINEZ: She didn't answer it, Your Honor.

17 THE COURT: Let me hear the entire question, Mr.
18 Martinez.

19 BY MR. MARTINEZ:

20 Q When you got home from whatever you claim happened,
21 you told your dad -- you asked your dad, does E's brother
22 have a tattoo above his eye. He said yes, correct?

23 A Correct.

24 Q And then you said what's his name. And he told you
25 his name is Nate?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 A Correct.

2 Q That's correct, right?

3 A Yeah.

4 Q So how come when you talked to the police -- okay.

5 I want to switch from that.

6 At that time -- at that time when he told you

7 exactly who I was, so you knew who I was then, correct?

8 A I knew your name, yes.

9 Q You knew who I was because you met me before and

10 then you just had, supposedly some incident with me, so you

11 knew who I was.

12 A Yeah.

13 Q Okay. So when you talked to the police --

14 A I did not -- I did not know your full name. All I

15 knew is you went by Nate. I asked Investigator Bailey if

16 he knew your name, the person that I had circled, and he

17 said I do not know it right off the top of my head. And I

18 said if I say his name will you know it, and he said yes.

19 So I said, is his name Nathan and he said, yes, that is his

20 name.

21 Q You told the police that he was an unknown male.

22 A I did not know you when you entered my room. After

23 you -- whenever you abducted me and raped me, I did not

24 know your name. I knew I had seen you before, but no, I

25 did not know your name.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q You went home and found out my name?

2 A Yes.

3 Q So you told the police a false statement by saying
4 you don't know who I was?

5 MS. CAMPBELL: Objection, Your Honor. He's
6 misstating facts; and he's asked and answered that.

7 MR. MARTINEZ: I've got records. I got records,
8 Your Honor, to prove that she --

9 THE COURT: Don't interrupt, number one. Number
10 two, I'll be glad to hear from you concerning her
11 objection.

12 MR. MARTINEZ: She had the objection.

13 THE COURT: I said I'd be glad to hear from you
14 concerning your objection.

15 MR. MARTINEZ: Your Honor, I have records that
16 state that she said that she didn't know who I was.

17 THE COURT: Okay.

18 MR. MARTINEZ: From the police. From the police
19 records, from her record, from her own handwriting that she
20 provided the police.

21 THE COURT: Okay.

22 MR. MARTINEZ: That contradicts everything. She's
23 giving a description of me --

24 THE COURT: Ask your -- re-ask your question, Mr.
25 Martinez.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Okay. You said that he was a bigger, Hispanic
3 male, almost bald and had a lot of tattoos. He had a
4 tattoo above his left eye and a big tattoo on his left hand
5 had Roman numerals on it; and by his thumb. The man also
6 had a big tattoo along his bag, his neck, written in
7 graffiti. Is that true?

8 A Your back?

9 Q That's what you stated.

10 A It's your neck written in graffiti, not back.

11 Q It says along the back of his neck written
12 graffiti.

13 A That is not correct, it's the front. I
14 understand -- I have my own statement. I understand what
15 you're saying.

16 THE COURT: Hand me up what you're referring to,
17 please.

18 Sheriff, hand that up.

19 (The Court was looking over the statement.)

20 THE COURT: All right. Thank you.

21 All right. That appears to be a statement given by
22 Ms. Tucker on 3/28/14 to the -- Detective Bailey.

23 So you may ask your next question, Mr. Martinez.

24 BY MR. MARTINEZ:

25 Q So you knew who I was after you talked to your dad;

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 and then you went and talked to your girlfriend, correct?

2 And told your girlfriend what happened?

3 A I talked to my girlfriend before I found out who
4 you were, but yes.

5 Q Okay. So the next day when you found out who I
6 was, you didn't go and tell her that you knew who I was?

7 A I believe I did tell her that I knew who you were.

8 Q How come she didn't state that in her statement?

9 A I don't know. I haven't read her statement.

10 THE COURT: How would this witness know how come
11 another witness did or did not say anything in that
12 witness's statement.

13 MR. MARTINEZ: Okay.

14 THE COURT: No, it's not okay. It's the rules of
15 evidence.

16 MR. MARTINEZ: You're right. You're right.

17 THE COURT: Thank you, I've been affirmed.

18 You may ask your next question.

19 BY MR. MARTINEZ:

20 Q In that photo lineup, that you circled, how many
21 people did you see on there with a tattoo above their eye?

22 A One.

23 Q Just one person, right?

24 A Yeah.

25 Q And that's one of the descriptive things that you

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 stated was that identifying factor towards me, right?

2 A Yes.

3 Q You stated last time that when asked if the person
4 was in there -- by Colin D. Bailey and he asked you -- Ms.
5 Campbell asked you did they tell you that necessarily that
6 the person that raped you would be in there.

7 A And they did not.

8 Q You stated yeah. They said that. The last
9 hearing, on the trial transcript, that's what you said.
10 That was your words.

11 A They did not tell me that you had to be in there.

12 THE COURT: What page of that transcript is that,
13 Mr. Martinez?

14 MR. MARTINEZ: 97.

15 THE COURT: 97.

16 MR. MARTINEZ: Yes, sir, number 21.

17 THE COURT: Line 21?

18 MR. MARTINEZ: Yes, sir.

19 THE COURT: Thank you.

20 (The Court was reviewing the transcript.)

21 THE COURT: Do you have any other questions, Mr.
22 Martinez.

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: Would you ask your next question,
25 please.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Where did we ride to?

3 A Airbase Road in Hopkins.

4 Q And where did we go to?

5 A I believe it was a daycare, but it was behind a
6 brick building.

7 Q Okay. You took Mr. Collin D. Bailey there,
8 correct?

9 A Yes, I did.

10 Q And you said that there was a -- there was articles
11 that was used to tie you up, right?

12 A Yes.

13 Q What was they?

14 A Two shirts, the string from a robe, and I'm not
15 positive what you had my feet tied up with, but I know for
16 a fact that it was the electrical part to my hair
17 blow-dryer.

18 Q You didn't state that the hair blow-dryer was on
19 your hands?

20 A It was one of them. But I know you had that.

21 Q Okay. And you told Mr. Collin D. Bailey that on
22 Starling Godson Road, where Martinez got out of the car
23 because the hair dryer was still missing, we drove slowly
24 down the road, but she did not find it.

25 A I was with Investigator Bailey.

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q So was your blow-dryer missing?

2 A I don't have it.

3 MR. MARTINEZ: Beg the Court's indulgence.

4 (There was a pause in the proceedings.)

5 BY MR. MARTINEZ:

6 Q You testified last time that the hair dryer was at
7 your dad's house. You didn't turn it over to the
8 investigator when you turned over everything, the other --
9 the shirts and the -- the string, and your underwear and
10 your clothing?

11 A Nathan, I've only been to my dad's house maybe a
12 number of three times since you've taken me out of that
13 house, so I don't know what's there and what's not there.
14 It could be at my dad's house. I don't have it. I don't
15 remember -- I don't remember giving it to the police, no.

16 THE COURT: What page of the transcript is that.

17 MR. MARTINEZ: That's on 108.

18 THE COURT: Thank you.

19 MR. MARTINEZ: Line 1. It says, And where are the
20 hair dryer or the electric cord. She stated, I believe
21 it's still at my dads.

22 It says, Do you think it's still at your dad's.

23 Witness nodded head.

24 Was that ever turned over? I don't believe so, no.

25 BY MR. MARTINEZ:

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q How tall did you say that I was?

2 A I said about 6'5", but I'm not very good at
3 estimating, so...

4 Q When -- did the police ever notify you about
5 being -- they never gave your stuff back or the articles
6 that you gave them with like, lab results? They never --

7 A No.

8 Q They went -- but they went -- they went and
9 checked -- the cops came to your house --

10 A Yes.

11 Q -- correct?

12 They did DNA tests on you, on your dad, and they
13 checked the car. They checked the house, all the places
14 that you claim I could have been -- you know, what I'm
15 saying, they checked the house, correct?

16 A Yes.

17 Q And they never gave you no results of that?

18 A No.

19 Q Did you -- you have two dogs, correct?

20 A Yes, I do.

21 Q These dogs, are they -- they're not vicious dogs,
22 correct?

23 A You know they're not.

24 Q But they're -- they're -- if somebody's coming into
25 your house, they're going to alert you that they're coming

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 into the house, correct?

2 A The little dog sleeps in my dad's room. The big
3 dog sometime sleeps in the living room and sometimes sleeps
4 in my dad's room. So when you asked me where my dog was,
5 like I told you, I wasn't sure.

6 Q Your dogs notify you if someone's in the house,
7 though, right?

8 A Not usually, no. They don't bark.

9 Q But if somebody comes, they're going to let you
10 know that there's somebody there?

11 MS. CAMPBELL: Objection, Your Honor, asked and
12 answered.

13 MR. MARTINEZ: She didn't answer.

14 THE COURT: It's a --

15 THE WITNESS: I did answer. I said they don't
16 bark.

17 THE COURT: Wait -- Ms. Tucker, wait just a minute,
18 please.

19 Ask the question, Mr. Martinez.

20 MR. MARTINEZ: Okay.

21 BY MR. MARTINEZ:

22 Q You was not raped at knife point, correct?

23 A At -- was I raped at knife point, no. I woke up at
24 knife point.

25 Q You -- you didn't let me inside the house?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 A No. If I woke up at knife point, how did I let you
2 in my house?

3 Q How did I get into your house undetected --

4 MS. CAMPBELL: Objection, Your Honor.

5 THE COURT: We've been through the back door.

6 MR. MARTINEZ: She doesn't know -- I didn't go
7 through the back door. I was --

8 THE COURT: We've been through that. If she -- her
9 testimony is that she was asleep and awakened by an armed
10 intruder at knife point. How would she have any personal
11 knowledge of how the armed intruder entered that residence?
12 Still good law.

13 MR. MARTINEZ: Then how would she be able to tell
14 the police that she knows how that they --

15 THE COURT: You've already asked her all about
16 telling the police that and she's already answered that.
17 How can a sleeping human being --

18 MR. MARTINEZ: She wasn't sleeping.

19 THE COURT: Ask her if she was sleeping when an
20 armed intruder put a knife to her neck in her bedroom. Ask
21 her that.

22 MR. MARTINEZ: She's going -- she's already gave
23 false testimony that she wasn't.

24 THE COURT: That she wasn't sleeping.

25 MR. MARTINEZ: I mean that she was sleeping.

Ellexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 THE COURT: Yes, she has. There's no testimony in
2 the record except she was sleeping when an armed intruder
3 entered her bedroom and put a knife to her neck. The
4 witness has to have personal knowledge to testify to a
5 fact, so how would a sleeping person know how an armed
6 intruder entered her residence and her bedroom at night,
7 unless perhaps the intruder told her? She has no personal
8 knowledge.

9 MR. MARTINEZ: I know these people. I've been to
10 their house. She knows me personally. I know her dad.
11 Her dad's invited me to her house. I'm -- I smoked weed
12 with her dad.

13 THE COURT: Mr. Martinez, your knowledge does not
14 change the rules of evidence.

15 MR. MARTINEZ: I know, but I'm just saying, just --

16 THE COURT: Your knowledge in cross-examination of
17 this witness, does not change the rules of evidence.

18 MR. MARTINEZ: All right.

19 THE COURT: You may ask your next question.

20 BY MR. MARTINEZ:

21 Q So -- so you're saying that -- how would I know
22 that you're a diabetic?

23 A I'm sorry?

24 THE COURT: Say that question again.

25 BY MR. MARTINEZ:

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q How would I know that you're a diabetic?

2 MS. CAMPBELL: Objection.

3 THE WITNESS: Who said that I was a diabetic?

4 THE COURT: I would allow that question.

5 BY MR. MARTINEZ:

6 Q What was that black --

7 THE COURT: Wait a minute, I sustain that
8 objection. You're asking her how you would know something.

9 MR. MARTINEZ: All right.

10 BY MR. MARTINEZ:

11 Q Are you a diabetic?

12 A No, I'm not.

13 Q You're not?

14 A No.

15 Q Okay. What was the -- what was that little
16 black -- little black thing --

17 A My glucose checker?

18 Q Yeah.

19 A I'm hypoglycemic.

20 Q Oh, okay. So how would I know that you had to take
21 that?

22 THE COURT: How would she know.

23 MS. CAMPBELL: Objection.

24 MR. MARTINEZ: Okay.

25 BY MR. MARTINEZ:

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 Q Why did -- why did -- why was that taken with you?

2 A It wasn't.

3 Q It wasn't?

4 A No.

5 Q Okay. So for the record, you were not raped at
6 knife point?

7 A No.

8 Q Did I threaten you to have sex with me?

9 A Yes.

10 Q What did I say?

11 A You told me if I did not listen to what you said
12 that you were going to kill me. That is a threat.

13 Q How come you didn't tell the police that?

14 MS. CAMPBELL: Objection.

15 THE COURT: I would overrule that.

16 THE WITNESS: I did.

17 BY MR. MARTINEZ:

18 Q Mr. Collin D. Bailey has a statement that you say
19 that?

20 A I don't know what his --

21 THE COURT: Say that -- say that question, again.

22 MR. MARTINEZ: I said Mr. Collin D. Bailey has a
23 statement that she's told him that.

24 THE COURT: You're asking her what Mr. Collin's
25 statement is?

Elexia Tucker - Cross-Examination In Camera by Mr. Martinez

1 MR. MARTINEZ: No, I'm letting her know that that's
2 not stated on record that she told him that.

3 MS. CAMPBELL: And --

4 THE COURT: Okay. Well, letting her know things is
5 not a question.

6 MR. MARTINEZ: All right. No further questions.

7 THE COURT: Redirect, Solicitor?

8 MS. CAMPBELL: No, sir.

9 THE COURT: Thank you. Thank you, Ms. Tucker. You
10 may step down.

11 All right. Your next witness, Solicitor?

12 MS. WALKER: Your Honor, the State calls Briona
13 Hurshman.

14 THE COURT: All right.

15 BRIONA HURSHMAN,

16 having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State your full
18 name for the record.

19 MS. CAMPBELL: Your Honor, may I approach before
20 she testifies?

21 THE COURT: Sure.

22 (There was a bench conference out of the hearing of
23 the jury and the Court Reporter.)

24 MS. WALKER: May it please the Court, Your Honor?

25 THE COURT: Yes, ma'am.

Briona Hurshman - Direct Examination In Camera by Ms. Walker

DIRECT EXAMINATION

BY MS. WALKER:

Q Ma'am, where do you currently live? Just what state.

A California.

Q Before you lived in California, where did you live?

A I lived in Columbia, South Carolina.

Q How long did you live here?

A Seven years.

Q 2014, where did you live?

A Forest Acres, Columbia.

Q Who lived at Forest Acres with you?

A It was myself, my husband, and our daughters.

Q How many daughters do you have?

A Two.

Q How old are they? How old are they now?

A Seven and fourteen.

Q And then they would have been twelve and five?

A I believe it was before L.H. 's birthday, so she was eleven and five.

Q I want to take your attention to that morning, why we're here. Tell me how that morning started out.

A My husband left for work and me and my youngest, D.H. , were on the third floor in the master bedroom -- I mean bathroom, and I was getting ready. L.H. was on the

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 second floor in her bedroom and she was getting ready for
2 school.

3 I told D.H. to go down to her sister's room to
4 make sure she was getting ready. She came right back into
5 the bathroom and she was followed in by the -- by the
6 intruder. And --

7 Q Where were you standing?

8 A I was sitting at my vanity, so when I -- I had to
9 turn around to look and see what she was doing and when I
10 turned around he entered the bathroom with the gun first.

11 Q Had you ever seen this person before?

12 A Never.

13 Q Did you give him permission to enter your home?

14 A No.

15 Q What happened next?

16 A He told me to shut up and -- and to get up. He
17 said it several times, shut up and get up. I was confused.
18 He told me to come into my bedroom and lay down face down
19 on the floor. At that point, he tied my hands and my feet
20 and then he told me to be quiet. He went down -- D.H.
21 just stood -- I'm sorry.

22 Q Take your time. You need a break?

23 A D.H. stood in the bathroom and he went down and
24 he brought L.H. back in and her hands were tied in front
25 of her with clothes or something. He put the girls in the

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 bathroom, and it was a French door so it just kind of shut
2 just a little bit and he came back over. And he told me to
3 shut up or he had -- he had -- or else he had a gun in one
4 hand and a hammer in the other and he told me he was going
5 to bash my brains in, did I want my children to see that.
6 He said to be quiet.

7 From that point, he reached up under my shirt and
8 then he took my pants off.

9 Q Okay. At this point, where were you in the
10 bedroom?

11 A I was on my bedroom floor, it was -- there when
12 he -- like this is the door and then there's a closet here
13 and I was on the floor here. My daughters were in the
14 bathroom over on this same wall here. So I was right on
15 the floor near the foot of my bed.

16 Q How far away from your girls were you at that
17 point?

18 A A matter of just a few feet from us.

19 Q Now, I think at this point -- so the intruder had a
20 hammer in one hand and a gun in the other?

21 A Yes.

22 Q And what were you wearing?

23 A I was wearing a pair of jeans and a sweater because
24 I was getting ready to go work.

25 Q Where did you work at that point?

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 A At a salon in Camden.

2 Q And did he put his hand under your shirt?

3 A Yes.

4 Q Please tell me what happened next.

5 A After I -- he told me what he was about to do, so I
6 said please don't, please don't. My kids don't need to --
7 please don't. My babies can hear you. I kept telling him
8 please don't. I kept telling him I wouldn't tell anybody,
9 I won't tell anybody.

10 After he took my pants off, he put his fingers
11 inside me and I kept begging him to stop, please stop. He
12 tried to get on top of me.

13 Q Let me ask you, not to be graphic, but when you say
14 he put his fingers inside of you, can you -- can you tell
15 us how -- where he entered your body?

16 A He put his fingers into my vagina.

17 Q Okay. As you're begging him to stop, what is he
18 doing?

19 A He's not stopping at all. He's then trying to get
20 behind me. He was frustrated. He flipped me over to my
21 back. He then rubbed his penis against me. It was at that
22 point -- he first then put his fingers inside of me again
23 and then he was rubbing himself on me and I was
24 disoriented. I kept saying, I'm not looking at you. I
25 won't tell anybody. Just leave us alone. And then he --

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 he was rubbing himself and my phone kept going off. It was
2 next to us and it was my husband. He kept calling and
3 calling and calling.

4 Then he grew frustrated because I was resisting him
5 and the phone was going off.

6 Q Do you know how many times your husband called your
7 cell phone?

8 A (Witness shook head.)

9 Q No?

10 A It was several times because I usually always
11 answer.

12 Q Did you ever answer your husband's phone calls?

13 A No.

14 Q At any point in time did you use the cell phone
15 during this encounter?

16 A Yes. Before -- before he took my pants off or
17 anything like that, he told me -- he had my phone. He said
18 you're going call into work. Tell them you're not coming
19 in today. He asked me which number it was. I told him it
20 was under my boss's name and I called her. He pushed the
21 button. I called her and I said I wasn't coming in and
22 that I was sick.

23 Q Had you ever called into work sick before?

24 A Never. I told her I was sick. She said what's
25 going on and I said, I'm not coming in today. And he hung

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 up the phone. From that point, she knew another person who
2 worked with my husband. She called him and said tell Heath
3 something's going on.

4 Q Don't -- let's not get into what she said. But at
5 some time, your husband began to call you back to back to
6 back?

7 A Yes.

8 Q I think you were saying that he grew frustrated?
9 Your rapist?

10 A Yes.

11 Q And tell me how you were resisting.

12 A I was trying to -- I was trying to hold my legs --
13 I was trying to keep them closed as much as possible.

14 Q Did you have -- did he still have the gun and
15 hammer at that point?

16 A I didn't know where they were. I knew he had had
17 them, I didn't know where they were. My hands were still
18 tied. He had had to untie my feet.

19 Q Did you ever get a good look at your rapist?

20 A Yes, I saw his face.

21 Q Were y'all close in proximity at that point?

22 A Yes.

23 Q Okay. The light in your bedroom during the rape,
24 can you describe that for me?

25 A I know we had just moved in, so there's not like

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 actually ceiling lights. There's a lamp off -- over here,
2 there's a lamp over here that was on.

3 Q What time of day was this?

4 A Early morning.

5 Q Was the sun up? If you remember.

6 A It was up about six o'clock.

7 Q Could you see well in your bedroom?

8 A I could see him.

9 Q How long was the intruder in your house?

10 A I can guesstimate, it was maybe 20 minutes. I
11 don't --

12 Q Okay. And as he's growing frustrated, what are you
13 doing?

14 A I'm asking him to stop. And the phone's going off,
15 I'm resisting, trying to keep my legs closed. And trying
16 to -- I kept telling him I wouldn't look and trying to move
17 my head to make him think I wasn't seeing him. And then
18 when he finally did stop, he was like looking around the
19 room. And he opened up the bathroom door and my girls were
20 standing there.

21 And then he looked in -- I had a jewelry box on my
22 night stand. He looked in the jewelry box. I saw him grab
23 something out of the jewelry box. He also grabbed my debit
24 card that was on the nightstand and then he asked me what
25 my PIN for my debit card was. And I lied to him and told

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 him a different number. And he pointed the gun at me and
2 he said say it again. I said the same number again.

3 And then he looked around. He told my girls, Come
4 on. And he walked down the stairs and the girls followed
5 him down the stairs.

6 Q Did he tell you what to do before he left? Did he
7 say anything to you?

8 A I don't know.

9 Q As he's marching your girls away from you, did you
10 know where he was going with them?

11 A No.

12 Q How long did you remain in your bedroom?

13 A As soon as I could get my hands undone, I grabbed
14 the underwear and I put them on. I was trying to run down
15 the stairs to try to get them and to see that he wasn't
16 somewhere. But I opened up the bathroom door on the second
17 floor and they were in the bathroom. I told them to stay
18 there as I ran down the stairs to see if he was still in my
19 house. But he had left my cell phone on the desk that I
20 had in the living room and --

21 Q What did you do once you realized he was no longer
22 in your home?

23 A I don't -- I think I called my husband and he said,
24 I'm on my way. Call the police, call the police. So
25 that's when I called 9-1-1.

Briona Hurshman - Direct Examination In Camera by Ms. Walker

- 1 Q Did your husband eventually make it home?
- 2 A He did.
- 3 Q And did you make contact with the law enforcement?
- 4 A Yes.
- 5 Q Did they respond to your call?
- 6 A Immediately, yeah.
- 7 Q Did you tell them what had happened to you?
- 8 A Yes.
- 9 Q Was there anything taken from your home?
- 10 A Yes, my husband's wedding ring and another ring
- 11 that was mine. And the debit card he took.
- 12 Q At some point while making contact with law
- 13 enforcement, were you able to identify the intruder?
- 14 A I was able to give him a description of what he was
- 15 wearing, an estimate on how tall he was, any description I
- 16 could give them so that they could go and catch him.
- 17 Q While he was assaulting you, did he ever remove his
- 18 coat?
- 19 A No.
- 20 Q Did you notice any identifying characteristics
- 21 about him?
- 22 A That he had glasses on; that his -- he had shaved,
- 23 buzzed his hair down. He had a giant neck tattoo.
- 24 Q Did you ever go on Facebook to look at pictures?
- 25 A Like later?

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 Q Later.

2 A Later I did.

3 Q Describe for the Court how that came about?

4 A It was maybe a day or so later that my husband gave
5 me a call and said that they had a name and I -- he gave me
6 the name and when I got the name, I did like a Google
7 search. I went to Facebook and when I was scrolling
8 through the Facebook pictures, I immediately saw there was
9 an account. I clicked on it and I called my husband and I
10 said that's him.

11 Q I want to show you State's Exhibits 5, 6, and 9.

12 MR. MARTINEZ: I object to those, Your Honor.

13 Under --

14 THE COURT: You may show them for identification
15 purposes only.

16 MS. WALKER: Thank you, Your Honor.

17 THE COURT: Evidence doesn't really come in at this
18 stage. You can offer for identification purposes. The
19 only evidence as far as physical items, it's not evidence
20 until it's offered for introduction in front of the jury,
21 at which point I will rule on any objections that may be
22 made.

23 MS. WALKER: May it please the Court?

24 THE COURT: Yes, ma'am.

25 BY MS. WALKER:

Briona Hurshman - Direct Examination In Camera by Ms. Walker

1 Q Are these the pictures that you saw on Facebook?

2 A Yes.

3 Q And did you recognize this person?

4 A Yes.

5 Q How did you recognize this person?

6 A From this picture.

7 Q You're pointing at State's Exhibit Number 9?

8 A Yes.

9 Q And who is that?

10 A The -- that's Nathan.

11 Q And where did you recognize him from?

12 A From being in my home.

13 Q Did the police tell you go on Facebook to make this
14 identification?

15 A No.

16 MS. WALKER: Beg the Court's indulgence, Your
17 Honor.

18 THE COURT: Yes, ma'am.

19 (There was a pause in the proceedings.)

20 BY MS. WALKER:

21 Q Ma'am, the person who came into your home carrying
22 a knife and a hammer, tied you and your daughters up, raped
23 you, and then stole your belongings, do you see him here in
24 the courtroom?

25 A Yes.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q Can you point him out for me?

2 A (Pointing.)

3 MS. WALKER: Thank you, Your Honor. I have no
4 other questions for this witness.

5 THE COURT: Mr. Martinez.

6 MR. MARTINEZ: Yes, sir.

7 **CROSS-EXAMINATION**

8 **BY MR. MARTINEZ:**

9 Q Ms. Hurshman, you know what a rape is?

10 A Yes.

11 Q What is a rape?

12 MS. WALKER: Objection, Your Honor.

13 THE COURT: It doesn't matter what her definition
14 of rape it. It only matters what the definition of a
15 sexual battery is under the laws of South Carolina -- let
16 me finish.

17 Under the laws of the State of South Carolina, I
18 believe the definition is under 16-3 perhaps 651. I will
19 tell the jury the definition of sexual battery. It's no
20 moment in this trial what her subjective opinion of what
21 the word rape means. As to common-law rape, there's no
22 longer -- it does exist because there's no statute of
23 limitations, but you're indicted for criminal sexual
24 conduct in the first degree.

25 You may ask your next question.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q When -- what time would you say this happened?

3 A I believe it was within the six o'clock hour of the
4 morning.

5 Q You don't recall what time it happened?

6 MS. WALKER: Objection, Your Honor, asked and
7 answered.

8 THE COURT: She testified on the record about six
9 a.m. and she testified just now about six o'clock in the
10 morning, so she's testified as to the time. You may ask
11 your next question.

12 BY MR. MARTINEZ:

13 Q Okay. And you seen this person -- how close did
14 you see him?

15 A At one point you were a foot away from me.

16 Q A foot away from you. And you didn't notice any
17 other tattoos?

18 A I was terrified. I didn't know --

19 Q You didn't know?

20 A I didn't know what was going on. I didn't take
21 inventory of your tattoos.

22 Q You just told the solicitors that you seen a huge
23 neck tattoo --

24 A Yes, I did see a huge neck tattoo. I didn't make
25 inventory of any other tattoos on you.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q You seen -- did you see the person's hands? You
2 didn't see --

3 A I didn't notice any other tattoos. Yes, I saw your
4 hand when you pointed a gun in my face. I didn't take any
5 notice of other tattoos besides the one on your neck.

6 Q Okay. And how long do you think it took you to get
7 untied?

8 A I don't know.

9 Q Ten minutes? Fifteen minutes?

10 A A couple of minutes. No more than -- no more than
11 maybe -- I don't know, it -- I don't know.

12 Q Okay. The person that did this to you, they
13 used -- they used force when they was touching you -- you
14 said they were touching you places, they was throwing you
15 on the ground --

16 A I never stated that anybody threw me on the ground.

17 Q You said they grabbed you and you pushed them and
18 that they grabbed you and threw you -- put you on the
19 ground --

20 A I didn't say --

21 MS. WALKER: Objection, Your Honor.

22 THE WITNESS: -- and pushed me to the ground.

23 THE COURT: I'm sorry, your objection?

24 MS. WALKER: Judge, he's misstating the facts, or
25 relying on facts that have not been testified to.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 THE COURT: Restate the question, Mr. Martinez.

2 MR. MARTINEZ: I beg the Court's indulgence.

3 THE COURT: Yes, sir.

4

5 BY MR. MARTINEZ:

6 Q Page 137, I didn't -- number 8, answer. I didn't
7 know what to do and that's when he pointed a gun at me,
8 kept telling me to shut up and get up. He just said, get
9 you know, get up. I was trying. I pushed him. I didn't
10 know what was happening. He told me shut up and go lie
11 down on the bedroom floor and he didn't listen -- and did
12 you listen to these things he was telling you to do. Yeah,
13 yes, I did. I laid down in floor and he told me to lay
14 face down.

15 Okay. Did -- was he -- he was touching you in
16 places, as you said, correct?

17 A Yes, you were.

18 Q Okay. Who was the officer that came and talked to
19 you?

20 A Detective Shumard.

21 Q He showed you a photo lineup, correct?

22 A Yes.

23 Q What did it look like?

24 A It was six photos.

25 THE COURT: Can you speak up a little bit for me,

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 please.

2 THE WITNESS: It was six photos.

3 THE COURT: Thank you.

4 BY MR. MARTINEZ:

5 Q Did I have glasses on?

6 A In the photo?

7 Q They had six photo lineup, all people with glasses
8 on it?

9 MR. MARTINEZ: I think it's State's Exhibit -- the
10 one with the -- excuse me, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. MARTINEZ:

13 Q What about this?

14 A I can't see from here.

15 MR. MARTINEZ: Would you take that --

16 MS. WALKER: What's this?

17 MR. MARTINEZ: That's Elexia Tucker's.

18 MS. WALKER: That's not -- that's Elexia Tucker's
19 photo lineup.

20 MR. MARTINEZ: It's the same photo lineup you guys
21 used though, correct?

22 MS. WALKER: I haven't shown her a photo lineup.

23 MR. MARTINEZ: Well, the police showed her a photo
24 lineup.

25 THE COURT: Well, listen, if you have a photo

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 lineup shown by the police and --

2 MR. MARTINEZ: A blank one? I don't have a blank
3 one. She never identified me, Your Honor.

4 THE COURT: I understand that. My question is, do
5 you have a copy of a photo lineup that was shown by Forest
6 Acres Police Detective Simmons? I believe you said that
7 was shown to Ms. Hurshman.

8 MR. MARTINEZ: That's the same exact one.

9 THE COURT: No, sir, it's not the same exact
10 because this one has been altered by the signature of
11 Ms. Tucker, writing Ms. Tucker, and dating it. It may be
12 the same photograph, but you've got to get it straight for
13 the record.

14 Would you hand that -- show that to the solicitor,
15 Sheriff.

16 (The officer was showing the photo to the
17 solicitor.)

18 THE COURT: All right. Do you want -- you're
19 telling the Court that this photographic lineup was shown
20 by Detective Simmons to Ms. Hurshman, correct?

21 MR. MARTINEZ: Detective Shumard.

22 THE COURT: Shumard, I apologize. I misunderstood
23 your pronunciation.

24 I apologize, Detective Shumard.

25 Is that -- what is your position on that,

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Solicitor?

2 MS. WALKER: Your Honor, Detective Shumard doesn't
3 remember showing -- if that's the one he showed or not --
4 or showed her or not.

5 THE COURT: Okay.

6 MS. WALKER: I don't understand where he's going
7 with this, but --

8 THE COURT: Well, I think -- I think he's got the
9 right to test her ability to identify him or not identify
10 him based on if that is a fact she was shown a photographic
11 lineup or lineups and was not able to identify Mr.
12 Martinez. I think that's relevant.

13 MS. WALKER: Yes, Your Honor. I understand and
14 agree with that. I just don't know from speaking with the
15 investigator if that's the photo lineup that he showed her.
16 If he would like to have her look at that photo lineup and
17 he wants to mark it for identification purposes and have
18 her look at it, I don't have an objection to that.

19 THE COURT: I'll allow him to do that, but let me
20 make sure I'm tracking. Are you -- am I to infer from that
21 response that there may be other photographic lineups that
22 are not similar to State's 1, State's 4, and State's 8?
23 I'm not tracking that at all; because every photographic
24 lineup that's been introduced in court has been this same
25 document with the same sequence, numbering sequence, same

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 individuals each and every time. There are other
2 photographic lineups?

3 MS. WALKER: Yes, Your Honor, there's one that they
4 also produced that has the defendant in it without glasses
5 on. May I approach and show it to you.

6 THE COURT: Yes, you can.

7 (The Court is looking at the document.)

8 THE COURT: Do you have more than one photographic
9 lineup, Mr. Martinez?

10 MR. MARTINEZ: Yes, sir, I've got that one as well.

11 THE COURT: You have this one as well.

12 MR. MARTINEZ: The one with and without glasses.

13 THE COURT: All right. Do you want to have our --
14 do you want to have it -- do you want to show either one or
15 both of these lineups to Ms. Hurshman.

16 MR. MARTINEZ: I'd like to show both of them to
17 her.

18 THE COURT: Sir?

19 MR. MARTINEZ: I'd like to show both of them to
20 her.

21 THE COURT: All right. I'm going to mark this
22 as -- this is the one -- this is what it is, I'm not going
23 to describe that until it's shown to the witness.

24 Mark this as Defense 1 -- that's right, Sheriff.

25 Mark this for Defense 1 for identification.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 That's what you want me to do, correct, Mr.

2 Martinez?

3 MR. MARTINEZ: May I see it.

4 (The officer was showing it to Mr. Martinez.)

5 (Defendant's Exhibit Number 1 was marked for
6 identification.)

7 THE COURT: And Defense two.

8 (Defendant's Exhibit Number 2 was marked for
9 identification.)

10 THE COURT: Sheriff, would you mind showing these
11 to Mr. Martinez so he'll know which one he's referring to?

12 (The officer was showing the documents to Mr.
13 Martinez.)

14 THE COURT: And also, Solicitor, if you want to
15 look at them.

16 MS. WALKER: Yes, Your Honor, the deputy showed
17 them to me.

18 THE COURT: All right.

19 MR. MARTINEZ: Thank you.

20 THE COURT: All right. And would you --

21 Sheriff, do you mind handing them up our witness?

22 (The documents were handed to the witness.)

23 THE COURT: All right. Mr. Martinez, you can ask
24 your next question.

25 BY MR. MARTINEZ:

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q Did Mr. Shumard show you either one of those
2 photographic lineups?

3 A I believe it was Exhibit 1 that he showed me.

4 THE COURT: Which one was it, Ms. Hurshman?

5 THE WITNESS: I'm sorry. The one here.

6 THE COURT: What number is on there at the bottom.

7 THE WITNESS: The exhibit number or his number?

8 THE COURT: No, the blue sticker.

9 THE WITNESS: One.

10 THE COURT: One. Thank you.

11 BY MR. MARTINEZ:

12 Q So he showed you the one of me with glasses,
13 correct?

14 A I believe so, yes.

15 Q You believe so? Or you know so?

16 A I answered you. I believe so.

17 Q Did he also show your daughter this same --

18 A I don't know what he showed my daughter.

19 Q You guys were there together at the same time --

20 A No, we were not.

21 Q Where was you at when he showed it to you.

22 A We were at a counseling facility for my children.

23 Q At the Dickerson Center?

24 A Yes.

25 Q And he showed you a photo lineup and then

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 separately he showed your daughter a photo lineup?

2 A Yes.

3 Q Okay. All right. When you -- when you went to the
4 hospital -- do you remember going to the hospital after
5 they gave you a rape kit?

6 A Yes.

7 Q Do you remember talking to people?

8 A To the nurse, yes.

9 Q Okay. I answered -- she asked you what the guy --
10 what the guy looked like. What did you --

11 A The nurse?

12 Q Yeah.

13 A I don't remember the nurse asking me what you
14 looked like. She asked me what you had done to me.

15 Q She didn't ask you what happened?

16 A I don't remember -- I just answered you. I don't
17 remember that she asked me what you looked like, she asked
18 me what you had done.

19 Q Do you remember telling her -- do you remember she
20 did a -- she took a fingernail -- she scraped your
21 fingernails, she did a bunch of -- she did an exam on you
22 too -- I don't know what they do, but they took like stuff
23 in for DNA or evidence -- they took stuff from you, right?

24 A Yes.

25 Q Clothing?

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 A Yes.

2 Q And I guess you said they tested your breast, they
3 took DNA from that, correct? To try to get DNA from that?

4 A Try to get DNA from my vagina where you scraped me,
5 yes.

6 Q And your breast as well?

7 A I don't remember.

8 Q Do you remember talking with them?

9 A Talking to the nurse? Yes.

10 Q Yes. Do you remember -- hold on?

11 MR. MARTINEZ: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (There was a pause in the proceedings.)

14 THE COURT: All right. Mr. Martinez, if you would
15 ask your next question.

16 BY MR. MARTINEZ:

17 Q All right. You stated that -- that the person
18 didn't put his -- he didn't put -- you didn't put that he
19 had a condom on; is that correct?

20 A I stated that I wasn't sure if you had a condom or
21 not, that when you were running your penis against me to
22 try to -- that I heard a noise and I wasn't sure if it was
23 the sound of a condom or not.

24 Q You remember writing a statement?

25 A Yes.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q Do you remember what that statement said?

2 A Verbatim? No.

3 Q Just -- just a round about way what it pertains to?

4 A The statement that I gave -- what's your question?

5 Q I'm asking if you remember what you stated.

6 THE COURT: You can --

7 MS. WALKER: Your Honor, if he wants to ask --

8 THE COURT: --- ask a specific question, what --

9 MR. MARTINEZ: I'm asking her questions and she
10 says she doesn't remember. She made the statement.

11 THE COURT: She said I don't remember verbatim, I
12 believe.

13 MR. MARTINEZ: She states in her statement, he
14 rubbed his penis on my vagina and then he had his hand on
15 my vagina, then went back to rubbing his penis, which had a
16 condom covering on my vagina.

17 THE COURT: Well, ask her if she said that or not,
18 Mr. Martinez.

19 BY MR. MARTINEZ:

20 Q Did you state that?

21 A Yes, I did.

22 Q So you seen --

23 A No, I just told you I didn't see it. I said I
24 heard something. I wasn't sure if there was a condom or
25 not.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q You stated it was already covered.

2 A I didn't see it.

3 Q So you didn't know that there was a condom on it?

4 MS. WALKER: Objection, Your Honor, asked and
5 answered.

6 THE WITNESS: I just answered that.

7 THE COURT: Yes, she has answered that, Mr.
8 Martinez. Ask your next question please..

9 BY MR. MARTINEZ:

10 Q Was the person wearing gloves?

11 A I don't remember gloves.

12 Q So there was no gloves.

13 THE COURT: She said -- her answer was I don't
14 remember gloves. That's not a yes, that's not a no.
15 That's her memory. I don't remember gloves.

16 MR. MARTINEZ: She stated -- do you remember if the
17 suspect had any gloves on his hands. No, I don't believe
18 he was wearing gloves.

19 BY MR. MARTINEZ:

20 Q Is that true?

21 A Yes, that's what I just told you.

22 Q Or you do not recall?

23 A I don't remember seeing gloves.

24 Q Okay. So you would have seen the person's hand
25 then, correct?

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 A You already asked me that.

2 MS. WALKER: Your Honor, she's already answered
3 this, maybe three times.

4 THE COURT: I'll allow her to answer that.

5 Yes, sir?

6 BY MR. MARTINEZ:

7 Q If someone's tying you up --

8 THE COURT: No, sir, you're changing the question.
9 I just allowed you to ask her and her to answer that
10 question.

11 BY MR. MARTINEZ:

12 Q All right. So I don't understand. You said that
13 you was on your -- was you on your stomach or was you on
14 your back when the person was rubbing himself on you?

15 A Both.

16 Q And you were able to see him when you was on your
17 back?

18 A Yes, I saw your face.

19 Q You saw my face?

20 A Yes.

21 Q And -- okay. Okay. There's another thing. You
22 said that -- you said in your thing that you seen jewelry
23 being taken; is that correct?

24 A I said I saw you open up my jewelry box and I
25 thought you took something out of my jewelry box.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q You just told a statement that you seen your
2 husband's ring taken?

3 MS. WALKER: Objection, Your Honor. That's
4 misstating her direct testimony.

5 THE COURT: Restate your question.

6 BY MR. MARTINEZ:

7 Q Did you not say that -- that your husband's ring --
8 you seen your husband's ring being taken?

9 A No. I stated that I saw you take something out of
10 the jewelry box.

11 Q So you didn't -- you didn't see what was taken?

12 A No. I saw you take something out of the jewelry
13 box.

14 Q So how do you know what was taken if you didn't see
15 it?

16 A Because when I told the police that arrived at my
17 house that you had touched the jewelry box, they took the
18 jewelry box and they asked me what had been taken and
19 initially I realized that my husband's ring was no longer
20 in the jewelry box.

21 Q Okay. You gave a description of that ring, right?

22 A Yes.

23 Q And what was the description of that ring?

24 A I told them that it was a large gold band.

25 Q You told them it was a family heirloom from my

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 husband's grandfather. It was the gold band. I don't
2 believe that it was golden on the inside, just the outside;
3 is that correct?

4 A Yes. I didn't know if it was solid gold or plated
5 gold.

6 Q Okay. And then the next day, I believe -- it was
7 actually -- when -- okay. So you went back -- you went to
8 the police and they showed you some pictures of the ring,
9 right?

10 A They asked us to come down to the police station
11 and see if we could identify some rings.

12 Q And they showed you a pictures of the rings, right?

13 A Yes.

14 Q They showed you two rings?

15 A Yes.

16 Q And then you altered your story to state now that
17 you was missing two rings when you never seen nothing
18 taken?

19 A No, I didn't say I -- I said I didn't see what you
20 took from the jewelry box. And then when they asked me to
21 take inventory, I said I know my husband's ring is gone.
22 When we went to the police station, they showed us two
23 rings and one was my husband's wedding ring. Another one
24 was another ring that I never wore because it was too small
25 for me, so I didn't know that it was gone.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q They -- they showed you photographs of a ring,
2 right?

3 MS. WALKER: Objection, Your Honor. He's already
4 asked that question and she's answered it.

5 THE COURT: You may ask your question.

6 BY MR. MARTINEZ:

7 Q How can somebody show you a picture -- when they
8 show you a picture of a ring, how can you still
9 inadequately describe the ring that they showed you?

10 A How did I inadequately describe the ring? Is it a
11 gold band?

12 Q It's a gold band, but it's not discolored and it's
13 not -- there's no --

14 A The inside of his ring is darker than the outside.
15 That's what I meant by discolored. We had it resized
16 several times.

17 Q Okay. You also testified there was some nicks in
18 it?

19 A There's a nick on the inside. That's why he wasn't
20 wearing it.

21 Q A nick on the inside --

22 A I don't know if it was a nick. It scratched his
23 hand, that's why he didn't wear it.

24 Q Where was the nick? Inside?

25 A I don't -- I don't have the ring. I don't know.

Briona Hurshman - Cross-Examination In Camera by Mr. Martinez

1 Q Well, you just testified that you did know.

2 A There was a nick on the ring. It cut his hand. I
3 don't know exactly where the nick is.

4 Q You said there was a nick because you had it sized?

5 A No, I didn't say because I had it sized. We've had
6 it resized, that's why it's a large band. There's a nick
7 on it, it scratched his hand. He didn't wear it.

8 MR. MARTINEZ: Your Honor --

9 THE COURT: Yes, sir.

10 MR. MARTINEZ: I beg the Court's indulgence,
11 please.

12 She -- I'll find that later but --

13 BY MR. MARTINEZ:

14 Q Okay. So you went to -- okay. So you didn't see
15 nothing taken from the box?

16 MS. WALKER: Objection, Your Honor, asked and
17 answered.

18 THE COURT: She has testified -- all right.

19 Court will be in recess 15 minutes.

20 Ms. Hurshman, you may step down. Do not discuss
21 your testimony. Thank you, thank you very much.

22 When do y'all think we'll be ready for the jury?
23 Mr. Martinez? Solicitor?

24 MS. CAMPBELL: Your Honor, we still have a Denno
25 hearing and we have one more ID procedure.

1 THE COURT: So if we take a 15 minute recess, it
2 will be 11:35. How long will the remainder of the hearings
3 take, Solicitor?

4 MS. CAMPBELL: It won't take us very long.

5 THE COURT: Well, I have a jury -- I'm going to
6 release the jury until 1:30.

7 MS. CAMPBELL: Yes, sir.

8 THE BAILIFF: Your Honor, may the witness step
9 down?

10 THE COURT: I've -- Ms. Hurshman, you may step
11 down, refresh yourself during this recess. Do not discuss
12 your testimony.

13 (A brief recess was observed.)

14 THE COURT: I'm going to bring the jury in and give
15 them instructions on the record before we continue with our
16 witness.

17 All right. Anything before I bring the jury in,
18 Solicitor?

19 MS. WALKER: No, Your Honor.

20 THE COURT: Mr. Martinez.

21 MR. MARTINEZ: Yes, I'd object to Ms. Hurshman's
22 emotional outburst in front of the jury.

23 THE COURT: There's been no emotional outburst in
24 front of the jury because the jury has not been in the
25 Court.

1 MR. MARTINEZ: But still, they're about to come in
2 and she's up there sobbing.

3 THE COURT: I don't notice that. I've noticed
4 Ms. Hurshman right there, right now, having conversation
5 with who seems to be a member of the solicitor's office
6 staff and two other individuals between those two. It
7 looked like Ms. Tucker and a young man. I see no emotions
8 whatsoever.

9 MR. MARTINEZ: All right.

10 Sheriff Barefoot, have you seen any emotions being
11 exhibited from Ms. Hurshman?

12 OFFICER BAREFOOT: No, sir.

13 THE COURT: The jury is not -- the jury has not
14 been in the courtroom and I do not think Ms. Hurshman has
15 been in the courtroom, was not in the courtroom at any time
16 during the jury selection process.

17 Is that correct, Solicitor? Is that correct?

18 MS. GODWIN: Yes, Your Honor, that's correct.

19 THE COURT: She was not.

20 But I would advise everyone in the gallery, if they
21 cannot control their emotions in the gallery that it would
22 be best not to be in the courtroom. But as I say, I see no
23 emotions being exhibited in this courtroom by Ms. Hurshman
24 in the presence of the jury.

25 All right.

1 (The jury entered the courtroom at 11:40 a.m.)

2 THE BAILIFF: Your Honor, the jury is present.

3 THE COURT: Thank you. Thank you, Mr. Bailiff.

4 I've often heard it said you should never start
5 making a statement with an apology, but it seems like more
6 often, I do start off by making apologies.

7 I try to estimate the time that it will take to
8 hear and rule on pretrial matters in any trial. A wise
9 judge once told me and others when I was sitting out there,
10 not up here, that good trial lawyers can't tell time. I
11 hope that statement holds true for trial judges. As I say,
12 your time is very valuable to me, but I have not yet
13 completed pretrial hearings. And I apologize to you for
14 that and rather than hold you captive, I'm going to release
15 you until 1:30. So don't get too comfortable in those
16 chairs right now.

17 Again, you will find at least one trait which is
18 shared by all circuit judges that I know in South Carolina.
19 It appears that none of us can tell time. Y'all's presence
20 is very important, or the most important to the trial of
21 this case as judges of the facts. And I apologize for
22 shuffling you back and forth.

23 We are going to press on in your absence and call
24 it your luncheon recess or a walk about, or what have you.
25 But please remember during this break, do not discuss this

1 case with others, including your fellow jurors, lunch
2 mates, family, friends, or anyone else. If anyone tries to
3 talk to you about the case, please report that to me. Do
4 not read, watch, listen to any news accounts of the case,
5 if any.

6 Do not use your computer, cellular phone, or any
7 other electronic devices with communication capabilities to
8 research or collect any information which is prohibited to
9 obtain or disclose it. Information which is prohibited
10 include, but is not limited to the following: Information
11 about a party, a witness, an attorney, or a court officer;
12 news accounts about the case, past or present, if any;
13 information collected through juror research on any topics
14 raised or testimony offered by any witness; or information
15 that a juror might think would be helpful in deciding the
16 case.

17 You will decide the case based on the evidence and
18 the testimony presented before you from this witness stand
19 from the witnesses, reasonable inferences to be drawn by
20 you and any physical items of evidence and the law as I
21 tell you the law is.

22 I would ask you if you would please be back
23 promptly at 1:30. Please be back promptly at 1:30. Thank
24 you. Thank you very much, I hope y'all have a pleasant
25 break and luncheon recess.

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 (The jury left the courtroom at 11:44 a.m.)

2 THE COURT: Any objections to anything I've told
3 the jury from the State, Solicitor?

4 MS. WALKER: No, sir, Your Honor.

5 THE COURT: From the defense, Mr. Martinez?

6 MR. MARTINEZ: What's that, Your Honor?

7 THE COURT: Any objection to anything I informed
8 the jury?

9 MR. MARTINEZ: No, sir.

10 THE COURT: Thank you, Mr. Martinez.

11 Would you have our witness come back around,
12 please, Solicitor.

13 MS. WALKER: Yes, sir.

14 (Ms. Hurshman returned to the witness stand.)

15 THE COURT: All right. Mr. Martinez, you may ask
16 your next question.

17 **CROSS-EXAMINATION IN CAMERA CONTINUED**

18 BY MR. MARTINEZ:

19 Q When you seen the suspect, did you see their
20 eyebrow?

21 A I saw your face.

22 Q Did you see an eyebrow tattoo?

23 A I didn't remember an eyebrow tattoo.

24 Q So when you testified last time that you did see an
25 eyebrow tattoo, you --

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 A I didn't remember what I told the police in my
2 statement. I didn't state that I saw an eyebrow tattoo.

3 Q So you didn't see an eyebrow tattoo?

4 A No. I was terrified. I tried to remember all
5 information when I gave my statement.

6 Q Okay. What was -- what was your description of the
7 person that you saw?

8 A He was tall. I believed that you were Hispanic.
9 At the time when I gave the police a description it said he
10 was tall. I said I thought you were maybe the same height
11 as me about 5'9" or so and that you had a large neck tattoo
12 and glasses. I don't remember -- I remember that you had a
13 beanie on when -- when -- and a hoodie.

14 Q How did I -- how did the person smell?

15 A I smelled cologne and cigarettes. I remember the
16 cologne.

17 Q You told the officers that he smelled clean, like
18 he -- like he had cologne on.

19 A Yeah, that's what I just said, you had cologne on.

20 Q You didn't say cigarettes in there?

21 A But you had cologne on.

22 Q But you didn't say cigarettes?

23 MS. WALKER: Objection, Your Honor.

24 BY MR. MARTINEZ:

25 Q You said it --

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 THE COURT: You can ask that question if it was a
2 prior inconsistent statement or at least not a
3 continuation.

4 THE WITNESS: No, I didn't say cigarettes.

5 THE COURT: All right. Ask your next question.

6 BY MR. MARTINEZ:

7 Q You testified that you, when -- how long was it --
8 how long that you found a name? Or my name?

9 A It wasn't the next day. I think it was maybe -- it
10 wasn't the next day. It was day two or three maybe.

11 Q And --

12 A Two or three days after the fact that I learned
13 your name. I think. It wasn't the very next day.

14 THE COURT: Are you asking about her testimony
15 today on the record or her testimony previously.

16 MR. MARTINEZ: She testified today and previously
17 it was a couple of days after the incident happened that
18 she found out my name and then she went and did her own
19 Facebook -- Facebook search or Google.

20 THE COURT: She did not testify to that today. She
21 testified it was a day or so later.

22 BY MR. MARTINEZ:

23 Q Okay. So it was a day or so later that you found
24 out my name? That you told the State, correct?

25 A It wasn't -- yeah -- it wasn't the next day, it

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 was, maybe the second day afterwards, or the third day
2 afterwards.

3 Q Okay. The second day was when you went and Shumard
4 showed you the photo lineup?

5 A Okay. The incident happened. It wasn't the next
6 day. It was the day after that or the day after that.

7 Q So it was within a week period, though, correct?

8 A Yes.

9 Q Okay. And when you recognized that -- as you
10 stated, that's him, that's the guy, who did you notify that
11 to?

12 A My husband.

13 Q Your husband? You didn't notify the police?

14 A No.

15 Q You had -- did you have an opportunity to notify
16 the police?

17 A Yes.

18 Q Did you -- did you come to a bond hearing for --
19 that wasn't your bond with this case?

20 A No.

21 Q Are you sure?

22 A I came to my bond hearing in Forest Acres. They
23 alerted me that there was another bond hearing in Richland
24 County and asked if I would be present and I said yes; and
25 I came for that bond hearing as well.

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Q And that was for Ms. Tucker's, correct?

2 A Yes, but it was linked to my case. That's why I
3 was there.

4 Q There's -- what is the link between her case and my
5 case?

6 A You.

7 Q That's not a link.

8 MS. WALKER: Objection, Your Honor. That's not a
9 question.

10 MR. MARTINEZ: I think that's an incorrect
11 statement.

12 THE COURT: She may -- you may ask that question,
13 she said that it was linked to her case.

14 MS. WALKER: She said -- he said what was the link
15 and she said you; and his response was that's not a link.

16 THE COURT: He said why did you go to the bond
17 hearing.

18 Play it back for me, Madam Court Reporter, that
19 part of that question, please.

20 THE COURT REPORTER: He said didn't you go to
21 another bond hearing and asked -- there was another bond
22 hearing and they asked her to be present and she was there.

23 It keeps moving, Your Honor, I'm sorry.

24 THE COURT: That's quite all right.

25 THE COURT REPORTER: I came to my bond hearing in

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Forest Acres. They alerted me there was another bond
2 hearing and asked if I would be present and I said yes.
3 And I came to that bond hearing as well.

4 And he asked, And that was not your case, it was
5 Ms. Tucker's. She says, Correct, yes, but it was linked to
6 my case that's why I was there. And he --

7 THE COURT: The question was by him, Why did you go
8 to the bond hearing.

9 MS. WALKER: That's not the question I'm objecting
10 to.

11 THE COURT: I understand that. But her answer was
12 because it was linked to my case. And then his question
13 was, What was the link. I understand the question you were
14 objecting to.

15 What was her response to why did you go to the bond
16 hearing?

17 THE COURT REPORTER: She said it was -- he said
18 what is the link between your case and she said you.

19 Is that what you want?

20 THE COURT: No, ma'am, I want why did you go to the
21 bond hearing of Ms. Tucker, and what that response was.

22 THE COURT REPORTER: She was asked if she would be
23 present because it was linked to her case and he asked how
24 it was linked.

25 THE COURT: All right. If you can, you may answer

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 that question.

2 I would overrule the objection.

3 If you can, you may answer the question, how was it
4 linked, if you can answer that question.

5 THE WITNESS: Because at the time his name was
6 attached to -- that's the name that they had given us
7 for -- that's -- because it was another bond hearing for
8 him and that's a name that they had given us as the
9 intruder in my case, so when -- any time they're releasing,
10 they would contact me -- not release. Any time he was
11 going to leave a facility he was in, they contacted me,
12 they asked, Would you -- do you -- could you come to this
13 bond hearing as well; and I said yes, because he was --
14 because it was the same person. They believed it was the
15 same person.

16 THE COURT: Thank you, Ms. Hurshman.

17 You may ask your next question, Mr. Martinez.

18 BY MR. MARTINEZ:

19 Q Who called you and asked you to come to that other
20 bond hearing? Do you remember?

21 A No.

22 Q Do you remember if it was the police?

23 A I don't remember.

24 Q Was it sexual trauma?

25 MS. WALKER: Objection, Your Honor. She doesn't

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 remember. Asked and answered.

2 THE COURT: You may ask your question, Mr.
3 Martinez. Was it who?

4 BY MR. MARTINEZ:

5 Q Was it sexual trauma, the business, Sexual Trauma
6 Services of the Midlands?

7 A I don't remember specifically who contacted me to
8 let me know. I received a call that was generated any time
9 that you were taken out of the -- any time you were being
10 transferred, they alerted -- they would call and alert me
11 and they notified me that you were going to have another
12 bond hearing. And they instructed me on what time, but I
13 don't know who had called.

14 Q You was escorted by Sexual Trauma Services of the
15 Midlands, is that -- with one of their people, correct?

16 A One of their counselors came with me, yes.

17 Q And at the time -- did you tell the sexual trauma
18 agent or therapist, That's him, that's the guy?

19 A During the bond hearing?

20 Q Yes.

21 A I don't know. Which bond hearing?

22 Q The bond hearing for Elexia Tucker. The one -- it
23 was in this courthouse.

24 A I don't believe I -- I don't know they said that.
25 I know that when we went to the bond hearing in Forest

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Acres, that they were with me at that time, yes.

2 Q Your husband was there too; correct?

3 A My husband went to another hearing in -- my husband
4 went to another hearing in Forest Acres that I wasn't able
5 to go to.

6 Q That was a month later; is that --

7 A I don't know. I don't know. I didn't write down
8 the dates. I don't know when the one that he went to was.

9 Q But it -- would you say it was after the point --
10 it was after the fact that you did your Google search and
11 you knew for certain that's the guy, that's him?

12 A It was after that that we went to bond hearings.

13 Q Okay. And you never told the police -- you never
14 told the sexual trauma unit, these people that was
15 escorting you that you were going to their therapy
16 classes -- you were going to therapy classes; is that
17 correct?

18 A Yes, I was in counseling.

19 Q And you had opportunities to disclose your
20 information, you know that's the guy, that's him.

21 A Are you asking me if I told them specifically, like
22 wrote down, This is the person?

23 Q Yes.

24 A No. I don't remember saying -- I never wrote
25 anything down to my counselor saying that's him.

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Q Did you ever notify them verbally, that's him. I
2 know that's him. I know that's the guy right there.

3 A I remember at the Forest Acres bond hearing when
4 you -- it was a video -- not a video. It was like a --
5 video conference call that you had with the judge. That
6 was when -- when I saw you again and I was with my
7 counselor.

8 Q That was the same -- that was the next -- I got
9 arrested at nighttime and that was the same -- that was the
10 same day. I got arrested at night. I got booked at like 3
11 o'clock that night?

12 A Same day as what?

13 Q That bond hearing was that same day on the 2nd,
14 April 2nd, 2014. So at that time, you still hadn't come to
15 the conclusion that that's him after you seen me?

16 A No, I already came to that conclusion when I saw
17 your face, when I saw your picture.

18 Q The bond hearing that you said that you saw me on
19 the video --

20 A Uh-huh...

21 Q -- was after -- it was after that you come to the
22 conclusion that's him, that's the guy?

23 A No. Are you asking if that was the -- if I came to
24 that conclusion -- if I looked on Facebook after your bond
25 hearing?

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Q Okay. The incident happened on the 27th of March,
2 okay? You said that you had a name within one or two days,
3 maybe three days. I was arrested the 2nd, at 1:30 at
4 night. So that's what, 28, 29, 30? How many days are
5 in -- so let's say five days later. Five days later you
6 went to another bond hearing where you seen me on video and
7 you've already made your discovery, that's him, that's the
8 guy on your Google search, on your Facebook where you
9 identified my neck -- you identified me. Did you go the
10 police and tell them your discovery?

11 A No, I told my husband when he gave me -- when he
12 was given a name, I went on, saw your picture, told my
13 husband, that's him. I don't know how the police had
14 obtained your name or anything like that. And when it
15 comes to the bond hearing, nobody questioned me, Hey, that
16 guy there, is that him? I was never asked that question.

17 Q You never went and volunteered that information?

18 THE COURT: She's asked and answered that she
19 notified her husband.

20 BY MR. MARTINEZ:

21 Q So you notified your husband. And your husband --
22 do you know what your husband did with that information?

23 A No.

24 Q Did the police come and talk to you after the
25 incident? Did they show you pictures?

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 A Again?

2 Q Yes..

3 A They came and showed us the pictures the day
4 afterwards when we were at the Dickerson Center.

5 Q They didn't --

6 A That's the only time they showed me a lineup.

7 Q They never came and showed you other photographs of
8 me or anyone else like tattoo on necks, tattoos anywhere?

9 A I don't remember that. I don't know.

10 Q So there was no further contact with you and the
11 police --

12 MS. WALKER: Objection, Your Honor, she just said
13 she doesn't know.

14 THE COURT: Different question, no further contact.
15 Where they were showing her the pictures.

16 Ask the question, Mr. Martinez.

17 BY MR. MARTINEZ:

18 Q So there was never, no police that came to you
19 after the fact, after they -- even after they arrested me
20 and came to you and showed you -- how you identified your
21 attacker, neck tattoo, the face, more different
22 photographic lineups; they didn't come to you and
23 communicate how to identify your attacker?

24 A Not that I recall.

25 Q How come you stopped going to your sexual therapy

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 classes?

2 MS. WALKER: Objection --

3 THE COURT: Not relevant.

4 MS. WALKER: -- to the relevance.

5 THE COURT: What's the relevancy for purposes of
6 Neal versus Biggers, State versus Moore, identification?
7 What is the purpose of how come you stopped going to your
8 therapy classes?

9 MR. MARTINEZ: Yeah, that's not relevant.

10 THE COURT: Sir?

11 MR. MARTINEZ: It has no relevancy in this.

12 THE COURT: It does not.

13 BY MR. MARTINEZ:

14 Q Do you remember giving a sketch?

15 A Yes.

16 Q And you seen the person good enough that you could
17 give a detailed description of the person?

18 A Yes.

19 Q Correct?

20 You said he was 5'9" to 5'11" and he had -- he was
21 medium build; is that correct? Not little, not heavy. You
22 also stated that if you saw this person again you would
23 recognize him?

24 THE COURT: Now, there's several questions in
25 there. What question do you want Ms. Hurshman to answer,

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 Mr. Martinez?

2 BY MR. MARTINEZ:

3 Q What was the description you gave of the overall
4 build to the person that attacked you?

5 A That you were tall. And I think at the time I said
6 that you were tall and that you weren't, like -- like heavy
7 set or anything. I'm not --

8 Q Do you feel like you're very tall?

9 THE COURT: Say that question again.

10 THE WITNESS: Yes, I do.

11 MR. MARTINEZ: You feel like yourself is tall?

12 I asked her if she feels like she's tall.

13 BY MR. MARTINEZ:

14 Q Okay. You said -- well, they asked you, If you saw
15 this person again, would you recognize him. You stated, I
16 feel like I would, yes. So after you --

17 THE COURT: Was that a question? Or are you just
18 reading, Mr. Martinez? The way --

19 MR. MARTINEZ: I'm just reading -- I'm asking
20 her --

21 THE COURT: Don't interrupt me. The way court goes
22 with cross-examination, you ask a question and allow the
23 witness to respond to the question. So ask your question.

24 BY MR. MARTINEZ:

25 Q Did you say that?

Briona Hurshman - Cross-Examination In Camera Continued by Mr. Martinez

1 A Say what?

2 Q That you feel like you would be able to recognize
3 the person if you seen them again?

4 A Yes.

5 Q So when you was -- you gave a detailed description,
6 you was able to give a -- give the head shape, the ears,
7 the hair, the eyes, the eyebrows, tattoo, the nose, cheeks,
8 clothing, mouth, a chin, glasses, skin color. You said his
9 skin color was darker than yours; you said the face was
10 kind of full. You gave a detailed description of your
11 attacker.

12 When you were shown a photo lineup of me, you was
13 not able to identify me; is that correct?

14 A Yes.

15 Q And for the record, you never notified no one about
16 your Facebook discovery, aside from your husband, that you
17 could identify me until the day of the last trial; is that
18 correct?

19 A Yes.

20 MR. MARTINEZ: Thank you. No further questions.

21 THE COURT: Redirect?

22 MS. WALKER: None, Your Honor.

23 THE COURT: Thank you. Thank you, Ms. Hurshman.

24 You may step down.

25 All right. Solicitor, you may call your next

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 witness.

2 MS. CAMPBELL: State calls Lieutenant Shumard.

3 THE COURT: All right. If you would come around
4 and be sworn.

5 MS. CAMPBELL: Your Honor, this is about the
6 statements; is it okay if we go into that?

7 THE COURT: Yes, ma'am.

8 RUSSELL SHUMARD,
9 having been duly sworn, testified as follows:

10 THE CLERK: Please have a seat. State your full
11 name for the record.

12 THE WITNESS: Russell Shumard, S-h-u-m-a-r-d.

13 **DIRECT EXAMINATION IN CAMERA**

14 BY MS. CAMPBELL:

15 Q Lieutenant Shumard, where are you employed?

16 A I'm employed with the Forest Acres Police
17 Department.

18 Q I want to turn your attention back to March and
19 April of 2014. Were you working as an investigator at that
20 time?

21 A I was.

22 Q And did you become involved in the investigation of
23 this case?

24 A I did.

25 Q Specifically over the course of the days

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 following -- what date did this actually occur?

2 A March 27, 2014.

3 Q And the next several days, did y'all develop a
4 suspect in this case?

5 A We did, yes, ma'am.

6 Q And what was his name?

7 A His name was Nathan Martinez.

8 Q And ultimately did you get warrants for that
9 suspect?

10 A Yes, ma'am.

11 Q And eventually was he arrested on those charges?

12 A Yes, ma'am.

13 Q What day was he arrested?

14 A April 2nd, 2014.

15 Q And were you there when the actual arrest was made?

16 A No, ma'am.

17 Q But was he transported to Forest Acres Police
18 Department at some point that day?

19 A Yes, ma'am, at 1:30, 2 o'clock in the morning.

20 Q And did you actually -- did they make contact with
21 you once he had been apprehended?

22 A Yes, they did.

23 Q Once he was apprehended, did you make arrangements
24 to meet up with him at the Forest Acres Police Department?

25 A Yes, ma'am.

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 Q And that was around what time?

2 A 1:30, 2 o'clock in the morning.

3 Q And what was the purpose of you meeting up with Mr.
4 Martinez that morning?

5 A To discuss the case to see if he wanted to give a
6 statement.

7 Q Prior to discussing anything with him -- well, let
8 me ask you this: Where did you make contact with him?
9 Where did this take place?

10 A Where did what, the interview?

11 Q Yes.

12 A The interview took place at 5205 Trenholm Road at
13 the Forest Acres headquarters.

14 Q Where in the headquarters did it take place?

15 A Upstairs we have an office and several rooms
16 available and we sat down with him in the conference room.

17 Q And who all was present that evening?

18 A Myself, Investigator Bailey with the Columbia
19 Police Department, and Investigator Morrison with Forest
20 Acres Police Department.

21 Q Prior to asking him any questions about the case,
22 did you get some background information?

23 A Yes, ma'am.

24 Q And as well, prior to talking to him about the
25 case, did you advise him of his rights?

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 A Yes, ma'am.

2 Q I'm going to show you what's been marked as State's
3 Exhibit Number 91 first and ask if you recognize that?

4 A Yes, ma'am.

5 Q And is that the actual advice of rights used in the
6 case?

7 A Yes, it is.

8 Q Can you tell the judge basically how you went
9 through advising him of his rights that night.

10 A Yes, ma'am, the form is pretty standard. It's got
11 the individual's name, the location, his address, his date
12 of birth, the time of day, the city, state, social security
13 number, telephone, if any, and case number it's referenced
14 to and it goes into the Miranda warnings or the Miranda
15 Rights which we read to the individual. And then at the
16 bottom of that, there's a waiver of rights where Mr.
17 Martinez signed.

18 Q Can you go through the rights exactly as you did
19 that night that you went through with Mr. Martinez?

20 A Yes. We read this form verbatim and beside each of
21 these statements, there's a line for a person to initial.

22 You have the right to remain silent. Anything you
23 say can and will be used against you in a court.

24 You have the right to have a lawyer and consult
25 with your lawyer before and while answering any questions.

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 And if you cannot afford a lawyer, one will be provided for
2 you before any questioning if you wish and at no cost to
3 you.

4 If you decide to answer questions now without a
5 lawyer present, you will still have the right to stop
6 answering at any time. You also have the right to stop
7 answering questions at any time until you consult with your
8 lawyer.

9 Q And those rights were read to him?

10 A Yes, ma'am.

11 Q And did he acknowledge those rights in any way on
12 that piece of paper?

13 A He did. There's a -- beside each statement, beside
14 each line, there's a place for the individuals to put their
15 initials and they're indicating by putting their initials
16 that they understand everything that we read to them.

17 Q And are those his initials next to each of those
18 rights?

19 A Yes, ma'am, I saw him initial them.

20 Q And you actually witnessed that?

21 A Yes, ma'am.

22 Q Once he had initialled that he understood what his
23 rights are, did you then proceed to the waiver of rights on
24 that form?

25 A I did. I asked him to read that bottom portion. I

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 can't remember if I read it or if he read it and then he
2 signed off that he -- that he was waiving his rights and
3 this was witnessed by Investigator Morrison. We had him to
4 print his name on the form as well.

5 Q He signed it and printed underneath it?

6 A Yes, ma'am.

7 Q And at the bottom of the form, there's some
8 additional information?

9 A It says two year college, 2004.

10 Q And what is that information and how did you get
11 it?

12 A That is Investigator Morrison's handwriting. I
13 don't know how we got that information.

14 Q You wouldn't have gotten it from him?

15 A Well, being that this is Investigator Morrison's
16 handwriting, perhaps Investigator Morrison got that
17 information from him.

18 Q And that was put on the form as well?

19 A Yes, ma'am.

20 Q And were you there when he actually signed off on
21 that form?

22 A Yes, ma'am.

23 Q And printed his name?

24 A Yes, ma'am.

25 MS. CAMPBELL: Your Honor, at this time, I would

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 approach with State's Exhibit 91.

2 THE COURT: Yes, ma'am.

3 BY MS. CAMPBELL:

4 Q When you were advising him of his rights, did the
5 defendant appear to be coherent?

6 A Yes, ma'am.

7 Q Did he appear to be under the influence of any
8 alcohol or drugs?

9 A No, ma'am.

10 Q At any time when you were talking to him and
11 advising him of his rights prior to the actual questions
12 about the case, did you threaten him in any way?

13 A I did not.

14 Q Did you promise him anything to make him talk?

15 A I did not.

16 Q Did you use any coercion to make him talk?

17 A No, I did not.

18 Q At any time were any creature comforts deprived?
19 He wasn't deprived of any creature comforts or anything?

20 A No.

21 Q In your opinion was he cooperating with you
22 voluntarily?

23 A Yes.

24 Q At any point did he tell you that he did not want
25 to talk to you?

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 A Never during the interview, no.

2 Q Did -- at any point did he ever ask for an
3 attorney?

4 A He did not.

5 Q And in fact, was he wanting to tell you his story?

6 A Yes.

7 Q Once you advised him of his rights, did you then
8 proceed to ask him certain questions in this case?

9 A Yes.

10 Q I want to show you what's been marked as State's
11 Exhibit Number 92, which is a four page document. I'd
12 first ask if you recognize that.

13 A Yes, ma'am.

14 Q And is that the statement that you took from Mr.
15 Martinez that night?

16 A Yes, ma'am.

17 Q And who all was present when that statement was
18 being taken?

19 A Myself, Investigator Morrison from my department,
20 and Investigator Bailey from the Columbia Police
21 Department.

22 Q And I notice that there is initial handwriting in a
23 question and answer form?

24 A Yes, ma'am.

25 Q And then next to it are some highlighted initials.

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 Whose initials are those?

2 A These are Nathan Martinez's initials.

3 Q Tell the judge how you went about -- or about how
4 those initials came about on there.

5 A Well, we wrote a series of questions on the form
6 and then asked him, Mr. Martinez, to answer. He answered
7 and then I put a little highlight beside his answer and
8 then handed and showed the form to him and asked him to
9 initial that he understands that that's the answer he gave
10 for that particular question.

11 Q And that's where he would initial it?

12 A Yes, that's when he initialled it and he would
13 also -- he elaborated in his own handwriting in some of
14 these answers.

15 Q And to give an illustration of that, is -- like on
16 the third question and answer, when you asked him what day
17 was this and he answered Thursday, did he initial that?

18 A The answer was Thursday. He initialled that part,
19 yes, ma'am.

20 Q And then there's a different handwriting?

21 A Correct.

22 Q Whose handwriting is that?

23 A Mr. Martinez's.

24 Q And what did he write?

25 A Because of news stories about it, and then his

Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 initials again.

2 Q Okay. And then finally at the end -- and he was
3 given the opportunity to add to or change anything?

4 A Yes, ma'am.

5 Q And then he would initial that he agreed with it?

6 A That's correct.

7 Q And then at the end your final question is what?

8 A My final question is, Is there anything you wish to
9 add.

10 Q And at that point did he write --

11 A And at that point --

12 Q -- one, two, three, four, five, six, seven, eight
13 lines about what he wished to add?

14 A Yes, ma'am. This is all his handwriting.

15 Q And then he initialled it?

16 A Yes, ma'am.

17 Q At any point when you were going through this
18 statement that was being reduced to writing, did he tell
19 you he wanted to stop talking or did he invoke any of his
20 rights?

21 A He never did.

22 Q And was he anxious to give you his version of the
23 story?

24 A He seemed anxious, yes.

25 Q And that's what's on here?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A Yes, ma'am.

2 Q And again, the questions were your questions?

3 A Yes, ma'am.

4 Q And the answers were his?

5 A Yes, ma'am.

6 Q And he'd elaborate as he did multiple times on this
7 form; is that correct?

8 A He did.

9 MS. CAMPBELL: Your Honor, at this time we hand up
10 State's Exhibit Number 92.

11 THE COURT: All right. Thank you.

12 MS. CAMPBELL: That's all I have of this witness.

13 THE COURT: All right. Thank you, Solicitor.

14 Mr. Martinez.

15 MR. MARTINEZ: Yes, sir.

16 **CROSS-EXAMINATION IN CAMERA**

17 **BY MR. MARTINEZ:**

18 Q Mr. Shumard?

19 A Yes, sir.

20 Q Okay. You said you received a call from Kevin
21 Isenhoward the night of the incident about 6 or 7 o'clock,
22 correct?

23 A Correct.

24 Q And he told you I know who your guy is?

25 A Correct.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q And from that point on, you didn't -- I was the
2 only suspect, correct?

3 A You were a prime suspect.

4 Q So there was other investigations into other
5 people?

6 A Not necessarily. Just when that information came
7 about, all the effort was put into -- into you.

8 Q With no evidence?

9 A Excuse me?

10 Q There was no physical evidence. I didn't fit the
11 description, aside of my tattoo that you -- even
12 Mr. Isenhoward states that he doesn't fit the size and the
13 build, but he -- he has a tattoo?

14 A The information that Mr. Isenhoward gave me was
15 that after the sketch composite was done and e-mailed, he
16 called me that evening when I was at home and said this guy
17 looks very similar to an individual that we have as a
18 suspect in a similar -- in a home invasion slash sexual
19 assault.

20 Q And that's why I became a suspect?

21 A Yes, sir.

22 Q Even though the victim still didn't identify me; is
23 that true?

24 A That's correct. She had not -- we had not shown
25 her any lineups at that point, but he called with that

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 information, gave me your name and date of birth.

2 Q The following day, you guys made a photo lineup; is
3 that correct?

4 A We reached out to SLED and they generated a lineup
5 for us.

6 Q And you talked to -- that same night Isenhoward
7 told you that Heidi Smith -- Heidi Jackson knows who I am;
8 is that correct?

9 A Correct.

10 Q What else did even Kevin Isenhoward tell you when
11 you guys talked on the phone?

12 A He said that he had heard from her that you were
13 crazy and that you did believe that the Ogden Police
14 Department had implanted a device in your head.

15 Q And then when you talked to Holly Wagner, what did
16 she say?

17 A She said about the same thing, in that, I believe
18 that she had said that you had been diagnosed with paranoid
19 schizophrenia.

20 Q And what -- what did Heidi -- you spoke to Heidi
21 Jackson as well, correct?

22 A Correct.

23 Q And what did she tell you?

24 A I believe Heidi Jackson is the investigator in the
25 other case and she said about the same things.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q Did she tell you that I cut into my own head?

2 A I believe she did.

3 Q Did she tell you that -- she told you as well that
4 I have mental health issues, that I wouldn't take my
5 medication at the time and stuff like that?

6 A I believe so.

7 Q Okay. And then you talked to Warren Cavanaugh; is
8 that right?

9 A Correct.

10 Q And you told him that you wanted me -- you wanted
11 for them to come get me; is that right?

12 A At that time we had warrants for your arrest. He
13 is part of the Fugitive Task Force to make apprehensions on
14 felons and I requested his assistance. He asked me for
15 some information, I gave it to him; and he said I will keep
16 you updated.

17 Q And let's see -- so did he tell you about a phone?

18 A Yes.

19 Q And he said that he was tracking my -- my mother's
20 phone; is that correct, with the pings?

21 A Correct. He said that he was -- he had found out
22 what your phone number was, that it was a government phone
23 and that they were in the process of pinging it to
24 ascertain your location.

25 Q You asked him to find out if they could find out

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 where I was prior to that -- prior to that week, if they
2 could find the pings to see where I'd been -- where that
3 phone had been, did you not?

4 A Correct.

5 Q Did they provide you with that?

6 A With?

7 Q The history of that phone?

8 A No, sir, they did not.

9 Q He -- he called you -- Warren Cavanaugh called you
10 prior to them -- he called you and told you like two hours
11 before he came and arrested me and told you that they
12 found -- they were tracking the phone and that they're
13 going to let you know?

14 A Correct.

15 Q However, two days prior to that, you told him that
16 it doesn't matter day or night for them to call you so you
17 could send a car to get me; is that correct?

18 A Correct, that is correct.

19 Q So does that seem voluntary to you?

20 A I don't understand your question. Does what seem
21 voluntary?

22 Q My consent to want to come and to talk to you.

23 A Well, they had -- they had warrants for your
24 arrest. Their job was to apprehend you. And I asked --

25 Q Not for me to go to the police station and talk to

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 you. You planned out with the police officers for them to
2 take me to your police station?

3 A Correct.

4 Q And you said day or night for them to call you,
5 that way you can send a car if you have to, to meet them so
6 your people could bring me to you?

7 A Correct.

8 Q Does that seem very voluntary?

9 A No, sir.

10 Q When he called you that night, two hours before,
11 how soon did you have that form -- the waiver form already
12 filled out?

13 A I don't know.

14 Q So you've already got the waiver form filled out
15 prior to me coming to your headquarters?

16 A I don't know.

17 Q You testified last time that you had already filled
18 it out before I came?

19 A Okay. If that's the case, then that's what I said,
20 yes, sir.

21 Q How voluntary is that?

22 A That's simply a method of saving time. Besides,
23 also, I point out that I did not fill out the top of the
24 form. That's Investigator Morrison's handwriting. I don't
25 know when he filled that out.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q How knowingly, intelligently, and voluntarily is me
2 signing my waiver when the form is already prefilled out
3 for me?

4 A Well, that's something we would normally do. If we
5 anticipate we're going to have an interview with somebody
6 and we have warrants -- we had warrants for you for a few
7 days, and it would be only common sense to go ahead and
8 fill out the form so as to save a few minutes and time.

9 Q So -- okay. So you already had it preconceived
10 that you was going to -- that you already was -- that I was
11 already going to volunteer to you consent?

12 A We were in preparation -- we were in preparation
13 for an interview.

14 Q How -- how prior to -- that you knew that you were
15 going obtain a waiver --

16 A Well, once we identify a potential suspect, we
17 always have it in our minds to potentially give an
18 interview or get an interview or get a statement from a
19 potential suspect. We always have that in our minds as
20 investigators to plan out and think about what we're going
21 to ask them; what is the -- you know -- and anticipate and
22 think about what we're going to ask you.

23 So yes, the form could have been filled out as soon
24 as we identified you. I don't know. But that's simply a
25 normal thing that we do if we know that so and so is a

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 potential suspect in a case and there's -- there will be a
2 potential to ask questions and to interview them, then yes,
3 we'll fill that form out and hang onto it for weeks if we
4 need to until we have a time to talk with that individual.
5 So it's just to save time when we actually have our
6 interview.

7 Q Okay. When Warren Cavanaugh called you and he said
8 that he had me arrested, did he state to you that I wanted
9 to -- was willing to speak with you?

10 A He did not state that, no.

11 Q He did not -- he did not state that Mr. Martinez
12 has agreed -- has voluntarily wanted to come to your police
13 station and talk with you about this incident?

14 A I didn't ask him that. So no, he didn't say that.
15 He just simply called me. He says, we've got your guy. I
16 said, okay. Bring him to headquarters for me. And that
17 was the extent of that conversation, I believe.

18 Q Okay. When -- how come you didn't do like a
19 narrative of the interview?

20 A Because we rely -- the statement that was given
21 stands for itself.

22 Q You did a narrative for the other suspects that you
23 interrogated.

24 A Yes, sir, I did.

25 Q So why would you not do that in my interrogation?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A Well, one of the investigators pointed out to me
2 that that might not be a good tactic, to let the statement
3 speak for itself. Yes, I did that for the other victims,
4 had done, I guess, a narrative in my notes as to what each
5 person said. So as to when I look at my investigative
6 notes, I can look at it and glance at what she said in her
7 statements as opposed to reading. Besides your statement
8 was four -- was only four pages and I think my victims was
9 all handwritten line for line, I think, the same -- it
10 wasn't very long.

11 Q They hand -- well -- when I got there, what was my
12 physical appearance?

13 A You looked to be drained. You appeared to be
14 tired. You indicated that you hadn't eaten in a couple of
15 days, hadn't had any sleep in a couple of days. We gave
16 you a bottle of water.

17 Q Did -- who was all present?

18 A Myself, Investigator Bailey, and Investigator
19 Morrison.

20 Q When I first got there, you're saying that I was
21 anxious and wanted to talk to you about it?

22 A Yes, sir, it appeared that way.

23 Q As in, I just wanted to sit down and talk about
24 whatever happened?

25 A Correct.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q Was there any -- was there ever any discussions
2 about my mental health issues?

3 A No, sir.

4 Q There was never no discussion about my mental
5 health issues?

6 A I don't believe so, not directly. I don't think
7 so.

8 Q Was you present this whole -- the whole
9 interrogation?

10 A Yes, sir.

11 Q And there was never no discussion about my mental
12 health issues?

13 A I don't believe there was.

14 Q So I never appeared to be suffering from any type
15 of mental health issues?

16 A I mean your appearance, I already testified as to
17 your appearance. I don't have the capability of looking at
18 someone and saying if they have a mental illness.

19 Q What about my language? Did I speak in logically?

20 A You said some things that, you know, that kind of
21 raised some question marks in reference to the -- some of
22 the things that you said in the statement, yeah.

23 Q So did I appear to be afraid and I was in fear?

24 A You seemed, although you were drained and
25 emotional -- and tired, you appeared to be calm.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q Was I crying?

2 A No, sir.

3 Q Are you sure?

4 A I don't think so.

5 Q Do you remember taking -- there was a picture
6 taken?

7 A Yes, sir, there was pictures taken.

8 Q Do you -- when I -- when I signed on the waiver,
9 when I signed -- when I initialled the waiver, did you guys
10 discuss with me the rights -- the rights that I was
11 waiving?

12 A Did we discuss with you the rights?

13 Q Yeah.

14 A Yes, sir.

15 Q Did you help me understand my rights?

16 A Yes, sir.

17 Q And throughout the process, you reminded me that I
18 have rights to exercise; is that correct?

19 A I believe so.

20 Q When -- when did you guys introduce me to Colin D.
21 Bailey?

22 A I believe we introduced him as soon as we started
23 the interview we introduced you to him, I think.

24 Q Did you introduce me before I signed my waiver
25 over?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A Don't know.

2 Q You don't know?

3 A No, sir.

4 Q So was there any offer of cigarettes?

5 A I believe there was.

6 Q When was this?

7 A I can't remember.

8 Q Was it before?

9 A I can't remember.

10 Q Why would I -- why was I offered cigarettes?

11 A Just as a method of -- I believe you had asked;

12 and, in fact, you had asked that you would want to smoke,

13 and we know that, you know we offer that to get you calm or

14 get you to calm down a little bit to give you -- to calm

15 you down. I mean, a cigarette does a lot of things for

16 people sometimes.

17 Q Did I tell you that I wanted -- that I wanted

18 medical attention?

19 A I don't believe you did, no, sir.

20 Q I never told you I wanted medical attention to

21 remove the microchips from inside my head?

22 A I don't know if you said that or not.

23 Q Any time, did it seem like my will was overborne?

24 A If it seemed like what?

25 Q Like my will was overborne?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A Can you elaborate a little bit on your will
2 overborne or --

3 Q Did it seem like I was suffering symptoms like I
4 couldn't -- my right to self-incrimination, I couldn't
5 decide what was going on at the time.

6 A You seemed anxious to tell us what happened and we
7 just continued forward with the interview. There were --
8 you never said you wanted to stop, so we just continued.
9 You never invoked your rights, so we continued.

10 Q So I never appeared to be suffering from any type
11 of symptoms of mental health?

12 THE COURT: That's been asked and answered. He
13 said that he can't look at a person and tell whether the
14 person has mental health issues or not.

15 MR. MARTINEZ: He can review my statement.

16 THE COURT: Ask your next question.

17 BY MR. MARTINEZ:

18 Q In my statement that I gave, what -- do you recall
19 my statement?

20 A Yes, sir.

21 Q Is the statement up --

22 MR. MARTINEZ: Can I show him my statement again,
23 Your Honor, please?

24 (The statement was given to the witness.)

25 THE COURT: All right. Ask your next question,

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 please.

2 BY MR. MARTINEZ:

3 Q Can you read the -- my last part up there where it
4 says, Do you have anything to add to this?

5 A It says, I want to resolve these issues and prove
6 that what I've complained about with the chips implanted
7 inside of me to mental health and Richland County
8 Investigator Heidi Jackson and Holly Wagner are the truth
9 and I am not responsible for my actions, but I am deemed
10 electronically wronged, harassed by the Utah police that
11 make me want to harm myself and others. That's the end.

12 Q How is that -- does that sound logically?

13 A It sure doesn't, no, sir.

14 Q So that -- so how would I get it resolved by me
15 speaking with you, how was I going to be able to show and
16 resolve what I've been saying is the truth?

17 A I don't know.

18 Q Will you read the other part that I was saying -- I
19 think it was the second page, where the -- it's like the --

20 A Which part, sir?

21 Q It's a lengthy thing -- it talks about microchips
22 being microplanted within -- the microchips.

23 A Are you talking about the lengthy part?

24 Q Yes.

25 A Okay. The question was -- let me make sure you're

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 asking the right thing because the question is why did you
2 do all this. Is that the answer -- is that point where --

3 Q Yes.

4 A The question on the form that I addressed to you,
5 sir, was why did you do all this and your answer -- and you
6 wrote this -- I have to -- I have been complaining about
7 illegally implanted microchips inside my head by the Utah
8 Police and they want to tell me to hurt myself and others.
9 I did not want to do this or hurt no one, but the voices
10 make me use -- make me use my mind and thoughts and
11 blackout and I can't recall or remember things that happen
12 to me because the chips inside of me.

13 And then your initials where you ended that. And
14 apparently later on, you may have interviewed --
15 elaborated. Once I realized what was going on I left.

16 Q Does that seem logical to you?

17 A It sure doesn't.

18 Q Does that seem I'm speaking coherently and I know
19 what I'm talking about?

20 A Well, I mean you were just as calm -- you were just
21 as calm as possible when you were giving us this
22 information.

23 Q Okay. Was you present during the photographs that
24 were taken?

25 A I believe I was.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Q And you told what was said, it was in a little room
2 and you knew what was being said and who said what?

3 A Investigator Warren -- yes. Most -- some of it.

4 Q Why was I showing you pictures of -- why was there
5 a picture taken of behind my ear?

6 A I believe you had pointed out something to -- to
7 Investigator Morrison who was taking the photographs and
8 you may have pointed that out to him and he took the
9 picture.

10 Q I didn't tell you that I was cutting on myself to
11 cut the microchip out?

12 A If you said that, I didn't hear it.

13 Q But --

14 A And again, I wasn't taking the photographs,
15 Investigator Morrison was. Maybe you said that to him, but
16 I don't recall you verbatim -- verbally saying that.

17 MR. MARTINEZ: I'd like to admit these into
18 evidence.

19 BY MR. MARTINEZ:

20 Q These are the pictures that you taken -- that you
21 took?

22 A I didn't take those pictures.

23 Q Morrison took them? It shows my appearance, it
24 also shows my neck. It shows my face. It shows that I
25 look afraid and that I was -- I was under distress and I

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 didn't want to be -- I didn't agree to be there. I did not
2 want to be there.

3 MR. MARTINEZ: I beg the Court's indulgence.

4 (There was a pause in the proceedings.)

5 (Some photographs were handed up to the Court.)

6 THE COURT: Have you seen these, Solicitor.

7 MS. CAMPBELL: I would assume I have, Your Honor.

8 THE COURT: Do you want to see them?

9 MS. CAMPBELL: No, sir.

10 BY MR. MARTINEZ:

11 Q So you testified I was -- I wasn't under stress?

12 THE COURT: Do you want me to rule on these, Mr.
13 Martinez?

14 MR. MARTINEZ: Oh, yes, I'm sorry. I'm sorry.

15 (The Court was looking at the photographs.)

16 THE COURT: All right. I'm -- the sheriff's
17 handing Defense Exhibit 3 through 16 to the witness.

18 All right. You may ask your next question.

19 BY MR. MARTINEZ:

20 Q Those are photographs that were taken after --
21 after the interrogation; is that correct?

22 A Correct.

23 Q And you look and tell me my demeanor in those
24 photographs?

25 A (Looking.) You look calm, yet exhausted look in

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 your face.

2 Q You see the marks where I'd been crying?

3 A Did I see what?

4 Q Did you see like the marks where I'd been crying?
5 My nose was all snuffed up?

6 A Well, I can't tell that. I mean...

7 I don't see any tears on your cheeks if that's what
8 you're asking.

9 Q You don't see the dry marks on the side of my eyes?

10 A Unfortunately, the investigator didn't take that
11 close of photos of your eyes, so I can't tell.

12 Q After -- so you was present the whole time,
13 correct?

14 A Yes, sir.

15 Q Colin D. Bailey was present the whole time,
16 correct.

17 A I believe he was, yes, sir.

18 Q Charles Morrison was present the whole time,
19 correct?

20 A I believe he was, yes, sir.

21 Q And you testified the whole time I was calm, I was
22 anxious and I wanted to get this over with, correct?

23 A Yes, sir.

24 Q And at no time was I suffering from mental illness
25 or mental --

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A I'm not a medical expert. I don't know if you were
2 suffering from mental illness or not. I'm not a doctor,
3 sir.

4 Q Okay. You was notified by multiple police and they
5 all told you that I suffer from a mental illness that is
6 directly related to the police and I live in fear for my
7 life?

8 A Yes, I testified to that, yes..

9 Q And they told you I lived in fear for my life and
10 misdirected the police on -- how do I say this.

11 My symptoms would be directly related to being in a
12 closed room with three officers in a police -- how do I
13 say -- the police was using authority to intimidate me
14 mentally; to -- let's just say, when I first got there, did
15 you or any of the officers notify me why I was there?

16 A Notify you of what?

17 Q Notify me as to why I was in your courthouse -- I
18 mean your police station?

19 A Well, that was one of the first questions on the
20 form, do you know why you're here.

21 Q And what did it say?

22 A You said yes.

23 Q Okay. But I'm talking about before the -- that's
24 before this statement took place. I just didn't go in
25 there until I made a statement?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A No, you sure didn't.

2 Q That's what I'm saying. There was cigarettes
3 promised to me --

4 THE COURT: Move on from that, Mr. Martinez. I can
5 hear testimony. I know about the cigarettes, bottle of
6 water, mental health issues, paranoid schizophrenia, the
7 chips, the police are conspiring -- I can hear testimony
8 and can reasonably remember it. If not, I'll have my court
9 reporter read it back to me, so move on from that.

10 BY MR. MARTINEZ:

11 Q Okay. So when I first got there, was I notified as
12 to the purpose I was arrested and brought to you?

13 A Yes.

14 Q So you notified me as to why I was there at your
15 courthouse -- at your jailhouse?

16 A Because we had warrants for you, yes.

17 Q Okay. Did you -- okay. Before you -- okay. You
18 had warrants for me. And did I tell you about -- did I
19 tell you that I was staying over in that area?

20 A In which area.

21 Q In Forest Acres?

22 A I don't remember.

23 Q You don't remember?

24 A No, sir.

25 Q You don't remember The Landings?

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 A Yeah, I know where The Landings is.

2 Q Do you remember I told you about The Landings?

3 A I'm not sure.

4 Q Well, is this your handwritten notes?

5 A Yeah, it looks like my handwriting from here, but I
6 can't tell what --

7 Q It says I -- that you knew about chips in the head,
8 knew story, saw story on the news, voices heard by me,
9 staying in area of The Landings?

10 A If that's what I wrote, then that's what I wrote.

11 MR. MARTINEZ: All right. No further questions,
12 Your Honor.

13 THE COURT: Redirect?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Thank you, thank you, Lieutenant, you
16 may step down.

17 THE WITNESS: Thank you.

18 THE COURT: You have other witnesses for purposes
19 of this hearing, Solicitor?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Do you have any evidence or testimony
22 or witnesses you wish to present for purposes of both the
23 Neal versus Biggers and the Jackson versus Denno hearing,
24 Mr. Martinez?

25 MR. MARTINEZ: Yes, I'd like to have Colin D.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Bailey testify to -- to both of them actually.

2 THE COURT: Okay.

3 MR. MARTINEZ: Charles Morrison and -- and I want
4 the psychiatric people to testify to my mental issues.

5 THE COURT: Have you subpoenaed the psychiatric
6 people?

7 MR. MARTINEZ: Yes, sir. It's Colbi Sutton and Dr.
8 Chavez from the jail.

9 THE COURT: Have you notified them to be here at
10 1:30?

11 MR. MARTINEZ: Not at 1:30. We told them to be
12 here --

13 MR. KATA: I can go get in touch with them.

14 THE COURT: Are they here now?

15 MR. KATA: They're not here now, Your Honor.

16 THE COURT: Okay. How long do you think this
17 testimony of Detective Bailey, Detective Morrison and Dr.
18 Colbi and Dr. Chavez will take?

19 MR. MARTINEZ: I'm not sure, Your Honor, to be
20 honest.

21 THE COURT: How long do you think that your direct
22 examination of these witnesses will take?

23 MR. MARTINEZ: Maybe two hours.

24 THE COURT: All right. All right. Court will be
25 in recess until 1:30.

Russell Shumard - Cross-Examination In Camera by Mr. Martinez

1 Anything else --

2 MR. MARTINEZ: I'm going to ask for Heidi Jackson
3 and Holly Wagner to testify too, sir.

4 THE COURT: You're representing yourself.

5 MR. MARTINEZ: Yes, sir.

6 THE COURT: And you've got standby counsel. If
7 you've got those witnesses subpoenaed -- I don't know -- I
8 don't know who they are. What are you asking me to do?

9 MR. MARTINEZ: I'm just notifying you that I need
10 them to testify as well.

11 THE COURT: What about them, Mr. Kata?

12 MR. KATA: Your Honor, I have some of those law
13 enforcement people. A lot of this is just being told to me
14 now.

15 THE COURT: Is there any reason you didn't share
16 that earlier?

17 MR. MARTINEZ: Your Honor, they were on the witness
18 list, as well, as I gave him the subpoenas to subpoena
19 them.

20 THE COURT: Has Heidi Jackson and Holly Wagner been
21 subpoenaed, Mr. Kata?

22 MR. KATA: Your Honor, I believe they have, but
23 I'll check my list. We put out a lot of subpoenas. I
24 didn't know that they would be called as witnesses at this
25 point.

1 THE COURT: All right. Solicitor, to the extent
2 these are law enforcement officers, have them here --

3 MS. CAMPBELL: Yes, sir, we'll start contacting
4 them right now.

5 THE COURT: All right. You call the psychiatrist,
6 psychologist, and mental health also.

7 MR. KATA: Yes, Your Honor.

8 THE COURT: All right. 1:30. Thank you, thank you
9 very much.

10 (A recess for lunch was observed.)

11 THE COURT: What witnesses do we have available
12 now?

13 MS. WALKER: Your Honor, Investigator Bailey is
14 here, Investigator Holly Wagner is here. Investigator
15 Jackson is on the way, she's en route and there are two
16 psychiatrists --

17 MR. KATA: Your Honor, Dr. Sutton is on her way and
18 she said she would probably be an hour and a half. That's
19 probably 15 minutes ago. She's in transit now. Dr.
20 Chavez, I contacted him by telephone, he informed me that
21 he was seeing patients and was booked the rest of the
22 afternoon. It would be first thing in the morning. I told
23 him I would relay that to the Court. He doesn't really
24 understand.

25 THE COURT: He's what?

1 MR. KATA: He doesn't know that he's under
2 subpoena, he just --

3 THE COURT: And what do you call first thing in the
4 morning? You and Mr. Martinez, for Dr. Chavez or a
5 combination of --

6 MR. KATA: Your Honor, I get up early. I can be
7 back here whenever.

8 THE COURT: All right.

9 MS. WALKER: Your Honor, Mr. Morrison is on his way
10 as well.

11 THE COURT: All right. Thank you.

12 (The jury entered the courtroom at 1:41 p.m.)

13 THE BAILIFF: Your Honor, the jury is present.

14 THE COURT: Thank you. Thank you, Mr. Bailiff.

15 Ladies and gentlemen, I'm sure before the week is
16 out, you'll know your route very well to and from the
17 Richland County Judicial Center, your route from the front
18 door of the judicial center to your jury room, and your
19 route very well from your jury room to the courtroom.

20 Now, as I often say, I can predict anything but the
21 future. Having said that, I still have not completed the
22 pretrial hearings. That is not the fault of the parties,
23 the defense nor the State. They've been out here, not on
24 time, but early, working very diligently to move the case
25 along and it's just a matter of me listening to testimony

1 outside your presence, which I am required do. And as I
2 told you earlier, it's very difficult to try to predict the
3 amount of time that would be necessary to hear that
4 testimony.

5 With that being said, I'm going to ask y'all -- I'm
6 going release you for the remainder of the afternoon and
7 the day and ask you to be back at 11 o'clock in the
8 morning, again with the instruction, do not discuss the
9 case with anyone. Do not read, watch, or listen to any
10 news accounts about the case. Do not do any independent
11 research or any research on the internet.

12 With that being said, you're now released for the
13 remainder of the day. Please be back promptly at 11
14 o'clock in the morning. I hope y'all have a pleasant
15 afternoon, pleasant evening. Thank you very much for your
16 patience.

17 (The jury left the courtroom at 1:44 p.m.)

18 THE COURT: All right. Mr. Martinez, you may call
19 your first witness.

20 MR. MARTINEZ: Your Honor, I'd like to restate,
21 yesterday, I asked for a motion to dismiss these charges.
22 We're not here on admissibility of evidence. This evidence
23 was obtained illegally through the -- my Fourth Amendment,
24 illegal search and seizure as I stated. Officers have
25 testified to that.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 There's -- because of another incident, I was
2 solely became the incident in these other cases and all the
3 information that was gathered from this was illegally
4 obtained due to the police saying -- one officer was saying
5 I was a suspected in another case and I was sought through
6 the whole way after there's no evidence to -- they can't --
7 they can't support the allegations with -- they can't prove
8 none of the elements beyond a reasonable doubt. Because
9 like I said they have obtained is illegally due to illegal
10 search and seizure.

11 THE COURT: All right. And I believe I said
12 yesterday I'd taken that motion under advisement. And you
13 need to listen to the Court and follow the instructions of
14 the Court. And I said Mr. Martinez, call your first
15 witness.

16 MR. MARTINEZ: Okay. I'd call Colin D. Bailey.

17 THE COURT: All right. Detective Bailey come
18 around and be sworn for us, please.

19 COLIN D. BAILEY,
20 having been duly sworn, testified as follows:

21 THE CLERK: Please have a seat. State your full
22 name for the record.

23 THE COURT: All right. Mr. Martinez.

24 **DIRECT EXAMINATION IN CAMERA**

25 BY MR. MARTINEZ:

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Q Mr. Bailey, you was -- in 2014 at the time of the
2 interview, was you issued audio recording devices?

3 A Yes.

4 Q At the time of the interrogation was you wearing
5 that on your tie?

6 A I don't -- I don't recall.

7 Q Do you recall your BOLO report that you issued
8 prior to the interrogation?

9 A I don't recall offhand. I think I have a copy of
10 it.

11 Q It states --

12 MR. MARTINEZ: I beg the Court's indulgence.

13 (There was a pause in the proceedings.)

14 BY MR. MARTINEZ:

15 Q It states -- you put a BOLO report out and it says
16 the suspect Nathan Martinez used a knife and power cords --
17 yeah, and power cords to tie the victim. The incident is
18 similar to the Forest Acres and Martinez is wanted there as
19 well. Use caution as Martinez has schizophrenia, and
20 possibly other mental disorders; is that correct?

21 A It is correct, the BOLO says that.

22 Q So you was aware that I have mental health
23 conditions?

24 A I was aware that there was a possibility, sir, that
25 you did suffer from mental health issues.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Q And you said to use caution. So knowing that you
2 were issued a recording device and it says that it was up
3 to your discretion, correct? To be able to use these audio
4 recording devices in your official duties, including
5 interrogations; is that correct?

6 A Yes.

7 Q So in your discretion, dealing in that type of
8 situation where you specifically state to use caution,
9 would you rather not -- would you rather prefer to use your
10 audio device to protect yourself and your case as well as
11 me and my rights?

12 A As you stated earlier, sir, it's our discretion.

13 Q So you don't that's abuse of discretion when you
14 stated to use caution?

15 A (No verbal response.)

16 Q Okay. When you was -- you was present during the
17 interrogation, correct?

18 A What interrogation?

19 Q The interrogation of me, yourself, and the Forest
20 Acres police?

21 A I was.

22 Q And when I signed this waiver, when exactly did
23 they offer me cigarettes?

24 A I do not know. I don't recall anybody offering
25 you -- ask the question again.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Q Okay. I was allowed to smoke cigarettes; is that
2 correct?

3 A That I do not know. I think you were. I believe
4 you were smoking as I was leaving at the very end of
5 everything.

6 Q Okay. So you don't remember -- you don't remember
7 it agreed upon for me to smoke cigarettes?

8 A Correct. I do recall there was a discussion
9 because you had indicated that you do smoke cigarettes. I
10 think I went so far as to ask you what kind of cigarettes
11 you smoke.

12 Q And they was provided for me; o, is that true?

13 A No, sir, I don't know.

14 Q You stated that in your report that they were
15 provided for me, Newport Red 100's you quoted?

16 A I don't know what was provided for you, I just know
17 that you were either getting ready to smoke or was smoking
18 as I was leaving.

19 Q Okay. So you -- you were present during the
20 waiver, correct? When they read all these rights to me and
21 when they was talking to me, you was present during the
22 whole conversation; is that correct?

23 A Correct.

24 Q And when I signed this waiver, did they mention
25 anything about you and the CPD case?

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 A I don't recall that they mentioned anything about
2 the CPD case until the end of Forest Acres discussion was.

3 Q So why are you using the Forest Acres waiver of
4 rights in your case?

5 A You had waived your rights. And that had been read
6 to you and had your signature.

7 Q Did you read me my rights?

8 A I did not read you your rights.

9 Q You did not read me my rights. And you are from a
10 different agency for a totally separate, unrelated case, is
11 that correct?

12 A That's not correct.

13 Q That's not correct. What's not correct about that?

14 A I would say that the two cases are similar enough
15 to be related.

16 Q In which ways?

17 A Which way what?

18 Q How are they related?

19 A Both cases were burglaries involving sexual
20 assaults of females.

21 Q Different victims, different times, no relation,
22 different agencies. It's not the same thing. If it was
23 the same we could have two trials, we never -- it could be
24 in the same trial.

25 THE COURT: And how do you know that?

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 MR. MARTINEZ: Because it's --

2 THE COURT: Aren't you familiar with the Town of
3 Greenville versus Green, that you would have to sever those
4 trials?

5 MR. MARTINEZ: Well, as you said yourself, Your
6 Honor, when I filed a motion to sever, you said that these
7 are not the same cases.

8 THE COURT: Your motion to sever was only as to the
9 indictments as to Ms. Hurshman. That was your motion to
10 sever, not as to indictments as to Mr. Hurshman and
11 separate indictments as to Ms. Tucker.

12 MR. MARTINEZ: I asked that you sever three
13 separate cases.

14 THE COURT: Ask your next question.

15 BY MR. MARTINEZ:

16 Q Okay. So you stated that I agreed to talk to you;
17 is that correct? Did I agree to talk to you?

18 A You did.

19 Q And did I agree to write a statement?

20 A You did.

21 MR. MARTINEZ: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (There was a pause in the proceedings.)

24 BY MR. MARTINEZ:

25 Q All right. The Forest Acres PD had a particular

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 hearing with Mr. Martinez, I asked him if I could ask him
2 about another incident, the one with a girl in a car and
3 Martinez agreed. Martinez referred that he did not know or
4 does not remember why he burglarized a home of a guy named
5 Tucker. But states me found himself in the neighborhood
6 and decided to enter the residence through an unlocked
7 door, unlocked back door and look for something to steal.

8 He reports the situation he found himself in is the
9 same as in Forest Acres. Martinez found himself upstairs,
10 was in the dwelling where he encountered a teenage girl who
11 he believed was Tucker's daughter. He told said daughter
12 that he was there to rob her father. And she told him she
13 would, instead give him a ride. Martinez reports that the
14 daughter added don't hurt my dad. Martinez insisted that
15 although that he was brandishing a knife that she went
16 willingly and that the unknown male sleeping downstairs
17 woke up and observed the couple leaving the home and did
18 not say anything.

19 Martinez reports that he walked out the front door
20 after grabbing the car keys from the counter.

21 THE COURT: Let me stop you there, Mr. Martinez.
22 Is there a question coming.

23 MR. MARTINEZ: Yeah, because he just stated that I
24 wanted to give a statement. When I told him I -- it says
25 right here. I asked Martinez about a statement and he said

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 that he had already written one for Forest Acres. He
2 hesitated and instead I asked questions using a statement
3 form, to which Martinez wrote his answers. After two
4 pages, Martinez was becoming increasingly agitated and
5 ended my interview.

6 THE COURT: So what's your question, please?

7 MR. MARTINEZ: He said that after I --

8 THE COURT: What is your question to the witness,
9 not to me. Ask the witness a question.

10 BY MR. MARTINEZ:

11 Q Okay. So you're saying I wanted to write a
12 statement?

13 A Can you ask that again, sir?

14 Q Okay. So how come my statement that you wrote for
15 me does not match up with what you stated in your -- in
16 your supplemental report or your incident report?

17 A I don't follow.

18 Q What you said in your narrative of what happened
19 doesn't -- doesn't match up with the statement that was
20 written for me.

21 MR. MARTINEZ: I beg the Court's indulgence so I
22 can get the statement so I can show him.

23 (There was a pause in the proceedings.)

24 MR. MARTINEZ: Your Honor, could I have the last
25 number on the last item that I admitted, so I can --

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 THE COURT: I think it was 14. Is that correct?

2 THE COURT REPORTER: 16.

3 THE COURT: All right. So this would be 17.

4 (Defendant's Exhibit Number 17 was marked for
5 identification.)

6 MR. MARTINEZ: I'd like to -- this is the statement
7 that Colin D. Bailey wrote and I wrote my part into it.
8 I'd like to admit it into evidence.

9 THE COURT: All right. Solicitor, any objections?

10 MS. CAMPBELL: For purposes of this hearing, none,
11 Your Honor.

12 THE COURT: State's -- is that a 7? 17.

13 MR. MARTINEZ: Should be 17 and 18?

14 THE COURT: Review that, Mr. Martinez and see if
15 that's 17.

16 MR. MARTINEZ: That is 17 and the other is 18.

17 THE COURT: Well, it's one exhibit. So it should
18 all be 17, correct?

19 THE COURT REPORTER: Yes, sir.

20 THE COURT: So it should be 17 for identification
21 purposes only.

22 All right. You may ask your next question.

23 BY MR. MARTINEZ:

24 Q All right. Anywhere in my statement do I admit or
25 state that I raped Elexia Tucker?

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 A Say that again, sir.

2 Q Anywhere in this statement that you took from me
3 and I stated my answers in, does it state that I raped
4 Elexia Tucker?

5 A I would say it does, yes, sir.

6 Q Where at?

7 A I asked you if you had sex with Elexia and you said
8 that you had.

9 Q I said yes, we talked and she said it was okay and
10 was willing to. Does that sound about right?

11 A Based on the totality of the other things he said,
12 no. I believe one can come to that conclusion, sir.

13 Q That sounds consensual, does it not? She wanted
14 to.

15 A Based on the totality, I don't think it was
16 consensual, sir.

17 Q Okay. Does it say that I entered through a back
18 door, an unlocked back door?

19 A Where do you see that?

20 Q You stated that in your report.

21 A Are you talking about the statement or the report?

22 Q I'm talking about your investigative notes.

23 A Okay.

24 Q As I said, your investigative notes and what you're
25 stating in your affidavit to get a search warrant, it

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 doesn't match up with what was stated in the statement that
2 you wrote for me and that I wrote behind you.

3 THE COURT: Solicitor, do you have a copy of that
4 statement that I can refer to? Will you hand me a copy of
5 Defendant's 17?

6 (The solicitor handed the document to the Court.)

7 THE COURT: You may ask your next question, Mr.
8 Martinez.

9 BY MR. MARTINEZ:

10 Q At the end of this statement, it says, Is any part
11 of Elexia's statement untrue. It says yes, I don't
12 remember or know about tying her up or that I forced her to
13 leave with me or that I forced her to have sex with me. I
14 don't remember this. You remember that?

15 A It's right there in the statement.

16 Q Okay. So where in, right here, does it say that I
17 forced Ms. Tucker to have sex with me at knife point?

18 A I think I already answered that, sir. It's the
19 totality of the entire statement.

20 Q Did Ms. Tucker tell you that she was forced at
21 knife point to have sex?

22 A She indicated that she was threatened with a knife
23 and was ultimately forced to have sex with you, yes, sir.

24 Q Okay. You went to her house, correct?

25 A Yes.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Q And you seen -- well, you talked to her about this
2 alleged incident, right?

3 A I did.

4 Q Okay. And what did she say about the person who
5 did it? Supposedly kidnapped her? What did she tell you?

6 MS. CAMPBELL: Objection, Your Honor, hearsay.

7 THE COURT: If you phrase the question
8 appropriately you may ask it, Mr. Martinez. But it would
9 have to be consistent with Rule 613 of the South Carolina
10 Rules of Evidence.

11 BY MR. MARTINEZ:

12 Q Ms. Tucker told you that at first he came into the
13 door, the back door, took the car, forced her to have sex
14 with him --

15 MS. CAMPBELL: Objection, Your Honor, to leading.
16 We would ask for --

17 MR. MARTINEZ: Your Honor, there was evidence that
18 was tested by CPD that Mr. Colin D. Bailey can testify that
19 there was no evidence to support what they're -- what the
20 allegations are.

21 THE COURT: Her objection was leading. You called
22 this witness. So you cannot ask leading questions under
23 Rule 611 of the South Carolina Rules of Evidence. Now
24 you're to be held to the same standard as an attorney and
25 an officer of the Court; so I would sustain that objection.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Did -- in your investigation of the evidence, was
3 there any results linking me to the house whatsoever?

4 MS. CAMPBELL: Objection as to relevance.

5 THE COURT: What is the relevancy of that question
6 as far as a --

7 MR. MARTINEZ: The relevancy --

8 THE COURT: -- Jackson versus Denno hearing on the
9 voluntariness of the statement that you gave.

10 MR. MARTINEZ: Okay.

11 BY MR. MARTINEZ:

12 Q At any time during the interrogation was you not
13 present?

14 A I don't think so. I believe I was there the entire
15 time.

16 Q And you was sitting to my left, correct?

17 A I was.

18 Q And you said that I had a visible scar behind the
19 back of my ear; is that correct?

20 A How do I -- in what way did I say that? I
21 indicated -- I possibly indicated somewhere that he had
22 injury to -- in and around your ear.

23 Q You stated -- all right. Excuse me.

24 Okay. You said Martinez had a visible injury near
25 his ear on his head where he said he tried to cut out the

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 device but was unsuccessful.

2 A What page is that? The pages -- the numbers are at
3 the bottom.

4 Q Number 3. Right there in the middle. The
5 paragraph starts with although --

6 A Okay. Very good, I see it.

7 Q So now do you recall -- you recall stating that?

8 A It's here, yes, sir.

9 Q Okay. Also, at the time, did I appear to be
10 suffering from any mental health issues?

11 A At the time of the interview?

12 Q Yes, sir.

13 MS. CAMPBELL: Objection, Your Honor, I don't know
14 that he's qualified to make an assertion as to mental
15 health issues.

16 THE COURT: Could you rephrase your question, Mr.
17 Martinez, please.

18 BY MR. MARTINEZ:

19 Q Did -- was I speaking logically when you got to
20 question me? Was I speaking logically? Was it like a --
21 like the conversation we're having now? Was the
22 conversation -- we were speaking back and forth?

23 A Yes, sir.

24 Q There was no like -- I wasn't suffering from no
25 symptoms from a -- was my will overborne?

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 A I have no idea what that means.

2 Q Well, it's a matter. --

3 THE COURT: What was your answer?

4 THE WITNESS: I have no idea what that means. He
5 said, will overborne.

6 Will overborne?

7 BY MR. MARTINEZ:

8 Q Yeah. Was --

9 A Forgive me, I don't know what that is.

10 Q Was it too much for me at the time with the
11 interrogation?

12 A It was not.

13 Q It didn't appear that I was under distress, I
14 didn't know what was going on?

15 A Correct. You didn't appear to be under a great
16 deal of stress and you did appear as if you knew what was
17 going on.

18 Q Okay. I'd like to quote you now, although all
19 three investigators tried to keep Martinez on topic,
20 Martinez spent most of the time talking about his problems,
21 including where he felt the police in Utah had implanted a
22 tracking communication device in his head near his ear; and
23 the police were telling him to do things, commit crimes.
24 Martinez had a visible injury near his ear on his head he
25 said he tried to cut out the device but was unsuccessful.

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Martinez told me he did not have mental problems and when
2 he heard voices, they were being broadcast on said device.

3 Martinez reports he had sought professional help
4 and had been at Providence Hospital in September seeking
5 mental health solutions and was told he had paranoid
6 schizophrenia. Martinez also spoke about his family saying
7 his brother was Manuel Martinez and his girlfriend was
8 Sequesha (phonetic), a/k/a Blood. He spoke about his
9 brother's sons, his nephews, and said he had thoughts of
10 smashing their heads.

11 Does that sound like someone who's speaking
12 logically?

13 A What you were saying -- some of that stuff you were
14 saying sounded like it was -- you were trying to throw us
15 off or a lie or perhaps you -- there was some issue, but
16 sir, you were making perfectly great sense when we spoke
17 about the incident in Forest Acres, the incident in
18 Columbia, as well as generally your history. As you just
19 quoted, you spoke about your brother, his girlfriend, his
20 children, so everything was spoke of --

21 Q Smashing people's heads in is logical?

22 A Well, your question was, did it appear that he was
23 speaking logically.

24 Q Why would it take all three investigators to keep
25 me on topic?

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 A Sir, I don't know, I can't answer that.

2 Q You said that.

3 A Correct.

4 Q So if someone is speaking logically and wants to
5 voluntarily give a statement shouldn't need three officers
6 to keep someone on topic because they want to talk about
7 their problems. They're not talking about problems,
8 they're talking about -- what you guys are saying that I
9 voluntarily want to talk about, but through out your
10 statements, is it not correct that I am talking about my
11 problems, being microchipped, have a fear of the police?
12 Is that not correct?

13 A We were able to talk about the case in Forest Acres
14 and in Columbia.

15 Q Okay. So I'm going to ask it again then. If we
16 was able to talk about the case, how come your statements,
17 what you said happened, your narrative of what happened did
18 not match up with what the statement says?

19 MS. CAMPBELL: Objection, Your Honor, I believe
20 that's been asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: I don't -- I don't understand.
23 You're asking why my written notes don't lineup with your
24 written statement?

25 BY MR. MARTINEZ:

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 Q Yes, sir.

2 A I can't answer that, sir. I think -- I would say
3 that is a misleading question --

4 THE COURT: No that's not a misleading question.
5 Answer the question. The man's asking you a question.

6 Why don't your notes match up with the statement he
7 gave to you. You were there. Answer the question. It's
8 simple.

9 THE WITNESS: I would estimate that they did match
10 up. I would say that they did.

11 THE COURT: Show him the documents and ask him
12 what -- show him what areas you're referring to that don't
13 match up, Mr. Martinez. Y'all quit sparring. You ask the
14 question.

15 You answer the question.

16 Didn't you graduate from the South Carolina
17 criminal justice academy?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: When?

20 THE WITNESS: In 2005.

21 THE COURT: All right. Well that's been 12 -- 11
22 years ago. You ought to be able to answer Mr. Martinez's
23 question.

24 BY MR. MARTINEZ:

25 Q Okay. A part -- your statement, it says why did

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 you go Mr. Tucker's house. And I said, the voices in my
2 head told me to go rob him.

3 THE COURT: All right. So what you're asking the
4 officer now to compare it to, Mr. Martinez.

5 MR. MARTINEZ: Comparing it to the entry.

6 THE COURT: Comparing to what.

7 MR. MARTINEZ: He stated that I stated that I
8 entered through an unlocked back door.

9 THE COURT: So you're asking the officer why is
10 that different? One statement doesn't say anything about a
11 back door and the other statement does.

12 THE WITNESS: I follow now, Your Honor and Mr.
13 Martinez --

14 THE COURT: Thank you.

15 THE WITNESS: Some of the confusion comes from the
16 fact that you wrote answers to some of my questions and
17 then I wrote and then -- these weren't all the questions
18 that I asked you and you did not write down verbatim
19 everything that you told to me. So some things you told to
20 me verbally they could be not written down in the
21 statement, I wrote it in my notes.

22 Q Okay. So is not entering into a residence a major
23 element into burglary?

24 A Yes.

25 Q So you knowing that, why would you not write that

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 statement, write that question down for me, how did you
2 enter this house; so therefore, you could get an answer
3 from that?

4 A I don't know why you -- I did not ask you why did
5 you -- how did you enter the house?

6 Q Yes.

7 A I don't recall why I didn't ask that specific -- I
8 think at different points of the conversation, that was one
9 of the answers that prior to getting you to write this, I
10 did -- I never really got a clear answer from you except
11 for the fact that you came in through an unlocked back
12 door.

13 Q So you didn't get a clear answer, but you got a --

14 A I mean that's a clear answer, but you had indicated
15 earlier in our conversation that you didn't remember --

16 Q I didn't remember? Or I entered through an
17 unlocked back door?

18 A Both.

19 Q Okay. I told you about an individual that was up
20 and I told you that they watched me leave the house; is
21 that correct?

22 A You did.

23 Q And what -- what was the -- did you go back and ask
24 Ms. Tucker about that individual?

25 MS. CAMPBELL: Objection, Your Honor, as to

Colin D. Bailey - Direct Examination In Camera by Mr. Martinez

1 relevance.

2 THE COURT: Relevance, Mr. Martinez? He asked
3 Ms. Tucker about that individual.

4 MR. MARTINEZ: Mr. Bailey didn't -- in his
5 investigative work, he didn't investigate the -- into
6 someone watching me leave. They watched -- Ms. Tucker
7 wasn't tied up. Ms. Tucker wasn't under distress. He
8 didn't go back and question her about this individual.

9 THE COURT: What is the relevancy of that, if that
10 is a fact, and I do not know if it is or is not. What is
11 the relevancy of that on an in-camera hearing on whether or
12 not you gave a voluntary statement to Detective Bailey on 2
13 April 2014 in regards to the incident that occurred in
14 Columbia -- alleged to have occurred in Columbia at the
15 Tucker residence? What is the relevance as to whether or
16 not you gave a voluntary statement that this officer ask
17 Ms. Tucker.

18 MR. MARTINEZ: Okay. Yeah, it doesn't -- that's
19 not for this hearing.

20 THE COURT: All right. Thank you. Thank you, Mr.
21 Martinez. Ask your next question.

22 BY MR. MARTINEZ:

23 Q Okay. For the record, you stated that you did not
24 read me my Miranda Rights; is that correct?

25 THE COURT: That's been asked and answered. I

Colin D. Bailey - Cross-Examination In Camera by Ms. Campbell

1 understood the testimony from both him and Lieutenant
2 Shumard. When it's in the record, it's in the record. You
3 don't have to put it in there twice.

4 MR. MARTINEZ: All right. No further questions,
5 Your Honor.

6 THE COURT: All right. Thank you.
7 Solicitor?

8 MS. CAMPBELL: Just a couple of questions, Your
9 Honor.

10 **CROSS-EXAMINATION IN CAMERA**

11 BY MS. CAMPBELL:

12 Q At any time when -- and I want to just focus on
13 the -- when you were first got the Forest Acres Police
14 Department.

15 A Yes, ma'am.

16 Q At any time did anyone threaten Him any way?

17 A They did not.

18 Q Did anyone force him to talk?

19 A No.

20 Q In your opinion was he wanting to talk to you all?

21 A He was.

22 Q At any time did he invoke any of his rights or say
23 that he didn't want to talk anymore, wanted a lawyer or
24 anything of that sort?

25 A He did not.

Colin D. Bailey - Redirect Examination In Camera by Mr. Martinez

1 MS. CAMPBELL: That's all I have, Your Honor.

2 THE COURT: Recross -- excuse me, redirect?

3 MR. MARTINEZ: Yes, sir.

4 REDIRECT EXAMINATION IN CAMERA

5 BY MR. MARTINEZ:

6 Q Did I not tell you that I did not want to speak
7 with you?

8 A You did not say you did not want to speak with me.

9 Q Did you and Mr. Morrison try to convince me that I
10 knew something about that case when I told you I don't know
11 what you're talking about?

12 MS. CAMPBELL: Your Honor, if he could clarify what
13 case he's talking about.

14 MR. MARTINEZ: The case that he was investigating.

15 MS. CAMPBELL: Relevance?

16 THE COURT: Which case -- which case is that.

17 MR. MARTINEZ: The CPD case. The relevance is I
18 never -- I never signed -- he never read me my rights.
19 He's supposed to notify me that I have rights and exercise
20 them. He never did that. He hasn't told a separate
21 incident as he states. It's a separate incident.

22 They told me -- they introduced to me, how come
23 they was already done? I already involuntarily waived that
24 waiver, signed that waiver. It has nothing to do with him
25 and his case.

Colin D. Bailey - Redirect Examination In Camera by Mr. Martinez

1 MS. CAMPBELL: Your Honor, our questions were
2 limited to the statement onto Forest Acres case.

3 THE COURT: On what.

4 MS. CAMPBELL: The statement we are seeking to
5 introduce was just the statement for the Forest Acres case,
6 as to its admissibility.

7 THE COURT: I understand that, Solicitor, but if
8 it's -- my ruling would be based on the totality of the
9 circumstances. Although your questions focused on the
10 Forest Acres, I understand that, but I'll give him leeway
11 since it's in the same empty room with the same officers.
12 And I was fixing to look up Mitchell Sims. I don't recall
13 what that actually said where he was interviewed in Nevada
14 and then interviewed in -- by South Carolina officers.
15 Nothing's ever on point, of course, but I'm going to point
16 at it and see what it says.

17 I just don't remember the full details of State
18 versus Simms. But I'm going to give him that leeway being
19 in the same interview room with the same officers during
20 the same general time frame.

21 All right. Keep your questions pointed, though,
22 that's why -- a man's got to know his limitations, Mr.
23 Martinez and I'm saying that about myself. That's why I
24 get frustrated with the witness because -- and he -- the
25 witness gets frustrated because -- and you get frustrated,

Colin D. Bailey - Redirect Examination In Camera by Mr. Martinez

1 but your questions have to be focused so he does understand
2 and can focus on what you're answering -- asking, excuse
3 me.

4 So ask your next question.

5 BY MR. MARTINEZ:

6 Q Did I not tell you that I did not want the write a
7 statement for you?

8 A Yeah, I said you didn't want to write. I asked
9 you -- after our interview, I asked if you could write down
10 what happened and you said you didn't want to do that.

11 Q And you took it upon yourself to force it upon me,
12 correct.

13 A Incorrect.

14 Q So if I tell you that I don't want to write one and
15 you do it any way, is that voluntary?

16 A Well, what happened was, I then asked you well what
17 if I ask -- I write down a question, would you be willing
18 to write down an answer. Then you said yes.

19 Q You don't state that in your report. You just said
20 I asked Martinez to write a statement and he said he
21 already written one for Forest Acres. He hesitated and
22 instead I asked questions using a statement form to which
23 Martinez wrote his answers on. After two pages, Martinez
24 was becoming increasingly agitated and I ended my
25 interview.

Colin D. Bailey - Redirect Examination In Camera by Mr. Martinez

1 You just testified that I wanted to give a
2 statement, that I wanted to talk to you, so why would I get
3 agitated? Why would I be -- why would you have to end the
4 interview?

5 A The agitation came when you were frustrated that
6 myself and the other investigators weren't following and
7 weren't really interested in your talking about some of the
8 other issues that we had discussed. The chip implanted in
9 the head, having gone to the hospital, and you were getting
10 more -- starting near the end of my interview, near the end
11 of giving the written statement from you, you were getting
12 frustrated with us because we wanted -- we didn't really
13 want to -- it didn't seem -- and I'm getting a little ahead
14 a little bit, but it -- my estimation it's just viewed that
15 we weren't interested in hearing about that. You were
16 getting more and more aggravated regarding those issues.

17 Q Again, you just told the State that I was talking
18 to you about the incidents. I wasn't talking about the
19 other stuff.

20 A Sir, as you quoted, sir, in my notes, we spoke
21 about a wide variety of topics.

22 Q Okay. Was we talking about the case and I was
23 willingly, voluntarily knowingly, intelligently giving you
24 my statement or was I talking about my problems? Or was it
25 doing it in between like answering your questions or was

Colin D. Bailey - Redirect Examination In Camera by Mr. Martinez

1 you guys speaking to me and letting me know what I did and
2 I was telling you that I don't know what you guys are
3 talking about and I have microchips inside my head. I need
4 help.

5 A You were speaking about the case, about the Forest
6 Acres case and about the CPD case and you were also talking
7 about some of the other issues that your dealing with,
8 including, as we just spoke, where you were talking about
9 your brother, his children, and his family.

10 Q What about when I told you that the -- I told you
11 some more stuff that the voices told me to do; is that
12 correct?

13 A Yes, yes, sir, you indicated that -- that there
14 was -- you indicated that there was a chip inside of your
15 head that occasionally gave you orders as to do things.

16 Q But I told you that they are constantly talking to
17 me and they are constantly trying to control me. As you
18 state in your report, but I told you more things, though.
19 I told you about they want me to grab a police gun, they
20 want me to shoot you, they want me to shoot other cops,
21 they want me to go crazy, they want me to kill people?

22 A I'm fairly certain I would remember shooting --
23 shooting police officers, sir. I don't remember you
24 talking about that. I -- you certainly did speak about the
25 voices telling you do things.

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 Q Okay. Thank you.

2 THE COURT: Recross?

3 MS. CAMPBELL: No, sir.

4 THE COURT: Thank you, thank you very much,
5 detective, you may step down.

6 Mr. Martinez, you may call your next witness.

7 MR. MARTINEZ: Dr. Colbi Sutton.

8 MR. KATA: She's outside, I'll step outside to
9 bring her in.

10 THE COURT: All right.

11 (There was a pause in the proceedings.)

12 THE COURT: All right. Doctor, if you'll come
13 around and be sworn for us, please.

14 COLBI SUTTON,

15 having been duly sworn, testified as follows:

16 THE CLERK: Please have a seat. State your full
17 name for the record.

18 THE WITNESS: It's Colbi, C-O-L-B-I, Sutton,
19 S-U-T-T-O-N.

20 THE COURT: All right. Mr. Martinez.

21 Thank you, thank you for being with us this
22 afternoon, Doctor.

23 **DIRECT EXAMINATION IN CAMERA**

24 **BY MR. MARTINEZ:**

25 Q Ms. Sutton, will you please state your credentials

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 to the Court?

2 A Sure. I have a doctorate in clinical psychology
3 from Spaulding University. I went on and did a
4 post-doctoral fellowship in forensic psychology at Emory
5 University in Atlanta.

6 Q All right. And you did a competency evaluation on
7 me; is that correct?

8 A That's correct.

9 Q And what was your results from your evaluation?

10 A The results were that you were presumed competent
11 to stand trial.

12 Q And as far as my mental health issues?

13 A Can you be more specific?

14 Q What was I -- what was your diagnosis of me from
15 the evidence?

16 A Well, when I saw Mr. Martinez there was a question
17 of a possible delusional disorder. By delusion, I mean a
18 fixed belief, that it's irrational, but that he continued
19 to hold despite contradicting evidence. However, when I
20 met with Mr. Martinez, he reported several other symptoms,
21 several psychotic symptoms and so we did psychological
22 testing.

23 The testing is designed to evaluate symptoms that a
24 person's reporting to see if they are atypical for people
25 with genuine mental illness. And what those results came

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 out to is that it was probably that you were feigning
2 symptoms of psychosis.

3 Q I was faking?

4 A Feigning.

5 Q What does that mean?

6 A It means that your report of your symptoms were
7 most likely not accurate. So either you were exaggerating
8 the amount or the severity of the symptoms.

9 Q So if someone has a delusional disorder, how can
10 they fake a delusional?

11 A So they're not mutually exclusive. In other words,
12 it's not either/or. Often people with mental illness can
13 feign or exaggerate their symptoms. We do see that, it's
14 not unusual. However, when someone is feigning these
15 symptoms, it's difficult to see what's real and what's not.
16 And it's also impossible to tell the true or genuine
17 severity of those symptoms.

18 Q So you're saying there's like -- somebody can have
19 a little, a little delusion or someone -- it's like a scale
20 of delusionally?

21 A No. A delusion is just a fixed false belief that
22 somebody continues to hold, despite contradicting evidence.
23 So he would have lots of different types of delusions.
24 What they do is they take typical symptoms, so you look at
25 a person with a genuine psychotic disorder and then look at

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 things like the frequency, the presentation, how often they
2 experience these symptoms and so forth and then they design
3 these tests in order to see if these are typical or
4 atypical symptoms are some of the genuine psychotic
5 disorders.

6 And so I administered two of these tests and they
7 both came out saying that you were feigning symptoms of
8 psychosis.

9 Q So I was -- is there a different -- as you
10 explained before, there's a difference between feigning and
11 malingering; is that correct?

12 A There is a difference. Feigning just means that
13 somebody's making up symptoms. Malingering means that
14 they're doing it for a specific secondary gain. So for
15 example somebody could make up symptoms in order to get out
16 of additional jail time, for example. That would be a
17 secondary gain for a reason why they're actually feigning
18 symptoms.

19 Q When you testified here last time, you said there
20 was evidence to support my delusion?

21 A Yes.

22 Q And you said that it was prior to any allegations
23 or any type of charges. They started in 2012 and you said
24 with that type of evidence that it wouldn't -- it wouldn't
25 be labeled as fainting (verbatim)?

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 A No. I'm sorry.

2 Q You didn't state that at the competency hearing?

3 A Can you repeat your question?

4 Q You stated that because there was evidence that it
5 happened -- that my delusional disorder is prior to any of
6 these allegations that the evidence supports that I have a
7 genuine delusion.

8 A We look at all sorts -- like at all types of
9 evidence for doing these evaluations. That was one point
10 that I looked at. And it is possible -- yes, I said that
11 they did begin -- it appears that they began before you had
12 any type of criminal charges, come is one thing we look at.
13 However, subsequently, the testing came out. So like I
14 said, it doesn't mean that you have one or the other.
15 People can feign symptoms and have a genuine psychotic
16 disorder.

17 Q So it's -- you're saying there's no way to tell?

18 A Well, when somebody is not necessarily being
19 genuine in their symptoms, it's very difficult to tweeze
20 out what is real and what's not. I mean, we can't tell.
21 Our psychological testing can't tell us like the genuine
22 severity of it. So in a competency evaluation, if you --
23 if it's determined that you're feigning symptoms, then
24 you're presumed competent.

25 Q But competency is totally different than a mental

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 illness though; is that correct?

2 A Competency is just a way of saying your ability to
3 stand trial; so really what we're looking at is if you have
4 the capacity so understand the legal system and an ability
5 to work with or assist your attorney with your defense.

6 Q So like I said, it's totally separate, a competency
7 evaluation is just to see if I know what a judge does; if I
8 know what a solicitor is; if I know what a lawyer is; if I
9 know my way around a courtroom; is that correct?

10 A Well, in a competency evaluation, we try to clarify
11 the diagnostic picture so the actual mental health
12 diagnosis that a person may have and then we look to see if
13 that mental abnormality is actually impacting their ability
14 to stand trial or to have the capacity to stand trial.

15 Q Okay. And as I said, competency is a totally
16 separate issue then of mental disorders? Someone can be
17 competent and still have a mental disorder; is that
18 correct?

19 A That's correct.

20 Q Did you ever give a report to Ms. Zmroczek?

21 A No, I did not.

22 Q Did you ever -- you never made one?

23 A I did not.

24 Q There was -- you never made a -- after you did your
25 questioning and answers, there was no report?

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 THE COURT: That's the third time you've asked that
2 question.

3 MR. MARTINEZ: I didn't --

4 THE COURT: That's the third time that you've asked
5 this doctor if she gave a report -- if she gave a report to
6 Ms. Zmroczek. And you asked her if she gave a report. And
7 she answered the question.

8 MR. MARTINEZ: All right.

9 BY MR. MARTINEZ:

10 Q So as I said, there is proof prior to any of these
11 allegations that I suffer from a delusional disorder?

12 A It can't be determined. There is proof that you
13 reported a delusion, a possible delusion before the
14 criminal charges that I know of. However, it's -- there's
15 not enough evidence to say whether or not you have a
16 genuine delusional disorder or not.

17 Q Okay. All right. Thank you.

18 MR. MARTINEZ: No further questions.

19 THE COURT: Solicitor.

20 MS. CAMPBELL: Just a couple of questions.

21 **CROSS-EXAMINATION IN CAMERA**

22 BY MS. CAMPBELL:

23 Q As part of your evaluation, did you also have an
24 opportunity to review Dr. Tross's report?

25 A I did.

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 Q As far as criminal responsibility?

2 A Yes.

3 Q And capacity to conform?

4 A Yes.

5 Q And I just want to show you a copy of this. If you
6 would just look and see if that's what you reviewed.

7 A Yes, it is.

8 MS. CAMPBELL: Your Honor, at this time, for
9 purposes of this hearing, in addition to the pretrial, I
10 want to make this an exhibit.

11 THE COURT: All right. Mark it the next State's
12 Exhibit.

13 (State's Exhibit Number 98 was marked for
14 identification.)

15 THE COURT: What number?

16 THE COURT REPORTER: 98.

17 MS. CAMPBELL: 98.

18 THE COURT: Oh, we're not going consecutive.

19 MS. CAMPBELL: We're going to keep our numbers from
20 the last.

21 THE COURT REPORTER: They've already got some
22 marked.

23 MS. CAMPBELL: Sorry. May I approach?

24 (Solicitor handed the document to the Court.)

25 THE COURT: Thank you.

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 MS. CAMPBELL: I have nothing further.

2 THE COURT: Recross, Mr. Martinez? Excuse me.

3 Redirect, Mr. Martinez?

4 MR. MARTINEZ: Yes, Your Honor. I requested the
5 transcript from the hearing -- we had a hearing when she
6 testified and I requested it for this purpose right here to
7 be able to show her exactly what she's testified to before.
8 She testified before that --

9 THE COURT: What's your motion? What do you want?

10 MR. MARTINEZ: I want to have -- if the clerk of
11 court that was here from that day, subpoenaed so she can
12 play back --

13 THE COURT: You should have -- you should have
14 prepared for that. Preparation is the key to victory. You
15 should have prepared.

16 MR. MARTINEZ: I did prepare. I motioned the
17 Court. I wrote you letters and I asked you for the money
18 for the transcripts.

19 THE COURT: I don't read letters. I rule on
20 motions that are filed with the clerk and then served on
21 the solicitor and served on me.

22 MR. MARTINEZ: I filed motions with the clerk.

23 THE COURT: They were never served on me, but be
24 that as it may, you have an attorney, standby counsel
25 sitting next to you that could have, in fact, you could

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 have probably found out who the court reporter was and had
2 that request made.

3 MR. MARTINEZ: I filed a motion that was stamped on
4 November 8th asking for this prior -- I didn't --

5 THE COURT: I never received a copy of that order,
6 Mr. Martinez.

7 MR. MARTINEZ: The clerk of court made -- the
8 solicitors did. I even sent a closed copy to the Honorable
9 Judge Knox McMahon.

10 THE COURT: That's not serving it on me.

11 Mr. Martinez, what are you asking me to do?

12 MR. MARTINEZ: I need the transcript, as I stated
13 before.

14 THE COURT: I didn't ask you what you needed.
15 Listen to my question. What are you asking me do?

16 MR. MARTINEZ: I would like for you to please
17 subpoena the court reporter who was present on that day so
18 we can verify and cross-examine Ms. Sutton to exactly what
19 she stated on that occasion.

20 THE COURT: Let me make sure I'm tracking this one.
21 This is the doctor that evaluated you at the request of
22 your fifth appointed defense counsel; is that correct?

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: She has a PhD and is a forensic --

25 THE WITNESS: Psychologist.

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 THE COURT: -- psychologist. A forensic
2 psychologist. Who has also done testing at the request of
3 your fifth appointed defense attorney.

4 MR. MARTINEZ: Yes.

5 THE COURT: Correct.

6 MR. MARTINEZ: Yes, sir.

7 THE COURT: And you're asking me to subpoena -- to
8 A, find out who the court reporter was; B, I guess rather
9 than subpoena perhaps, require the court reporter to
10 prepare an expedited transcript; and C, so that you can
11 cross-examine your witness.

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: The witness you called. Is that what
14 you're asking me to do?

15 MR. MARTINEZ: Yes, sir.

16 THE COURT: Prepare me an order. Find out who the
17 court reporter is. She -- I apologize. Dr. Sutton will
18 remain under subpoena.

19 MR. MARTINEZ: Okay.

20 THE COURT: But I don't understand why you can't
21 ask questions now and if we get an expedited transcript it
22 can just be made a part of the record for this hearing. If
23 we get it. And if what Dr. Sutton testifies to is
24 inconsistent with whatever the court reporter's
25 transcription is, I'll take it all into consideration; the

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 doctor's testimony on direct and cross, prior testimony,
2 transcript of the court reporter.

3 MR. MARTINEZ: Yeah, she never said fainting -- she
4 never said fainting. She said I was -- she said -- she
5 testified last time that there's no way that they can --
6 that she can read or tell about my delusional disorders.
7 She said I do suffer from delusional disorder, but she
8 can't tell because the test is exaggerated. She stated
9 exaggerating, not fainting.

10 THE COURT: Do you want to ask this doctor any
11 other questions at this time.

12 MR. MARTINEZ: No, sir.

13 THE COURT: Thank you.

14 Doctor -- has the doctor been subpoenaed, Mr. Kata?

15 MR. KATA: Yes, Your Honor.

16 THE COURT: Would you please remain under subpoena
17 for the Court, Doctor?

18 THE WITNESS: Uh-huh.

19 THE COURT: Thank you. Any other questions
20 solicitor?

21 MS. CAMPBELL: No, sir.

22 THE COURT: Thank you, thank you very much for
23 being with us this afternoon.

24 Call your next witness, Mr. Martinez.

25 MR. MARTINEZ: It's Morrison -- I'd like to call

Colbi Sutton - Direct Examination In Camera by Mr. Martinez

1 Charles Morrison, Investigator Charles Morrison.

2 THE COURT: Is he here?

3 MS. GODWIN: Yes, Your Honor, he's just outside.

4 THE COURT: He's what?

5 MS. GODWIN: He's just outside waiting.

6 THE COURT: Thank you, Solicitor.

7 So after this today, let me make sure I'm correct,
8 we have two other witnesses present and available, Officer
9 Jackson and Officer Wagner?

10 MR. MARTINEZ: Yes, sir.

11 THE COURT: All right. Do you want any other
12 witnesses today? Do you want any other witnesses besides
13 those I just named and Dr. Chavez for purposes of this
14 hearing?

15 MR. MARTINEZ: I'll still need to -- I need to talk
16 to Shumard on the ID, identification of Ms. --
17 Ms. Hurshman. I have a copy of -- he's the one that --

18 THE COURT: So you're going to call Lieutenant
19 Shumard to the stand?

20 MR. MARTINEZ: Yes, sir. I need to question him
21 about the identification.

22 THE COURT: Why didn't you question him while he
23 was on the witness stand.

24 MR. MARTINEZ: As you stated, you stated it was
25 only for the statement only. So I questioned him about the

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 statement.

2 THE COURT: You could have questioned him about
3 anything as part of an in-camera hearing, Mr. Martinez.

4 Well, I digress. Swear our witness, please.

5 CHARLES MORRISON,

6 having been duly sworn, testified as follows:

7 THE CLERK: Please have a seat. State your full
8 name for the record.

9 **DIRECT EXAMINATION IN CAMERA**

10 BY MR. MARTINEZ:

11 Q Mr. Morrison, you were present during the
12 interrogation; is that correct?

13 A Yes.

14 Q Why did you not make a report, a supplemental
15 report or any type of notes from that interrogation --

16 A The statement was my notes, sir.

17 Q -- for the other interrogations that you made, you
18 made like a copy of what -- questions and answers report
19 for them. Why did you not do that for me?

20 A What other cases?

21 Q Did you question other people in this case?

22 A Yes.

23 Q And when you did that, you made a supplemental
24 report; wasn't that correct?

25 A Yes, just as I spoke with them.

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 Q So why did you not do that with me?

2 A Because I thought the statement was good enough.

3 Q When I first -- when I went to the Forest Acres,
4 how was my demeanor?

5 A You were calm, pleasant.

6 Q I was calm and pleasant?

7 A Yes, sir.

8 Q And I anxiously wanted to talk to you?

9 A Yes, sir.

10 Q I didn't seem in any kind of distress?

11 A No, sir.

12 Q I didn't seem to be suffering from any type of
13 illnesses or tired or nothing like that?

14 A Not that I recall.

15 Q I didn't seem to be sad, crying?

16 A No, sir.

17 Q When -- when I first got there, I wanted to be
18 there, correct?

19 A That's a question for you to answer.

20 Q Did I want -- did I volunteer to go to your
21 headquarters, to your jail and volunteer to give a
22 statement, to talk to you?

23 A You consented to that statement.

24 Q Who did I consent to?

25 A I'm the one who advised you of your rights and you

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 signed the form.

2 Q Okay. And did I give you the information for that
3 consent?

4 A You signed it, sir.

5 Q Did I give you the information voluntarily,
6 knowingly?

7 A We spoke about it and you did.

8 Q I gave you my mother's address --

9 A Oh, the advice of rights form?

10 Q My waiver, yes?

11 A That information come, I believe, off the driver's
12 license, or what information I may have like a -- like a
13 driver's license, a booking sheet, a rap sheet, that
14 information comes from that.

15 Q Okay. So did I give I that you?

16 A No, sir, you did not. It was on the paperwork that
17 I already had.

18 Q When did you fill that out?

19 A Before you got there.

20 Q How before I got there? How soon?

21 A I don't recall. It should have been probably been
22 moments.

23 Q Moments?

24 A It was already -- it was done before you got there
25 the night you were coming.

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 Q So you already -- you guys already had it that you
2 was going to get a statement because I was going to agree
3 to a statement no matter what?

4 A No, sir. I was notified by my Lieutenant Shumard
5 that you were being transported to the police department.
6 I got to the police department, I filled out the form and
7 then you arrived. I advised you of your rights, explained
8 the form, and you signed it.

9 Q And before I signed that, what was the discussion?

10 A I don't recall any specific discussion.

11 Q You don't recall you guys notifying me why I was
12 there?

13 A I believe we spoke about that after the Miranda
14 Rights were advised.

15 Q So it wasn't before? So you're saying I just
16 waived my Miranda Rights, not knowing what I was waiving my
17 Miranda Rights for?

18 A Before I spoke to you in detail about this, I had
19 to advise you of your rights. And I did.

20 Q Would I have to know -- do I have to know what I'm
21 waiving my rights for?

22 A That's up to you, sir. I didn't ask you any
23 questions before.

24 Q That's -- you're the police officer --

25 A Sure.

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 Q -- to notify the suspect of their rights and that
2 way they can know their rights and that way they can
3 exercise their rights whenever they so freely choose to.
4 How can they know what they're exercising their rights to
5 or not exercising their rights to when they don't even know
6 why they're there.

7 A Sir, when we sat down and talked, I advised you of
8 your rights and we spoke about the matter. I did not speak
9 to you before advising you your rights about the matter.

10 Q And did you agree to give me cigarettes?

11 A No, sir.

12 Q You didn't?

13 A No, sir.

14 Q You never sent a police officer to buy me
15 cigarettes?

16 A No, sir.

17 Q That never happened during the interview?

18 A Not that I recall, no, sir.

19 Q Not that you recall? Was Mr. Colin D. Bailey
20 present the whole time?

21 A Of our conversation?

22 Q Of the whole interrogation.

23 A Yes, sir, I believe so.

24 Q Was Mr. Shumard present the whole time?

25 A I believe so.

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 Q Was there any talk about microchips inside my head?

2 A You had told me that the Utah police had put a
3 microchip in the side your head.

4 Q When did I say that?

5 A It was through your conversation, during our
6 conversation.

7 Q Was it at the beginning of our conversation?

8 A I think you brought it up a number of times
9 throughout the conversation.

10 Q Why would I bring it up?

11 A I -- probably because it was important for you to
12 tell it.

13 Q I thought that I was anxious to tell -- tell what
14 happened. Why would I be talking about microchips?

15 A I don't know why you would talk about a microchip.

16 Q Does that seem logical?

17 MS. CAMPBELL: Objection, Your Honor.

18 THE COURT: Ask your next question, Mr. Martinez.

19 BY MR. MARTINEZ:

20 Q So you don't remember any cigarettes being bought
21 for me and agreed for me to smoke, Newport Red 100's?

22 A No, sir.

23 Q Throughout the whole interrogation?

24 A No, sir. I didn't buy you any cigarettes.

25 Q Okay. You're the one that took the pictures of me;

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 is that correct?

2 A I did take pictures, yes, sir.

3 Q And why did you take pictures of me?

4 A Because the tattoos, the description of you,
5 because other people had picked you out of lineups, the
6 eyewitnesss. And you insisted that you wanted your head to
7 be photographed because of scars and this microchip that
8 you told me about.

9 Q And you told me that you would then give it to the
10 solicitor's office to help me out; is that correct?

11 A I told you that photographs would be passed onto
12 the solicitor's office.

13 Q And you told me that you would notify them of my
14 microchips in my head; is that correct?

15 A Yes, sir, you put it in your statement.

16 Q And you remember my statement?

17 A I remember we took a statement.

18 Q You remember why -- why would I say that I want --
19 why would I say that I want to resolve this issue?

20 A I can't answer for you, sir.

21 Q Were you the one --

22 A You're asking me a question, why would you want it.
23 And I can't answer that for you.

24 Q Okay. How would I be able to resolve this issue by
25 -- how would I be able to resolve the issue of being

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 microchips out of my head by giving you a statement?

2 A I told you, you have an issue that I couldn't fix
3 that that would be something done by like a judge, because
4 you had said you wanted these microchips taken out.
5 There's no way I could get something taken out of your
6 head. That would be up to the judge.

7 Q But that was the topic of conversation, right?

8 A That is something we talked about, yes, sir.

9 Q And not something I kept asking for and telling you
10 that I needed it done; is that correct?

11 A You had said that.

12 Q I said that I -- I had been to the police, I'd been
13 the mental health; I'd been seeking help with this issue.

14 A Yes, sir, you said that.

15 Q Did I seem to be suffering from a mental illness
16 that the time?

17 A Not that I noticed, no.

18 Q So are you saying it's logical to speak about
19 microchips planted in someone's head and that somebody's
20 cutting their own head to remove them?

21 A Sir, you were very calm, very pleasant. I did
22 not -- I'm not trained in picking up on the mental signs
23 that you're talking about.

24 Q So you wouldn't agree with Colin D. Bailey that I
25 was getting frustrated and upset at you guys?

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 A I don't remember you getting frustrated and upset.

2 Q When I signed this waiver for you guys -- when did
3 you introduce Colin D Bailey to me?

4 A Sir, I believe when you had signed the advice of
5 rights form, I believe it was Mr. Bailey, Mr. Shumard, and
6 myself all in the room at the same time.

7 Q Okay. Well, you had gone up together, but when did
8 you introduce Colin D. Bailey as City of Columbia and
9 having this totally unseparated -- separate case?

10 A From what I remember when you walked into the room,
11 everyone was identified. You knew who everyone was.

12 Q So you're saying that you explained to me who Colin
13 D. Bailey was and that he -- that he was there for a
14 totally separate incident when I signed that waiver of
15 rights?

16 A I identified him for you, sir.

17 Q Now, when did you identify me, exactly?

18 A I believe in the beginning of our conversation.

19 Q And you told me this is Mr. Colin D. Bailey of the
20 City of Columbia's Police Department and he wants to speak
21 to you about a totally separate incident and you want to
22 sign your waivers over, your rights over for this incident
23 as well as our incident?

24 MS. CAMPBELL: Objection, leading; asked and
25 answered.

Charles Morrison - Direct Examination In Camera by Mr. Martinez

1 THE COURT: Restate your question, Mr. Martinez.

2 BY MR. MARTINEZ:

3 Q When the waiver was signed for both agencies, would
4 you say I was notified of both agencies in two separate
5 incidents for that one waiver?

6 A That advice of rights entitled Forest Acres. We --
7 you and I and Mr. Shumard spoke about the Forest Acres
8 incident. I do recall that we spoke about that incident by
9 itself and Mr. Bailey was in the conversation with us in
10 the room. He did not ask you any questions during our
11 interview of the Forest Acres incident.

12 Q He did not have no questions?

13 A No, sir. Not that I recall.

14 Q Okay.

15 A It was Mr. Shumard and myself.

16 Q So Mr. Colin D. Bailey -- so it didn't take all
17 three officers to keep me on topic then?

18 A Not that I recall.

19 Q So I was sitting there calm and giving my side of
20 the story of whatever happened?

21 A Yes.

22 Q And in between, I bring up my mental health issues?
23 Is that correct?

24 A Yes, you spoke of some chips in your head.

25 Q How often did I mention that?

Charles Morrison - Cross-Examination In Camera by Ms. Campbell

1 A I couldn't give you a particular number, sir. A
2 number of times, two or three.

3 Q Two or three times?

4 A Possibly, yes, sir.

5 Q So I just want to clarify because I didn't really
6 understand, so you did not -- the waiver was just for --
7 simply for the Forest Acres incident, correct?

8 A Yes, sir, I'm not quite -- don't recall Mr. Bailey
9 getting another form. I didn't ask you about Mr. Bailey's
10 case. I didn't know the details of Mr. Bailey's case.

11 Q So you didn't know nothing about his case?

12 A I knew that he had a similar matter, but I did not
13 know the details of his case.

14 Q All right.

15 MR. MARTINEZ: Nothing further, Your Honor.

16 THE COURT: Solicitor?

17 MS. CAMPBELL: Just one question.

18 **CROSS-EXAMINATION IN CAMERA**

19 **BY MS. CAMPBELL:**

20 Q Y'all spoke first about the Forest Acres case
21 involving Ms. Hurshman?

22 A That is correct.

23 Q And then did Mr. Bailey, Investigator Bailey then
24 talk to you about his on case with CPD?

25 A That's correct.

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 Q And that would have been after y'all talked about
2 the Forest Acres, case?

3 A Yes.

4 MS. CAMPBELL: Thank you, Your Honor, I have
5 nothing further.

6 THE COURT: Recross? Excuse me, redirect?

7 MR. MARTINEZ: No, nothing further.

8 THE COURT: Thank you, thank you very much,
9 Detective Morrison for being here.

10 Call your next witness, Mr. Martinez.

11 MR. MARTINEZ: I'd call Holly Wagner, Investigator
12 Holly Wagner.

13 THE COURT: All right. If you'd come around and
14 join us, please.

15 HOLLY WAGNER,
16 having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State your full
18 name for the record.

19 THE WITNESS: Holly Wagner.

20 THE COURT: All right. Mr. Martinez.

21 **DIRECT EXAMINATION IN CAMERA**

22 **BY MR. MARTINEZ:**

23 Q Yes, Ms. Wagner, you came -- you came to visit me
24 at the jail on 4/3/24; is that correct?

25 A Correct.

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 Q You and Officer, or Sergeant Faust?

2 A Sergeant Faust, yes, sir.

3 Q Faust. And what was my condition when you came to
4 see me?

5 A What do you mean what was your condition?

6 Q What did -- when -- what area did you come to see
7 me at?

8 A Well, we went to Alvin S. Glen to visit you. I'm
9 not --

10 Q I was in a specific section?

11 A I don't -- I don't recall that. I just know we
12 went to the jail to see you.

13 Q I was on -- you went to see me the same -- they
14 arrested me that night and you came to see me that same --

15 A That next day.

16 Q That same day. The same day during the morning --
17 the daytime, correct? And --

18 THE COURT: The question was originally, did the
19 officer come see you on April 3rd, 2014.

20 MR. MARTINEZ: Yeah.

21 THE COURT: So it wasn't the same date that you
22 were arrested. I thought you were arrested on the early
23 morning hours of April the 2nd.

24 THE WITNESS: Right, the next day.

25 THE COURT: Isn't that correct?

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q Okay. So you came the next day?

3 A Yes.

4 Q And when you came to see me, you tried to give me a
5 waiver to sign; is that correct?

6 A Correct..

7 Q But I couldn't sign it because of why?

8 A You were in restraints.

9 Q And why was I locked down like that?

10 A I'm not sure.

11 Q Martinez -- it says -- your statement on 4/3, it
12 says: Approximately 3:20 p.m., Sergeant Faust and
13 Investigator Wagner went to AS -- or AGDC to interview
14 Nathan Martinez. Investigator Wagner advised Martinez of
15 his Miranda Rights of which he waived and agreed to talk to
16 us and answer questions. Martinez was in shoe dorm and on
17 lockdown, meaning he was handcuffed in the rear and his
18 feet were shackled, which prevented him from signing the
19 form.

20 Martinez denied anything like that. Martinez
21 denied entering the victim's apartment without her consent.
22 Martinez maintains he knocked on the door and she let him
23 in and engaged in consensual sex. During the entire
24 interview, Martinez talked about the voice in his head
25 saying that there was a device planted there by the Utah

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 police.

2 Martinez said that they will not stop talking to
3 him, that the voices were -- the voices started telling him
4 to hurt other people to include taking the gun from a cop
5 and killing them.

6 In addition, he claimed the voices told him to kill
7 himself, one of the reasons he was on lockdown and cuffed
8 the way he was. Is that true?

9 A I don't believe that's my followup.

10 THE COURT: Wait just a minute, Officer. Is the
11 question, Is that true that that's in her statement?

12 MR. MARTINEZ: Yes. This is from her. This is
13 from that interview.

14 THE COURT: Is that the question, Is what's in her
15 statement what said? She doesn't know the truth or the
16 voracity underlying that, just that's what was said and she
17 recorded it; is that what you're asking?

18 MR. MARTINEZ: Yes.

19 BY MR. MARTINEZ:

20 Q Is that what you stated?

21 A Is it possible for me to see that, what you're
22 reading from to refresh my memory?

23 (The document was given to the witness.)

24 THE WITNESS: This is -- this is not my report. So
25 somebody else wrote this.

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 THE COURT: May I -- may I see that, please?

2 MS. WALKER: Yes, Your Honor, you want me to mark
3 it for any ID?

4 Defense --

5 THE COURT: Defense 18, I think.

6 Is that right?

7 THE COURT REPORTER: Defense 18.

8 (Defense Exhibit Number 18 was handed to the
9 Court.)

10 THE COURT: Whose report is this.

11 MR. MARTINEZ: It came with her information with
12 sign waiver -- an interrogation waiver that I didn't sign
13 that they have. They came, as she stated, Sergeant Faust
14 came --

15 THE COURT: This is a crime scene investigative
16 analysis.

17 MS. WALKER: May I look at that, Your Honor?

18 THE COURT: Ma'am?

19 MS. WALKER: Can I approach you and read that?

20 THE COURT: Yes, ma'am.

21 MS. WALKER: I may be able to shed some light on
22 this.

23 THE COURT: All right. The officer said that's not
24 her report.

25 BY MR. MARTINEZ:

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 Q Was you present when this happened? You was
2 present with Mr. Faust; is that correct?

3 A I was with Mr. Faust when we came -- Sergeant Faust
4 when we came and spoke to you on the 3rd, yes.

5 Q So none of this -- you're saying none of this
6 happened?

7 THE COURT: She's saying that's not her report.

8 BY MR. MARTINEZ:

9 Q So you were present when -- so Mr. Faust -- this is
10 from Mr. Faust then?

11 A I don't know who wrote that report.

12 MS. WALKER: May I say something, Your Honor? He
13 has copies on the front and back. On the back is
14 Investigator Faust's report. On the front is a CSI. So
15 he's asking her about stuff in someone else's report.

16 THE COURT: You can ask her -- you can ask her, Mr.
17 Martinez, about the event that occurred.

18 MR. MARTINEZ: That's what I was asking.

19 BY MR. MARTINEZ:

20 Q Was you present --

21 THE COURT: Ask your next question.

22 BY MR. MARTINEZ:

23 Q Was you present when Mr. Faust and you was
24 questioning me?

25 A Yes.

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 Q We was in -- we was in a -- so is this accurate
2 what he's saying?

3 A If that's his followup, that's his recollection of
4 it. I did not read his followup. So it's accurate that we
5 went there and we spoke with you and we asked you about --
6 about the Vasser case and you denied -- you said that she
7 let you in the house and you had consensual sex. That's my
8 recollection of that. Why you were in restraints, Sergeant
9 Faust may have known that information, but I did not
10 know -- I remember you being in restraints, that you
11 couldn't sign the waiver; but I did not know why you were
12 in restraints.

13 Q So --

14 A Does that answer your question?

15 Q No. How would he know --

16 MS. WALKER: Objection, Your Honor, as to how
17 Sergeant Faust would know something to this witness.

18 MR. MARTINEZ: She -- it's like me and my
19 co-counsel right here speaking to someone right here and
20 then him not knowing exactly what was going on. These two
21 officers came together to question me.

22 THE COURT: Ask your question.

23 BY MR. MARTINEZ:

24 Q So you're saying that what he stated, you never
25 heard nothing about?

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 A Some of what he stated I knew about. I don't know
2 the answer about the restraints. I had no knowledge as to
3 why you were in restraints.

4 Q The officer told you --

5 A The officers? Which officers?

6 Q The officers told you guys that they wouldn't take
7 the restraints off of me because you were trying to get
8 them to allow them for me to sign the waiver?

9 A Well, they may have told him that. I don't recall,
10 that is what I'm saying. I don't know why you were in the
11 restraints.

12 Q Did you -- do you know that I was sitting there
13 talking about microchips and needing a doctor to cut them
14 out and I needed help and I needed to talk to -- to call
15 Heidi?

16 A Yes, I recall that.

17 Q And you remember that I said that I needed help and
18 I needed to get these microchips out and that I wanted to
19 prove that there's a device in my head and that I wouldn't
20 let go, I was trying to get help from you guys?

21 A Yes.

22 Q You remember that?

23 A I remember.

24 Q And from your experience, you know that I suffer
25 from -- that I have mental health issues; is that correct?

Holly Wagner - Direct Examination In Camera by Mr. Martinez

1 A I knew that you had some mental health issue that
2 is you had -- that you believed the stuff about your ear,
3 you know -- or the voices and the listening device -- I
4 knew about that, yes.

5 Q And that was prior to any allegations -- well from
6 your record -- from what you was told after the allegations
7 came, you heard from what I told mental health or looking
8 for help for those issues; is that correct?

9 A Can you ask that again? I'm not sure I understand
10 what you're asking me. Are you asking me before I went
11 there on the 4th or before I spoke to you the first time I
12 ever met you.

13 Q Before -- okay. You met me through Heidi Jackson,
14 correct?

15 A Right.

16 Q Heidi Jackson told you that she knew me and she
17 knows me from mental health report. And she told you my
18 issues, which was stemming from way before any of these
19 issues came about; is that correct?

20 A Yes.

21 Q And they come directly from the police -- out of
22 fear of the police and me not trusting the police and
23 that's why Heidi Jackson assisted me with you and your
24 case; is that correct?

25 A I -- yeah. I would say yes.

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q All right. Thank you.

2 MR. MARTINEZ: No further questions.

3 THE COURT: Solicitor?

4 MS. WALKER: I don't have any questions, Your
5 Honor.

6 THE COURT: Thank you, thank you, Officer for being
7 with us. You may step down.

8 Mr. Martinez, call your next witness.

9 MR. MARTINEZ: Yes, I call Heidi Jackson

10 THE COURT: All right. If you would come around
11 and be sworn for us, please.

12 HEIDI JACKSON,

13 having been duly sworn, testified as follows:

14 THE CLERK: Please have a seat. State your full
15 name for the record.

16 THE WITNESS: My name the Heidi Jackson.

17 **DIRECT EXAMINATION IN CAMERA**

18 **BY MR. MARTINEZ:**

19 Q Ms. Jackson, how did you meet me?

20 A You made a police report with our sheriff's
21 department.

22 Q And what was that report pertaining to?

23 A The report suggested that someone put a device
24 inside your ear and was listening to you or was speaking to
25 you.

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q And do you remember when that was?

2 A It was in 2013.

3 Q And when I went and met with you, did I appear to
4 be on drugs or alcohol?

5 A No, sir.

6 Q Did I appear to be -- did I have any reason to be
7 fabricating this story? What I was saying?

8 A None that I know of.

9 Q Was I -- I wasn't wanted by the police, I wasn't
10 facing any charges. I told you that I wanted medical help
11 for medical issues; is that correct?

12 A Yes, sir.

13 Q And when I went to you, I asked you for -- for
14 assistance to get this medical help; is that correct?

15 A Yes, sir.

16 Q And you told me that you couldn't help me get the
17 medical help --

18 MS. WALKER: I object to the leading, Your Honor.

19 THE COURT: All right. Solicitor. That's
20 sustained.

21 Restate your question.

22 BY MR. MARTINEZ:

23 Q Did -- when I stated -- when I asked for help, you
24 referred me to -- to mental health; is that correct?

25 A Yes.

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q And why did you refer me to mental health?

2 A Because you stated that there was a device
3 implanted in your head, so that seemed like a reasonable
4 thing to do is refer you to mental health. I'm not a
5 doctor.

6 Q Does that -- what I was saying, does that seem
7 logical?

8 A Does what seem logical?

9 Q To have a device in your head?

10 A That's why I referred you to mental health.

11 Q So when someone's stating they have a device in
12 their head and they keep repeatedly telling you that, that
13 doesn't seem logical; does it?

14 A I'm not a doctor, so all I could do is refer you to
15 mental health. That was not in the scheme of what I do.

16 Q Okay. And when I went to the doctor, I went to
17 mental health and then mental health wouldn't -- wouldn't
18 give me the medical help that I asked because you told me
19 you was going to ask them -- did you not ask that -- did
20 you not ask mental health people if they would run tests on
21 me to see if what I was talking about was true because I
22 showed you evidence that I have stuff inside my head and
23 behind my ears and I was telling you that I was -- that
24 I -- that I have -- I told you that I have evidence that
25 it's there and you told me that you're going to take me --

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 did you not take me to mental health and state that you're
2 going to ask them for medical help?

3 A What I did was I called mental health one time and
4 I believe that you and your mother went down there. And
5 then I took you another time because you voluntarily went
6 to mental health with me the second time and the third
7 time, I had done paperwork to ask them to evaluate you.

8 Q And that was because of the repeated nature of me
9 asking for medical help, correct?

10 A It was because you kept calling me or coming into
11 my office, yes.

12 Q And what -- what was my -- you knew that I suffer
13 from -- well, okay. You knew that I have a mental illness
14 that is directly related to the police; is that correct?

15 A I believe that you might have a mental illness and
16 that's why I referred you to mental health.

17 Q But my -- my issue is directly related to the
18 police; is that correct?

19 A Your complaint was that the Ogden Police Department
20 put something in your head.

21 Q Okay. And in my e-mails -- in my correspondence
22 with you, my whole -- the whole time, I explained to you
23 that I don't need mental health help, I need medical help;
24 is that correct?

25 A Yes.

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q Do you recall -- do you recall when you came to
2 pick me up for -- for the polygraph test and you called me
3 that morning and I told you what if I don't come in? Do
4 you remember that conversation?

5 A I don't remember the conversation.

6 Q Do you recall if I told you that I wanted to go to
7 jail to get medical attention?

8 A I don't recall you saying you want to go to jail to
9 get medical attention.

10 Q You don't recall that?

11 A No.

12 Q Do you recall when -- when the cops -- do you
13 recall seeing my mom at the jail?

14 A I saw your mom a lot of times, but I don't recall
15 at the jail seeing her, no.

16 Q No? Do you recall seeing my mom after I was
17 arrested?

18 A I can't be sure when I saw your mom. I know I saw
19 her many times.

20 Q You never -- at the beginning -- when I was first
21 arrested, the public defender's office requested that you
22 hand over the e-mails that I was sending to you; is that
23 correct?

24 A Yes.

25 Q And the solicitor's -- well, they had a court order

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 for you to do that, but the solicitor's office, as well as
2 the police, told you not to comply with that order; is that
3 correct?

4 A No, that's not correct. I did turn over the
5 e-mails.

6 Q You turned over the e-mails after a rule to show
7 cause, failure to comply with a subpoena.

8 A No, I turned over the e-mails before then to the
9 solicitor's office.

10 Q So you was never told my --

11 MR. MARTINEZ: I beg the Court's indulgence.

12 (There was a pause in the proceedings.)

13 BY MR. MARTINEZ:

14 Q Scott Hayes -- you know who Scott Hayes is?

15 A Yes, sir.

16 Q Did he tell you that you did not have to respond to
17 the subpoena?

18 A No, I did respond to the subpoena.

19 Q So you're saying that -- okay. You gave them the
20 e-mails and then they didn't -- you're saying that they
21 didn't turn them over to the public defender at that time?

22 A I don't know what they did with them. I did turn
23 over the e-mails.

24 Q You had to come to a hearing. Do you recall that?

25 A Yes.

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q And it was to show cause as to why you didn't
2 follow the subpoena?

3 A I came to a rule to show cause hearing and they
4 talked about the e-mails. They discussed whether that they
5 would be part of the trial or not.

6 Q And it was stated that Assistant Solicitor, Foster
7 Matthews and Scott Hayes said that you didn't have to --

8 MS. WALKER: Your Honor, I'd like to object as to
9 the relevancy of this line of questioning for a Jackson
10 versus Denno hearing. I think it's a Jackson versus Denno.

11 THE COURT: What is the relevancy, Mr. Martinez.

12 MR. MARTINEZ: The relevancy is that the
13 solicitor's and -- the relevancy -- what I'm trying to
14 establish is that my whole thing is that I wanted medical
15 attention. My whole -- since I've had the issue I've
16 wanted medical attention. And --

17 THE COURT: Go ahead. Go ahead.

18 MR. MARTINEZ: That's my whole thing. I've
19 always -- I never wanted anything but medical attention and
20 the police officers took advantage of that. They knew
21 that. They told me to get medical attention and it's
22 referred to in my statement and that's why -- that's what
23 I'm trying to establish that before any of this came about,
24 I was --

25 THE COURT: I don't have any question about this

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 officer's credibility.

2 MR. MARTINEZ: Oh, me neither.

3 THE COURT: And what she said, that you came down
4 there and you made that report to her and she referred you
5 to mental health and evidently assisted you on several
6 occasions to have mental health follow through and provide
7 what services they could provide with you. I don't see how
8 some rule to show cause hearing, whatever time frame it is
9 later on, that this officer had to go to has any relevance
10 or bearing on a knowing, voluntary, intelligent waiver of
11 your Miranda Rights.

12 MR. MARTINEZ: She knows my history. She's the
13 one --

14 THE COURT: So did Dr. Sutton. Your history did
15 not begin with those e-mails. I think your history began
16 as far as -- and quite frankly, she knows your history.
17 She has no personal knowledge of it. So it would be
18 hearsay.

19 MR. MARTINEZ: Okay. But her personal experience
20 with me has always been about my mental health issues.

21 THE COURT: I've heard that. I take that into
22 account.

23 MR. MARTINEZ: Okay.

24 BY MR. MARTINEZ:

25 Q So you told -- in your communication, when you

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 talked to Officer Shumard, that I cut into my head; is that
2 correct?

3 A Did I talk with -- I'm sorry, I don't know who
4 you're saying that I spoke to.

5 Q You notified Mr. Shumard, the guy right there in
6 the middle, through e-mail.

7 A That you cut -- if you're asking me -- I remember
8 that your mother told me, yes, that you did cut into your
9 own head, if that's what you're asking me.

10 Q So my mother told you that?

11 A Yes.

12 Q And you notified him that I hate the police in
13 general and that because I believe that they implanted a
14 device into my head; is that correct?

15 A I don't know that I told him that. I don't know
16 that you hate the police in general because you came and
17 spoke to me and we had a good rapport.

18 Q When -- when -- when the incident with -- with
19 Ms. Vasser, you came and was -- well, actually, I called
20 you because the police were coming to my house, but you --

21 MR. MARTINEZ: Excuse me. I beg the Court's
22 indulgence.

23 THE COURT: Yes, sir.

24 (There was a pause in the proceedings.)

25 BY MR. MARTINEZ:

Heidi Jackson - Direct Examination In Camera by Mr. Martinez

1 Q Right here, your e-mail, it says Jackson Heidi,
2 your e-mail address, Very well could be him. He meets the
3 description. I think he's closer to 5'11" or taller. He
4 is accused of sexual assault. He hates police in general
5 because he believes police in Utah implanted a device and
6 he made cuts in his own head with a knife trying to get the
7 device out. He has schizophrenia. He used to be a CRIP in
8 Utah. I've never seen him violent, but it could be him.

9 THE COURT: Is there a question?

10 MR. MARTINEZ: Did you --

11 THE COURT: All I heard was a reading.

12 MR. MARTINEZ: Okay.

13 BY MR. MARTINEZ:

14 Q Do you recall that? You sent this from --
15 Isenhoward connected you to Mr. Shumard and you sent this
16 to him. Do you recall that?

17 A That sounds like something that I would have said.
18 I can't see the e-mail, so I can't verify it for sure, but
19 it sounds like something I would have written.

20 Q Okay.

21 (The document was handed to the witness to read.)

22 (There was a pause in the proceedings.)

23 THE WITNESS: Okay.

24 BY MR. MARTINEZ:

25 Q It states that I hate police in general; is that

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 right?

2 A Yes, it states he hates police in general because
3 he believes police in Utah implanted a device in him,
4 correct.

5 Q Okay. Thank you. No further questions.

6 THE COURT: Solicitor?

7 MS. WALKER: Your Honor, I don't have any
8 questions.

9 THE COURT: Thank you, thank you very much,
10 Officer, for being with us.

11 Call your next witness, Mr. Martinez.

12 MR. MARTINEZ: I need to talk to Shumard on the
13 identification -- for the identification of Ms. Hurshman.

14 THE COURT: Does that mean you're calling him as a
15 witness?

16 MR. MARTINEZ: Yes, sir.

17 THE COURT: All right. Come around, please,
18 Lieutenant. You're still under oath.

19 DIRECT EXAMINATION IN CAMERA

20 BY MR. MARTINEZ:

21 Q Mr. Shumard, you -- does the -- the following day
22 after the incident, you went to the Dickerson Center with a
23 photographic identification; is that correct?

24 A Yes.

25 Q Which identification did you use?

Russell Shumard - Direct Examination In Camera by Mr. Martinez

- 1 A Which identification?
- 2 Q Yes.
- 3 A You mean which lineup?
- 4 Q Yes.
- 5 A I don't remember which lineup I used.
- 6 Q You do not remember which lineup you used?
- 7 A No, sir.
- 8 Q You showed your photographic lineup to Briona
9 Hurshman and L.H. ; is that correct?
- 10 A That's correct.
- 11 Q And you showed them -- did you show them at the
12 same time? Different times? Separately?
- 13 A Separately.
- 14 Q And you showed them both the same photographic
15 lineup?
- 16 A I believe so, yes.
- 17 Q You don't recall which one, but you showed them
18 both the same one?
- 19 A Correct. I showed them a lineup, but I don't
20 recall which lineup.
- 21 Q And they did not pick me out?
- 22 A That is correct.
- 23 Q And for -- did -- did you ever see Briona Hurshman
24 again after that?
- 25 A Yes. From time to time I believe I saw her briefly

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 at our headquarters for the bond hearing.

2 Q And that was the bond hearing or the --

3 A The Forest Acres bond hearing.

4 Q What about the preliminary hearing?

5 A I can't recall if she was present or not.

6 Q Her husband was, though; is that correct?

7 A I don't know.

8 Q At any time after this incident did you take
9 photographs that I submitted into evidence that you guys
10 took of me? Did you take those and show them to
11 Ms. Hurshman?

12 A Which photographs are you referring to?

13 Q The ones that I showed you of my neck?

14 A The ones that we took?

15 Q Yes, sir.

16 A No, I did not show those pictures to Ms. Hurshman
17 in any of my followup.

18 Q Did you show her any other photographic lineups,
19 reach out --

20 A No, sir, I didn't show her anymore photographs.

21 Q Her identification of the suspect wasn't important?

22 A Yes, it was important and like I said, we showed
23 her a lineup. She didn't identify you.

24 Q So -- so you're saying that you never contacted her
25 or -- okay. She never contacted you and said anything

Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 about she was sure that I was the person who attacked her?

2 A No, not that I recall.

3 Q Nobody ever contacted you from her family, the
4 sexual trauma, the whatever -- victim advocates? They
5 never contacted you and said that she told them that she
6 can identify -- she knows that's the guy for sure?

7 A I don't recall.

8 Q All right. Thank you. No further questions.

9 THE COURT: Solicitor?

10 MS. GODWIN: Nothing from the State, Your Honor.

11 THE COURT: Thank you, Lieutenant, you may step
12 down.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Martinez, call your next witness.

15 MR. KATA: Your Honor, I believe our last witness
16 is Dr. Chavez.

17 THE COURT: All right. Anything before we take our
18 evening recess, Mr. Martinez?

19 MR. MARTINEZ: I was going to ask if I could get
20 the warrant that was -- that was -- that was issued for
21 them to track my mother's phone. You said for the
22 solicitor to find out who has it and where it was at and
23 they said it was sealed.

24 THE COURT: All right. Solicitor?

25 MS. CAMPBELL: Your Honor, I believe we have the

1 officers here.

2 THE COURT: I'm sorry, I couldn't quite hear you.

3 MS. CAMPBELL: We have the officers here who got
4 that and it was sealed and they can provide you with
5 whatever information you want.

6 THE COURT: May I see it, please. May I see the
7 document that's been retrieved.

8 MS. CAMPBELL: We have not seen it, just for the
9 record.

10 THE OFFICER: May I approach?

11 THE COURT: Yes, sir, thank you.

12 (The Court was looking at the document.)

13 THE COURT: What is the phone number you're
14 referring to, Mr. Martinez?

15 MR. MARTINEZ: I think it starts with [REDACTED].

16 THE COURT: Well, I'm not trying to make you guess.

17 MR. MARTINEZ: I'm not sure of the exact -- I don't
18 recall. It's been -- like I say it was my mother's phone.

19 Your Honor, is that -- is that Mr. Cavanaugh? Is
20 that Warren Cavanaugh?

21 THE OFFICER: No, it's not.

22 THE COURT: Is there a -- there should be an
23 affidavit that goes with this. Do you have that?

24 THE OFFICER: Your Honor, the order portion of that
25 is also an application that is on file. That's the order

1 portion that was -- that's the order portion that I could
2 locate. I'm still trying to find that application, sir.

3 THE COURT: Mark R. Berube.

4 THE OFFICER: Berube.

5 THE COURT: That's you?

6 THE OFFICER: Yes, sir.

7 THE COURT: Perhaps I'm imprecise with my question
8 so there -- perhaps you were imprecise in your answer.
9 There is application presented to the Court?

10 THE OFFICER: Yes, sir, the original application
11 that goes with that. I'm trying to locate that, sir.

12 THE COURT: All right. This is the order signed by
13 a Circuit Court Judge, James R. Barber, the 1st day of
14 April, 2014, for phone number [REDACTED]-2894. Is that -- was
15 that your mother's phone?

16 MR. MARTINEZ: Yes, sir.

17 THE COURT: And the final paragraph of this order
18 is: It is ordered that the application -- that the order
19 and the application be sealed until otherwise ordered by
20 the Court. I notice this order there's not a clerk's seal.
21 There's not a clock-in stamp.

22 THE OFFICER: No, Your Honor... That is the order
23 that we're trying to locate that was on file with the
24 clerk's office. I noticed that earlier. I have a copy of
25 that available. But the order was the most important.

1 THE COURT: So the clerk's office filed by
2 SC-42-03361?

3 THE OFFICER: Yes, Your Honor.

4 THE COURT: So this is a copy.

5 THE OFFICER: That's correct, Your Honor.

6 THE COURT: All right. Well, I am ordering that
7 this -- I'm not having to unseal this because this copy is
8 not sealed, but it is Judge Barber's order consistent with
9 17-29-30(B)2 and both the State and the defense may have a
10 copy of that order.

11 If you would also please continue to look for the
12 filed copy so that we have both the order and the
13 application.

14 THE OFFICER: Yes, sir.

15 THE COURT: All right. Thank you.

16 Anything further --

17 Thank you for being with us, officer.

18 Anything further, Mr. Martinez?

19 MR. MARTINEZ: Yeah. I'd ask if we could subpoena
20 Sergeant Faust, the officer that did --

21 THE COURT: Sure. You don't have to ask me that.
22 I'm not going to restrict you from issuing subpoenas. See
23 if you can get him here, Solicitor. You want him in the
24 morning?

25 MR. MARTINEZ: And Cavanaugh as well.

1 THE COURT: For in the morning for purposes of this
2 hearing?

3 MR. MARTINEZ: Yes, sir.

4 THE COURT: Why do you keep changing the target on
5 me? Why do you keep having me bring the jury back and
6 forth.

7 MR. MARTINEZ: I'm not intentionally doing that,
8 sir.

9 THE COURT: All right. Well, let's see, I was
10 going to start at 9:30 and now I'm back to 9 o'clock.

11 What time you want to start in the morning?

12 THE COURT REPORTER: When you tell me to be here.

13 THE COURT: Great American woman. Usually I do
14 exactly what he she tells me.

15 Let's say 9 o'clock.

16 MS. CAMPBELL: Your Honor, there's one more matter
17 that we could take up this afternoon instead of in the
18 morning.

19 THE COURT: What is that?

20 MS. CAMPBELL: Ms. Culpepper, the ID. She'll be
21 fairly short.

22 THE COURT: Solicitor, I prefer to take it up in
23 the morning.

24 MS. CAMPBELL: You prefer to take it up in the
25 morning?

1 THE COURT: Yes, ma'am.

2 Any other discovery matters, anything of that
3 nature.

4 MS. CAMPBELL: Your Honor, we did file reciprocal
5 discovery in this case. We have not received anything from
6 the defense. I'm just renewing for the purposes -- to make
7 sure there's nothing that hasn't been given to us.

8 THE COURT: Make sure you comply with that
9 reciprocal discovery.

10 MR. MARTINEZ: All right. I would ask the State to
11 provide the information that we requested for the DNA so
12 that we can forward it to our --

13 THE COURT: The DNA from the CPD or --

14 MR. MARTINEZ: Yeah -- no, from this case right
15 here. We asked information so we can forward it to the DNA
16 expert.

17 THE COURT: Do we have that, Solicitor?

18 MS. CAMPBELL: Yes, sir, last night, I believe we
19 received a copy of what they were requesting in court and
20 forwarded it to the sheriff's department. Quite simply, I
21 haven't had a chance today to followup on that.

22 THE COURT: Y'all have not -- y'all have not?

23 MS. CAMPBELL: We have not. The sheriff's
24 department has their request or what they were requesting.
25 That was provided by Mr. Kata, I believe, at the break last

1 night.

2 MR. KATA: That's correct, Your Honor.

3 THE COURT: Let's see if we can get it to Mr.
4 Martinez in the morning.

5 MS. CAMPBELL: We'll do our best, Your Honor. As
6 soon as we break.

7 THE COURT: Thank you, thank you, Solicitor.
8 Anything else, Mr. Martinez?

9 MR. MARTINEZ: No, sir.

10 THE COURT: All right. 9 o'clock in the morning.
11 Court will be in recess until 9 o'clock in the morning.

12 (Court was in recess until the following morning.)

13 WEDNESDAY, NOVEMBER 30, 2016

14 THE COURT: As an initial matter before we -- Mr.
15 Kata is not here.

16 MS. WALKER: Your Honor, may ask permission to use
17 my cell phone to call Mr. Kata?

18 THE COURT: Yes, ma'am.

19 MS. WALKER: Thank you, Judge.

20 (Mr. Kata entered the courtroom.)

21 THE COURT: Here he is.

22 MR. KATA: I apologize, Your Honor.

23 THE COURT: As an initial matter, under the
24 judicial cabinet, I have the responsibility to maintain the
25 decorum and the dignity of the courtroom. And I take that

1 very seriously. So both as to the attorneys, Mr. Martinez,
2 Mr. Kata, and those folks that are present in the
3 courtroom, I expect that y'all will maintain, all of
4 y'all -- and this is not to single out any individual, this
5 is just a general statement that I make. But I would
6 advise all that you must maintain the dignity and the
7 decorum of the courtroom throughout those proceedings. If
8 you feel you're unable to do so, you have a choice to make.

9 If you cannot maintain that standard, it is best
10 you not be in here. If I observe any conduct that falls
11 below that standard, I will take steps to correct that at
12 the appropriate time, either during or after the trial.

13 Anything from the State before we begin with our
14 witnesses, Solicitor?

15 MS. CAMPBELL: No, Your Honor, I just need to turn
16 over to the defense -- I checked with DNA last night and
17 they just have a form he needs to fill out so I can get
18 that information for him today.

19 THE COURT: All right. Yes, sir -- yes, ma'am.

20 Anything from defense, Mr. Martinez?

21 MR. MARTINEZ: Yes, Your Honor. We was given a
22 copy of this motion last night. I would like to talk --
23 have a hearing, a motion. Mr. Kata wants to get all the
24 information for this.

25 THE COURT: I do not have a copy of any motion.

1 MR. MARTINEZ: This is for the track and trace they
2 put on my mother's phone.

3 THE COURT: I don't have a copy of any motion. I
4 don't know what you're -- I understand what you're talking
5 about, but I don't have a copy of the motion.

6 MR. KATA: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. KATA: Your Honor, I believe Mr. Martinez would
9 like TO call Agent Mark Berube as a witness and have a
10 hearing on the legality of this order at some point in
11 time, pretrial.

12 THE COURT: What motion is it? I don't have a copy
13 of it. You said you received a copy of a motion.

14 MR. MARTINEZ: It wasn't a motion, it was a motion
15 to have this tracking device installed on my phone that I
16 was using.

17 THE COURT: I thought you told me previously it was
18 your mother's phone.

19 MR. MARTINEZ: It was my mother's phone, but I was
20 using it.

21 THE COURT: All right. Prior to that testimony, we
22 would have such a hearing.

23 Where would that come up in the presentation of the
24 testimony, Solicitor?

25 MS. CAMPBELL: In front of the jury? Not today.

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 THE COURT: All right.

2 MS. CAMPBELL: And we won't mention it in opening
3 either.

4 THE COURT: All right. Anything further, Mr.
5 Martinez.

6 MR. MARTINEZ: No, sir.

7 THE COURT: All right. You may call your first
8 witness.

9 MR. MARTINEZ: I call Dr. Chavez -- Chavez.

10 THE COURT: Doctor, if you would come around and
11 join us at the bailiff.

12 And I apologize for the delay this morning, Doctor
13 and thank you for your patience.

14 JOSE CHAVEZ,

15 having been duly sworn, testified as follows:

16 THE CLERK: Please have a seat. State your full
17 name for the record.

18 THE COURT: Doctor, your full name for the record,
19 please.

20 THE WITNESS: Sure. My full name is Jose J-O-S-E,
21 Chavez, C-H-A-V-E-Z.

22 THE COURT: Thank you.

23 All right. Mr. Martinez?

24 **DIRECT EXAMINATION IN CAMERA**

25 **BY MR. MARTINEZ:**

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 Q Mr. Chavez thank you for being here today. Can you
2 tell me where you work at. Where you work at?

3 A Well, I have different jobs. I work with
4 corrections. I work with gee owe care and I also have a
5 private practice, a family practice.

6 Q Can you tell the Court your -- your resume?

7 A How far do you want me to go into the resume.

8 Q Just a general -- just a general idea.

9 A Okay. I did my bachelors in science and pre-
10 medicine in Mexico City. I did medical school in Mexico.
11 I did my internship in Canada. I did my residency in
12 Cincinnati, Ohio. I also did post graduate in neurology
13 and also a rotation in emergency psychiatry. I have been
14 most graduate courses in internal medicine. And I have
15 completed a rotation at Morse village a facility here in
16 Columbia. I have worked with the department of mental
17 health since 1982.

18 Q How long have you -- how long have you been
19 treating me?

20 A Approximately one year.

21 Q One year?

22 A Yeah.

23 Q And in your findings, in your diagnosis of me, what
24 is your diagnosis of me?

25 A The diagnosis that we concur with the different

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 doctors that evaluated you that there has been a delusional
2 disorder.

3 Q And ha is my delusional disorder come from?

4 A They do call it a fixed delusion, a fixed medical
5 illness which is very difficult to treat. Basically
6 thinking that you have microchips inserted in your brain.

7 Q And every time that you see me, do I express my
8 same symptoms?

9 A You always say about that.

10 Q Every time that I see you, I express my symptoms
11 are present?

12 A You have verbalized that you have been hearing
13 voices and you have verbalized that the voices are telling
14 you to kill yourself.

15 Q And I am prescribed -- you prescribed me
16 medication; is that correct?

17 A That's correct.

18 Q What is the medication that you prescribed me for?

19 A The medication you're taking is Zyprexa.

20 Q And I -- you've prescribed me other medications as
21 well as; is this correct?

22 A That's correct. You were being prescribed by Dr.
23 Higgins also an anti-depression Cylexin and one of if
24 biggest problems that we have had with you as you recall is
25 that your lack of compliance on treatment.

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 Q Yeah. Because -- it's because I express to you
2 that I can't function with all that -- you guys started
3 giving me a lot of medications and I said that I can't
4 function; is that correct?

5 A Well, that's what you have essentialized.

6 Q Thank you, Dr. Chavez. I appreciate it.

7 MR. MARTINEZ: No further questions, Your Honor.

8 THE COURT: Solicitor, do you have questions of Dr.
9 Chavez.

10 MS. CAMPBELL: Just a couple, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MS. CAMPBELL:

13 Q Were you aware that Dr. Higgins thought he was
14 malingering at one point?

15 A That's correct.

16 Q And were you aware that prior hospitalizations that
17 they found that he was malingering as well?

18 A That's correct.

19 Q Did you do any testing to see if he's malingering.

20 A Well it's just basically on his -- the malingering
21 on the fixed delusion, they are very close together, but
22 it's basically on what the testimony, the patient is
23 telling you about his hearing voices and seeing things.
24 However he was basically hearing voices. He does never
25 verbalize seeing things.

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 Q So he's always just described as voices?

2 A Right. The very interesting thing one time he said
3 the illegal drugs make him feel good like he didn't have
4 any auditory hallucinations.

5 Q And in fact, he's verbalized to you that he
6 actually functions better when he's not on medications?

7 A That's correct.

8 Q Thank you.

9 MS. CAMPBELL: Your Honor, nothing further.

10 THE COURT: Recross examination.

11 MR. MARTINEZ: Yes.

12 **REDIRECT EXAMINATION**

13 **BY MR. MARTINEZ:**

14 Q Mr. Chavez, is it true that Dr. Higgins -- is that
15 his name?

16 A Yes.

17 Q Did he not say I was malingering because I did not
18 want to take the medication?

19 A He was concerned because he said you were trying to
20 make him to believe that you were suffering from psychosis
21 because you didn't want to face the charges that you have.

22 Q Is it not true that he said I was -- on his report,
23 I don't have it with me, but he said I wasn't compliant
24 with my medication. I didn't want to take the Zyprexa so
25 therefore I was malingering.

Jose Chavez - Direct Examination In Camera by Mr. Martinez

1 A Well, I just mentioned what he said.

2 Q Okay. All right. Thank you.

3 THE COURT: Solicitor?

4 MS. CAMPBELL: No, sir.

5 THE COURT: Thank you. Doctor, thank you very much
6 for your time. I realize it disrupts your personal life.

7 THE WITNESS: Thank you, your Honor, thank you very
8 much for allowing me to come today. Yesterday I was very
9 busy and I couldn't really -- I really appreciate it.

10 THE COURT: I understand the inconvenience it
11 causes to personal and professional lives. Thank you for
12 being here, Doctor.

13 THE WITNESS: Sure.

14 THE COURT: All right. Mr. Martinez, you may call
15 your next witness.

16 MR. MARTINEZ: Your Honor, I guess I -- I would
17 like to -- I don't know how to do this, but I want to
18 testify to my statement --

19 THE COURT: Of course, you may testify.

20 MR. MARTINEZ: -- to the statement that I gave.

21 THE COURT: All right. If you would come around,
22 please, and be sworn.

23 NATHAN MARTINEZ,

24 having been duly sworn, testified as follows:

25 THE CLERK: Please have a seat.

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 THE COURT: All right. Mr. Martinez, you're under
2 oath.

3 MR. MARTINEZ: Your Honor, on 4/2/2014, at 1:30 in
4 the morning, I was outside my brother's house with my
5 mother in a car and we was awakened to the dogs outside in
6 the backyard going crazy because the cops were raiding my
7 brother's house. My brother came out to see what was going
8 on. They threw my brother on the ground with guns pointed
9 on him, multiple cops. His girlfriend came out to see what
10 was going on. They threw her on the ground and pointed
11 guns at them and they came around to the car, pointed guns
12 at my mom's face, pointed guns at me and told me not to
13 move or they would shoot me.

14 So they opened the door, grabbed me, threw me on
15 the ground, face first, cuffed me up, was going -- one of
16 the officers was going to assault my mother. Another
17 officer had to restrain him, calling her a bitch and
18 talking about she was harboring a fugitive and they put me
19 in a car, or a truck, and without telling me where I was
20 going or what was happening, they just took me to -- I
21 didn't know where I was going, but I ended up in Forest
22 Acres and I walk into a room with three plain clothes
23 officers and I told them I didn't want to be there.

24 And they said, What's wrong; and I said, I don't
25 want to be here. I said, What am I doing here. And they

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 said, it's okay. It's all right.

2 And I said, I don't want to be here. I said, What
3 am I doing here; and they said, It's okay, you don't have
4 nothing to worry about.

5 I said, Look, I ain't done nothing. I don't know
6 what you guys want -- I don't know what you guys want with
7 me. And they said, Well, if you ain't done nothing you
8 don't have nothing to worry about it.

9 And Mr. Morrison said, Just calm down. We know
10 that you smoke cigarettes, here, we'll get you some
11 cigarettes. So he sends one of his officers to get me some
12 cigarettes and when I look he said you ain't done nothing,
13 sit down. It's okay.

14 I was like, Look, I don't want to be here man. I
15 ain't got nothing to say to you guys. I don't know what
16 I'm here for. And they said, Well, if you ain't done
17 nothing, you don't have nothing to worry about.

18 Mr. Shumard said, We know that you got mental
19 health issues. I've talked to other officers and we don't
20 even know if we're supposed to be talking to you like this.

21 And I was, I said, Well, what are you guys talking
22 about? And they said just talk to us and, you know,
23 everything's all right, you ain't got nothing to worry
24 about. We just want to talk to you. We just have a couple
25 of questions to ask you. You don't have nothing to worry

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 about. And I said, I don't want to -- I don't have nothing
2 to talk about. They said; Well, then you ain't got nothing
3 to worry about.

4 I said, Why am I here? They said, If you ain't
5 done nothing, you don't have nothing to worry about. I
6 said, I don't want to be here. And they said, Look, we
7 know that you got mental health issues. We've talked to
8 other agencies.

9 I said, I have -- I said, I've been looking for
10 medical attention. I've been asking for medical help
11 because I have microchips inside my head. I have evidence
12 to prove that. I have medical tests that will prove this
13 and I -- I've been asking for help.

14 Mr. Shumard told me, You know, I can get you that
15 help. We can help you. And I said, How can you help me?

16 He said, We can help you get medical attention.
17 And I said, How are you going to get the medical attention?

18 He said, We can talk to people. He said, All
19 you've got to do is talk to us. If you ain't done nothing
20 wrong, you don't have nothing to hide.

21 I said, I don't have nothing -- I don't -- I said,
22 why am I here. They said, If you talk to us, then that's
23 all you got to do. They said, Just sign the waiver and
24 talk with us. I said, I don't want to talk to you guys. I
25 ain't got nothing to talk about.

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 They told me, Look, we can help you get medical
2 attention, we'll help you get some help, we know you need
3 help. We know. They said, just sign the waiver,
4 everything will be all right, you don't have nothing to
5 worry about.

6 I again told them I didn't want to sign the waiver.
7 I told them, I don't want to talk to you, I don't know
8 nothing. I don't even know why I'm here. He said --
9 Mr. Morrison said, We can help you. We can help you -- I
10 was telling him how I noticed how I got microchips and I'm
11 showing my ear. I said, Look, I don't know nothing about
12 nothing. All I know is I've got microchips in my head and
13 that's it.

14 And they was like, Well, we can get you help, we
15 can help. And I said -- I said, all right. I'll sign the
16 waiver. I ain't got nothing to worry about, I ain't did
17 nothing.

18 So as soon as I signed the waiver all three
19 officers starting talking to me at the same time telling me
20 what I'd done and what I didn't do and what happened and I
21 told them -- I'm talking to one while another one is
22 telling me, like for instance, Mr. Shumard would ask me a
23 question and I was like, no, I don't know nothing about
24 that. And Mr. Morrison was like, you just said you know
25 something about that. An then Mr. Colin D Bailey was like,

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 yeah, you just -- you did just say that. And I was like, I
2 was like, no, I didn't just say that. And Mr. -- and they
3 were just keeping -- that's how it was going. I didn't say
4 that.

5 And every time they would question me, it would be
6 like we'd keep going back and forth. I'm like, I didn't
7 say that. And they're trying to tell me what I said.

8 You did say that. You did that, don't you remember
9 that. And they keep trying to tell me, you remember that?
10 You remember doing this? And I said, I don't remember
11 that, I don't remember none of that.

12 And then, I kept telling them, Look, I don't know
13 what you guys are talking about. All I know is I have
14 microchips inside my head that I can prove are there. I
15 can prove it.

16 And they were like, Oh, okay. All right. All
17 right. But anyway, So how did you do that? I said, I
18 wasn't even there. Oh, yeah, okay then.

19 Mr. Shumard would slide a paper over there while
20 they're talking to me and like you just initial right here,
21 just initial right here and I wasn't paying attention at
22 the initialing. And he was like, here, you want to add
23 something. I didn't even say that. Yeah, yeah, you just
24 said that. You just said that. I didn't say that and I
25 get it and I'm like here, and I put, all I know is I got

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 microchip implants inside my head.

2 And I write up that little statement, that little
3 statement; all I know is I need help.

4 At the end of the statement -- it went on like that
5 for an hour-and-a-half, maybe two hours. I kept telling
6 them no, I don't know nothing about this. I didn't do
7 this. And they was like how did you do this? Where was
8 you at? Why did you do this.

9 I told them, Look, I don't know nothing about that,
10 I didn't do that. And they kept telling me, Yeah, you did.
11 You just said you did. You did that. You know you did
12 that.

13 I was like, I didn't do that. I did none of that
14 and they was like -- they be like, yeah, you did say that,
15 you did say that.

16 At no time did they -- did they tell me -- actually
17 let me -- allow me to exercise my rights. I told them that
18 I didn't want -- I don't want to write a statement, I don't
19 want nothing to do with this. They kept reminding me,
20 Well, we're going to help you. We're going to let you
21 smoke. We got you cigarettes, here you go. Light your
22 cigarette right here, you're all right, you're all right.
23 We're not going to hurt you, not going to do nothing.

24 And then after the fact -- Well, after Forest Acres
25 was done talking, Mr. Morrison said, Well, do you know

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 something about a girl in a car? And I was like, I don't
2 know nothing about no girl in a car. And he was like,
3 well, we have another officer here who wants to talk to you
4 about a girl in a car.

5 And then Colin D. Bailey was like, You just said
6 you know something about a girl in a car. I said, I ain't
7 never said I know nothing about a girl in no car. And
8 Mr. Morrison was like, Yeah, you did, you just said that.
9 I said, I never said that.

10 And we'd go back and forth, yes, you did. I go
11 back, no I didn't. So Mr. Colin D Bailey tells me about
12 Elexia Tucker. And I told him, I said, No, there was a guy
13 that was up -- I said it didn't happen like that. That
14 didn't happen like that. That's impossible. There's a guy
15 that was up. I said I want you to go back to her house and
16 look at the design of her house.

17 And he was like, Yeah, you did, you put a knife and
18 this -- I had a knife in my pocket. I was out walking the
19 streets, I didn't have a knife out that I was brandishing
20 to her. I didn't -- I said I was let into the house. She
21 let me in the house and then I was there. I know them. I
22 said, I know them. I said, I know them, they know me.

23 I said, it wasn't even like whatever you're saying.
24 And he was like, Well, he didn't read me my rights and also
25 I told him that I didn't want to talk to him. He states in

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 his report that I did want to talk to him, which I did not
2 want to talk to him. And as I stated -- as I told him,
3 what he says in his report and what -- what actually was
4 written in that statement doesn't make -- doesn't match up.

5 And they also took pictures of me and they told me
6 that they were going to help me, they was going to give
7 them to the solicitor's -- they was going to give them to
8 the solicitor's office to help me and they was going to the
9 help me get medical attention. And that's why I made that
10 statement, I told them that I was going to be able to
11 resolve this to be able to show that what I was saying was
12 the truth about having microchips implanted inside my head.

13 And that's why I said that, for that specific
14 reason. And then afterwards, I went back -- I went to jail
15 and I called my mom and I told my mom the same thing; that
16 there was three police questioning me and you didn't know
17 what they were saying, they was saying all kinds of stuff.
18 And I don't know -- they thought that I was crazy.

19 At the jail they thought I was crazy because they
20 thought I was going crazy or nothing, but I guess -- I
21 don't know. But they put me on suicide watch and as I --
22 as I -- as Officer Holly Wagner, she testified and the
23 other one would testify too that I was on suicide watch
24 after that happened because of that incident, the way the
25 police came and threatened me and questioned me.

Nathan Martinez - Direct Examination In Camera by Mr. Martinez

1 THE COURT: Anything further? Anything further
2 you'd like to say?

3 MR. MARTINEZ: As far as that, I just want to say,
4 like I said at the time, my whole issue is with -- with the
5 chips implanted in my head and that's -- that directly --
6 my mental health issues directly bear on that, on that
7 statement and that's certain in that situation and it
8 affected, my symptoms.

9 THE COURT: Anything else you'd like to say?

10 MR. MARTINEZ: No, sir.

11 THE COURT: All right. Solicitor?

12 MS. WALKER: Beg the Court's indulgence, Your
13 Honor?

14 THE COURT: Yes.

15 (There was a pause in the proceedings.)

16 MS. WALKER: We don't have any questions, Your
17 Honor.

18 THE COURT: Thank you. Thank you, Mr. Martinez,
19 you may step down.

20 All right. Mr. Martinez, you may call your next
21 witness.

22 MR. MARTINEZ: Yes, I'd call Warren Cavanaugh.

23 THE COURT: All right. Detective -- Investigator
24 Cavanaugh, if you'd come around and be sworn for us,
25 please.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 WARREN CAVANAUGH,

2 having been duly sworn, testified as follows:

3 THE CLERK: Please have a seat. State your full
4 name for the record.

5 THE WITNESS: Thank you, Your Honor, I'm Warren
6 Cavanaugh, Richland County Sheriff's Department.

7 THE COURT: All right. Mr. Martinez?

8 DIRECT EXAMINATION IN CAMERA

9 BY MR. MARTINEZ:

10 Q Mr. Cavanaugh, are you the one that transported me
11 to Richland -- or to Forest Acres Police Department?

12 A No, sir.

13 Q You're not -- are you one of the ones that was part
14 of the arrest?

15 A Yes, sir.

16 Q And was you there when -- was you present when the
17 officers threw me on the ground?

18 A I was present when you were placed in the
19 handcuffs. I don't believe you were thrown to the ground.

20 Q You don't believe so?

21 A If you were, I didn't see that.

22 Q You was there when -- where was I located at?

23 A In your mother's van beside your brother's house.

24 Q And you guys were -- how many people was there?

25 A There were quite a few people there. I'm not sure

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 of the numbers.

2 Q You guys weren't -- you guys were pointing guns at
3 me and my mother through the car window?

4 A I would say so, yes.

5 Q And was there an officer that threatened my mom?

6 A I definitely didn't hear that.

7 Q You didn't hear that?

8 A No, sir.

9 Q Do you know about the track that was -- the trace
10 that was on my mother's phone?

11 A Can you go a little bit further on what you're
12 asking?

13 Q You told Shumard -- you remember talking to Shumard
14 about there was -- that you guys were following my phone, a
15 phone that was issued to my mother that I was using?

16 A I did.

17 Q And do you remember exactly when you guys were
18 tracking my phone?

19 A You asking the date or --

20 Q Yeah, the date?

21 A I think that was the first of April of '14, 2014, I
22 think that's right.

23 Q You guys didn't have a track on that prior to that?

24 A No, sir.

25 Q Mr. -- it said on -- on 3/30, he said he called you

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 and requested your assistance in apprehending the suspect
2 and then -- and then that's -- on the 31st, he said Warren
3 Cavanaugh called me and advised me they discovered the
4 suspect's phone number, it was a government issue and was
5 currently out of minutes. However, the next day, 4/1/2014,
6 it should be loaded up again and once that takes place,
7 they would start monitoring.

8 MS. WALKER: I would object to the relevancy of
9 this, Your Honor, for the purposes of the Denno hearing.

10 THE COURT: What is the relevance, Mr. Martinez for
11 purposes of Jackson versus Denno and the voluntariness of
12 your statement given on 2, April, 2014.

13 MR. MARTINEZ: All right. I'll question him later
14 on that, I'm sorry.

15 THE COURT: Sir?

16 MR. MARTINEZ: I'll question him later on that
17 matter.

18 THE COURT: When -- what are you calling later?

19 MR. MARTINEZ: This has to do with that tracking,
20 trace device that they had on the phone.

21 THE COURT: I'm not going into that motion now.

22 MR. MARTINEZ: That's what I'm saying, I'll wait
23 until later to do that then.

24 THE COURT: This is the Jackson versus Denno
25 hearing, so please stay focused on that.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q So do you know who transferred me to -- from my
3 brother's house to the --

4 A Not off the top of my head. It was one of the
5 other officers that was there that I did follow that
6 officer.

7 Q Did he say that I agreed to go to the police
8 station?

9 MS. WALKER: I would object to the hearsay as to
10 what the officer -- the other officer said, Your Honor.

11 THE COURT: Well, and it's an unknown officer.
12 This officer has testified he didn't transport you. He
13 doesn't recall who did transport you, so he can't testify
14 to what some other person may have said that is at this
15 point not even known.

16 Q Was you present when I -- when I was asked -- was I
17 ever asked in your presence if I wanted to go and talk to
18 the police?

19 A That question was never asked. You were arrested
20 by Richland County Sheriff's Department fugitive team,
21 which is what I'm a part of. We were asked to assist
22 Forest Acres in locating you and arresting you on their
23 charges, which is why you were transported to the Forest
24 Acres police department.

25 Q So I never -- so you're saying I never voluntarily

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 wanted to be transported to the --

2 A I don't know if you were or not, but the reason you
3 were is because that's who you were arrested for. We were
4 assisting that agency.

5 THE COURT: And that -- Mr. Martinez, that's
6 irrelevant. An arrest warrant is a court order at the end
7 of the day. When a judicial officer issues an arrest
8 warrant, a law enforcement officer has a sworn duty to
9 arrest that person and incarcerate that person and then
10 that person has the right to a bond hearing. If these
11 officers had a warrant and would fail to execute that
12 warrant with the knowledge of where the individual lives
13 for which the warrant had been issued, that'd be misconduct
14 in office.

15 They're sworn to execute that order that has been
16 issued by the judge. And I don't know many people that --
17 many people I -- I'm not sure I know anybody that
18 volunteers to be arrested.

19 So ask your next question.

20 MR. MARTINEZ: I understand what you're saying,
21 Your Honor. I'm just saying that I never volunteered to go
22 speak to the police.

23 THE COURT: You never turned yourself in.

24 MR. MARTINEZ: I never knew that I was being
25 wanted.

Warren Cavanaugh - Direct Examination by Mr. Martinez

1 THE COURT: That may be. That may be, Mr.

2 Martinez. But the arrest team, the Fugitive Task Force has
3 a duty to execute that arrest warrant, to arrest the
4 individual. So stay focused on the voluntariness of the
5 statement. This officer wasn't a part of that.

6 BY MR. MARTINEZ:

7 Q Okay. So you said, your job is to arrest me and
8 take me to jail, correct?

9 A I'm going to try this again. We were asked to help
10 the Forest Acres Police Department. We were asked to help
11 that jurisdiction based off they're also Richland County so
12 they also actually had the Richland County fugitive team
13 help in locating you. When you were located because it was
14 Forest Acres arrest warrants for the charges, you were
15 transported to Forest Acres to be placed into their custody
16 on their warrants that we assisted them with. That was the
17 extent of my job.

18 Q Was that procedure?

19 A Absolutely.

20 Q You don't -- as he said take people to jail, arrest
21 them and take them to jail and then if the person wants to
22 talk to them they leave him there, give them that right?

23 A Not if it's a warrant out of another jurisdiction.
24 That's not our duty for that, no, sir.

25 Q Okay. All right.

Warren Cavanaugh - Cross-Examination by Ms. Walker

1 MR. MARTINEZ: No further questions, Your Honor.

2 THE COURT: Solicitor?

3 **CROSS-EXAMINATION IN CAMERA**

4 BY MS. WALKER:

5 Q Sir, did you or anyone in your presence ever
6 question this defendant?

7 A Absolutely not.

8 Q Thank you, sir.

9 THE COURT: Redirect, Mr. Martinez?

10 **REDIRECT EXAMINATION**

11 BY MR. MARTINEZ:

12 Q You said that I was in my mother's car; right?

13 A I believe it was a van.

14 Q Is there any way I would have gotten dusty or dirty
15 laying there or sitting in there?

16 THE COURT: Any way what? What was the question?

17 MR. MARTINEZ: Is there any way I would have gotten
18 dusty and dirt just sitting in the car?

19 MS. WALKER: I would object to the speculative
20 nature of the question, Your Honor.

21 THE COURT: And tell me the relevancy say of
22 whether you were --

23 MR. MARTINEZ: The relevancy --

24 THE COURT: Let me -- just let me finish my
25 thoughts. I'm not getting frustrated at all, Mr. Martinez.

Warren Cavanaugh - Cross-Examination by Ms. Walker

1 Let me finish my thoughts.

2 Tell me the relevancy of whether you were clean or
3 dirty as to voluntariness of your statement.

4 MR. MARTINEZ: Because in the totality of the
5 circumstances, my physical appearance from my arrest will
6 show that my clothes -- I'm wearing a black shirt and it's
7 all dusty and dirty, it's got grass and it's got dirt all
8 over it.

9 THE COURT: You didn't testify to that.

10 THE WITNESS: I did say that they -- I just asked
11 him if I was thrown to the ground.

12 THE COURT: You didn't testify that you got dusty
13 and dirty, but tell me, if you got dusty and dirty, what is
14 the relevancy of that in the interview with Lieutenant
15 Shumard, Detective Morrison and Detective Bailey.

16 MR. MARTINEZ: Because it shows that I was thrown
17 to the ground when he said -- he stated that he was there,
18 present, and I was never thrown to the ground. But
19 everybody was thrown to the ground. My brother was on the
20 ground --

21 THE COURT: What is the link if you were thrown to
22 the ground between being thrown to the ground at a remote
23 location and being interviewed at the Forest Acres Police
24 Department? This officer didn't interview you. Officer
25 Cavanaugh just said there was no questioning.

1 MR. MARTINEZ: It's the nature, it's the force.
2 It's the abuse for no reason.

3 THE COURT: Asking your physical appearance at the
4 scene of the arrest --

5 Can you respond to that question, Detective?

6 THE WITNESS: I don't know that I can. That was
7 over two years ago. I don't honestly remember what he was
8 wearing at the time.

9 MR. MARTINEZ: All right. Thank you.

10 THE WITNESS: You're welcome.

11 THE COURT: Thank you, thank you very much,
12 Detective Cavanaugh, for being with us today.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You may step down.

15 Call your next witness, Mr. Martinez.

16 MR. MARTINEZ: I don't have nothing further, Your
17 Honor. I just want to make my argument and that's it.

18 THE COURT: So you have no further witnesses or
19 testimony that you would like to offer in this Jackson
20 versus Denno hearing.

21 THE WITNESS: No, sir.

22 THE COURT: All right. So those witnesses that I
23 had subpoenaed, Detective Heidi Jackson, Detective Holly
24 Wagner, Scott Faust are now released from their subpoena
25 for purposes of the Jackson versus Denno hearing.

PRETRIAL MOTION ARGUMENT

1
2 THE COURT: All right. Solicitor, I'll be glad the
3 hear from you on both the Neals versus Biggers as to
4 Ms. McRae, as to Ms. Tucker, as to Ms. Hurshman.

5 MS. CAMPBELL: Your Honor, as far as --

6 THE COURT: And I think I may have already ruled on
7 Ms. Tucker.

8 MS. CAMPBELL: I think you ruled on it, yes.

9 THE COURT: But it was at the end of the day.

10 As to -- I may have -- I think I've also ruled on
11 Ms. McRae.

12 MS. CAMPBELL: McRae, I believe you have.

13 THE COURT: So I think it's as to Ms. Hurshman.

14 MS. CAMPBELL: Your Honor, we feel like that under
15 the totality of the circumstances that Ms. Hurshman
16 explained that she saw the lineup, that she then went on
17 her own volition without any instruction from the police,
18 onto Facebook. She then saw a person whose name had been
19 provided to her husband and she immediately recognized him
20 specifically from the tattoos as well as the face and, Your
21 Honor, we would think under the totality of the
22 circumstances, the identification is proper and we would
23 ask that you allow her to identify him. There's no
24 evidence of any police misconduct to justify police action
25 that caused her to recognize, for her to go on and look up

1 that person and we respectfully ask that you allow her
2 identification.

3 THE COURT: All right. As to the identification by
4 Ms. Hurshman, I'll be glad to hear from you, Mr. Martinez.

5 MR. MARTINEZ: Your Honor, the identification must
6 be free of independent, any later suggestion that what a
7 person -- it has to be -- she was at the bond hearing. She
8 was at unrelated bond hearings. She was around other
9 people. She was -- her husband went to another bond --
10 went to the preliminary hearing a month later. She told
11 her husband, that's the guy, that's him.

12 They did do a Facebook or Google research, whatever
13 they did. They never came forward with that evidence. She
14 never came forward with that evidence. She never went and
15 told the trauma, the sexual trauma. She never went and
16 told the victim's advocates. She never told anybody that.
17 She came the day of trial with a fabricated story to the
18 solicitor and now the solicitor's using it -- well,
19 attempting to use it against me when she couldn't identify
20 me with the photo lineup that was shown to her; that
21 everything else seemed to identify me but her.

22 She seen the person. She's the one that gave the
23 descriptive description. She -- these people that seen
24 this guy passing by. She was there up personal with this
25 person. She smelled him. She knows -- she couldn't

1 identify this person even with the highly suggestive photo
2 lineup, that I can prove with their evidence from that
3 track and trace device that SLED -- SLED Fugitive, Richland
4 County, all of them, were a part of these legalities -- the
5 legal action that violated my rights. And that -- they
6 called her to another bond hearing to try to influence her
7 yet even more to try to make her believe, Oh, that's the
8 guy, that's the suspect. She wasn't supposed -- that case
9 had nothing to do with her. She wasn't supposed to be
10 called there. She came to another hearing. She didn't
11 even go to her own preliminary hearing, her own case.

12 Now, like I said, she's coming to court, I would
13 object to it, Your Honor because of the -- it's -- her
14 testimony's been unreliable and untrustworthy and her
15 identification has to be free of any independent later
16 suggestiveness.

17 THE COURT: Thank you. Thank you, Mr. Martinez.
18 Anything in response, Solicitor?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: Thank you.

21 A criminal defendant may be deprived of due process
22 of law by an identification procedure which is
23 unnecessarily suggestive and conducive to irreparable
24 mistaken identification *Stovall versus Denno*, 388 U.S. 293.
25 Although I will analyze this, it is -- my first impression

1 in ruling that there was no unnecessarily suggestive
2 identification procedure because there was no
3 identification procedure by State action resulting in the
4 identification of the defendant by Ms. Hurshman.

5 She was shown Defense 1 for identification and
6 failed to identify or did not identify any individual
7 involved; therefore, the conclusion is if there'd been
8 suggestiveness, it would have been her identifying Mr.
9 Martinez.

10 Independent, independent from the police,
11 Ms. Hurshman searched Google and Facebook for the name
12 Nathan Martinez, which had been provided for her. She did
13 her own investigation on the internet. The question then
14 becomes if she had, because opinion -- because
15 identification testimony is the opinion or belief of a
16 witness that a particular individual is the individual that
17 committed the offense; you then look at, first, the various
18 factors as to her ability to have identified the individual
19 that allegedly perpetrated the offense.

20 The following factors are considered in evaluating
21 the totality of the circumstances as to whether an
22 identification is admissible. The opportunity for the
23 witness to view the criminal at the time of the crime; the
24 testimony of Ms. Hurshman is it was approximately 20
25 minutes, although time would perhaps be difficult to

1 estimate under the circumstances she described even given
2 minutes one way or the other, that is a high degree of
3 opportunity.

4 The witness's degree of attention: Clearly she had
5 no choice but to be attentive. She was held captive. She
6 was restrained. It was just her and the alleged suspect,
7 obviously in close proximity both on a floor where the
8 suspect's body parts were touching and/or introduced into
9 the victim's body. Where else would her attention have to
10 be?

11 The accuracy of the witness's prior description of
12 the criminal: Although there could be discrepancies from a
13 person's height or such as that or weight, the height being
14 the most discrepant, the weight, this build or similar,
15 also the ethnicity of the alleged perpetrator.

16 The levels of certainty demonstrated by the witness
17 when she does a complete and Face -- or an extended
18 Facebook and Google search, further her attention to detail
19 that the face and, as she called it, a giant neck tattoo.
20 So even under the circumstances she had the opportunity or
21 she was able to pay attention to detail.

22 I take into account part of the testimony was, was
23 there or was there not a condom. Was there or was there
24 not a -- gloves being worn by the perpetrator. The length
25 of time between the crime and to confrontation. Well, that

1 is a pretty narrow window of time because she has
2 identified the individual and gave that notification to her
3 husband within just days. All that is prior to any bond
4 hearing she may have attended as to victim number -- well,
5 let me -- rather than number, Victim Tucker. Whether she
6 did, Ms. Hurshman, or did not attend any bond hearings her
7 own or others is of no moment to this Court. She had
8 already made her identification and advised her husband.
9 Whether or not she told the police, whether or not she told
10 sexual trauma, whether or not she told anybody at the
11 Dickerson Center is of no moment to this Court. What's
12 important to this Court is if there is the reliability of
13 the identification by Ms. Hurshman with no State action of
14 the individuals -- of the individual.

15 There would be no greater proximity between the
16 victim and the alleged perpetrator. There couldn't be
17 greater amounts of time, depending on how long a person was
18 restrained and held captive, but 20 minutes perhaps would
19 seem like a lifetime to a victim, but is more than
20 sufficient time. The lighting she described, although no
21 overhead lighting, she was manhandled within the house from
22 the bathroom to the bedroom, a lot, a lot -- a great deal
23 of contact between the alleged perpetrator.

24 As to the photographs introduced, State's Exhibit
25 Number 90 for identification, Number 5 for identification,

1 Number 6 for identification, off of Facebook page, indicate
2 this is a Facebook page of Nathan Martinez shows a partial
3 chest, neck in an upwards position. You can, of course see
4 that the -- there is what would be consistent with
5 Ms. Hurshman's description of a giant neck tattoo.

6 The second photograph, State's Exhibit Number 6
7 shows Mr. Martinez from further down, a little below
8 midchest showing more tattoos, but Ms. Hurshman testified
9 that he was not unclothed. And State's Exhibit Number
10 50 -- excuse me Number 90 shows, actually it shows an
11 enlargement of State's 6.

12 So based on the totality of the circumstances, I
13 think all of those factors are met as to Ms. Hurshman's
14 identification of the defendant. Further, I think there's
15 -- there's no, no testimony in the record that her
16 identification was made post any bond hearing. And her
17 identification is made on the individual. It's her
18 opinion, her identification -- it's my opinion, her
19 identification is made based on her opinion of what she saw
20 the interactions that were -- that she sustained on 27
21 March 2014. Therefore, by a preponderance of the evidence
22 the identification by Ms. Hurshman is admitted both out of
23 court and in court identification.

24 All right. Next Jackson versus Denno, Solicitor.

25 MS. CAMPBELL: Your Honor, we feel like in

1 reviewing the actual statement itself, you can see where
2 Mr. Martinez was able to initial each and every answer. In
3 addition to that, there were several different places and
4 added in information in some handwriting, and his
5 handwriting is very distinct. There is no credible
6 evidence that he was anything -- that he was not advised of
7 his rights, that he did not waive those rights and that he
8 agreed and was actually on one he told his version of the
9 story.

10 In addition to that, Your Honor, there is evidence
11 that he was allowed to amend anything that was written down
12 for him and that he did that on several occasions and that
13 there's no evidence that it's not his signature at the
14 bottom of that form acknowledging that that was, in fact,
15 his statement. He initialled it and added in the parts
16 that he wanted to himself.

17 Your Honor, based on the credible evidence in this
18 case, we feel like the statement is voluntary, that his
19 rights were not infringed in any way and we'd ask that the
20 statement be allowed. Thank you.

21 THE COURT: Thank you, Solicitor.

22 Mr. Martinez?

23 MR. MARTINEZ: Yes, Your Honor, I'd like to cite
24 State versus Allen.

25 THE COURT: What is the cite.

1 MR. MARTINEZ: Westlaw 2014 Westlaw 374, 7336, it's
2 -- at the end it says -- I'd like to read, quote it. It
3 says, in concur and result I write separately because I
4 believe the trial court misapplied the law in deciding
5 Allen's statement was voluntary --

6 THE COURT: Slow down a little bit for me, please.
7 When you're reading and you're looking down, we all tend to
8 go a little faster. Just slow down --

9 MR. MARTINEZ: Okay.

10 THE COURT: -- for me and my court reporter,
11 although she can type quicker than I can think. But just
12 slow down a little bit for me.

13 MR. MARTINEZ: Okay. It's at the end, it says I
14 concur result. I write separately because I believe that
15 the trial court misapplied the law in deciding that Allen's
16 statement was voluntary, however because appellant counsel
17 did not argue merit in this respect the standard of review
18 requires this matter be affirmed. In Allen's statement to
19 police, she initially denied being in South Carolina the
20 weekend the victim was shot.

21 However, the officers subsequently confronted her
22 with evidence from witnesses placing her in the area. It
23 is at this point they also brought up that she was not
24 currently charged with murder but she could be charged with
25 murder and implied they would have to charge her with

1 murder if she was not forthcoming.

2 Allen therefore admitted to driving to South
3 Carolina with her boyfriend, picking up her son and one of
4 his friends, driving the three to the victim's house,
5 hearing gunshots after the three went into victim's house
6 and driving the three away. Allen also admitted she
7 believed they were going to kill the victim when they got
8 out of the car and her boyfriend had told her before they
9 arrived at the victim's house that Allen's son needed to do
10 the victim before the victim do -- before someone do him.

11 Defense counsel argued Allen's statement should be
12 suppressed because she was threatened at least twice in the
13 taking of this statement being told she would be placed in
14 greater jeopardy if she was not straight with the
15 investigators and it was at this point that the statement
16 took a different turn with Allen, then incriminating
17 herself.

18 The State argued that the Court was to look to see
19 if Allen properly waived her Miranda Rights at the start of
20 her statement and if the Court would be satisfied that she
21 understood what she was doing and she gave a knowing and
22 voluntarily statement that we would submit to anything
23 that's made after she has properly advised of her rights
24 and she waived, it's admissible.

25 Defense Counsel countered one cannot be bound by

1 waiver given at the beginning of -- the beginning of a
2 statement when there is 180 degree change during the giving
3 of the statement because to do so would allow the State to
4 take whatever action it wanted to as long as it secured the
5 initial waiver. The Trial Court apparently argued --
6 agreed with the State's argument, ruling as follows: When
7 the Court looked to whether or not a statement is freely
8 and voluntarily given --

9 THE COURT: Mr. Martinez, let me stop you a minute.
10 I can read. I will read that case. You do not have to
11 read it to me. Tell me your argument as to how that case
12 applies.

13 MR. MARTINEZ: It's saying that the circumstances
14 exists which establish that his will was overborne and his
15 capacity for self-incrimination critically impaired. At
16 that time, the waiver becomes un voluntary.

17 THE COURT: All right.

18 MR. MARTINEZ: At that time when my will became
19 overborne, you heard conflicting testimony from the police
20 who gave three different totally separate stories of the
21 account of the interrogation. One said there were
22 cigarettes, one said there was no cigarettes. One said
23 there was no medical attention, one said there was medical
24 attention. They didn't -- the officers didn't give no --
25 no supplemental report as to what happened. They did to

1 everyone else's. Mr. Colin D. Bailey was the only one to
2 provide supplemental notes as to what happened and he
3 states in his report that it took all three of the officers
4 to keep me on topic so right there that my will for -- my
5 will was overborne.

6 It took three officers to talk about what they
7 wanted to talk about. They all stated -- he stated, the
8 only thing I wanted to talk about was microchips.

9 At the time of the -- at the time of the making of
10 the -- the statement, I suffered as I stated from the
11 mental disability directly -- the symptoms directly applied
12 to that incident and it would -- it affected me.

13 THE COURT: All right. Thank you.

14 Any in response, Solicitor?

15 MS. CAMPBELL: No, Your Honor.

16 THE COURT: Under State versus Parker, 381 South
17 Carolina 68, the trial judge determined the admissibility
18 of the statement upon proof of its voluntariness by a
19 preponderance of the evidence citing State versus Miller
20 375 South Carolina 370. The process of determining whether
21 a statement is voluntary and thus admissible is bifurcated.
22 It involves determination by a judge and the jury.

23 First the trial judge must conduct an evidentiary
24 hearing outside the presence of the jury where the State
25 must show the statement was voluntarily made by a

1 preponderance of the evidence.

2 In determining whether a confession was given
3 voluntarily, this Court must consider the totality of the
4 circumstances surrounding the defendant's giving of the
5 confession, *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).
6 This must be done on the totality of the circumstances,
7 including the giving of Miranda Rights, if any; the age of
8 the accused; the lack of education or his low intelligence;
9 the lack of any advice to the accused of his constitutional
10 rights; the length of detention; the repeated and prolonged
11 nature of questioning and the use of physical punishment
12 such as deprivation of food or sleep. No one factor is
13 determined -- but each case requires careful scrutiny of
14 all the surrounding circumstances and that reaches the
15 ultimate question of whether it was knowingly,
16 intelligently, voluntarily given under the totality of the
17 circumstances.

18 I have listened closely and intently to the ten
19 witnesses that have been presented during the course of
20 this Jackson versus Denno hearing. Lieutenant Shumard,
21 Detective Colin Bailey, Detective Charles Morrison, Dr.
22 Colbi Sutton, Holly Wagner, Heidi Jackson, Dr. Jose Chavez,
23 Nathan Martinez, and Investigator Warren Cavanaugh.

24 I have reviewed the -- the various documents that
25 have been presented. As an initial matter, the defendant

1 being arrested at 1:30 in the morning by the Richland
2 County Fugitive Task Force at the request of the Forest
3 Acres Police Department by assistance and taken to the
4 Forest Acres Police Department again is no moment to this
5 Court. I think that would be the protocol involved. The
6 fugitive task force generally would have no knowledge
7 except the individual would be wanted and they would have
8 arrest warrants issued and perhaps copies of those arrest
9 warrants.

10 In talking to the Forest Acres Police Department,
11 the fact that the advice of rights as far as personal
12 identifying information had been previously filled out,
13 again, is of no moment to this Court. It's been testified
14 and there's no contradictory testimony that this is the
15 procedure the Forest Acres Police Department used in this
16 case or in all cases.

17 In the advice of rights, noted in the lower left,
18 he has indicated two years of college, so there is no lack
19 of education in that regard. Lieutenant Shumard testified
20 -- or it was testimony both by the lieutenant and Detective
21 Morrison as to the advice of his rights.

22 As to the advice of rights, each right is
23 initialled NM, that's State's Exhibit Number 91. Further
24 as to the waiver of rights, it is signed by Mr. Martinez
25 and witnessed by Forest Acres Police Department, Detective

1 -- Detective Morrison.

2 The statement given, State's Exhibit Number 92,
3 indicates this statement was made in the presence of
4 Lieutenant Shumard an employee of the Forest Acres Police
5 Department. I make this statement of my own free will and
6 accord without reward or intimidation. All of the above is
7 the truth, the whole truth, and nothing but the truth, so
8 help me God. I received a copy of this statement. It is
9 signed by Mr. Martinez, dated 2 April, 2014 and sworn to --
10 that's page 1 of the statement.

11 Page 2 of the statement has the identical language
12 at the bottom, again signed by Mr. Martinez.

13 Page 3 of the statement has the identical
14 information on the form signed by Mr. Martinez and
15 witnessed by Detective Morrison.

16 Page 4 has the identical information. Also on page
17 4, the final question, Is there anything you wish to add
18 and there is one, two, three, four, five, six, seven --
19 seven lines and a word on the eighth line that was added.
20 Again that page has the same language.

21 So now the rights form has been initialled five
22 times and the statement form has been signed with that free
23 and voluntary language on it four times. So it's numerous
24 signatures by Mr. Martinez.

25 I also take into account the photographs that were

1 introduced, Defendant's Exhibits 3 through 16. I do see
2 Defendant's 3, a cut behind his ear; Defendant's 4, a cut
3 behind his ear; Defendant's 5, a cut behind his ear; 6, 7
4 is a photograph of the individual, Mr. Martinez. He
5 characterized it as these photographs would show him crying
6 and such. I do not see that on this photograph, 8, a
7 photograph of Mr. Martinez primarily showing the neck
8 tattoo; 9 showing basically what 8 shows; 10 shows some arm
9 tattoos; 11 showing hand tattoos; 12 showing the cut behind
10 the ear; 13 showing a head to toe photograph of the -- of
11 the -- of Mr. Martinez; 14 showing basically the same as
12 13; 15 showing from about thigh level up; and 14, showing
13 the face again. I see no indication -- and I'm not sure
14 anyone can read a photograph for the showing or not showing
15 of distress.

16 In further evaluating the testimony brought out
17 through cross-examination and others of a microchip and his
18 focus and concern on the microchip, I take that into
19 account and I think the testimony is consistent both among
20 the officers and Mr. Martinez that he's concerned that he
21 has a delusion -- the level of which feigning is relative.
22 It seems to be a very fixed, hard delusion when it assists
23 Mr. Martinez, and a very elusive delusion when it doesn't
24 assist Mr. Martinez. But I take his mental health and
25 condition and all into effect.

1 In looking at the case of Gibbs versus Warden of
2 the Georgia State Penitentiary Hardwick, 450 F supplement
3 242 1978, and some of the South Carolina cases deal more
4 with mental insufficiency, but if following this, this
5 Ms. Gibbs was serving five consecutive life sentences after
6 a jury found her guilty of poisoning murders of five of her
7 close relatives.

8 Her sole contention challenges the voluntariness of
9 her confession given during custodial interrogation. She
10 basically states that because of her psychotic psychiatric
11 state that there was considerable psychiatric testimony
12 that she was psychotic, suffering from schizophrenia for a
13 number of years which included the period during which she
14 confessed.

15 I've heard no testimony of that. Further during
16 the cross-examination of Dr. Sutton, State's Exhibit 19 was
17 introduced into evidence and it indicates at the time of
18 the alleged offenses, Mr. Martinez did not appear to be
19 suffering from mental health symptoms that could cause one
20 to lack the capacity to distinguish moral or legal right
21 from moral or legal wrong or to recognize the acts charged
22 as morally or legally wrong. He did not relate symptoms of
23 a mental disorder of his thinking or actions or proceeding
24 or during the time of the alleged offense. Additionally,
25 official records do not note the presence of related mental

1 health symptoms, i.e. delusions or hallucinations at the
2 time of the incident.

3 Mr. Martinez acknowledged the wrongfulness of the
4 acts but maintained he was engaged in consensual sexual
5 activity on the first two accounts and asserts he cannot
6 remember engaging in sexual activity on the third account,
7 the first account being Ms. Vasser, the second account
8 being Ms. Tucker, the third account being Ms. Hurshman.

9 That is, of course, inconsistent with the delusion.
10 But I take into account he does have a delusion as feigning
11 as it maybe would take that into account that it would not
12 affect and did not affect the voluntariness of the
13 statement that was given.

14 As far as the testimony from the report of Colin
15 Bailey, and taking into account Mr. Martinez's testimony, I
16 find it credible that the officers may have had to keep him
17 focused because in his testimony before the case, the
18 majority of it he focused on the microchip. The fact that
19 there's no supplemental report by Detective Morrison or
20 Lieutenant Shumard is of no moment to this Court. There's
21 no requirement for that. They both indicate the statement
22 speaks for itself. They thought it was sufficient.
23 There's testimony he was given water. There's no testimony
24 he was threatened in any manner.

25 As far as getting medical treatment, perhaps he

1 needed it. I do not find that if there were such promise
2 to be an inducement for giving the statement. Cigarettes,
3 I take that into account, I find that does not affect the
4 voluntariness of the statement. There's no threats,
5 there's no promises.

6 Each case is analyzed within it's own part of the
7 universe. Quite frankly I find from this record that Mr.
8 Martinez's interrogation was conducted under circumstances
9 and in a fashion which bear not the slightest hint of
10 improper compulsion by the police. Based on the
11 preponderance of the evidence, the statement is admissible.

12 All right. Anything further Mr. Martinez?

13 MR. MARTINEZ: Yes, Your Honor, I wasn't aware that
14 Ms. Tross's testimony was offered by the State.

15 THE COURT: Ms. What.

16 MR. MARTINEZ: I wasn't aware that Ms. Tross's
17 testimony was --

18 THE COURT: Mr. Who.

19 MR. MARTINEZ: Ms. Tross, Rozanna Tross, the one
20 that you just read from.

21 THE WITNESS: It's marked as an exhibit. It was
22 offered through the testimony of Dr. Sutton and you have
23 been here throughout the course of the trial --

24 MR. MARTINEZ: I wasn't --

25 THE COURT: -- vigorously defending yourself.

1 MR. MARTINEZ: Yeah, but her -- she --

2 THE COURT: Yeah?

3 MR. MARTINEZ: -- she has nothing to do with --

4 THE COURT: Yeah? Did you say yeah.

5 MR. MARTINEZ: I said yeah. Ms. Sutton has nothing
6 to do with Ms. Tross.

7 THE COURT: It was introduced in the record. It is
8 marked as a State's Exhibit. Do you think, Mr. Martinez,
9 I'm reading from a document that is not in evidence for
10 purposes of this hearing.

11 MR. MARTINEZ: I didn't know -- as I stated, I
12 didn't know it was entered through Ms. Sutton. It had
13 nothing to do with her.

14 THE COURT: Ms. -- Mr. Martinez, you have chosen to
15 represent yourself. It was offered during the
16 cross-examination of Dr. Sutton.

17 MR. MARTINEZ: Okay. That --

18 THE COURT: It is in evidence. I've made my
19 ruling.

20 All right. Anything further?

21 MR. MARTINEZ: Yes, I would like to state for the
22 record so it's on the record that I didn't know that was
23 entered. I -- after I received that, I wrote a report and
24 told you that I wanted to dispute those findings because
25 they was inaccurate. They don't support the records that

1 was given to them. And I was never -- it's been stated by
2 Ms. Zmroczek, I wanted to dispute them findings. Them
3 findings are inaccurate.

4 THE COURT: And I want to state for the record that
5 you have chosen under Ferrata versus California to
6 represent yourself, that you have been present in the
7 courtroom each and every time court was in session, that
8 you called Dr. Sutton as a witness, as an expert witness;
9 that Dr. Sutton, during her cross-examination, this
10 document was offered into evidence; that you did not
11 object. I asked you about it and it is a document that is
12 in the record.

13 Now, move on, Mr. Martinez. I have ruled.
14 Anything further.

15 MR. MARTINEZ: Not -- I guess, not -- not towards
16 this.

17 THE COURT: Sir?

18 MR. MARTINEZ: I still have my other motions, but
19 not to that.

20 THE COURT: All right. Court will be in recess.
21 Upon my return, I'm calling the jury, we're going into
22 opening statements. Thank you. Thank you very much.

23 (A brief recess was observed.)

24 THE COURT: All right. I have not ruled on the
25 testimony as to Ms. Tucker. I do not think I have ruled on

1 the Lyle testimony.

2 Solicitor, I'll be glad to hear from you in that
3 matter.

4 MS. GODWIN: Thank you, Your Honor. I have some
5 cases I would like to hand up.

6 THE COURT: All right. Yes, ma'am.

7 MS. GODWIN: And, Your Honor, I've also prepared a
8 chart with the similarities of the two. I'll hand the same
9 to Mr. Martinez.

10 THE COURT: Thank you, Solicitor.

11 All right. And just a brief argument, Solicitor,
12 please.

13 MS. GODWIN: Thank you, Your Honor. Your Honor,
14 first of all you heard testimony from both Ms. Tucker and
15 Ms. Hurshman. We believe that Ms. Tucker's case would be
16 admissible pursuant to Lyle and several other cases, both
17 of which I have handed up to you. Your Honor, these
18 incidents are so closely related. Looking at the chart,
19 they both occurred, first, in the same County. They are
20 only two days apart. Both of the victims were in their
21 homes when this occurred. Both methods of entry in each
22 case was at -- there was no forced entry and it is presumed
23 that there is an unlocked door through which the defendant
24 entered.

25 Your Honor, both of these instances occurred while

1 it was dark outside in the early morning hours. In both of
2 these, although they were different weapons, there was a
3 weapon used and threats, both verbal and physical. Your
4 Honor, in Ms. Tucker's case, the weapon was a knife; in the
5 Forest Acres case, Ms. Hurshman's case, the weapons were a
6 gun and a hammer.

7 The methods of restraints were very similar in
8 these two cases, Your Honor. In Ms. Hurshman's, the Forest
9 Acres case which we're here on today, the defendant used
10 electrical cords, both a drill cord and an extension cord
11 to bind the victim's hands and feet. He also used on her
12 daughter, L.H. , clothing. All of these items
13 were found in the victim's homes. He did not bring these
14 to the scene.

15 Similarly with Ms. Tucker's case, the Columbia
16 Police Department case, the defendant, again, used an
17 electrical cord from the victim's hair dryer that was found
18 in her home. A cloth robe from a bath rope that was found
19 in the home; and again, clothing found in the home to bind
20 this victim.

21 Your Honor, his questioning of both of these
22 crimes, one of the first things he does, in both of these,
23 is address who else may be present in the home. In Ms.
24 Hurshman's case, he asked her daughter, who else is in the
25 home, specifically if there are any men in the home. In

1 Ms. Tucker's case, again, when he approached her, he asks
2 if -- who else is in the home, specifically asked where her
3 father is, where the dogs are. And in both cases, he
4 similarly he asked about the location of cars.

5 Your Honor, the threats, again, very similar and
6 Ms. Hurshman's case, there are verbal threats. He tells
7 her to shut up and lie down on the floor. Threatens to
8 bash her head in with a hammer. In Ms. Tucker's case, he
9 uses verbal threats. He said that he will kill the victim
10 if she says anything and also threatens to kill the
11 victim's father.

12 Your Honor, in both of these cases, there is
13 vaginal penetration. With Ms. Hurshman, digital and with
14 Ms. Tucker's, there's actual vaginal intercourse and oral
15 sex.

16 Your Honor, the defendant gives a statement in each
17 of these cases. In Ms. Hurshman's case, he admits to
18 entering the home through an unlocked front door, admits to
19 being in the home, admits to having the hammer, admits to
20 seeing a lady tied up, taking several things from her home,
21 including a debit card, rings, and cash, but did not admit
22 to the sexual assault.

23 Similarly in Ms. Tucker's case, he admits to
24 entering the home through an unlocked back door, having a
25 knife, leaving with the victim in a car and does not admit

1 to the sexual assault; rather he says it was consensual.

2 Your Honor, in both of these statements, the defendant
3 admits that he entered each of these homes with the intent
4 to steal from the home.

5 Your Honor, State v Wallace sets out the Court's --
6 what the Court can consider in -- or should consider,
7 rather -- in determining whether evidence of other crimes
8 can be offered through motive, ID, common scheme or plan,
9 absence of -- absence or intent.

10 Your Honor, the common scheme and plan is relevant.
11 That's the first prong because proof of one is strong proof
12 of the other.

13 Your Honor, in reaching whether this is admissible,
14 this State v Wallace, which is 384, S C 428, goes through
15 the analysis of the similarities and the dissimilarities to
16 determine whether there is a close degree of similarity and
17 in that case it cites State v Parker, which is 315 SC 230.

18 Your Honor, another case I handed up, State v.
19 Wallace, 384 SC 428, states that when the similarities
20 outweigh the dissimilarities, the bad evidence is
21 admissible under Rule 404(b). And again Your Honor, in
22 these cases, we would argue that there is that close degree
23 of certainly.

24 Going a little farther, Your Honor, these cases are
25 also -- have a common nexus in that Ms. Tucker does not

1 identify Mr. Martinez as being her attacker until the
2 sketch is released from Ms. Hurshman's case. It is at that
3 point that she reports her -- the March 25th incident to
4 law enforcement.

5 Your Honor, it's not until Ms. Hurshman has
6 reported and completed this sketch with the SLED and it was
7 then released on the news, that Ms. Tucker sees that and is
8 able to come forward.

9 Your Honor, if you have any other questions, I
10 would be glad to address those.

11 THE COURT: Thank you. Thank you, Solicitor.

12 Mr. Martinez?

13 MR. MARTINEZ: Yes, Your Honor, I'd like to hand up
14 case law.

15 Your Honor, first of all, I'd like to argue
16 relevancy to this case under 401. Also I'd like to argue
17 403, Rule 403, undue prejudice, and then I'd like to argue
18 clear and convincing. There's no -- they can't -- the
19 State can't provide a date. They can't provide any type of
20 evidence to put me into this house -- into this home.

21 THE COURT: What home?

22 MR. MARTINEZ: Into Ms. Tucker's.

23 THE COURT: All right.

24 MR. MARTINEZ: Or for Ms. Hurshman's for that,
25 but --

1 THE COURT: Well, we're not talking about the
2 relevancy of Ms. Hurshman. The similarities because
3 they've called her case for trial.

4 MR. MARTINEZ: Okay. The similarities -- it's like
5 she said, the method of entry; they said that they don't
6 know how -- she said that she -- she speculated.

7 THE COURT: All right. Continue, please, briefly.

8 MR. MARTINEZ: She addressed that there's no --
9 there's no evidence of clear and convincing evidence or
10 anything other than her statement, which she has clearly
11 shown she's perjured herself and gave false testimony to
12 not only the police, but as to us as well on the stand,
13 when she told a different story; that she knew exactly who
14 I was as soon as she went home. Then she told her dad and
15 her dad didn't do nothing. Told her girlfriend, the
16 girlfriend did nothing.

17 There's no -- under that State versus Wilson, there
18 -- and from Lyle, it says -- it says that there has to be a
19 connection; that evidence of other crime is competent to
20 prove a specific crime charged can establish motive,
21 intent, the absence of the state of common scheme or plan
22 embracing the commission of two or more crimes so related
23 to each other that the proof of one tends to establish the
24 others. The identity of the crime -- the identity of the
25 person charged with the commission of the crime is on

1 trial.. That's State versus Lyle and all these -- all these
2 that they gave to you that I've seen are people -- these
3 people are related. You got --

4 THE COURT: They're not related in State versus
5 Bell.

6 MR. MARTINEZ: State versus Bell is --

7 THE COURT: State versus Wallace they're related,
8 but they're not relate in State versus Bell and many of the
9 other cases.

10 MR. MARTINEZ: But there's some kind of connection
11 that connects these people, these crimes together.

12 THE COURT: Yeah, State versus Bell connects it by
13 a phone call to Dawn Smith both in the homicide of Dawn
14 Smith's sister, Shari Smith; and then he called Dawn Smith
15 to give Dawn Smith the location of the body of Debra
16 Helmick. Debra Helmick and Shari Smith were only linked by
17 their death through the actions of Larry Gene Bell. There
18 was no other relationship except their murder.

19 MR. MARTINEZ: But there was evidence that linked
20 him to this similar crime.

21 THE COURT: Correct.

22 MR. MARTINEZ: There's no evidence that links me to
23 either one of these crimes.

24 THE COURT: All right.

25 MR. MARTINEZ: And also, as Wilson says that even

1 if there's to be similarities, they're similarities, it's
2 those similarities that again has the prejudicial effect to
3 undue fairness and undue prejudice and being as that
4 there's no conviction, and that the State will not proceed
5 to trial on that -- on those allegations, that's what they
6 are, allegations, they will not proceed to trial with them,
7 they're just simply using them for this purpose alone, to
8 incriminate me to cause me unfair and undue prejudice.

9 THE COURT: All right. Thank you, Mr. Martinez.

10 I have reviewed State versus Wilson, 374 SC 635; in
11 there, Mr. Wilson was tried for criminal sexual conduct,
12 first degree and burglary. The trial judge allowed
13 testimony of another -- of an attempted criminal sexual
14 conduct and a peeping tom offense which occurred in the
15 same vicinity more than three months later. In a close
16 reading of that case, it states: It is true that there
17 existed similarities between the rape and the attempted
18 rape and the fingerprints on the window with the peeping
19 tom. However, these similarities are diminished when the
20 time frame of the offenses are considered.

21 The time frames of the offenses are very close in
22 time in this case based on the testimony of Ms. Tucker and
23 the date of the incident as to Ms. Hurshman.

24 In analyzing 403 and, of course, it must be clear
25 and convincing, one does look at the purpose for which the

1 State is offering the evidence as a common plan and scheme
2 and in reviewing the similarities versus the
3 dissimilarities and reviewing the chart that was handed up
4 which I will mark as a court's exhibit there are clearly
5 similarities and based on the testimony of both
6 Ms. Hurshman and Ms. Tucker and the evidence thereafter
7 appears too, the similarities outweigh the dissimilarities.

8 In the -- and I use that standard the Wallace in
9 making that decision in Wallace and State versus Bell. As
10 far as the 403 analysis, I used the standard from State
11 versus Collins, I don't have the cite on that, a Dillon
12 County case tried before Judge Burch. And in ruling on
13 403, although relevant, which it's clearly relevant, it's
14 not character evidence; evidence may be excluded if it's
15 probative value is substantially outweighed by the danger
16 of unfair prejudice, confusion of the issues or misleading
17 the jury. And the key in there is unfair prejudice. All
18 evidence should be prejudice. It is only unfair prejudice
19 that is prohibited by the rules.

20 The real cruxes of the similarity between
21 Ms. Tucker's incident and Ms. Hurshman's is that the sketch
22 by Ms. Hurshman spurs Ms. Tucker to report the case
23 although she knew in a broad sense of that term, knew the
24 perpetrator as she testified in the conversation with her
25 father after the event, but within that narrow time frame

1 of when she saw that sketch; she reported to the police.

2 So the cases are clearly intertwined to such an
3 extent that the identification and common plan and scheme
4 cannot be extracted one from the other. So I would find
5 that it does meet the standard of clear and convincing
6 under 404(b), identification and common plan and scheme.
7 And it's probative value is not outweighed by the danger of
8 unfair prejudice.

9 Anything further before we bring in our jury,
10 Solicitor?

11 MS. GODWIN: Nothing from the State.

12 THE COURT: Anything from the defense, Mr.
13 Martinez?

14 MR. MARTINEZ: Yes, I'd like to have that hearing
15 for the -- as soon as we can -- I filed --

16 THE COURT: What hearing.

17 MR. MARTINEZ: The hearing for the track and trace
18 that was illegally --

19 THE COURT: I'm not having that hearing now. I'll
20 take it under advisement and we'll have it at the
21 appropriate time. We have been in pretrial hearings since
22 Monday. It's now Wednesday. We're beginning the trial of
23 the case.

24 Solicitor, do not present any evidence or testimony
25 concerning the trap and trace until such time as I can hear

1 it in-camera. Do not use it as part of your opening
2 statement.

3 Anything further, in Martinez?

4 MR. MARTINEZ: All the evidence that was gathered
5 was illegally obtained from that.

6 THE COURT: I have just ruled. Don't argue with me
7 after I ruled. If I want further argue -- and let me --
8 let me point this rule out to you very clearly and
9 distinctly. Give me just a moment, please.

10 (There was a pause in the proceedings.)

11 THE COURT: Rule 18 of the South Carolina Rules of
12 Criminal Procedure, A, Argument after ruling. Counsel or
13 pro se defendant shall not attempt to further argue any
14 matter after he's been heard and the ruling of the Court
15 has been made.

16 B, Argument on objection. No argument shall be
17 made on objections to admissibility of evidence or conduct
18 of the trial unless specifically requested by the Court.

19 C, Interruption of argument: No attorney or pro se
20 defendant shall interrupt another in the course of his
21 argument.

22 I have just stated that I am not going to rule on
23 that at this time. I'm not going to hear the matter
24 in-camera at this time. We're doing opening statements.

25 MR. MARTINEZ: All right. Thank you.

1 THE COURT: Mr. Bailiff, Juror Number 93, Juror
2 Number 93, she'll be our forelady. Have her sit in the
3 appropriate seat.

4 THE BAILIFF: Yes, sir.

5 THE COURT: The indictments, Madam Clerk?

6 THE CLERK: Yes, Your Honor.

7 (The jury entered the courtroom at 11:51 a.m.)

8 THE BAILIFF: Jury is seated, Your Honor.

9 THE COURT: Thank you. Thank you, Mr. Bailiff.
10 Good morning. Welcome back.

11 Madam Clerk, would you please swear our jury.

12 THE CLERK: Yes, sir.

13 (The jury was sworn at 11:52 a.m.)

14 THE CLERK: You may be seated.

15 **OPENING REMARKS BY THE COURT**

16 THE COURT: Madame Forelady, ladies and gentlemen
17 of the jury the case we're about to try is the case of the
18 State versus Nathan Daniel Martinez, the defendant. What I
19 will now say is intended to serve as an introduction to the
20 trial of the case. These remarks are not an instruction on
21 the law in this case. I will instruct you on the law
22 applicable to this case during and at the end of the trial
23 before you begin your deliberations.

24 This is merely an explanation of the procedure that
25 we will follow in the trial so that you may better

1 understand what may be happening.

2 The defendant is charged by indictments filed in
3 this Court with the crimes of burglary in the first degree,
4 armed robbery, kidnapping, kidnapping, kidnapping, criminal
5 sexual conduct in the first degree, and possession of a
6 weapon during the commission of a violent crime, the
7 elements of which will be explained to you later.

8 These indictments, ladies and gentlemen, again, are
9 simply the formal charging documents by which an individual
10 is brought into the Court and they are not in any sense of
11 evidence of any of the allegations that are contained
12 therein. Mr. Martinez has pled not guilty to these
13 indictments.

14 The State, the party to my front right, therefore,
15 that has burden of proving each of the elements of the
16 indictments beyond a reasonable doubt and it will be your
17 duty, ladies and gentlemen, to decide whether or not the
18 State has met that burden.

19 Your purpose as jurors is to find and determine the
20 facts. You, ladies and gentlemen, are the sole judge of
21 the facts. If at any time I make any comment regarding the
22 facts, you must disregard it. You are to determine the
23 facts from the testimony you hear from the sworn witnesses
24 testifying before the witness stand before you and any
25 other physical items of evidence that may be introduced

1 into court. It is also up to you to determine the
2 inferences which you feel may properly be drawn from the
3 evidence.

4 It is especially important that you perform your
5 duty of determining the facts diligently and
6 conscientiously because ordinarily, there is no way to
7 correct an erroneous determination of the facts by a jury.

8 On the other hand and with equal emphasis, the same
9 law that makes you the judges of the facts, make me the
10 judge of the law. The law as given by the Court is the
11 only law you may consider. You must accept it and follow
12 it even though you may disagree with it. I cannot tell you
13 what the facts are. You cannot disagree with me about what
14 the law is or what the law should be. Your job is to take
15 the law as I give it to you and apply it to the facts as
16 you find them from the testimony, physical items of
17 evidence, and any reasonable inferences you may draw.

18 After doing that, you will render your verdicts,
19 true and just verdicts, under the solemn oath that you have
20 just taken as jurors.

21 It is important that you keep an open mind and not
22 decide any information or any issue in the case until all
23 of the evidence has been presented, the parties have made
24 their closing arguments to you and I have instructed you on
25 the law in the case. It is your solemn responsibility to

1 determine the guilt or the innocence of Mr. Martinez. And
2 your verdicts must be based, again, solely on the evidence
3 that is presented to you during this trial and on the law
4 as I instruct you during and at the close of the trial.

5 Now, in just a minute the solicitor will make what
6 is called an opening statement in which the solicitor will
7 explain to you the issues in the case or at least what the
8 solicitors think the issues are in this case. Mr. Martinez
9 may also make an opening statement, although he is not
10 required to do so. What the solicitor may say, what Mr.
11 Martinez may say is not evidence, is not evidence in his
12 capacity as a pro se defendant. It is their contention as
13 to the issues in the case.

14 The closing arguments are not evidence. The
15 parties may comment on the law, the facts, the reasonable
16 inferences, but the closing arguments are not evidence.
17 The questioning by the solicitor or questioning by Mr.
18 Martinez is not evidence. That's the framework that is
19 used by which the sworn testimony is extracted from those
20 witnesses that will testify before you.

21 Mr. Martinez does not have to make an opening
22 statement. A defendant, regardless of the seriousness of
23 whatever the charges may be has no burden whatsoever to
24 prove himself or herself innocent. A criminal defendant in
25 South Carolina is always presumed to be innocent.

1 From time to time during the trial, you may hear
2 one of the solicitors or Mr. Martinez say something like,
3 Your Honor, I believe we have a question of law, or a
4 matter of law to discuss; or Your Honor, may we approach
5 the bench; or sometimes I, myself might find it necessary
6 for me to excuse you from the courtroom for a short while
7 so the attorneys and Mr. Martinez may discuss a matter of
8 law.

9 This is not to hide anything from you. The reason
10 for this is because you being the judges of the facts and
11 sometimes when I'm discussing matters of law with the
12 attorneys, it may be necessary for me to make some comment
13 as to the facts in connection with ruling whether or not a
14 particular law applies. I am not supposed to tell you what
15 the facts are, so I excuse you from the courtroom while
16 these discussions take place so that in no way will you be
17 influenced by anything that I might say or do in connection
18 with the facts.

19 In determining what the true facts are in this case
20 in using your individual good judgment, common sense, and
21 your collective good judgment and common sense, you must
22 decide whether or not the testimony of the witnesses is
23 believable. It will be my responsibility to rule as a
24 matter of law as to whether the testimony is admissible or
25 not. In other words, you get to hear it or not based under

1 the standards I must apply under the rules of evidence.

2 But once the testimony is admitted, whether or not you
3 believe it is socially for you to determine.

4 Again in using your good judgment and common sense
5 in deciding whether to believe a witness, you have the
6 right to consider the interest of any witness, the bias, if
7 any of a witness, the prejudice, if any of a witness; the
8 opportunity for the witness to have seen the matters and
9 things about which the witness may testify; the way, the
10 demeanor, the manner a witness exhibits to you while on the
11 witness stand.

12 You may consider if a witness's testimony is
13 corroborated by another witness or not corroborated. If
14 they are consistent statements, if there are prior
15 inconsistent statements, you may consider anything in the
16 record that will assist you in determining the
17 believability, the credibility of the witnesses. Anything
18 in the record.

19 That means it will be your duty to pay close
20 attention to these witnesses, to observe, to listen to
21 them, to pay close attention to the attorneys and to Mr.
22 Martinez and to the Court. Don't let your thoughts wander
23 but give strict attention to the testimony in this case so
24 that at the end of all of the testimony, after the closing
25 arguments and the instruction on the law by the Court you

1 will then be in that position to determine what the true
2 facts are and to apply the law to those facts as you have
3 found them to be and thus render those true and just
4 verdicts.

5 It will be your added responsibility, Madame
6 Forelady -- and thank you for volunteering for that very
7 important position -- to preside in the jury room and be
8 the jury spokesperson here in court. It will also be your
9 duty to write the verdicts, but I will give you further
10 instructions about that at the conclusion of the trial.

11 Ladies and gentlemen, just administratively, if you
12 cannot see or particularly hear a witness or an item of
13 evidence, please get my attention, the attention of one of
14 our fine bailiffs and I will certainly have that witness
15 stand up, speak up or rearrange where you would be able to
16 see and hear adequately. If you can't see, if you can't
17 hear, you can't determine what the true facts are, so
18 please, please, keep that in mind.

19 You will see me from time to time on my computer.
20 And to my left is my law clerk, Ms. Marsh, but you will see
21 me from time to time on my computer. In trials, I may look
22 down that bumpy and dusty road and see what I think will be
23 perhaps an oncoming legal issue. I do legal research. I
24 don't tweet, I don't repeat, I don't know what hash rag is,
25 I don't snap rat, I don't do none of that. I pay close

1 attention the trial of this case. But I tell you that
2 because a juror, it annoyed that particular juror. Perhaps
3 I annoyed that particular juror, but if it does in the
4 background, please let me know. And Ms. Marsh does and
5 will certainly continue to do that research if I need it.

6 If an item is offered into evidence, a photograph
7 or something of the like, sometimes it may be handed to
8 your foreperson and passed among members of the jury while
9 you're in the courtroom in your jury box. Look at it all
10 you wish. Remember any item I allow into evidence will
11 also be was in your jury room during the time of your
12 deliberations. I tell you that to let you know that it
13 would not be the only opportunity that you would have to
14 see those items of evidence just while you're here in the
15 jury box. You will also have them in the jury room with
16 you during your deliberations.

17 And finally, what am I really in charge of? I'm
18 really in charge of taking breaks. That's what I'm in
19 charge of. And I have a really simple rule that has worked
20 well for me over the years. If I want to take a break, we
21 take a break and it works out great for everybody. Ladies
22 and gentlemen, this is an important case. It's an
23 important case to Mr. Martinez. It's an important case to
24 the State. This is not some type of judicial sprint. I
25 will allow the parties the opportunity to present their

1 case to you.

2 If you're sitting up there and your thoughts get to
3 wandering, you probably need a break and you're probably
4 not the only one that needs a break. At any time, any
5 time, any of you need a break, as I say, you're probably
6 not the only one; please raise your hand, y'all will take
7 y'all's break, we will take ours.

8 Any objections to anything I've told the jury from
9 the State, Solicitor?

10 MS. GODWIN: None from the State, Your Honor.

11 THE COURT: From the defense, Mr. Martinez?

12 MR. MARTINEZ: No, sir, none.

13 THE COURT: All right. Thank you. Thank you very
14 much.

15 Solicitor, you may address the jury.

16 MS. GODWIN: May it please the Court?

17 THE COURT: Yes, ma'am.

18 **OPENING STATEMENTS**

19 MS. GODWIN: Between her breathless, crying sobs,
20 the 9-1-1 operator could barely make out the two words
21 Briona Hurshman was trying to say: Rob and raped. On that
22 day, a stranger came into Ms. Hurshman's home. On that
23 day, that stranger turned Ms. Hurshman's home, a home she
24 had only been in for five days, into a living hell.

25 This day didn't start out that way. She woke up,

1 she got her two daughters, L.H. and D.H. , 5 and 11, up
2 to get ready for school. Her husband also got up. He got
3 ready and he usually left a little bit earlier, so he had
4 gone to work.

5 L.H. , her 11-year-old daughter, was on the second
6 floor getting ready for school when she heard a noise
7 downstairs. She looked out of her doorway and coming up
8 the stairwell she saw a man. It was only seconds until he
9 was in her room with a gun pointed at the 11 year old, he
10 started making his demands. He told her shut up. He then
11 took the shirt that L.H. was planning to wear to school
12 that day and bound her hands together with it. He took a
13 pair of her pants and tied her feet together and with the
14 11-year-old bound, tied up, he asked her the question: Is
15 there anyone else in the home? She said yes. Then he
16 asked her specifically: Are there any men in the home?
17 She said no.

18 Armed with that knowledge, his gun and a hammer, he
19 began to walk up the stairs. Briona, L.H. 's mom was
20 upstairs sitting at her vanity, putting on her makeup,
21 getting ready for work. She had just sent her 5-year-old
22 daughter, D.H. , downstairs to check on L.H. because
23 sometimes L.H. didn't get ready for school right away. So
24 when D.H. appeared in the mirror behind her immediately
25 after she had just sent her downstairs to check on her

1 sister, she turned to see why. When she turned, she didn't
2 only see D.H. , but she saw an armed man pointing a gun in
3 her face.

4 The demands begin again. He told her, Shut the
5 fuck up. Get out, get out. Get down on the floor. Shut
6 the fuck up. She doesn't know what's going on. She
7 complied.

8 He led her out of her bathroom, put her in the
9 master bedroom where he had her get face down on the floor
10 at gunpoint. He used an extension cord to tie her legs and
11 a drill cord to bind her hands behind her back, face down,
12 on the floor of her master bedroom. He then stuffed some
13 clothing in her mouth to keep her quiet.

14 He disappears. Back downstairs L.H. , still tied
15 up, lying partially on the mattress and partially on the
16 floor, hears her mother scream. Shortly thereafter, he's
17 back. He tells her she's going to have to come upstairs
18 with him. He takes L.H. upstairs and when she enters her
19 mother's bedroom, she sees her mother lying face down,
20 bound at the wrists and ankles with extension cords;
21 clothing in her mouth; and her five-year-old sister still
22 in the bathroom.

23 He puts L.H. in the bathroom with her
24 five-year-old sister and shuts the door. All the girls can
25 hear on the other side of the door is their mother crying,

1 begging, pleading: Please stop. Please don't hurt my
2 babies. They can hear you. Please stop. Please. No.
3 No. No.

4 While she's crying and pleading he tells her to,
5 shut up or he's going bash her head in with the hammer. He
6 asks Ms. Hurshman where she works. She informs him that
7 she works in Camden. He tells her she's going to have to
8 call her boss because she's not going to be going into work
9 today. She's still tied up. Her hands are behind her
10 back, so she says, I can't get to my phone. You're going
11 to have to do it.

12 So he takes her phone. She gives him instructions
13 on how to get her boss's number and he dials it and places
14 the phone in front of her. When her boss answers she said:
15 I'm not going to be able to come into work today.

16 And before she can explain to her boss, who's
17 asking, Why? Why? What's going on? He hangs up.

18 She is pleading, crying, begging him to stop. He
19 puts the clothes in her mouth again and he moves behind
20 her. He gets on top of her from behind. He puts his hand
21 underneath her shirt and begins to rub on her breasts. He
22 pulls down her pants and before her pants are even all the
23 way down, he inserts his fingers into her vagina. He pulls
24 her pants all the way off and again forces his fingers
25 inside of her.

1 He tries to penetrate her with his penis, but she's
2 resisting; trying to stop this from happening. He demands
3 that she roll over. She doesn't comply with that either.
4 But he flips her over himself. In this new position, he
5 again begins the assault. He puts his hand up her shirt,
6 begins to rub her breasts. He puts his fingers inside her
7 vagina and again tries to insert his penis into her. She's
8 struggling. She does not want this to happen.

9 And the whole time this is going on, her phone that
10 was close by was ringing. Now, her hands are still tied
11 behind her back so she can't answer it, but she can see
12 that it's her husband calling because her boss knew someone
13 who knew her husband. He's calling over and over and over
14 and over trying to see why his wife isn't going to work.

15 This seems to agitate this stranger. So when he's
16 done with his assault, he decides he'll rob her now. He
17 walks around the room looking for things to take. He gets
18 her debit card and demands her number, her PIN number. She
19 gives it to him -- gave him a number. And then again,
20 threatening her to say it again, say it again. At some
21 point during this, he opens the bathroom door. The
22 five-year-old and the 11-year-old inside see their mother,
23 still tied, bound face down on her bedroom floor, no pants
24 on, and this man still in the room.

25 He then goes to a jewelry box that Ms. Hurshman's

1 husband had made for her, opens that. They see him take
2 some things. He takes her husband's wedding band and she
3 would later find out that he took one of her rings also.
4 He takes a bed sheet from the bed she shares with her
5 husband and he wraps it around her head. He shoves her
6 5-year-old's pajamas in her mouth and as she's saying, I
7 can't breathe, I can't breathe; he says, yes, you can. And
8 he takes the girls.

9 She has no idea what he's going to do. He walks
10 downstairs with the girls where he puts them in another
11 bathroom and he leaves.

12 The stranger who burglarized the Hurshman's home
13 that day, the stranger who tied up an 11-year-old, locked
14 her in the bathroom with a 5-year-old, held them at
15 gunpoint and sexually assaulted their mother in the next
16 room; the stranger who raped Briona Hurshman is Nathan
17 Martinez.

18 You're going to hear a lot about the law in the
19 case and the judge will instruct you on it, but I want to
20 go over a few things with you so you understand exactly
21 what he's charged with.

22 In South Carolina, burglary in the first degree
23 occurs when a person enters the dwelling of another without
24 consent. Simply put, that means someone goes into someone
25 else's home when they do not have permission to; and while

1 in entering or while inside of the house or in immediate
2 flight therefrom that person is armed with a deadly weapon
3 or explosive, causes physical injury to a nonparticipant in
4 the crime, someone who's not committing it with them; uses
5 or threatens the use of a dangerous instrument, displays
6 what is or appears to be a knife, pistol, revolver,
7 shotgun, machine gun, any other kind of firearm. It
8 doesn't matter if it is, but if he displays what appears to
9 be any of those.

10 This entering or occurring -- occurs in the
11 nighttime. Simply put, when it's dark. Any one of those
12 alone, along with the entering the dwelling without consent
13 makes it a burglary first, first degree.

14 Criminal sexual conduct in the first degree: A
15 person is guilty of criminal sexual conduct in the first
16 degree, in South Carolina, if the actor engages in a sexual
17 battery -- and I want to stop for a minute and kind of go
18 over what exactly a sexual battery is. A sexual battery
19 can be sexual intercourse, cunnilingus, fellatio, or any
20 intrusion, however slight into any part of a person's body
21 -- of any part of a person's body or any object into the
22 genital or anal opening of another person. So anything
23 from one person's body or an object into an opening of
24 another's, however slight -- anything.

25 And then you have to have a few circumstances, one

1 of the following circumstances: If he -- if there's sexual
2 battery with the victim and any of these others are proven,
3 if he accomplishes the sexual battery by aggravated force.

4 What is aggravated force? Aggravated force is the
5 use of physical force or physical violence of a high and
6 aggravated nature to overcome the victim or the threat of
7 the use of a deadly weapon.

8 So if you have a sexual battery with aggravated
9 force, that is enough for criminal sexual conduct in the
10 first degree in South Carolina.

11 There are a few other factors that can be present.
12 If the victim submits to a sexual battery by the actor
13 under circumstances where the victim is also a victim of
14 forcible confinement. Kidnapping, burglary, house
15 breaking, robbery, extortion, trafficking; but if the
16 victim submits while any of those are occurring, that is --
17 or if the actor causes the victim without the victim's
18 consent to be mentally incapacitated by drugs. But this
19 aggravated force factors, if they submit during house
20 breaking, burglary, kidnapping.

21 He's also charged with three counts of kidnapping.
22 In South Carolina, kidnapping happens when anyone seizes,
23 confines, inveigles decoys, kidnaps, abducts, or carries
24 away by any means whatsoever another human. Kidnapping can
25 occur when someone is restrained. It doesn't have to exist

1 for any certain amount of time.

2 Armed robbery. He's charged with armed robbery.

3 And armed robbery is simply when someone commits a robbery
4 and they meet the definition of being armed. For purposes
5 of armed robbery, one is armed if they have a pistol, dirk,
6 slingshot, metal knuckles, razor, other deadly weapon, or
7 while committing the robbery, they're alleging by actions
8 or words that while using the representation of a deadly
9 weapon that they have a deadly weapon.

10 And possession of a weapon during the commission of
11 a violent crime. The judge will instruct you as I said on
12 the law, but I would submit that all of these: Burglary in
13 the first degree, CSC, criminal sexual conduct in the first
14 degree, and kidnapping are violent crimes. So possession
15 of a weapon during the commission of a violent crime.

16 When Briona Hurshman was able to get out of her
17 restraints and go downstairs and find her daughters, she
18 found her phone. The defendant had left it on a table next
19 to the front door. She used that phone to call 9-1-1. And
20 you will hear that call. You will hear from officers who
21 responded to the scene.

22 Investigator Shumard with the Forest Acres Police
23 Department and investigator Morrison responded and they did
24 what's called processed the scene. They collected
25 evidence. One of the things that they collected was a cell

1 phone cover from Ms. Hurshman's cell phone that was used by
2 the perpetrator during this crime. They collected all
3 that.

4 They met with Ms. Hurshman and decided that she
5 needed to be seen at the hospital. She was taken to the
6 hospital where she underwent a sexual assault exam. The
7 nurse who did that is Bridgette de Guzman. She will tell
8 you about the abrasions she found in Ms. Hurshman's vagina,
9 how they were consistent with resisting and how they would
10 have been painful.

11 After she met with the sexual assault nurse,
12 Ms. Hurshman went and met with someone at SLED named
13 Deborah Goff. Debra Goff is a composite sketch artist and
14 after her meeting with Ms. Hurshman, she was able to
15 develop a sketch based on Ms. Hurshman's description of the
16 person who broke into her home. That sketch was later
17 released to the media. When that sketch was released, some
18 people came forward.

19 You will hear from Charlisa McRae. She was a woman
20 who lived in the same area as Ms. Hurshman. She'll tell
21 you how she, on the morning of this assault, encountered a
22 man who did not fit in that area. She is very familiar
23 with everyone who lives in her neighborhood and he stuck
24 out. He stood out because she had not seen him around.
25 She described him as having a large tattoo around his neck.

1 She remembers the clothing he was wearing. She actually
2 spoke to him because she makes a point to speak to everyone
3 she sees in the vicinity of the neighborhood. And when she
4 saw that sketch released to the media. She knew that was
5 the man she had seen on the morning that Ms. Hurshman was
6 assaulted.

7 The same day of this burglary and robbery and
8 sexual assault and kidnapping, Nathan Martinez took two
9 rings to a local pawnshop. When he sold those rings, they
10 requested his driver's license as is policy when they buy
11 jewelry. They made a record of what they bought. They
12 made a record of who sold it to him.

13 The man who was working at that pawnshop at the
14 time is named Kendall Decker. He was able to meet with
15 investigators from Forest Acres Police Department and
16 identify Mr. Martinez as the man who sold two rings hours
17 after this act occurred. Those two rings were later
18 identified by Ms. Hurshman as belonging to her and her
19 husband.

20 Investigator Shumard eventually tracks down Mr.
21 Martinez and when he is arrested, he admits to being in the
22 Hurshman's home. He admits to taking several of her
23 belongings, including the debit card, the wedding ring. He
24 admits that he had a hammer, not a gun; that he handled her
25 cell phone, that he remembered seeing two kids in the

1 bathroom and he saw some lady tied up so he just left.

2 You will hear, finally from Rachel Grant. She is a
3 DNA expert with the Richland County Sheriff's Department
4 and she will tell you when she tested the swab from the
5 cell phone cover, she found Nathan Martinez's DNA.

6 You will also hear, ladies and gentlemen, by a
7 woman named Elexia Tucker. She will tell you that two days
8 prior to Ms. Hurshman's event, a stranger raped her. How
9 he entered her home through an unlocked door, found her
10 bedroom upstairs where she was sleeping. How when she woke
11 up she felt someone tying her hands together and as soon as
12 she realized what was going on, there was a knife at her
13 throat. That that person told her that if she made any
14 noise he would kill her; that he used the electrical cord
15 of a hair dryer to tie her up, along with clothing from her
16 room.

17 How he threatened to kill her father; how he took
18 her from her father's home at knife point at night. Got
19 the keys to her father's car, put her in it, drove her out
20 to the country, how he forced her to take off her clothes,
21 how he raped her in the backseat of the car; how he allowed
22 her to get dressed after the assault only to decide a few
23 minutes later he wasn't done and forced her again to take
24 off her clothes. He again raped her and when she began to
25 cry because it hurt, she tells him, It hurts, it hurts; he

1 said, That's okay, you can just give me oral sex until I'm
2 satisfied.

3 How her hell lasted for hours. How when she got
4 home, the first thing she did was tell her dad. How she
5 was so terrified from the threats that this man made while
6 he kidnapped her and took her out to the country and raped
7 her in her father's car that she was too afraid to come
8 forward to the police, her fear of being killed, that it
9 wasn't until she saw his face on TV that she had the
10 courage to come forward because she realized it had
11 happened again to another lady.

12 Ladies and gentlemen, at the end of this trial,
13 we're going to come back before you and we're going to ask
14 you to find Nathan Martinez guilty. We're going to ask
15 that you find him guilty of burglary in the first degree.
16 We're going to ask that you find him guilty of criminal
17 sexual conduct in the first degree. We're going to ask
18 that you find him guilty for kidnapping for Briona
19 Hurshman; guilty of kidnapping for L.H. ; guilty
20 of kidnapping for D.H. ; guilty of armed robbery;
21 and guilty of possession of a weapon during the commission
22 of a violent crime.

23 We're going to ask you for a verdict that speaks
24 the truth and one that holds Nathan Martinez responsible
25 for everything he did that day that he decided he was going

1 to make the Hurshman's brand new home a living hell. Thank
2 you.

3 THE COURT: Thank you. Thank you, Solicitor.
4 Mr. Martinez?

5 MR. MARTINEZ: Yes, sir.

6 Ladies and gentlemen of the jury, you guys heard
7 from the State. You've heard what they've said. I want
8 you guys to understand that the good thing about this is
9 they don't have any evidence. They're not going to be able
10 to produce no evidence to support what they're saying.
11 They're not going to be able to meet beyond a reasonable
12 doubt any type of proof of evidence aside from a ring that
13 Ms. Hurshman cannot even look at and give you an accurate
14 description. She said that she was missing a wedding band
15 that was discolored. The ring that I went and sold -- I
16 sold two rings, that was not discolored. Then she turns
17 around and she's shown a picture of two rings and she
18 changes her story to know it's two rings. Then she still
19 -- they showed a picture and she still gives an inaccurate
20 description of the ring.

21 That -- and the only thing -- the reason why I'm
22 here and it's going to be proven is because of my neck. I
23 have a tattoo on my neck. Also I have other issues that
24 we're going to discuss as far as my mental health issues
25 that the police are aware of.

1 MS. GODWIN: Objection.

2 MR. MARTINEZ: Totality of the circumstances. I
3 have to be able to explain everything surrounding my
4 statement.

5 THE COURT: Just give them -- as I stated what an
6 opening statement is a statement of the brief issues, what
7 you contend the issues are in the case, Mr. Martinez.

8 MR. MARTINEZ: Okay.

9 They're going to present -- she said they're going
10 to have DNA evidence, which is going to link me to the cell
11 phone, which is false. There's no DNA evidence. I
12 actually have a DNA expert that I provided their report
13 from their officers that says that there's somebody else's
14 DNA present on Ms. Hurshman that they gathered, the police
15 gathered from Ms. Hurshman, her body. There's another DNA
16 on her from somebody else tested besides her family and me.
17 She's saying that she was touched, she was forced and said
18 that there's going to be evidence to support that.

19 There's the other DNA evidence. My DNA evidence
20 and their DNA expert is going to come say that my DNA
21 cannot be said is on that cell phone cover. My DNA
22 expert's going to say that there's no conclusion on that
23 because there's a mixture of DNA. And when you mix a bunch
24 of DNA's, you can't get a reading out of it because it's a
25 big mixture, especially when there's a family that's so

1 closely related that when you mix these DNA -- the same
2 DNA, you can't read it because of the similarities, because
3 of the relatedness of the family.

4 Also they're going to state that there's another
5 victim, which the police are alleging all these false
6 accusations against me. I know that alleged victim. I
7 know her father. I know that family and they know who I
8 am. She's going to give you conflicting testimony.
9 There's no evidence that's going to support her claims at
10 all. She's stating that she was raped. She's stating that
11 she was raped at knife point. She's going to contradict
12 that, the police are going contradict that, my statement
13 that I gave is going to contradict that.

14 I never told the police anything like that. She
15 lied to the police. She gave a false statement. There is
16 no evidence. She saved her underwear. She saved articles
17 of clothing. She saved everything. There's no evidence to
18 prove that, to prove anything that she says. They're going
19 to say that it happened on a specific date. They don't
20 have no proof of that either. They don't have no proof on
21 this other than the simple allegation of her test -- her
22 false testimony that she gave to the police, that she's
23 gave on the stand and that she's been allowed to just
24 perjure herself and give false testimony and it's simply
25 just -- just to incriminate me to make me seem like I done

1 this other crime.

2 Well, you did this, as they say, proof of one,
3 proof of the other. Which is there -- there is no proof.
4 There's no evidence that's going to support me other than
5 my tattoo. The victims, as she said, seen the person.
6 They seen this person up close, this person that had them.
7 They wouldn't give a descriptive detail, in detailed
8 description of the person, yet they never identified me.

9 They went -- the police went -- went to -- went and
10 showed them a photo lineup and they couldn't identify me.
11 They're going to offer you testimony that days later they
12 could identify me. Yet, they never told nobody. They had
13 every opportunity to go to the police. The police were
14 with them. They went to bond hearings, they went to sexual
15 trauma, they went to hospitals. They never told nobody.
16 They never came forward with this information, Well, I know
17 that's the guy right there. I know that's him. They never
18 said nothing like that, but yet they're going to falsely
19 claim that they did.

20 I'm asking you guys to please not listen to what
21 they say, but listen to what they can prove. Because they
22 can't prove anything they're saying. They don't have any
23 evidence, none. They have circumstantial evidence as far
24 as the rings, but they can't prove -- as they went over
25 them little -- the laws, and it has to be shown. It has to

1 be shown that that's what happened.

2 As far as my statement, that was -- that's going to
3 be shown that that was taken against my will and I didn't
4 want to give it voluntary. Everything else -- like I said,
5 I just ask that you guys will please judge this case based
6 on the facts, based upon the evidence and not allow the
7 State to use -- to use inflammatory words and guns and kids
8 tied up and rape and assaulted, sexually assaulted and try
9 to influence you. They're trying to incite your angers and
10 your fears. They want you to -- your fears and your angers
11 and frustrations and they want to cause that incitement
12 towards me with those inflammatory words that are false
13 that they can't support with evidence, they can't support
14 that with facts, aside from the victim's testimony that
15 doesn't support the facts.

16 It doesn't support what they're saying, it doesn't
17 support what happened. As I said, I asked you guys, please
18 judge this case according to evidence. Thank you, guys.

19 THE COURT: Thank you, Mr. Martinez.

20 Solicitor, you may call your first witness.

21 MS. WALKER: Thank you, Your Honor. The State
22 calls Briona Hurshman.

23 THE COURT: Ms. Hurshman, if you would come around
24 and be sworn for us, please.

25 BRIONA HURSHMAN,

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1 having been duly sworn, testified as follows:

2 THE CLERK: Please have a seat. State your full
3 name for the record, please.

4 THE WITNESS: My name is Briona Hurshman.

5 **DIRECT EXAMINATION**

6 BY MS. WALKER:

7 Q Ms. Hurshman, what state do you currently live in?

8 A California.

9 Q Before you lived -- before you moved to California,
10 where did you live?

11 A Here in Columbia, South Carolina.

12 Q What part of town were you living in?

13 A Forest Acres.

14 Q Who lived in Forest Acres with you?

15 A Myself, my two daughters, L.H. and D.H. , and my
16 husband.

17 Q How old are your girls now?

18 A 14 and 7.

19 Q In 2014, the case we're here for now, how old were
20 your girls then?

21 A 11 and 5.

22 Q I want to take you back to the morning that we're
23 here about. Who was living in your home at that time?

24 A I was there --

25 Q Tell me who was living there?

Briona Hurshman - Direct Examination by Ms. Walker

1 A My husband, my two daughters, myself.

2 Q And starting that morning, about what time did
3 y'all get up?

4 A We're early risers, we were up probably around
5 5:30, 6 o'clock in the morning.

6 Q Describe the layout of that home that y'all lived
7 in at that point.

8 A We lived in a three story townhouse. The first
9 story had a living room and a guest room and the second
10 floor -- the second floor had L.H. and D.H.'s bedrooms
11 and a bathroom. And on the third floor was our master
12 bedroom with a bathroom.

13 Q Did your husband leave for work before or after you
14 that morning? Do you remember?

15 A Before.

16 Q Once your husband left for work, who was left in
17 your house?

18 A My two daughters and myself.

19 Q At some point did you start trying to get your
20 girls ready for school?

21 A Yes.

22 Q Tell me about it.

23 A We -- since I worked far I had to get the girls --
24 I'm sorry.

25 Q Don't apologize. Take a deep breath.

Briona Hurshman - Direct Examination by Ms. Walker

1 A Since I worked far, I had to get the girls ready
2 early --

3 Q Now, tell me this, where did you work?

4 A I worked at a salon in Camden, so I had to make
5 sure that I had time to -- D.H. wasn't yet in school so I
6 had to make sure that I had time to put D.H. in daycare
7 and L.H. -- get L.H. to school and me to work on time.

8 Q And had you started doing that that morning?

9 A Yeah. D.H. was also getting ready with me and
10 L.H. was getting ready by herself in her room when -- I'm
11 sorry. And her bathroom.

12 Q At some point did you send your younger daughter to
13 hurry her older sister along?

14 A I was getting ready still finishing up my makeup
15 and I told D.H., Please go check on L.H. and make sure
16 she was up and getting ready. And then she left the
17 bathroom and she came right back inside.

18 Q She came right back. Was she alone?

19 A Initially she walked into the bathroom by herself
20 and I turned and right when I turned to see what was going
21 on, he entered the bathroom with a gun pointed at me.

22 Q This person, this man who entered your bathroom
23 with a gun pointed at you, had you seen him before?

24 A No.

25 Q This is a dumb question, but did he have permission

Briona Hurshman - Direct Examination by Ms. Walker

1 to be in your home?

2 A No, he did not.

3 Q As he's standing in your bathroom door pointing a
4 gun at you, does he say anything?

5 A He was yelling at me to shut up -- shut the F up
6 and get up.

7 Q Tell me exactly what he said?

8 A He said, Shut up, shut the fuck up. Get up -- just
9 kept telling me to shut up because I was trying to figure
10 out what was happening and I was confused and I didn't know
11 where L.H. was.

12 Q Take a breath. Take your time. We're going to go
13 slowly.

14 Who was in -- are your bathroom and bedroom
15 connected?

16 A Yes. The bathroom's within it. It had like a
17 French door, like a vented French door. So if you get up
18 you are walking directly into the bedroom.

19 Q Who was in, I guess, we'll call it the master
20 suite. Who was in the master suite at that point?

21 A He was standing -- he was standing in the bedroom
22 and I was in the bathroom and D.H. was in the bathroom.

23 Q She was how old at the time?

24 A 5.

25 Q And as he's telling you, to shut the fuck up, what

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1 are you doing?

2 A Sitting there and then I went to get up and I
3 didn't know what do because he had the gun in my face and I
4 didn't know if I -- I didn't know what do. So then I got
5 -- so then I got up and he told me to lay down on my
6 bedroom floor. And on the floor, we had a -- we had a
7 drill because we had still been hanging things and putting
8 stuff together and an extension cord on the floor and he --
9 he tied my hands and feet with those.

10 MS. WALKER: Your Honor, may I approach this
11 witness?

12 THE COURT: Yes, ma'am.

13 BY MS. WALKER:

14 Q I want to show you what's been marked as State's
15 Exhibit Number 79.

16 MR. MARTINEZ: Objection, Your Honor. I objected
17 to this, Rule 403 because any probative evidence that's
18 evidence that is substantially outweighed by a danger of
19 unfair prejudice --

20 THE COURT: All you have to do for me, Mr. Martinez
21 is cite me the rule. I assure you I know it.

22 MR. MARTINEZ: Rule 403.

23 THE COURT: All right. Thank you very much. I
24 would find -- I would overrule the objection.

25 State's what, please?

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1 MS. WALKER: Exhibit Number 79, Your Honor.

2 THE COURT: All right. You'll have to show it to
3 her.

4 BY MS. WALKER:

5 Q Do you recognize this?

6 A Yes.

7 Q Is this what was used to tie you up?

8 A The cords.

9 MS. WALKER: Your Honor, the State moves to move
10 State's Exhibit Number 79 into evidence.

11 THE COURT: State's 79 is in evidence subject to
12 defense objection under Rule 403 and I find that the
13 standard is such that I've overruled that objection.

14 (State's Exhibit Number 79 was entered into
15 evidence.)

16 BY MS. WALKER:

17 Q I show you State's Exhibit Number 80. Do you
18 recognize this?

19 A Yes.

20 Q Was this also used to tie you up?

21 A Yes.

22 MS. WALKER: Your Honor, the State seeks to move
23 Number 80 into evidence.

24 MR. MARTINEZ: Objection, Your Honor. No
25 relevance, 403. There's no -- also it violates my 5th and

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1 14th Amendment Right. There's no culpable evidence linking
2 me or Ms. Hurshman to these evidence.

3 THE COURT: The State is required to present
4 evidence of corpus delicti before they can present evidence
5 as to a particular defendant.

6 MR. MARTINEZ: Your Honor, that --

7 THE COURT: She is testifying as to items according
8 to her testimony that were used to tie her up. They're
9 clearly admissible under 403. They clearly have probative
10 value and no unfair prejudice under -- excuse me. They're
11 relevant under 401 and they have probative value that's not
12 outweighed by any probative evidence.

13 As to the 5th Amendment, I'm not sure what you're
14 referring to as far as the right against
15 self-incrimination.

16 MR. MARTINEZ: My 5th and my 14th Amendment, due
17 process.

18 THE COURT: And I'll deny your motion -- overrule
19 your objection.

20 Solicitor State's 80 is in evidence.

21 MS. WALKER: Thank you, Your Honor.

22 THE COURT: Subject to objection.

23 (State's Exhibit Number 80 was entered into
24 evidence.)

25 MS. WALKER: May it please the Court?

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1 THE COURT: Yes, ma'am.

2 BY MS. WALKER:

3 Q So you were tied up at this point. What were you
4 wearing when the intruder came into your house?

5 A You know it was like -- it was a sweater, a black
6 and white sweater and a pair of jeans.

7 Q I show you what's been marked as State's Exhibit
8 Number 75. Are these the pants that you were wearing?

9 A Yes.

10 MS. WALKER: Your Honor, the State seeks to move
11 State's Exhibit 75 into evidence.

12 MR. MARTINEZ: I object, Your Honor.

13 THE COURT: Your grounds.

14 MR. MARTINEZ: 401, 403. There's no relevance,
15 there's no -- the evidence is going to prove --

16 THE COURT: Just state your grounds --

17 MR. MARTINEZ: Okay.

18 THE COURT: -- briefly and succinctly.

19 MR. MARTINEZ: 401 and 403.

20 THE COURT: Overruled. State's 35 is in evidence
21 over objection.

22 THE COURT REPORTER: It's 75.

23 MS. WALKER: It's State's 75.

24 THE COURT: I can't hear you, Madam Court Reporter,
25 thank you.

Briona Hurshman - Direct Examination by Ms. Walker

1 MS. WALKER: Thank you.

2 THE COURT: All right. Solicitor.

3 BY MS. WALKER:

4 Q And so he tied you up with those items. As he's
5 tying you up, is he saying anything to you?

6 A He kept continuing to tell me to shut up.

7 Q Is your youngest daughter still in the room?

8 A She's standing -- she's standing in the bathroom
9 doorway. And he's telling me to shut up because I was
10 asking him what he's doing; please stop.

11 Q At any point while he's in there, you said he
12 already had a gun in his hand, does he become armed with
13 any other items?

14 A When he first came into the bathroom I didn't see
15 that he had a hammer in his other hand.

16 Q I show you State's Exhibit Number 78 and ask you if
17 you can recognize this.

18 A Yes.

19 MR. MARTINEZ: Objection, Your Honor. Relevance,
20 403; there's no probative value for this evidence. It's
21 outweighed by it's prejudicial effect.

22 THE COURT: Overruled.

23 What number, please, Solicitor?

24 MS. WALKER: Your Honor, this is State's Exhibit
25 Number 78.

Briona Hurshman - Direct Examination by Ms. Walker

1 THE COURT: 78 is in evidence subject to objection.
2 (State's Exhibit Number 78 was entered into
3 evidence.)

4 BY MS. WALKER:

5 Q Did you -- did you know where this hammer came
6 from?

7 A It's my husband's.

8 Q Once he's done tying you up, where are you placed
9 in your bedroom?

10 A On the floor of my bedroom.

11 Q Tell me what happened next.

12 A My hands -- my hands are tied and he stuck
13 something in my mouth and he left the room. And he -- he
14 returned back to the bedroom with L.H. in front of him.
15 Her hands were tied -- her hands were tied in front of her
16 and he led her to the bathroom then he shut the door.

17 Q Is L.H. here with you this week?

18 A Yes.

19 Q What about D.H. ?

20 A No. D.H. was -- she's only 7 years old and she's
21 -- she's -- I can't -- she's not here because she's scared
22 the bad man will come back.

23 Q Once he brings L.H. into the master suite, what
24 did he do?

25 A He shut the bedroom door and he came over to me.

Briona Hurshman - Direct Examination by Ms. Walker

1 He -- he had my phone and he told me to call my work and
2 tell them I'm not coming in.

3 Q Was your phone in a case at that point?

4 A Yes.

5 Q What was he doing with your phone?

6 A He moved it close to my mouth and he -- I just tell
7 him who to call and I -- he dialed the number and I called
8 my boss and I told her that I wasn't coming in today. She
9 asked me why and I just told her I'm not coming in and he
10 hung up the phone.

11 Q Have you ever called into work to tell your boss
12 that you weren't coming in --

13 A No.

14 Q -- before that day?

15 A (Witness shook head.)

16 Q After he handled your phone so you could call your
17 boss, what happened?

18 A He got behind me and I didn't -- I didn't realize
19 what he was doing until he reached up underneath me. He
20 was touching my breast and that's when I kept asking him to
21 please stop, please stop, and then he took my pants off and
22 I said, please stop. My babies can hear you, they can hear
23 you. I was just worried that they could hear what he -- he
24 was going to do to me. I knew what he was about to do to
25 me.

Briona Hurshman - Direct Examination by Ms. Walker

1 Q How far -- at this point, how far are your girls
2 away from you?

3 A A few feet -- they were just feet away. Just feet
4 away from me and in my bathroom.

5 Q Tell me about the light that was in your bedroom at
6 this point in time.

7 A We had a floor lamp in the corner of the bedroom
8 because the bedroom didn't have --

9 Q A ceiling light?

10 A (Witness nodded head.)

11 Q How close did the armed intruder get to you?

12 A He was on top of me.

13 Q He was closer to you than I am right now?

14 A Yes.

15 Q Did you get a good look at him?

16 A Yes.

17 Q And when he initially started to assault you, what
18 position was your body in?

19 A I was face down on the floor and he was behind me.

20 Q At some point did your position change?

21 A Yeah -- yes, after he -- after he initially took my
22 pants off and then --

23 Q Do you want a break?

24 A Yes, please.

25 MS. WALKER: Your Honor, may we have a --

Briona Hurshman - Direct Examination by Ms. Walker

1 Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 Madame Forelady, ladies and gentlemen of the jury,
4 step to your jury room. We'll take about a 10 minute
5 recess. Of course do not discuss the case during this
6 recess nor at any time before you're allowed to.

7 (The jury left the courtroom at 1:01 p.m.)

8 THE COURT: All right. Ms. Hurshman, you may
9 certainly step down during this 10 minute recess. Do not
10 discuss your testimony with anyone.

11 Court will be in recess 10 minutes. Thank you.

12 (A brief recess was observed.)

13 THE COURT: Anything before we bring in the jury,
14 Solicitor?

15 MS. WALKER: No, sir.

16 THE COURT: Mr. Martinez.

17 MR. MARTINEZ: No, sir.

18 THE COURT: All right. Thank you.

19 (The jury entered the courtroom at 1:32 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

21 THE COURT: Thank you. Thank you very much,
22 Mr. Bailiff.

23 THE BAILIFF: Your Honor, they have asked me to ask
24 you to speak up louder.

25 THE COURT: Me?

Briona Hurshman - Direct Examination by Ms. Walker

1 THE BAILIFF: Yes, sir.

2 THE COURT: I'm usually too loud. Thank you for
3 the compliment. My children wouldn't agree.

4 Be that as it may, I will certainly try to do so.
5 I was further away from the microphone.

6 All right. We're continuing the trial of the case.
7 Please continue to give the parties your complete and
8 undivided attention.

9 Solicitor, you may ask your next question.

10 MS. WALKER: Thank you, Your Honor.

11 BY MS. WALKER:

12 Q I think when we left off, you said that he had you
13 on your stomach.

14 A I was laying face down on my stomach on the floor
15 of my bedroom.

16 Q Where were his hands?

17 A At first he put hand hands under my shirt and he
18 was touching my right breast and then he took my pants off
19 and he -- he stuck his fingers in -- inside my vagina.

20 And --

21 Q Was he saying anything while he was doing this?

22 A At one point I was asking him -- at that point when
23 I was asking him to stop, he told me to shut up or he'd
24 bash my head in with --

25 Q With the hammer?

Briona Hurshman - Direct Examination by Ms. Walker

1 A He told me he would bash my head in with the hammer
2 that he had.

3 Q At some point, from being on your stomach, did your
4 position change?

5 A At that point when he tried to get on top of me
6 from behind and he couldn't, so he told me to roll over and
7 when I didn't, he rolled me over himself.

8 Q At this point, did you have an even closer look at
9 the intruder's face?

10 A I did. I kept asking him to please stop and that
11 the girls could hear him. He just continued, but I could
12 see him right in front of me and I tried to tell him I'm
13 trying, I'm sorry, I'm trying.

14 Q Take a deep breath...

15 A I tried to tell him that I wasn't looking at him
16 and that I wouldn't tell anybody if he would just stop, if
17 he would just leave I wouldn't tell anybody, but he
18 wouldn't stop.

19 Q Could you tell what he was wearing?

20 A He had a beanie on and I remember he had a hoodie.
21 That's the only clothes that I --

22 Q That's what you remember?

23 A That's what I remember.

24 Q Did he have any distinguishing characteristics?

25 A He had glasses on and lettering across his neck.

Briona Hurshman - Direct Examination by Ms. Walker

1 Q Could you tell what the lettering said?

2 A No, I just knew that it was just big block
3 lettering.

4 Q Did it cover the entirety of his neck?

5 A All the way -- yeah, up and across his neck.

6 Q Could you tell the race or the ethnicity of the
7 intruder?

8 A I thought by how he spoke that he was Hispanic, but
9 he didn't have like a Spanish accent, but just his diction.

10 Q Once he had you on your back, what does he do?

11 A He then put his fingers inside my vagina again and
12 then he rubbed his genitalia on mine and --

13 Q Let me stop you right there. And I'm going to ask
14 you even more personal questions.

15 You are married?

16 A Yes.

17 Q And you were married at the time?

18 A Yes.

19 Q In the couple of days preceding this invasion and
20 rape, were you actually intimate with your husband?

21 A Yes.

22 Q Okay. As he has you on your back and is continuing
23 to digitally penetrate you, is he still making threats?

24 A Several, over and over that he would bash my head
25 in and that L.H. -- too and I didn't want my children -- that

Briona Hurshman - Direct Examination by Ms. Walker

1 I wouldn't want my children to see that.

2 Q And can you estimate how long this whole thing
3 took?

4 A At -- at the -- at the time, I didn't -- I didn't
5 have a concept of the time. It seemed like it lasted
6 forever, but after he left, I realized he must have left at
7 one time and when I looked to see what time I had called my
8 boss and what time I called the police, it was just
9 minutes.

10 Q At some point, did he stop sexually assaulting you?

11 A He did. He grew agitated that -- what I felt he
12 grew agitated from was that I kept resisting him and --

13 Q How were you resisting him?

14 A I was trying to close my legs. I was trying to
15 move my body back and my phone kept ringing and ringing.

16 Q Do you know who it was?

17 A Yeah, because my husband's picture would pop up on
18 the picture. My husband's picture kept popping up on my
19 phone over and over. And it was on the floor next to us.

20 Q And so he began to show signs of frustration to
21 you?

22 A Yes.

23 Q And what did he do as a result of his frustration?

24 A He stopped and he got up. He looked around and I
25 remember that he opened up the bathroom door and from the

Briona Hurshman - Direct Examination by Ms. Walker

1 bathroom door, on my night stand was my jewelry box which
2 he then opened and we could see that he reached in the
3 jewelry box.

4 Q I want to show you what's been marked as State's
5 Exhibit Number 9 and ask you if you recognize this.

6 A Yes. That's my jewelry box.

7 MS. WALKER: Your Honor, the State seeks to move
8 Exhibit 9 into evidence.

9 THE COURT: Mr. Martinez.

10 MR. MARTINEZ: No objection.

11 THE COURT: State's 9 is in evidence without
12 objection.

13 (State's Exhibit Number 9 was entered into
14 evidence.)

15 BY MS. WALKER:

16 Q And can you recognize this? It also has an
17 inscription.

18 A Yes. It says for Briona with love.

19 Q Okay. Who gave this to you?

20 A My husband.

21 Q And when he opened up your jewelry box, you could
22 tell he did what?

23 A You could see he had reached into it and took --
24 took -- that he'd taken something from the box. He then
25 reached down, on the night stand was my debit card. He

Briona Hurshman - Direct Examination by Ms. Walker

1 took that.

2 Q Did he say anything to you after he took your debit
3 card?

4 A He asked me what my PIN number was. I told him a
5 number. He then comes towards me with the gun in his hand
6 and he told me to repeat it and I did.

7 Q Was the number you gave him a fake number or a real
8 number?

9 A It was just a fake number.

10 Q After he went through your jewelry box and took
11 your debit card, what did he do?

12 A I then -- he then -- he then went over to my girls
13 -- I'm so sorry.

14 He then went over to my girls and told them to come
15 on and he walked out of the bedroom.

16 Q You still tied up?

17 A Yeah.

18 Q With this drill and this electrical card?

19 A Yeah, and my girls, they followed him down the
20 stairway.

21 Q Did you know where he was taking your children?

22 A No.

23 Q Did you know what he had planned for your children?

24 A No.

25 Q Tell me what happened next.

Briona Hurshman - Direct Examination by Ms. Walker

1 A From then I was trying to get out. I was trying to
2 get out of the cord that he'd tied me up with and I grabbed
3 my -- I grabbed some clothes to put back on and as I was
4 running downstairs, I put them on. I saw the bathroom door
5 closed as I was running down and I saw my girls were
6 standing in their bathroom. I told them to stay there,
7 stay there; ran down the stairs to see if he was still in
8 the house and then I saw my phone on the desk and I called
9 my husband; and he told me, I'm on my way. Call 9-1-1.
10 Get off the phone, call 9-1-1. And so I called -- I called
11 9-1-1.

12 Q Slow down for just one second for me, okay. Deep
13 breath.

14 I want to show you first what's been marked as
15 State's Exhibit Number 76 and ask you if you recognize
16 this?

17 A I can't see. I'm sorry.

18 Q I'm sorry, I'm sorry. That's my fault.

19 (Showing the witness.)

20 THE WITNESS: Yes, that was my sweater.

21 BY MS. WALKER:

22 Q This is the sweater you put on?

23 A Yes.

24 MS. WALKER: Your Honor, State seeks to move
25 Exhibit Number 76 into evidence.

Briona Hurshman - Direct Examination by Ms. Walker

1 THE COURT: Mr. Martinez.

2 MR. MARTINEZ: No objection.

3 THE COURT: State's 76 in evidence without
4 objection.

5 (State's Exhibit Number 76 was entered into
6 evidence.)

7 BY MS. WALKER:

8 Q Once your husband told you to call 9-1-1, did you
9 do so?

10 A Yes, I did.

11 Q And have you had an opportunity to review that
12 9-1-1 call? You've listened to it in the past?

13 A Yes, I have.

14 Q And does it fairly and accurately depict the phone
15 call you made?

16 A Yes, it does.

17 MS. WALKER: Your Honor, State seeks to move
18 Exhibit Number 88 into evidence.

19 THE COURT: Mr. Martinez?

20 MR. MARTINEZ: No objection.

21 THE COURT: State's 88 is in evidence without
22 objection.

23 (State's Exhibit Number 88 was entered into
24 evidence.)

25 MS. WALKER: Your Honor, permission to publish to

Briona Hurshman - Direct Examination by Ms. Walker

1 the jury?

2 THE COURT: You may publish it.

3 (The 9-1-1 call was played for the jury.)

4 BY MS. WALKER:

5 Q Ms. Hurshman, that's the 9-1-1 call you made?

6 A Yes.

7 Q You said your cell phone was downstairs when you
8 collected it?

9 A Yes.

10 Q Did you know how your cell phone got downstairs?

11 A He took it with him.

12 Q At any point was your head or face covered during
13 this assault and invasion?

14 A Before he took my girls downstairs, he put some
15 clothes in my mouth and he wrapped -- he wrapped a sheet
16 around my head.

17 Q Once you were able to get free and get downstairs
18 and make the 9-1-1 call after seeing that your girls were
19 safe, no physical harm, did law enforcement officers
20 respond to your home?

21 A Yes, they did.

22 Q Did your husband also return to your home?

23 A Yes, he did.

24 Q When you met with law enforcement officers, did you
25 give them a statement?

Briona Hurshman - Direct Examination by Ms. Walker

1 A I told them right when they got there what
2 happened, but I didn't write my statement until after I got
3 back from the hospital -- from the hospital.

4 Q But you initially told them everything that
5 happened?

6 A Yes.

7 Q And you said you went to the hospital?

8 A Yes.

9 Q Why did you go to the hospital?

10 A They said they need -- they needed to -- they need
11 -- when that happens, it's best to go to the hospital to
12 check and make sure I was okay and then --

13 Q While you were at the hospital, did you meet with a
14 sexual assault nurse examiner?

15 A Yes, I did.

16 Q At some point, did you also meet with a sketch
17 artist?

18 A After.

19 Q After that?

20 A After that.

21 Q And did you give the sketch artist a description of
22 a man who came into your home and tied you up?

23 A Yes, I did.

24 Q At some point, did you learn that law enforcement
25 officers had a name of the individual?

Briona Hurshman - Direct Examination by Ms. Walker

1 A Of -- I believe it -- it --

2 Q I believe it was later.

3 A It wasn't the next day. It must have been the day
4 after -- like the day -- I don't know when.

5 Q It doesn't matter.

6 A It wasn't the very next day. It -- the following
7 day or the day after that.

8 Q Within that week you knew they had a name?

9 A Yes.

10 Q Okay. As you were doing all of this, did you also
11 do an inventory of what, if anything, was taken from your
12 home by an intruder?

13 A When they came and picked up my jewelry box, I just
14 knew instantly that my husband's wedding ring was gone.

15 Q I'm going to show you what's been marked as State's
16 Exhibit Number 10 and ask you if you recognize this?

17 A Yes.

18 Q What is this?

19 A That's my husband's wedding band.

20 MS. WALKER: Your Honor, State seeks to move Number
21 10 into evidence.

22 THE COURT: Mr. Martinez.

23 MR. MARTINEZ: No objection.

24 THE COURT: State's 10 is in evidence without
25 objection.

Briona Hurshman - Direct Examination by Ms. Walker

1 (State's Exhibit Number 10 was admitted into
2 evidence.)

3 BY MS. WALKER:

4 Q Did you later realize that additional jewelry had
5 been taken?

6 A I -- I honestly didn't realize until they asked us
7 to come identify the wedding ring. I saw another ring and
8 I said that's my ring, my aunt had given that to me for
9 Christmas, but it's too little for my hand so I'd never
10 worn it.

11 Q These rings were in your jewelry box?

12 A Yes, they were.

13 Q You said a couple of days of that you learned of a
14 name that law enforcement officers had of a suspect in your
15 case?

16 A My husband called me and he told me that they had a
17 name of someone. And I said give me the name. And he gave
18 me the name and I Googled the name and I went on Facebook
19 and I scrolled through until I saw his picture.

20 Q Did you see a picture that you recognized as the
21 man who came into your home?

22 A Yes, I did.

23 Q I want to show you what's been marked as State's
24 Exhibit Numbers 5, 6, and 90 and ask if you recognize
25 these?

Briona Hurshman - Direct Examination by Ms. Walker

1 MR. MARTINEZ: I object to these photographs, Your
2 Honor, under identification because of impermissible
3 suggested and unnecessarily identification procedure
4 violates my 14th Amendment right to due process of law and
5 fair trial.

6 THE COURT: All right. I would overrule that
7 objection. That's subject to your previous objection and
8 subject to my previous rulings in-camera under Neal versus
9 Biggers and State versus Moore.

10 May I see them, please, Solicitor.

11 MS. WALKER: Yes, Your Honor.

12 THE COURT: Step up here, Mr. Kata.

13 MR. KATA: Yes, Your Honor.

14 (There was a bench conference out of the hearing of
15 the jury and the Court Reporter.)

16 THE COURT: All right. Thank you. State's 90 is
17 in evidence subject to previous objection. State's 5 and 6
18 are marked for identification purposes only at this time.
19 Thank you.

20 (State's Exhibit Number 90 was admitted into
21 evidence.)

22 MS. WALKER: Thank you, Your Honor.

23 BY MS. WALKER:

24 Q Is this the picture that you saw once you Googled
25 the name?

Briona Hurshman - Direct Examination by Ms. Walker

1 A Yes.

2 Q And did you recognize this person?

3 A Yes, I did.

4 Q How did you recognize this person?

5 A Because that's the person that was in my home.

6 Q Once you realized that that was indeed the right
7 person, did you inform your husband of that?

8 A (Witness nodded head.) Yes, I did.

9 Q Did you ever have another conversation with law
10 enforcement about the Facebook photo?

11 A No.

12 Q Had they had the wrong person would you have
13 informed law enforcement?

14 A Yes.

15 Q Before you went online and looked at that picture,
16 did you look at a photo lineup?

17 A Yes.

18 Q Were you able to pick anyone out of that photo
19 lineup?

20 A No.

21 Q The Facebook picture, was that a better picture for
22 you to be able to observe?

23 A Yes. I just -- I just knew that -- I just knew
24 that the face -- yes, I'm sorry. Yes.

25 Q And did you see him again in person?

Briona Hurshman - Cross-Examination by Mr. Martinez

1 A I didn't -- not until a long -- not in person. Not
2 until --

3 Q Did you see him in a courtroom again?

4 A I did later, yes.

5 Q And you've seen him in person, were you able to
6 observe that that was the person who had been inside your
7 home?

8 A Yes.

9 Q The man who entered your home without permission
10 while armed with a gun, who tied up your daughters, who
11 tied you up and raped you, do you see him in the courtroom?

12 A Yes, I do.

13 Q Can you point him out for me?

14 MR. MARTINEZ: Objection, Your Honor. Same.

15 THE COURT: Overruled, subject to my previous
16 ruling, subject to your previous objections.

17 BY MS. WALKER:

18 Q The man who just stood and said objection?

19 A Yes.

20 Q Ms. Hurshman, I don't have any further questions?

21 THE COURT: Thank you, Solicitor.

22 Mr. Martinez.

23 MR. MARTINEZ: Yes, Your Honor.

24 **CROSS-EXAMINATION**

25 BY MR. MARTINEZ:

Briona Hurshman -- Cross-Examination by Mr. Martinez

1 Q Ms. Hurshman, you went -- okay. Did the individual
2 that -- the suspect that attacked you, did he have gloves
3 on?

4 A I don't know.

5 Q You don't know?

6 A No, I don't.

7 Q You've stated almost -- you've stated almost every
8 time that --

9 THE COURT: No, sir, you've got to be specific with
10 your question. When you ask a question on
11 cross-examination --

12 MR. MARTINEZ: Okay. Did you --

13 THE COURT: -- when you say she made a statement,
14 you've got to give her where.

15 MR. MARTINEZ: Okay.

16 BY MR. MARTINEZ:

17 Q Your original statement -- you remember making that
18 to the police?

19 A Yes, I do.

20 Q And you -- they asked you, do you remember the
21 suspect -- if -- do you remember if the suspect had gloves
22 on his hands. You stated no, I do not believe he was
23 wearing gloves. You testified again --

24 THE COURT: No, is that a question?

25 BY MR. MARTINEZ:

Briona Hurshman - Cross-Examination by Mr. Martinez

1 Q Is that true?

2 A Yes, that is what I wrote in my statement.

3 Q So did the individual have gloves on.

4 MS. WALKER: Objection, Your Honor, asked and
5 answered.

6 THE COURT: You may answer the question,
7 Ms. Hurshman.

8 THE WITNESS: No, I don't -- I don't remember
9 gloves.

10 BY MR. MARTINEZ:

11 Q And you said that the individual touched all these
12 items; is that correct?

13 A Yes, it is.

14 Q And the individual touched you, correct?

15 A Yes, you did.

16 Q Yes, he touched you forcefully, correct? He
17 grabbed your breast?

18 THE COURT: Give her the opportunity to answer one
19 question before you ask her the next, please.

20 THE WITNESS: I'm sorry. I'm sorry, can he repeat
21 the question?

22 THE COURT: State your question, Mr. Martinez.

23 BY MR. MARTINEZ:

24 Q The individual, you said he -- he touched you,
25 right?

Briona Hurshman - Cross-Examination by Mr. Martinez

1 A Yes.

2 Q He touched your breast, he touched your vagina. He
3 touched you; is that correct? In areas of your body?

4 A Yes.

5 Q And you also seen this person very up close; is
6 that correct?

7 A Yes.

8 Q How well lit was this room?

9 A We had a lamp in the room.

10 Q And was that lamp shining directly on you and this
11 person?

12 A Shining directly, no.

13 Q But it was able to shine light to where you would
14 see this person?

15 A Yes, I would have seen him.

16 Q You gave a detailed description of this individual
17 to the police; is that correct?

18 A Yes.

19 Q You gave a detailed -- not a detailed, but you gave
20 a description on the 9-1-1 call and you stated -- what did
21 you state? How tall was the guy?

22 A On the phone call, I thought you were -- about the
23 same height as myself, about 5 foot 9 inches.

24 Q And what about the build of this individual?

25 A I'm sorry, I don't remember exactly what I said.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 Q Do you remember that you told the sketch artist
2 that he wasn't big, he wasn't, quote, not little, not
3 heavy? You told Officer Shumard that he was --

4 THE COURT: Let's let her answer the first question
5 also Officer Shumard isn't the sketch artist.

6 MR. MARTINEZ: Okay.

7 BY MR. MARTINEZ:

8 Q Is that what you said?

9 A Yes, that's what I told them.

10 Q And you told them in the -- you said in the 9-1-1
11 call that he didn't take nothing; is that correct?

12 A If that's what I said in the call, that's what I
13 said in the call. I don't -- I was terrified.

14 Q Did you see -- you said that you seen something
15 taken out of the jewelry box; is that correct?

16 A Yes.

17 Q But then you contradicted yourself and said that
18 you didn't see anything out of the jewelry box; is that
19 correct?

20 A Contradicted myself on the phone call directly
21 after? Is that what you're asking me.

22 Q No, during testimony. During previous testimony.

23 A I'm sorry, I don't remember what I said verbatim.

24 Q Okay. Do you --

25 MR. MARTINEZ: I'd like to enter her statement into

Briona Hurshman - Cross-Examination by Mr. Martinez

1 evidence, Your Honor. That way she can read from it.

2 THE COURT: Sheriff, would you mind showing that to
3 the solicitor and then handing it up to me, please.

4 (The sheriff showed the document to the solicitor
5 and then handed it up to the Court.)

6 THE COURT: Thank you, Sheriff.

7 MS. WALKER: No objection to him entering these in
8 evidence, Your Honor.

9 (Defense Exhibit Number 20 and Number 21 were
10 marked for identification.)

11 THE COURT: Defense 20 is in evidence without
12 objection.

13 (Defense Exhibit Number 20 was entered into
14 evidence.)

15 BY MR. MARTINEZ:

16 Q On this thing right here you stated --

17 THE COURT: What page are you referring to?

18 MR. MARTINEZ: Page 2.

19 BY MR. MARTINEZ:

20 Q Page 2, where it says he then attempted.

21 A You want me to read that?

22 Q Yes, please.

23 THE COURT: It's in evidence, Mr. Martinez. Read
24 it. You read it.

25 BY MR. MARTINEZ:

Briona Hurshman - Cross-Examination by Mr. Martinez

1 Q He then attempted to rub his penis on my vagina and
2 then his hand on my vagina. Then went back to rubbing his
3 penis which had a condom covering on my vagina and
4 attempted to penetrate; is that true?

5 A That's what I wrote.

6 Q But then later on you contradicted yourself and you
7 said that you didn't even see a penis?

8 A I never said --

9 MS. WALKER: Objection, Your Honor, that's not --

10 THE COURT: Yes, sir, you need to rephrase.

11 Excuse me for interrupting Ms. Hurshman.

12 You need to rephrase that question, Mr. Martinez.

13 BY MR. MARTINEZ:

14 Q Did you later on state that there was no -- that
15 you didn't even see his penis and you didn't see the condom
16 on? You never stated that you saw the penis?

17 MS. WALKER: Objection, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, step
19 out for me momentarily, please. Do not discuss the
20 testimony.

21 (The jury left the courtroom at 2:19.)

22 THE COURT: Tell me what part of the record that
23 you're referring to where Ms. Hurshman stated she never saw
24 condoms.

25 MR. MARTINEZ: I said penis with a condom on it.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 THE COURT: I said -- answer my question. Tell me
2 what part of the evidence are you referring to where
3 Ms. Hurshman testified that she never saw a penis. I just
4 don't remember that in the testimony.

5 MR. MARTINEZ: She said with a condom on it -- I'm
6 talking about with a condom, a penis with a condom on it.

7 THE COURT: Well, penis is one thing and a condom
8 is another.

9 MR. MARTINEZ: She said that the penis had a condom
10 on it.

11 THE COURT: You're not tracking me. You're not
12 tracking the record.

13 Solicitor?

14 MS. WALKER: Your Honor, he's trying to impeach her
15 with a prior consistent statement. In her statement she
16 said what it felt like, what it felt like he was doing.
17 Now she's -- now he's asking her about a statement -- prior
18 testimony about questioning her about what she saw. That's
19 an improper request.

20 THE COURT: Are you talking about the in-camera
21 hearings?

22 MR. MARTINEZ: Yes, sir.

23 THE COURT: I thought all the testimony was whether
24 there was a presence of absence of a condom, not whether
25 there was the presence or absence of a penis.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 MR. MARTINEZ: No, this is before -- our last trial
2 where she stated that she didn't see a condom. She
3 contradicted herself and she's --

4 THE COURT: Show me the transcript that you're
5 referring to.

6 MR. MARTINEZ: Right here on 295.

7 THE COURT: Well, then why are you reading from her
8 statement?

9 MR. MARTINEZ: Because I'm showing her
10 inconsistencies in her statement. They're not adding up.

11 THE COURT: Hand that up to me, Sheriff.

12 (The document was handed to the Court.)

13 THE COURT: Thank you, Sheriff.

14 And what page of her statement, Defense 20, are you
15 referring to.

16 MR. MARTINEZ: Right there highlighted. It says
17 she didn't see it.

18 THE COURT: I don't have a highlighted copy. What
19 pages were they?

20 MR. MARTINEZ: I just handed up 195.

21 THE COURT: I'm talking about State's (sic) 20,
22 that you offered into evidence.

23 MR. MARTINEZ: Oh, on the statement, it said on
24 page 2, it said -- he went back -- on the bottom.

25 THE COURT: All right. And page 2 of that, it does

Briona Hurshman - Cross-Examination by Mr. Martinez

1 say he went back to rubbing his penis which had the condom
2 covering it on my vagina.

3 That's in evidence, correct?

4 MR. MARTINEZ: Yes, sir.

5 THE COURT: You're offering that.

6 MR. MARTINEZ: Yes. I didn't understand what you
7 said, Judge?

8 THE COURT: Sir?

9 MR. MARTINEZ: What did you -- I didn't understand
10 what you said.

11 THE COURT: I just said that your Defense 20 you
12 offered into evidence, her original statement.

13 MR. MARTINEZ: Yeah.

14 THE COURT: And then you want to impeach that with,
15 okay. You said that in your original statement -- you said
16 that -- in your original statement, you said that you seen
17 a condom that was already on, correct?

18 MR. MARTINEZ: Yes, sir.

19 THE COURT: Her answer, no, I didn't state that I'd
20 seen any condom. Question: You didn't state that?
21 Answer: I don't remember that.

22 All right. Any objection to that, Solicitor?

23 MS. WALKER: My objection is -- I mean he's using
24 it as an inconsistent statement. There's no inconsistency
25 there.

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1 THE COURT: There is. If she says no, I didn't
2 state that in my original -- I didn't state that I'd seen
3 any condoms.

4 MR. MARTINEZ: She never said she saw a condom in
5 her original statement.

6 THE COURT: In her original statement, six lines
7 from the bottom, she said, He went back to rubbing his
8 penis, which had a condom -- which had a condom over it on
9 my vagina.

10 MS. WALKER: Right. She's always said that's what
11 it felt like. Not that she saw a condom covering a penis.
12 It's not a visual description.

13 THE COURT: Well, that's not what the statement
14 says. I mean you can correct that on redirect. It says he
15 went back to rubbing his penis which had a condom overing
16 it, on my vagina.

17 MS. WALKER: Yes, sir. My only point is he keeps
18 saying she said she saw that and at no point has she said
19 she saw it. She's always -- she's never said that she saw
20 that. The statement doesn't say I saw.

21 MR. MARTINEZ: The statement says that he had a
22 condom on --

23 THE COURT: I've heard enough argument. I've heard
24 enough to quote the late Honorable Walter Bristow. I've
25 heard enough.

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1 Bring the jury back.

2 He can ask his question. There is more than one
3 sense that human beings have. How many senses are there?
4 Five?

5 MS. WALKER: Yes, Your Honor.

6 THE COURT: All of us have five. We don't have
7 less than five. None of that always includes common sense.

8 MR. MARTINEZ: Your Honor, may I get my transcript
9 back, please?

10 THE COURT: Sir?

11 MR. MARTINEZ: My copy of the transcript back.

12 THE COURT: Sure. Hand that back.

13 (The sheriff handed the document back to the
14 defendant.)

15 THE COURT: Thank you, Sheriff.

16 (The jury entered the courtroom at 2:26 p.m.)

17 THE BAILIFF: The jury is seated, Your Honor.

18 THE COURT: Thank you, Mr. Bailiff.

19 Thank you, Mr. Martinez, Solicitor.

20 Mr. Martinez, you may ask your question -- your
21 next question.

22 MR. MARTINEZ: That question or the next question.

23 THE COURT: You may ask your question.

24 BY MR. MARTINEZ:

25 Q So did you change your story and state that you had

Briona Hurshman - Cross-Examination by Mr. Martinez

1 never seen a condom on?

2 A I stated that I didn't see the condom.

3 Q Okay. So with this, what you stated in your
4 statement, it would imply that you was on your back. You
5 said when I would not cooperate and he could not become
6 fully erect, he became more frustrated and stopped. He
7 rolled me back onto my stomach; is that true?

8 THE COURT: Is that true as to what she said in her
9 statement?

10 MR. MARTINEZ: Yes, sir?

11 THE WITNESS: Yes, that's what's in my statement.

12 BY MR. MARTINEZ:

13 Q Okay. But then later on you stated that you was on
14 your stomach the whole time and -- that you was -- was you
15 on your back looking at the person?

16 A At one point I was on my back and then I rolled
17 back onto my stomach.

18 Q And you didn't see any -- when you're saying
19 condom, you'd have to see that area; is that correct?

20 A No.

21 Q You didn't see that area? You didn't see no
22 descriptive marks on, on --

23 A Descriptive marks?

24 Q Tattoos?

25 A Yes, I saw a tattoo.

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1 Q Where at?

2 A On your throat.

3 Q You didn't see any anywhere else?

4 A I saw your face, but I was -- I was so scared I
5 didn't see any other -- the only descriptive marks that I
6 noted was a neck -- the only descriptive marks that I was
7 able to tell them at the time of my statement was your
8 glasses and your neck tattoo..

9 Q Did you see the person's hands?

10 A I don't remember..

11 Q You noticed that he wasn't wearing gloves. You
12 noticed that he had a -- he was holding a hammer and a gun.

13 A I didn't remember seeing any tattoos on your hands.

14 Q Okay. You seen this person very well, correct?

15 A Yes.

16 Q You gave a very descriptive -- you went to the
17 hospital and you met with a sketch artist; is that correct?

18 A Yes.

19 Q And you gave a very descriptive description of the
20 person all the way down to their waist, to their skin
21 color, to their head, the head shape, wrinkles, eyes -- you
22 knew the color of the eyes. You knew the chin. You knew
23 that his skin color is --

24 MS. WALKER: I'm going to object, Your Honor. Is
25 this all one question or is it a series of questions? If

Briona Hurshman - Cross-Examination by Mr. Martinez

1 it's one question, I would ask that she be given an
2 opportunity to answer.

3 BY MR. MARTINEZ:

4 Q Did you give a very descriptive description of the
5 person to the sketch artist?

6 A Yes.

7 Q Did you give a description to the police, the one
8 that questioned you? Mr. -- I think it was Mr. Shumard?

9 A At the time of my statement?

10 Q Yes, ma'am.

11 A Yes, I think so. I remember giving a description
12 to the sketch artist. I remember a description when the
13 police arrived at my house.

14 Q So you gave the same description multiple times to
15 multiple people; is that correct?

16 A Yes.

17 Q You went to the hospital and you had an exam and
18 you told them the same description; is that correct?

19 A I don't remember at that time giving a description,
20 but I may have.

21 Q Okay. At this -- when you went to the hospital,
22 they did a bunch of numerous tests on you; is that correct?

23 A Yes.

24 Q For DNA? They took swabs and all this other stuff
25 from you, right?

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1 A Yes.

2 Q Okay. Can you please -- you've seen the ring; is
3 that true?

4 A Yes.

5 Q Can you describe that ring to the jury? For the
6 Court, please?

7 A It's a gold band, a large gold band.

8 Q And does it have distinguished features about it?

9 A I mean, no, there was a nick in it that's why my
10 husband didn't wear it. He said that it scratched his hand
11 and --

12 MR. MARTINEZ: Your Honor, I'd like to admit her
13 second statement that she made to the police concerning
14 this ring.

15 THE COURT: Sheriff, would you assist the Court in
16 showing that to the Solicitor?

17 (The document was handed to the solicitor.)

18 THE COURT: Thank you, Sheriff.

19 (The solicitor was looking at the document.)

20 MS. WALKER: Your Honor, may I see what's already
21 admitted?

22 THE COURT: See what?

23 MS. WALKER: The statement he's already admitted?
24 I just need to see the other thing.

25 THE COURT: Yes, State's 20.

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1 MS. WALKER: Yes, sir.

2 THE COURT: Excuse me, Defense 20.

3 MS. WALKER: Your Honor, if he's going to admit her
4 second statement, we'd ask that he admit the entire thing.

5 THE COURT: May I see it, please?

6 (The Court was looking at the document.)

7 THE COURT: All right. Mr. Martinez.

8 MR. MARTINEZ: This is the entire statement. She
9 went the next day. Officers showed her the photograph of
10 the rings and she gave an additional statement saying that
11 the rings were hers.

12 THE COURT: I've been --

13 MS. WALKER: Your Honor, he's just trying to admit
14 one page into evidence. Her second statement is two pages,
15 so if he's going to introduce one page, we would ask that
16 he introduces the second page where she goes on to describe
17 the ring.

18 THE COURT: Show me the whole statement.

19 MS. WALKER: Yes, sir.

20 THE COURT: I only have the one page. And show it
21 to Mr. Martinez.

22 MR. MARTINEZ: That's not her statement.

23 MS. WALKER: Your Honor, one page is shown, Your
24 Honor.

25 THE COURT: All right. Defendant's Exhibit 21 is

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1 in evidence without objection.

2 (Defense Exhibit Number 21 was entered into
3 evidence.)

4 BY MR. MARTINEZ:

5 Q All right. Now, Ms. Hurshman on your first
6 statement to Mr. Shumard, he asked you what did the ring
7 look like that was taken. You stated it was a family
8 heirloom from my husband's grandfather. It was a thin gold
9 band. I do not believe that it was golden the inside, just
10 the outside. Do you remember stating that? It's on page 4
11 of the second --

12 A Yes, that's what I wrote.

13 Q Okay. The next day, you went to the police
14 station, the police called you down to the police station
15 to ask you if you'd come down and identify -- they had some
16 photos of some rings and they wanted you to come down and
17 take a look at those; is that correct?

18 A Yes.

19 Q And they showed you a photograph of these two
20 rings. And you stated -- the question goes, did R.W.
21 Shumard show you a picture of two rings. You said yes. He
22 asked you do you recognize them. You stated yes.

23 He asked you, how do you recognize them? A thin --
24 I mean a plain yellow band, it's thin --

25 MS. WALKER: I would object, Your Honor. Is he

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1 just reading stuff at this point or is he asking --

2 THE COURT: Is that Defendant's 21.

3 MR. MARTINEZ: Yes.

4 THE COURT: It's in evidence.

5 BY MR. MARTINEZ:

6 Q Okay. She said a plain yellow gold band; it's thin
7 due to us having to have it stretched to large sizes
8 multiple times. It is my husband's wedding ring. The
9 second ring was a Christmas gift from my aunt. But I
10 thought it was located elsewhere, but I recognize it
11 because it's too small. It couldn't fit on my ring finger.

12 Also I remember the stones and the bold waves along
13 the sides?

14 THE COURT: What's your question, Mr. Martinez?

15 BY MR. MARTINEZ:

16 Q Did you state that?

17 A Yes.

18 Q You stated there's a nick in that ring; is that
19 true?

20 A Yes.

21 Q Can you show -- can you show me where that nick's
22 at in that ring, please?

23 (The witness is looking at the ring.)

24 THE WITNESS: Right here.

25 BY MR. MARTINEZ:

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1 Q You said that cuts him?

2 THE COURT: What was the question?

3 BY MR. MARTINEZ:

4 Q You said that that cuts him?

5 A I don't remember saying that it cut him. It -- he
6 would work with his hands, having the ring on and it starts
7 scratching his finger. He didn't wear it. That's why it
8 was in my jewelry box.

9 Q You stated that there's a nick on the ring that
10 cuts him and that's why he doesn't wear it?

11 A It didn't cut him like a knife would cut you. It
12 cuts into his skin.

13 Q It cuts into his skin? Is that ring discolored?

14 A I think it was -- I didn't know if it was just a
15 solid gold throughout the ring or if it's -- if it's just
16 gold plated. He worked with his hands all the time. He
17 worked with his hands all the time and I thought -- I
18 didn't wear the ring. I thought the ring was darker inside
19 than on the outside.

20 Q So you stated that you didn't see what was taken
21 out of the jewelry box; is that correct?

22 A That's correct.

23 Q So how can you state those are your rings when you
24 didn't see any taken out?

25 A That is my husband's ring. That is -- the other

Briona Hurshman - Cross-Examination by Mr. Martinez

1 ring, my ring. Those are our rings. I know those are
2 mine. That's how they're mine. That's our family wedding
3 ring.

4 Q So you didn't see anything else taken?

5 MS. WALKER: Objection, Your Honor. She's asked --
6 he's asked the question and she's answered it maybe three
7 times now.

8 THE COURT: Sustained.

9 BY MR. MARTINEZ:

10 Q Okay. Did you see me after you claim something
11 happened the you?

12 A In person?

13 Q Okay. Let's go back.

14 THE COURT: No, no. In person? She's asking you
15 to -- give her an answer to that.

16 BY MR. MARTINEZ:

17 Q Yes, personal, where you would have seen me.

18 A I saw you at -- I saw a video conference at your
19 bond hearing in Forest Acres.

20 Q And how long -- how long after -- how long after
21 did you receive the name that you said, when you seen --

22 THE COURT: After what?

23 BY MR. MARTINEZ:

24 Q How long after the accident did you receive my
25 name?

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1 A Not the following day, but the day or so afterwards
2 -- before -- before they -- before they apprehended you.

3 Q Okay. Before they apprehended me?

4 A Yes.

5 Q So you knew that's the guy that's him; I quote you
6 that's what you said before?

7 A Yes, that's what I told my husband.

8 Q Okay. You told your husband that, correct?

9 A Yes.

10 Q And then you went to a bond hearing and you seen
11 me, correct?

12 A Yes.

13 Q And you went to that bond hearing with the police.
14 It was at the police station, correct?

15 A Yes.

16 Q With the same arrest -- with the same officers that
17 was involved in the case?

18 A Yes.

19 Q And you didn't tell none of them, that's him,
20 that's the guy?

21 A No, he'd already been captured.

22 Q But you didn't tell them, I know that's him?

23 A No.

24 THE COURT: She answered that question. Ask your
25 next question.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q After that, you went to sexual trauma. You went to
3 other court -- you had victim advocates, you had sexual
4 therapy classes. Did you ever go to any of them people and
5 tell them that's the guy that did this to me. I'm glad
6 he's caught. I feel relieved he's incarcerated. I feel
7 better?

8 A I know -- I may have stated that I was relieved at
9 your bond hearing, that you had been captured, but I never
10 said that's him, that's -- that's -- I didn't say that. I
11 didn't think I had to. You had already been captured. If
12 it wasn't the right person I would have told them because I
13 don't want somebody to be out there. I would have told
14 them if it was the wrong person.

15 Q Did the police ask you?

16 A No.

17 Q The police didn't ask you, Hey, is this the guy
18 that did this to you?

19 A I don't remember the police asking me that, no.

20 Q Your husband didn't -- your husband was with you?

21 A At the bond hearing? No.

22 Q Your husband -- was he in contact with the police
23 after that?

24 A After the bond hearing?

25 Q Yes.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 A I don't know. It was hard for me to talk. The
2 only other time I know my husband had talked to the police
3 is there was another hearing or something in Forest Acres
4 and I -- I couldn't go to it and I know he was there. He
5 was there with the police when -- when you were there.

6 Q And he never told you -- he never talked about going
7 to the police with your discovery?

8 A No. You had already been apprehended.

9 Q And the police never came to you afterwards and
10 showed you photographs, photographs of me or other people
11 with neck tattoos, nothing like that?

12 A No.

13 MR. MARTINEZ: Oh, I beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (There was a pause in the proceedings.)

16 BY MR. MARTINEZ:

17 Q So you never went to the police and made a
18 statement?

19 A Yes, I did make a statement.

20 Q A statement concerning me, stating that -- that you
21 was positive of this identification?

22 MS. WALKER: Objection, Your Honor, asked and
23 answered.

24 THE COURT: Sustained.

25 BY MR. MARTINEZ:

Briona Hurshman - Cross-Examination by Mr. Martinez

1 Q Was you -- when you went to the sexual trauma and
2 you had your SANE get done, your rape kit, they got under
3 your fingernails; is that correct? They got all your
4 clothes?

5 A Yes.

6 Q And in your original statement, another thing too,
7 you said that money was taken from you too; is that
8 correct?

9 A A debit card and I think a few dollars wrapped
10 around it or next to it, maybe. Perhaps I just -- I know
11 that the debit card.

12 Q And later stated that there was nothing that you --
13 that the person didn't take the money; they was nothing
14 taken?

15 A I stated that you took nothing?

16 Q Or that the money -- you originally said that stuff
17 was taken and then you turned around and said that was --
18 it was taken?

19 A Is that a question?

20 Q Yeah, did you contradict yourself?

21 A I don't know.

22 Q When Mr. Shumard showed you -- the next day he went
23 to the Dickerson Center and showed you a photographic
24 lineup; is that correct?

25 A Yes.

Briona Hurshman - Cross-Examination by Mr. Martinez

1 Q And do you remember what photographic lineup that
2 was?

3 A It was just a lineup of six different faces.

4 Q Six different faces?

5 A I think so.

6 Q Was it with glasses?

7 A I think it was glasses.

8 MR. MARTINEZ: Your Honor, do we still have the
9 exhibits? I don't have my copy of that. The Court exhibit
10 I entered --

11 THE COURT: Our court reporter has them once
12 they're introduced. Our court reporter keeps the custody
13 of them, so she has -- you want Defense Exhibit 1?

14 MR. MARTINEZ: Yeah; please.

15 THE COURT: Do you have that, Madam Court Reporter?
16 (The document was handed to the defendant.)

17 THE COURT: Is that the one you're referring to,
18 Mr. Martinez?

19 MR. MARTINEZ: Yes, sir.

20 THE COURT: All right. I'd like to introduce that
21 into evidence.

22 MS. WALKER: I don't have an objection, Your Honor.

23 THE COURT: Defense 1 is in evidence without
24 objection.

25 (Defense Exhibit Number 1 was entered into